



# Annual Report 2015-16



## NSW Health Professional Councils

COMBINED ANNUAL REPORTS OF THE 14 NEW SOUTH WALES HEALTH PROFESSIONAL COUNCILS

ABORIGINAL AND TORRES STRAIT ISLANDER HEALTH PRACTICE COUNCIL • CHINESE MEDICINE COUNCIL  
CHIROPRACTIC COUNCIL • DENTAL COUNCIL • MEDICAL COUNCIL • MEDICAL RADIATION PRACTICE COUNCIL  
NURSING AND MIDWIFERY COUNCIL • OCCUPATIONAL THERAPY COUNCIL • OPTOMETRY COUNCIL • OSTEOPATHY  
COUNCIL • PHARMACY COUNCIL • PHYSIOTHERAPY COUNCIL • PODIATRY COUNCIL • PSYCHOLOGY COUNCIL

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*Health Professional Councils Authority*

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# Foreword

The annual reports of the 14 NSW Health Professional Councils (Councils) are presented as a combined report.

The Councils are:

- **Aboriginal and Torres Strait Islander Health Practice Council** of New South Wales
- **Chinese Medicine Council** of New South Wales
- **Chiropractic Council** of New South Wales
- **Dental Council** of New South Wales
- **Medical Council** of New South Wales
- **Medical Radiation Practice Council** of New South Wales
- **Nursing and Midwifery Council** of New South Wales
- **Occupational Therapy Council** of New South Wales
- **Optometry Council** of New South Wales
- **Osteopathy Council** of New South Wales
- **Pharmacy Council** of New South Wales
- **Physiotherapy Council** of New South Wales
- **Podiatry Council** of New South Wales
- **Psychology Council** of New South Wales

This 2016 annual report is structured in three parts.

**Part 1** contains information common across all Councils, including information about the responsibilities of Councils, regulatory activities, governance, compliance and data reports for all Councils.

**Part 2** contains information that is specific to each Council.

**Part 3** contains audited financial statements for each Council.

The consolidated report incorporating all information and financial statements for all Councils is available on the Health Professional Councils Authority (HPCA) website [www.hpca.nsw.gov.au](http://www.hpca.nsw.gov.au).

Each Council's website includes information common across all Councils (Part 1) and the specific chapters from Part 2 and Part 3 relevant to that Council.

The Health Professional Councils Authority has collated information provided by each Council about their respective activities.

Registration data has been provided by the Australian Health Practitioner Regulation Agency (AHPRA).



## Health Professional Councils Authority

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14 October 2016

The Hon Jillian Skinner MP  
Minister for Health  
Minister for Medical Research  
GPO Box 5341  
SYDNEY NSW 2001

Dear Minister

In accordance with the provisions of the *Annual Reports (Statutory Bodies) Act 1984* and the *Public Finance and Audit Act 1983*, the 14 NSW health professional Councils are pleased to submit the Annual Report and Financial Statements for the year ending 30 June 2016, for presentation to Parliament.

We believe that the content of this report clearly demonstrates the commitment of each Council to administer the *Health Practitioner Regulation National Law (NSW)* in the best interests of protecting the public of NSW.

Yours sincerely

Ms Lisa Penrith  
President  
Aboriginal and Torres Strait Islander  
Health Practice Council

Ms Rosemary MacDougal  
Deputy President  
Aboriginal and Torres Strait Islander  
Health Practice Council

Associate Professor Christopher Zaslowski  
President  
Chinese Medicine Council

Ms Christine Berle  
Deputy President  
Chinese Medicine Council

Dr Anthony Richards  
President  
Chiropractic Council

Dr Lawrence Whitman  
Deputy President  
Chiropractic Council

Conjoint Associate Professor William O'Reilly AM  
President  
Dental Council

Dr Penny Burns  
Deputy President  
Dental Council

Dr Greg Kesby  
President  
Medical Council

Adjunct Associate Professor Richard Walsh  
Deputy President  
Medical Council



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Medical Radiation Practice Council

Adjunct Professor John G Kelly AM  
President  
Nursing and Midwifery Council

Mr Kim Nguyen  
President  
Occupational Therapy Council

Mr Albert Lee  
President  
Optometry Council

Ms Anne Cooper  
President  
Osteopathy Council

Mr Stuart Ludington  
President  
Pharmacy Council

Mr Michael Ryan  
President  
Physiotherapy Council

Mr Luke Taylor  
President  
Podiatry Council

Professor Alexander Blaszczynski  
President  
Psychology Council

Dr Karen Jovanovic  
Deputy President  
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Dr Katherine Moore  
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Optometry Council

Ms Soraya Mir  
Member  
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Pharmacy Council

Professor Darren Rivett  
Deputy President  
Physiotherapy Council

Ms Kristy Robson  
Deputy President  
Podiatry Council

Associate Professor William Warren  
Deputy President  
Psychology Council

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- Nursing and Midwifery Council of New South Wales \_\_\_\_\_
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**PART 1**  
**Overview,  
Regulatory activity,  
Governance and  
Compliance**

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## About the councils

The 14 NSW Health Professional Councils (Councils) are statutory bodies established for the purpose of public protection. This is achieved through the management of complaints relating to the conduct, performance and health of registered health practitioners with a principal place of practice in NSW. Councils also manage matters relating to the conduct and health of students registered to undertake health practitioner training in NSW.

The Councils fulfil their regulatory functions in partnership with the NSW Health Care Complaints Commission (HCCC), which is a separate statutory authority established under the *Health Care Complaints Act 1993*.

### Charter

The Councils are constituted under the *Health Practitioner Regulation National Law (NSW)* (the Law) to exercise the powers, authorities, duties and functions imposed by the Law.

### Aims and Objectives

Councils act in the interests of the public by ensuring that registered practitioners are fit to practise and students are fit to have contact with members of the public whilst they undertake approved programs of study.

The Councils manage a range of programs, services and procedures to achieve this. This assures members of the public that registered practitioners maintain proper and appropriate standards of conduct and professional performance.

The Pharmacy Council has an additional role regulating pharmacy ownership and is required to maintain a register of NSW pharmacies.

### Council Membership

The composition of individual Councils is prescribed in the Law and the *Health Practitioner Regulation (New South Wales) Regulation 2010*. Council members (members) are appointed by the Governor for a term of up to three years except for half of the Pharmacy Council members who are elected. Details of the membership of each Council are provided in Part 2 of this report.

## About the Health Professional Councils Authority (HPCA)

The HPCA provides shared executive and corporate services to support the Councils' regulatory activities.

On behalf of the Councils, the HPCA liaises with:

- The Ministry of Health (MoH) to provide advice and responses to the Minister for Health and the Secretary on regulatory matters, member appointments and other operational functions such as human resources
- The HCCC on complaints management issues
- The Australian Health Practitioner Regulation Agency (AHPRA) regarding financial, registration and reporting matters.

This coordinated approach provides efficiencies through shared services that would be costly for each Council to undertake on its own and allows the Councils to concentrate on their core regulatory functions.

### Service Level Agreements

This year Service Level Agreements (SLAs) between each Council and the HPCA were reviewed and new three year agreements to 2019 were developed. New SLAs with all Councils were signed, other than with the Medical Council. The SLAs define services the HPCA provides to Councils and include performance indicators and annual review mechanisms. The SLAs provide a firm understanding of the scope and quality of services that Councils can expect within the constraints of available resources.

## NSW Councils and co-regulation

The NSW Councils and the HPCA operate under co-regulatory arrangements in the National Registration and Accreditation Scheme (NRAS). The Councils supported by the HPCA, and in partnership with the NSW Health Care Complaints Commission (HCCC), manage complaints about health practitioners in NSW and students registered to undertake health practitioner training in NSW.

National Boards and AHPRA are responsible for registration of health practitioners Australia wide and NRAS accreditation functions. National Boards and AHPRA also manage complaints about health practitioners in other Australian states and territories.

NSW Councils work collaboratively with the national Boards and AHPRA.

Under the NRAS, 14 health professions are registered. Registered practitioners can practise in their profession anywhere in Australia, but usually nominate a state or territory as their principal place of practice (PPP). Details of all registered health practitioners are maintained in a national Register. The Register is available online. Further information about the NRAS and the national Register is available on the AHPRA website [www.ahpra.gov.au](http://www.ahpra.gov.au).

NSW Councils are funded through a portion of registration fees paid to AHPRA by health practitioners who identify NSW as their principal place of practice. Councils also receive a portion of fees collected from practitioners who do not identify a principal place of practice.

## NSW Councils and co-regulation continued

### Registered Health Practitioners

Information about registration and registrant numbers is sourced from AHPRA and provides context for the Councils' regulatory activities and functions. As at 30 June 2016 there were 190,986 registered health practitioners who identified NSW as their principle place of practice. This represents 29% of the 657,621 health practitioners registered in Australia. Table 1 provides registrant numbers by profession.

**Table 1:** Registered health practitioners as at 30 June 2016

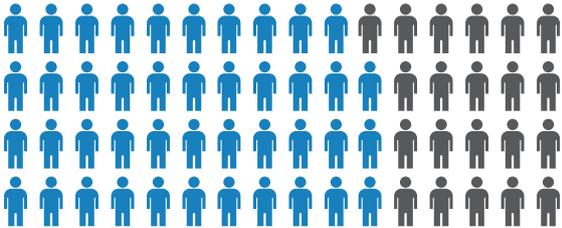
| Health Professions  | Total Registered Practitioners in Australia | Registered Practitioners with NSW as PPP | % of Australian Practitioners with NSW as PPP |
|---|---|--|---|
| Aboriginal and Torres Strait Islander Health Practitioner | 587   | 106                                      | 18.1%   |
| Chinese Medicine Practitioner                             | 4,762                                       | 1,953                                    | 41.0%   |
| Chiropractor  | 5,167                                       | 1,736                                    | 33.6%   |
| Dental Practitioner                                       | 21,741                                      | 6,580                                    | 30.3%   |
| Medical Practitioner                                      | 107,179                                     | 33,236                                   | 31.0%   |
| Medical Radiation Practitioner                            | 15,303                                      | 5,089                                    | 33.3%   |
| Midwife   | 4,122                                       | 903                                      | 21.9%   |
| Nurse   | 346,387                                     | 95,076                                   | 27.4%   |
| Nurse and Midwife   | 29,699                                      | 8,742                                    | 29.4%   |
| Occupational Therapist                                    | 18,304                                      | 5,167                                    | 28.2%   |
| Optometrist   | 5,142                                       | 1,743                                    | 33.9%   |
| Osteopath   | 2,094                                       | 572                                      | 27.3%   |
| Pharmacist  | 29,717                                      | 9,171                                    | 30.9%   |
| Physiotherapist   | 28,855                                      | 8,408                                    | 29.1%   |
| Podiatrist  | 4,655                                       | 1,268                                    | 27.2%   |
| Psychologist  | 33,907                                      | 11,236                                   | 33.1%   |
| <b>Total</b>  | <b>657,621</b>                              | <b>190,986</b>                           | <b>29.0%</b>                                  |

There is significant variation in registered practitioner numbers between professions in NSW ranging from Aboriginal and Torres Strait Islander (ATSI) Health Practice with only 106 practitioners representing 0.06% of all NSW registered practitioners to Nursing and Midwifery with 104,721 practitioners representing 54.83% of all NSW registered practitioners. All NSW Councils have the same complaints management responsibilities. However, larger numbers of practitioners in a profession generally mean the council has a greater number of complaints to manage than councils with smaller numbers of practitioners.

# NSW Councils and co-regulation

continued

## Registered health practitioners as at 30 June 2016

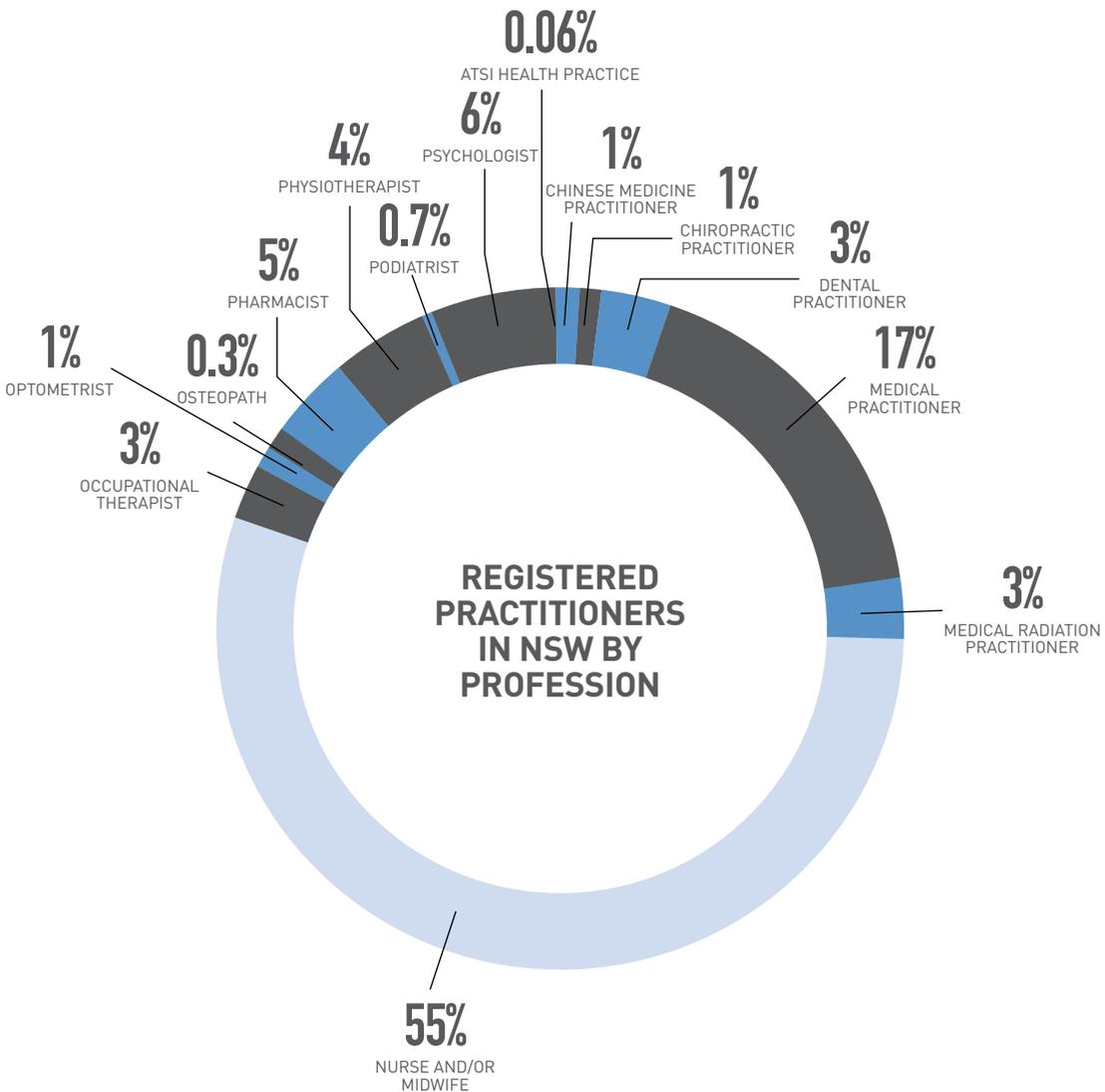


**190,986**

**PRACTITIONERS**

190,986 practitioners across 14 health professions were registered with NSW as the principal place of practice – that is 29% of the 657,621 registrants across Australia.

