Notifications

1. What volumes and timeframes are currently being experienced with notifications?

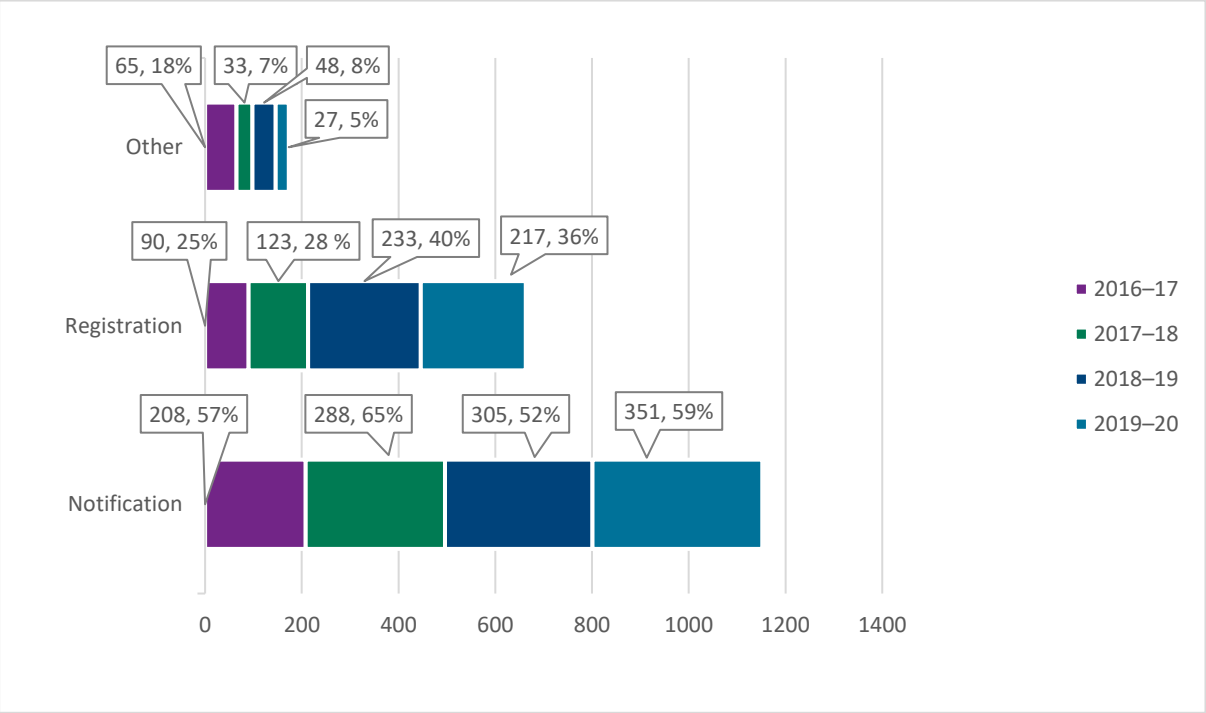
The office of the National Health Practitioner Ombudsman (NHPO) regularly receives updates from the Australian Health Practitioner Regulation Agency (Ahpra) about the number of notifications it has received and closed, and the average age of open notifications. Ahpra is best placed to provide the most up-to-date information about current volumes and timeframes it is experiencing in the management of notifications.

Notification-related complaints received by the NHPO

Concerns about the handling of a notification by Ahpra and/or the relevant National Health Practitioner Board (Board) constitute the largest proportion of complaints made to the Ombudsman. Generally, over half of the complaints made to the Ombudsman each year relate to the processing of a notification (Figure 1).

In 2020–21 the NHPO received 343 complaints to the Ombudsman about the handling of a notification.

Figure 1: Types of complaints to the Ombudsman from 2016–17 to 2019–20



Issues driving notification-related complaints

The NHPO recorded 505 complaint issues across the 343 notification-related complaints made to the Ombudsman in 2020–21. The most frequently recorded issue was a complainant's concern that a decision was unfair or unreasonable (213), followed by concerns about a delay in the notifications process (79) (Table 1).

