Attachment 1

Ahpra's response to the Senate Community Affairs References Committee

Written questions on notice

Notifications

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

In 2020–2021 Ahpra received 10,147 notifications. **Table One** (below) shows the trend over the past five years in the number of notifications received.

Of the 10,121 notifications closed in 2020–21, the average time to closure was:

- 37% were closed in under three months
- 35% were closed between 3-6 six months
- 14.3% were closed in 6-9 months
- 5.9% were closed in 9-12 months
- 6.2% were closed in 12-24 months
- 1.5% were closed after more than 24 months.

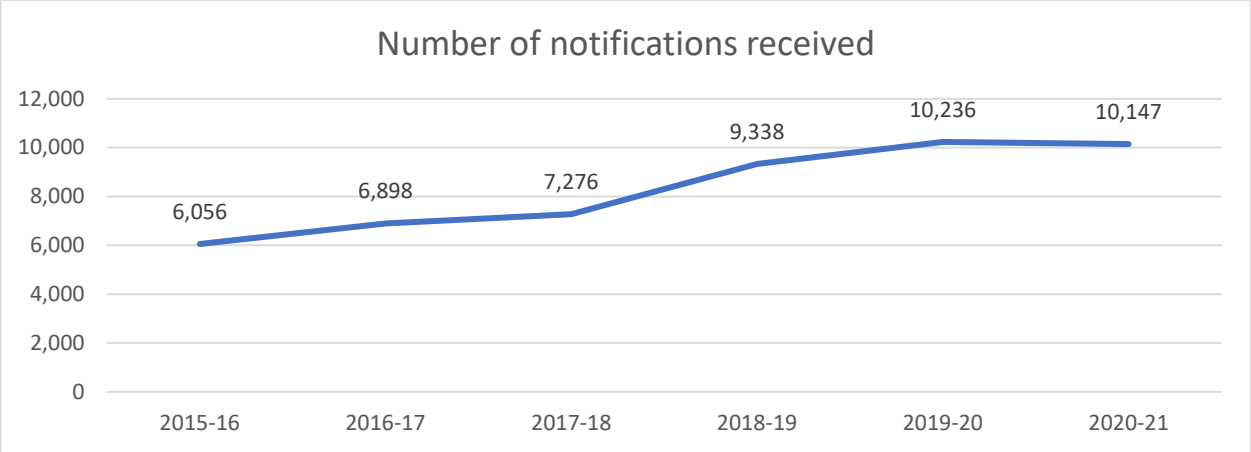


Table One: Number of notifications received by Ahpra from 2015-16 to 2020-21.

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

The fact that investigations take time does not mean there have been delays. Depending on the complexity of the issues being considered, there are time consuming tasks in every investigation and the pace at which they can be undertaken can be affected by:

- investigator workloads;
- staffing changes;
- response and submission timeframes on the part of a practitioner or their insurer or legal representative or third parties;
- time needed to identify and commission appropriate expert opinion where this is required;
- Covid-19 impacts including delays in Tribunals and Courts and other agencies, understandably, prioritising frontline services over response to requests for information;
- Ahpra decision to place the investigation of a matter 'on hold' due to external factors consistent with our policy. For example, concurrent criminal investigation or coronial inquiries. In 2020/21, 345 matters were on hold for an average of 99 days.

