# Question on Notice

## Notifications

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

   In the financial year ending 30 June 2021, 3659 of the 9387 complaints/notifications received by the Office of the Health Ombudsman (OHO) identified at least one registered practitioner. This compares with 3756 of the 9703 complaints in the preceding financial year. This is the first time that the number of total complaints/notifications actually fell since the OHO commenced operations.

   The OHO publicly reports on its timeframes for handling all health service complaints received under the *Health Ombudsman Act 2013* (the Act), which includes matters that are notifications under the National Law.

| Timeframes for health Service complaints[1] | Assessment decision within time (max 60 days) | Intake decisions within 7 days | Local Resolution completed within time (max 60 days) | Investigations completed within 1 year |
|---|---|---|---|---|
| FY1920 | 92% | 95% | 94% | 64% |
| FY2021 | 91% | 95% | 94% | 59% |

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

   Proportionally, there are very few matters subject to delay within the OHO. The vast majority of complaints are determined in the Intake and Assessment phase and, as is detailed in the table above, the OHO performs above the 90 per cent Service Delivery Targets set for those measures. Those targets are set having regard to the legislative timeframes provided for in the Act.

   As can also be seen from the above table, there is a larger proportion of matters investigated by the OHO that are open for beyond 1 year. The Act provides that generally Investigations must be completed within one year but can be extended at 3-month intervals.[2] An Investigation that reaches the 1-year point must be listed on a public register (deidentified). Where an open Investigation reaches the 2-year point, the Health Ombudsman must provide notice of it to the responsible Minister and the OHO's Parliamentary Oversight Committee.[3]

   A closer analysis of the Investigation matters reveals that many Investigations that are ongoing longer than 1 year are, or were, subject to criminal proceedings that must be resolved prior to the OHO finalising its Investigation. In those cases, the active Investigation is paused whilst awaiting the outcome of criminal proceedings.

[1] These statistics represent the Office's performance with respect to all complaints/notifications received including complaints about registered practitioners, unregistered health service providers and health service organisations.
[2] *Health Ombudsman Act 2013* (Qld) s 85(1)-(3).
[3] *Health Ombudsman Act 2013* (Qld) s 85(8).

To demonstrate the impact of criminal proceedings on the timeliness of Investigations, of the 145 Investigations open in the OHO on 31 August 2021:

- 32 of the 47 Investigations over 12 months of age are, or have been, paused because they are subject to criminal proceedings
- the average age of paused Investigations awaiting the outcome of criminal proceedings is approximately 14 months
- the average age of open Investigations actively being investigated is approximately 8 months.

Following Investigation by the OHO, matters are most commonly either referred to the Director of Proceedings or subject to no further action. The Director of Proceedings is an independent statutory decision maker tasked with deciding whether to refer the matter to the Queensland Civil and Administrative Tribunal (QCAT) or not. If referred to the QCAT, the matter enters a litigation phase in the control of QCAT. In some cases, the matter is referred to the National Board to deal with.

Pending criminal proceedings does not account for all delayed Investigations. Some matters are complex because they involve multiple consumers and/or incidents, complex matters of clinical judgement that may require significant independent clinical input or are subject to legal challenge. Whilst they remain a relatively small proportion, these matters sometimes can become protracted whilst the matter is fully investigated.

The OHO finished the 2021 financial year with a record low number of open Investigations (127 open, substantially down from a high of 394 Investigations open as at 30 June 2017), and only 13 active Investigations had been open more than 12 months. This is the lowest number of aged Investigations the OHO has ever finished a financial year with and well below the position the OHO was in on 30 June 2017 when it had 168 open active Investigations open more than 12 months. These results underline the journey the OHO has taken over the past few years in targeting and reducing delay and improving the timeliness of its services.

As a consequence of the concerted effort to progress aged cases through the system, there remains a small number of matters with significant age yet to be determined by the Director of Proceedings or in the QCAT.

