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Australian Health Practitioner Regulation Agency

*Review of notification
systems and
processes*

Final Report

December 2015



DISCLAIMER

Inherent Limitations

This report has been prepared as outlined in the Scope Section. The services provided in connection with this engagement comprise an advisory engagement, which is not subject to assurance or other standards issued by the Australian Auditing and Assurance Standards Board and, consequently no opinions or conclusions intended to convey assurance have been expressed.

The findings in this report are based on a qualitative study and the reported results reflect a perception of the Australian Health Practitioner Regulation Agency (AHPRA) but only to the extent of the sample surveyed, being AHPRA's approved representative sample of stakeholders. Any projection to the wider stakeholders is subject to the level of bias in the method of sample selection.

No warranty of completeness, accuracy or reliability is given in relation to the statements and representations made by, and the information and documentation provided by, AHPRA stakeholders consulted as part of the process.

KPMG have indicated within this report the sources of the information provided. We have not sought to independently verify those sources unless otherwise noted within the report.

KPMG is under no obligation in any circumstance to update this report, in either oral or written form, for events occurring after the report has been issued in final form.

The findings in this report have been formed on the above basis.

Third Party Reliance

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This report has been prepared at the request of AHPRA in accordance with the terms of KPMG's contract dated 12 November 2015. Other than our responsibility to AHPRA, neither KPMG nor any member or employee of KPMG undertakes responsibility arising in any way from reliance placed by a third party on this report. Any reliance placed is that party's sole responsibility.

BACKGROUND

FINDINGS:
CULTURE

FINDINGS:
RISK
MANAGEMENT

FINDINGS:
SYSTEMS &
PROCESSES

FINDINGS:
COMMUNICATION

APPENDICES

CONTACT US

AHPRA Review of notification systems and processes

1. Executive Summary

CONTEXT

In 2015, the Australian Health Practitioner Regulation Agency (AHPRA) was subject to community and media interest arising as a result of high profile issues and significant concerns about obstetric and midwifery care at the Djerriwarrh Health Service in Bacchus Marsh, Victoria, dating back to 2013. The 28-month timeframe for AHPRA to investigate a notification relating to one of the long serving doctors at the health service who had previously been subject to regulatory action led to AHPRA's systems and processes for managing notifications being called into question.

An effective and timely notifications system is critical for providing transparency and accountability of, and ensuring public confidence in, the regulatory system for health services and practitioners, and goes to the heart of AHPRA's credibility as a regulatory body. Recognising this, AHPRA and the National Boards have commissioned this review into Victoria's existing notifications systems and processes, to examine the effectiveness of changes introduced since 2012 and consider further options for continuous improvement.

OBJECTIVE

The objective of this project was to review the end-to-end design and operational effectiveness of the notification process as it currently operates in Victoria. This review focused on AHPRA's Victorian notifications process only and did not consider the consistency with notifications processes adopted in other States or Territories.

It is recognised, however, that this review takes place in the context of nationwide activities to improve and strengthen notifications management, led by the recently appointed National Director of Notifications, and that the review's observations are likely to be relevant as part of the broader, national framework for notifications across the scheme.

The scope of this engagement is outlined in detail in Appendix 1.

OVERALL FINDINGS AND RECOMMENDATIONS

KPMG found that delays to AHPRA's resolution of higher risk and complex notifications continue to pose a reputational risk to the organisation, undermining stakeholder and public confidence in the regulatory system. This is exacerbated by a perception among key stakeholders of imbalance in relation to the National Scheme's approach towards the interests of practitioners, patients and public safety, emphasising the rights of practitioners subject to a notification.

While recent management changes within the Victorian Office have strengthened the focus and attention on continuous improvement in this area, KPMG considers further work is required to strengthen the upfront risk assessment and triaging of notifications, and ensure the resulting assessment and investigation of these matters is prioritised and tailored according to risk. KPMG's key recommendations are to:

- 1 Drive an open and transparent organisational culture with a clear balance between the interests of patients, public safety and the practitioner.
- 2 Adopt a more systematic, risk based approach to assessment and management of Victorian notifications. This should utilise a structured, data informed approach to triaging notifications, including consideration of broader factors which may impact risk rating, to enhance the overall effectiveness and efficiency of the Victorian notifications process.
- 3 Revisit methodology relating to management of Victorian notifications, using a risk based approach to implement a formal process which prioritises and tailors investigations based on risk rating, and encourages intensity of activity to promote the earliest possible resolution of the matter.
- 4 Implement a system to enhance and facilitate transparency of the Victorian notifications process, including reciprocal information sharing with key stakeholders to inform a risk based approach to managing notifications.

BACKGROUND

FINDINGS:
CULTUREFINDINGS:
RISK
MANAGEMENTFINDINGS:
SYSTEMS &
PROCESSESFINDINGS:
COMMUNICATION

APPENDICES

CONTACT US

1. Executive Summary

SUMMARY OF FINDINGS & OBSERVATIONS

The following table provides a summary of KPMG’s observations in relation to the key themes examined in this review.

THEMES AND OBSERVATIONS



CULTURE

AHPRA should consider steps to drive an open and transparent organisational culture with a clear balance between the interests of patients, public safety and the practitioner. This includes ensuring there is a balance between due process, consideration of all available information and timely decisions, where ‘activity’ is not valued above ‘decision making’.



RISK MANAGEMENT

AHPRA requires a more sophisticated and systematic, risk based approach to assessment and management of Victorian notifications. This should utilise a structured, data informed approach to triaging notifications, to drive a targeted case management approach.



SYSTEMS & PROCESSES

Issues around timeliness of the notifications process, particularly in relation to higher risk or complex matters, continues to be a frustration for all stakeholders. Prolonged delays and protracted processes are cited as a particular concern.



COMMUNICATION

AHPRA needs to continue to drive a customer service focus across all areas of the organisation, balancing the needs of the notifier, practitioners and the system.

Action should be taken to facilitate greater sharing of information to support regulatory and clinical governance responses to risk, along with further consideration around the merits of sharing of information with employers.

2. Background

OVERVIEW OF AHPRA

AHPRA was formed in July 2010 following the creation of the National Registration and Accreditation Scheme (NRAS) in response to the 2005 Productivity Commission report, which found the existing system of 90 different state/territory-based regulators was inflexible, inconsistent and inefficient across states and territories.

As such, Australia became the first country in the world to introduce a single national health practitioner regulatory system, with the aim of bringing greater consistency and uniformity to the health practitioner regulatory system.

AHPRA's operations are governed by the Health Practitioner Regulation National Law (the National Law), which provides for 14 health professions to be regulated under nationally consistent legislation. Within the context of the broader national framework, there can nevertheless be some variation of process at the State and Territory level. AHPRA's role includes to:

- support the 14 National Boards in their primary role of protecting the public
- publish national registers of practitioners so important information about the registration of individual health practitioners is available to the public
- manage the registration and renewal processes for health practitioners and students around Australia and support the Boards in the development of registration standards
- on behalf of the Boards, manage investigations into the professional conduct, performance or health of registered health practitioners, (except in NSW and QLD)
- work with State and Territory Health Complaints Entities (HCEs) to ensure the appropriate organisation deals with community concerns about individual, registered health practitioners or those 'holding out' as registered practitioners
- provide advice to the Ministerial Council about the administration of the NRAS.

KEY PRIOR REVIEWS

AHPRA has initiated and been subject to a number of performance reviews in recent years, with consistent findings in relation to the timely management of notifications processes, and the related customer experience. These include:

- *Inquiry into the Performance of AHPRA (Victorian Legislative Council) – 2014*
- *Setting things right: Improving the consumer experience of AHPRA (Health Issues Centre of Victoria) – 2014 (commissioned by AHPRA and the Boards)*
- *Independent Review of the National Registration and Accreditation Scheme (NRAS) (Snowball) – 2014*

Key themes and challenges arising from these reviews related to:

- lack of timeliness of the notifications and investigations process, in particular delays in assessment and finalisation of notifications, and inconsistent investigative processes and outcomes
- unclear governance, accountability, structure and culture in relation to performance of the National Scheme
- limited strategic focus, including use of data and research, and stakeholder engagement
- inconsistency in delivery, including regulatory performance, efficiency and performance management and reporting
- inadequate communication with notifiers, practitioners, employers, and HCEs as part of the notifications process, including explanations of outcomes of the process (inadequate customer service focus)
- lack of clarity and confusion with respect to the roles of AHPRA, the Boards and the Health Complaints Commissioner(s).