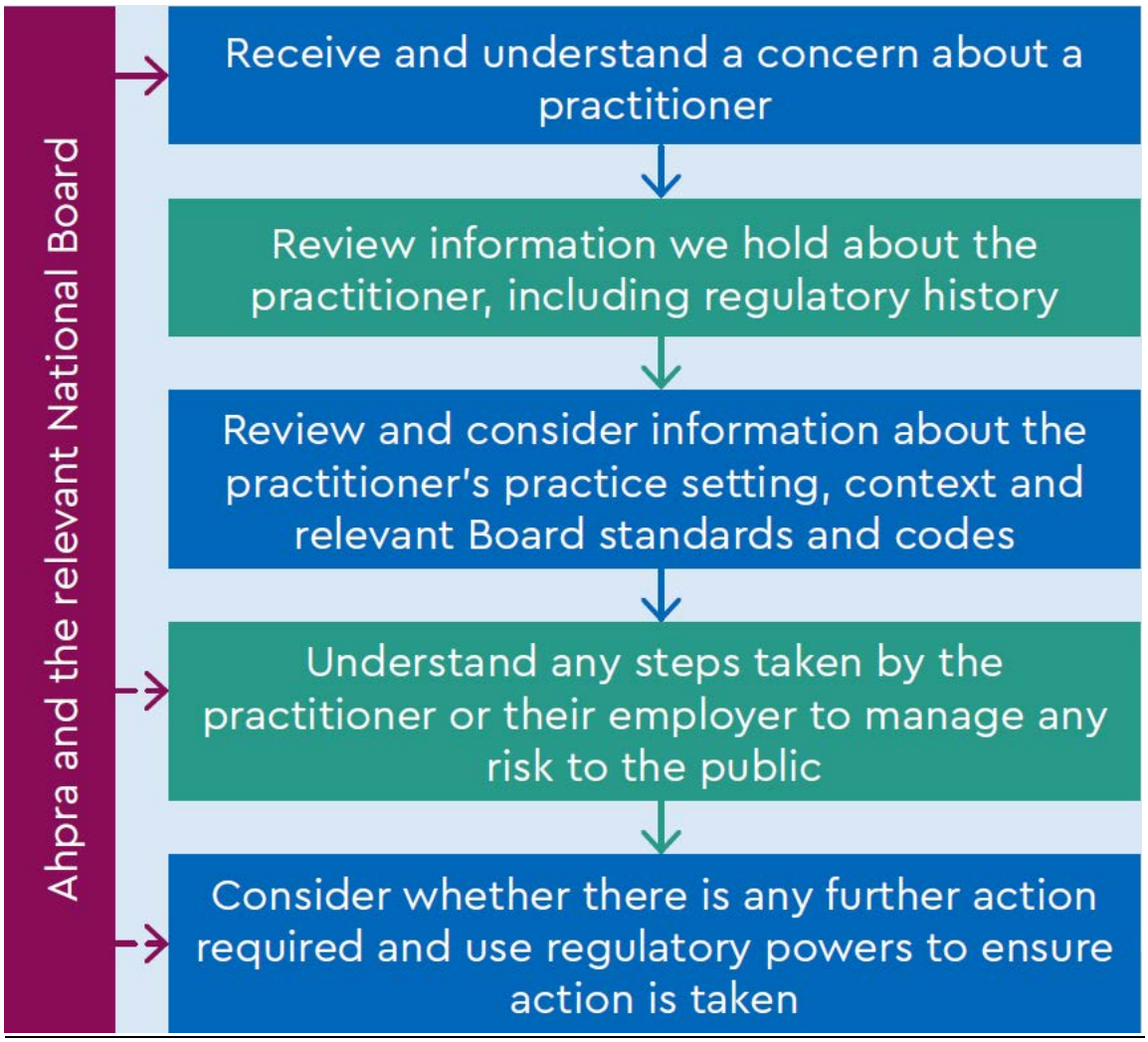
3. How are notifications assessed and prioritised? How are potential meritless and vexatious notifications identified and dealt with? How is the new vexatious complaints framework working in practice?

Assessing and prioritising notifications

Our risk assessment approach incorporates consideration of the practitioners' overall regulatory history, practice context and setting information. This approach improves our understanding of risk and ensures that matters of significant risk progress to investigation, while lower risk matters can be finalised more expeditiously. We also speak with the person making the notification to understand their concerns and the context in which these concerns have arisen.

We prioritise any matter which may give rise to a need for Immediate Action by a Board to protect public safety.

Figure One outlines the approach we take to managing notifications about health practitioners.



Potential 'meritless' notifications

Most of the notifications received by the National Boards and Ahpra do not result in the need for regulatory action. This lends itself to a mistaken perception that these notifications must have lacked any merit. However, a decision not to take regulatory action does not mean those notifications should automatically be considered unfounded or inappropriately made.

