



National Health  
Practitioner  
Ombudsman

# Annual report 2019–20

10-year anniversary edition



## Acknowledgement of Country

The National Health Practitioner Ombudsman acknowledges the Wurundjeri people as the traditional custodians of the land on which our office is located. We would also like to acknowledge the Aboriginal and Torres Strait Islander peoples, who are the traditional custodians of the lands where our services extend.

We pay our respects to Elders – past, present and emerging – across Australia and to those who may be reading this report. We value and are committed to honouring Aboriginal and Torres Strait Islander peoples' rich contribution and unique and continuing connection to the land, water and community.

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# Our year in numbers

987  
approaches



595  
complaints received



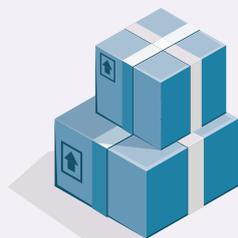
131  
investigations finalised



24  
formal comments or suggestions for improvement



568  
complaints finalised

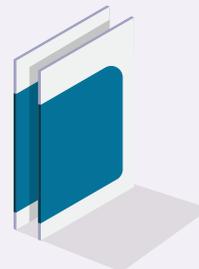


Moved to a new office

Implemented a new case management system



Published the safeguarding confidentiality review report



Two FOI review decisions published

168  
complaints transferred to Ahpra



15,244  
website visits

# Letter of transmittal



National Health  
Practitioner  
Ombudsman

The Hon. Natasha Fyles  
Chair  
Health Council  
PO Box 3410  
Rundle Mall  
Adelaide SA 5000

Dear Minister

I am pleased to present you with the joint National Health Practitioner Ombudsman's and National Health Practitioner Privacy Commissioner's annual report for the period 1 July 2019 to 30 June 2020.

The report has been prepared in accordance with s. 29 of the Health Practitioner Regulation National Law Regulation 2018.

I am satisfied that the office of the National Health Practitioner Ombudsman's financial and governance processes meet our specific needs and comply with the requirements of s. 28 of the Health Practitioner Regulation National Law Regulation.

Yours sincerely

**Richelle McCausland**  
National Health Practitioner Ombudsman  
National Health Practitioner Privacy Commissioner

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# Ombudsman and Commissioner's message



The COVID-19 health emergency has affected Australians on every level in the 2019–20 financial year. I would like to take a moment to thank all health practitioners who have provided services to the community during this challenging time.

Our health regulators too have had to adjust swiftly to complex challenges. New measures such as the pandemic sub-register of health practitioners have been implemented to meet healthcare needs as they emerge. These difficult circumstances have required new ways of communicating and monitoring change. They have also led to unusual trends in our complaints data.

This financial year my office received 987 approaches, five per cent fewer than 2018–19. This contrasts with the continued significant increase in approaches we have received in the past five years. I note that the number of complaints that my office received remained stable (increasing by 2 per cent). The most significant change was the decrease in enquiries, which reduced by 12 per cent. This means that my office has continued to receive more concerns that are within our power to address. This is a positive shift that is most likely due to more awareness about my office's role.

The way my office has operated for a significant part of the financial year has been unique as we work from home to help keep one another safe. I have been struck by the importance of connection during this time, and I am grateful to my staff, who have supported one another while providing an empathetic, effective and timely complaint-handling service.

We have continued to strive for fair and positive change in the regulation of registered health practitioners for the Australian community. This year we have collaborated with the Australian Health Practitioner Regulation Agency (Ahpra) and the National Boards to:

- address gaps in policies and procedures
- improve communication, particularly regarding explanations for decisions or actions.

I thank Ahpra's senior leadership team for their dedication to addressing the issues raised by my office.

This year is also remarkable because it is the 10-year anniversary of the National Registration and Accreditation Scheme. It is very rewarding to consider the major projects undertaken this year because they reflect how far my office has come, and how it has evolved to be a champion for fairness. These projects have included implementing a new early resolution complaint-handling process, developing a custom-made case management system and a new brand identity, including a shortened name for my office.

I would also like to thank the Health Council Secretariat and the Secretary and staff of the Victorian Department of Health and Human Services who have provided exemplary support to my office this financial year.

A handwritten signature in black ink that reads "Richelle McCausland".

**Richelle McCausland**  
National Health Practitioner Ombudsman  
National Health Practitioner Privacy Commissioner

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# We are respectful

We listen to and seek to understand the unique perspectives of everyone we engage with

# About us

## Our vision

We strive for fair and positive change in the regulation of registered health practitioners for the Australian community.

## Our purpose

We champion fairness through investigating complaints, facilitating resolutions and making recommendations to improve the regulation of Australia's registered health practitioners. Our office has three main roles. We accept:

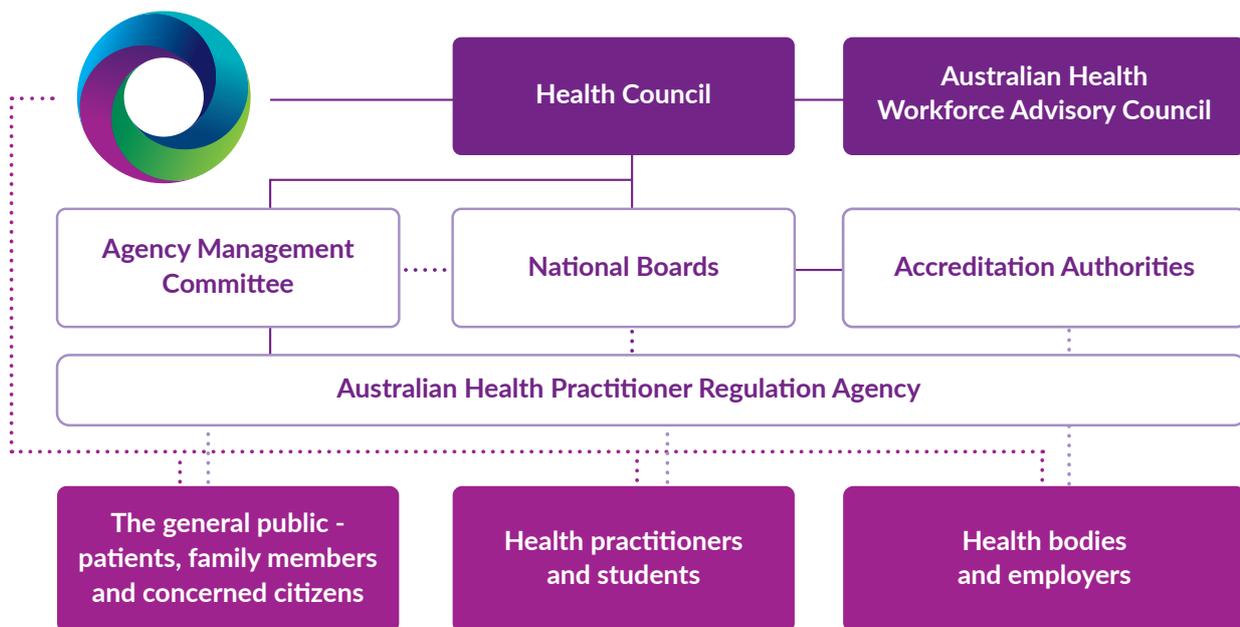
- complaints to the National Health Practitioner Ombudsman
- complaints to the National Health Practitioner Privacy Commissioner
- applications to review freedom of information (FOI) decisions.

## Our role

Our primary role is to provide oversight of bodies in the National Registration and Accreditation Scheme (National Scheme) including the Australian Health Practitioner Regulation Agency (Ahpra) and the 15 National Boards (see Figure 1).<sup>1</sup>

Richelle McCausland is the National Health Practitioner Ombudsman and National Health Practitioner Privacy Commissioner. She was appointed to both roles in May 2018 for a three-year term.

Figure 1: The role of our office



<sup>1</sup> The National Boards currently include the: Aboriginal and Torres Strait Islander Health Practice Board of Australia, Chinese Medicine Board of Australia, Chiropractic Board of Australia, Dental Board of Australia, Medical Board of Australia, Medical Radiation Practice Board of Australia, Nursing and Midwifery Board of Australia, Occupational Therapy Board of Australia, Optometry Board of Australia, Osteopathy Board of Australia, Paramedicine Board of Australia, Pharmacy Board of Australia, Physiotherapy Board of Australia, Podiatry Board of Australia and Psychology Board of Australia.

# What we do

## Complaint resolution

Our office provides a free, impartial and independent complaint-handling service for the public and health practitioners.

While our office has different roles based on the type of matter being raised, we generally:

- listen to concerns and identify common complaint trends
- consider whether Ahpra and the National Boards have acted consistently with the relevant laws and policies
- provide meaningful explanations and outcomes to individuals.

## Systemic improvement

We work collaboratively with Ahpra and the National Boards to identify and address systemic issues.

The Ombudsman and Commissioner can also conduct 'own motion' investigations into issues of interest to identify areas for improvement.

## Community engagement

We provide insight into issues raised by organisations whose work influences how the National Scheme operates. We also regularly engage with the public and the healthcare community to raise the profile of our services.

## Strategic directions



### Influencing systemic improvements

We work with stakeholders to identify and maximise opportunities for systemic improvement in the regulation of Australia's registered health practitioners



### Engaging and communicating

We effectively engage and communicate with our diverse community



### Building capability

We facilitate operational growth and support staff excellence



### Enhancing accountability

We broaden the scope of our activities in a way that is sustainable and meets the needs of our community

# Our values

## Independent

We make decisions and recommendations based on evidence and without taking sides



## Fair

We are open and follow impartial processes to make sure everyone is treated equally



## Courageous

We do what is in the public interest even if it is challenging



## Respectful

We listen to and seek to understand the unique perspectives of everyone we engage with



## Collaborative

We work with others to resolve issues and identify opportunities to improve



# 10-year anniversary of the National Scheme

The National Scheme was created 10 years ago with one overarching goal: to protect the public.

Before the National Scheme began, health practitioner regulation in Australia was fractured – there were eight different regulatory systems for health practitioners, 85 separate health practitioner boards and more than 65 different pieces of legislation.

The National Scheme sought to address the problems in the regulatory landscape by:

- ensuring all registered health professionals meet the same, high-quality professional standards
- allowing registered health practitioners to practise across Australia without having to re-register in each state and territory.

Ten years on, the National Scheme, managed by Ahpra and the National Boards, works to protect the public in many ways including by:

- registering more than 700,000 health practitioners
- setting national standards for each of the registered health professions
- approving accredited programs of study
- managing notifications made about health practitioners
- publishing an online public register of all registered health practitioners.

## Our role in creating positive change

Trust in the decision-making processes of regulators is essential. The establishment of our office in 2010 demonstrated, and continues to show, that the National Scheme values fairness and accountability.

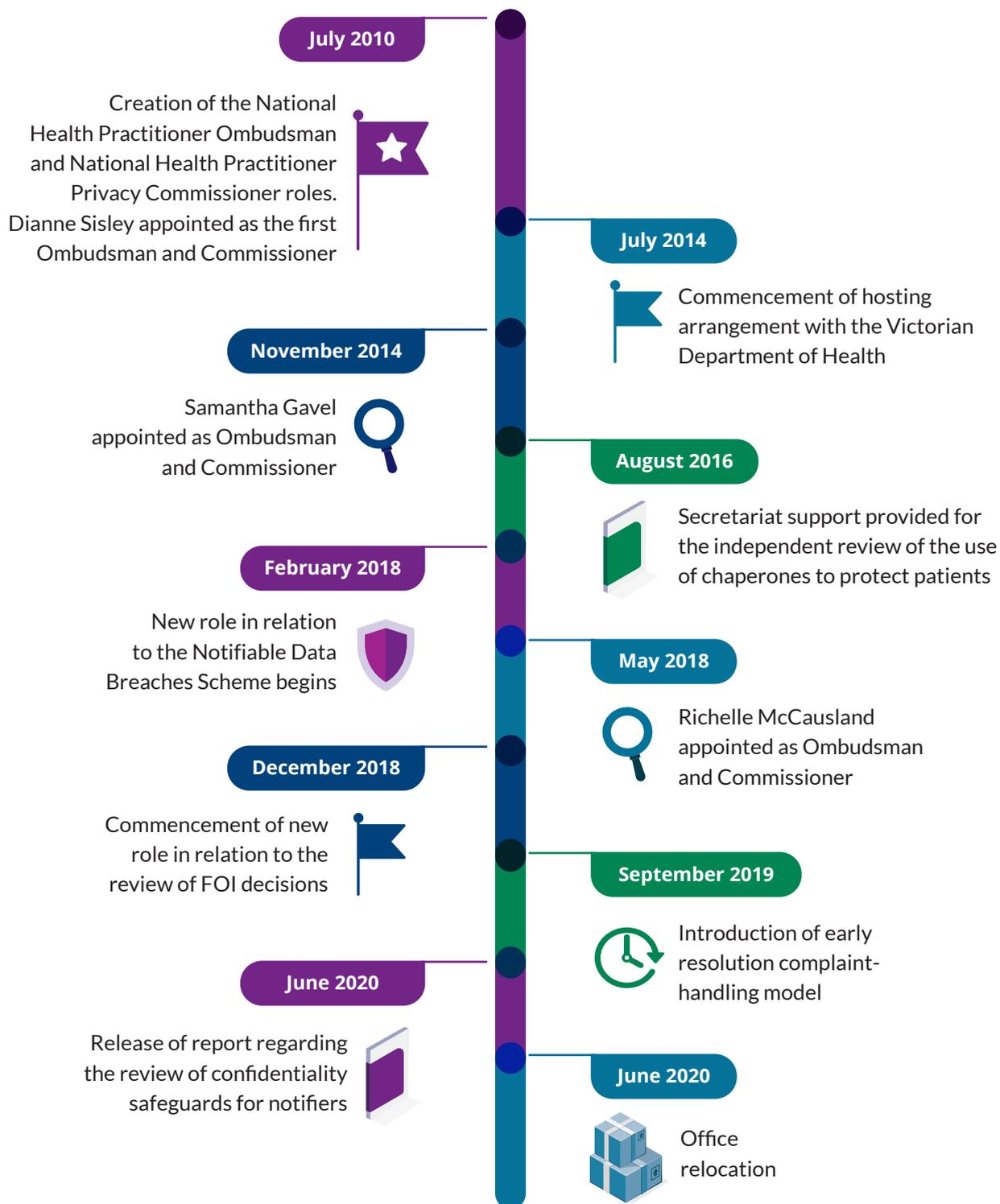
Our role and ability to influence positive change has continued to grow. In the past five years, there has been a five-fold increase in approaches to our office. The Ombudsman and Commissioner roles have also been expanded to enhance accountability through reviewing FOI decisions and we will soon begin accepting complaints related to accreditation entities.