## Relative proportion of registered practitioners in NSW by profession



## Student Registration

Students undertaking programs of study in 13 of the 14 regulated health professions are also registered. The Psychology Board of Australia does not register students but instead has in place provisional registration for new graduates.

The number of NSW students registered across the health professions as at 30 June 2016 was 40,937. NSW student registrations make up 26.6% of the 153,710 student registrations Australia wide. Figures are based on the location of the education provider.

Table 2 provides student registration numbers by profession.

Student registration data is identified separately to registration data about registered practitioners. Students do not pay registration fees and are not published on the national Register.

**Table 2:** Registered students as at 30 June 2016

| Students <sup>1</sup>                                     | Total Registered Students in Australia | Registered Students in NSW | % of Australian Students in NSW |
|---|--|----------------------------|---------------------------------|
| Aboriginal and Torres Strait Islander Health Practitioner | 292                                    | 0                          | 0.0%                            |
| Chinese Medicine Practitioner                             | 1,318                                  | 389                        | 29.5%                           |
| Chiropractor  | 1,240                                  | 539                        | 43.5%                           |
| Dental Practitioner                                       | 4,810                                  | 2,112                      | 43.9%                           |
| Medical Practitioner                                      | 19,760                                 | 6,981                      | 35.3%                           |
| Medical Radiation Practitioner                            | 3,447                                  | 1,669                      | 48.4%                           |
| Midwife   | 3,949                                  | 838                        | 21.2%                           |
| Nurse   | 89,620                                 | 19,748                     | 22.0%                           |
| Occupational Therapist                                    | 7,922                                  | 1,765                      | 22.3%                           |
| Optometrist   | 1,652                                  | 470                        | 28.5%                           |
| Osteopath   | 1,759                                  | 88                         | 5.0%                            |
| Pharmacist  | 7,280                                  | 2,357                      | 32.4%                           |
| Physiotherapist   | 8,943                                  | 3,324                      | 37.2%                           |
| Podiatrist  | 1,718                                  | 657                        | 38.2%                           |
| <b>Grand total</b>  | <b>153,710</b>                         | <b>40,937</b>              | <b>26.6%</b>                    |

<sup>1</sup> If a NSW student is completing his/her course with an education provider with a multi-jurisdictional presence, he/she may not be included in the NSW data. However these students are captured in data for total registered students in Australia.

Psychology students are not registered and are therefore not included in the table. New psychology graduates work under provisional registration instead of student registration.

# Overview of Health Professional Regulation in NSW

## COMPLAINTS IN NSW AS AT 30 JUNE 2016

**4,034**

COMPLAINTS RECEIVED

4,034 complaints were received about 3,478 NSW health practitioners including 339 mandatory notifications about 315 practitioners and 283 cases where immediate action was considered.

**3,612**  
COMPLAINTS WERE CLOSED

**2,004**  
COMPLAINTS REMAINED OPEN

(There were 1,582 open complaints at the beginning of 2015/16).

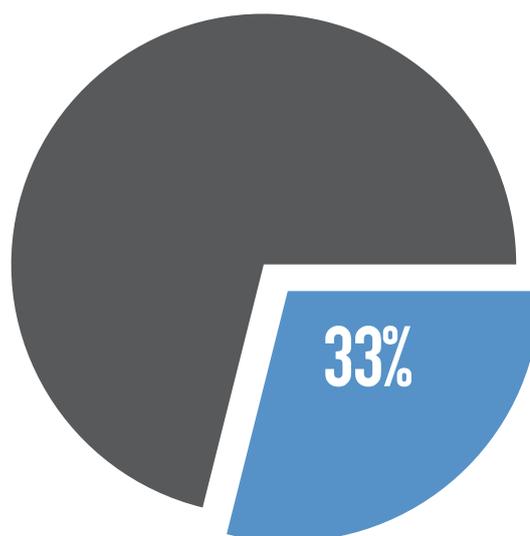
### CASES ACTIVELY MONITORED BY COUNCILS

**337**  
HEALTH CASES

**307**  
CONDUCT CASES

**127**  
PERFORMANCE CASES

## COMPLAINTS MANAGED BY COUNCILS



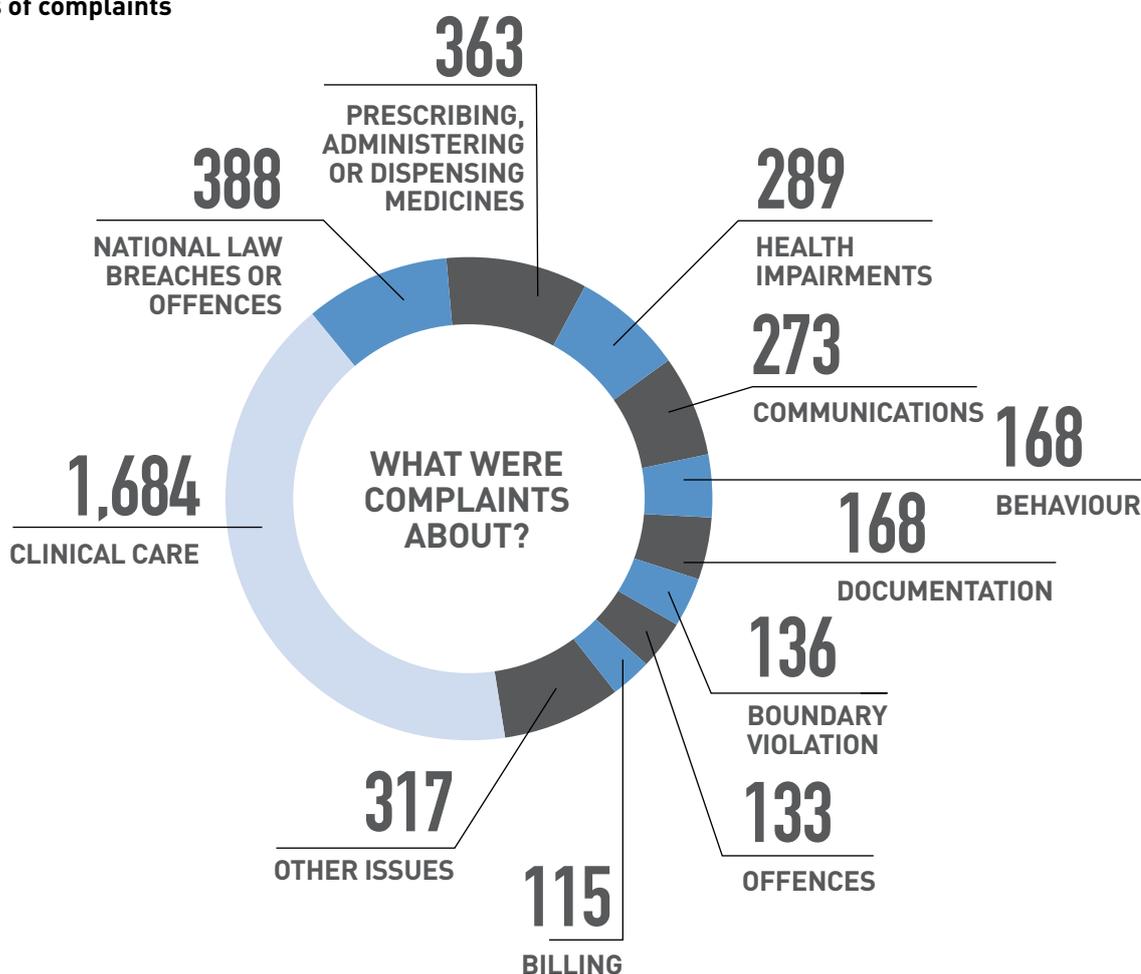
**1,315**

NEW COMPLAINTS

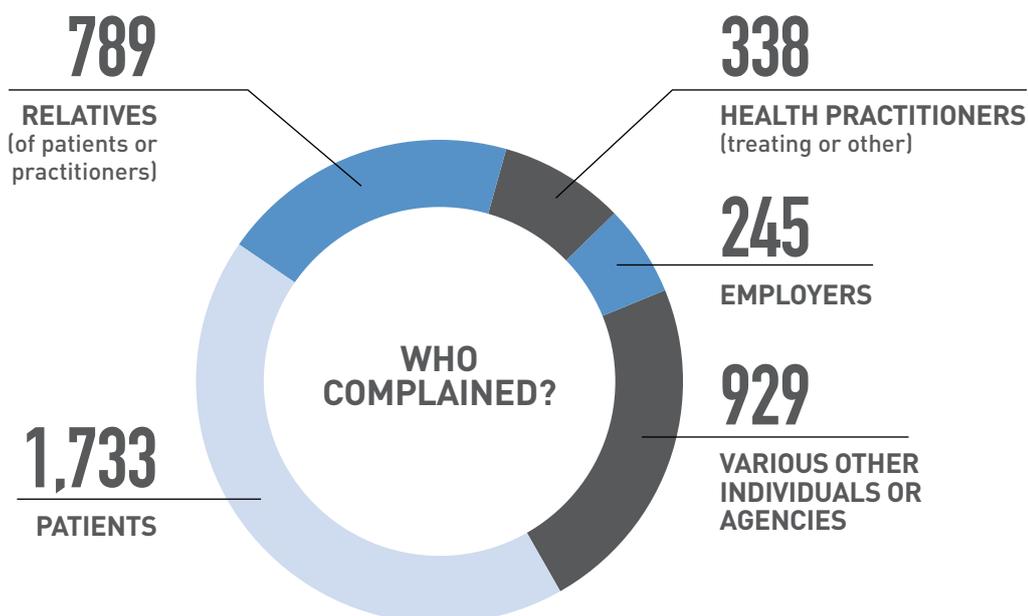
1,315 complaints were managed by Councils after consultation with the HCCC, that is 33% of all complaints received.

## Overview of Health Professional Regulation in NSW continued

### Types of complaints



### Source of complaints



# Achievements and Priorities

## Strategic Planning

Public protection is the driving force for all Councils and the HPCA. The combined Councils and HPCA Strategic Framework 2014 to 2017 provides an overarching direction to the shared priorities of Councils and the HPCA.

The five key strategic themes are to:

**1. STRENGTHEN THE PROFILE AND POSITIONING OF THE COUNCILS AND HPCA**

**Objective:** Improve communication and engagement with registrants (including new graduates), the NSW Minister and Government, jurisdictions and other key stakeholders.

**2. DEVELOP PARTNERSHIPS WITH KEY STAKEHOLDERS, INTERNALLY AND EXTERNALLY**

**Objective:** Strengthen collaboration across and between Councils and develop closer working relationships with key strategic partners.

**3. DEMONSTRATE VALUE**

**Objective:** Undertake research, measure performance and build and communicate evidence of the effectiveness and impact of the Councils' and HPCA's role.

**4. BUILD THE ORGANISATIONS' SUSTAINABILITY AND EFFECTIVENESS**

**Objective:** Ensure equitable, flexible and sustainable funding, manage risk and deliver efficient and effective services.

**5. POSITION THE COUNCILS AND HPCA FOR THE FUTURE**

**Objective:** Monitor current and emerging developments in the health care sector, and participate in and respond to key reviews and reform initiatives.

Underpinning this strategic framework are:

- Council specific strategic and action plans developed by some Councils
- The HPCA Strategic Plan 2015 to 2018 and annual action plans which are specific to the roles and responsibilities of the HPCA in supporting Councils.

Planning activities include consultation with staff and Council members and quarterly reporting for organisation-wide action plans.

## Council Presidents' Forum

The Forum of Council Presidents provides an opportunity for the Presidents from each Council to share information and work collaboratively. It has proved an excellent introduction to Council business and shared interests and goals for a number of new Council Presidents who were appointed in July 2015.