Many of those notifications raise valid concerns about the care a person has received even if regulatory action is not required to mitigate the risk and protect the public. There are different reasons why a National Board might decide to take no further action including:

- A reasonable standard has been met by the practitioner or
- There are no ongoing concerns about the safety of patient care and/or

- The practitioner has reflected on their practice and voluntarily taken steps to address the concerns without a Board needing to act and/or
- Employers or health services have put in place appropriate clinical governance arrangements to ensure patients are protected.

Around 50% of the notifications we receive are made by a patient, their families and friends or other members of the public. We rely on patients and the public to raise their concerns with relevant agencies. It is important that we have access to those concerns to inform risk assessments and future policy settings. We publish guidance to assist members of the public to decide whether their concern should be raised with Ahpra or with another entity, for example the health complaints entity in each state and territory.

Potential vexatious notifications

A vexatious notification is a notification without substance, made with an intent to cause distress, detriment or harassment to the practitioner named in the notification. In December 2020, we published our Vexatious notifications framework for identifying and dealing with vexatious notifications.

Identifying vexatious notifications is inherently difficult, as classification relies on the assessment of the motivation of the notifier. The framework provides detailed guidance to Ahpra staff and regulatory decision-makers by outlining:

- the features of vexatiousness
- potential indicators of vexatiousness and
- how to explore or question vexatiousness with notifiers and practitioners.

The framework emphasises the importance of identifying and managing vexatious notifications as quickly as possible. Our staff have been trained in applying the framework including the steps to take where there is a concern a notification may be vexatious.

If a practitioner tells us they believe a notification is vexatious, we provide them with an opportunity to discuss those concerns with us. The framework explicitly tells staff that it is important to explore in conversation with a practitioner why they believe a notification may be vexatious.

Practitioners can access information about vexatious notifications and the framework on a dedicated page on our website. We have also produced a podcast that discusses our approach to vexatious notifications.

The framework is being applied by Ahpra staff when triaging notifications and since its introduction very few notifications have been identified as vexatious. However, it is relatively early to have data trends since the publication of the framework.

The National Health Practitioner Ombudsman has agreed to undertake a formal review to assess implementation of this framework in December 2021.

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

An alternate dispute resolution process was not part of the design of the National Scheme announced by Australian Health Ministers in May 2009. However, Health Ministers accepted Recommendation 9 of the *Final Report of the Independent review of the National Scheme* (Snowball review) released in late 2015, which included that National Boards should to be empowered to refer matters for alternate dispute resolution to state and territory health complaints entities. COAG-Health-Council---Communique---Health-Ministers-response-to-the-independent-review-of-the-National-Scheme---reissued-on-14-August (1).PDF

The National Law as it is drafted permits referral of a complaint to a health complaints entity only with the tacit agreement of the relevant National Board and the relevant health complaints entity.

Amendments to the National Law in 2017 enabled National Boards to take a decision that no further action was needed if the matter was referred to another entity (eg a state health complaints body) or if the health practitioner who is the subject of the notification has taken appropriate steps to remedy the issue and the board reasonably believes no further action is required.

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

The primary means of keeping practitioners informed is through written correspondence and telephone conversations, either directly or through their nominated representative. For example, a Medical Defence Organisation. This usually includes an initial phone call when the notification is received to explain our processes and obtain all relevant information as early as possible in the process, a call if a decision to investigate is made, a case discussion to discuss the concerns (if the matter is lower risk) and verbal updates by phone (where possible).

Our notifications processes are developed to meet procedural fairness requirements by ensuring that practitioners are fully aware of the nature of the concerns raised; the information that may inform a board's decision; and to provide a reasonable opportunity to respond. We write to them with a notice of the notification, give them a copy of the notification (or summary) and aim to provide regular updates every 60 days (if there has been a decision to investigate).

Practitioners are given reasonable opportunity to respond to concerns and any adverse information before the Board makes a decision because we invite them to provide responses at both assessment and investigation. Our templates guide practitioners to provide a response as well as any information they consider relevant, and we provide the practitioner with access to all relevant information that was collected during an investigation and will be considered by the Board. This happens before the matter is presented to a Board for decision.

All information provided by the practitioner is given to a Board before it makes a decision.

Notifiers

When a notification is made, we aim to speak to a notifier to understand the nature of the concerns being raised and the context in which the concerns have arisen.