KPMG is advised that recent improvement strategies (described in further detail throughout this report) have been developed in response to these findings.

2. Background

KEY REGULATORY FUNCTIONS

AHPRA performs five key regulatory functions to support and operationalise the National Scheme. Decision-making power for these regulatory functions lies with the National Boards. AHPRA performs these functions in accordance with annual Health Profession Agreements signed between the Agency and the National Boards, and in accordance with delegations determined by National Boards. These five functions are outlined below.

Accreditation	Working with independent authorities to accredit education providers and training programs for health practitioner initial education
Registration	Supporting the assessment and processing of new and renewals of practitioner applications, issuing certificates, managing the student register and other related activities
Notifications	Receiving, managing and investigating notifications about the health, conduct and performance of individual health practitioners
Compliance	Monitoring and auditing individuals to ensure practitioners are complying with the policies and requirements established by National Boards and the National Law
Professional Standards	Providing policy advice and support to the National Boards in helping them develop professional standards, codes and guidelines

This review focused on AHPRA's Victorian notifications processes, outlined on the following slides.

OVERVIEW OF AHPRA'S VICTORIAN NOTIFICATIONS PROCESS

AHPRA is responsible for receiving, managing and investigating notifications about the health, conduct and performance of individual health practitioners. Decision making power, in relation to the notifications process, sits with the National Boards. Roles and responsibilities of both parties are outlined below.

AHPRA	<p>AHPRA staff receive concerns and manage the notifications process on behalf of the National Boards, including correspondence to the notifier, practitioner, employer, and any other relevant parties.</p> <p>AHPRA is responsible for assessing and investigating registered health practitioners.</p> <p>AHPRA does not make decisions about how to deal with notifications. Regulatory decisions are made by Boards.</p>
NATIONAL BOARD	<p>National Boards are appointed by Australia's Health Ministers collectively through the Ministerial Council. State and Territory Boards are appointed by individual State and Territory Health Ministers, and make all decisions about registered health practitioners. Boards consider notifications to assess whether there is evidence that the practitioner poses a risk to patient and public safety, and take action to manage these risks and keep the public safe.</p> <p>Board decisions may result in one or more of the following:</p> <ul style="list-style-type: none"> • no further action • health or performance assessment • immediate action • monitoring and compliance • investigation • panel hearing • tribunal hearing

2. Background

OVERVIEW OF AHPRA'S VICTORIAN NOTIFICATIONS PROCESS

Notifications received by AHPRA are managed at the State level by the notifications team located in each state (except NSW) under the National Law. Key steps in the notifications process are outlined in the diagram to the right. A glossary of key terms is provided at Appendix 2.

AHPRA performs a risk assessment and prepares material for consideration by the respective Boards. The frequency of Board meetings to consider notifications depends upon the Board, and the volume of notifications received. For example, the Medical Board of Australia (Victoria) convenes a Notifications Committee weekly, and nominates an Allocated Board Member (ABM) to take responsibility for each notification. Boards with fewer notifications meet less frequently (for example, monthly) to consider these matters.

Where Immediate Action is considered necessary, the Boards can be convened within very short timeframes – for example, within 24 hours – to consider appropriate interim action to address an imminent risk to public safety.

VICTORIAN NOTIFICATIONS

A high level summary of AHPRA's notifications in 2014-15 reveals:

- 1,901 notifications were received in Victoria in this timeframe
- 54% of Victorian notifications related to medical practitioners
- as at 30 June 2015, AHPRA Victoria had 918 open notifications

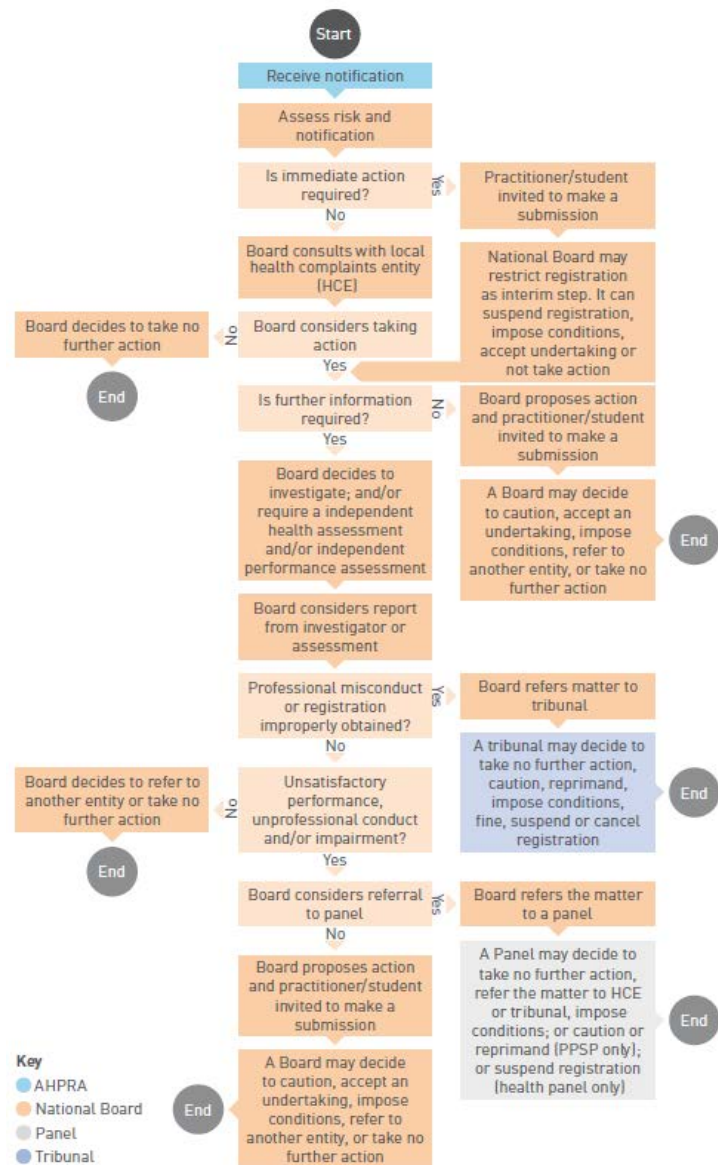
Source: AHPRA Annual Report 2014-15

KEY SYSTEMS AND DATABASES

Systems and databases used by AHPRA as part of the notifications process are Pivotal and TRIM.

Pivotal is used by the notifications team to record information relating to notifications, such as dates, tasks and outcomes.

TRIM is a document management system used to store electronic copies of information such as correspondence and evidence relating to notifications.