Over the last 12 months the Presidents' Forum considered issues such as the HPCA Information and Communications Technology (ICT) Strategic Plan; the HPCA Communications Framework; the website redevelopment project; and the service level agreements between Councils and the HPCA. Opportunities for collaborative research were also discussed and a working group is being established to further this initiative.

## Achievements and Priorities continued

### Improving Systems and Processes

Councils are committed to streamlining and simplifying their processes for dealing with complaints and communicating with practitioners, complainants and stakeholders.

Four key projects undertaken during the year are outlined below.

#### Plain English Communications

A major project this year has been to adopt a plain English approach to all letters and communications. Staff working groups are revising templates and developing information sheets under the guidance of the Plain English Foundation.

#### Compendium of Legal Advice

A compendium of legal advice has been developed as a reference source for staff and members to assist with decision making. It collates legal advice given by HPCA legal staff and external legal providers. It is proving a valuable tool to support the Councils' regulatory activities.

#### Regulation Handbook

The Regulation Handbook is an administrative manual for staff who support Councils. It was developed after consultation with HPCA staff at all levels. Since its launch in September 2015, the Handbook has been used as a central resource for staff training and to increase the efficiency, effectiveness and consistency of the work done across teams.

#### Electronic Papers via BoardBooks

The use of BoardBooks for access to Council and other meeting papers by Council members and HPCA staff is being further embedded in administrative practice. It has reduced the volume of the printing and produced internal efficiencies as well as providing members with a more manageable way of dealing with Council workloads. The system is linked to the records management system and conveniently includes reference and resource documents as well as meeting papers accessible via customised iPads.

### Research

Five Councils continued to be involved in a research project that is being conducted by the University of Sydney. This five part research project is comparing complaints-handling in NSW with other Australian jurisdictions. The Medical Council, the Nursing and Midwifery Council, the Dental Council, the Pharmacy Council and the Psychology Council are supporting this research in cooperation with the HCCC and AHPRA. Draft papers on some components of the project are being reviewed and publication is expected during the next reporting period.

A Research Policy Framework has also been prepared to provide a context for Councils to identify opportunities for collaborative research projects. It provides a structure to ensure that individual Council and joint research activities meet ethical, regulatory, policy and professional standards.

# Regulatory Activity

## Complaints about NSW Health Practitioners

Anyone can make a complaint about a registered health practitioner or registered student. Complaints may relate to the conduct, performance or health of a practitioner or the conduct or health of a student. A complaint may be made to a Council, the HCCC or AHPRA.

The *Health Care Complaints Act 1993* requires the Council and the HCCC to advise each other about complaints received and to consult regarding the course of action to be taken. A complaint made to a Council is deemed to be also made to the HCCC and vice versa.

The regulatory bodies and systems in place to manage complaints about health practitioners are critical to public protection when health care services are used. Only a very small proportion of practitioners are subject to a complaint when compared to the total number of health practitioners who are registered in each profession.

It is however important to note that different professions have different risk profiles which may explain why some professions receive a proportionally higher number of complaints. Often this can relate to the nature of work carried out by the different professions, for example more invasive procedures can carry a higher risk. Other factors which may also be relevant include whether practitioners are working in public health or private sectors where there are differences in ready access to other health practitioners and supervision.

During the reporting period the Councils received a total of 4,034 new complaints about 3,478 individual health practitioners representing 1.8% of all NSW based health practitioners.

Table 3 provides an overview of complaints about health practitioners by profession, including number of complaints open at the beginning and the end of 2015/16; number of complaints received during the year; number of practitioners subject of complaint; and proportion of NSW practitioners subject of complaint.

## Regulatory Activity

continued

**Table 3:** Overview of NSW complaints in 2015/16

| Health Professions             | Number of cases open at 1/7/15 | Number of complaints received in 2015/16 | Number of complaints closed in 2015/16 | Number of cases open at 30/6/16 | Number of practitioners subject of complaint in 2015/16 | % of registered practitioners in NSW subject of complaint in 2015/16 |
|--------------------------------|--------------------------------|--|--|---------------------------------|---|--|
| ATSI Health Practitioners      | -                              | -  | -                                      | -                               | -   | -  |
| Chinese Medicine Practitioner  | 4                              | 26                                       | 11                                     | 19                              | 25  | 1.28%  |
| Chiropractor                   | 17                             | 64                                       | 52                                     | 29                              | 50  | 2.88%  |
| Dental Practitioner            | 170                            | 528                                      | 401                                    | 297                             | 440   | 6.69%  |
| Medical Practitioner           | 815                            | 2,230                                    | 1,996                                  | 1,049                           | 1,877   | 5.65%  |
| Medical Radiation Practitioner | 3                              | 13                                       | 11                                     | 5                               | 13  | 0.26%  |
| Nurse / Midwife                | 321                            | 610                                      | 595                                    | 336                             | 563   | 0.54%  |
| Occupational Therapist         | 8                              | 24                                       | 28                                     | 4                               | 24  | 0.46%  |
| Optometrist                    | 9                              | 22                                       | 27                                     | 4                               | 22  | 1.26%  |
| Osteopath                      | 12                             | 9  | 18                                     | 3                               | 8   | 1.40%  |
| Pharmacist                     | 121                            | 259                                      | 236                                    | 144                             | 237   | 2.58%  |
| Physiotherapist                | 19                             | 37                                       | 38                                     | 18                              | 36  | 0.43%  |
| Podiatrist                     | 13                             | 15                                       | 22                                     | 6                               | 15  | 1.18%  |
| Psychologist                   | 70                             | 197                                      | 177                                    | 90                              | 168   | 1.50%  |
| <b>Total 2015/16</b>           | <b>1,582</b>                   | <b>4,034</b>                             | <b>3,612</b>                           | <b>2,004</b>                    | <b>3,478</b>  | <b>1.82%</b>   |

Data includes mandatory notifications.

May include complaints received under the former law.

**Note:** As no complaints about Aboriginal and Torres Strait Islander Health Practitioners were received or open in the reporting period, this profession has not been included in all further tables presenting complaints data in this report.

## Regulatory Activity

### continued

### Mandatory Notifications

The Law requires health practitioners, employers and education providers to make mandatory notifications to AHPRA if they believe a practitioner has behaved in a way that constitutes notifiable conduct. AHPRA then refers these matters to a Council for management where NSW practitioners are involved.

Notifiable conduct includes:

- Practising while intoxicated by alcohol or drugs
- Sexual misconduct in connection with the practice of the profession
- Placing the public at risk of harm because of a significant departure from accepted professional standards
- Placing the public at risk of substantial harm because of a health issue or impairment.

Registered students are also subject to mandatory notifications if they have an impairment that may place the public at substantial risk of harm.

During the reporting period 338 mandatory notifications were received about 315 registered practitioners, which represented 8.4% of all new complaints received during the year (n 4,034).

**Table 4:** Mandatory notifications received by profession

| Health Professions             | Notifications | Number of Practitioners Subject of Mandatory Notification | Mandatory Notifications as % of all Complaints Received for that Profession |
|--------------------------------|---------------|---|---|
| Chinese Medicine Practitioner  | 2             | 2   | 7.7%  |
| Chiropractor                   | 2             | 1   | 3.1%  |
| Dental Practitioner            | 5             | 5   | 0.9%  |
| Medical Practitioner           | 85            | 79  | 3.8%  |
| Medical Radiation Practitioner | 2             | 2   | 15.5%   |
| Nurse / Midwife                | 190           | 186   | 31.1%   |
| Occupational Therapist         | -             | -   | 0.0%  |
| Optometrist                    | -             | -   | 0.0%  |
| Osteopath                      | 1             | 1   | 11.1%   |
| Pharmacist                     | 4             | 3   | 1.5%  |
| Physiotherapist                | 4             | 4   | 11.1%   |
| Podiatrist                     | 1             | 1   | 6.7%  |
| Psychologist                   | 42            | 31  | 21.3%   |
| <b>Total</b>                   | <b>338</b>    | <b>315</b>  | <b>8.4%</b>   |

## Regulatory Activity continued

### Complaints about Students

Complaints about students are included in the Table 3 overview of NSW complaints for 2015/16 and Table 4 mandatory notifications. Only five Councils reported voluntary complaints or mandatory notifications about students as shown in Table 5.

**Table 5:** Complaints and mandatory notifications about health professional students

| Health Professions     | Number of Complaints and Mandatory Notifications About Students |
|------------------------|---|
| Dental Practitioner    | 2   |
| Medical Practitioner   | 15  |
| Nurse and Midwife      | 26  |
| Occupational Therapist | 1   |
| Physiotherapist        | 1   |
| <b>Total 2015/16</b>   | <b>45</b>   |

### Source of Complaints

Anyone can make a complaint about a health practitioner. Patients are most frequently the complainant. This year patients made 1,733 complaints accounting for 42.95% of all complaints received during the year.

Table 6 provides an overview of who lodged complaints during 2015/16 for each health profession.

## Regulatory Activity

continued

**Table 6:** Complaints received in 2015/16 by source of complaint

| Source of Complaint                   | Chinese Medicine Practitioner | Chiropractor | Dental Practitioner | Medical Practitioner | Medical Radiation Practitioner | Nurse / Midwife | Occupational Therapist | Optometrist | Osteopath | Pharmacist | Physiotherapist | Podiatrist | Psychologist | Total        |
|---------------------------------------|-------------------------------|--------------|---------------------|----------------------|--------------------------------|-----------------|------------------------|-------------|-----------|------------|-----------------|------------|--------------|--------------|
| AHPRA                                 | 9                             | 25           | 6                   | 19                   | 1                              | 27              | 2                      | 5           | -         | 4          | 1               | -          | 9            | <b>108</b>   |
| Anonymous                             | 1                             | 2            | -                   | 34                   | 1                              | 22              | 1                      | 1           | -         | 21         | 1               | -          | 3            | <b>87</b>    |
| Council                               | -                             | -            | 5                   | 51                   | 1                              | 17              | -                      | -           | -         | 32         | -               | -          | 3            | <b>109</b>   |
| Education provider                    | -                             | -            | 2                   | 3                    | -                              | 18              | -                      | -           | -         | 1          | -               | -          | 2            | <b>26</b>    |
| Employee                              | 1                             | 1            | 7                   | 9                    | 1                              | 6               | -                      | -           | -         | 8          | -               | -          | 7            | <b>40</b>    |
| Employer                              | -                             | -            | 3                   | 51                   | 2                              | 163             | 3                      | -           | -         | 5          | 5               | 3          | 10           | <b>245</b>   |
| Government department                 | -                             | 1            | 2                   | 29                   | 4                              | 12              | -                      | 1           | 1         | 3          | -               | -          | 1            | <b>54</b>    |
| Insurance company                     | -                             | 2            | 12                  | 2                    | -                              | -               | -                      | -           | -         | -          | 3               | 3          | -            | <b>22</b>    |
| Lawyer                                | -                             | -            | -                   | 24                   | -                              | 2               | -                      | -           | -         | 1          | -               | -          | 2            | <b>29</b>    |
| Member of the public <sup>1</sup>     | -                             | 10           | 165                 | 44                   | 1                              | 31              | 2                      | -           | 2         | 23         | 1               | -          | 24           | <b>303</b>   |
| Other practitioner <sup>2</sup>       | 2                             | 6            | 5                   | 83                   | -                              | 52              | 3                      | 1           | 1         | 18         | 1               | -          | 18           | <b>190</b>   |
| Patient                               | 9                             | 13           | 248                 | 1,217                | 2                              | 76              | 5                      | 12          | 3         | 66         | 21              | 5          | 56           | <b>1,733</b> |
| Pharmaceutical Services               | -                             | -            | 2                   | 15                   | -                              | 1               | -                      | -           | -         | 23         | -               | -          | 1            | <b>42</b>    |
| Police                                | -                             | 1            | -                   | 8                    | -                              | 3               | -                      | -           | 1         | 3          | -               | -          | 1            | <b>17</b>    |
| Relative (of patient or practitioner) | 1                             | 3            | 57                  | 538                  | -                              | 105             | 7                      | 2           | 1         | 36         | 2               | 3          | 34           | <b>789</b>   |
| Self report                           | -                             | -            | -                   | 24                   | -                              | 35              | 1                      | -           | -         | 2          | 1               | -          | 4            | <b>67</b>    |
| Treating practitioner <sup>3</sup>    | 2                             | -            | 13                  | 64                   | -                              | 34              | -                      | -           | -         | 12         | 1               | -          | 22           | <b>148</b>   |
| Other <sup>4</sup>                    | 1                             | -            | 1                   | 15                   | -                              | 6               | -                      | -           | -         | 1          | -               | 1          | -            | <b>25</b>    |
| <b>Total 2015/16</b>                  | <b>26</b>                     | <b>64</b>    | <b>528</b>          | <b>2,230</b>         | <b>13</b>                      | <b>610</b>      | <b>24</b>              | <b>22</b>   | <b>9</b>  | <b>259</b> | <b>37</b>       | <b>15</b>  | <b>197</b>   | <b>4,034</b> |

<sup>1</sup> Includes unpaid carers, friends of patient or practitioner, students.<sup>2</sup> Includes other service providers, colleagues.<sup>3</sup> Includes practitioners treating the patient or treating the practitioner.<sup>4</sup> 'Other' includes Courts/Coroner, HCCC, Hospital, Medicare, other regulation authority / council, paid carers.

