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# **A proposed new health commission for Queensland – Health Quality and Complaints Commission**

*On 20 February 2006, the Queensland Premier, the Hon Peter Beattie MP, and the Minister for Health, the Hon Stephen Robertson MP, announced that a new health commission, to be called the Health Quality and Complaints Commission, would be established and commence operation in July 2006. This Research Brief describes the proposed Health Quality and Complaints Commission and the current Health Rights Commission as well as the comparable complaints bodies in the other Australian jurisdictions and New Zealand. It also looks at the recommendations of the Forster Report on which the proposed Health Quality and Complaints Commission is based.*

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## **EXECUTIVE SUMMARY**

On 20 February 2006, the Premier, the Hon Peter Beattie MP, and the Minister for Health, the Hon Stephen Robertson MP, announced that legislation would be prepared to establish a new health commission (the Health Quality and Complaints Commission) to commence operation in July 2006: **pages 1 – 4.**

The current Health Rights Commission will be incorporated into the Health Quality and Complaints Commission. The Health Rights Commission deals with health care complaints, recommends improvements to health practices and procedures and assists health service providers to improve their complaint resolution strategies: **pages 4 – 5.**

The establishment of the Health Quality and Complaints Commission was proposed because of recommendations published in September 2005 in the *Queensland Health Systems Review: Final Report* (the Forster Report): **pages 5 – 7.**

Each of the Australian jurisdictions has established a health complaints body. The final section of the Research Brief describes these and the New Zealand office of the Health and Disability Commissioner: **pages 7 – 18.**

## **1 INTRODUCTION**

On 20 February 2006, the Premier of Queensland, the Hon Peter Beattie MP, released a media statement about Cabinet's approval of the preparation of legislation to establish a new health commission - to be called the Health Quality and Complaints Commission (the new Commission) - which will commence operation in July 2006. The Premier and the Health Minister the Hon Stephen Robertson MP stated that: "The new ...Commission will have the independence and the power to thoroughly investigate complaints about health service quality and safety from Queensland Health staff".<sup>1</sup> Mr Beattie described the proposed new Commission as:

*...a fiercely independent watchdog for both our patients and staff as recommended by Peter Forster. ...*

*Importantly it will prevent the tragic circumstances which saw Toni Hoffman's concerns about Jayant Patel fall on deaf ears from being repeated".<sup>2</sup>*

This Research Brief describes the proposed new Commission, the new Consumer Health Council and the current Health Rights Commission, and looks at the Forster Report's recommendations which led to the establishment of the new Commission. It then describes comparable complaints bodies in other Australian jurisdictions and New Zealand.

## **2 HEALTH QUALITY AND COMPLAINTS COMMISSION**

### **2.1 FUNCTIONS**

Under the proposed changes, the Queensland government will appoint District Complaints Coordinators to address complaints about "service quality and patient safety" at a local level. If a complaint is not able to be resolved locally, it will be

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<sup>1</sup> Hon Peter Beattie MP, Premier of Queensland, 'Beattie govt to establish strengthened health commission', 20 February 2006, downloaded 5 May 2006 from website at <http://www.cabinet.qld.gov.au>

<sup>2</sup> Hon Peter Beattie MP, Premier of Queensland, 'Beattie govt to establish strengthened health commission', 20 February 2006, downloaded 5 May 2006 from website at <http://www.cabinet.qld.gov.au>

referred to the new Commission.<sup>3</sup> The Commission will be empowered to investigate complaints about both the public and the private health systems.<sup>4</sup>

The proposed legislation will set out the functions of the new Commission. These functions include:<sup>5</sup>

- endorsing quality, safety and clinical practice standards throughout the State's public and private health facilities;
- monitoring compliance with the standards including regularly publishing reports;
- investigating on its own initiative and, where necessary, reporting on systemic failures;
- receiving, investigating and managing complaints about the State's public and private health facilities and health services raised by individuals, patients, clinicians and consumers of services.

## 2.2 MEMBERS

In a Ministerial Media Release, the Hon Stephen Robertson MP stated that the new Commission will consist of:<sup>6</sup>

*the Commissioner, a lawyer, a medical practitioner with clinical experience, and three to five other individuals with governance skills and experience at least two of whom will be non practising nurses or allied health professionals.*

## 2.3 BUDGET

The new Commission will have a budget of approximately \$7.7 million.<sup>7</sup>

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<sup>3</sup> Hon Peter Beattie MP, Premier of Queensland, 'Beattie govt to establish strengthened health commission', 20 February 2006, downloaded 5 May 2006 from website at <http://www.cabinet.qld.gov.au>

<sup>4</sup> Hon Peter Beattie MP, Premier of Queensland, 'Beattie govt to establish strengthened health commission', 20 February 2006, downloaded 5 May 2006 from website at <http://www.cabinet.qld.gov.au>