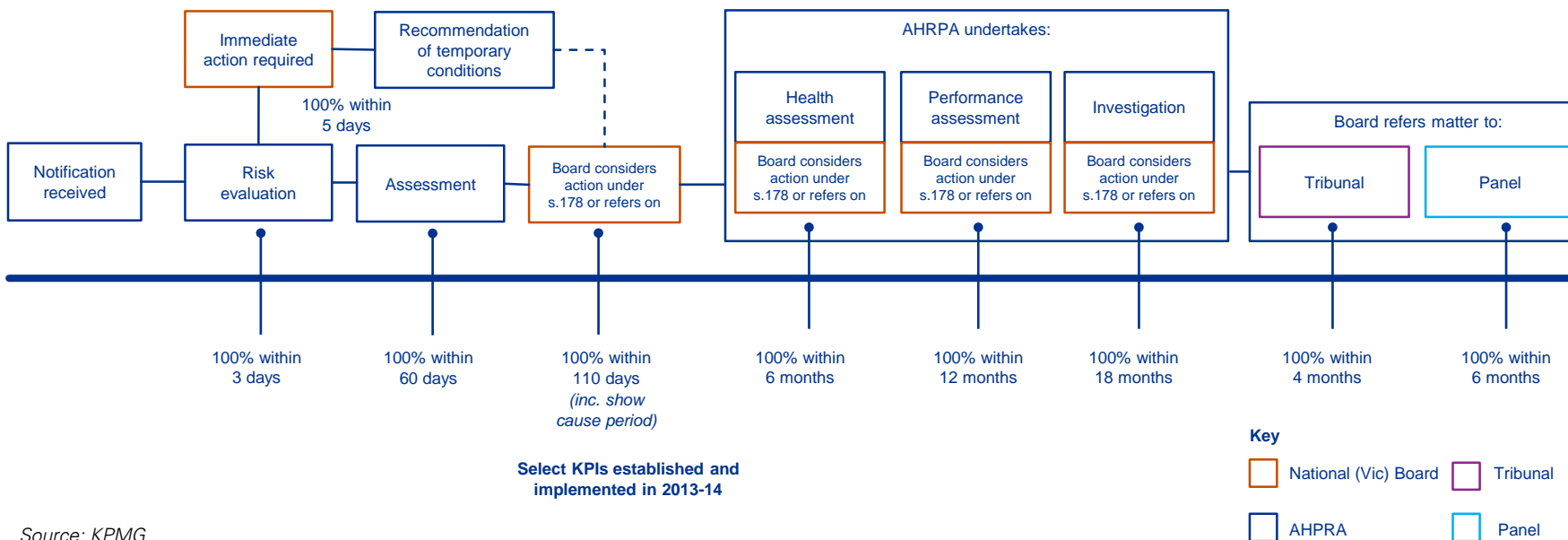
Source: AHPRA Annual Report 2013-14

2. Background

NOTIFICATIONS KPIS

In 2013-14, a suite of KPIs were implemented in relation to the notifications process as follows. Some of these KPIs have been reflected in key steps on the notification process below. While the KPIs outlined below reflect the maximum timeframes tolerated to complete individual steps in the process, some notifications can progress well within the timeframes and be closed relatively quickly (ie. within a few months).

Some KPIs provide for a graduated timeframe – for example, in relation to investigations, 80% are to be completed within 6 months, 95% within 12 months, and 100% within 18 months. The weekly RON report identifies all notifications being managed within the Victorian Office, and highlights those notifications that have extended beyond the relevant KPI timeframe, based on their stage of consideration.

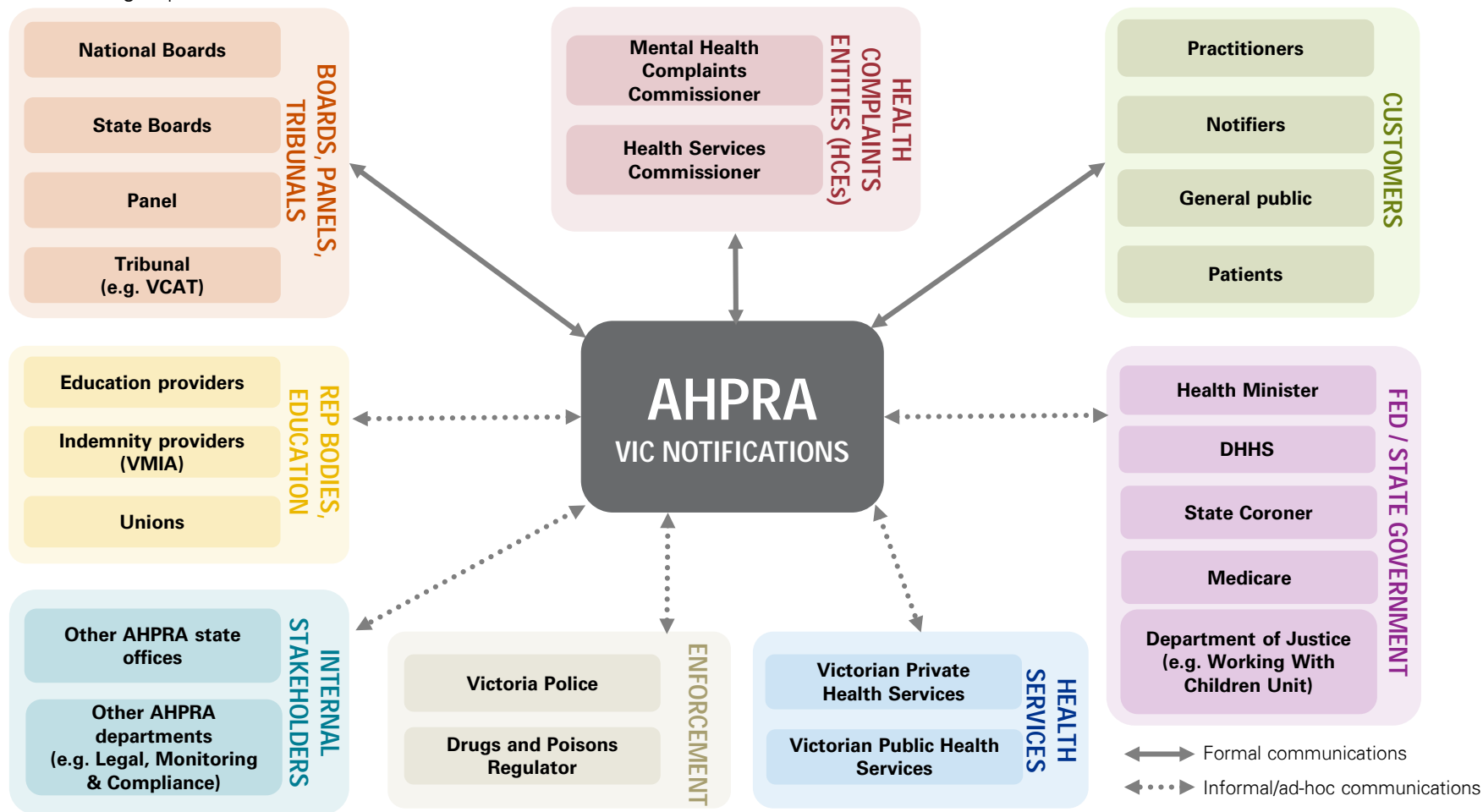


Source: KPMG

2. Background

OVERVIEW OF AHPRA'S VICTORIAN NOTIFICATIONS LANDSCAPE

As part of the notifications process, AHPRA engages with a wide variety of internal and external stakeholders at various stages. The diagram below outlines AHPRA's key stakeholders in the notifications process, and maps lines of communication between AHPRA and these stakeholder groups.



KEY FINDINGS

CULTURE



To drive a process of change and improvement across an organisation, it is essential to ensure the organisational culture and approach to service delivery is aligned to achieve the organisation's strategic objectives. The impact of related process improvements and personnel changes will be limited to the extent made possible by the underlying service culture.

3. Detailed Findings

3.1 Organisational culture

THEME:
CULTURE



Context

A consistent theme arising throughout the review was that AHPRA's organisational culture needs to be fully aligned to support continuous performance improvement. Changes in process and approach need to be accompanied by an underlying cultural mindset that supports the organisation's strategic direction.

Findings

Balance of 'protection'

AHPRA's overarching objective is to protect the public, by ensuring only competent and ethical practitioners are registered to practice within Australia.

Some stakeholders questioned whether there was an appropriate balance between the interests of practitioners, notifiers, patients and broader public safety, suggesting their perception of AHPRA's underlying culture leaned more towards protection of practitioners, rather than protection of patients, employers and the wider public.

Examples provided by stakeholders to illustrate this point included:

- presumption against sharing information with strategic partners in order to maintain confidentiality around a practitioner's notification, even in high risk matters

- lack of information sharing with employers and patients, given the direct impact a notification may have on individual health and safety, and an employer's operations
- the self-regulatory nature of precursor Schemes, which have continued to influence the early years of the National Scheme

On the other hand, an indemnity provider argued AHPRA could do more to recognise the level of personal and commercial stress applied to a practitioner who is subject to a notification, suggesting the organisation's focus was not enough on practitioners. Examples included:

- long delays in finalising complex notifications
- unreasonably short timeframes provided to practitioners to respond to complex legal questions (particularly in relation to the overall length of an investigation).