## Regulatory Activity

### continued

### Reasons for Complaints

There are various reasons why complaints are made about health practitioners. Overall the greatest number of complaints related to clinical care/treatment totalling 1,684 complaints accounting for 41.7% of matters. Given the wide ranging procedures, modalities and types of treatment undertaken by health practitioners that constitute clinical care, it is to be expected that this is consistently the most common reason for a complaint.

Table 7 sets out the number of complaints received during 2015/16 by type of complaint for each health profession.

**Table 7:** Number of complaints received in 2015/16 by type of complaint

| Complaint Category                                 | Chinese Medicine Practitioner | Chiropractor | Dental Practitioner | Medical Practitioner | Medical Radiation Practitioner | Nurse / Midwife | Occupational Therapist | Optometrist | Osteopath | Pharmacist | Physiotherapist | Podiatrist | Psychologist | Total        |
|--|-------------------------------|--------------|---------------------|----------------------|--------------------------------|-----------------|------------------------|-------------|-----------|------------|-----------------|------------|--------------|--------------|
| Behaviour  | -                             | 9            | 3                   | 43                   | -                              | 74              | 7                      | -           | 2         | 15         | 2               | 1          | 12           | <b>168</b>   |
| Billing  | 3                             | 7            | 21                  | 58                   | -                              | 1               | 2                      | 2           | -         | 7          | 4               | 2          | 8            | <b>115</b>   |
| Boundary violation                                 | -                             | 4            | 2                   | 69                   | 1                              | 22              | -                      | -           | 2         | 2          | 7               | -          | 27           | <b>136</b>   |
| Clinical care                                      | 9                             | 9            | 278                 | 1,106                | 9                              | 197             | 3                      | 9           | 3         | 5          | 9               | 5          | 42           | <b>1,684</b> |
| Communication                                      | -                             | 1            | 5                   | 209                  | -                              | 14              | 5                      | 3           | 1         | 6          | 6               | -          | 23           | <b>273</b>   |
| Confidentiality                                    | -                             | 1            | 2                   | 33                   | -                              | 19              | 2                      | 1           | -         | 3          | 1               | 2          | 13           | <b>77</b>    |
| Documentation                                      | 2                             | 3            | 10                  | 122                  | -                              | 1               | 1                      | -           | -         | 2          | 1               | 3          | 23           | <b>168</b>   |
| Health impairment                                  | 1                             | -            | 7                   | 100                  | 1                              | 146             | 1                      | -           | -         | 12         | 2               | -          | 19           | <b>289</b>   |
| Infection/hygiene                                  | 1                             | -            | 20                  | 16                   | -                              | 1               | -                      | -           | -         | -          | -               | 1          | -            | <b>39</b>    |
| Informed consent                                   | -                             | -            | 5                   | 44                   | -                              | 1               | -                      | -           | -         | -          | 1               | -          | 2            | <b>53</b>    |
| National Law breach                                | 2                             | 5            | 17                  | 59                   | 2                              | 31              | -                      | 1           | -         | 6          | -               | -          | 10           | <b>133</b>   |
| National Law offence                               | 7                             | 18           | 150                 | 30                   | -                              | 23              | 3                      | 5           | -         | 15         | 1               | -          | 3            | <b>255</b>   |
| Offence <sup>1</sup>                               | -                             | 4            | 3                   | 46                   | -                              | 39              | -                      | -           | 1         | 31         | 2               | -          | 7            | <b>133</b>   |
| Other <sup>2</sup>                                 | -                             | 3            | 3                   | 123                  | -                              | 3               | -                      | -           | -         | 6          | 1               | 1          | 8            | <b>148</b>   |
| Prescribing, administering or dispensing medicines | 1                             | -            | 2                   | 172                  | -                              | 38              | -                      | 1           | -         | 149        | -               | -          | -            | <b>363</b>   |
| <b>Total 2015/16</b>                               | <b>26</b>                     | <b>64</b>    | <b>528</b>          | <b>2,230</b>         | <b>13</b>                      | <b>610</b>      | <b>24</b>              | <b>22</b>   | <b>9</b>  | <b>259</b> | <b>37</b>       | <b>15</b>  | <b>197</b>   | <b>4,034</b> |

<sup>1</sup> Offence includes offences by student

<sup>2</sup> Other includes: Conflict of interest; discrimination; medico-legal conduct; research/teaching/assessment; response to adverse event; teamwork/supervision

## Regulatory Activity

### continued

#### Managing Complaints

The objective of complaints management is protection of public health and safety. The processes are intended to be remedial and supportive in nature rather than punitive for practitioners or an avenue for redress by complainants. However, on occasion the outcome may be disciplinary action for the practitioner who is the subject of a complaint, even though measures are taken to manage potential harm in the least restrictive manner. Information on the processes for making and managing complaints is available on the HPCA and Councils' websites which can be accessed through [www.hpca.nsw.gov.au](http://www.hpca.nsw.gov.au).

When a complaint is received in NSW, a preliminary assessment is undertaken by the relevant Council and the HCCC who jointly decide which agency will manage the matter and whether some form of action is required. Complaints may be referred for a health or performance assessment, investigation, conciliation or to other pathways for management depending on the nature and seriousness of the matter.

The Law provides Councils with powers to deal with complaints relating to a practitioner's health, performance and conduct, commonly referred to as 'streams', or 'programs'.

In some instances more than one stream may be applicable. However a primary stream is usually identified, based on which issue is the most serious.

#### Health

Impairment includes both physical and non-physical conditions that affect the health of a practitioner. Following assessment it may be determined that a practitioner with an impairment can continue to practise where public safety can be ensured and management measures are in place, such as restrictions on practice, supervisory or monitoring arrangements.

#### Performance

Performance issues generally relate to concerns about the standard of a practitioner's clinical performance, that is whether the knowledge, skill or judgement of a practitioner, or care exercised, is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience.

#### Conduct

Conduct issues generally relate to behavioural acts or omission and often go to the question of character or suitability. Conduct issues may constitute unsatisfactory professional conduct or professional misconduct, as defined in the Law.

## Regulatory Activity

### continued

#### Immediate Action under s150 of the Law

Under s150 of the Law, Councils must exercise their powers to either suspend or impose conditions on a practitioner's registration if they are satisfied that such action is appropriate, for the protection of the health or safety of the public, or is otherwise in the public interest.

During the reporting period 283 immediate action cases were considered by 10 Councils. Issues leading to consideration of immediate action are set out in Table 8 for each profession. The most frequent reason for considering immediate action related to the health/impairment of a practitioner accounting for 95 cases or 33.6% of all immediate action matters.

A decision not to take immediate action at the outset does not preclude action being taken at a later point in time or the substantive complaint continuing to be dealt with by the Council, or the HCCC.

**Table 8:** Immediate action considered / taken by category of complaint for each profession

| Profession                     | Boundary Violation | Health    | Infection Control | Offence   | Breach of Condition | Prescribing, Administering or Dispensing Medicines | Clinical Care | Other     | Total      |
|--------------------------------|--------------------|-----------|-------------------|-----------|---------------------|--|---------------|-----------|------------|
| Chinese Medicine Practitioner  | -                  | -         | -                 | -         | -                   | -  | 2             | -         | 2          |
| Chiropractor                   | 1                  | -         | -                 | -         | -                   | -  | -             | -         | 1          |
| Dental Practitioner            | 1                  | 5         | 21                | 1         | -                   | -  | 4             | 1         | 33         |
| Medical Practitioner           | 10                 | 40        | -                 | 3         | 11                  | 14   | 14            | 4         | 96         |
| Medical Radiation Practitioner | -                  | -         | -                 | -         | 1                   | -  | -             | -         | 1          |
| Nurse / Midwife                | 5                  | 35        | -                 | 5         | 6                   | 12   | 33            | 7         | 103        |
| Occupational Therapist         | -                  | -         | -                 | -         | -                   | -  | -             | -         | 0          |
| Optometrist                    | -                  | -         | -                 | -         | -                   | -  | -             | -         | 0          |
| Osteopath                      | -                  | -         | -                 | 1         | -                   | -  | -             | -         | 1          |
| Pharmacist                     | -                  | 7         | -                 | 3         | 2                   | 8  | -             | 10        | 30         |
| Physiotherapist                | 1                  | -         | -                 | -         | -                   | -  | -             | -         | 1          |
| Podiatrist                     | -                  | -         | -                 | -         | -                   | -  | -             | -         | 0          |
| Psychologist                   | 5                  | 8         | -                 | -         | 1                   | -  | -             | 1         | 15         |
| <b>Total</b>                   | <b>23</b>          | <b>95</b> | <b>21</b>         | <b>13</b> | <b>21</b>           | <b>34</b>  | <b>53</b>     | <b>23</b> | <b>283</b> |

Data includes matters where the practitioner surrendered registration.

Data excludes matters that did not proceed to an inquiry and also review inquiries.

## Regulatory Activity

continued

Councils exercised immediate action powers by imposing conditions for 176 matters, suspending the registration of 35 practitioners and accepting the surrender of registration from a further seven practitioners. These combined outcomes represented 77.1% of all immediate action matters considered. Councils determined that interim suspension or imposition of conditions was not warranted for 65 matters, that is 23% of all immediate action matters.

**Table 9:** Immediate action outcomes for each profession

| Health Professions             | No action taken | Accept Surrender of Registration | Action taken         |                   | Total      |
|--------------------------------|-----------------|----------------------------------|----------------------|-------------------|------------|
|                                |                 |                                  | Suspend Registration | Impose Conditions |            |
| Chinese Medicine Practitioner  | -               | -                                | -                    | 2                 | 2          |
| Chiropractor                   | -               | -                                | -                    | 1                 | 1          |
| Dental Practitioner            | 15              | -                                | 9                    | 9                 | 33         |
| Medical Practitioner           | 14              | 7                                | 18                   | 57                | 96         |
| Medical Radiation Practitioner | -               | -                                | 1                    | -                 | 1          |
| Nurse / Midwife                | 23              | -                                | 2                    | 78                | 103        |
| Occupational Therapist         | -               | -                                | -                    | -                 | 0          |
| Optometrist                    | -               | -                                | -                    | -                 | 0          |
| Osteopath                      | -               | -                                | -                    | 1                 | 1          |
| Pharmacist                     | 10              | -                                | 3                    | 17                | 30         |
| Physiotherapist                | -               | -                                | -                    | 1                 | 1          |
| Podiatrist                     | -               | -                                | -                    | -                 | -          |
| Psychologist                   | 3               | -                                | 2                    | 10                | 15         |
| <b>Total</b>                   | <b>65</b>       | <b>7</b>                         | <b>35</b>            | <b>176</b>        | <b>283</b> |

Data includes initial actions only.

Data excludes reviews of immediate action decisions and matters that did not proceed to an inquiry.

## Regulatory Activity

### continued

#### Complaints Referred for Council Management

One pathway for complaints after initial consultation between a Council and the HCCC is referral for management by a Council. During the reporting period 1,315 matters were referred for management by Councils, which overall represents 33% of complaints received. The proportion of complaints received that were referred for Council management was variable across the professions. Table 10 provides information about complaints referred for management by a Council by profession.

**Table 10:** Complaints referred for management by a Council following consultation with HCCC in 2015/16

| Health Professions             | Number of Complaints Referred for Management by a Council <sup>1</sup> | % of Complaints Received that were Referred for Management by a Council |
|--------------------------------|--|---|
| Chinese Medicine Practitioner  | 21   | 81%   |
| Chiropractor                   | 31   | 48 %  |
| Dental Practitioner            | 294  | 56%   |
| Medical Practitioner           | 363  | 16%   |
| Medical Radiation Practitioner | 8  | 67%   |
| Nurse / Midwife                | 338  | 55%   |
| Occupational Therapist         | 13   | 54%   |
| Optometrist                    | 12   | 55%   |
| Osteopath                      | 3  | 33%   |
| Pharmacist                     | 139  | 54%   |
| Physiotherapist                | 15   | 42%   |
| Podiatrist                     | 5  | 33%   |
| Psychologist                   | 73   | 37%   |
| <b>Total</b>                   | <b>1,315</b>   | <b>33%</b>  |

<sup>1</sup> Excludes matters that were discontinued, pre-resolved or referred to resolution / conciliation; matters withdrawn, referred elsewhere or determined to be out of jurisdiction at the initial consultation with the HCCC; matters referred to HCCC for investigation, to Director of Proceedings or Tribunal / PSC at some point; and matters still being assessed by the HCCC at 30 June 2016.

## Regulatory Activity

continued

### Assessments and Hearings

A number of different mechanisms are available to assist Councils in assessing, making further inquiries and managing complaints, including requests for health or performance assessments; panel reviews for impairment or performance matters; and counselling or interviews. For conduct matters that are not serious enough to warrant referral to a Tribunal, the Medical and Nursing and Midwifery Councils have available Professional Standards Committees while all other Councils use Assessment Committees and Council Inquiries.

Table 11 sets out the number of assessments and hearings completed during the year by profession. Counselling or interviews were most frequently used by Councils to assist them in complaints management with 392 completed during the year, that is 36% of all assessments and hearings concluded in 2015/16.