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Table 1: Issues driving notification-related complaints, 2020–21

Issues related to the handling of notifications (based on complainant's concerns)	Total number of issues recorded
Decision was unfair or unreasonable	213
Process was delayed	79
Information was not considered	40
Inadequate reasons were provided for a decision	39
Process was unfair	34
Inadequate steps were taken in a process	29
Vexatious nature of a notification was not identified	17
General health regulation concerns	13
Irrelevant information considered	12
Bias or a conflict of interest	8
Information inappropriately used	7
Inappropriate own motion investigation initiated	5
Other concern	5
Confidentiality not maintained	3
Unreasonable request for information	1

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

Delay in managing a notification by Ahpra and the relevant Board is an issue frequently raised with the NHPO. Across the 343 notification-related complaints made to the Ombudsman in 2020–21, the office recorded 79 issues about delay.

Issues about a delay in the notifications process were most often recorded in relation to active notifications (41, 52 per cent of all notification-related delay issues). Concerns were also relatively common where immediate action had been taken against a practitioner and the matter remained ongoing (10, 13 per cent).

Ahpra has generally been responsive to problems the NHPO has raised about delay on an individual level. In several cases, when Ahpra was made aware of the delay as part of the

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NHPO's early resolution transfer process,[1] the complainant was offered an apology and was connected with Ahpra staff to discuss and progress their matter.

Where the complaint related to a notification that had been finalised, delay was often recorded as an issue in circumstances where the Board had decided to take no further action (15, 19 per cent). This suggests that the complainant believed it had taken too long for the Board to decide that the notification would not be progressed further.

Each month Ahpra provides updates to the NHPO about its progress in reducing delays. The NHPO has been pleased to see some recent improvements in Ahpra's timeliness, particularly in relation to the assessment stage of the notifications process.

At a system level, the NHPO focuses on identifying areas within the notifications process that could lead to delay and monitoring these areas to determine if process improvements can be made. The Ombudsman and Commissioner has made formal comments and suggestions for improvement to Ahpra in relation to reducing unnecessary delay, including:

- improving timeframes for finalising investigations and avoiding periods of inactivity in managing notifications
- avoiding a backlog of unallocated notifications by promptly allocating notifications to a regulatory officer at the assessment stage of the notifications process
- more quickly reassigning matters (for example, if a staff member goes on leave or ceases employment with Ahpra)
- tightening procedures around commissioning an independent opinion report, including swiftly engaging the required opinion provider, promptly responding to their requests for further information and setting expectations about the timeframe for delivering the opinion report.

The Ombudsman made formal comments and suggestions for improvement eight times in relation to notification-related complaints in 2020–21. It is important to recognise that the most common investigation outcome for notification-related complaints was the NHPO providing the complainant with a further explanation about the concerns raised (91 of 108 complaints finalised following an investigation). This included sharing more detailed information with the complainant about why a decision was made and the reasons for identified delays.

[1] The early resolution transfer process facilitates the transfer of a complaint to Ahpra, with the complainant's consent, for resolution. The complaint remains open with the NHPO and it assesses Ahpra's response to determine necessary next steps.

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Case study[2]

The following case study provides insight into the reasons for delays in the management of notifications.

Alistair's story[3]

Alistair made a complaint to the Ombudsman regarding the handling of a notification he made about a psychologist. Alistair believed the Psychology Board of Australia had not considered the information he had provided and that action should have been taken against the psychologist. He was also concerned with Ahpra's communication during the notifications process.

The NHPO's investigation found the Board had been presented with all the information provided by Alistair and it was reasonably open to the Board to decide to take no further action. The Ombudsman did, however, provide formal comments to Ahpra about the delay in managing Alistair's notification. The delay appeared to be due to a failure to allocate the notification to an Ahpra regulatory officer for eight months.