<sup>5</sup> Hon Stephen Robertson MP, Health Minister, quoted in Hon Peter Beattie MP, Premier of Queensland, 'Beattie govt to establish strengthened health commission', 20 February 2006, downloaded 5 May 2006 from website at <http://www.cabinet.qld.gov.au>

<sup>6</sup> Hon Peter Beattie MP, Premier of Queensland, 'Beattie govt to establish strengthened health commission', 20 February 2006, downloaded 5 May 2006 from website at <http://www.cabinet.qld.gov.au>

<sup>7</sup> Hon Peter Beattie MP, Premier of Queensland, 'Beattie govt to establish strengthened health commission', 20 February 2006, downloaded 5 May 2006 from website at <http://www.cabinet.qld.gov.au>

## **2.4 WHAT IMPACT WILL IT HAVE ON THE HEALTH RIGHTS COMMISSION?**

In the Health Rights Commission Annual Report 2004-05, it was stated that the new Commission:<sup>8</sup>

*will incorporate the existing Health Rights Commission as one of its divisions. Complaints unable to be resolved locally will be passed on to this division for independent, external review. The Health Rights Commission, albeit under another name or as part of a larger review body, will be responsible for monitoring the effectiveness of Queensland Health's internal complaint handling, as well as continuing its existing role of providing education and advice on complaints handling across the health sector generally.*

## **2.5 REVIEW**

The Hon Stephen Robertson MP stated that an all-party Parliamentary Committee will be established after the Commission has been operating for one year to review the Commission's performance.<sup>9</sup>

## **3 CONSUMER HEALTH COUNCIL**

On 21 April 2006, the Minister for Health, the Hon Stephen Robertson MP announced in Parliament that a new Consumer Health Council will be established "to provide a fearless independent voice for health consumers in Queensland."<sup>10</sup> He stated that the Council would complement the work of the new Commission by operating the patient support service, allowing the new Commission to act as a "neutral umpire".<sup>11</sup> He described the Consumer Health Council as:<sup>12</sup>

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<sup>8</sup> Health Rights Commission of Queensland, *Annual Report 2004 – 2005*, December 2005, p 4.

<sup>9</sup> Hon Peter Beattie MP, Premier of Queensland, 'Beattie govt to establish strengthened health commission', 20 February 2006, downloaded 5 May 2006 from website at <http://www.cabinet.qld.gov.au>

<sup>10</sup> Hon Stephen Robertson, 'Ministerial Statement: Consumer Health Council', *Queensland Parliamentary Debates*, 21 April 2006, p 1342.

<sup>11</sup> Hon Stephen Robertson, 'Ministerial Statement: Consumer Health Council', *Queensland Parliamentary Debates*, 21 April 2006, p 1342.

<sup>12</sup> Hon Stephen Robertson, 'Ministerial Statement: Consumer Health Council', *Queensland Parliamentary Debates*, 21 April 2006, p 1342.

... a community based body that ensures patients, their families and carers have a strong voice in health policy and planning, research and service delivery. It will provide a statewide patient advocacy and support service. It will advocate for the rights of consumers and provide support and information to consumers who may wish to complain about health services.

#### 4 HEALTH RIGHTS COMMISSION

The Health Rights Commission was established in 1992 under the *Health Rights Commission Act 1992* (Qld). The Health Rights Commission has three main functions:<sup>13</sup>

- to provide an independent and impartial avenue for resolving health care complaints;
- to recommend improvements to health practices and procedures based on the information obtained from complaints; and
- to work collaboratively with health service providers to assist them to improve their own complaint resolution strategies.

Complaints are able to be made to the Health Rights Commission about any private or public health service provider<sup>14</sup> in Queensland. Common areas of complaint are:<sup>15</sup>

- outcomes of treatment;
- difficulty accessing services;
- misdiagnosis; and
- breaches of privacy or confidentiality.

In the financial year 2004-05, the Commission received 4,163 new complaints about health services and resolved 4,097 complaints.<sup>16</sup> The Health Rights Commission resolves complaints in various ways. These include “explanations,

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<sup>13</sup> Health Rights Commission of Queensland, ‘About us’, dated 2001, downloaded 5 May 2006 from website at <http://www.hrc.qld.gov.au/aboutus.html>

<sup>14</sup> A health service provider is a person who provides a service to an individual for, or purportedly for, the benefit of human health. Health services include hospital, nursing home, mental health and dental services.

<sup>15</sup> Health Rights Commission of Queensland, *Annual Report 2004 – 2005*, December 2005, p 10.