**Table 11:** Assessments and Hearings concluded in 2015/16

| Health Professions             | Applicable to All Councils      |  |                                      |   |   |                          | Applicable to All Councils Except Medical and Nursing / Midwifery Councils | Medical and Nursing / Midwifery Councils Only |   |
|--------------------------------|---------------------------------|--|--------------------------------------|---|---|--------------------------|--|---|---|
|                                | Health Assessments <sup>1</sup> | Impaired Registrant Panels (IRPs) <sup>1</sup> | Performance Assessments <sup>1</sup> | Performance Review Panels (PRPs) <sup>1</sup> | Tribunals (Complaint Hearings) <sup>2</sup> | Counselling / Interviews | Assessment Committees  | Council Inquiries                             | Professional Standards Committees (PSCs) <sup>2</sup> |
| Chinese Medicine Practitioner  | 1                               | -  | -                                    | -   | -   | 6                        | -  | -   | -   |
| Chiropractor                   | -                               | -  | -                                    | -   | 1   | 9                        | -  | 3   | -   |
| Dental Practitioner            | 3                               | 2  | -                                    | -   | 2   | 29                       | 44   | 19  | -   |
| Medical Practitioner           | 42                              | 56   | 15                                   | 29  | 26  | 141                      |  |   | 22  |
| Medical Radiation Practitioner | -                               | 1  | -                                    | -   | -   | -                        | -  | -   | -   |
| Nurse / Midwife                | 164                             | 105  | 29                                   | 12  | 8   | 122                      |  |   | 5   |
| Occupational Therapist         | 1                               | 3  | -                                    | -   | -   | -                        | -  | -   | -   |
| Optometrist                    | -                               | -  | -                                    | -   | -   | -                        | -  | -   | -   |
| Osteopath                      | -                               | -  | -                                    | -   | 4   | 1                        | -  | -   | -   |
| Pharmacist                     | 7                               | 8  | 1                                    | 4   | 5   | 46                       | -  | 10  | -   |
| Physiotherapist                | 1                               | 1  | -                                    | -   | -   | 5                        | 2  | -   | -   |
| Podiatrist                     | -                               | -  | -                                    | -   | 2   | 3                        | -  | -   | -   |
| Psychologist                   | 22                              | 15   | 6                                    | 3   | 5   | 30                       | -  | 2   | -   |
| <b>Total</b>                   | <b>241</b>                      | <b>191</b>                                     | <b>51</b>                            | <b>48</b>                                     | <b>53</b>                                   | <b>392</b>               | <b>46</b>  | <b>34</b>                                     | <b>27</b>   |

<sup>1</sup>Excludes reassessments and reviews.

<sup>2</sup>Includes matters that did not proceed eg withdrawn.

## Regulatory Activity

### continued

### NSW Civil and Administrative Tribunal (NCAT)

Serious matters may be referred to the NSW Civil and Administrative Tribunal (NCAT) following investigation by the HCCC, particularly where substantiated complaints could result in cancellation or suspension of registration. The HCCC prosecutes these matters before NCAT.

NCAT decisions are publically available on the NCAT website.

During the reporting period 60 new hearings were referred to NCAT. Table 12 provides an overview of complaint matters referred to NCAT by profession, including the number of matters open at the beginning and the end of 2015/16 and the number of matters referred during the year.

**Table 12:** Overview of complaints matters referred to NCAT

| Health Professions             | Number of Open Hearings at 1/7/15 | Number of New Hearings Referred in 2015/16 | Number of Hearings Closed in 2015/16 | Number of Open Hearings at 30/6/16 |
|--------------------------------|-----------------------------------|--|--------------------------------------|------------------------------------|
| Chinese Medicine Practitioner  | -                                 | 1  | -                                    | 1                                  |
| Chiropractor                   | -                                 | 2  | 1                                    | 1                                  |
| Dental Practitioner            | -                                 | 5  | 2                                    | 3                                  |
| Medical Practitioner           | 20                                | 29   | 25                                   | 24                                 |
| Medical Radiation Practitioner | -                                 | -  | -                                    | -                                  |
| Nurse / Midwife                | 6                                 | 18   | 8                                    | 16                                 |
| Occupational Therapist         | -                                 | -  | -                                    | -                                  |
| Optometrist                    | -                                 | -  | -                                    | -                                  |
| Osteopath                      | 4                                 | -  | 4                                    | -                                  |
| Pharmacist                     | 5                                 | 1  | 5                                    | 1                                  |
| Physiotherapist                | -                                 | -  | -                                    | -                                  |
| Podiatrist                     | 2                                 | -  | 2                                    | -                                  |
| Psychologist                   | 4                                 | 4  | 5                                    | 3                                  |
| <b>Total</b>                   | <b>41</b>                         | <b>60</b>                                  | <b>52</b>                            | <b>49</b>                          |

Hearings may involve one or more complaints.

Other functions carried out by NCAT include:

- Adjudicating appeals by a practitioner against certain decisions by a Council, a PSC, a PRP and the National Boards
- Reviewing orders cancelling a practitioner's registration and in some cases orders imposing conditions on registration.

## Regulatory Activity

### continued

#### Outcomes for Closed Complaints

The range of outcomes leading to closure of complaints reflects the different findings when a matter is examined and also the various options available to manage a complaint appropriately.

Outcomes leading to closure of complaints during the year are set out in Table 13 by profession. There may be more than one outcome for a single complaint, for example a practitioner may be reprimanded and also have conditions placed on his/her registration.

The majority of closed complaints were either discontinued or involved no further action. Together these outcomes totalled 2,754 matters representing 76% of outcomes for closed complaints.

A Council may take no action following further inquiries into the complaint, if for example it is satisfied that the practitioner acknowledges the issues of concern and has taken steps to ensure their practice has improved. Where no further action is recorded as the final outcome, Councils may have also provided advice or comments in correspondence to the practitioner or required the practitioner to take some action, such as updating a patient consent form.

Apart from matters that were discontinued or identified for no further action, conditions on registration was the most frequent outcome accounting for 200 matters, that is 5.5% of closures.

Outcomes for mandatory notifications cases are included in Table 13. However the issues that lead to mandatory notifications are potentially very serious. Consequently outcomes for these matters are also presented separately in Table 14.

## Regulatory Activity

continued

**Table 13:** Outcomes for complaints closed in 2015/16

| Outcome <sup>1</sup>                                | Chinese Medicine Practitioner | Chiropractor | Dental Practitioner | Medical Practitioner | Medical Radiation Practitioner | Nurse / Midwife | Occupational Therapist | Optometrist | Osteopath | Pharmacist | Physiotherapist | Podiatrist | Psychologist | Total        |
|---|-------------------------------|--------------|---------------------|----------------------|--------------------------------|-----------------|------------------------|-------------|-----------|------------|-----------------|------------|--------------|--------------|
| Registration cancelled or registration disqualified | -                             | -            | -                   | 18                   | -                              | 8               | -                      | -           | 10        | 4          | -               | -          | 8            | <b>48</b>    |
| Registration suspended                              | -                             | 3            | -                   | 3                    | -                              | -               | -                      | -           | -         | 5          | -               | 6          | 2            | <b>19</b>    |
| Surrender of registration accepted                  | -                             | -            | -                   | 17                   | -                              | 5               | -                      | -           | -         | -          | -               | -          | 8            | <b>30</b>    |
| Conditions on registration                          | -                             | 1            | 18                  | 58                   | -                              | 81              | 2                      | -           | -         | 24         | 1               | -          | 15           | <b>200</b>   |
| Orders made but no conditions                       | -                             | 3            | -                   | 8                    | -                              | -               | -                      | -           | -         | 4          | -               | -          | 1            | <b>16</b>    |
| Change to non-practising registration accepted      | -                             | -            | -                   | 6                    | -                              | -               | -                      | -           | -         | -          | -               | -          | -            | <b>6</b>     |
| Refund/payment withheld or retreat                  | -                             | -            | 2                   | -                    | -                              | -               | -                      | -           | -         | -          | -               | -          | -            | <b>2</b>     |
| Fine imposed  | -                             | -            | -                   | -                    | -                              | -               | -                      | -           | -         | -          | -               | -          | -            | <b>0</b>     |
| Reprimand issued                                    | -                             | 1            | 13                  | 18                   | -                              | 3               | -                      | -           | -         | 3          | -               | -          | 1            | <b>39</b>    |
| Caution issued                                      | -                             | -            | 7                   | 4                    | -                              | 1               | -                      | -           | -         | 4          | -               | -          | -            | <b>16</b>    |
| Finding but no orders                               | -                             | -            | -                   | -                    | -                              | 3               | -                      | -           | -         | -          | -               | -          | -            | <b>3</b>     |
| New complaint to be made                            | -                             | -            | -                   | -                    | -                              | -               | -                      | -           | -         | -          | -               | -          | -            | <b>0</b>     |
| Counselling   | -                             | 6            | 17                  | 4                    | -                              | 36              | -                      | 11          | 2         | 10         | 3               | 6          | 13           | <b>108</b>   |
| Resolution or conciliation by HCCC                  | -                             | -            | -                   | 48                   | -                              | 9               | -                      | -           | -         | -          | 1               | -          | 1            | <b>59</b>    |
| All or part referred to another body                | 2                             | 2            | 4                   | 91                   | -                              | 15              | -                      | 2           | -         | 8          | -               | -          | 3            | <b>127</b>   |
| No further action <sup>2</sup>                      | 7                             | 19           | 208                 | 558                  | 9                              | 191             | 16                     | 4           | 3         | 117        | 17              | -          | 42           | <b>1,191</b> |
| No jurisdiction <sup>3</sup>                        | -                             | -            | 3                   | 31                   | -                              | 82              | -                      | -           | -         | 4          | 1               | -          | 14           | <b>135</b>   |
| Discontinued  | 2                             | 17           | 132                 | 1,092                | 2                              | 158             | 9                      | 9           | 3         | 56         | 12              | 9          | 62           | <b>1,563</b> |
| Withdrawn   | -                             | 1            | 17                  | 60                   | -                              | 7               | 1                      | 1           | -         | 3          | 3               | 1          | 8            | <b>102</b>   |
| <b>Total</b>  | <b>11</b>                     | <b>53</b>    | <b>421</b>          | <b>2,016</b>         | <b>11</b>                      | <b>599</b>      | <b>28</b>              | <b>27</b>   | <b>18</b> | <b>242</b> | <b>38</b>       | <b>22</b>  | <b>178</b>   | <b>3,664</b> |

<sup>1</sup> Each complaint may have more than one outcome, all outcomes have been included.

<sup>2</sup> Includes matters resolved before assessment; apology; advice; Council letter; comments by HCCC; deceased; registration status change; did not proceed.

<sup>3</sup> Includes practitioners who failed to renew registration.

Data includes outcomes for all complaints closed in 2015/16 including mandatory notifications and complaints where immediate action was considered / taken.

## Regulatory Activity

continued

During the reporting period a total of 313 mandatory notifications were concluded by Councils. The most serious outcome was cancellation or suspension of registration, or surrender of registration accepted, which applied to 19 matters, that is 6% of all mandatory notifications. Conditions were imposed on practice for 74 matters, that is 24% of all mandatory notifications. For 133 matters, Councils determined that no further action was required or the matter was discontinued or withdrawn, that is 42% of all mandatory notification matters.

**Table 14:** Outcomes of mandatory notifications closed in 2015/16

| Outcome <sup>1</sup>                                | Chinese Medicine Practitioner | Chiropractor | Dental Practitioner | Medical Practitioner | Medical Radiation Practitioner | Nurse / Midwife | Occupational Therapist | Optometrist | Osteopath | Pharmacist | Physiotherapist | Podiatrist | Psychologist | Total      |
|---|-------------------------------|--------------|---------------------|----------------------|--------------------------------|-----------------|------------------------|-------------|-----------|------------|-----------------|------------|--------------|------------|
| Registration cancelled or registration disqualified | -                             | -            | -                   | 2                    | -                              | 3               | -                      | -           | 1         | -          | -               | -          | 2            | <b>8</b>   |
| Registration suspended                              | -                             | -            | -                   | 1                    | -                              | -               | -                      | -           | -         | -          | -               | -          | 1            | <b>2</b>   |
| Surrender of registration accepted                  | -                             | -            | -                   | 2                    | -                              | 3               | -                      | -           | -         | -          | -               | -          | 4            | <b>9</b>   |
| Conditions on registration <sup>2</sup>             | -                             | -            | 3                   | 13                   | -                              | 48              | -                      | -           | -         | 2          | -               | -          | 8            | <b>74</b>  |
| Change to non-practising registration               | -                             | -            | -                   | 2                    | -                              | -               | -                      | -           | -         | -          | -               | -          | -            | <b>2</b>   |
| Fine imposed  | -                             | -            | -                   | -                    | -                              | -               | -                      | -           | -         | -          | -               | -          | -            | <b>-</b>   |
| Caution or reprimand issued                         | -                             | -            | 3                   | 2                    | -                              | 2               | -                      | -           | -         | 1          | -               | -          | 1            | <b>9</b>   |
| Finding but no orders                               | -                             | -            | -                   | -                    | -                              | 1               | -                      | -           | -         | -          | -               | -          | -            | <b>1</b>   |
| Counselling   | -                             | -            | -                   | -                    | -                              | 12              | -                      | -           | -         | -          | -               | -          | 2            | <b>14</b>  |
| All or part referred to another body                | -                             | -            | -                   | 4                    | -                              | 5               | -                      | -           | -         | -          | -               | -          | 1            | <b>10</b>  |
| No further action <sup>2</sup>                      | 1                             | 2            | -                   | 21                   | 1                              | 67              | 1                      | -           | -         | 2          | -               | -          | 5            | <b>100</b> |
| No or other jurisdiction <sup>3</sup>               | -                             | -            | -                   | 1                    | -                              | 50              | -                      | -           | -         | -          | -               | -          | -            | <b>51</b>  |
| Discontinued or proceedings withdrawn               | -                             | -            | 1                   | 18                   | -                              | 6               | -                      | -           | -         | 1          | -               | 1          | 6            | <b>33</b>  |
| <b>Total</b>  | <b>1</b>                      | <b>2</b>     | <b>7</b>            | <b>66</b>            | <b>1</b>                       | <b>197</b>      | <b>1</b>               | <b>-</b>    | <b>1</b>  | <b>6</b>   | <b>-</b>        | <b>1</b>   | <b>30</b>    | <b>313</b> |

<sup>1</sup>Each complaint may have more than one outcome, all outcomes have been included.

