

## Section 1 - Notifications

### Question 1

What volumes and timeframes are currently being experienced with notifications?

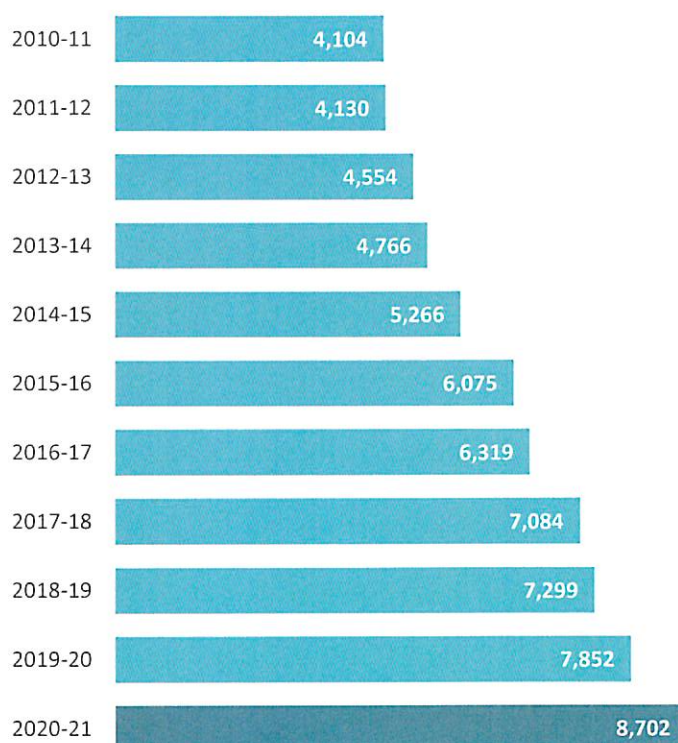
#### Response

[\*In NSW the statutory term for a “notification” is a complaint and a complaint is managed in accordance with the *Health Care Complaints Act 1993*.]

A pattern of year-on-year growth in complaints is well established in NSW and this is consistent with the experience of other jurisdictions across Australia.

For 2020-21, 8,702 complaints were received by the Commission, which is 10.8% more than 2019-20.

**Chart 1 Number of complaints received from 2010-11 to 2020-21**



*Counted by provider identified in complaint*

The Commission assessed a total of 8,222 complaints in 2020-21, compared to the 8,023 complaints assessed in 2019-20.

On average, new complaints are currently assessed in 40 days, compared to 39 days in 2019-20 and 48 days in 2018-19. The proportion of complaints assessed within 60 days was 86.6% of complaints in 2020-21.

## Question 2

Where delays are experienced, what are the lengths of those delays, and what are the reasons?

### Response

The statutory timeframe for assessing a complaint is 60 days.

If a complaint takes more than 60 days to assess, the extent of the delay will vary depending on the cause. Delay can be due to one or more of the following factors:

- The complexity of the complaint.
- The need to consider multiple related complaints.
- The need to seek further information from the complainant.
- The time taken for health practitioners or organisations (or their legal representatives) to provide records, relevant documentation and responses to the matters raised in the complaint.
- The potential need for expert opinion on the issues arising in the complaint.

## Question 3

How are notifications assessed and prioritised? How are potential meritless and vexatious notifications identified and dealt with?

### Response

There is a structured, risk-based triage and intake process for all complaints. This process identifies the nature and extent of the issues and risks in a complaint and any related or prior complaints that may be of relevance. It sets out the assessment plan for the complaint and identifies any complaints requiring higher priority due to acute risks or other sensitivities.

This triaging process includes applying the criteria set down in section 27(1) of the *Health Care Complaints Act*, which enables a complaint to be discontinued if it is "frivolous, vexatious or not made in good faith".

The Commission is also reviewing and adopting, as appropriate, the Ahpra Framework for dealing with vexatious notifications, to promote a consistent approach.

## Question 4

Have any alternative dispute resolution processes been considered to deal with notifications?

### Response

Alternative dispute resolution processes are an integral part of the NSW complaints handling framework.

There are three primary resolution pathways (both informal and formal) in the NSW complaints handling processes.

- I. **Resolution during the assessment process:** Assessment Officers have the opportunity to resolve lower level concerns (about issues such as waiting times, administrative processes, staff attitudes or difficulty accessing reports or medical records) through early discussion and problem solving with the parties to a complaint.