<sup>16</sup> Health Rights Commission of Queensland, *Annual Report 2004 – 2005*, December 2005, p 10.

apologies, reparative treatment, refunds, offers to pay for further treatment, ex gratia payments and changes in policy or procedures”.<sup>17</sup>

## **5 FORSTER REPORT**

The new Commission was proposed as a result of recommendations published in September 2005 in the *Queensland Health Systems Review: Final Report* (the Forster Report<sup>18</sup>).<sup>19</sup> The review was instigated because of concern about the “quality and safety of public hospital services”, particularly relating to Dr Jayant Patel at Bundaberg Hospital.<sup>20</sup>

### **5.1 HEALTH COMMISSION**

Amongst other recommendations, the Forster Report recommended the establishment of a Health Commission to:<sup>21</sup>

- oversee the development and implementation of quality, safety and clinical practice standards throughout the State’s public and private health facilities;
- monitor the compliance of all public and private health facilities with agreed standards including regularly publishing reports on a comparative basis relating to these standards;
- encourage hospitals to ensure that clinical governance systems are in place throughout the public and private hospital network and perform as intended;
- investigate on its own initiative and, where necessary, report on systemic failures within the State’s public and private health facilities;

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<sup>17</sup> Health Rights Commission of Queensland, *Annual Report 2004 – 2005*, December 2005, p 10.

<sup>18</sup> Peter Forster headed the review of Queensland Health’s systems.

<sup>19</sup> Hon Peter Beattie MP, Premier of Queensland, ‘Beattie govt to establish strengthened health commission’, 20 February 2006, downloaded 5 May 2006 from website at <http://www.cabinet.qld.gov.au>

<sup>20</sup> *Queensland Health Systems Review: Final Report*, September 2005, p x, downloaded 5 May 2006 from website at [http://www.health.qld.gov.au/health\\_sys\\_review/final/qhsr\\_final\\_report.pdf](http://www.health.qld.gov.au/health_sys_review/final/qhsr_final_report.pdf)

<sup>21</sup> *Queensland Health Systems Review: Final Report*, September 2005, pp 198 – 199, downloaded 5 May 2006 from website at [http://www.health.qld.gov.au/health\\_sys\\_review/final/qhsr\\_final\\_report.pdf](http://www.health.qld.gov.au/health_sys_review/final/qhsr_final_report.pdf)

- investigate matters referred by the Minister or the Committee where there is a suspicion of systemic weakness or failure;
- receive, investigate and manage complaints about the State's public and private health facilities and health services raised by individuals, patients, clinicians and consumers of services;
- to undertake complementary research to inform its other functions; and
- to report generally to the Parliament or Minister and Committee as deemed appropriate by the Commission on its functions and research.

The Forster Report also made recommendations regarding the structure of the new Commission. It recommended that a commissioner with a small team of assistant commissioners should form the governing body. An executive director should be the “accountable officer and the administrator of the organisation”.<sup>22</sup> The Report also recommended that there be three Directors with responsibility for the existing Health Rights Commission functions, overseeing “quality, safety and systemic clinical practice issues” and the appointment of District Health Council members and for community consultation and liaison.<sup>23</sup>

The Report recommended that the Health Commission's members should consist of “eminent health professionals, experts in the field of quality and safety systems, consumers and those with an interest in improving health in Queensland”.<sup>24</sup>

## 5.2 STATUTORY COMMITTEE

The Forster Report recommended that the Health Commission “should report to the Minister and a statutory committee established under the *Parliament of Queensland Act 2001* (Qld) to ensure the Commission “is accountable and has the level of independence necessary to restore the community's trust and faith in healthcare

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<sup>22</sup> *Queensland Health Systems Review: Final Report*, September 2005, p 199, downloaded 5 May 2006 from website at

[http://www.health.qld.gov.au/health\\_sys\\_review/final/qhsr\\_final\\_report.pdf](http://www.health.qld.gov.au/health_sys_review/final/qhsr_final_report.pdf)

<sup>23</sup> *Queensland Health Systems Review: Final Report*, September 2005, p 199, downloaded 5 May 2006 from website at

[http://www.health.qld.gov.au/health\\_sys\\_review/final/qhsr\\_final\\_report.pdf](http://www.health.qld.gov.au/health_sys_review/final/qhsr_final_report.pdf)

<sup>24</sup> *Queensland Health Systems Review: Final Report*, September 2005, p xxvii, downloaded 5 May 2006 from website at

[http://www.health.qld.gov.au/health\\_sys\\_review/final/qhsr\\_final\\_report.pdf](http://www.health.qld.gov.au/health_sys_review/final/qhsr_final_report.pdf)

systems within Queensland”.<sup>25</sup> The Report stated that the role and function of the Committee should include, amongst other things:<sup>26</sup>

- monitoring and reviewing the operations of the Commission to ensure that the Commission is performing its functions as intended;
- receiving reports of the Commission, together with the Minister, that it is determined should not be tabled in the Parliament;
- monitoring the outcome of reports by the Commission;
- referring matters to the Commission by its own initiative; and
- overseeing the appointment of the Commissioners who would be nominated by the Minister, after extensive advertising.