Approach to regulation

Many stakeholders commented on their perception of a conservative, risk averse culture within the Victorian Office. This is perceived to manifest in ways such as:

- 'over-engineering' of advice to Boards, where this may not be warranted due to lower risk profile of a notification
- a fundamental position against sharing information with third parties, narrowly interpreting the provisions of the National Law in this regard

EXECUTIVE
SUMMARY

BACKGROUND

FINDINGS:
CULTURE

FINDINGS:
RISK
MANAGEMENT

FINDINGS:
SYSTEMS &
PROCESSES

FINDINGS:
COMMUNICATION

APPENDICES

CONTACT US

3. Detailed Findings

3.1 Organisational culture

THEME:
CULTURE



Findings (cont.)

- examples of activity on a file providing false assurance of progress and allowing delayed decision making, rather than driving a case management approach to finalising matters in the shortest possible time
- the decision to halt progress in a complex notification to enable a second matter to be fully assessed and joined under s.153

The lack of a strong customer service focus has also been highlighted, consistent with findings of the AHPRA-commissioned HIC report around the influence workplace culture can have on AHPRA's communication with notifiers, practitioners and others involved in the National Scheme.

Some stakeholders observed opportunities exist for AHPRA to be bolder in its regulatory approach, through interpreting existing legislative provisions around information sharing more broadly. Another theme was to proactively consider (a reduction in) the level of preliminary assessment required for Boards to make initial determinations, in order to expedite a Board's consideration of less complex matters, building on existing process improvements in the Victorian office.

The South Australian triage pilot project provides an example of an initiative intended to more quickly seek practitioner (Board Member) input into the merits of a matter, thus providing clearer direction to AHPRA staff around prioritisation of assessment effort. The National Office is considering this project with respect to its application in Victoria and elsewhere in the country. There is also a greater focus on the use of s.178 ('relevant actions') to manage risk.

KPMG considers initiatives such as this promote an organisational culture which is proactive and bold in interpreting its legislative mandate, interpreting its responsibilities broadly.

EXECUTIVE
SUMMARY

BACKGROUND

FINDINGS:
CULTURE

FINDINGS:
RISK
MANAGEMENT

FINDINGS:
SYSTEMS &
PROCESSES

FINDINGS:
COMMUNICATION

APPENDICES

CONTACT US

3. Detailed Findings

3.1 Organisational culture

Recommendation(s)

Management should:

1. reaffirm the primacy of public safety as an objective underlying the regulation of the NRAS.
2. critically assess processes through the lens of addressing underlying organisational culture which may inhibit transparency and communication, and/or promote protracted decision making.

THEME:
CULTURE



EXECUTIVE
SUMMARY

BACKGROUND

FINDINGS:
CULTURE

FINDINGS:
RISK
MANAGEMENT

FINDINGS:
SYSTEMS &
PROCESSES

FINDINGS:
COMMUNICATION

APPENDICES

CONTACT US

KEY FINDINGS

RISK MANAGEMENT



A risk based approach to the assessment and management of notifications is at the heart of achieving AHPRA's objective of protection of the public, to ensure those matters posing the highest risk are appropriately and expeditiously managed.

3. Detailed Findings

3.2 Risk based approach for assessment, triage and management of Victorian notifications

THEME:
RISK MANAGEMENT



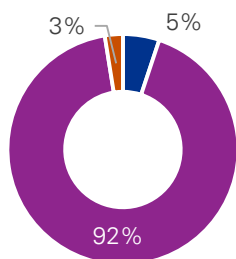
Context

AHPRA’s initial assessment of risk drives the process by which a notification will be considered, escalated, and ultimately, resolved. Understanding the drivers of risk is essential, to ensure an appropriate initial assessment is performed.

The current approach to identifying risk provides for the allocation of a risk rating of either normal, high or Immediate Action. This risk rating is used to prioritise tabling of notifications to the relevant Board (eg. rapid tabling of Immediate Action and high risk matters).

In 2014-15, only 3% of Victorian notifications resulted in Immediate Action, while a further 5% were classified as high risk. The overwhelming majority of matters were classified as normal risk (92%).

Risk ratings for Victorian notifications 2014/15

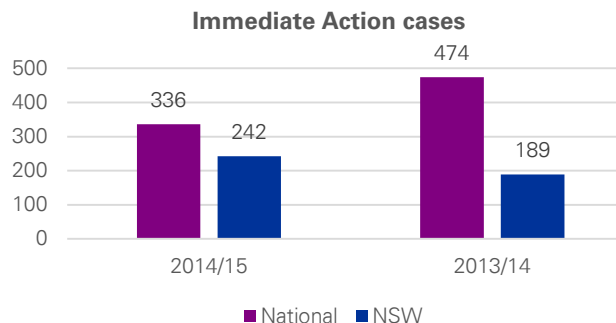


■ High risk (non-IA) ■ Normal risk (non-IA) ■ Immediate Action (IA)

Source: Pivotal extract for Victorian notifications received in FY14-15

Immediate Action is taken to swiftly address those matters of the highest concern for public safety. Victoria’s proportion of matters in which Immediate Action was taken is lower than the national average (3% of cases in Victoria in 2014-15 compared to 7% nationally). This is also consistent when comparing with the NSW model, which also took Immediate Action in 7% of matters in 2014-15, even though the threshold is lower in NSW than other States and Territories (Part 8 of the National Law does not apply in NSW).

One explanation for the lower rate of Immediate Action cases in Victoria, may be the lower rate of mandatory reporting in this State, which has been shown to be considerably lower than the national average (11.8 mandatory reports per 10,000 registered practitioners in 2013-14, compared with a national rate of 18.9 (media reports, 21 October 2015). However AHPRA should continue to explore further reasons behind this discrepancy, to ascertain whether too many matters are being screened out as normal risk in the first instance.



3. Detailed Findings

3.2 Risk based approach for assessment, triage and management of Victorian notifications

THEME:
RISK MANAGEMENT



Findings

While risk is considered during initial assessment of notifications received by AHPRA; a structured, data informed approach to triaging notifications based on risk is not utilised, impacting the overall effectiveness and efficiency of the Victorian notifications process.

Approach to assessment, triage and management of Victorian notifications

KPMG found that processes for assessment (including justification of risk rating), triage and subsequent prioritisation and management of notifications can be strengthened.

The Health, Performance and Conduct Management Operational Directive is helpful in assisting an officer to consider whether to rate a matter as 'clinical input required', 'high' or 'normal' risk.

However, the risk rating process does not include a structured consideration of broader factors beyond the notification itself, such as the source of the risk, history of the practitioner, or history of the notification with other relevant parties – these matters are left to the judgment of individual officers.

As such, there is a risk that notifications are not consistently and appropriately risk rated resulting in inappropriate prioritisation of notifications and the potential for risks to remain untreated.

The process for triaging or prioritising investigations based on risk rating can also be strengthened, particularly where matters are classified as 'normal' risk, however may be at the higher end of the seriousness spectrum.

Untreated risk

Unless a matter meets the threshold for Immediate Action, a Board has no opportunity to take regulatory action until the resolution of the matter; that is, there are no other interim regulatory actions at its disposal. This leads to a period of 'untreated risk' while a matter is examined.

It is considered a more structured approach to upfront risk assessment is required, which involves greater use of automatic red flags, and a more nuanced approach to risk rating so that the highest risk matters come to the attention of Boards and are swiftly dealt with, including prioritising resourcing and tailoring subsequent assessment and investigation activities.

While specialist notifications teams have been created within the Victorian Office to manage certain types of notifications, there are further opportunities to ensure subsequent processes or resourcing allocations being tailored to address the initial risk assessment, particularly for the highest risk matters. A more nuanced approach to risk rating may also help to elevate some matters currently classified as 'normal' risk so that a greater number of notifications have a tailored, case managed outcome.

There is an opportunity to facilitate greater information sharing between AHPRA's strategic partners, to ensure the broadest possible understanding of risk is available to Boards in considering how to manage individual notifications. This would support national initiatives to strengthen AHPRA's upfront risk management, as highlighted in the following section.