- II. **Referral for local resolution by a health organisation:** This pathway is available under section 26(1) of the *Health Care Complaints Act 1993* and involves connecting the complainant directly with the health service provider to find constructive, situation-specific solutions for minor complaints.
- III. **Referral to the Commission's Resolution Service:** Division 9 of the *Health Care Complaints Act 1993* provides an alternate and neutral means of resolving complaints of the Commission. This service provides trained facilitators to bring the parties together (on a voluntary basis) to identify areas of concern, improve understanding and help drive improvements in care. In addition, matters can be referred for conciliation pursuant to Division 8 of the *Health Care Complaints Act 1993*.

The Commission's Resolution Service continues to grow in significance. There has been a 32.6% increase in the number of complaints referred for assisted resolution over the past two years : 460 resolutions were finalised in 2020-21 compared to 412 in 2019-20 and 347 in 2018-19.

## Question 5

What processes are undertaken to keep parties informed during the notification process?

### Response

All complaints receive a formal acknowledgment.

Both complainants and providers are able to track the status of their complaint and who is handling it through the Commission's *eComplaints* portal.

The Commission may require further information upon receipt of the complaint and will liaise with the complainant to secure this and to ensure that any further consent that is necessary to access relevant documents is in place.

The Commission typically seeks a response to the issues raised in the complaint from the health service provider and gathers from them any relevant medical records or other documents. There will be cases where this is not required, as all relevant information may be to hand at the outset. When information and responses are received Discussions occur with the parties as necessary.

The parties to the complaint are advised in writing of the outcome of the assessment of the complaint (although in exceptional and rare circumstances notice of the complaint and its outcome may not be provided if giving such notice would prejudice an investigation or create a risk of harm, intimidation or harassment to a patient, client or other person).

## Question 6

Are there service standards for timeliness and communication during the process, and are they being met?

### Response

Section 22 of the *Health Care Complaints Act 1993* sets out the timeframe for carrying out an assessment of a complaint, which is 60 days after receiving the complaint or after receiving any additional information that is required from the complainant to assess the complaint.



As noted above, the average time taken to assess a complaint is 40 days, and the 60 days timeframe is met in 86.6 % of cases.

## Question 7

How are systemic issues identified and addressed? How is notifications data being used, including in relation to education and prevention efforts?

### Response

**In terms of the management of individual complaints:** The triage and intake process includes identifying any individual providers and health organisations named in or linked to the complaint. Responses will typically be sought from both the facility and the provider. The assessment will consider both the actions of the individual provider and the policies, procedures and actions of any relevant health facility.

If systemic issues are identified these can be addressed in a number of possible ways depending on the nature and seriousness of the issues. Systems issues may trigger:

- Corrective comments to the health organisation.
- Identification of matters to be addressed by the organisation through a local resolution process.
- Referral of the matter for Assisted Resolution or conciliation.
- Investigation of the health facility.

An investigation that identifies systemic issues that pose a risk to public health and safety will result in formal comments and recommendations for improvement, the implementation of which is monitored by the Commission.

**In terms of identifying systemic issues across the body of complaints:** The Commission undertakes analysis and reporting by service provider and issue type in its quarterly and annual reporting. Through this process common themes and issues are identified. These are addressed in a number of ways, including:

- Collaboration with the Ministry of Health and the Clinical Excellence Commission on responses to common risks.
- Working with the 16 NSW Professional Councils, membership and fellowship bodies and insurers, to identify areas of practice where additional communication and education to the relevant profession is required to improve standards and prevent complaints.
- Commission participation in practitioner education programs.

## **Section 2: Co-Regulation**

### **Question 1**

Has there been an evaluation or review of the co-regulatory approach in Queensland and New South Wales? What issues have arisen?

### **Question 2**

Have any inconsistencies been identified between jurisdictions? How are these being addressed?

### **Response**

In NSW co-regulation is limited to national registration. There is not a co-regulatory arrangement with Ahpra in relation to complaints handling. All complaints about NSW health service providers are managed by the Commission under the *Health Care Complaints Act*, even if the complaint is made via Ahpra.

The Commission notes that a comparison of complaints handling systems was undertaken by the University of Sydney and completed in 2016-17.

A small proportion of complaints may be assessed for referral to Ahpra if they relate to the statutory offences that are linked to registration (including being "holding out", breaches of use of protected titles and advertising offences).

There are well established operational collaboration processes between the Commission and Ahpra.