## **6 OTHER JURISDICTIONS**

The 1993 renegotiation of the Medicare Agreement between the States and the Commonwealth required each State to establish an independent public health complaints body.<sup>27</sup> This section of the Research Brief looks at the bodies in each of the Australian States and Territories and at the position of the Health and Disability Commissioner in New Zealand.

### **6.1 TASMANIA**

In Tasmania, the office of the Health Complaints Commissioner is part-time because the State’s Ombudsman is appointed as the Health Complaints Commissioner.<sup>28</sup>

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<sup>25</sup> *Queensland Health Systems Review: Final Report*, September 2005, p 200, downloaded 5 May 2006 from website at [http://www.health.qld.gov.au/health\\_sys\\_review/final/qhsr\\_final\\_report.pdf](http://www.health.qld.gov.au/health_sys_review/final/qhsr_final_report.pdf)

<sup>26</sup> *Queensland Health Systems Review: Final Report*, September 2005, p 200, downloaded 5 May 2006 from website at [http://www.health.qld.gov.au/health\\_sys\\_review/final/qhsr\\_final\\_report.pdf](http://www.health.qld.gov.au/health_sys_review/final/qhsr_final_report.pdf)

<sup>27</sup> Office of the Health Complaints Commissioner, *Tasmanian Health Complaints Commissioner Ninth Annual Report 2004-05*, August 2005, p 7, downloaded 11 April 2006 from website at <http://www.healthcomplaints.tas.gov.au>

<sup>28</sup> Office of the Health Complaints Commissioner, *Tasmanian Health Complaints Commissioner Ninth Annual Report 2004-05*, August 2005, p 1, downloaded 11 April 2006 from website at <http://www.healthcomplaints.tas.gov.au>

The *Health Complaints Act 1995* (Tas) (which commenced operation in May 1995):<sup>29</sup>

*established a system for the assessment, resolution and investigation of complaints against health service providers. The intent was to give members of the public access to a free, independent and expeditious means of resolving health complaints. The eleven Registration Boards retained their statutory role in relation to complaints about registered practitioners, while the Commissioner was empowered to examine all other public and private health complaints.*

The functions of the Health Complaints Commissioner are set out in section 6 of the *Health Complaints Act 1995* (Tas). The functions include:

- receiving, assessing and resolving complaints;
- assisting health service providers to develop procedures to resolve complaints;
- providing information, education and advice in relation to the Charter of Health Rights, health rights and responsibilities, and procedures for resolving complaints; and
- identifying and reviewing issues arising out of complaints and suggesting ways of improving health services and preserving and increasing health rights.

Section 22 of the *Health Complaints Act 1995* (Tas) provides that health complaints can be made to the Health Complaints Commissioner by persons including the user, a health service provider, the Health Minister and the parent or guardian of a health service user who is a child.

A complaint may be made to the Health Complaints Commissioner about matters including:<sup>30</sup>

- a health service provider failed to exercise due skill;
- a health service provider failed to treat a health service user in an appropriate professional manner;
- a health service provider failed to respect a health service user's privacy or dignity; and
- a health service user was not provided with a reasonable opportunity to make an informed choice of the treatment or services available.

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<sup>29</sup> Office of the Health Complaints Commissioner, *Tasmanian Health Complaints Commissioner Ninth Annual Report 2004-05*, August 2005, p 7, downloaded 11 April 2006 from website at <http://www.healthcomplaints.tas.gov.au>

<sup>30</sup> *Health Complaints Act 1995* (Tas), section 23.

Section 7 of the *Health Complaints Act 1995* (Tas) requires the Commissioner to act “independently, impartially and in the public interest” in exercising his or her functions.