We have risen to the challenge of an increased workload with new mechanisms to increase effectiveness, including a new investigation model in 2016, complaint transfer process in 2018, early complaint resolution process in 2019 and new case management system in 2020.

Most importantly, we have continued to provide meaningful outcomes to individual complainants and have worked with Ahpra and the National Boards to bring about significant improvements in the National Scheme. This includes working with Ahpra to:

- create and review policies and procedures
- enhance communication
- improve record keeping and information management practices.

# Timeline of significant milestones



## About our team

Our small team of highly skilled and committed staff support the Ombudsman and Commissioner to provide quality services.

### The Ombudsman and Commissioner

Richelle McCausland currently holds the roles of both National Health Practitioner Ombudsman and National Health Practitioner Privacy Commissioner.

The Health Council appoints the Ombudsman and Commissioner for a term of three years. The Health Council is made up of health ministers from each state and territory in Australia.

The law gives the Ombudsman the power to consider and investigate how Ahpra and the National Boards manage the regulation of Australia's registered health practitioners. The Commissioner also has the power to handle privacy complaints and to review FOI decisions.

### Complaints team

Our complaints team generally handle:

- complaints to the Ombudsman
- complaints to the Commissioner
- applications for FOI review.

The Ombudsman and Commissioner delegates decision-making powers to members of the complaints team. Some staff members can decide whether to investigate complaints and others can conduct FOI reviews.

The complaints team is empathetic and values working collaboratively with stakeholders to achieve complaint resolutions.

### Strategy and communications team

Our strategy and communications team focuses on delivering our stakeholder engagement plan. This financial year several large projects were progressed including:

- updating our strategic vision, purpose and values
- refreshing our branding to reflect the unique roles of the office
- upgrading our website to a more secure and engaging platform.

### Business services team

Our business services team provides administrative and governance support to our office.

We have experienced significant and continued growth, and the business services team responds proactively to this changing environment by:

- helping to recruit highly qualified staff in roles developed to address potential pressure points
- supporting the development of a positive organisational culture to support staff, including in response to challenges associated with COVID-19
- facilitating the relocation of the office to a larger and independent space
- implementing risk management processes.

### Strategic planning

As part of our commitment to continuous improvement, our team created a three-year strategic plan for our office. This involved creating four main areas of strategic focus:

1. Influencing systemic improvements
2. Engaging and communicating
3. Building capacity
4. Enhancing accountability.

Our team also collaborated to update the office's vision, purpose and values statements. These developments are essential to ensure we can track our progress and clearly communicate with our stakeholders.

## Team building

This financial year we continued to focus on building a strong and collaborative team dynamic.

We improved our induction process to ensure new staff receive a comprehensive introduction to the office. This involves pairing the new staff member with a more experienced 'buddy'.

“ One of my responsibilities this year was to mentor a new member of the complaints team.

I enjoyed watching my colleague grow, gain new skills and become part of our team culture.

I also love that our office gives us the chance to be part of team building days. One of the activities I liked the most focused on problem solving and communication in a team setting.

- Zoe, NHPO investigator



Photograph: a virtual photo of our team

# Responding to COVID-19

Australia's health system has faced unprecedented challenges due to the COVID-19 pandemic.

We would like to extend our thanks to the health practitioners who have worked, and continue to work, to keep our communities safe and provide essential treatment to those who are affected.

## Health regulation impacts

We also acknowledge the unique challenges health regulators have faced, and are facing, as a result of the COVID-19 pandemic.

COVID-19 has required regulators such as Ahpra and the National Boards to respond quickly to new situations. For example, in April 2020 Ahpra and the National Boards established a short-term pandemic response sub-register to help fast track the return of experienced and qualified health practitioners to the workforce. About 35,000 health practitioners were added to the pandemic sub-register, most of whom were nurses.

## We're here to help

Our office has stayed open, with our staff making themselves available to assist health practitioners, the public and health regulators wherever possible.

In March the Ombudsman and Commissioner released a statement encouraging health practitioners and community members to contact us if needed.

We published frequently asked questions received by both our office and Ahpra on our website. This included information about:

- the pandemic sub-register
- registration and registration fees.

## Supporting staff health and wellbeing

Staff health and wellbeing has remained a key priority in our COVID-19 response plan.

We established a COVID-19 risk management committee, which continues to meet weekly.

One of the main changes managed during this time has been the need for staff to work from home in line with Victorian Government directives.

Maintaining connections and open communication have been essential components of our plan to support staff during this challenging time.

Key activities have included:

- proactively sharing our response plan, including reference to the four different stages of our response
- the Ombudsman and Commissioner providing regular updates about our response plan
- regularly requesting staff input on how to improve our response, including through anonymous staff surveys
- scheduling weekly one-on-one meetings between staff and their manager
- holding weekly team meetings to provide relevant updates and share developments.

“ Virtual catchups with the team have brought us closer together. These catchups have not been about work. Instead, a question of the day has prompted a lot of laughs and a better understanding of each other.

- Diana, NHPO business services team



## Maintaining quality services

Our office has continued to provide high-quality services during this time and has effectively responded to the unique challenges COVID-19 has raised.

One of the most significant changes during this financial year was the shift to a new telephony system for our team members and our 1300 complaints line.

This change alleviated concerns that complainants would not be able to speak directly to a staff member if they called the 1300 number and staff were not in the office to answer the call.

“ I am really proud of the way the office has supported me and my colleagues while working from home. I have been provided with all my equipment needs, such as a laptop and screen, and then later moving to softphones for an improved work experience. My start and finish times have also been flexible so that I can enjoy spending my hour of exercise in the sun. - Diana, NHPO business services team

# We are fair

We are open and follow impartial processes to make sure everyone is treated equally

## Contact with our office

We recorded 987 approaches in 2019–20 including:



**595** complaints about the administrative actions of Ahpra and the National Boards



**371** enquiries relating to concerns about the regulation of health practitioners



**21** FOI matters involving Ahpra and the National Boards

Overall, there was a 5 per cent decrease in approaches compared with 2018–19. This contrasts with the upward trend in the number of approaches our office has received since 2014–15 (see Figure 2).

The COVID-19 pandemic resulted in unusual complaint trends this financial year. In particular, there were comparatively fewer complaints received between February and May 2020.

The most significant change in 2019–20, however, was in relation to the number of enquiries we received, which decreased by 12 per cent. The number of complaints remained stable, increasing by 2 per cent. We therefore continued to receive more concerns that were within our scope to address. This suggests that complainants are becoming more aware of how to appropriately escalate their concerns.

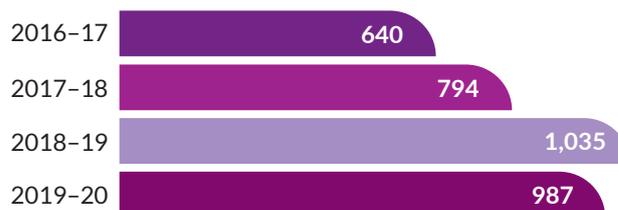
While our office did receive more complaints overall than it did last financial year, the trend over the previous five years suggests that the office would most likely have received a greater number of complaints if the COVID-19 pandemic did not occur.

There are many possible reasons for this, including:

- some complainants may have decided to delay submitting their complaint until after the pandemic
- feelings of fatigue in the stressful COVID-19 environment may also have led some complainants to discontinue with their complaint.

There may also have been other factors at play, including the increasing ability of Ahpra's newly formed national complaints team to resolve some matters without the involvement of our office.

Figure 2: Number of approaches received by our office between 2016–17 and 2019–20



Fifty-two per cent of approaches were received through email (512), 46 per cent through calls to our central enquiry line (451) and 2 per cent via post (24).

## Complaints

We received 595 complaints in 2019–20. These complaints related to concerns about how Ahpra and the National Boards handled a notification, a registration matter, personal information or an FOI request.

We did not receive any privacy complaints in relation to the Commissioner role in 2019–20.

## Enquiries

We received 371 enquiries in 2019–20.

Most of these enquiries (330) related to concerns we were not able to consider. Our staff ensure that individuals requesting assistance with issues outside our jurisdiction are referred to the appropriate service wherever possible.

We also received:

- eleven requests for general information about our office
- ten media requests
- 20 enquiries about other matters, most of which were enquiries we could not consider further because we were not provided with enough information.

We call these contacts ‘enquiries’ because they are outside our core complaint-handling activities.

## FOI matters

Our office also received 21 approaches related to FOI decisions made by Ahpra.



## Wei's story<sup>2</sup>

**Wei experienced chronic pain after undergoing a medical procedure. Wei formed the belief that the procedure caused his ongoing pain and he made a notification to Ahpra and the Medical Board about his doctor.**

The Board decided to take no further action. Wei complained to our office that the Board did not have all relevant information before it, including information he provided to Ahpra about the subsequent procedure he underwent to address his pain.

We investigated Wei's complaint and decided to provide formal comments to Ahpra. The Ombudsman commented that Ahpra did not present the supplementary information from Wei to the Board and that it had not made good records of its investigative decisions resulting from clinical input. The Ombudsman also noted that the reallocation of the matter to another Ahpra investigator during the course of the investigation resulted in some delay.

Ahpra apologised to Wei and advised that it would return the matter to the Board to determine whether the supplementary information warranted reconsideration of the notification. Wei was satisfied with this outcome.

Ahpra explained to the Ombudsman that it is developing guidance for staff to better deal with clinical input through the investigation process and that it is also taking steps to minimise the impact of transferring files between staff.

Following this, Ahpra advised our office in February 2020 that it had published its revised *Clinical input policy* and accompanying guideline for staff. A webinar about the new policy and guidelines for notifications staff was also published to promote the implementation of the policy.

<sup>2</sup> Please note that all names have been changed to preserve privacy.

# Ombudsman complaints

This financial year our office received 595 complaints to the Ombudsman.

In general, the Ombudsman accepts and (where appropriate) investigates complaints about how Ahpra and the National Boards handled:

- a notification (59 per cent)
- a registration-related matter (36 per cent)
- personal information or a breach of privacy (1 per cent)
- a request for documents under FOI legislation (1 per cent) (see Figure 3).

The Ombudsman can consider complaints that relate to how a matter was handled, not whether Ahpra or a National Board’s decision about a matter was right or wrong.

**Figure 3: Types of complaints received**



## Common complaint themes

As in previous years, most complaints received in 2019–20 related to the handling of a notification about a registered health practitioner (see Table 1).

Concerns were mostly raised by the person who made the notification, rather than the health practitioner who was the subject of the notification.

**Table 1: Complaints by type in 2017–18, 2018–19 and 2019–20**

Complaints by type	2017–18	2018–19	2019–20
Handling of a notification	288	305	351
Handling of a registration matter	123	233	217
Handling of a breach of privacy or personal information	6	17	6
Handling of an FOI matter	8	17	4
General health regulation concerns	0	12	5
Accreditation processes*	-	-	3
Other	19	2	9
<b>Total</b>	<b>444</b>	<b>586</b>	<b>595</b>

\* In 2019–20 we updated our reporting methodology to capture complaints made about the accreditation process.

Many complaints were also about registration matters, particularly perceptions of unfair processes and policies.

A smaller number of complaints were received about the handling of privacy-related matters, the handling of FOI requests and other general concerns about health practitioner regulation.<sup>3</sup>

<sup>3</sup> It is important to note that the Ombudsman can accept complaints about how Ahpra and the National Boards handled privacy-related matters and FOI requests, and this role is separate to the powers of the Commissioner.

Complainants commonly raised concerns about poor communication, delays and the information considered by a National Board when it made a regulatory decision (see Figure 4).

Figure 4: Infographic of common complaint themes



## Finalised complaints

Our office successfully finalised 567 complaints this financial year.

In general, we listen to concerns and carefully consider the most appropriate way to resolve complaints. We may:

- decide to investigate
- transfer the complaint directly to Ahpra for a response
- assist Ahpra to resolve the complainant's concerns without investigation
- decide not to investigate.

When we investigate a complaint, we review the available information to determine whether the relevant administrative actions:

- were lawful and reasonable
- were consistent with relevant policies and procedures.

## Investigation outcomes

We finalised 130 investigations of complaints to the Ombudsman during 2019–20. Generally, investigations resulted in three outcomes:

- providing a further explanation to the complainant
- providing formal comments or suggestions for improvement to Ahpra
- assisting Ahpra to resolve the matter.

### Providing a further explanation to the complainant

The most common investigation outcome (62 per cent) was providing a further explanation to the complainant about the decision or action they complained about (81 complaints). This means we did not identify any major error in how Ahpra or the relevant National Board handled the complainant's matter. Instead, we were able to help the complainant to better understand how their issue had been handled.

### Providing formal comments or suggestions for improvement to Ahpra

Eighteen per cent (24) of investigations were finalised when the Ombudsman provided formal comments and/or suggestions for improvement to Ahpra and the relevant National Board. The complainant stories in this report demonstrate the types of comments and suggestions made during 2019–20 and the steps Ahpra has taken to address them.

### Assisting Ahpra to resolve the matter

Sixteen per cent (21) of investigations were finalised after Ahpra agreed to take steps to resolve the complainant's concerns.

A further four complaints were finalised after Ahpra provided an apology to the complainant.