EXECUTIVE
SUMMARY

BACKGROUND

FINDINGS:
CULTURE

FINDINGS:
RISK
MANAGEMENT

FINDINGS:
SYSTEMS &
PROCESSES

FINDINGS:
COMMUNICATION

APPENDICES

CONTACT US

3. Detailed Findings

3.2 Risk based approach for assessment, triage and management of Victorian notifications

THEME:
RISK MANAGEMENT



Recent process improvements by AHPRA

At the national level, priorities for strengthening notifications management include:

- developing an enhanced method of assessing the risk to the public of new notifications (Notifications Risk Assessment Framework)
- introducing 'red flag' indicators to identify high risk notifications which require individualised investigative approaches
- piloting a Notifications Liaison Officer (in Victoria) to strengthen and personalise communication with notifiers and practitioners

In the Victorian Office, process improvements include:

- establishment of six specialist teams to improve the management of particular types of notifications by increasing staff expertise and tailoring the management of cases
- a dedicated Immediate Action team (operating nationally)
- a project currently in development to identify a shared framework for risk is currently in development. It is intended the framework will be used by AHPRA staff when assessing and triaging notifications, presenting information to Boards, and defining issues for investigation.

In addition, AHPRA has actively sought a partnership with the University of Melbourne (supported by a grant from the National Health and Medical Research Council) to strengthen evidence-based risk evaluation. This will complement AHPRA's dedicated research unit established in 2015.

Findings (cont.)

Red flags

There was broad agreement among stakeholders that certain notifications warrant a higher allocation of risk, based on their specific circumstances, and that this should be automatically generated.

These include:

- the source of the notification (e.g. mandatory notifications or notifications by a fellow practitioner automatically rated higher)
- history of the practitioner (e.g. multiple recent or past notifications imply a higher rating)
- history of the notification with other relevant parties (e.g. VicPol, HCEs, other States).

A number of stakeholders suggested there should be a positive presumption that a notification from another practitioner should automatically be considered high risk, given the expertise and level of insight likely to be attributed to the notifier (noting the potential for some vexatious or commercially-driven notifications in limited circumstances).

EXECUTIVE
SUMMARY

BACKGROUND

FINDINGS:
CULTURE

FINDINGS:
RISK
MANAGEMENT

FINDINGS:
SYSTEMS &
PROCESSES

FINDINGS:
COMMUNICATION

APPENDICES

CONTACT US

3. Detailed Findings

3.2 Risk based approach for assessment, triage and management of Victorian notifications

THEME:
RISK MANAGEMENT



Findings (cont.)

Past history and patterns of conduct

In addition, further weight should be given to past history and patterns of conduct. Marie Bismark (Melbourne School of Population and Global Health, University of Melbourne) has undertaken research into identification of doctors at risk of recurrent complaints. She highlights the strong correlation between previous and future notifications against practitioners, with the number of prior complaints being “a strong predictor” of subsequent complaints, suggesting this is another area warranting closer consideration.

Whether a practitioner has a past history of notifications forms part of the Board’s deliberations about a current notification (any history is highlighted in AHPRA’s immediate action risk assessment matrix), however the level of sophistication of the analysis of patterns of conduct is unclear. Likewise the passage of time considerations undertaken by the Boards are currently very subjective, and there is scope for incorporating a positive presumption that past behaviour is always relevant, requiring careful consideration on each occasion, no matter the time which has elapsed.

KPMG examined the structured assessment process adopted by the Working With Children (WWC) Unit, within the Department of Justice and Regulation, when considering what weight is given to prior history and patterns of conduct in assessing a WWC application. In this case, the relevant prior conduct relates primarily to criminal history; KPMG acknowledges that disclosure of criminal history in the NRAS would be considered in the context of practitioner registration.

Case Study: Working With Children Unit

The WWC scheme is not quick to dismiss past patterns of conduct; a judgment call is required to be made and the officer must assess whether past history or patterns of conduct should influence the decision to allow an application.

Considerations include whether the applicant poses an unjustifiable risk to the safety of children, having regard to matters including the period of time since an offence was committed (influenced by professional experience; frequency of offending; sexual or drug offending; age at the time of offending). Other considerations include:

- risk factors (eg. drug/alcohol use, lack of employment/long term stable employment, health issues)
- protective factors (eg. stable and supportive relationships, stable employment, undergoing treatment, network)
- attitude and insight into offending (eg. notwithstanding a substantial period of non offending, the applicant may lack insight about offending on a victim or more generally)

AHPRA provides advice to Boards on matters to be considered when faced with situations where past history of notifications or a pattern of conduct exists.

The deliberations of the WWC Unit may provide guidance to AHPRA and Boards in making a judgment call when considering these issues, which may involve a number of factors, including the passage of time.

EXECUTIVE
SUMMARY

BACKGROUND

FINDINGS:
CULTURE

FINDINGS:
RISK
MANAGEMENT

FINDINGS:
SYSTEMS &
PROCESSES

FINDINGS:
COMMUNICATION

APPENDICES

CONTACT US

3. Detailed Findings

3.2 Risk based approach for assessment, triage and management of Victorian notifications

THEME:
RISK MANAGEMENT



Recommendation(s)

Management should implement the following.

1. Develop a risk based framework and adopt a systematic, risk based approach to assessment, risk rating, triage and management of notifications. This should:
 - provide greater level of granularity between normal and high risk ratings, and distinct criteria to classify notifications within this range, or as Immediate Action
 - for example, a multi-scale axis highlighting considerations such as frequency, likelihood to repeat and number, against impact and severity.
 - be data informed, and include use of a matrix or algorithm to generate risk rating based on consideration of factors such as:
 - the source of the risk or source of the notification (e.g. mandatory notifications or notifications from another health service practitioner automatically rated higher)
 - history of the practitioner (e.g. multiple notifications imply a higher rating)
 - history of the notification with other relevant parties (e.g. VicPol, HCEs, other states, etc) or other relevant information provided by strategic partners in a reciprocal information sharing environment.
2. Implement a formal process to prioritise and tailor investigations based on risk rating, outside of notifications identified as being for Immediate Action (IA), which may include the ability to flexibly allocate additional resources and intensify activities to address and resolve notifications based on their level of risk.
3. Consider further options for managing lower risk notifications, including a streamlined investigation approach, delegated decision making to AHPRA employees or outsourcing to another body.
4. Consider whether greater in-house expertise is required to support higher risk or more complex matters – for example, specialty fields for investigators or additional in-house practitioner support.
5. Examine trends between States and Territories in relation to risk allocation for all notifications, to assess whether Victoria's allocation of high risk ratings are in line with comparator jurisdictions, and consider adjusting assessment approaches to bring the State in line with comparators.
6. Develop approaches to support a more detailed consideration of a notification's risk profile, such as a peer review pilot project of risk assessment outcomes between State and Territory offices.
7. Work with Boards to further develop their understanding of 'passage of time' considerations.

EXECUTIVE
SUMMARY

BACKGROUND

FINDINGS:
CULTURE

FINDINGS:
RISK
MANAGEMENT

FINDINGS:
SYSTEMS &
PROCESSES

FINDINGS:
COMMUNICATION

APPENDICES

CONTACT US

KEY FINDINGS

SYSTEMS AND PROCESSES



Effective systems and processes are central to AHPRA's ability to execute one of its principal functions – assessing the health, performance and conduct of practitioners through the notifications process established under the National Law.

The timely and appropriate resolution of notifications is a core element in demonstrating AHPRA's effectiveness as a regulator. The need for a strengthened focus on the timely resolution of matters has been consistently highlighted by external reviewers, and is essential in ensuring any untreated risk is managed as efficiently as possible, while reinforcing AHPRA's commitment to a customer service approach.

3. Detailed Findings

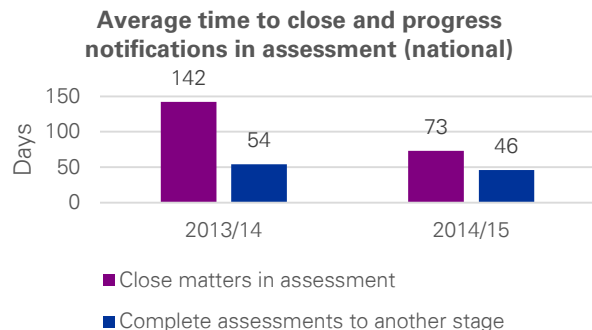
3.3 Timeliness of the Victorian notifications process

THEME:
SYSTEMS AND PROCESSES



Context

Over a number of years, AHPRA has continued to refine its processes in an attempt to drive timely outcomes for practitioners and notifiers. Timely performance is a key focus area for the Agency Management Committee, and overall, some indicators of timeliness have been improving – for example, time taken to close matters in assessment or complete to another stage (below).