The NHPO also provided feedback that Ahpra could improve its communication by more promptly sending correspondence and explaining the reasons for any delay in managing notifications.

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

The NHPO closely monitors Ahpra's management of notifications, including potentially meritless or vexatious notifications. While Ahpra is best placed to provide current information about how it assesses and prioritises notifications, the NHPO would like to highlight Ahpra's new frameworks for dealing with low-risk notifications and for identifying and managing vexatious notifications.

New framework for dealing with low-risk notifications

In 2020 Ahpra made changes to how it assesses notifications with the goal of reducing the time taken to finalise matters deemed to be of low risk to patient safety. The new model focuses on assessing the regulatory risk posed by the practitioner through considering the characteristics of the notification, the characteristics of the practitioner (including the practice setting and any regulatory history) and the risk controls in place. If, after considering these characteristics, Ahpra is satisfied the matter is low risk, it recommends that the relevant Board takes no further action.

[2] The NHPO acknowledges that case studies provide insight into identified issues and may not necessarily be representative of all complainants' experiences.

[3] Please note that all case studies have been deidentified and pseudonyms used to protect complainant confidentiality.

The NHPO supports Ahpra's goal of reducing the time taken to finalise low-risk notifications and has welcomed Ahpra's recent success in improving its timeliness at the assessment stage of the notifications process. Progressing low-risk matters more promptly, and without lengthy investigations, is likely to reduce unnecessary stress for health practitioners.

However, the NHPO received some complaints in 2020–21 where it was clear that Ahpra's letters to inform notifiers and practitioners about a decision made under this framework were too brief. The letters did not provide enough detail about the risk framework used to make the decision and how the Board had applied the framework to come to its decision to take no further action.

The NHPO provided feedback to Ahpra that these letters could be updated to better explain the reasons why a Board had decided not to take further action and where appropriate, what steps the practitioner who was the subject of the notification had taken to remedy a matter and reduce future risk, such as making process improvements or undertaking further training.

The NHPO was pleased that Ahpra accepted the suggestions and made improvements. The NHPO will continue to closely monitor the management of low-risk notifications.

Vexatious notifications framework

In December 2020 Ahpra published a framework for identifying and dealing with vexatious notifications. This followed recommendations made in relation to the management of vexatious notifications by the Senate Community Affairs References Committee in 2016[4] and 2017[5], and the Ombudsman and Commissioner in her review of confidentiality safeguards for people making notifications about registered health practitioners[6].

Since the new framework was implemented, the NHPO has received one complaint where concerns were specifically raised about the application of the framework. More generally, the office recorded 17 issues across complaints made to the Ombudsman in 2020–21 where a practitioner raised a concern that the vexatious nature of a notification was not identified during Ahpra and the Board's examination of the notification (constituting two per cent of all issues raised with the NHPO).

Ahpra and the Ombudsman and Commissioner have agreed that the NHPO will undertake a formal review to assess the implementation of the vexatious notifications framework beginning in December 2021. The review will consider whether the framework has been effective and if it has had any unintended consequences.

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[4] Senate Community Affairs References Committee, Medical complaints in Australia, November 2016

[5] Senate Community Affairs References Committee, Complaints mechanisms administered under the Health Practitioner Regulation National Law, May 2017

[6] NHPO, Review of confidentiality safeguards for people making notifications about health practitioners, accessible on the NHPO's website: www.nhpo.gov.au/safeguarding-confidentiality-review

Saskia's story

Saskia made a complaint to the Ombudsman about Ahpra and the Medical Board of Australia's handling of a notification that raised serious concerns by her employer. Saskia was concerned that the Board had not applied the framework for identifying and dealing with vexatious notifications because it had failed to consider the motivations of the individuals involved in the notification. Saskia was also concerned about the time being taken to investigate the matter.