## Our Ombudsman complaint-handling work in numbers



**567**

complaints  
finalised in  
2019-20



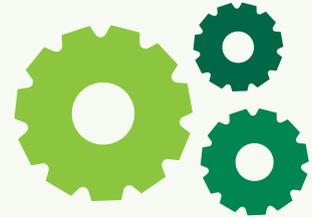
**117**

investigations  
commenced



**130**

complaints  
finalised after  
investigation



**130**

complaints  
processed as early  
resolution transfers



**85%**

of complaints finalised through  
the early resolution transfer  
process without the need for  
further inquiries or investigation



**15%**

of complaints finalised  
on the same day they  
were received

Complaints finalised:

**37%**  
within



**60%**  
within



**79%**  
within



## Discretion not to investigate

We exercised discretion not to investigate 235 complaints during 2019–20. In these instances, we did our best to help people identify what they wanted to achieve and to suggest alternative ways that they could progress their concerns.

Reason complaint not investigated	Number
Not warranted by the circumstances	135
Requested information not provided by complainant	43
Complainant had not complained to Ahpra	29
Matter currently before, or concerns, a court or tribunal, or would be more appropriately handled by a court or tribunal	20
Insufficient interest (the person who made the complaint is not a party to the complaint they made)	7
Complainant became aware of the matter more than 12 months ago	1
<b>Total</b>	<b>235</b>

## Dr Mitchell's story

**Dr Mitchell is a general practitioner living with a neurological illness that has restricted his ability to work for several years. He made an application to the Medical Board that would enable him to return to clinical practice.**

However, he encountered difficulties navigating Ahpra's registration processes.

Dr Mitchell made a complaint to the Ombudsman because he believed Ahpra had required him to complete forms that were meant for international medical graduates rather than Australian medical practitioners returning to practice with a disability. He said that the forms were very difficult to complete because they were tailored to a different cohort of medical practitioner and that Ahpra refused to allow him to provide a separate letter to the Board that would better explain his situation.

Our investigation confirmed that Dr Mitchell's circumstances were duly considered by the Board before any decisions were made about his proposed return to practice. However, we concluded that it would have been better had he not been asked to complete forms that were not relevant to his circumstances.

The Ombudsman provided formal comments to Ahpra about this issue and Ahpra agreed that the feedback would be incorporated into a review of forms that it already had underway.



## Who complaints were about

The number of complaints we receive about each National Board appears to be linked to the size of the profession the National Board represents, as well as the number of notifications received about practitioners who are registered in each profession (see Table 2).

All complaints we received involve Ahpra in some way. This is because Ahpra is the main point of contact for people interacting with the National Scheme.

As in previous years, most complaints to our office related to the regulation of the medical, nursing and midwifery, and psychology professions. However, it is interesting to note that the proportion of complaints related to the medical profession increased this financial year, from 42 per cent in 2018–19 to 53 per cent.

**Table 2: Registration, notification and complaint numbers in 2019–20 by health profession<sup>4</sup>**

Profession	Registered health practitioners	Notifications received by Ahpra	Applications for registration received by Ahpra	Complaints received by Ahpra	Complaints received by our office
Medical	125,641	5,745	17,563	122	315
Nursing and midwifery	451,478	1,957	39,930	98	117
Psychology	40,517	737	5,624	100	52
Dental	24,406	784	1,719	18	36
Paramedicine	19,838	112	2,819	9	17
Pharmacy	34,512	448	3,675	24	16
Medical radiation practice	18,243	31	1,624	6	7
Physiotherapy	37,113	125	3,540	7	7
Chiropractic	5,777	92	457	4	6
Occupational therapy	23,997	53	2,560	6	6
Podiatry	5,608	44	459	1	6
Optometry	6,043	41	326	1	3
Chinese medicine	4,921	38	586	4	2
Aboriginal and Torres Strait Islander health practice	812	8	222	0	0
Osteopathy	2,753	21	333	1	0
Other/unknown					5
<b>Total</b>	<b>801,659</b>	<b>10,236</b>	<b>81,437</b>	<b>401</b>	<b>595</b>

<sup>4</sup> Data regarding 'Notifications received by Ahpra', 'Applications for registration received by Ahpra' and 'Complaints received by Ahpra' was provided by Ahpra.

### Maya's story

**Maya made a complaint to our office about how Ahpra and the Paramedicine Board handled her application for registration.**

Maya believed it was unreasonable that Ahpra requested she provide Board-approved International Criminal History Checks (ICHC) for multiple countries she had previously worked in. She was also concerned about the cost of seeking multiple ICHCs, delays in the processing of her matter and difficulty contacting her registration officer.

We initially discussed Maya's complaint with her and received consent to transfer her complaint to Ahpra through our early resolution transfer process. After receiving Ahpra's response, Maya remained dissatisfied and our office began an investigation.

Our investigation found that Ahpra's handling of the ICHC requirements was reasonable. It is a legislative requirement that the Board check the criminal history of all applicants and Ahpra's requests were consistent with this requirement.

To resolve the complaint, Ahpra confirmed Maya was only required to complete an ICHC for three countries. Ahpra assisted Maya by providing information about the Board's requirements and about how to obtain an approved ICHC through an appropriate vendor. Ahpra also granted Maya a further extension of time to provide the relevant documentation for her application.

Our office was pleased when Maya said she was on track to complete her application.



## Where complaints came from

We receive complaints from across Australia and from people located outside Australia who have been in contact with Ahpra or a National Board.

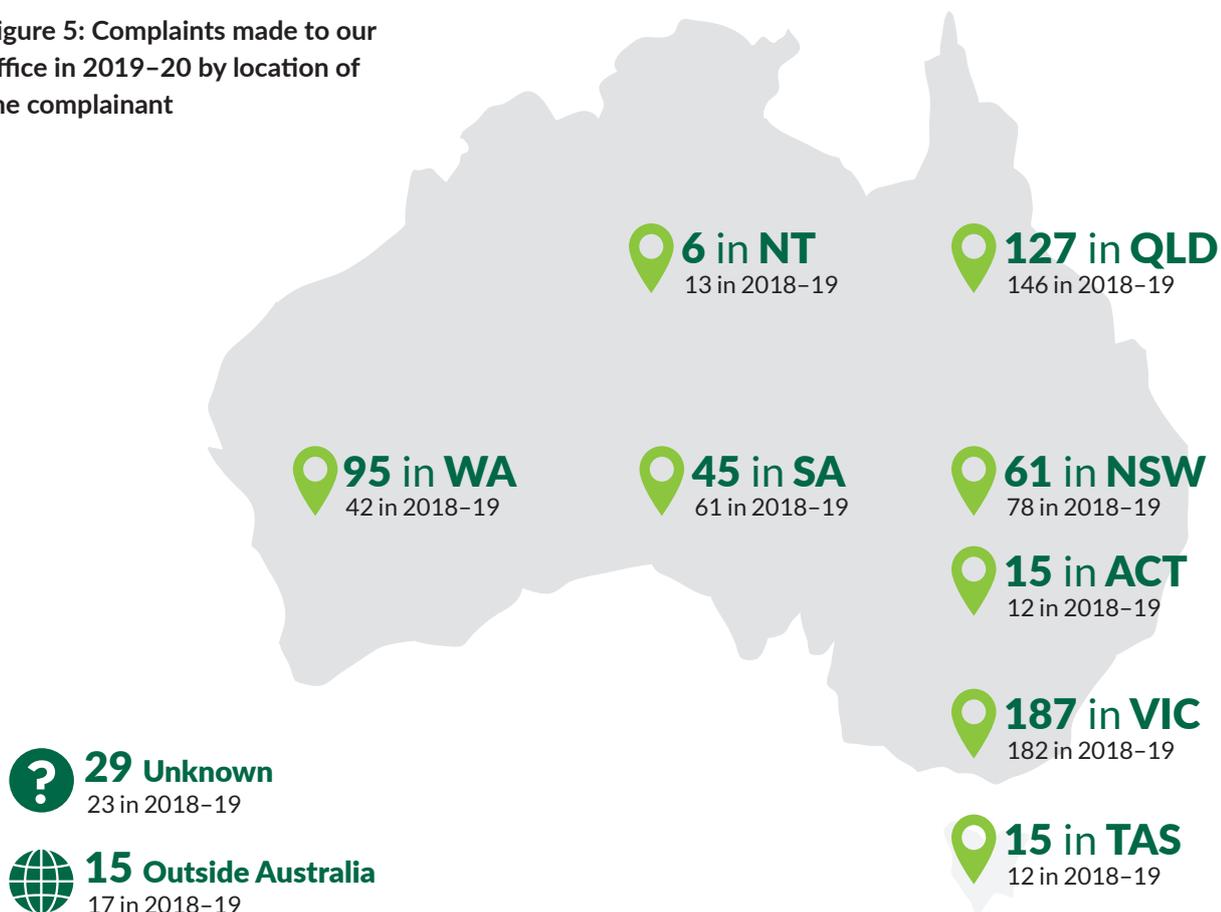
As in previous years, most of the complaints to our office came from people located in Victoria (see Figure 5). This trend is likely due to the large number of registered health practitioners who are part of the National Scheme in Victoria. We saw an increased number of complaints this financial year from people located in Western Australia. It is unclear why this increase in complaints occurred and we will continue to monitor this trend.

New South Wales and Queensland have different arrangements in place for making notifications about health practitioners, and these arrangements affect the number of complaints we receive from these locations.

In New South Wales, notifications are handled by the Health Care Complaints Commission and the Health Professional Councils Authority. We do not have power to receive complaints about how a notification has been handled by these entities.

In Queensland, complaints about health practitioners are handled by the Office of the Health Ombudsman. The Office of the Health Ombudsman assesses each complaint it receives to determine if it should be referred to Ahpra or should be managed by the Office of the Health Ombudsman. We only handle complaints about a matter from Queensland if it has been referred to Ahpra by the Office of the Health Ombudsman.

**Figure 5: Complaints made to our office in 2019–20 by location of the complainant**



# Complaints about the handling of notifications

In 2019-20 most of the complaints we received (59 per cent) were about the handling of a notification by Ahpra and a National Board.

The number of complaints of this type increased by 15 per cent compared with 2018-19 (see Figure 6).

**Figure 6: Notification-related complaints received from 2018-19 to 2019-20**



## About the notification process

Anyone can make a notification to Ahpra about a registered health practitioner if they have a concern about the health, conduct or performance of the practitioner.

In general, Ahpra gathers information about the notification and presents it to the relevant National Board. The National Board then decides whether it needs to take regulatory action to protect the public. The National Board can make this decision with or without conducting an investigation into the notification.

## Concerns about the handling of a notification

As in previous years, complainants in 2019-20 typically raised concerns about:

- delays in Ahpra progressing the notification
- Ahpra not providing updates about the progress of the notification
- Ahpra not adequately explaining the reasons for the National Board's decisions

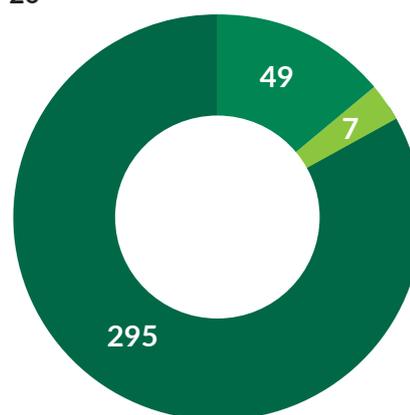
- Ahpra or a National Board misunderstanding an issue raised in the notification
- a National Board not considering all relevant information when making a decision or taking action
- Ahpra not responding to a complaint about the handling of a notification in accordance with its policy.

## Types of notification-related complaints

Most complaints about the handling of notifications were made by notifiers (84 per cent). This has been a consistent trend.

A significantly smaller number of complaints were made by health practitioners who were the subject of the notification (14 per cent) and members of the public who were not a party to the notification (2 per cent) (see Figure 7).

**Figure 7: Types of notification-related complaints in 2019-20**



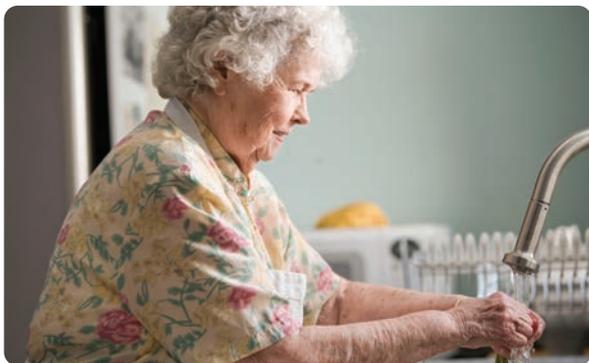
Complaints by:

- Practitioner
- General public
- Notifier

## Investigations

We commenced 101 investigations about the handling of a notification in 2019–20 including:

- ninety-four investigations that concerned complaints made by a notifier
- seven investigations that concerned complaints made by a practitioner who was the subject of the notification.



## Outcomes of notification-related complaints

Our office finalised 334 complaints about the handling of a notification this financial year.

We finalised 115 complaints following an investigation. The most common investigation outcome for notification-related complaints was our office providing the complainant with a further explanation about the concerns raised (73). This often included sharing more detailed information with the complainant about why a decision was made.

Other investigation outcomes included:

- assisting Ahpra to resolve a complainant's concerns (21)
- the Ombudsman providing formal comments, suggestions for improvement or positive feedback to Ahpra (17)
- Ahpra providing an apology to the complainant (4).

## Explaining a decision or action

Most of the complaints we receive are resolved through our office providing a further explanation to the complainant about why a decision was made or an action was taken.

Often, we find 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 what they were hoping for.

Recent legislative changes have provided Ahpra with greater discretion to communicate with notifiers about actions taken by National Boards in response to a notification. Providing clearer explanations about how a notification was managed is essential and can help build trust in the National Scheme.

### A proactive approach

We have continued working with Ahpra in several ways to improve how decisions are communicated.