Source: AHPRA Annual Report 2014/15

With new management in 2015, the Victorian Office has seen an increased focus on continuous improvement, and has implemented a range of measures to continue to reduce the time taken to finalise notifications.

These measures seek to address identified challenges in local processes which have exacerbated delays in recent years, including those highlighted by the ‘after action review’ of the Djerriwarrh Health Service matter.

Recent process improvements by AHPRA

- Development of KPIs for key milestones of the notifications process to facilitate timely consideration of notifications.
- Introduction of weekly management report (RON) which provides AHPRA management visibility over all notifications and investigator caseloads, highlighting those which fall outside KPI timelines.
- Investigator to liaise with Allocated Board Member at 6 and 9 month mark (escalation / mandatory review points); development of investigations plans.
- Reduction in caseload for investigation team managers (40 to 0) to facilitate enhanced oversight / monitoring of ongoing investigations; and investigation officers (45 to 30).
- Integration between assessment, investigation and legal teams.
- Establishment of six specialist teams to improve notifications management (assessment, health, performance, complex investigations, fast track teams (low risk notifications), and specialist notifications unit).
- State Manager (or delegate) accountability for progress on Immediate Action, high risk or highly complex matters.
- State Manager (or delegate) reviews all Immediate Action cases and may request early clinical opinion under national directive.
- More experienced officers allocated to take initial notifications report, early phone contact with notifier, and dedicated scheduling.
- Re-tendering of Legal Panel, currently briefing out Panel preparation, establishment of centralised tracking system, additional internal legal resources, templates for Panel reports, ‘Top 5 Risk’ Reports.
- White Paper on proposed operating model in consultation phase.

3. Detailed Findings

3.3 Timeliness of the Victorian notifications process

THEME:
SYSTEMS AND PROCESSES



Findings

Despite the increased focus on timely resolution of notifications, it remains the case that a number of very significant matters remain unresolved outside the relevant KPI timeframe, with stakeholder feedback and results from file review pointing to continued examples of long delays of over two years to finalise notifications (785 days for one file review matter, which transferred interstate and involved a Tribunal hearing). This is exacerbated by examples of limited communication with parties in relation to specific, albeit often complex, notification matters – which stakeholders indicated has sometimes involved up to 12 months between contact points, and a lack of data to definitely track timeliness by stage.

KPMG recognises there is a difference between delay related to the complexity or sensitivity of a matter, and ‘avoidable delay’ related to internal processes and bottlenecks. For example, delays in finalising Board minutes to trigger a ‘Board decision’, which was observed during the review, have been provided by AHPRA as an example of an avoidable delay without a reasonable justification.

KPMG would argue increased complexity of a matter should also mean increased intensity of resourcing and activity, to reduce delays, rather than be used as an explanation for why a matter remains unresolved outside KPI timeframes. The higher the risk, the more quickly you would expect to see the matter resolved.

The failure to resolve high risk, high profile and complex notifications in a timely manner continues to be a significant reputational risk for the organisation, and undermines stakeholder and public confidence in the regulatory system.

Timely resolution of complex matters

Feedback from some stakeholders indicated that for less complex or routine notifications, the timeliness of AHPRA’s assessment and resolution of matters has improved over time. It is considered process improvements by AHPRA over the last two years would have contributed to this perception.

It remains the case, however, that the higher risk or more complex matters continue to provide a challenge for timely resolution.

Examples were provided by indemnifiers and health services of relatively recent matters involving serious allegations around practitioner conduct and competence (ie. 2014 and 2015) which have involved long delays, unsatisfactory communication with parties, confusion arising from having multiple contact points within AHPRA over the life of a notification, short timeframes for practitioner responses and in one case, an outcome contested by an ‘expert’ notifier, exacerbated by a lack of communication with the notifier directly.

Failure to finalise notifications in a timely manner leaves AHPRA open to reputational risk, as occurred in the Djerriwarrh Health Service matter. In that case, the 28 month timeframe to investigate a doctor in relation to care of a mother after the still-birth of her baby was highlighted by media reports as a key failing of the regulator, even though AHPRA was not advised of wider concerns at the hospital about preventable still births until July 2015. This example illustrates how delays in resolving notifications can have unforeseen consequences, and leave AHPRA open to a greater level of public critique.

3. Detailed Findings

3.3 Timeliness of the Victorian notifications process

Findings (cont.)

Escalation processes

Stakeholders expressed concerns that an attitude which equates 'activity' on a file justifying the lack of a decision may have existed in relation to notifications processes in recent years.

More recent developments to drive a stronger case management approach, and highlight matters that remain unresolved to senior leaders, include:

- State Manager oversight of all high risk matters
- escalation processes where investigators initiate contact with the relevant Allocated Board Member (ABM) for a notification that remains unresolved after 6 and 9 months respectively.

Feedback from consultation with Boards indicates that while Board Members were aware of the escalation process, they could not identify occasions where this had happened in practice.

One Board Member suggested a preferred approach would be a monthly report to ABMs on any matters exceeding KPIs, for the Board Member to follow up directly, rather than placing the onus for consultation on the investigator.

Challenges around Panel and Tribunal hearings

The 'after action review' for the Djerriwarrh Health Service matter also highlighted unacceptable delays in the timeliness of establishing and completing a Panel hearing. Stakeholder feedback indicated there has been an historic reliance on Panels in Victoria as a means of resolving notifications (although 2014/15 figures indicate Victorian matters had a Panel hearing on 1% of occasions, compared to 3% nationally).



THEME: SYSTEMS AND PROCESSES

Panel hearings 2014/15

	Panel hearings	Total notifications
National	269	8,426
Victoria	11	1,901

The RON001 KPI analysis report (25 November 2015) highlights:

- Panels: 22 out of 40 notifications (55%) outside KPIs.
- Tribunals: 22 out of 37 notifications (60%) outside KPIs.

KPMG notes the backlog of Panel matters has significantly improved, reducing from around 150 matters outside KPIs 12 months ago, to around 30 matters based on updated data at 8 December 2015, with the majority of these outstanding matters now awaiting decision and reasons (22 out of 32 matters).

Other factors highlighted as potential contributors to delay include:

- reported challenges with the timely provision of external legal panel advice for complex matters, including preparation of significant additional material
- silos between groups in the Victorian office – ie. assessment, investigations, and legal teams – which has blurred accountability for a timely outcome

The need for strong processes to manage and drive completion of the Panel process is clear, and AHPRA should be commended for addressing the unacceptable delays present at the start of 2015.

The focus has been on Panel hearings in the first instance; KPMG notes that similar efforts are being applied to reducing backlogs in Tribunal activity in a similar manner.

3. Detailed Findings

3.3 Timeliness of the Victorian notifications process

THEME: SYSTEMS AND PROCESSES



Findings (cont.)

Outcome of process walkthrough and file review

Opportunities to strengthen key controls around the notifications process to enhance timeliness and efficiency were identified as part of the process walkthrough and file review. This activity highlighted delays are experienced during the investigations process and when matters are referred to panels and tribunals.

The relevant KPIs in these situations are:

- Notifications referred for investigation: 100% completed within 18 months
- Panel hearings: 100% completed within 6 months
- Tribunal hearings: 100% completed within 4 months

These KPIs are not consistently being met. For example, the RON001 KPI analysis report (25 November 2015) indicated 61 out of 547 open notifications (11%) in the investigation stage were not completed within 18 months. Panel and tribunal matters falling outside KPI timelines were discussed in the previous section.

Opportunities exist to enhance oversight of key milestones in the notifications process to ensure that delays are identified and addressed in a timely manner and that notifications are progressed promptly. KPIs should be strengthened to drive timely decision making for the highest risk matters, critically assessing maximum time limits for each stage of the notification lifecycle.

While KPMG is advised AHPRA nationally has conducted two major audits of aged files over the last 12 months, it would appear opportunities exist to strengthen the review and analysis of notifications in breach of KPIs to determine the root cause and any systemic or recurring issues impacting the timeliness of the notifications process.