We provide notification outcomes to notifiers over the phone and in writing wherever possible. The Common Protocol - Informing notifiers about the reasons for National Board decisions published in August 2018, explains the circumstances in which notifiers will be informed about the reasons for National Board decisions. The Common Protocol also explains how information privacy considerations relating to practitioners and other people will be considered in disclosing reasons for decisions to notifiers.

Employers and Places of Practice

As outlined in our published Regulatory Guide (page 37), if regulatory action is taken we advise the employers and places of practice for the practitioner. Ahpra has also published Ahpra guideline - informing a National Board about where you practise. This guideline has been developed to assist registered health practitioners to provide practice information to their National Board in a way that meets their legal obligations under the National Law.

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

There are no published service standards apart from the requirement in Section 161 of the National Law to provide a written update on an investigation at not less than three monthly intervals.

Ahpra is not currently meeting the requirement for written updates to notifiers and practitioners in all cases undergoing investigation. We aim to balance the preference of parties for verbal updates with this statutory requirement for written updates.

Ahpra is looking at ways to improve our compliance including system automation of written updates.

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

We identify and disseminate information about systemic issues through:

- Publication of data in our Annual Report including qualitative analysis of common themes;
- We share areas of concern and tribunal cases through National Board newsletters and publication on our website. A recent example is the Pharmacy Board of Australia's professional practice issues webpage, which includes case studies learnings and the Board's July 2021 newsletter.
- Conference presentations;

- Research and data publications in the context of our published Research and Evaluation Framework;
- Published research - a list of research publications is on our website;
- Commissioned reviews of notifications trend data within professions to inform the ongoing development of registration standards and policy and related guidance;
- Regular liaison with health system partners and professional associations.

As we move further into the digital age where big data and advanced analytics are commonplace, Ahpra is reviewing its Data Strategy to prepare us to maximise the opportunities our data provides to improve public safety, practitioner regulation and workforce planning. We are currently consulting with a range of key stakeholders on a revised data strategy that has a number of focus areas including the content of the public register, data exchange, and the use of advanced analytics.

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?

Consistent with the 2008 Intergovernmental agreement for National Registration and Accreditation Scheme for the Health Professions, the Council of Australian Governments agreed that the design of the national registration and accreditation scheme would allow states and territories to decide whether or not to adopt the national provisions relating to conduct, health and performance and complaints handling. If a jurisdiction decided not to adopt the national provisions relating to conduct, health and performance and complaints handling, they would become a "co-regulatory" jurisdiction. New South Wales (NSW) has been a co-regulatory jurisdiction from the beginning of the scheme in 2010. Queensland became a coregulatory jurisdiction in July 2014 with the establishment of the Office of the Health Ombudsman (OHO).

In terms of **formal reviews and evaluations** the following are relevant:

- **Scheduled independent review of the national scheme (Snowball review).** When establishing the National Scheme, Health Ministers scheduled a review to assess whether the National Scheme was meeting its objectives after three years of operation – including its operation in coregulatory jurisdictions. The Independent Review of the National Registration and Accreditation Scheme for health professions (the Independent Review) was conducted by Mr Kim Snowball, a former Director-General of Health in Western Australia, in 2014.

  The Independent Review made 33 recommendations. Health Ministers accepted, or accepted in principle, 20 recommendations, deferred decisions on seven recommendations pending further advice, and did not accept six recommendations. The recommendations accepted from the Independent Review are being progressed in tranches. The first tranche of reforms was made in 2017 when the National Scheme was extended to include registration of paramedics and to strengthen the complaints management, disciplinary and enforcement powers of Ahpra and the National Boards. Reforms to respond to other recommendations from the Independent Review are part of the current tranche of proposed amendments that are being progressed (refer to submission 4 from the Health Chief Executives Forum).

- **New South Wales specific.** In 2015, the New South Wales Government formally reviewed the operation of the national law as applied in that jurisdiction five years after the passage of the Act. The Report on the Statutory Review of the Health Practitioner Regulation National Law (NSW) was tabled in NSW Parliament in November 2015 and found that the objectives of the National Law as applied in NSW remained valid and that overall the National Law operated effectively. Minor changes were recommended to promote consistency in the legislation, to give more flexibility and to ensure the smooth operation of the complaints handling processes. The *Health Practitioner Regulation National Law (NSW) Amendment (Review) Bill 2016* progressed these amendments.