## 6.2 NORTHERN TERRITORY

The Northern Territory’s Health and Community Services Commission is described in its website as providing a “free, independent, confidential, fair and impartial complaints service to Territorians in respect of all health, aged and disability services.”<sup>31</sup> Like the Tasmanian Health Complaints Commissioner, the Northern Territorian Health and Community Services Complaints Commissioner is part-time.<sup>32</sup>

The Health and Community Services Complaints Commission was established under the *Health and Community Services Complaints Act 1998* (NT). It aims to resolve disputes informally by such means as discussing the problem and advising the complainant of the correct agency to help. Approximately 80% of complaints are resolved in this way.<sup>33</sup> However, if the complaint cannot be resolved informally, formal conciliation is used or an investigation is undertaken.<sup>34</sup>

Section 12 of the *Health and Community Services Complaints Commission Act 1998* sets out the powers and functions of the Commissioner. These include:

- encouraging and assisting users and providers to resolve complaints directly with each other;
- conciliating and investigating complaints
- suggesting ways of improving health services and community services and promoting community and health rights and responsibilities;
- assisting providers to develop procedures to effectively resolve complaints;

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<sup>31</sup> Health and Community Services Complaints Commission, ‘Review of Health and Community Services Commission Act’, last updated 19 April 2004, downloaded 2 May 2006 from website at [http://www.nt.gov.au/omb\\_hcsc/hcsc/review.shtml](http://www.nt.gov.au/omb_hcsc/hcsc/review.shtml)

<sup>32</sup> Office of the Health Complaints Commissioner, *Tasmanian Health Complaints Commissioner Ninth Annual Report 2004-05*, August 2005, p 1, downloaded 11 April 2006 from website at <http://www.healthcomplaints.tas.gov.au>

<sup>33</sup> Health and Community Services Complaints Commission, *Health and Community Services Complaints Commission Seventh Annual Report 2004-2005*, September 2005, p 24, downloaded 2 May 2005 from website at <http://www.nt.gov.au>

<sup>34</sup> The Health and Community Services Complaints Commission, *An Introduction to the Role, Function and Jurisdiction of the Commission*, downloaded 2 May 2006 from website at <http://www.nt.gov.au>

- suggesting ways of improving health services and community services and promote community and health rights and responsibilities; and
- inquiring into and reporting on any matter relating to health services or community services on receiving a complaint or on a reference from the Minister or the Legislative Assembly.

### 6.3 NEW SOUTH WALES

The Health Care Complaints Commission of New South Wales underwent a period of upheaval in the year 2004-05.<sup>35</sup> The changes included restructuring of the Commission, staff changes, alterations to the method of handling complaints, and amendments to its enabling legislation (the *Health Care Complaints Act 1993* (NSW)).<sup>36</sup>

The amendments to the *Health Care Complaints Act 1993* (NSW) were drafted to give effect to the recommendations of the Special Commission of Inquiry into Camden and Campbelltown Hospitals and the review of the Act by the Cabinet Office.<sup>37</sup> One of the problems to be addressed was the Health Care Complaints Commission's "inability to increase the timeliness of investigations".<sup>38</sup> The Leader of the Opposition, Mr John Brogden MP, stated that the reason for the legislation was that.<sup>39</sup>

*people who put genuine complaints to the [Health Care Complaints Commission] about the deaths of loved ones in their family or people they knew were simply pushed aside by an organisation that did not want to investigate anything or blame anyone and sought to conclude most procedures with ... an open finding.*

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<sup>35</sup> Health Care Complaints Commission, *Health Care Complaints Commission 2004-05 Annual Report*, p 5, downloaded 5 May 2006 from website at <http://www.hccc.nsw.gov.au>

<sup>36</sup> Health Care Complaints Commission, *Health Care Complaints Commission 2004-05 Annual Report*, p 5, downloaded 5 May 2006 from website at <http://www.hccc.nsw.gov.au>

<sup>37</sup> Hon Morris Iemma MP, 'Health Care Complaints Act Amendments', *New South Wales Parliamentary Debates*, 14 September 2004, p 10,862.

<sup>38</sup> Hon Morris Iemma MP, 'Health Care Complaints Commission Complaints Processing', *New South Wales Parliamentary Debates*, 24 February 2004, p 6434.

<sup>39</sup> Mr John Brogden MP, 'Health Care Complaints Act Amendments', *New South Wales Parliamentary Debates*, 14 September 2004, p 10,862.

At the time of releasing exposure draft bills for public consideration, the Minister for Health, the Hon Morris Iemma MP stated that the bills had three main purposes:<sup>40</sup>

- to refocus the Health Care Complaints Commission on investigating serious complaints about health service providers;
- to improve the operation of the complaints handling process to make the process faster and more effective; and
- to make the complaints system fairer for all parties by giving proper protection to complainants, to practitioners and to the general public (for example, complainants will be protected from liability if they make a complaint in good faith).

Prior to the amendments to the *Health Care Complaints Act 1993* (NSW), the Commission's role was to:<sup>41</sup>

- facilitate the maintenance of standards of health services in New South Wales;
- promote the rights of clients in the New South Wales health system by providing clear and easily accessible mechanisms for the resolution of complaints;
- facilitate the dissemination of information about clients' rights throughout the health system; and
- provide an independent mechanism for assessing whether the prosecution of disciplinary action should be taken against health practitioners who are registered under health registration Acts.