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

*How are notifications assessed and prioritised?*

One of the OHO's key functions is that it is the single front door for all health service complaints and notifications in Queensland, which includes matters relating to health practitioners (both registered and unregistered) and complaints about health service organisations. Therefore, one of the key roles is to refer the matter to another more appropriate agency to respond to it.

In order to make the Intake decision (which is required within 7 days), officers of the OHO Intake and Triage Team:

- confirm that the complaint is within jurisdiction
- consider the complaint and information provided, and the extent of the alleged conduct, performance or health
- briefly review each complaint to identify whether the information indicates any serious risk and refer matters raising the possibility of serious risk to persons to the immediate action team
- for registered practitioner matters, determine the most appropriate agency within the co-regulatory model to manage the matter having regard to the relevant legislative provisions concerning referral to the Ahpra/National Board.

There are no powers in the Act to require information other than from complainants at the Intake stage. While some complaints can be closed at the Intake stage, these complaints fall into certain clear categories. The main ones are where the complaint issue is trivial, or where the complaint is misconceived (for example, where it will not be possible to obtain the outcome desired). Complaints which raise any potential issue of performance, health or conduct, are accepted, and progressed to a decision about what action is appropriate and which agency should take the matter forward.

In relation to registered practitioners, the Act requires the OHO to retain the most serious matters. These are matters that indicate professional misconduct and pose a significant issue for the health and safety of the public (unless the OHO is satisfied that the professional misconduct can be appropriately dealt with by Ahpra/National Board, which is often the case where there is a concurrent health impairment).

Once identified as a serious matter to be retained by the OHO, the matter is either subject to an Assessment or Investigation and a decision about immediate action is taken if indicated. The Assessment process allows for some further exploration of the complaint, including through submissions from practitioners. It may become apparent through this process that the complaint is misconceived or not as serious as first indicated at which point no further action may be taken, or in some cases, it may be appropriate for the National Board to determine the matter.

Matters indicating possible serious risk are briefed to the Health Ombudsman at a meeting of the Referral and Immediate Action Committee which is convened two times a week with other matters dealt with out of session as required. Outcomes from this briefing process include direction concerning priority of enquiries to be made and ultimately may result in immediate action being taken against a practitioner.

The majority of complaints and notifications concerning registered practitioners that are received by the OHO are referred to Ahpra/National Boards (in the order of 60% over the last two financial years) to manage because they do not reach the threshold of seriousness for the OHO to retain. The majority of these matters are referred at the Intake stage, within 7 days of receipt. As described above, this decision, when made at the Intake stage, is not

an assessment of the merits of the complaint but rather about which agency should determine the matter.

Matters that may not require a regulatory response may progress to local resolution to bring the parties together in order to attempt to foster the ongoing treating relationship.

On 6 December 2021 the joint consideration framework will be implemented under legislation which means that any health service complaint about a registered practitioner in Queensland will be considered by OHO and the National Agency jointly and a decision then made about which entity is the most appropriate to manage the matter.

*How are potential meritless and vexatious notifications identified and dealt with?*

The Health Ombudsman Act provides that a decision can be made to take no further action in respect of a complaint or notification if it is trivial, vexatious, not in good faith, lacking in substance or misconceived.

The Intake stage (in which most matters are referred to Ahpra/National Boards) provides limited opportunities to identify meritless or vexatious complaints as this may not be apparent given the limited information available only from the complainant. As a result, very few matters are resolved on the ground that the complaint is vexatious. It is for Ahpra/National Board to undertake a more detailed analysis of the matter once referred by the OHO.

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

The Act has provision for local resolution and conciliation of complaints about health service providers.