- **Queensland specific.** In 2015/2016, the Queensland Parliamentary Committee for Health, Communities, Disability Services and Domestic and Family Violence Prevention conducted an inquiry into the performance of the Queensland Health Ombudsman's functions. Key issues were the responsiveness and timeliness of complaints management, the amount of clinical advice in decisions about complaints, inconsistency in data between Ahpra and the OHO, and the OHO's engagement with stakeholders.

The Committee did not consider that wholesale changes to the co-regulatory arrangements were required but made recommendations that included:

- considering options for a joint-consideration model between the OHO and Ahpra for complaints
- considering ways to reduce or eliminate the splitting of matters between Ahpra and the OHO
- that OHO and Ahpra develop a joint plan for consistent data and resolution of outstanding data issues
- considering whether amendments to the Queensland OHO Act is needed.

The Queensland Government adopted the recommendations of the committee and work is progressing to implementing joint-consideration models for complaints, reduce the splitting of matters and amendments to the HO Act. The Final report of the Inquiry into the performance of the Health Ombudsman's functions pursuant to section 179 of the Health Ombudsman Act 2013 is accessible here.

The Queensland *Health Transparency Act 2019* makes amendments to the OHO Act which came into effect from March 2020. When the last amendments to the Queensland OHO Act take effect in December 2021, both agencies will review each matter and agree on the best agency to deal with the notification.

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

The National Scheme operates in a largely consistent way across Australia – specifically, in the setting of national registration standards for practitioners, maintaining the national register, registering practitioners and students, data collection and information sharing.

While there are differences in arrangements for notifications in Queensland and NSW, in practice, there are few jurisdictional inconsistencies in the National Scheme. In New South Wales, complaints about health practitioners are managed by the NSW Health Care Complaints Commission (HCCC) in partnership with the Health Professional Councils Authority and 15 NSW health professional councils. Ahpra has no role in dealing with complaints about registered health practitioners in NSW.

In Queensland, the Health Ombudsman (OHO) receives all complaints about health practitioners in Queensland. The OHO decides whether it will keep a complaint or refer it to a National Board or Ahpra to manage. The OHO deals with the most serious notifications it receives.

Regulatory outcomes from both Queensland and NSW are published on the online national register. For example, if conditions are to be placed on a medical practitioner's registration by the Medical Council of NSW or the OHO, we receive notice and we update the public online national register so that the conditions are publicly accessible.

Relationships with co-regulatory partners are well managed through close working relationships and protocols. Recent areas of focus have included a program of work to publish nationally aligned data on notifications and complaints, and; review of the funding methodology in Queensland and NSW. Registrant fess collected by Ahpra on behalf of National Boards contribute to the costs of co-regulation in both NSW and Queensland, under two different funding models.

Mandatory reporting (Western Australia approach)

10. How does the system in Western Australia differ to the mandatory reporting requirements under the national law in the other states?

Treating practitioners in Western Australia providing a health service to a practitioner-patient or student are exempt from the requirement to make a mandatory notification. A treating practitioner is a practitioner who becomes aware of the concern while providing treatment to another practitioner or student.

In other states and territories there is no blanket exemption for treating practitioners. Rather, treating practitioners are required to make a mandatory notification about another registered health practitioner if they are concerned about a practitioner practising with an impairment, practising while intoxicated, or significantly departing from accepted professional standards and placing the public at substantial risk of harm.

However, a lower threshold for making a mandatory notification applies for sexual misconduct. If they have the reasonable belief that the practitioner-patient has engaged, is engaging or is at risk of engaging in sexual misconduct in connection with their practice, they must report that.

All practitioners including those in Western Australia still have a professional and ethical obligation to protect and promote public health and safety, so they may also consider whether to make a voluntary notification about another practitioner.

Background

There are four concerns that may trigger a mandatory notification by a registered health practitioner: health impairment; intoxication while practising; significant departure from accepted professional standards; and sexual misconduct.