Under the amended legislation, which came into effect in May 2005, the Commission's role is to:<sup>42</sup>

- receive and assess complaints relating to health services and health service providers in New South Wales;
- investigate and assess whether any such complaint is serious and if so, whether it should be prosecuted;
- prosecute serious complaints; and
- resolve or oversee the resolution of complaints.

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<sup>40</sup> Hon Morris Iemma MP, 'Health Care Complaints Act Amendments', *New South Wales Parliamentary Debates*, 14 September 2004, p 10,862.

<sup>41</sup> Health Care Complaints Commission, *Health Care Complaints Commission 2004-05 Annual Report*, p 2, downloaded 5 May 2006 from website at <http://www.hccc.nsw.gov.au>

<sup>42</sup> Health Care Complaints Commission, *Health Care Complaints Commission 2004-05 Annual Report*, p 2, downloaded 5 May 2006 from website at <http://www.hccc.nsw.gov.au>

In the financial year 2004-05, the Health Care Complaints Commission of New South Wales received 3,239 complaints against providers.<sup>43</sup> This was up 15% on the previous year.<sup>44</sup> Most of the complaints (43%) related to the treatment received by the complainant. The second most common cause of complaint related to professional conduct such as competence. The Health Care Complaints Commission finalised 870 investigations (the average over the previous four years was 339).<sup>45</sup> It completed 51% of investigations within 12 months during the year.<sup>46</sup>

#### 6.4 AUSTRALIAN CAPITAL TERRITORY

The position of the Community and Health Services Complaints Commissioner was established under the *Community and Health Services Complaints Act 1993* (ACT). The Australian Capital Territory Parliament has, however, passed legislation (the *Human Rights Commission Legislation Amendment Act 2006* (ACT) and the *Human Rights Commission Act 2005* (ACT)) which will repeal the *Community and Health Services Complaints Act 1993* (ACT) and establish a human rights commission, a member of which will be a health services commissioner.<sup>47</sup> The date of the commencement of the *Human Rights Commission Legislation Amendment Act 2006* (ACT) is to be fixed by the Minister,<sup>48</sup> but it is expected to be in August or September 2006.<sup>49</sup>

The changes to the office of the Community Health Services Complaints Commissioner arose out of the Reid review of ACT Health (confirmed in a review report prepared by the Foundation for Effective Markets and Governments) which

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<sup>43</sup> Health Care Complaints Commission, *Health Care Complaints Commission 2004-05 Annual Report*, p 5, downloaded 5 May 2006 from website at <http://www.hccc.nsw.gov.au>

<sup>44</sup> Health Care Complaints Commission, *Health Care Complaints Commission 2004-05 Annual Report*, p 5, downloaded 5 May 2006 from website at <http://www.hccc.nsw.gov.au>

<sup>45</sup> Health Care Complaints Commission, *Health Care Complaints Commission 2004-05 Annual Report*, p 5, downloaded 5 May 2006 from website at <http://www.hccc.nsw.gov.au>

<sup>46</sup> Health Care Complaints Commission, *Health Care Complaints Commission 2004-05 Annual Report*, p 6, downloaded 5 May 2006 from website at <http://www.hccc.nsw.gov.au>

<sup>47</sup> The other members of the commission will be the president, the disability and community services commissioner, the discrimination commissioner and the human rights commissioner – *Human Rights Commission Act 2005* (ACT), section 12.

<sup>48</sup> *Human Rights Commission Legislation Amendment Act 2005* (ACT), section 4.

<sup>49</sup> Dr Foskey MP, *Human Rights Commission Legislation Amendment Bill 2006* (ACT), *Australian Capital Territory Parliamentary Debates*, 16 February 2006, p 207.

identified a need “to consolidate the existing complaint bodies to ensure an optimum system for consumers and citizens and to allow flexibility in the use of resources.”<sup>50</sup> In introducing the bill to the Legislative Assembly, the Chief Minister stated:<sup>51</sup>

*... the creation of a new office that can accommodate all the functions of [the offices of the Community Health Services Complaints Commissioner and the Human Rights Office] will enable the sharing of resources and expertise as well as increasing consistency and improving coordination of the statutory oversight functions. Importantly, it will also provide a single access point for people who want to access a range of complaints resolution, service improvement and community education facilities.*

*The Human Rights Commission will have statutory functions that will allow it to present an independent, fair and accessible mechanism for the resolution of discrimination, health, disability and community services complaints ...*

Upon the commencement of the *Human Rights Commission Act 2005* (ACT), the Community and Health Services Complaints Commissioner and his office will be amalgamated into the new human rights commission.<sup>52</sup> The Health Services Complaints Commissioner will then be referred to as the Health Services Commissioner.<sup>53</sup> Uniform procedures will be used for considering complaints in each of the different areas of the human rights commission. These procedures will be similar to that under the current legislation because the new legislation was modelled on the existing provisions.<sup>54</sup>

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<sup>50</sup> Mr Stanhope MP, Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs, ‘Human Rights Commission Bill 2005, *Australian Capital Territory Parliamentary Debates*, 7 April 2005, p 1508.