The NHPO explained the early resolution transfer process to Saskia and she agreed that her complaint could be transferred to Ahpra. In response, Ahpra explained that the Board had considered Saskia's concerns about the motivations of those involved in the notification but had decided to investigate to obtain further information about the allegations that had been made. Ahpra showed that the investigation had progressed in a timely manner and with regular communication to Saskia. Ahpra also explained that there was a clear plan to continue progressing the investigation in a timely way.

The NHPO considered that Ahpra's complaint response was fair and reasonable. The NHPO spoke to Saskia about Ahpra's response and explained the NHPO's decision to finalise her complaint. The NHPO let Saskia know she was welcome to contact the office again after the notifications process had been finalised if she had further concerns.

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

The management of notifications must be considered in the context of the National Registration and Accreditation Scheme's overarching goal: to protect the public.[7] From the National Scheme's perspective, notifications are one of the main ways that Ahpra and the Boards are informed of potential risks to public safety. To this end, the National Law outlines how the Boards are empowered to manage notifications. This does not specifically include using alternative dispute resolution processes.

This means that the current notifications process of Ahpra and the Boards is markedly different from the complaints process of other health complaint entities. Health complaint entities can generally work with the complainant and health service provider to resolve complaints. Outcomes for the complainant can include, for example, an apology from a health practitioner, or a refund or compensation. Some health complaints entities are empowered to facilitate meetings between complainants and practitioners to discuss issues and attempt to resolve matters.

[7] In late 2019 the COAG Health Council explained in its communique and policy direction that the paramount guiding principle for administering the National Scheme is to ensure public protection and public confidence in the National Scheme.

While the NHPO recognises that Ahpra has sought to clearly communicate the parameters of the National Scheme, it has been observed that notifiers often enter the notifications process with the expectation that their motivations and desired outcome will be given greater consideration by Ahpra and the relevant Board. For notifiers, why they made a notification, and the outcome they expect, can be deeply personal. The Senate Community Affairs References Committee's previous inquiry recognised this fundamental tension in its report, stating:

"notifiers are often looking for a resolution, but the board's primary concern is whether the practitioner's conduct fell below the relevant standard."[8]

Since the previous Inquiry's report and relevant recommendation, Ahpra and the Boards have sought to engage with notifiers in a more meaningful way. This includes providing notifiers with clearer expectations about their role within the notifications process and referring notifiers to more appropriate complaint pathways if Ahpra and the Boards will not be able to achieve the outcome they are seeking. Further, Ahpra and the Boards generally encourage practitioners to reflect on why a notification has been made about them and whether there are any steps that can be taken to remedy the matter, such as committing to take steps to improve their performance or conduct in the future.

However, the NHPO has observed that tension continues to exist in the National Scheme regarding notifiers and their expectations of the notifications process. The highest proportion of complaints received by the office relate to a notifier's concern about the handling of a notification they have made. Across the 343 complaints the Ombudsman received about the handling of a notification in 2020–21, the top three issues were a notifier's concern that:

- a decision to take no further action at the assessment stage was unfair or unreasonable
- the reasons for a decision to take no further action at the assessment stage were not adequately explained
- not all information had been considered when a decision to take no further action was made at the assessment stage.

The most common investigation outcome of notification-related complaints in 2020–21 was the NHPO providing the complainant with a further explanation about the concerns raised (91). This included sharing more detailed information with the complainant about why a decision was made to take no further action in relation to a notification. Often, the NHPO has found that when it becomes clear to complainants that their matter has been through a fair process, they are likely to accept the outcome they receive, even if it is not the outcome they were hoping for. This indicates that there are opportunities for improvement in Ahpra's communication with notifiers about the notifications process.

[8] The Senate, Community Affairs References Committee, Complaints mechanism administered under the Health Practitioner Regulation National Law, May 2017

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

The National Law requires that Ahpra communicates with notifiers and practitioners who are the subject of a notification throughout the process. For example, Ahpra is generally required to inform practitioners:

- when a notification about them is received
- when a Board decides to investigate
- when a Board proposes to take regulatory action and when a Board decides to take regulatory action.