Depending on the type of concern, an assessment of the risk of harm to the public must be made when deciding whether to make a mandatory notification under the National Law. Before making a mandatory notification, a notifier must form a reasonable belief that the incident or behaviour that led to a concern actually occurred and that a risk to the public exists.

There are different thresholds that trigger a mandatory notification depending on whether a notification is being made as a treating practitioner, non-treating practitioner, employer or education provider.

The threshold for making a mandatory notification as a treating practitioner is higher than for other notifier groups. This is intended to give practitioners the confidence to seek help without the fear of a mandatory notification. The threshold for treating practitioners to make a mandatory notification about impairment, intoxication while practising and significant departure from accepted professional standards is when there is a substantial risk of harm to the public.

The National Boards have published mandatory notification guidelines to step out the different thresholds and the differing requirements if a practitioner is based in WA, to help practitioners make an assessment about whether or not a mandatory notification needs to be made.

Under the National Law the mandatory notification obligations apply to all registered health practitioners across Australia – not only medical practitioners. There are also obligations for employers and education providers (in relation to impaired students). There are specific exemptions for registered health practitioners that relate to the circumstances in which the 'reasonable belief' is formed, for example in the medico-legal context.

In Queensland, mandatory notifications (reports) are made to the Health Ombudsman and are dealt with under that state's co-regulatory arrangements.

In New South Wales, mandatory notifications are made to Ahpra but are referred to the Health Care Complaints Commission and the relevant health professional council.

In every other state or territory, including Western Australia, mandatory notifications are made to Ahpra.

11. What consideration has been given to reforming this aspect of the national law in line with the approach in Western Australia?

It is within Australian Health Ministers' remit as the Ministerial Council for the National Scheme to consider proposed changes to the National Law – not Ahpra or the National Boards.

On 1 March 2020, the requirements to make a mandatory notification changed following amendments made to the National Law. The changes were agreed by the Ministerial Council at the time to better support health practitioners to seek help about their health without fearing of a mandatory notification being made.

Health Ministers considered reforms to mandatory reporting by treating practitioners at their meetings in 2017 and 2018 and conducted two rounds of consultation before agreeing changes. In 2018, Ministers agreed to progress amendments to mandatory reporting requirements for treating practitioners, noting that Western Australia would retain its current arrangements of a complete exemption from mandatory reporting by treating practitioners.

The goal of the reforms was to achieve an appropriate balance between encouraging practitioners with an impairment to feel confident that they can seek treatment, while protecting the public from harm by requiring treating practitioners to make mandatory reports about other registered health practitioners that pose a substantial risk of harm to the public or are engaging in sexual misconduct in connection with the practise of their profession. For more information we recommend reviewing the Explanatory Notes for the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2018.

Registration

12. How often do the National Boards review registration standards to maintain currency? Where changes are proposed, how do the National Boards consult within the profession?

The standard review period is at least every five years. However, a National Board may decide to review a registration standard at any time as required, including at the request of the Ministerial Council. It is a requirement under the National Law for wide-ranging consultation to be undertaken on all proposed revisions to registration standards.

This is a link to the procedures that apply to developing and reviewing registration standards to ensure currency, and the wide-ranging consultation that National Boards undertake with stakeholders, including in compliance with Health Ministers policy direction 2019-2.

Further, **Appendix A** to our joint submission provides a complete set of registration standards for each profession regulated under the National Scheme, including when the current standard came into effect, and whether it is currently under review.

13. How do the registration processes, and re-registration processes, operate in the different professions?

The registration and renewal process operate in a national framework and are the same across all professions. The National Law sets out:

- how an application may be made
- the types of registration available
- what requirements need to be met to be granted registration
- the decision-making process.

All **initial applicants** must:

- submit an application on the Board approved form, either online or in hard copy
- pay the relevant application and registration fee (set by the National Board)
- submit certified proof of identity documents, and
- provide any other information required by the Board.

More information on our registration processes is available online from the Ahpra website: here.

All **renewal applicants** must:

- declare they've met the continuing professional development, professional indemnity and criminal history registration standards
- pay the registration fee, and
- submit using the Board approved online or hard copy form.

All professions have annual renewal cycles – nursing and midwifery practitioners renew annually in May; medical practitioners renew annually in September and allied health practitioners renew annually in November.