<sup>51</sup> Mr Stanhope MP, Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs, ‘Human Rights Commission Bill 2005, *Australian Capital Territory Parliamentary Debates*, 7 April 2005, pp 1508 - 1509.

<sup>52</sup> Mr Stanhope MP, Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs, Human Rights Commission Legislation Amendment Bill 2005 (ACT), *Australian Capital Territory Parliamentary Debates*, 14 February 2006, p 5.

<sup>53</sup> Mr Stanhope MP, Ginninderra-Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs, Human Rights Commission Bill 2005 (ACT), *Australian Capital Territory Parliamentary Debates*, 23 August 2005, p 3015.

<sup>54</sup> Mr Stanhope MP, Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs, ‘Human Rights Commission Bill 2005, *Australian Capital Territory Parliamentary Debates*, 7 April 2005, p 1509.

Under the new legislation, the Health Services Commissioner will have functions which include the following:<sup>55</sup>

- to encourage the resolution of complaints and assist in their resolution by providing an independent, fair and accessible process for resolving the complaints;
- to encourage and assist users and providers to make improvements in the provision of services;
- to encourage and assist people providing health services to develop and improve procedures for dealing with complaints; and
- to identify, inquire into and review issues relating to the matters that may be complained about under the *Human Rights Commission Act 2005*.

## 6.5 VICTORIA

The Office of the Health Services Commissioner was established by the *Health Services (Conciliation and Review) Act 1987 (Vic)*. The Act also established a Health Services Council whose role is:<sup>56</sup>

- to advise the Minister on the health complaints system and the operations of the Commissioner under the *Health Services (Conciliation and Review) Act 1987 (Vic)* and the *Health Records Act 2001 (Vic)*;
- to advise the Minister and the Commissioner on issues referred to it by the Commissioner;
- to provide expertise, guidance and advice to the Commissioner;
- to promote the Commissioner, the operations of the Commissioner and the guiding principles; and
- with the Minister's approval, to refer matters relating to health service complaints, or interferences with privacy with the meaning of the *Health Records Act 2001 (Vic)*, to the Commissioner for inquiry.

The Commissioner must, if asked by the Council, report to the Council on any matter relating to the operations of the Commissioner under the *Health Services (Conciliation and Review) Act 1987 (Vic)* and the *Health Records Act 2001 (Vic)*.

Section 9 of the *Health Services (Conciliation and Review) Act 1987 (Vic)* sets out the functions of the Health Services Commissioner. These include:

- investigating complaints relating to health services;

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<sup>55</sup> *Human Rights Commission Act 2005 (ACT)*, section 14.

<sup>56</sup> *Health Services (Conciliation and Review) Act 1987 (Vic)*, section 14.

- reviewing and identifying the causes of complaints and suggesting ways of removing and minimising those causes;
- investigating any matter referred to the Commissioner by either House of Parliament or by any Committee of either House or both Houses;
- conciliating between users and providers where a complaint has been made;
- considering ways of improving health complaints systems; and
- developing, after consultations considered appropriate by the Commissioner, with users, providers and persons who, in the Commissioner's opinion, have an appropriate interest, a code of practice to provide guidance on the way in which the Commissioner intends to carry out some or all of the Commissioner's functions.

About 15% of the complaints conciliated by the Office of the Health Services Commissioner relate to the *Health Records Act 2001 (Vic)*.<sup>57</sup>

An Aboriginal Liaison Officer is employed by the Office of the Health Services Commissioner to:<sup>58</sup>

- liaise and create networks with Aboriginal and Torres Strait Islander communities;
- increase awareness of the Office of the Health Services Commissioner with Aboriginal and Torres Strait Islander communities;
- provide policy advice to the Commissioner on matters relating to indigenous people; and
- conciliate complaints and enquiries involving indigenous people.