In November 2019 Ahpra invited the Ombudsman and Commissioner to present to its intake and assessment teams about how to draft good reasons for decisions.

As the following case studies demonstrate, the Ombudsman and Commissioner also provides feedback to Ahpra through more formal mechanisms – for example, providing feedback in relation to how Ahpra communicates decisions about limiting the scope of an investigation.

### Fiona's story

**Fiona made a notification to Ahpra and the Psychology Board. Following an investigation, the Psychology Board decided to take no further action.**

Fiona made a complaint to our office because she believed Ahpra's communication with her had been 'slow and vague' and that Ahpra had failed to appropriately use evidence she had provided.

She also complained that the investigation 'lacked compassion and understanding' and that Ahpra's outcome letter was 'abrupt and dismissive'. She told us she had tried to make a formal complaint, but Ahpra did not respond.

#### “ Lacked compassion and understanding

Our investigation found evidence of Ahpra's communications to Fiona being unreasonably delayed and further identified that the reasons for the Board's decision had not been accurately communicated to her. We also noted that Fiona was not told that three of her issues would not be investigated until the investigation of the fourth issue was already complete. Finally, we confirmed that Ahpra had failed to provide a substantive response to Fiona's formal complaint.

The Ombudsman provided Ahpra with formal comments about these issues. Ahpra responded with information about the work it has done since Fiona's notification was finalised to improve how decisions are communicated and to also improve its handling of complaints about itself.

Ahpra agreed to further consider the Ombudsman's comments about how decisions to limit the scope of an investigation are communicated as part of an ongoing review into how Ahpra processes notifications.



## Trevor's story

**Trevor believed a medical practitioner failed to adequately manage and monitor his medical condition. He made a notification to Ahpra and, following an investigation, the Medical Board decided to take no further action.**

Trevor raised concerns with us about the adequacy of the investigation and the explanation provided to him about the Board's decision. He also expressed disappointment with the length of time taken to finalise the notification, possibly because his matter was reallocated to different Ahpra staff members on several occasions.

Our investigation into Trevor's complaint found that, while Ahpra made reasonable attempts to communicate the Board's decision to Trevor, it could have been clearer about the issues that had been identified for investigation. We also determined that Ahpra did not provide regular updates to Trevor about the progress of the investigation, which was inconsistent with its legislative obligation to provide written updates at least every three months.

To resolve Trevor's concerns, Ahpra agreed to arrange for a clinical advisor to meet with Trevor to discuss the matter further.

After highlighting some aspects of the matter that could have been handled better, the Ombudsman provided positive feedback to Ahpra regarding its commitment to addressing Trevor's complaint.

## Nozomi's story

**Nozomi made a complaint to our office on behalf of her daughter. Nozomi believed a notification made about her daughter was not handled in a fair way by Ahpra and the Medical Board due to bias and conflicts of interest.**

Nozomi was also concerned that the Board had not appropriately investigated concerns that the notification was vexatious, that Ahpra investigators had acted inappropriately and that conditions should not have been placed on her daughter's registration.

Our investigation found that it was open to the Board to take action against Nozomi's daughter. We also found no evidence that Ahpra staff had behaved improperly or that there was bias or undeclared conflicts of interest.

The Ombudsman did, however, make comments to Ahpra about how it communicated with Nozomi and her daughter. The Ombudsman reiterated that it would be beneficial if tailored communication was provided to practitioners about the notification process. In particular, the Ombudsman recommended that Ahpra consider releasing the Board's reasons for proceeding to an investigation unless it is not deemed appropriate to do so by Ahpra or the Board.

## Regular updates for notifiers and practitioners

It is a legislative requirement that Ahpra provides written notices to notifiers and practitioners about the progress of an investigation at least every three months.

The Ombudsman regularly comments on Ahpra's failure to consistently provide these updates to notifiers in her formal comments to Ahpra.

In response, Ahpra has revised its policy on updating notifiers and practitioners during an investigation and has developed a desktop guide for staff about applying the policy.

Ahpra has also created a notifications working group, which provided feedback on this policy and will also consider how to further support staff to comply with the legislative requirement.

Ahpra has committed to:

- reducing barriers for staff to provide this update, including by amending templates and lowering the delegation so that investigators (and not managers) can now send these updates
- updating its case management system to make it easier for staff to complete this action by the due date.

We will continue to monitor the implementation of these measures to ensure Ahpra is complying with its legislative requirement to provide regular updates.

## Bruce's story

**Bruce made a complaint to our office about how his notifications had been handled by Ahpra, the Medical Board and the Nursing and Midwifery Board. Bruce was concerned that the Boards had not considered all information about his son's treatment when deciding to take no further action. Bruce also complained that Ahpra's investigations had taken too long.**

We investigated Bruce's complaint. We found that the Boards had considered the information Bruce provided about his son's treatment and that it was open to the Boards to decide to take no further action.

We did, however, find that there were unreasonable delays in the managing of Bruce's notifications. This included a five-month delay in acknowledging Bruce's notifications when they were transferred to Ahpra by another agency.

Our office provided informal comments to Ahpra about these delays and the importance of prompt acknowledgement letters to explain the notification process to notifiers.

## Conflict of interest procedures

Investigations conducted by our office have found gaps in how Ahpra and the National Boards were declaring and managing conflicts of interest. This included conflicts in relation to Board members involved in the decision-making process and third parties who provide expert opinion reports to Boards.

As a result of the Ombudsman's formal comments and suggestions for improvement, Ahpra amended its conflict of interest policy and procedure. The policy was also the subject of an article in a bulletin to staff to increase awareness about the changes.

We will continue to monitor Ahpra's implementation of the new policy and ensure that the gaps identified in the following case studies have been appropriately addressed.

### Dr Wang's story

#### **Dr Wang made a notification to Ahpra about numerous incidents at her workplace.**

She made a complaint to our office for several reasons, including that the Medical Board may not have appropriately managed conflicts of interest she identified in relation to members of the Board and the practitioners she made notifications about.

We investigated Dr Wang's complaint, and the Ombudsman made formal comments to Ahpra about how it records conflicts of interest declared by Board members. Ahpra agreed to review its current arrangements for capturing and recording information about potential conflicts involving Board members.

We will continue to monitor this issue.

# Sarah's Story

**Sarah made a notification to Ahpra and the Medical Board about a medical practitioner who provided care to her during a high-risk pregnancy. The Board decided to take no further action after carrying out an investigation regarding Sarah's concerns.**

Sarah made a complaint to our office because she believed there was a conflict of interest between the person who wrote an expert opinion report about the management of her pregnancy and the practitioner she made the notification about.

Our investigation found that it had been reasonably open to the Board to decide to take no further action. However, we also identified that Ahpra did not have clear processes in place for declaring and managing conflicts of interest in relation to expert opinion reports in cases where Ahpra did not commission the report itself.

The Ombudsman made formal comments to Ahpra about this issue.

In response to the Ombudsman's feedback, Ahpra acknowledged that a gap existed in its current processes. Ahpra advised that it will implement a conflict of interest check for expert opinion reports written by third parties in the future. This check will require the author to share any potential conflicts before the report is accepted.

These declarations will help ensure that any potential conflicts of interest are assessed and appropriately considered by Ahpra investigators or the relevant Board.



## Assessing new information

Another area our office has worked with Ahpra to improve is how National Boards are presented with new information about a closed notification.

The Ombudsman's formal comments and suggestions for improvement in relation to new information has led to a National Board reconsidering a matter in several instances.

Ahpra has also provided further guidance to its staff about how to assess new information and how the information should be recorded and communicated to those involved in the notification.



## Jose's story

**Jose was a registered psychologist who made a notification to Ahpra and the Psychology Board about a former colleague who refused to transfer patient records following the termination of a business arrangement.**

The Psychology Board considered the notification and decided to take no further action on the basis that it believed the patient records had been released to Jose. Jose made a formal complaint to Ahpra about the Board's decision because he had not received all patient records. Ahpra assessed this information and advised him it was not new information and that the notification would remain closed.

Jose made a complaint to our office because he was concerned with the Board's initial decision and he believed it needed to consider the new information he provided.

Following our investigation, Ahpra offered to have the Board consider Jose's correspondence and any updated information provided.

Jose returned to our office several months later because he had not received any contact from Ahpra regarding the Board's further consideration of his notification.

We liaised with Ahpra and, as a result, Jose received a detailed update from Ahpra and an apology for the delay. Jose was pleased with our assistance.

# Complaints about the handling of registration matters

Thirty-six per cent of all complaints to our office this year were about the health practitioner registration process (217).

This is slightly lower than the number of registration-related concerns the office received in 2018–19 (see Figure 8). The decrease in complaints is most likely due to the improvements Ahpra has made in managing applications for registration from graduates after a large number of applicants experienced delays in 2018–19.

**Figure 8: Registration-related complaints received between 2017–18 and 2019–20**



## About the registration process

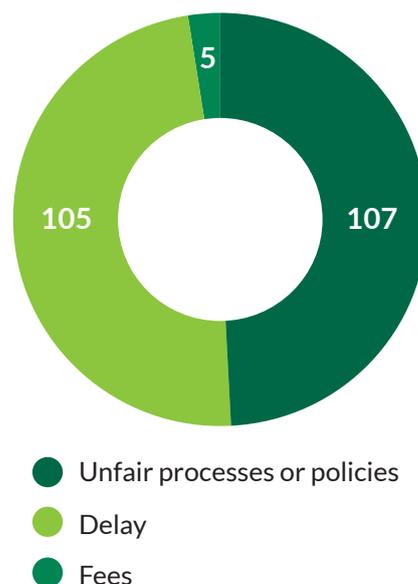
Practitioners must be registered by the National Board that represents their profession. Registered practitioners are also required to renew their registration every 12 months.

### Concerns raised

Complaints about the registration process generally related to three key areas:

- unfair processes or policies relevant to assessing applications for registration (107)
- delays in the processing and assessment of applications for registration and renewals of registration (105)
- registration fees (5) (see Figure 9).

**Figure 9: Types of registration-related complaints received in 2019–20**



## Registration-related complaint trends

Most registration-related complaints involved concerns about unfair processes or policies.

This contrasts with complaint trends in the previous financial year, where most complaints related to delays in the processing and assessment of registration applications. Significantly, almost half of the complaints about unfair registration processes or policies (51) related to the nursing profession.

## Investigations

We commenced 13 investigations about the handling of a registration matter in 2019–20. Most of these investigations related to concerns about process and policy (11), and a smaller number related to delays (2).

## Outcomes of registration-related complaints

We finalised 204 complaints about the handling of a registration matter in 2019–20.

The most common complaint outcome was our office assisting Ahpra to resolve a complainant's concerns without investigation (84).

We also finalised 10 complaints following investigation. Investigation outcomes included providing the complainant with further information (6) and the Ombudsman providing formal comments or suggestions for improvements to Ahpra (4).

## Registration delays

A delay in the assessment of an application for registration or registration renewal is a recurring concern raised by complainants.

This financial year, our office encouraged Ahpra to proactively communicate with applicants about the estimated timeframe for applications to be assessed and processed. As a result of this collaboration, Ahpra agreed to:

- clearly communicate in its public-facing materials that there may be delays
- ensure that outward-facing information adequately communicates the expected timeframes to applicants.

## Liam's story

**Liam had applied to Ahpra for provisional registration as a medical radiation practitioner. When his application was approved, Liam was informed that he needed to apply to participate in the Supervised Practice Program.**

Liam started practising as a medical radiation practitioner; however, he had forgotten to submit all required documentation for the Supervised Practice Program. Three months later, Ahpra informed Liam that it had not received the necessary information from him.

The matter was resolved quickly when Liam presented Ahpra with the required documentation and his participation in the program was approved. However, Ahpra and the Medical Radiation Practice Board stated that they would not recognise the time Liam had spent working without official approval to participate in the program, which meant he would have to be supervised for three months longer than he had planned.

Francesco, Liam's supervisor, made a complaint to our office because he believed Liam's career progression would be affected because of this issue.

Francesco explained that there are predetermined windows of time for practitioners to make applications for education and pursue employment opportunities in the profession and that this extended period of supervision would make Liam out of sync with his peers.

We investigated Francesco's concerns. We found it was reasonable for the Board to decide not to recognise the period before Liam was provided with approval to participate in the program. Ahpra had clearly advised Liam that he needed to apply to participate in the program before beginning to practise as a medical radiation practitioner.

The Ombudsman did, however, make formal comments to Ahpra about the delays in the processing of Liam's paperwork. She raised concerns that there was a three-month delay in informing Liam that his application to participate in the program was incomplete.

The Ombudsman also noted that delay is a concern frequently raised by complainants and that Liam's complaint demonstrates the negative impact that a delay can have on practitioners.

We will continue to monitor this issue.

## English Language Skills Registration Standard

Our office frequently receives concerns about the English Language Skills Registration Standard.

The Ombudsman has provided information to Ahpra about the typical complaints we receive in relation to this area and has provided advice on areas for improvement including:

- communication – for example, clearly explaining to applicants why they do not meet the Standard

- staff training in relation to consistently assessing and identifying when an applicant meets the Standard
- exploring possibilities to update relevant definitions in the Standard regarding the requirements for continuous education, vocational education and online courses.

We look forward to working with Ahpra to ensure assessments associated with this Standard are improved for future practitioners.

### Gabriel's story

**Gabriel made a complaint to our office about Ahpra's handling of his application for general registration as a registered nurse. He was concerned that Ahpra had completed an incorrect assessment of his education against the extended education pathway of the Nursing and Midwifery Board's English Language Skills Registration Standard.**

We investigated Gabriel's concerns and confirmed that his education did not meet the requirement for five years of full-time equivalent study in the extended education pathway of the Standard.

We provided an explanation to Gabriel about how failed subjects affected the assessment of his education. We also informed him that his vocational education had not been assessed to have an Australian Qualifications Framework equivalency of Certificate III or above and therefore could not be counted towards recognised study in the extended education pathway.