Ahpra is also required to provide progress updates to those involved in the notification (the notifier and the practitioner) at least every three months during an investigation.

Despite these requirements, the NHPO often receives complaints related to how Ahpra and the Boards keep those involved in a notification informed of its progress. In 2020–21 the office recorded 81 issues related to communication in the management of notifications. Of these issues, most related to communication, including that Ahpra did not provide reasonable updates (30), closely followed by concerns that Ahpra did not respond to the complainant's efforts to make contact (26). Other issues included Ahpra being uncontactable (6) or having unreasonably long call wait times (2). Where Ahpra and complainants were in contact, some issues were raised about Ahpra providing incorrect advice (5) or Ahpra staff allegedly interacting in a way that was rude or insensitive (12).

The NHPO frequently informs Ahpra, both formally and informally, about the importance of providing regular updates and meeting its legislative requirement to provide an update to the relevant notifier and practitioner at least every three months during an investigation.

Ahpra has made some improvements, and shown an ongoing commitment to improving, its communication and responsiveness. This includes encouraging staff to make telephone contact with notifiers and practitioners at the time something changes during an investigation and providing a written update via email based on that conversation.

The NHPO also acknowledges that COVID-19 and related restrictions have undoubtably affected workplaces across Australia, including Ahpra (particularly given its national office is in Melbourne). Managing challenges related to hybrid and working-from-home arrangements can affect service delivery.

Dr Garcia's story

Dr Garcia made a complaint to the Ombudsman about an unreasonable delay and a lack of transparency around the status of Ahpra's investigation of a notification made about him. Dr Garcia explained that Ahpra had not shared with him the reasons for the delay or what information it was asking for and from which entities.

The NHPO's investigation found Ahpra did not provide consistent updates to Dr Garcia and did not comply with its legislative requirement to provide an update at least every three months. The NHPO also found there were delays in Ahpra's investigation, which had already been approximately three and a half years long and was ongoing. These factors contributed to a highly stressful experience for Dr Garcia.

In response to the NHPO's findings, Ahpra apologised to Dr Garcia and provided an adequate explanation about how its investigation would be progressed and finalised.

The Ombudsman made formal comments to Ahpra regarding the impact infrequent and inadequate communication and delay have on health practitioner wellbeing.

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

The Ombudsman sought and welcomed recent discussions with Ahpra about the importance of revising its service charter. A service charter is a proactive measure to determine what staff and those engaging with an entity can expect from one another. Discussions about developing a more comprehensive service charter come from systemic issues the NHPO has identified in communication problems repeatedly raised by complainants. These include:

- a lack of transparency about the notifications or registration processes
- frustration with unanswered phone calls or written correspondence
- not receiving updates about a matter, particularly if it is delayed.

The Ombudsman has suggested that setting more comprehensive service standards will help address these concerns in a number of different ways. From an organisational perspective, it would assist Ahpra to induct staff and ensure staff have a clear understanding of their role in communication. From a complainant perspective, these standards also operate to set expectations about what level of communication they can look forward to, and therefore reduce unnecessary stress or anxiety associated with uncertainty.

The NHPO will continue to work with Ahpra on revising its service charter and continue to monitor timeliness and communication issues.

Ying's story

Ying made a complaint to the Ombudsman about delay and Ahpra's communication with her during the management of a notification she made about a doctor.

The NHPO's investigation found there had been little action taken for six months in relation to Ying's notification. Ahpra did not acknowledge or respond to questions Ying had asked or provide updates about the notification during this time. In response to the NHPO's findings, Ahpra acknowledged, and apologised to Ying for, the delays and poor communication she had experienced. Ahpra also met with Ying to better understand how its handling of the notification affected her.