These pathways are most commonly used to bring service delivery disputes to a resolution, especially where there is a desire to repair therapeutic relationships and a regulatory response is not required (being cases where the concerns do not indicate risk to health and safety or otherwise indicate professional misconduct, unprofessional conduct, or unsatisfactory professional performance).

| Processes completed [4] | FY1920 (registered practitioner) | FY2021 (registered practitioner) |
|---|---|---|
| Local Resolution | 1406 (401) | 1479 (505) |
| Conciliation | 29 (4) | 43 (2) |

Local resolution under the Act involves minimal intervention by the health ombudsman with the aim of bringing about resolution as quickly as possible. This involves the health service provider being given an opportunity to make submissions in the response to the complaint and the OHO analysing and sharing that information or explanation with the complainant.

[4] These statistics represent the number of Local Resolution and Conciliation processes completed in respect of complaints about registered practitioners, unregistered health service providers and health service organisations combined. The number in parenthesis is the number of processes relating to registered practitioners.

This may be facilitated in writing or meetings with a view to reaching an agreement on a course of action between the parties.

Conciliation involves the health ombudsman appointing a conciliator to arrange and assist in negotiations aimed at reaching a settlement of the complaint, including by way of a contract if appropriate. Under the Act, conciliation must generally not be undertaken whilst other regulatory action (immediate registration action, Investigation, or referral to the tribunal) is underway. To encourage candid negotiation, the conciliation is strictly confidential, and anything said or admitted during the conciliation, and documents prepared for conciliation, are not admissible in legal proceedings or by the health ombudsman or national board in taking regulatory action.

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

In accordance with the requirements of the Act, there are various stages at which parties (both complainants/notifiers, and subject practitioners) must be informed about the status of the notification.

Section 278 of the Act requires the complainant and health service provider to be notified of decisions to accept a complaint or take any relevant action and the reasons for the decision within 7 days of that decision. This includes decisions to:

- undertake an Assessment or Investigation
- take immediate registration action
- refer a matter to the Director of Proceedings
- take no further action in respect to the matter.

There are also requirements that apply within the Investigation process to keep parties updated. Section 84 of the Act requires the Health Ombudsman to give notice of the progress of an Investigation to the health service provider and the complainant at not less than 3 monthly intervals.

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

The service standards for timeliness are driven by statutory decision timeframes described above in answer to questions 1 and 5 and performance against those requirements is reported publicly monthly, quarterly and in our Annual Report. As is also mentioned above, the OHO meets or exceeds the majority of these standards.

There are no service standards currently established in relation to communication. However, the OHO has an internal report on the communication of decision notices to complainants arising from Intake decisions where no further action is taken in respect of the complaint. For the financial year ending June 2021, approximately 91% of these decision notices were communicated within 7 days of the decision being taken.

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

   Systemic issues identified by the OHO typically arise from complaints about health service providers and health service organisations. These reports may be published on the OHO website: https://www.oho.qld.gov.au/investigations/investigation-reports

   At an individual level, past notification history is taken into account when assessing notifications and past notifications with similar features or allegations may give rise to more detailed scrutiny of allegations of escalating regulatory response about individual practitioners.

**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?**

   **And**

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

   In 2016 the Queensland Health, Communities, Disability Services and Domestic and Family Violence Prevention Parliamentary Committee (as it then was) conducted a review of the performance of the Office of the Health Ombudsman and drew some comparisons with the model in New South Wales. A copy of that review is available on the Queensland Parliament website at:

   https://documents.parliament.qld.gov.au/com/HCDSDFVPC-48D8/RN3155PIHO-10FB/rpt31-16Dec2016.pdf

   As has been mentioned above, since then, significant progress has been made by the OHO to eliminate historical backlogs that existed at the time of the review and improve its productivity and timeliness across all areas of its operations.

   There has also been legislative reform arising from that inquiry. Significantly, joint consideration of notifications by Ahpra and the OHO is set to commence in December 2021. It is anticipated that this process will improve the timeliness of outcomes for complainants and reduce some potentially unnecessary referral of matters between the agencies in the co-regulatory model by improving the consistency of decision making at the earliest possible opportunity.