## **6.6 SOUTH AUSTRALIA**

The Office of the Health and Community Services Complaints Commissioner was established by the *Health and Community Services Complaints Act 2004 (SA)* which was enacted in October 2005. The object of the Office of the Health and Community Services Complaints Commissioner is to assist people to resolve complaints about health and community services where a direct approach to the service provider is unreasonable or has not succeeded.<sup>59</sup>

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<sup>57</sup> Office of the Health Services Commissioner, *2005 Annual Report*, p 20, downloaded 5 May 2005 from website at <http://www.health.vic.gov.au>

<sup>58</sup> Office of the Health Services Commissioner, *2005 Annual Report*, p 20, downloaded 5 May 2005 from website at <http://www.health.vic.gov.au>

<sup>59</sup> Health and Community Services Complaints Commissioner, 'About us', last modified 12 October 2005, downloaded 4 May 2006 from website at <http://www.hcsc.sa.gov.au>

The Office of the Health and Community Services Complaints Commissioner deals with complaints about both public and private providers of health or community services. A complaint may be made on many different grounds including:<sup>60</sup>

- that a health or community service provider<sup>61</sup> has acted unreasonably by not providing a health or community service, or by discontinuing (or proposing to discontinue) a health or community service provided to a particular person;
- that the provision of a health or community service was not necessary or was inappropriate;
- that a health or community service provider has failed to exercise due skill;
- that a health or community service provider has failed to respect a person's privacy or dignity.

The complaint must be made within two years of the circumstances giving rise to the complaint.<sup>62</sup>

The Health and Community Services Complaints Commissioner may investigate a lodged complaint, refer the complaint to a conciliator or the relevant body, deal with the complaint or take no action on the complaint.<sup>63</sup>

Like Victoria, the legislation establishing the health complaints body also establishes a Council; in South Australia it is called the Health and Community Services Advisory Council.

## 6.7 WESTERN AUSTRALIA

The Office of Health Review was established in 1996 to deal with health complaints under the *Health Services (Conciliation and Review) Act 1995* (WA). Its role was expanded in 1999 to deal with complaints about disability services under the *Disability Services Act 1993* (WA). The *Carers Recognition Act 2004* (WA), which came into effect in 2005, sets out the Western Australian Carers

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<sup>60</sup> *Health and Community Services Complaints Act 2004* (SA), section 25.

<sup>61</sup> A health service provider is a person, government agency or body of persons who provide a health service. Examples of health services are a service provided at a hospital, health institution or aged care facility and a laboratory service. A community service provider is a person, government agency or body of persons who provides a community service. Examples of a community service are a service that provides community support or care and a counselling, advice or community information or awareness service.

<sup>62</sup> *Health and Community Services Complaints Act 2004* (SA), section 27.

<sup>63</sup> *Health and Community Services Complaints Act 2004* (SA), section 29.

Charter. Carers are able to complain to the Office of Health Review if an organisation has failed to comply with the Charter.

While the primary function of the Office of Health Review is “the receipt, conciliation and investigation of complaints”<sup>64</sup>, it also performs other functions such as identifying causes of complaints and recommending ways of minimising them.

## **6.8 NEW ZEALAND**

The legislation establishing the office of the Health and Disability Commissioner (the *Health and Disability Commissioner Act 1994* (NZ)) was enacted in October 1994. The purpose of the Act is set out in section 6:

*to promote and protect the rights of health consumers and disability services consumers, and, to that end, to facilitate the fair, simple, speedy, and efficient resolution of complaints relating to infringements of those rights.*

The impetus for the introduction of a Health and Disability Commissioner was the recommendation made by Judge Cartwright in her 1988 Cervical Cancer Inquiry Report that a commissioner be established as an independent complaints resolution and educational body.<sup>65</sup>

Under the *Health and Disability Commissioner Act 1994* (NZ), complaints can be made orally or in writing by any person.<sup>66</sup> Thus a complaint may be made by the consumer, his or her family, a support person or another person such as a provider organisation staff member. The Commissioner is also able to undertake investigations on his or her own initiative.<sup>67</sup>

After receiving a complaint, the Commissioner may decide:<sup>68</sup>

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<sup>64</sup> Office of Health Review, *Office of Health Review Annual Report 2004/2005* Annual Report 2004/2005, August 2005, p 36, downloaded 5 May 2005 from website at <http://www.healthreview.wa.gov.au>

<sup>65</sup> The Health and Disability Commissioner, ‘Introduction’, downloaded 4 May 2006 from website at <http://www.hdc.org.nz/aboutus.php>

<sup>66</sup> *Health and Disability Commissioner Act 1994* (NZ), section 31.

<sup>67</sup> *Health and Disability Commissioner Act 1994* (NZ), section 40.

<sup>68</sup> *Health and Disability Commissioner Act 1994* (NZ), section 33.

- to refer the complaint to another agency or person (for example, the Accident Compensation Corporation, Director-General of Health or an advocate);
- to call a conference of the parties concerned;
- to investigate the complaint; or
- to take no action on the complaint.

If the Commissioner decides to undertake an investigation, a report is prepared which may contain recommendations.<sup>69</sup>

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<sup>69</sup> *Health and Disability Commissioner Act 1994 (NZ)*, section 45.

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