Any differences arise in the **category of registration** that is being sought at initial registration or at renewal of registration. For example – an initial application for the category of Limited Registration in an Area of Need requires evidence that the position is in a declared Area of Need.

Renewal of Limited registration occurs annually, on the anniversary of initial registration and often requires evidence of satisfactory work performance or progression towards general registration.

More information on renewal processes are available online from the Ahpra website: here.

14. What are the timeframes for registration in the different professions? Where delays are experienced, what is the cause of these delays?

The timeframes for deciding applications for registration are not profession dependent but rather reflect the category of registration being sought and the completeness of the application when received by Ahpra. Indicative timeframes are published on the Ahpra website at: https://www.ahpra.gov.au/Registration/Registration-Process.aspx

In 2020-21 the time to decide the outcome of an application for registration was:

- median time of two days (four days in 2019/20)
- average of 17 days (19 days in 2019/20).

From the time a **complete application** is submitted, it can take six to eight weeks to finalise assessment dependent on the time of year. If a graduate application is complete, the standard time frame is two weeks after the education provider confirms graduate results. The average time to finalise graduate registrations across all professions in the 2020-2021 graduate period was nine days.

Specialist applications where general registration is already held also take about two weeks to assess.

Common factors which impact upon timeframes from receipt of applications to decision include:

- Insufficient evidence/documentation to support the application which may require both informal and formal requests for further information.
- Awaiting information from 3rd parties such as evidence to support English language declaration, relevant information about criminal history, or evidence from the applicant's treating practitioner about any health impairments, certificates of good standing from other regulatory bodies.
- Where the delegation to approve the registration rests. Applications which require a Board or Committee to decide rather than an Ahpra staff member will take longer.

15. With respect to the registration of overseas practitioners, what feedback has been received about the English language tests and the exempted countries? Are changes being considered to address the feedback?

A review of the English Language Skills (ELS) registration standards by National Boards has commenced. The ELS registration standards and requirements apply to all applicants for registration – Australian and overseas trained practitioners. The last multi-profession review of the ELS registration standards concluded in 2015.

All National Boards are participating in the review, with the exception of the Aboriginal and Torres Strait Islander Health Practice Board of Australia, whose registration standard is not due for review until December 2024. The Nursing and Midwifery Board of Australia's (NMBA) registration standard was last reviewed in 2019.

We acknowledge the views expressed at the public hearings by Amnesty International and RISE: Refugees, Survivors and Ex-Detainees, including that English language requirements are discriminatory and disproportionately impact ex-detainee refugee communities and other culturally diverse communities. National Boards are committed to avoiding discrimination and will consider this feedback closely as part of the review process.

Reviewing and revising the ELS standards ensures that they continue to be relevant, contemporary, based on the best available evidence and aligned with international best practice. Ahpra has commissioned research on English language testing from expert academics to inform the current review and we will publish the evidence once available.

We anticipate public consultation on any proposed revisions to the registration standards will commence in the last quarter of 2021 and we will alert stakeholders to the release of the consultation. Public consultation enables people and organisations who are interested in ELS to have their say on proposed revisions to the standards.

16. Has consideration been given to including other health professions, such as social workers and personal care workers in aged care, in the national scheme?

Australian Health Ministers – as the Ministerial Council for the National Scheme – are responsible for deciding which health professions are regulated under the National Scheme. Approval for the inclusion of a new profession under the national scheme is subject to a formal regulatory assessment process. Submissions are made to the Ministerial Council in line with the guidance issued by Australian Governments on the regulatory assessment criteria and the process. A link to this guidance is provided here.

Neither Ahpra nor the National Boards consider submissions or make the decisions about which professions are to be regulated under the Scheme.

General

17. Regarding the committee's 2017 inquiry into complaints mechanism administered under the Health Practitioner Regulation National Law[1], what progress has been made with implementing the recommendations?

We draw your attention to **Appendix C** to the joint submission from Ahpra and the National Boards that was submitted to the Committee on 21 May 2021. The appendix provides a detailed response on how we have responded to the recommendations of previous Senate inquiries, consistent with governance arrangements that apply to Ahpra and the National Boards and the National Scheme.

1 www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/ComplaintsMechanism/Government_Response