<sup>2</sup>Includes conditions by consent.

<sup>3</sup>Includes practitioners who failed to renew registration.

## Regulatory Activity

### continued

#### Monitoring and Compliance with Orders and Conditions

Councils are responsible for monitoring compliance with orders made and conditions imposed by an adjudication body. Conditions fall into two categories:

- i. public conditions, which are published on the national Register website [www.ahpra.gov.au](http://www.ahpra.gov.au) or
- ii. private conditions, which relate to impairment and are recorded by AHPRA but not published on the national Register.

By ensuring compliance with orders and conditions, practitioners can continue to practise in a way that is safe for consumers.

Within HPCA there is a Monitoring, Inspection and Scheduling Unit (MISU) which oversees and administers systems and processes for monitoring compliance for the Nursing and Midwifery and Dental Councils. The other Councils use their own HPCA support staff for monitoring functions but may also seek assistance from MISU on occasion.

As at 30 June 2016, 771 cases were being actively monitored by the HPCA on behalf of the Councils. The health stream accounted for the greatest number of cases being monitored totalling 337 cases, or 44% of all monitoring cases. Cases requiring active monitoring by Councils are set out in Table 15 by stream for each profession.

**Table 15:** Active monitoring cases as at 30 June 2016 by profession and stream

| Profession                     | Conduct    | Health     | Performance | Total      |
|--------------------------------|------------|------------|-------------|------------|
| Chinese Medicine Practitioner  | 1          | -          | 1           | 2          |
| Chiropractor                   | 7          | -          | 1           | 8          |
| Dental Practitioner            | 28         | 10         | 15          | 53         |
| Medical Practitioner           | 171        | 119        | 30          | 320        |
| Medical Radiation Practitioner | -          | 1          | -           | 1          |
| Nurse / Midwife                | 47         | 170        | 56          | 273        |
| Occupational Therapist         | -          | 2          | -           | 2          |
| Optometrist                    | -          | 1          | 1           | 2          |
| Osteopath                      | 1          | -          | -           | 1          |
| Pharmacist                     | 37         | 11         | 10          | 58         |
| Physiotherapist                | 3          | 3          | 3           | 9          |
| Podiatrist                     | 1          | -          | 2           | 3          |
| Psychologist                   | 11         | 20         | 8           | 39         |
| <b>Total</b>                   | <b>307</b> | <b>337</b> | <b>127</b>  | <b>771</b> |

# Governance and Compliance

## Legislative Changes

### **Health Practitioner Regulation National Law (NSW)**

In the previous reporting period amendments were made to the Health Practitioner Regulation National Law (NSW) to require employers to be notified of conditions on a practitioner's registration and to require that complainants be notified of the outcomes from their complaints. Those amendments, Sections 176BA and 145BA respectively, commenced on 1 November 2015.

### **Health Practitioner Regulation National Law (NSW) Amendment (Review) Act 2016**

During the reporting period the NSW Parliament passed substantial amendments to the *Health Practitioner Regulation National Law (NSW)* (the Law) via the *Health Practitioner Regulation National Law (NSW) Amendment (Review) Act 2016*, which received the Governor's assent on 17 March 2016. Those amendments arose from the five year statutory review conducted by the Minister for Health between November 2014 and November 2015.

The vast majority of those amendments commenced on 15 May 2016. The remaining amendments as to financial interests in pharmacy businesses and to include notifications made under section 130 of the Law as complaints did not commence until 1 July 2016.

Overwhelmingly the amendments were of a "tidy-up" or clarifying nature and did not represent any change in policy or approach. Details of the amendments that represent a change in policy follow.

A new section 41NA provides a means for the Minister for Health to address concerns arising from a Council being financially unviable. The Minister now has the power to direct a financially unviable Council and/or its Executive Officer to delegate their functions to another Council or person as designated by the Minister. The section also allows for the Governor to make regulations modifying an unviable Council's functions, including reporting and auditing. No such direction or regulation had been made at the end of the reporting period.

A new section 139I provides that notice of a notifiable event under s130 from a registered practitioner or student to a National Board is taken to be a complaint to both the relevant Council and the Health Care Complaints Commission. This amendment streamlines administrative processes and ensures that a notification of important matters, such as serious criminal charges, is properly considered in the complaints system.

Section 147B(1) has been amended to delete the requirement that Council Assessment Committees must settle complaints by consent. This amendment recognises that the settlement of complaints, ordinarily by the repayment of fees, is by-and-large inconsistent with the public interest nature of the complaints process.

A new section 155C(1)(f) allows a Council to impose performance related conditions on a practitioner's registration following a performance assessment and without the need to establish a Performance Review Panel. This process can only be initiated with the practitioner's consent and recognises that in circumstances where there is agreement as to the remedial steps that are appropriate the convening of a Performance Review Panel is cumbersome, wasteful and serves no public benefit.

## Governance and Compliance continued

There were also a range of minor amendments as a consequence of other legislation passed by the Parliament as follows:

**Statute Law (Miscellaneous Provisions) Act (No 2) 2015:** Minor amendments to terminology and cross referencing flowing from the commencement of the *Government Sector Employment Act 2013*.

**Legal Profession Uniform Law Application Legislation Amendment Act 2015:** Minor amendment to reflect the change in name of the *Legal Profession Act 2004* to the *Legal Profession Uniform Law (NSW)*.

### **Health Practitioner Regulation (New South Wales) Regulation 2010**

A minor amendment was made to the *Health Practitioner Regulation (New South Wales) Regulation 2010*. That amendment inserted clause 1A into Schedule 2 of the Regulation and relates to the keeping of specific records by a medical practitioner who is treating a patient for chlamydia.

### **Audit and Risk Management**

NSW Treasury has granted the Councils an exemption from the *Internal Audit and Risk Management Policy for the NSW Public Sector* on the grounds that Councils are small agencies for which the administrative and cost burden of full compliance would be prohibitive. Nevertheless appropriate internal audit and risk management practices have been adopted. These practices are consistent with the core requirements of the policy and include the operation of the HPCA Audit and Risk Committee.

In July 2015 the updated *Internal Audit and Risk Management Policy for the NSW Public Sector* (TPP15-03) came into effect which included a requirement that Audit and Risk Committees comprise only independent members appointed for an initial minimum three year term.

The HPCA Audit and Risk Committee was initially established with two independent members and one HPCA representative. However, consistent with the new policy, committee membership was reviewed in March 2016 and a third independent member was appointed instead of the HPCA representative.

The Committee is an important way of ensuring independent monitoring and advice regarding financial reports, risk management and internal audits and reviews. It operates in a clear and transparent manner with a documented charter. Representatives of the Councils, the Audit Office of NSW and the internal auditors may attend meetings as observers.

### **Internal Audit**

The recommendations of internal audits undertaken in 2014/15 were implemented. The procurement audit recommendations were finalised. Recommendations arising from the records management audit are being progressively addressed as the upgrades to information and communications technology that are necessary to implement those recommendations are delivered.

In late 2015 the HPCA's internal auditor, IAB, was wound up and the HPCA's contract with IAB for internal audit services terminated. The IAB's former directors established Centium, which continued to provide internal audit support on an ad hoc basis for the remainder of the year. Centium is currently finalising the ICT governance audit which was carried over from 2014/15.

In June 2016 Protiviti Pty Ltd was appointed as the HPCA's new internal auditor. A new three year internal audit plan is currently being developed.

## Governance and Compliance continued

### Insurances

The HPCA manages insurances for all Councils through the Ministry of Health's insurance cover with the NSW Treasury Managed Fund including:

- Legal liability – public liability, professional indemnity, product liability
- Workers compensation
- Property coverage
- Comprehensive Motor Vehicle Insurance Policy.

### Information Management and Systems

The ICT (Information Communications Technology) Strategic Plan 2014 to 2016 provided a focus for the HPCA's planning and infrastructure development needs. An enterprise architecture review was commissioned and the findings are being analysed to inform the ICT Strategic Plan for the next three years and decisions on the future ICT platform and requirements to implement the NSW Government ICT Strategy.

Further modifications were made to the case management system (MaCS) to improve usability and reporting. The MaCS user group guided priorities and contributed to user testing. Staff received ongoing training and support as changes were implemented and the accuracy and reliability of reporting was improved. The MaCS newsletter provided updates to staff on system enhancements and details of other resources and manuals to assist in ensuring data quality.

The recommendations of the records and information management internal audit are being progressively implemented, although some are dependent on improvements to the overall ICT platform. Councils are moving towards full electronic records management. The records and information management user group (RIMUG) includes representatives from across the HPCA and is supporting improved use and understanding of the TRIM records management system capabilities to meet business needs. The group is developing procedures and guidelines to assist staff to better integrate TRIM with business activities and enable improvements for locating, securing and managing corporate and practitioner records.

### Human Resources

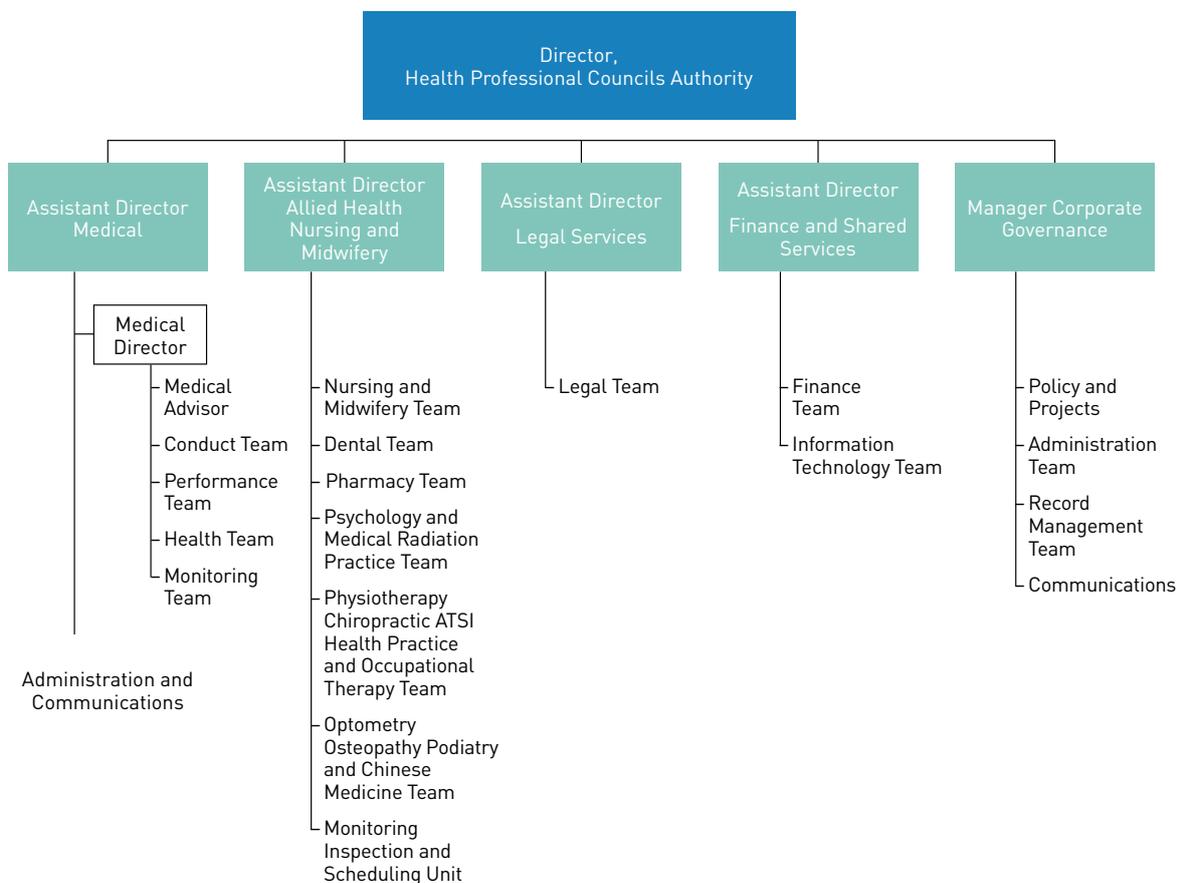
The Councils are supported by HPCA staff who are employed under Part 4 of the *Government Sector Employment Act 2013*. The NSW Ministry of Health provides human resources services under a service level agreement with the HPCA. HPCA staff are required to comply with Ministry of Health policies and procedures and are included in Ministry of Health reports. As at 30 June 2016 the HPCA's employment profile comprised 109 ongoing and temporary roles.

An organisational review has been underway for staff supporting the Medical Council and a separate review was commenced on the structures for corporate services across the HPCA and regulatory teams supporting Councils, other than the Medical Council. The following organisational chart represents the structure of HPCA as at 30 June 2016 and does not include the changes proposed by either review.

# Governance and Compliance

continued

Organisation Chart as at 30 June 2016



## Governance and Compliance

### continued

#### Performance Management

All staff have a performance agreement as required under the *Government Sector Employment Act 2013*. Managers completed annual and half year reviews with staff, which provided an opportunity to discuss individual priorities and identify learning and development needs.