Our investigation also confirmed that Gabriel had received inconsistent assessments of his education from Ahpra and that gaps within public-facing information most likely led to his mistaken belief that he could satisfy the requirements of the extended education pathway.

We noted that many of these issues had since been addressed by Ahpra's release of a new suite of public-facing information and changes in how Ahpra manages English language assessments.

We provided feedback to Ahpra about ongoing gaps that required attention, which led to further updates to public-facing information.

## Tamar's story

**Tamar was a provisionally registered psychologist when Ahpra informed her that she must complete a Board-approved English language test before she could apply for general registration.**

She made a complaint to our office because she thought the decision was unreasonable.

Tamar was born in England to an English-speaking family. She completed her primary education in English before moving to Rhodesia, a former British colony now known as Zimbabwe, where she completed her secondary education. Tamar completed her tertiary education in Australia.

Tamar advised us that English is her primary language and the only language she can speak. She believed the Board's application of the Standard to her specific circumstances was inappropriate and inconsistent with the intent of the Standard.

We initiated an investigation into Tamar's complaint. Initially, Ahpra advised us that because Rhodesia is not a 'recognised country' under the Standard, Tamar would need to sit an English language test.

Later, the Board reconsidered its decision requiring Tamar to complete an English language test. The Board recognised that Rhodesia was a British colony at the time Tamar undertook her secondary schooling and therefore falls within the definition of a 'recognised country' in accordance with the Standard. This meant Tamar was able to demonstrate her English language competency under the extended education pathway because she was viewed as having completed her primary and secondary education in a recognised country.



## FOI complaints

The Ombudsman can consider complaints about Ahpra's handling of FOI matters. This is a different function from the Commissioner's ability to receive applications to review Ahpra's FOI decisions (see 'FOI review decisions').

We received four complaints about the handling of FOI matters this financial year. This is a significant decrease compared with 2018–19, when we received 17 complaints. This change is most likely due to the increased use of our FOI review service by people who are seeking outcomes related to requests for information under the FOI Act.

We finalised three FOI complaints without investigation in 2019–20. We have found that many people who make complaints about the handling of FOI matters are seeking more information about a regulatory decision that they do not understand or are unhappy with. When we identify this, we talk with the complainant to understand why they are dissatisfied with the decision made by Ahpra or a National Board. This may result in our office suggesting alternative ways for the complainant to get the outcome they are seeking.

The Ombudsman provided formal comments to Ahpra in relation to one FOI complaint in 2019–20.

### Maria's story

**Maria made a complaint to our office about Ahpra's handling of a request for access to a document containing her personal information. The FOI request had been made by an individual who had previously made a notification about Maria.**

During the FOI consultation process, Maria's legal representative provided a submission to Ahpra opposing the release of the document.

Ahpra advised Maria that if a decision was made to release the document, she would have the opportunity to seek a review of the decision prior to the document's release.

When Maria's legal representative sought an update from Ahpra regarding the FOI application, she was advised that Ahpra had already decided to partially release the document to the applicant.

We investigated Maria's complaint. We concluded that Ahpra should have provided notice of the FOI decision to Maria and informed her of her review rights before releasing the document to the applicant. We also found that Ahpra did not respond to her formal complaint and that there were significant delays in responding to requests for information from our office.

The Ombudsman made formal comments to Ahpra about the issues identified in this complaint and will continue to monitor Ahpra's response to these comments.

# Privacy complaints

The Ombudsman can receive complaints about an administrative action of Ahpra or a National Board that raises privacy concerns. Depending on the nature of the matter, our office may consider these complaints using the Ombudsman's powers or the Commissioner's powers.

We received six complaints to the Ombudsman that related to Ahpra's handling of a privacy-related matter in 2019-20. This represents a significant decrease in complaints of this type from 2018-19 (16). However, in 2017-18 we also received six complaints of this type, which indicates the number of complaints received in 2019-20 may have been an anomaly. We will continue to monitor this complaint trend.

## Peyton's story

**Peyton was required to undergo a health assessment with Dr Green, as the Medical Board had received a notification that suggested she had a health impairment.**

The Board decided to take no further action after reading Dr Green's report, but Peyton discovered that documents created during the health assessment had been stored electronically and in the hard copy records of the public health service in which Dr Green was employed.

Peyton was worried that her colleagues may be able to access the documents, so she made a complaint to Ahpra. She felt that Ahpra did not take her complaint seriously, so she made a further complaint to our office.

Our investigation found that Ahpra had made immediate contact with both Dr Green and the public health service to ask that the material be deleted from its records. When this was refused, Ahpra sought reassurance that the material would be securely protected from inappropriate access.

Ahpra then commenced a review of how it communicates with health assessors about their confidentiality and record-keeping obligations, which has since resulted in Ahpra's template letters to health assessors being updated to make these obligations clear.

We were satisfied that Ahpra had responded appropriately to Peyton's concerns. However, we noted that Ahpra could have communicated with Peyton more clearly about what it was doing in response to her complaint. At our request, Ahpra wrote to Peyton to apologise for the distress and inconvenience she had experienced and to provide reassurance that it did fully comprehend the significance of her concerns.

# Privacy Commissioner complaints

Our office accepts complaints to the Commissioner about how Ahpra and the National Boards use or share personal information. The Commissioner can decide:

- what action should be taken to resolve a complaint
- whether compensation should be awarded for any loss or damage suffered due to a breach of privacy
- that the handling of personal information was reasonable and take no further action.

We did not receive any new complaints to the Commissioner this financial year.

We did, however, finalise one complaint made to the Commissioner in 2018–19. Following an investigation, we provided a further explanation to the complainant about their issue.

## Privacy rights

In Australia the *Privacy Act 1988* (Cwlth) sets out how privacy is protected. The Privacy Act has 13 Australian Privacy Principles that govern the protection of privacy including:

- how personal information is collected, used, shared or corrected
- the responsibilities of organisations and agencies
- rights to access personal information.

The Commissioner's power to consider privacy complaints comes from the Privacy Act, which has been modified by the Health Practitioner Regulation National Law (the National Law).

Complaints about breaches of privacy may relate to the inappropriate sharing or use of personal information.

Ahpra and the National Boards keep several files that may contain personal information including:

- registration files
- notification files
- investigation files
- public register information, including previous registration and disciplinary information
- legal files
- employment files
- general administration files and documents.

## Notifiable Data Breaches Scheme

Ahpra and the National Boards must notify our office about data breaches involving personal information that are likely to result in serious harm to any individual. A data breach of this nature is called a 'notifiable data breach'.

Since the Notifiable Data Breaches Scheme began on 22 February 2019, we have not received any eligible notifications from Ahpra or the National Boards about data breaches.

# A day in the life of an investigator

We asked Alice from our complaints team to share her experiences as an investigator.

**Q: What do you like most about being an investigator?**

**A:** I like that our office is a champion for fairness. We help people navigate the complex health practitioner regulation system. When people contact us, they have often lost confidence in the regulatory system, and we have an important role in restoring that trust.

**Q: What does a typical day look like for you?**

**A:** Each day is different, depending on where my matters are sitting. I usually manage about 15 complaints that are at different stages of our complaint process. I handle both registration and notification-related matters.

If I am assessing a complaint, I will first explore whether early resolution can be achieved without the need to investigate. I enjoy this work because it provides an opportunity to work closely with complainants and Ahpra to resolve complaints quickly and informally.

I like connecting with people who call our general complaints line. Speaking with complainants on the phone is rewarding and allows me to remain connected with all levels of complaints and enquiries.

I also spend my day working on my open investigations. This involves carefully reviewing information provided by complainants and Ahpra, exploring ways to resolve a matter and drafting decision letters.

**Q: Can you walk us through the key steps in an investigation?**

**A:** I invest a lot of time in the initial stages of the complaint process to talk to the complainant about their concerns and desired outcome.

If I decide a matter is appropriate for investigation, I will request all relevant information in relation to the complaint from Ahpra. After assessing this information, I may ask further questions or discuss options to resolve the complaint with Ahpra.

Once I'm satisfied that I have all the information needed to form a view, I will write to the complainant with my proposed findings. The complainant is given the opportunity to respond to my proposed findings before I make a final decision.

If I identify an issue during my investigation or an opportunity for something to be done better in the future, I will work with the Ombudsman and Commissioner to provide formal comments or suggestions for improvement to Ahpra. This is important work because it often leads to significant improvements in the experience of people who interact with Ahpra and the National Boards.

**Q: What advice would you give to people who would like to make a complaint?**

**A:** I think it's important for everyone to know that we value every complaint we receive. Without people trusting us to share their concerns, we wouldn't be able to achieve positive outcomes for the community and the National Scheme.

## FOI matters

In 2018–19 our office began a new role in relation to the oversight and review of FOI decisions made by Ahpra and the National Boards.

We deal with:

- notices of extensions of time for Ahpra to process an FOI request as agreed between Ahpra and the FOI applicant
- applications for an extension of time for Ahpra to process an FOI request (where there has not been an agreement with the applicant)
- applications for an applicant to be declared vexatious
- applications for a review of an FOI decision made by Ahpra.

When we conduct a review of an FOI decision made by Ahpra, the Commissioner considers Ahpra's decision and can decide to:

- affirm the decision (not change it)
- vary the decision (not change the decision itself but modify aspects of it), or
- set aside the decision and make a fresh decision.

## FOI rights

By law, all individuals have the right to request access to information held by Ahpra, its Management Committee and the National Boards.

People generally apply to the Commissioner for a review of an FOI decision made by Ahpra for two main reasons.

The first reason is because they are unhappy with Ahpra's decision not to give access to documents or information they requested. This could be because they:

- do not agree with the reasons given for not providing some or all of the information or documents they requested
- do not believe Ahpra provided all of the documents it should have based on their FOI request.

The second reason is because they are unhappy that Ahpra has released information about them that they believe should not have been released.

## Applications received

We recorded 21 matters relating to the Commissioner's FOI powers this financial year. This is fewer matters than we received in the previous financial year (29).

The type of FOI matters we received was significantly different from the previous financial year. In 2018–19 most of the matters we received were applications made by Ahpra for an extension of time to process an FOI request (14). We did not receive any applications of this type in 2019–20. This suggests Ahpra has addressed FOI matters in a timely way this financial year. It also suggests that more applicants are aware of, and are willing to approach, our office for an FOI review.

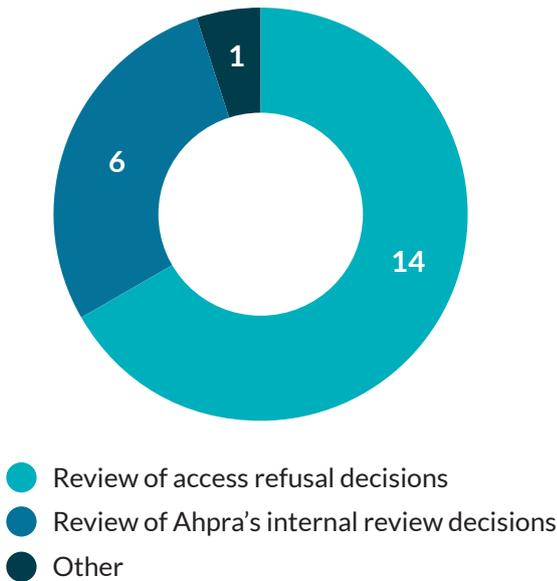
## Types of applications

We received 14 applications to review an access refusal decision in 2019–20 (see Figure 10). These review applications related to Ahpra's decision not to release documents or certain information requested by the applicant in their FOI request.

Six applications for a review of Ahpra's internal review decision were also made. These requests for review were based on the decision Ahpra came to after it conducted an internal review of its original FOI decision in relation to the applicant's FOI request.



Figure 10: Types of FOI review matters in 2019–20



## Outcomes of applications

The Commissioner published two FOI review decisions this financial year.

Most FOI review applications were withdrawn after we provided a preliminary view of the application (five matters) or after the applicant agreed to instead lodge a complaint with the Ombudsman about the concern that led to the FOI request (four matters).

We provide a preliminary view to applicants and Ahpra to help the parties achieve a quicker resolution of the matter as informally as possible.

Alternatively, we may suggest that applicants make a complaint to the Ombudsman. This can be particularly useful if the applicant is seeking to better understand why a regulatory decision was made or an action was taken, as the FOI review process is very limited in scope.

One review application was resolved by agreement in 2019–20. This is a significant outcome because a formal finding by the Commissioner is not necessary if both the applicant and Ahpra agree on how an application can be resolved.

Two review applications were declined because we concluded that they should be considered by a tribunal (and not the Commissioner). One review application was also declined because it did not meet the necessary timeframes for lodging an application.

## Building capacity

We continue to improve our ability to respond effectively to FOI matters. Our team has been working to develop new processes, procedures and templates to ensure applicants can easily navigate this complex area.

Similarly, we continue to strengthen relationships with organisations that have similar functions in this space, such as the Office of the Australian Information Commissioner.

In July 2020 we will also welcome a new senior investigator to the team who has specialist skills in this area.

## FOI review decisions

In February 2020 the Commissioner published her first two decisions regarding the review of a decision made by Ahpra: 'JH' and Australian Health Practitioner Regulation Agency, and 'MS' and Australian Health Practitioner Regulation Agency. All FOI review decisions made by the Commissioner are available on our website.

Both review decisions related to an applicant's request for access to a submission that a practitioner had provided to Ahpra and the relevant National Board in response to the applicant's notification.

In both matters Ahpra decided that the practitioner's submission was fully exempt from release under the 'agency operations conditional exemption' and the 'personal privacy conditional exemption'. This means that Ahpra refused to provide the submission to the applicant.

### Agency operations conditional exemption

A document is conditionally exempt from release under s. 47E(d) of the FOI Act if disclosure would or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency. Put simply, if release would mean that Ahpra's operations would be negatively affected in a significant way, and this would be contrary to the public interest, then the information requested does not need to be released.

