

11 Health-care complaints systems

Prior to the mid-1980s, the only agencies with statutory powers to handle complaints against doctors were the state and territory medical boards. Medical boards were obliged under the relevant medical acts to investigate and assess the complaints and determine whether a complaint represented unprofessional conduct under the act. Complaints were also sometimes made to state branches of the Australian Medical Association, to medical colleges and to the state health departments, but these organisations did not have statutory powers to investigate, mediate or take other action.

During the 1980s, there was dissatisfaction with the health complaints processes in several states, especially regarding their fragmented nature, difficulties in access and difficulties in knowing where to complain. In addition, it was recognised that complainants' needs were not always met when the complaints were determined by the medical board according to the terms of the legislation. In New South Wales, the response to this dissatisfaction was the establishment in 1984 of a Health Complaints Unit within the Department of Health, and in Victoria by the passing of the *Health Services (Conciliation and Review) Act 1987*. This act established the office of the Health Services Commissioner, who was charged with receiving complaints from users of health services about providers and given the power to conciliate them confidentially.

In Queensland, the *Health Rights Commission Act 1991* established the Office of the Health Rights Commissioner. In the Australian Capital Territory, the *Health Complaints Act 1993* established the Office of the Commissioner for Health Complaints, since replaced by the Health Services Commissioner under the *ACT Human Rights Commission Act 2005*. The *NSW Health Care Complaints Act 1993* established the Health Care Complaints Commission, which subsumed the role of the previous Health Complaints Unit and took on additional power to conciliate complaints. Conciliation is now used in all jurisdictions and has become the most common pathway for medicolegal redress [1]. Since then (catalysed by the 1993 Medicare agreements between the federal and state governments), all states and territories have health complaints systems (see Table 11.1). The agencies in each state have similar powers, although in NSW, the Health Care Complaints Commission is also responsible for investigating allegations of unprofessional conduct of doctors, with subsequent referral if necessary to the NSW Medical Council or the NSW Medical Tribunal

for adjudication. In Queensland, since 2013, the Health Ombudsman (under new legislation, the *Health Ombudsman Act 2013*) has assumed the roles previously undertaken by the Health Quality and Complaints Commissioner and has been responsible for investigating and prosecuting allegations of unprofessional conduct of doctors [2].

The right of patients to complain about their medical care is now included in the *Australian charter of healthcare rights*, issued in 2008 by the Australian Commission on Safety and Quality in Health Care [3]. These rights cover access, safety, respect, communication, participation, privacy and the right to complain or comment on care received.

This chapter focusses only on the complaints-handling processes regarding complaints made about doctors. It should be noted that health complaints commissions also handle complaints about other health professionals and health-care institutions and have a role in promoting improvements in health care overall. The chapter does not consider complaints relating to possible offences under the federal Medicare legislation; this is discussed in Chapter 16.

Theoretically, analysis of health complaints should be a useful tool to improve the health system. The use of complaints in this way and the obstacles to such use are discussed in Chapter 14.

11.1 Health complaints commissions

The purposes of the health complaints legislation in the states and territories are virtually identical and include the:

- provision of an accessible and independent mechanism for resolving health-care complaints
- promotion of the rights of patients and the dissemination of information about such rights
- provision of the capacity to review and improve the quality of health services
- establishment of a committee to advise the minister on health services generally (in NSW this committee is a parliamentary joint committee).

In addition, the Commissions in Victoria and ACT have assumed a statutory role in relation to health records (privacy) legislation in those jurisdictions. The health complaints commissions are funded from general revenue.