Further findings from this process include:

- Opportunities exist to revisit KPIs to ensure these are aligned with better practice and capture key milestones in the notifications lifecycle. This will assist in driving timely decision making and the customer service focus of AHPRA's notifications handling processes. The following was noted in relation to KPIs.
 - A KPI relating to acknowledgement of receipt of a notification is not in place.
 - Investigation KPIs are not differentiated according to risk rating. For high and normal risk investigations there is no formal difference in the KPI to complete an investigation.
- As the status of notifications are progressed, AHPRA staff update Pivotal with the relevant information to progress the notification to the next stage. From a systems perspective, there is no formal review process to ensure that the necessary work has been completed in order to progress a notification to the next stage in Pivotal. As data used to measure AHPRA's performance against KPIs is derived from Pivotal, this has the potential to impact the accuracy of KPIs.

3. Detailed Findings

3.3 Timeliness of the Victorian notifications process

THEME:
SYSTEMS AND PROCESSES



Recommendation(s)

Management should:

1. ensure a transparent performance reporting framework is established and adhered to, including accountabilities assigned for its achievement.
2. strengthen periodic review and analysis of aged matters (including notifications in breach of KPIs) to monitor trends and determine the root cause and any systemic or recurring issues impacting the timeliness of the notifications process.
3. develop approaches to accurately measure the time taken to undertake each stage of the notifications process. This could include:
 - implementing mandatory fields to require a supporting document to be linked to completion of a particular task, where applicable.
 - locking down the system once a stage is complete to prevent retrospective changes being made, with an audit trail log to track any subsequent changes or updates to the entry.
4. review KPIs to ensure these are aligned with better practice and capture key milestones in the notifications lifecycle. This should include:
 - implementation of a KPI relating to acknowledgement of receipt of a notification. Better practice suggests notifications received should be acknowledged within 48 hours.
 - implementing differentiated KPIs for completion of an investigation, according to risk rating
5. consider alternative mechanisms for tracking matters which fall outside agreed KPIs and assessing Allocated Board Members' performance in driving timely resolution, for example:
 - individual report to Allocated Board Member on a monthly basis highlighting matters outside KPIs for their nominated caseload
 - de-identified reports to show aggregate performance of Board Members' caseloads (ie. rate of finalisation)
 - considering KPIs as improvement targets, monitoring year-on-year performance to show improvements over time.
6. capture data to track timeliness of notification resolution – for example, length of time a matter remains in each stage of the management process (assessment, investigation, Panel etc).

EXECUTIVE
SUMMARY

BACKGROUND

FINDINGS:
CULTURE

FINDINGS:
RISK
MANAGEMENT

FINDINGS:
SYSTEMS &
PROCESSES

FINDINGS:
COMMUNICATION

APPENDICES

CONTACT US

3. Detailed Findings

3.4 Document management and system limitations

THEME: SYSTEMS AND PROCESSES



Context

Systems used by AHPRA as part of the notifications process are Pivotal and TRIM. Documentation and supporting evidence relating to notifications is stored electronically using these systems to allow staff to access the relevant information as required.

Findings

Currently, the Pivotal system is used to document key steps within the notification process and report on the status of notifications. AHPRA management advised that Pivotal is unable to store documents and as a result the TRIM system is used to store key documents developed throughout the notification process, such as investigation management plans and reports outlining recommendations to the Board. The file review highlighted the challenges associated with navigating the dual systems, and the sophisticated knowledge required to find relevant documents.

As Pivotal and TRIM do not communicate/interface well and are not reflective of one another, AHPRA's ability to undertake timely and efficient reviews of the key steps in the notification process is limited. Information stored in one system relating to specific tasks and events in the notifications process is not automatically linked to the other. Additionally, some teams within notifications utilise excel spreadsheets to track the status of notifications due to limitations of Pivotal.

Opportunities to strengthen document retention processes and increase accessibility include:

- Standardised file naming conventions are not utilised when storing notification related documentation in Pivotal and TRIM. As such, relevant documentation cannot be located in a timely manner. Given that notifications and investigations may be managed/transferred to multiple staff/investigators, with a significant amount of documentation to be considered, file naming conventions would increase the efficiency of the notifications process.
- Methods of recording investigation information are inconsistent, and there are no formal minimum requirements surrounding information to be recorded. This has the potential to impact the efficiency and integrity of investigations. The following exceptions were noted.
 - Documentation of Investigation Management Plans (IMPs) is inconsistent, as these can be completed in various formats and to varying degrees of detail. While a standardised IMP template was released in October/November 2015, adoption of this template is still in the trial phase, with feedback and review to be provided to AHPRA management. As such, this process is not yet consistent and embedded across all investigations at AHPRA.
 - Relevant documentation is inconsistently uploaded to TRIM and/or Pivotal, and tabs and fields in Pivotal are used inconsistently by different teams to document key information.
 - Discussions with staff indicated that Pivotal training is not provided beyond initial induction.

3. Detailed Findings

3.4 Document management and system limitations

Findings (cont.)

System enhancements are required to increase the effectiveness, accuracy and efficiency of AHPRA's notifications process. The following was noted.

- Information used throughout the investigations process is retained in TRIM and Pivotal. TRIM and Pivotal do not communicate/interface well and are not reflective of one another, particularly given neither is a case management system. For example:
 - information stored in one system relating to specific tasks and events in the notifications process is not automatically linked to the other and is not easily accessible
 - duplicate information is often stored in both systems

As such, there is not a single source of truth, and the time taken to search for relevant information across both systems contributes to process inefficiencies.

Ensuring underpinning processes are clear and consistent will be essential if a decision is made to implement a new notifications management system to address existing limitations and issues with Pivotal.

THEME: SYSTEMS AND PROCESSES



Recent process improvements by AHPRA

Relevant national initiatives include:

- investigating the feasibility of implementing a new notifications management system to address existing limitations and issues with Pivotal. This includes review of existing processes in preparation for this implementation.
- a project to implement standard convention for file naming across the organisation.

EXECUTIVE
SUMMARY

BACKGROUND

FINDINGS:
CULTURE

FINDINGS:
RISK
MANAGEMENT

FINDINGS:
SYSTEMS &
PROCESSES

FINDINGS:
COMMUNICATION

APPENDICES

CONTACT US

3. Detailed Findings

3.4 Document management and system limitations

Recommendation(s)

Management should:

1. investigate opportunities to enhance the functionality of Pivotal for document management purposes, to ensure one system captures and stores all relevant information relating to notifications.
2. implement standardised file naming conventions to store notification related documentation in Pivotal and TRIM. This should be documented in procedure, and staff should be educated accordingly to ensure consistency of the process.
3. implement standardised processes and templates for recording investigation information, including minimum requirements. This should include embedding and ensuring consistent use of the recently released IMP template across all investigations at AHPRA. This should be reflected in policy and procedure documentation, and staff should be educated accordingly.
4. conduct refresher training on Pivotal for AHPRA staff on a regular basis to ensure that all staff are aware of functionality and document management and retention processes, to ensure consistency of the process.

THEME:
SYSTEMS AND PROCESSES



EXECUTIVE
SUMMARY

BACKGROUND

FINDINGS:
CULTURE

FINDINGS:
RISK
MANAGEMENT

FINDINGS:
SYSTEMS &
PROCESSES

FINDINGS:
COMMUNICATION

APPENDICES

CONTACT US

KEY FINDINGS

COMMUNICATION



Effective communication with relevant parties is essential in driving patient safety and quality of care across the broader health system, while also ensuring individuals impacted by AHPRA's regulatory functions are appropriately informed about the activities of AHPRA in a customer focused manner.

3. Detailed Findings

3.5 Customer service focus

Context

AHPRA recognises the need to adopt an improved customer service focus, in line with the HIC's *Setting things right*, and the NRAS Review.

AHPRA has made changes to improve the experience of the notifier, and has also held a workshop with the Australian Medical Association (AMA) to identify actions to improve the practitioner's experience also. Continuing areas of challenge are reported as:

- time taken for a notification to be finalised
- tone and clarity of communication
- need to better explain how the process works and why
- greater transparency about what information can be released legally.