In both cases Ahpra submitted that release of the practitioner's submission would prejudice the integrity and robustness of its investigation process. The Commissioner agreed with this reasoning. This was primarily because if a health practitioner does not consent to the release of their submission, and Ahpra releases it, a reasonable person, including health practitioners, would expect that any documents provided to Ahpra in the future may not be treated confidentially. This could affect Ahpra and the Board's ability to carry out their functions because the important information they need may become hard to get.

Release of the submission without consent is also not consistent with Ahpra's duty of confidentiality under the law.

### Personal privacy conditional exemption

A document is conditionally exempt from release under s. 47F of the FOI Act if disclosure would involve the unreasonable disclosure of personal information of any person (including a deceased person). In applying this conditional exemption, the decision-maker must also consider whether disclosure would not be in the public interest.

In both cases Ahpra's submitted that disclosure of the health practitioner's submission would involve an unreasonable disclosure of third-party personal information and that disclosure would be contrary to the public interest. The Commissioner agreed with this reasoning. This was mainly because the personal information of the applicant and the practitioner were so intertwined it was not practical to separate them. Moreover, the health practitioner's submission expresses their opinions about the notification, which is personal information that would not otherwise be known to the applicant.



## 'JH' and Australian Health Practitioner Regulation Agency

**On 6 February 2020 the Commissioner finalised her first formal review of a decision made by Ahpra to refuse access to a document that had been requested under the FOI Act.**

The FOI applicant had previously made a notification about a medical practitioner to Ahpra and the Medical Board. After the Board decided to take no further action, the applicant sought access to the practitioner's response to the notification via the FOI process. Ahpra decided that the requested document was fully exempt from release. The applicant then approached our office for a review of that decision.

During our review we considered the document at issue and the submissions of the applicant, Ahpra and the practitioner who had authored the document. We also considered previous decisions of the Australian Information Commissioner and relevant tribunals, as well as the relevant legislative frameworks.

We concluded that the practitioner's response to the notification was fully exempt from release. However, the reasons for this decision varied slightly from those given by Ahpra. The Commissioner decided that:

- the document was exempt from release on the basis that disclosure would or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of Ahpra and the Board and that giving access would be contrary to the public interest
- the document was exempt from release on the basis that disclosure would involve the unreasonable disclosure of personal information and giving access would be contrary to the public interest.

## 'MS' and Australian Health Practitioner Regulation Agency

**On 6 February 2020 the Commissioner finalised her second formal review of an FOI decision Ahpra to refuse access to a medical practitioner's response to a notification.**

The FOI applicant had previously made the notification to Ahpra and the Medical Board about the performance of the medical practitioner.

Following the Board's decision to take no action against the practitioner, the applicant made an FOI request to Ahpra. The applicant was seeking to verify the accuracy of the information the practitioner had provided to Ahpra and the Board. Ahpra decided that the practitioner's response was fully exempt from release. The applicant then approached us for a review of that decision.

Our review considered:

- the applicant's submissions
- Ahpra's and the health practitioner's submissions
- previous decisions made by the Australian Information Commissioner and relevant tribunals
- the relevant legislative frameworks.

We found that the practitioner's response to the notification was fully exempt from release under the agency operations conditional exemption and the personal privacy conditional exemption. The Commissioner decided to affirm Ahpra's decision.

# FOI review process

There are three main steps in the FOI review process.

1



## Acknowledgement and assessment of the application

We aim to acknowledge an FOI review application within three days of receiving it.

The assigned staff member will introduce themselves to the applicant within two weeks of receiving the application and will be the main contact person for the applicant throughout the FOI review process.

We check that the application:

- has been made in writing
- includes contact details for how information can be sent to the applicant (this is usually an email or mailing address)
- includes a copy of Ahpra's FOI decision that the applicant would like to be reviewed.

We also check that the application was made within the time period allowable under the FOI Act. If a review application is made outside this timeframe, we ask the applicant to complete an application for an extension of time and then consider their reasons before we make a decision on how to proceed.

It is also useful if the FOI review application provides an explanation of why Ahpra's decision should be reviewed.

The FOI review process focuses on whether the FOI Act has been appropriately applied. The reasons why a person wants access to documents is not relevant to assessing whether a document, or part of a document, is exempt from release under the FOI Act. We may contact the applicant during the assessment phase to gather more information.

### Choosing the best way forward

If we decide to review the FOI decision, we inform both the applicant and Ahpra that we have accepted the review application. We usually do this by email or post.

If we believe the applicant's concerns could be better addressed in another way, we discuss this with the applicant. This may include suggesting that the applicant's concerns could better be addressed by making a complaint to the Ombudsman.



## Reviewing Ahpra's FOI decision

If an application proceeds to a review, there are several steps involved. This process may take some time depending on the number of documents involved in the review and the complexity of the issues raised.

### Seeking information from Ahpra

We formally request that Ahpra provides all information and documents that are relevant to the FOI request or internal review request and their decision. This usually includes:

- the FOI request and, if applicable, the internal review request
- copies of relevant correspondence between the applicant, Ahpra and other third parties, such as letters, emails or file notes of telephone conversations
- copies of all exempt documents identified in the schedule of documents to Ahpra's FOI decision. For documents that were partly exempt we request the documents in both redacted and unredacted form.

We also ask Ahpra to provide a submission to explain why it made its decision.

### Analysing the decision

We thoroughly consider all the information provided by the applicant and Ahpra. This process usually involves consideration of the FOI Act, the Office of the Australian Information Commissioner's FOI guidelines and any relevant tribunal or court decisions.

We may request more information from the applicant or Ahpra during this analysis, if needed.

### Informal resolution

We try to resolve most FOI review applications by agreement. We are empowered to use any technique that the Commissioner considers appropriate to facilitate an agreed resolution of matters at issue in the review. This may include working with Ahpra to release the specific information an applicant is seeking access to. If we can facilitate an agreement between the applicant and Ahpra we encourage the applicant to withdraw their FOI review application at this stage.

### Preliminary view

If no agreement is reached the assigned staff member will form a preliminary view on the review application. This is an important step because it explains the staff member's analysis of Ahpra's FOI decision and can help the applicant understand what the outcome of their review application will most likely be.

The assigned staff member will share their view with the applicant or Ahpra. The staff member's preliminary view may be that Ahpra's decision should be:

- affirmed (not changed)
- varied (decision not changed but aspects of it modified), or
- set aside and a fresh decision made.

The preliminary view is generally a good indication of the final outcome of an FOI review application. To date, all preliminary views that have proceeded to a final decision have been upheld by the Commissioner in her decision.

#### **Responding to the preliminary view**

If the applicant or Ahpra agree with the preliminary view, the review request will be finalised. This could involve:

- Ahpra issuing a revised decision in line with the view (including releasing any additional documents in full or in part)
- the applicant withdrawing the application.

If the applicant or Ahpra is not satisfied with the preliminary view, our office invites the relevant party to provide a response. This response should explain the reasons why they disagree with the preliminary view.

3



## **Final decision**

If the preliminary view is not accepted by the relevant party, the Commissioner makes a final decision. The Commissioner considers the information relevant to the matter, the preliminary view and any submissions received in response to the preliminary view.

The Commissioner will then decide to:

- affirm the decision (not change it)
- vary the decision (decision not changed but aspects of it modified), or
- set aside the decision and make a fresh decision.

The reasons for the Commissioner's decision are provided to the applicant, Ahpra and, if applicable, any other review party.

Ahpra must comply with any final decision the Commissioner makes.

The decision is also published on our website. To protect individuals' privacy, identifying personal information is removed from published decisions.

#### **Appeal process**

If the applicant or Ahpra disagree with the Commissioner's decision, an appeal can be made to the responsible tribunal in the relevant state or territory. An appeal must be made within 28 days after receiving the Commissioner's decision.

The tribunal will reconsider Ahpra's original decision and has the power to make a new decision.

Our office is not involved in any subsequent tribunal proceedings.

## Junior's story

**Junior made an FOI review application to our office after Ahpra refused to provide him with the health practitioner's response to a notification he had made. Junior's concerns related to a range of different issues including the information that was considered by the Board when making a decision about his notification, and not simply about Ahpra's application of the FOI Act.**

We informed Junior that the Commissioner had previously made decisions related to requests for access to a submission provided by a health practitioner in response to a notification made about them. The Commissioner's position is that a practitioner's response is generally exempt from release and that there is case law to support this view. We explained that the consent of the health practitioner to release their submission is an important factor when considering these matters.

We explained to Junior that there are different pathways available to him to address his concerns. This included requesting an internal review of the FOI decision from Ahpra, proceeding to make an FOI review application to our office or making a complaint to the Ombudsman about the handling of the notification itself. We explained to Junior that his concerns about the information considered by the Board in his notification would be more appropriately addressed through a complaint to the Ombudsman. Junior decided to go ahead with making a complaint to the Ombudsman and he withdrew his FOI review application.



## Debbie's story

**Debbie, the legal representative of a health practitioner named Bridget, contacted our office to seek a review of an FOI decision made by Ahpra to refuse access to documents related to a notification made about Bridget.**

Debbie made the review application outside the timeframe in which applications can be made to our office under the FOI Act. The review application was approximately three months outside the 60-day timeframe. After considering submissions from Debbie and Ahpra, we decided not to accept the FOI review application on the basis that it was made out of time.

Importantly, the documents in the scope of the FOI request related to a notification that Ahpra was still investigating. Because the investigation was ongoing, Ahpra decided to refuse to release almost all of the requested documents on the basis that disclosure would or could reasonably be expected to prejudice the conduct of an investigation. We explained to Debbie that this decision appeared reasonable in the circumstances.

We also advised Debbie that should she wish to pursue access to the relevant documents under the FOI Act, she could consider making a fresh FOI request to Ahpra once the investigation is finalised.

# We are courageous

We do what is in the  
public interest even  
if it is challenging

# Responding to COVID-19-related concerns

COVID-19 has resulted in our staff working flexibly under new circumstances to continue to provide high-quality services.

## Enquiries

It can be difficult to work out how to make a complaint about a health-related concern in Australia. It is therefore not surprising that we received several enquiries about COVID-19 that were outside our remit. In these cases, our staff worked to provide information about the best entity to address the concerns.

The COVID-19-related enquiries we received generally related to:

- patients seeking to complain about how a health service was implementing infection control and safety measures
- the availability of health services during the pandemic, both in relation to the refusal to see patients in person and the decision of some health services to remain open
- concerns about the availability of medication and personal protective equipment.

## Complaints

Our office also received a small number of complaints that were specifically related to COVID-19 from which two common themes emerged.

### Inclusion on the pandemic sub-register

Our office received complaints from health practitioners who were dissatisfied that they were not included on the pandemic sub-register. Reasons for non-inclusion generally related to the practitioner not meeting the registration standards or the practitioner's registration having lapsed more than three years ago.

### Delays due to COVID-19-related circumstances

Complainants also raised concerns about delays due to unique COVID-19 circumstances. This manifested in different ways such as:

- concern about a lack of information and contact regarding an alternative way to undergo a performance assessment
- delays in Ahpra registration staff responding to complex applications for registration.

We worked with Ahpra, primarily through our early resolution transfer process, to finalise these complaints and ensure that complainants received timely responses to their concerns.

# An updated financial hardship policy

**Another significant development during the COVID-19 health emergency was Ahpra's release of an updated financial hardship policy in April 2020.**

Our office had previously provided feedback to Ahpra that its approach to financial hardship needed to be reviewed and better communicated.

Ahpra and the Nursing and Midwifery Board of Australia recognised that some nurses and midwives could be experiencing financial hardship as a result of COVID-19 so made a payment plan available. Those who met the criteria were eligible to pay half of their registration fee at the time of renewal and to make a second payment in October 2020.

We will continue to monitor Ahpra's implementation and review of its financial hardship policy.



# New role relating to accreditation functions

In February 2020 the COAG Health Council responded to the recommendations made by Professor Michael Woods in his independent review of the National Scheme's accreditation systems.

Health ministers accepted the recommendation that the role of our office be expanded to allow us to accept complaints about accreditation entities under the National Law. The health ministers agreed that this expanded role will lead to greater transparency and accountability and a further emphasis on procedural fairness. This is a significant milestone for our office, and we are proud that we continue to strengthen our ability to influence positive change.

## The role of accreditation entities

Accreditation entities have an essential role in the National Scheme including to:

- develop accreditation standards for a National Board's approval
- accredit and monitor education providers and programs of study to ensure they meet the necessary requirements
- assess overseas-qualified practitioners and accrediting authorities
- provide advice to the National Boards about these functions.

Multiple accreditation bodies, including specialist colleges, are responsible for undertaking the National Scheme's accreditation functions. The accreditation process varies by health profession.

## Expanded role for our office

The Ombudsman and Commissioner's role has been expanded to include:

- accepting complaints about the administrative actions of accreditation entities, in line with the Ombudsman's current powers
- accepting complaints to the Privacy Commissioner about accreditation entities.

The FOI Act does not apply to accreditation entities and so the scope of our role has not been expanded in relation to reviewing FOI matters.

## Next steps

### Reviewing accreditation processes

Before commencing the expanded role, our office will undertake a review of accreditation processes.

The review will examine existing processes and procedures and make recommendations for improvement. Health ministers have indicated that the specialist medical colleges should be a priority for the review.

The terms of reference for the review are currently being developed, and the review will most likely commence in 2020–21. It should be noted that some delays can be expected due to the impact of COVID-19 on health bodies across Australia.

We look forward to engaging with accreditation bodies as we undertake this significant project.

# We are independent

We make decisions  
and recommendations  
based on evidence and  
without taking sides

# Safeguarding confidentiality review

In late 2018 Ahpra requested that the Ombudsman and Commissioner conduct an independent review of the confidentiality safeguards for people making notifications about registered health practitioners.

The request was made after the conviction of South Australian general practitioner Dr Brian Holder for the attempted murder of pharmacist Kelly Akehurst. Ms Akehurst had made a notification to Ahpra about Dr Holder's prescribing practices and it is thought that the notification was the motive for the crime.

While acts of violence against notifiers are rare, this experience threw a necessary spotlight on whether Ahpra's handling of notifications adequately safeguards the confidentiality of notifiers.