#### Learning and Development

Learning and development opportunities are available to all staff to ensure they have the skills and knowledge relevant to core business and the achievement of strategic priorities. It also provides support for career development. During the year staff participated in the following mandatory training sessions:

- HPCA Orientation for new staff held in December 2015 and June 2016
- Code of Conduct e-learning module
- Understanding Government Sector Employment (GSE) non-executive recruitment and merit selection
- Understanding procurement and risk management in the Government sector.

Other learning and development sessions included:

- Understanding Public Interest Disclosure (PID)
- Writing procedures and policy documents in plain English
- Better time management using Microsoft Outlook
- Dealing with difficult complainants
- Violence prevention management and communication
- TRIM records management system and Monitoring and Complaints System (MaCS) for case management
- Influencing without authority
- Applying for a role under the new GSE Act.

Staff forums were held in September 2015 and March 2016 and included presentations on current projects and issues relevant to all staff. Feedback confirms the value of the forums as a communication medium and an opportunity for all staff to meet together. Staff particularly value interactive and discussion sessions.

A Professional Development Framework and Program is being developed to better align learning and development needs with strategic directions.

## Governance and Compliance

### continued

#### Consultants

Consultants engaged during 2015/16 at a cost of less than \$50,000 per consultancy are set out in table 16.

**Table 16:** Consultant engagements costing less than \$50,000

| Service Provided              | Number    | Total Cost incl GST \$ |
|-------------------------------|-----------|------------------------|
| Council business processes    | 6         | \$97,962               |
| Financial management          | 1         | \$11,040               |
| Governance                    | 2         | \$40,919               |
| Nursing and Midwifery Council | 6         | \$58,054               |
| Medical Council               | 2         | \$34,875               |
| <b>Total</b>                  | <b>17</b> | <b>\$242,580</b>       |

During the reporting period there was one consultancy engagement of \$50,000 or more. The Nous Group was engaged to undertake an organisational review and process mapping for Gladesville office staff supporting the Medical Council at a cost of \$85,388.

#### Financial Management

The HPCA provides financial management services to the Councils including the payment of accounts, budget preparation and monitoring and coordination of regular financial reporting to the Councils.

Service Level Agreements (SLAs) between Councils and the HPCA include cost allocation methodologies for the distribution of shared costs across all Councils. The methodologies are largely based on Council activity and provide a formula to apportion shared services staff, facilities and other resources and were reviewed through the negotiation process with Councils to ensure the formulae are equitable and the most effective means of calculating Councils' individual contributions to shared costs.

A new financial accounting system (TechnologyOne) was implemented in July 2015. Over the next twelve months, further software development will be carried out to automate and streamline the collation of financial information and will involve the implementation of online workflow approvals. It is anticipated that the Member timesheet system will also transfer to the TechnologyOne accounting software during this time.

#### Format

The accounts of the Councils' administrative operations, including any Education and Research Fund activities, together with the Independent Auditor's Report are set out in the Financial Statements in Part 3 of this Report.

#### Investment Performance

The Councils' banking arrangements are with Westpac Banking Corporation as part of the Treasury banking system in accordance with the agreement between NSW Treasury and Westpac Banking Corporation for the provision of transactional banking.

The interest is paid twice per year by Treasury based on daily cash balances.

## Governance and Compliance

### continued

#### Payments Performance

The Councils' accounts are managed by the Health Administration Corporation (HAC). The consolidated accounts payable performance report for all 14 Councils is set out in Tables 17 and 18.

**Table 17:** Consolidated Councils' accounts payable performance (1)

| Quarter                         | Current<br>(within due date) | Less than<br>30 days<br>overdue | Between 30<br>to 60 days<br>overdue | Between 60<br>to 90 days<br>overdue | More than<br>90 days<br>overdue |
|---------------------------------|------------------------------|---------------------------------|-------------------------------------|-------------------------------------|---------------------------------|
|                                 | \$                           | \$                              | \$                                  | \$                                  | \$                              |
| <b>All suppliers</b>            |                              |                                 |                                     |                                     |                                 |
| September                       | 264,664                      | 462,895                         | 2,300                               |                                     |                                 |
| December                        | 454,106                      | 798,174                         | 6,250                               |                                     |                                 |
| March                           | 1,556,496                    | 317,281                         | 1,972                               |                                     |                                 |
| June                            | 1,778,521                    | 3,126,078                       | 5,170                               |                                     |                                 |
| <b>Small business suppliers</b> |                              |                                 |                                     |                                     |                                 |
| September                       | 22,314                       | 2,560                           |                                     |                                     |                                 |
| December                        | 46,223                       | 3,580                           |                                     |                                     |                                 |
| March                           | 36,913                       | 4,210                           |                                     |                                     |                                 |
| June                            | 138,179                      | 1,838                           |                                     |                                     |                                 |

**Table 18:** Consolidated Councils' accounts payable performance (2)

| Measure  | Sept    | Dec       | Mar       | June      |
|--|---------|-----------|-----------|-----------|
| <b>All suppliers</b>                                     |         |           |           |           |
| Number of accounts due for payment                       | 119     | 66        | 60        | 109       |
| Number of accounts paid on time                          | 98      | 60        | 54        | 98        |
| % of accounts paid on time (based on number of accounts) | 82.4%   | 90.9%     | 90.0%     | 89.9%     |
| \$ amount of accounts due for payment                    | 729,859 | 1,258,530 | 1,875,749 | 4,909,769 |
| \$ amount of accounts paid on time                       | 692,541 | 1,100,210 | 1,556,496 | 1,778,521 |
| % of accounts paid on time (based on \$)                 | 94.9%   | 87.4%     | 83.0%     | 36.2%     |
| Number of payments for interest on overdue accounts      | -       | -         | -         | -         |
| Interest paid on overdue accounts                        | -       | -         | -         | -         |
| <b>Small business suppliers</b>                          |         |           |           |           |
| Number of accounts due for payment                       | 43      | 66        | 60        | 109       |
| Number of accounts paid on time                          | 40      | 60        | 54        | 92        |
| % of accounts paid on time (based on number of accounts) | 93%     | 91%       | 90%       | 84%       |
| \$ amount of accounts due for payment                    | 24,874  | 49,803    | 41,123    | 140,017   |
| \$ amount of accounts paid on time                       | 22,314  | 46,223    | 36,913    | 138,179   |
| % of accounts paid on time (based on \$)                 | 89.7%   | 92.8%     | 89.8%     | 98.7%     |
| Number of payments for interest on overdue accounts      | -       | -         | -         | -         |

Note: The NSW Health invoices for May and June 2016 were not paid until July 2016 \$4.048M due to a disputed overcharge on payroll. A credit note for \$362k was received in August 2016.

## Governance and Compliance continued

### Government Information Public Access (GIPA)

#### Access to Information

All Councils are committed to the principles of the *Government Information (Public Access) Act 2009* (GIPA Act) and provide access to policies, publications and information through their websites. The Councils comply with the *Government Information (Public Access) Regulation 2009* regarding annual reporting requirements and the Information and Privacy Commission's GIPA online reporting tool is used for statistical reporting.

Council websites 'Access to Information' pages provide information about GIPA and how to make an application and include agency information guides, a disclosure log, the access information form and details of government contracts.

#### Review of Proactive Release Program

The Councils reviewed their program for the release of government information to identify the type of information that can be made publicly available and also reviewed program and policy registers. Relevant documents are included on websites when they are newly released and/or revised. Documents currently available on the HPCA and Councils' websites include:

- Combined Councils and HPCA Strategic Framework 2014 to 2017
- HPCA Strategic Plan 2015-2018 and HPCA Action Plan 2016/17
- ICT Strategic Plan 2014-2016
- Annual Reports
- Council newsletters
- Legal Practice Notes
- Conditions Bank Handbook
- Handbook for Council, Committee and Panel members
- Delegations manual
- Staff handbook
- Business Continuity Management Plan
- Communications Framework and Plan
- Current policies and procedures.

## Governance and Compliance

### continued

#### **Number of Access Applications Received**

Formal access applications for 2015/16, including withdrawn applications but excluding invalid applications, were as follows.

- The Dental Council received one formal application
- The Medical Council received two formal applications and managed two applications from 2014/15
- The Pharmacy Council received one formal application
- The Psychology Council received two formal applications and managed one application received in June 2015.

The other 10 Councils did not receive any formal access applications.

The Medical Council also noted that:

- Two invalid applications were received and neither subsequently became valid
- One invalid review application was received.

#### **Number of Refused Applications for Schedule 1 Information - Clause 7(c)**

During the reporting period a total of seven access applications were refused in part because the information requested was information referred to in Schedule 1 of the GIPA Act as follows:

- The Dental Council refused in part one application received in the current reporting period
- The Medical Council refused in part two access applications received in the current reporting period and two applications received in the previous reporting period
- The Pharmacy Council refused in part one application received in the current reporting period
- The Psychology Council refused wholly one access application received in the previous reporting period.

## Governance and Compliance

continued

For tables 19 and 20 more than one decision can be made in respect of a particular access application. If so, a recording is made in relation to each such decision.

**Table 19:** Number of applications by type of applicant and outcome - GIPA

|   | Access granted in full | Access granted in part | Access refused in full | Information not held | Information already available | Refuse to deal with application | Refuse to confirm/ deny whether information is held | Application withdrawn |
|---|------------------------|------------------------|------------------------|----------------------|-------------------------------|---------------------------------|---|-----------------------|
| Media   | -                      | -                      | -                      | -                    | -                             | -                               | -   | -                     |
| Members of Parliament                                       | -                      | -                      | -                      | -                    | -                             | -                               | -   | -                     |
| Private sector business                                     | -                      | -                      | -                      | -                    | -                             | -                               | -   | -                     |
| Not for profit organisations or community groups            | -                      | -                      | -                      | -                    | -                             | -                               | -   | -                     |
| Members of the public (application by legal representative) | -                      | 4                      | -                      | -                    | -                             | -                               | -   | -                     |
| Members of the public (other)                               | 2                      | 2                      | -                      | -                    | -                             | -                               | -   | -                     |

**Table 20:** Number of applications by type of application and outcome - GIPA

|  | Access granted in full | Access granted in part | Access refused in full | Information not held | Information already available | Refuse to deal with application | Refuse to confirm/ deny whether information is held | Application withdrawn |
|--|------------------------|------------------------|------------------------|----------------------|-------------------------------|---------------------------------|---|-----------------------|
| Personal information applications*   | -                      | 3                      | -                      | -                    | -                             | -                               | -   | -                     |
| Access applications (other than personal information applications)                     | 2                      | 1                      | -                      | -                    | -                             | -                               | -   | -                     |
| Access applications that are partly personal information applications and partly other | -                      | 2                      | -                      | -                    | -                             | -                               | -   | -                     |

\* A personal information application is an access application for personal information (as defined in clause 4 of Schedule 4 to the Act) about the applicant, the applicant being an individual.

## Governance and Compliance

continued

**Table 21:** Invalid applications - GIPA

| Reason for invalidity   | Number of applications |
|---|------------------------|
| Application does not comply with formal requirements (section 41 of the Act)  | 2                      |
| Application is for excluded information of the agency (section 43 of the Act) | -                      |
| Application contravenes restraint order (section 110 of the Act)              | -                      |
| Total number of invalid applications received                                 | 2                      |
| Invalid applications that subsequently became valid applications              | -                      |

For tables 22 and 23 more than one public interest consideration may apply in relation to a particular access application and, if so, each such consideration is recorded, but only once per application.

**Table 22:** Conclusive presumption of overriding public interest against disclosure: matters listed in Schedule 1 of the Act - GIPA

|   | Number of times consideration used |
|---|------------------------------------|
| Overriding secrecy laws                               | 1                                  |
| Cabinet information                                   | -                                  |
| Executive Council information                         | -                                  |
| Contempt  | -                                  |
| Legal professional privilege                          | -                                  |
| Excluded information                                  | 7                                  |
| Documents affecting law enforcement and public safety | -                                  |
| Transport safety                                      | -                                  |
| Adoption  | -                                  |
| Care and protection of children                       | -                                  |
| Ministerial code of conduct                           | -                                  |
| Aboriginal and environmental heritage                 | -                                  |

## Governance and Compliance

### continued

**Table 23:** Other public interest considerations against disclosure: matters listed in table to section 14 of the Act - GIPA

|  | Number of occasions when application not successful |
|--|---|
| Responsible and effective government                                 | 2   |
| Law enforcement and security   | -   |
| Individual rights, judicial processes and natural justice            | 4   |
| Business interests of agencies and other persons                     | -   |
| Environment, culture, economy and general matters                    | -   |
| Secrecy provisions   | -   |
| Exempt documents under interstate Freedom of Information legislation | -   |

**Table 24:** Timeliness - GIPA

|  | Number of applications |
|--|------------------------|
| Decided within the statutory timeframe (20 days plus any extensions) | 6                      |
| Decided after 35 days (by agreement with applicant)                  | 2                      |
| Not decided within time (deemed refusal)                             | -                      |
| <b>Total</b>   | <b>8</b>               |

**Table 25:** Number of applications reviewed under Part 5 of the Act (by type of review and outcome) - GIPA

|  | Decision varied | Decision upheld | Total    |
|--|-----------------|-----------------|----------|
| Internal review  | 1               | -               | 1        |
| Review by Information Commissioner *                             | -               | -               | -        |
| Internal review following recommendation under section 93 of Act | -               | -               | -        |
| Review by NCAT   | -               | -               | -        |
| <b>Total</b>   | <b>1</b>        | <b>-</b>        | <b>1</b> |

\* The Information Commissioner does not have the authority to vary decisions, but can make recommendations to the original decision-maker. The data in this case indicates that a recommendation to vary or uphold the original decision was made by the Information Commissioner.