The Ombudsman made formal suggestions for improvement to Ahpra, raising concerns about the delay in assessing the matter. The Ombudsman also acknowledged Ahpra has recently taken meaningful steps to avoid delay and improve its communications in the future, particularly in relation to the planned revision of its Service Charter.

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

Ahpra is best placed to provide information about how it uses notifications data in relation to the education of health practitioners.

The NHPO proactively identifies broader systemic issues in the administration of the National Scheme which may be affecting those involved in the notifications process. The NHPO uses its complaint handling work and complaints data to identify and address systemic issues. Generally, the office identifies issues that may have system-wide effects through an evaluation of the:

- potential of an identified complaint issue to cause serious harm if another individual was to experience it
- nature of the issue, including if it relates to processes or policies that determine how Ahpra or a Board respond to other matters
- number of complaints received in relation to a certain matter or area of the National Scheme.

The NHPO addresses systemic issues based on the specific circumstances of the issue raised. This may include:

- the Ombudsman making formal comments or suggestions for improvement to Ahpra's CEO following an investigation
- making informal suggestions for improvement to Ahpra's complaints or notifications team as part of the office's complaint handling work
- discussing approaches to improving processes or policies in regular meetings with Ahpra

- initiating or attending workshops or consultation sessions with Ahpra to further explore an issue of interest
- making submissions to confidential or public consultation requests on issues affecting the notifications process based on the NHPO's experiences and complaints data
- the Ombudsman launching an own motion investigation to further identify and understand how an issue is affecting the National Scheme and making recommendations to address it.

The NHPO regularly publishes information about its complaints data and performance to facilitate awareness and understanding about the office and its work, including in relation to the notifications process. This includes through publishing information on its website, including its monthly complaint reports and annual reports. The NHPO also accepts requests from organisations for access to relevant complaints data.

Co-regulation

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

The NHPO cannot accept complaints about how a matter has been handled by the Health Care Complaints Commissioner or Health Professionals Council Authority in New South Wales.

Similarly, the office cannot accept complaints about how a matter has been handled by the Office of the Health Ombudsman (the OHO) in Queensland. The NHPO only handles complaints about a matter from Queensland if the OHO has decided to refer the concern about a health practitioner to Ahpra. Evaluating the co-regulatory approach in Queensland and New South Wales is therefore generally outside of the NHPO's jurisdiction.

The NHPO does note, however, that in the past some issues regarding delay have been raised where a matter is subject to the co-regulatory approach. Examples of delay have arisen both at the beginning of the process (when deciding which entity should take carriage of the matter) and towards the end of the process in more serious matters (when there is consultation at the point of taking regulatory action).

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

As previously mentioned, the co-regulatory approach in Queensland and New South Wales is generally outside of the NHPO's jurisdiction.

However, the office's experience with complainants supports the Senate Community Affairs References Committee's previous inquiry report that noted:

> "…navigating where to lodge a complaint has been confusing for consumers… This is a complex area of regulation with many possible points of entry. The committee

acknowledges that knowing where to lodge a complaint continues to be an ongoing issue for some people."[9]

The NHPO's website seeks to clearly explain the office's role and the type of complaints the office can assist with. It also provides information about how people can make other health-related complaints, including the contact details of relevant entities. The NHPO regularly refers people to the most relevant service possible when the office is not able to address the concerns that have been raised with it.

In 2020–21 the NHPO received 328 enquiries about concerns it could not consider. Fifty-four per cent of these enquiries were referred to a state or territory health complaints entity (176) and 16 per cent were referred to Ahpra to make a notification about a health practitioner (53). The NHPO makes referrals based on factors such as: why the person is making a complaint; what result they would like from making a complaint; and, where the person is located, particularly if they live in a co-regulatory jurisdiction.

[9] The Senate, Community Affairs References Committee, Complaints mechanism administered under the Health Practitioner Regulation National Law, May 2017