## The review's findings

The Ombudsman and Commissioner's review found that Ahpra's current approach offers reasonable safeguards for notifiers.

The Ombudsman and Commissioner concluded that it is preferable for Ahpra to share with the relevant practitioner all information it holds about a notification, including the identity of the notifier (if known). This means the practitioner is given the best opportunity to understand the notification and to respond, in detail, to the allegations that have been made. It also simplifies the way Ahpra manages notifications.

The Ombudsman and Commissioner also concluded that Ahpra's current process of accepting confidential and anonymous notifications serves an important purpose. It is clearly in the public interest for Ahpra to be made aware of concerns about registered health practitioners, regardless of the source of those concerns or whether any additional steps need to be taken to keep the notifier's identity confidential.

However, the Ombudsman and Commissioner identified that improvements could be made to the handling of notifications to better safeguard the confidentiality of notifiers.

## Review recommendations

### Consideration of confidentiality safeguards for notifiers

The Ombudsman and Commissioner recommended that Ahpra introduces a new step in the notification process to proactively consider safeguarding the confidentiality of the notifier. Ahpra could mitigate risks of harm to notifiers by assessing on a case-by-case basis how the notifier's personal information will be used and whether it is necessary to disclose the notifier's identity.

### Improvements to the administrative management of confidential and anonymous notifications

The Ombudsman and Commissioner recommended that gaps in Ahpra's policies, processes and staff training in relation to confidential and anonymous notifications be addressed, including by:

- reviewing and updating Ahpra's privacy policy and collection statements
- strengthening guidance for Ahpra staff
- improving how confidential and anonymous notifications are recorded in Ahpra's electronic case management system (Pivotal) and, where possible, automating processes for managing confidential and anonymous notifications.

### Improvements to communication about privacy and confidentiality for notifiers

The Ombudsman and Commissioner recommended that Ahpra reviews all communications about notifications and makes necessary amendments to ensure consistency in messaging about a notifier's privacy. It was also recommended that Ahpra staff have a verbal discussion with notifiers about how their personal information will be used and disclosed during the management of a notification.

## Consequences for practitioners who harm, threaten, intimidate, harass or coerce notifiers

The Ombudsman and Commissioner recommended that Ahpra develops guidance for staff regarding how to deal with information that suggests a practitioner has sought to harm, threaten, intimidate, harass or coerce a notifier.

Further, the Ombudsman and Commissioner recommended that Ahpra seeks an amendment to the National Law to make it an offence for a registered health practitioner to harm, threaten, intimidate, harass or coerce a notifier.

## Managing the risk of vexatious notifications

While the evidence suggests that vexatious notifications are rare, the Ombudsman and Commissioner recommended that Ahpra develops and publishes a framework for identifying and dealing with this type of notification.

## Ahpra's response

The Ombudsman and Commissioner welcomed Ahpra's acceptance of all her recommendations. Ahpra's response was comprehensive and included significant changes in processes and procedures.

Changes include Ahpra:

- progressing the amendment of the National Law to make it an offence for a person who, by threat, intimidation or inducement, persuades or attempts to persuade another person not to continue to make a notification
- assessing every notification on a case-by-case basis to determine whether the release of the notifier's name is necessary to enable a response
- amending its collection statement and privacy policy about consent to make them clearer
- developing new resources to help guide staff
- reviewing existing communication materials.

Ahpra chief executive Martin Fletcher welcomed the review:

“ We support strengthening the protection of notifiers from risks of harm and we will adopt all ten recommendations, a number of which we are already progressing.

## Community response

Our office sought to ensure that our stakeholders were made aware of the Ombudsman and Commissioner's recommendations and Ahpra's response. The reaction was broadly positive, and the review and Ahpra's response received significant media attention.

## Acknowledgements

The Ombudsman and Commissioner would like to acknowledge and thank those individuals and organisations who participated in the review. In particular, Ms McCausland thanks Ms Akehurst for sharing her story as part of the review.

### Oliver's story

**Oliver made a complaint to our office about how Ahpra and the Nursing and Midwifery Board handled the mandatory notification he made about a colleague several years ago. He said that he had been harassed, bullied and threatened by senior colleagues after making the notification.**

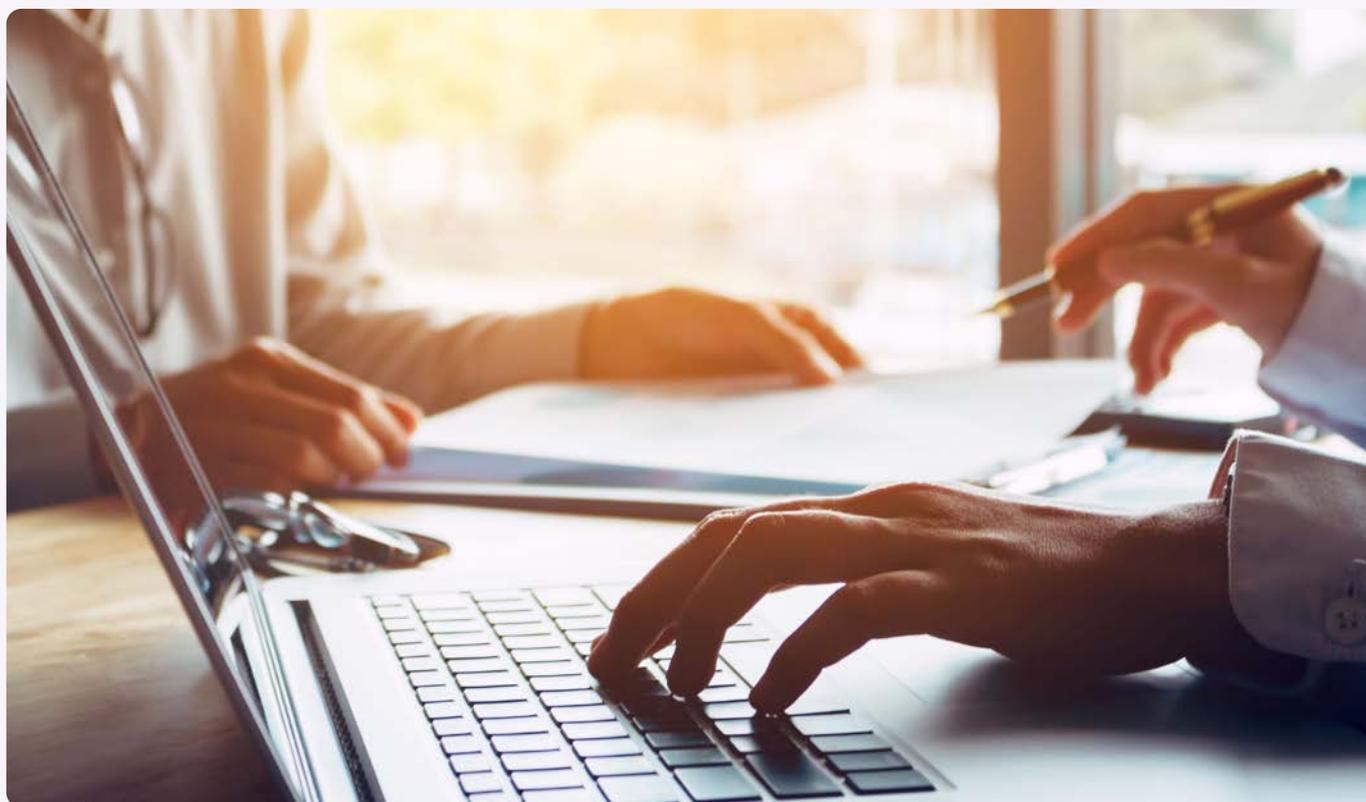
Oliver explained that he assumed Ahpra would protect him from any negative consequences arising from the notification. He was dissatisfied that Ahpra had not taken action after he shared his experience of being harassed, bullied and threatened.

We decided to investigate Oliver's complaint. After looking closely at the available information, the Ombudsman provided formal feedback to Ahpra and the Board about how it handled this matter.

The Ombudsman commented that Ahpra could have improved how it communicated with Oliver about his notification and his belief that he had been harassed, bullied and threatened. Ideally, Ahpra should have explained to Oliver that:

- his identity could have been kept confidential to mitigate risks of harm (including physical, psychological and reputational harm)
- the National Law does not currently include a provision that relates to harassing, bullying or threatening a notifier; however, allegations of harassment, bullying or threatening behaviour on the part of a registered health practitioner could be raised as a notification about that health practitioner.

Oliver was grateful for our involvement and thanked us for providing him with some assurance that improvements would be made.



# An independent and effective office

It is fitting that in the year of the 10th anniversary of the National Scheme that our office achieved a number of significant governance and operational milestones.

## A new home

We moved into a new office space in June 2020. Our new home, located at 50 Lonsdale Street in Melbourne, hosts independent facilities and improved capacity to engage with our stakeholders and complainants.

## Policy architecture

Our office has successfully implemented valuable new policies and governance measures during this financial year. In particular, we have gained greater clarity about our hosting arrangements with the Victorian Department of Health and Human Services and the new functions we will undertake in 2020–21.

## A positive and productive relationship with the department

We continue to build on our positive relationship with our host, the Department of Health and Human Services.

Our staff are employees of the department on secondment to our office and, as far as possible, we comply with departmental policies. We also apply the department's performance and development process to provide:

- ongoing dialogue between employees and supervisors
- clarity about employee performance and behavioural expectations
- opportunities to regularly review our organisational culture
- a framework to identify staff training and development needs.

As in previous years the Ombudsman and Commissioner met quarterly with the Secretary to the department. These meetings provide the opportunity for updates and continued collaboration to ensure the effective running of our office.

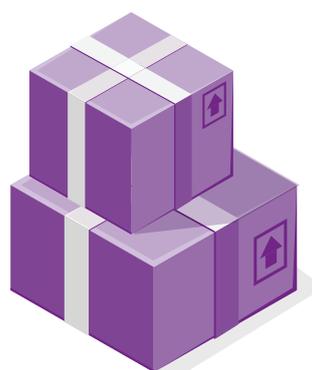
We also revised the memorandum of understanding with the department in 2019–20.

## Technological innovation

Our office is committed to streamlining processes and reducing our environmental impact. From next financial year, we will use only electronic complaint files and will significantly reduce the use of paper.

As previously discussed, we also upgraded our telephony system in 2019–20. This new system is particularly important due to COVID-19 working-from-home arrangements. It is also a significant improvement for our complaint-handling capabilities because it offers:

- improved voicemail recording abilities
- call queuing
- increased flexibility for staff.



# A new case management system

One of the most significant projects we undertook this financial year was developing a new case management system, custom built to serve our needs both now and into the future.

## Why a new system was needed

We had previously relied on a document management system that was secure and helped us to capture basic information about complaints. However, it was not designed to be used as a case management system and had limited data capture and reporting capabilities.

## New capabilities

The new case management system streamlines how our office interacts with complainants and the agencies we oversee. Some invaluable features of the new system include:

- clear and comprehensive process workflows to guide staff and enable consistent case management
- secure document and data capture, storage and retrieval for every stage of the complaint-handling process
- automated reminders regarding key actions for staff, such as providing six-weekly updates to complainants
- a powerful tool for creating and generating reports to track complaint trends.

This will enhance our ability to identify and use complaint trends as evidence in support of making systemic improvements.

Another important element of this project is the shift to a more user-friendly interface. Staff can easily access information about their workload and managers are offered immediate, clear information about how matters are progressing. The upgrade also makes it possible for us to work towards becoming a paperless office.

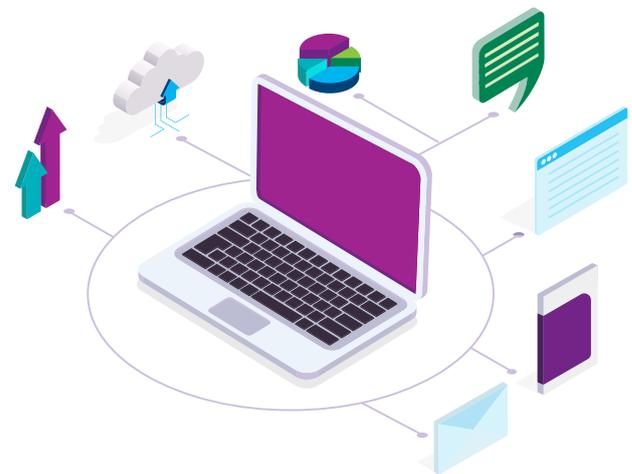
## Safe and secure data protection

The new system also has connectivity with our document management system to ensure essential information is stored securely.

## Staff training and change management

An essential component of this project has been training staff to confidently and accurately use the new software. Staff training sessions will continue in the next financial year and we will offer short informational tutorials for staff on issues that arise during the first three months of use.

We will also continue to make further refinements to the system in the future.



# We are collaborative

We work with others  
to resolve issues and  
identify opportunities  
to improve

## Working with Ahpra

Our office works closely with Ahpra to achieve positive outcomes for the National Scheme.

### Improvements to Ahpra's handling of complaints

We have been pleased to see further developments in Ahpra's internal complaints management.

In particular, we have noted that Ahpra continues to improve the quality of its communications with complainants. Ahpra's complaints team regularly provides comprehensive and detailed explanations to complainants in response to their specific concerns.

The timeliness of Ahpra's responses to our investigations has also continued to improve.

### Assisting Ahpra to resolve complaints

When assessing and investigating complaints, we look for opportunities to work with Ahpra to quickly and effectively resolve complaints. This could involve asking Ahpra to reconsider a decision, issue an apology or refund a fee. If Ahpra agrees to take the suggested action to resolve the complaint, we call this an 'assisted resolution'. Table 3 provides a breakdown of assisted resolutions in 2019–20.