## Governance and Compliance

### continued

The Medical Council also noted that an appeal against an NCAT review determination resulted in a further determination that allowed the appeal in part and subsequent release of further information to the applicant.

**Table 26:** Applications for review under Part 5 of the Act (by type of applicant) - GIPA

|   | Number of applications for review |
|---|-----------------------------------|
| Applications by access applicants   | 1                                 |
| Applications by persons to whom information the subject of access application relates (see section 54 of the Act) | 2                                 |

### Public Interest Disclosures

Each Council is subject to the provisions of the *Public Interest Disclosures Act 1994* and the reporting requirements of the *Public Interest Disclosures Regulation 2011*. Staff and Council members comply with the policy and information is available on the requirements and processes for making and managing disclosures. Councils provide six monthly reports to the NSW Ombudsman and Ministry of Health.

There were no public interest disclosures (PIDs) made by staff or members of any Council during the year.

**Table 27:** Public Interest Disclosures

|   | Made by public officials performing their day to day functions | Under a statutory or other legal obligation | All other PIDs |
|---|--|---|----------------|
| Number of public officials who made PIDs  | -  | -   | -              |
| Number of PIDs received                   | -  | -   | -              |
| Of PIDs received, number primarily about: |  |   |                |
| • Corrupt conduct Maladministration       | -  | -   | -              |
| • Serious and substantial waste           | -  | -   | -              |
| • Government information contravention    | -  | -   | -              |
| Number of PIDs finalised                  | -  | -   | -              |

## Governance and Compliance

### continued

#### Privacy

The Councils are subject to the provisions of the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002* and have adopted the NSW Health Privacy Management policy. Staff attended information sessions conducted by the Information and Privacy Commission during the year.

The Nursing and Midwifery Council dealt with five privacy breaches. Four were a result of information being sent to incorrect email addresses due to: human error, failure to advise of a change in email address, and an incorrect email address entered on the database. A privacy breach also occurred because of a scanning error when test results for two people were scanned together resulting in one test result being inappropriately provided to panel members.

The Council's processes were reviewed on each occasion and staff were reminded of the importance of compliance with privacy requirements and the need to check all pages of documents and contact details prior to mailing or emailing documents. Individuals who had received confidential information were requested to delete the email and were reminded about privacy requirements. System errors were corrected to minimise further privacy breaches. In every case the practitioner whose privacy was breached was notified, informed of the circumstances and the actions taken by the Council and offered an apology.

The Dental Council managed one privacy breach where information for two hearings was transposed and sent to the wrong practitioners. The information was recovered and an apology made to each of the affected practitioners. Internal processes were reviewed and privacy awareness training provided to all Dental Council team staff. The Privacy Commissioner was advised of the breach.

Staff awareness and training is included in next year's learning and development program and is available for all staff.

#### Complaints about Council Administrative Processes

The Councils acknowledge that the trust and confidence of the public is essential to their role and value all forms of feedback. A complaints handling policy and procedures are in place for addressing complaints about the Councils' administrative processes, activities, staff or service delivery. The Complaints Management Policy is currently being updated in line with the NSW Ombudsman Complaint Management Framework.

The Nursing and Midwifery Council was the only Council to receive complaints about Council administrative processes during the reporting period. Ten complaints were received by this Council:

- Two complainants and two practitioners who were the subject of a complaint, reported they were dissatisfied with the outcome of the complaint. The information on file was reviewed and further explanation about protective jurisdiction, the complaints assessment process and reasons for the outcome were provided. A further complaint was made about the Council to the Human Rights Commissioner about the outcome of a complaint by another practitioner. The complaint was dismissed by the Human Rights Commissioner following a response from the Council to the allegations.

## Governance and Compliance

### continued

- Two practitioners who were the subject of a complaint perceived that a report of a meeting was inaccurate and the Council's processes were unfair. A review of the files and procedures indicated that due process was followed and there were no inaccuracies evident in the reports. The reports however did not include information that the practitioners believed should be included. The information omitted was not considered to be key to the decision. The practitioners' responses to the reports were placed on file with the reports. The Council is in the process of developing fact sheets to better inform the parties involved in the complaints process.
- Three practitioners complained about delays and lack of timeliness. The Council provided an explanation for the delays and offered an apology. A review of processes was conducted to determine strategies to prevent or minimise future delays. One of these practitioners also complained about lack of information about the complaint assessment process, the punitive language used in correspondence, the lack of case management and the need for improved support for practitioners who may be suffering from an illness.
- A panel member complained about the Council's processes for establishing new panel members. An apology was offered in relation to the delay and lack of clarity of communication. The Panel Member Handbook and the forms for payment have been revised to ensure that the information provided to panel members is consistent and correct.

The Nursing and Midwifery Council has projects underway to improve correspondence and other forms of communication with stakeholders.

### Exemptions from Reporting Provisions

As small statutory bodies, the Councils are exempt from certain reporting provisions and provide a triennial report in relation to the following:

- Workforce diversity
- Disability services
- Multicultural policies and services program
- Work, health and safety.

The Councils last reported on these provisions in 2013/14 and will next report in 2016/17.

The Councils continued to meet their compliance obligations with regard to each of these matters and are committed to implementing the relevant policy requirements.



## Health Professional Councils Authority

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### Digital Information Security Annual Attestation Statement for the 2015/2016 Financial Statement

I, Mr Ameer Tadros, Director, Health Professional Councils Authority, am of the opinion that the NSW Health Professional Councils had an Information Security Management System in place during the financial year being reported on which is materially consistent with the Core Requirements set out in the Digital Information Security Policy for the NSW Public Sector with the following exceptions:

#### **Core Requirement 1 – Information Security Management System**

The HPCA ICT Strategic Plan 2014 – 2016 implements the requirements of NSW Health Policy Directive *Electronic Information Security Policy* (PD2013\_033) for the health professional Councils.

#### **Core Requirement 2 – Compliance with Minimum Controls**

Full adoption of DFS C2013-5 *Information Classification and Labelling Guidelines* has been scheduled as part of the overall ICT infrastructure roadmap to be implemented during 2016/17. It will include application of NSW Government protective markings to documents.

Implementation of information security awareness is continuing.

A test and review of the Business Continuity Plan (BCP) was undertaken including successful live outage testing and restoration of key ICT systems such as MaCS (practitioner database), TRIM (records system) and NuRex (pharmacies database). The BCP has been updated to include procedures for staff and stakeholder communication and workarounds in the event of key system outage or loss, and a BCP training workshop includes scenario testing.

The Records and Information Management Policy is being reviewed.

#### **Core Requirement 3 – Certified Compliance with AS/NZS ISO/IEC 27001**

Compliance with ISO 27001 Certification is planned in 2016/17 as part of the ICT strategic architecture roadmap and following an information security review.

#### **Mr Ameer Tadros**

Director, Health Professional Councils Authority

Date: 21 September 2016

Contact Officer:

Ms Dieu Koit

Assistant Director, Finance and Shared Services, Health Professional Councils Authority

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# Glossary

## **Adjudication Body**

The Council, a panel, tribunal or court can be declared an adjudication body for the purposes of the Law.

## **Boundary/Boundaries**

Parameters around appropriate and effective interactions between health professionals and their patients are professional boundaries. Behaviours that damage or exploit patients constitute boundary violation. This includes both sexual and non-sexual misconduct.

## **Cancellation**

- A Council may recommend the cancellation of a practitioner's registration to the Tribunal Chair if the practitioner does not have sufficient physical and mental capacity to practise the profession
- A Council may recommend the cancellation of a student's registration if the student has an impairment
- The Tribunal may order the cancellation of a practitioner's or student's registration if it is satisfied that the practitioner is not competent to practise or is guilty of professional misconduct, or if the practitioner/student is unfit in the public interest to practise/to undertake clinical training or is not a suitable person for registration in the profession
- The Tribunal must cancel a practitioner's or student's registration if he/she has contravened a critical compliance order.

## **Caution**

A caution is a formal warning intended to act as a deterrent to a practitioner not to repeat conduct. This is a less serious outcome than a reprimand.

## **Closed Complaint**

A complaint is closed when a final outcome/decision has been determined by the Council or other decision-making entity under the Law, such as a Tribunal, Professional Standards Committee, Performance Review Panel or Court. This decision disposes of the matter.

## **Complainant**

A person who makes a complaint to a health complaint entity:

- A health professional Council of NSW
- Health Professional Councils Authority (HPCA)
- Health Care Complaints Commission (HCCC)
- Australian Health Practitioner Regulation Agency (AHPRA).

## **Conciliation**

The Council may refer a complaint to the HCCC for conciliation, whereby the parties involved can negotiate a resolution.

## Glossary

continued

### **Condition**

A condition aims to restrict a practitioner's practice in some way or may relate to the management of the practitioner's health, to protect the public. Conditions on practice are displayed on the public register maintained by AHPRA.

### **Immediate Action (Section 150)**

If a Council is satisfied that a practitioner or student poses an imminent risk to public safety the Council must take immediate action and may suspend registration or impose conditions on registration pending further investigation.

### **Notification**

A notification can be either voluntary or a mandatory notification. A voluntary notification is about behaviour which presents a risk but is not as serious as a mandatory notification.

### **Notifiable Conduct / Mandatory Reporting**

Notifiable conduct includes practising whilst intoxicated, engaging in sexual misconduct in connection with professional practice, placing the public at risk of substantial harm due to an impairment or a significant departure from accepted professional standards.

### **Open Matter**

A complaint remains open until such time as a final outcome/decision has been determined by the Council or other decision-making entity under the Law, such as a Tribunal, Professional Standards Committee, Performance Review Panel or Court. This decision disposes of the matter.

### **Order**

An order is a decision, condition or restriction placed on a practitioner's registration or practice.

### **Professional Misconduct**

Unsatisfactory professional conduct of a sufficiently serious nature to justify suspension or cancellation of the practitioner's registration.

### **Reprimand**

A reprimand is a formal rebuke or chastisement for inappropriate and unacceptable conduct and appears on a practitioner's registration.

### **Stream**

Conduct: behaviour by a practitioner that may be categorised as professional misconduct or unsatisfactory professional conduct.

Performance: professional performance that is considered unsatisfactory because it is below the standard reasonably expected of a practitioner of an equivalent level of training or experience.

Health: a practitioner who may have a physical or mental impairment, disability, condition or disorder that detrimentally affects, or is likely to detrimentally affect their capacity to practise their profession.

## Glossary

continued

### Supervision

Supervision is the performing of one's duties or practice under the supervision of another similarly qualified practitioner.

### Suspension

- A Council may suspend a practitioner's registration for an interim period if it determines that immediate action is required to protect the health or safety of any person(s) or the action is in the public interest
- With the voluntary agreement of the practitioner or student, a Council may suspend registration if recommended by an Impaired Registrants Panel
- A Council may recommend the suspension of a practitioner's registration to the Tribunal Chair if the practitioner does not have sufficient physical and mental capacity to practise the profession. It may recommend the suspension of a student's registration if the student has an impairment
- The Tribunal may order the suspension of a practitioner's or student's registration if it is satisfied that the practitioner is not competent to practise or is guilty of professional misconduct, or if the practitioner / student is unfit in the public interest to practise / to undertake clinical training or is not a suitable person for registration in the profession.

### Unsatisfactory Professional Conduct

Conduct which is:

- significantly below reasonable standards
- in contravention of the Law or regulations
- in contravention of conditions of registration
- failure to comply with order/decision of a Professional Standards Committee or Tribunal
- accepting or offering a benefit for referral or recommendation to a health service provider or a health product
- engaging in over servicing
- failure to disclose pecuniary interest in giving a referral or recommendation
- permitting assistants not registered in the profession to provide services requiring professional discretion or skill, or
- other unethical or improper behaviour.

Additional matters apply to medical practitioners and pharmacists.

## Abbreviations

|          |  |
|----------|--|
| AASB     | Australian Accounting Standards Board  |
| AHPRA    | Australian Health Practitioner Regulation Agency                                       |
| ARC      | Audit and Risk Committee   |
| ATO      | Australian Taxation Office   |
| ATSI     | Aboriginal and Torres Strait Islander  |
| AustLII  | Australasian Legal Information Institute   |
| BCS      | Business Classification Scheme   |
| CORE     | Collaboration Openess Respect Empowerment  |
| CPI      | Consumer Price Index   |
| DP       | Director of Proceedings, HCCC  |
| DPP      | Director of Public Prosecutions  |
| FTE      | Full-time Equivalent   |
| GIPA Act | Government Information (Public Access) Act 2009  |
| GSE      | Government Sector Employment   |
| GST      | Goods and Services Tax   |
| HAC      | Health Administration Corporation  |
| HCCC     | Health Care Complaints Commission  |
| HPCA     | Health Professional Councils Authority   |
| ICT / IT | Information Communications Technology / Information Technology                         |
| IRP      | Impaired Registrants Panel   |
| L&D      | Learning and Development   |
| MaCS     | Monitoring and Complaints System   |
| MOH      | Ministry of Health   |
| NCAT     | NSW Civil and Administrative Tribunal  |
| NRAS     | National Registration and Accreditation Scheme   |
| PID      | Public Interest Disclosures  |
| PPP      | Principal Place of Practice  |
| PRP      | Performance Review Panel   |
| PSC      | Professional Standards Committee   |
| RTS      | Records Titling Standard   |
| SLA      | Service level agreement  |
| The Law  | Health Practitioner Regulation National Law (NSW) No 86a                               |
| TRIM     | Total Records Information Management - the document management system used by the HPCA |

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