**Table 3: Complaints finalised through assisted resolution in 2019–20**

Type of assisted resolution	Number
Assisted resolution without investigation	133
Assisted resolution following investigation	7
<b>Total</b>	<b>140</b>

### Collaboration to improve communication

We have welcomed opportunities to discuss and make suggestions about how to improve public-facing information regarding Ahpra's activities. This included providing comments on draft public communications in relation to:

- graduate registration
- advice about cosmetic surgery and procedures
- publishing links to tribunal and court decisions on Ahpra's national register of practitioners.

This is an important proactive measure to reduce the number of complaints we receive as a result of misunderstandings or unclear information.

We look forward to continuing to work with Ahpra to strengthen its communications.

### Interface review report

In February 2019 our office and Ahpra jointly commissioned an independent review of the interface between our organisations. This followed a significant increase in the number of complaints to our office and steps Ahpra had taken to improve its complaint-handling processes.

Our office and Ahpra welcomed the recommendations made by former Aged Care Complaints Commissioner Rae Lamb in her review report.

All the review recommendations have been implemented or are currently on track to be implemented.

One of the most significant changes made in response to the review was to implement an early resolution transfer process following a successful pilot project in September 2019.



We have also continued to discuss and address emerging complaint trends and high-priority complaints with Ahpra through regular meetings. Our staff meet weekly with Ahpra's complaints team. The Ombudsman and Commissioner also meets monthly with Ahpra's senior leadership team.

Both our office and Ahpra have committed to ensuring Ahpra staff are aware of the important role of our office. Recent examples of collaboration include:

- Ahpra publishing a complaint page about our office on its staff intranet
- the Ombudsman and Commissioner presenting to Ahpra's Agency Management Committee in June 2020.

## Early resolution transfers

The new early resolution process builds on the previous 'warm transfer' process implemented by our office.

The warm transfer process enabled us to, with the complainant's consent, transfer a complaint directly to Ahpra's complaints team for resolution. The transfer process reconnected Ahpra and the complainant so Ahpra had an opportunity to address the complainant's concerns before we became involved more formally.

We finalised 38 complaints this way during July and August 2019 before the new early resolution transfer process was introduced.

The early resolution process adds an additional step to the previous warm transfer process. Instead of our office closing the complaint after we transfer it to Ahpra, the complaint remains open with our office while Ahpra responds. Once Ahpra has provided a response, we assess it to ensure it is fair and reasonable. Once we have completed this assessment, we may decide to:

- investigate the complaint
- undertake further enquiries with Ahpra
- take no further action and close the complaint.

Ahpra has two business days after the date it receives a transferred complaint to acknowledge receipt of the matter. Ahpra must then respond to the transferred complaint in full within 20 business days. If Ahpra is unable to meet these timeframes, it must contact our office to seek an extension.

Since implementing the early resolution transfer process in September 2019, 130 complaints have progressed through this mechanism.

### An effective new process

The early resolution transfer process has brought about significant improvements for complainants by reducing lengthy investigations.

In 2019–20:

- 22 per cent of complaints we received proceeded through the early resolution transfer process (130)
- 85 per cent of complaints that have been through the early resolution transfer process were finalised without the need for further enquiries or investigation by our office.

Of the 130 complaints that we transferred in 2019–20, 113 proceeded to a decision within the financial year. We decided to:

- finalise 96 complaints without further investigation
- investigate 16 complaints
- make preliminary enquiries in one case.

Ahpra's compliance with the agreed response times for early resolution transfers has been high. Ahpra provided an acknowledgement of the transfer within the required timeframe 89 per cent of the time (14 failures to meet the timeframe). Ahpra also provided a response to the complaint within the required timeframe 89 per cent of the time (14 failures to meet the timeframe).



### Types of complaints

Most early resolution transfers related to complaints about delays in the registration process (38 per cent), the handling of a notification from the point of view of a notifier (36 per cent) and registration processes and policies (18 per cent) (see Figure 11).

Figure 11: Types of complaints received through the early resolution process in 2019-20



## Mohamed's story

**Mohamed's complaint concerned Ahpra and the Psychology Board's handling of a matter involving his provisional registration as a psychologist.**

Mohamed was concerned that Ahpra and the Board had not correctly applied its guidelines when deciding he could not work as a counsellor after being granted provisional registration.

Mohamed had also received advice from Ahpra that led him to believe he had to either surrender his provisional registration or cease practising as a counsellor. This was causing Mohamed significant stress because he was concerned that he would be forced to give up his ambition to work as a psychologist or his established counselling practice. He contacted our office to share this concern.

We spoke to Mohamed and advised him about our early resolution process with Ahpra. He agreed to have his complaint transferred.

As a result of this transfer, Mohamed was informed that the initial advice provided by Ahpra was incorrect and that he could continue to practise as a counsellor while undertaking an internship program. Mohamed was grateful for our involvement.

We provided feedback to Ahpra about the handling of Mohamed's matter. The Ombudsman shared her concern that there was no acknowledgement by Ahpra that it had misinterpreted the guidelines and no apology provided to Mohamed for the distress that he experienced as a result of the incorrect advice.

The Ombudsman also reiterated the obligation Ahpra has to ensure staff are properly trained to interpret guidelines and policies and to provide correct advice to practitioners.

## Sofia's story

**Sofia was an internationally qualified Chinese Medicine practitioner seeking to be registered in Australia. She was advised that she needed to complete a clinical assessment examination as part of the registration process.**

Sofia raised concerns with our office that the Chinese Medicine Board had not appropriately responded to her concerns that the patient she had to assess during the examination did not speak English and that she was unable to undertake part of the examination because there was no interpreter present. She also raised concerns about the imposition of an annual registration fee so soon after registration and at a time when she did not have the ability to freely practise. She asked that the registration fee be waived.

We requested Sofia's consent to transfer her complaint to Ahpra's complaints team through our early resolution transfer process.

In response, the Board thanked Sofia for her feedback and advised her that they were developing a new regulatory examination that would involve both written and clinical assessments to ensure the validity and reliability of the assessment results.

The Board advised it was disappointed to hear about Sofia's experience during the examination and stated that it is the Board's expectation that the exams be conducted entirely in English. Ahpra offered Sofia an apology for her experience during the examination.

The Board also approved a pro-rata refund of Sofia's 2018–19 registration fee.

Sofia was grateful for our assistance in having her concerns addressed. We were pleased that the early resolution process had resulted in a quick and positive outcome for the practitioner.

# Working with the National Boards

## Presentations to National Boards

Our office continues to collaborate wherever possible with the National Boards to ensure common complaint trends are addressed quickly and that our complaints data provides insight into the National Board's important work.

This year, the Ombudsman and Commissioner was invited to present to a number of National Boards including the:

- Occupational Therapy Board in August 2019
- Medical Radiation Board in December 2019
- Pharmacy Board in April 2020.

We look forward to continuing to increase our engagement with the National Boards in 2020–21.

## Guidelines for advertising a regulated health service

In November 2019 we welcomed the opportunity to provide a response to Ahpra and the National Board's public consultation on the review of the guidelines for advertising a regulated health service.

Although the number of concerns reported to our office about advertising was relatively small, complainants raised several important issues.

Based on these identified complaint issues, the Ombudsman and Commissioner provided feedback on the new guidelines. This included providing comments on the need to:

- revise the proposed audience of the guidelines
- define the scope and application of:
  - who an 'advertiser' is
  - what constitutes an 'advertising channel'
  - the reasonable timeframe for 'acceptable evidence'

- add clear guidelines for how to notify Ahpra of potential noncompliance
- provide proactive advice about how to advertise within the guidelines
- clearly state the processes involved with, and consequences of, noncompliance
- clarify how fake or false testimonials or reviews factor into the guidelines.

## Guidelines for mandatory notifications

Our office provided feedback as part of Ahpra and the National Board's public consultation on the review of the guidelines for mandatory notifications.

We welcomed efforts to improve clarity about when practitioners are not required to make mandatory notifications and the context provided for why mandatory notifications are valuable and necessary.

The Ombudsman and Commissioner noted the significant improvements made to the guidelines, including clarifying use of the term 'mandatory notification' and revisions to the definition of the different risk thresholds.

The Ombudsman and Commissioner also made several suggestions for improvement including:

- ensuring the guidelines' introduction clearly articulates why mandatory notifications are necessary and who is exempt from making a mandatory notification
- clarifying the difference between a 'disciplinary action' and an 'offence' for practitioners
- providing more information about how to make an anonymous or confidential notification and how health practitioners can access support services if needed.

# Community engagement

We engage with our diverse stakeholders through a range of channels to ensure our services are available and accessible to those who need them. These channels include:

- email
- our website
- core reports and materials
- media engagement
- working with Ahpra to ensure that those who are dissatisfied with its services are referred to our office when appropriate.

## Media enquiries

Our office received ten media enquiries this financial year. This represents a 100 per cent increase from the previous financial year (5).

## Stakeholder engagement plan

Our stakeholder engagement plan for 2019–20 focused on increasing the accessibility of the office by refreshing our brand identity and redeveloping the website. These two projects involved a range of stakeholder identification and engagement activities.

This initial focus on refreshing our brand and website seeks to build a strong foundation for increased engagement with the office in 2020–21. For example, the website upgrade will include significantly more content relevant to stakeholder groups such as new pages on how to make confidential and anonymous complaints. The website upgrade will also prioritise search engine optimisation.

We are currently analysing how best to incorporate social media to increase our profile.

## Our website

Our website provides an important way for people to get information about our office and the services we provide.

This year, 11,164 people visited our website. Of these, about 99 per cent (11,074) were new visitors. There were a total of 15,244 website visits in 2019–20.

As part of our commitment to being transparent about our work, our website hosts our key strategic documents and policies. We also publish all monthly complaint reports.

## Website upgrade

As part of our commitment to greater stakeholder engagement, our office began a website upgrade project this financial year. This upgrade is needed to:

- meet appropriate privacy, security and accessibility requirements
- incorporate our updated visual identity
- improve our website's useability and ensure it is updated to include relevant information for health practitioners and the general public
- facilitate new functions such as a web form that is linked to our new case management system.

The new website will be launched in October 2020.





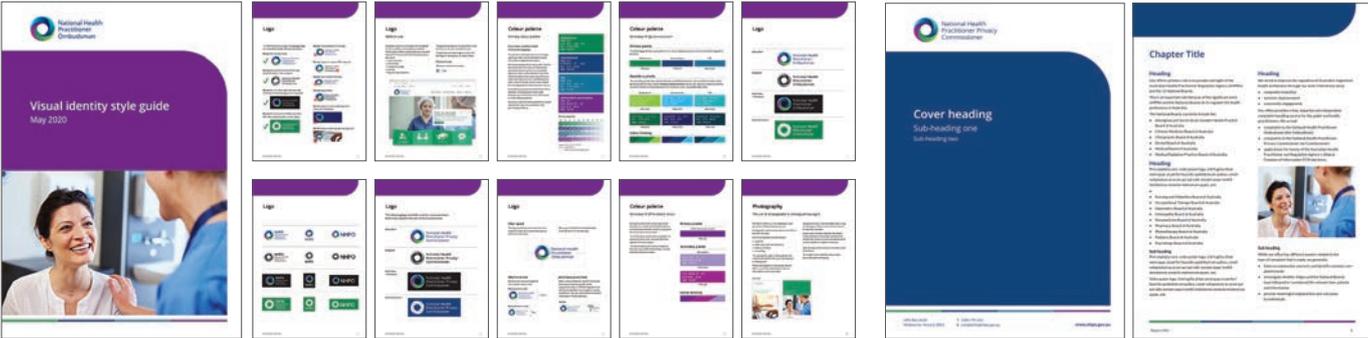
# A strong and independent voice in the National Scheme

In 2019–20 we updated our visual identity to ensure it is more accessible and consistent. It is also important that our brand is future-proofed in relation to our expanding role and legislative jurisdiction. The most notable changes include:

- shortening the umbrella name of the office to the ‘National Health Practitioner Ombudsman’
- introducing a new colour palette to clearly differentiate the functions of our office and the separate roles of the Ombudsman and the Commissioner.

We undertook a range of activities to ensure the updated visual identity would achieve these goals. These included:

- stakeholder identification and engagement activities such as:
  - persona and journey mapping through staff workshops and an analysis of our website analytics
  - a phone and website survey of our current stakeholders
  - a workshop with Ahpra staff to discuss perceptions of our office and learnings from its recent brand refresh.
- a desktop review of 13 other offices’ naming conventions in relation to their legislative function, including the Commonwealth Ombudsman, Office of the Health Ombudsman and the Health Complaints Commissioner
- consultation about possible implications of the updated name change for the office.



# Financial statement

## Our funding arrangements

Health practitioner registration fees fund our office.

We must submit an annual budget proposal to the Australian Health Ministers' Advisory Council by 1 March each year. On approval, the Victorian Department of Health and Human Services (as our host) raises quarterly invoices on behalf of our office, which are payable by Ahpra. These funding arrangements are outlined in memorandums of understanding with Ahpra and the department.

At the end of each financial year, we retain any unspent funds to allow for investment in longer term projects. It is noted that the office ended 2019–20 with more unspent funds than planned. This is because some of our planned projects were delayed due to COVID-19. The funds for these projects have been carried over to 2020–21. Other longer term projects proposed for 2020–21 include a staff intranet and further refinements to our new case management system.

## Our financial statement

The department provides financial services to our office. Our financial operations are consolidated with those of the department and are audited by the Victorian Auditor-General's Office. A complete financial report is therefore not provided in this annual report.

A financial summary of the expenditure for 2019–20 is provided below and has been certified as true and correct by the department's acting chief finance officer.

Retained earnings balance 1 July 2019	\$588,505
<b>2019–20 revenue (invoices raised to AHPRA)</b>	<b>\$2,200,000</b>
<b>Expenditure for 2019–20</b>	
Salaries	\$1,352,956
Salary on-costs	\$204,476
Supplies and consumables	\$590,028
Indirect expenses (includes depreciation and LSL)	\$47,817
<b>Total expenditure</b>	<b>\$2,195,277</b>
<b>Balance as at 30 June 2020</b>	<b>\$593,228</b>