These align with a number of the consumer responsiveness recommendations arising from the NRAS Review, which calls for measures such as:

- interviewing complainants to determine expectations and advise on process
- greater information sharing between National Boards, AHPRA and HCEs
- rationale for deliberations and progress reports routinely and quarterly conveyed to notifiers and health practitioners
- legislative change to enable notifiers personally impacted by practitioner conduct to be informed in confidence about the process, decision and rationale for the decision in their matter
- improved clarity and sensitivity in communication with notifiers.

Source: COAG Health Council Communique, 7 August 2015

THEME: COMMUNICATION



Recent process improvements by AHPRA

- Requirement to contact notifier earlier (before Board hearing) to seek further information, with focus on phone call rather than written correspondence.
- Piloting of a new Notifications Liaison Officer in the Victorian Office
- Community Reference Group involvement in refreshing and testing AHPRA website.
- Development of plain language materials and related staff training.
- Simplified notifications form.
- National template for letters to relevant parties.

EXECUTIVE
SUMMARY

BACKGROUND

FINDINGS:
CULTURE

FINDINGS:
RISK
MANAGEMENT

FINDINGS:
SYSTEMS &
PROCESSES

FINDINGS:
COMMUNICATION

APPENDICES

CONTACT US

3. Detailed Findings

3.5 Customer service focus

THEME:
COMMUNICATION



Findings

Despite the Agency Management Committee recognising the need for AHPRA to drive increased consumer responsiveness and to embed a strengthened customer service focus across its notifications operations, it would appear considerable work remains to improve the notifier and practitioner experience.

In commenting on AHPRA's consumer responsiveness, stakeholders continue to raise issues such as:

- limited or ad hoc communication with the notifier or practitioner in relation to progress, including occasions where there have been lengthy delays in communicating with parties
- multiple contact points provided throughout a notification's life cycle
- the cursory or legalistic tone of written communication between AHPRA and notifiers or practitioners, with limited detail around a matter's progress, issues being examined or anticipated timeframes
- the absence of a detailed statement of reasons for decisions (noting there was divided stakeholder opinion on the adequacy of the rationale already provided to parties)
- statutory restrictions on communicated information with some parties – eg. the patient or the employer (where they are not the notifier), and whether they should be entitled to information given the potential direct impact on their health, safety or operations

KPMG recognises AHPRA is required to operate within the framework of the National Law when communicating with parties, and related groups such as employers (where they are not the notifier). This includes, for example, limiting disclosure of outcomes to notifiers that are not published on the register of practitioners.

While there is an ongoing balance between effective communication and disclosure, KPMG considers AHPRA has taken a relatively conservative approach in balancing these elements. AHPRA should continue to drive thinking around taking a broad interpretation of its legislative framework in relation to information sharing, to ensure the best outcomes in the public interest.

A judgement about where the public interest lies is required. These considerations are not unique to AHPRA; they are raised across a number of other areas of government activity. For example, improved information sharing is at the heart of an improved system response to the issue of family violence, which is currently a priority consideration for all levels of government.

The Victorian Commissioner for Privacy and Data Protection has discussed what he considers to be the "wide-spread lack of understanding across government" as to what personal information organisations can or should share, where this is appropriate and how to make decisions in this area (unpublished, 2015). Along with constraints in enabling legislation, he points to a lack of leadership, as well as cultural and institutional barriers (eg. risk aversion, poor governance or inadequate investment in resources) as further obstacles to appropriate information sharing.

The extent to which factors of this nature contribute to a conservative approach to information sharing should be critically examined in the AHPRA context.

EXECUTIVE
SUMMARY

BACKGROUND

FINDINGS:
CULTURE

FINDINGS:
RISK
MANAGEMENT

FINDINGS:
SYSTEMS &
PROCESSES

FINDINGS:
COMMUNICATION

APPENDICES

CONTACT US

3. Detailed Findings

3.5 Customer service focus

Recommendation(s)

Management should:

1. consider whether cultural or institutional barriers are contributing to a conservative approach to information sharing and communication with relevant parties.
2. review steps in the process at which communication to relevant parties is required, and examine opportunities to streamline this to ensure the relevant parties are notified appropriately.
3. establish a single point of contact for parties to liaise with throughout the notification life cycle.
4. consider level of detail provided in written communication to parties, with a view to providing as much information as possible (depending on outcome of information sharing project)

THEME:
COMMUNICATION



EXECUTIVE
SUMMARY

BACKGROUND

FINDINGS:
CULTURE

FINDINGS:
RISK
MANAGEMENT

FINDINGS:
SYSTEMS &
PROCESSES

FINDINGS:
COMMUNICATION

APPENDICES

CONTACT US

3. Detailed Findings

3.6 Information sharing to support regulatory and clinical governance responses to risk

THEME:
COMMUNICATION



Context

Throughout this review, AHPRA's role as part of a broader intersection between regulatory and clinical governance responses to risk to ensure public health and patient safety was emphasised. In particular, the need for greater communication and collaboration between AHPRA, as the profession regulator, and DHHS, as the funder and system regulator, as well as the HSC and health services, was highlighted. The onus should be on all parties to drive reciprocal information sharing protocols, in the public interest. This would provide increased confidence for AHPRA that when considering notifications, all relevant information was available to Boards to make informed decisions, and appropriately address potential systemic or serious risks to public safety.

The relationship between the Victorian Office and the HSC was described as strong, and one of the better HCE relationships nationally. The jointly developed matrix for phone transfers and referrals is an example of this.

AHPRA's relationship with DHHS, as the system regulator, could be further strengthened. This includes ensuring increased visibility of its activities at the Deputy Secretary level (we are advised that most interaction occurs with the Health Workforce Branch) and proactive engagement with AHPRA from DHHS. In particular, opportunities exist for greater information sharing between strategic partners to drive a heightened focus on patient safety and ensure relevant information is connected and acted upon in a timely manner. This could include, for example, triangulating information around a cluster of avoidable incidents with information on related practitioner notifications. This is a reciprocal relationship, with all sides sharing responsibility for strengthening existing communication channels.

A lack of clarity around where information can be appropriately shared continues to be a key obstacle in facilitating open and systematic communication between strategic partners.

Recent process improvements by AHPRA

- Project to clarify extent of information sharing allowable within the parameters of the National Law, in particular the scope of ss. 219, 220
- Draft MOU between AHPRA and DHHS to facilitate information sharing, and identify responsible officers and obligations for information recipients

EXECUTIVE
SUMMARY

BACKGROUND

FINDINGS:
CULTURE

FINDINGS:
RISK
MANAGEMENT

FINDINGS:
SYSTEMS &
PROCESSES

FINDINGS:
COMMUNICATION

APPENDICES

CONTACT US

3. Detailed Findings

3.6 Information sharing to support regulatory and clinical governance responses to risk

THEME:
COMMUNICATION



Findings

Through its involvement in the end-to-end notifications process, AHPRA identifies and has visibility over trends, themes, risks and systemic issues arising. This information can assist its strategic partners (for example, DHHS or the HSC) in facilitating continuous improvement and addressing risks to public safety.

In a similar manner, AHPRA's strategic partners also hold and analyse information which would be valuable in supporting AHPRA in its approach to practitioner regulation. Approaches for proactively engaging with AHPRA should be a high priority for partner organisations.

Opportunities exist to establish stronger collaboration between all parties to identify and mitigate risks to public safety and drive continuous improvement across the health system. This requires clarification and formalisation of each party's role in the co-regulatory model, including AHPRA and National Boards, DHHS, OHSC, MHCC and health services.

Restrictions within the National Law were regularly put forward as a key barrier to greater information sharing by all stakeholders. It is important to clarify the extent to which existing legislative provisions can be used to drive greater collaboration, and where legislative change may be required.

This includes understanding the broadest possible interpretation of National Law provisions including ss. 216, 219, 220 in relation to information sharing between Commonwealth, State and Territory entities, and disclosure to protect the health or safety of a patient, or public health more broadly.

Limitations around information sharing relating to settlements associated with prior lawsuits/insurance cases

AHPRA has limited visibility over information relating to settlements associated with prior lawsuits and insurance cases raised against practitioners. This may impact on AHPRA's ability to assign an appropriate risk rating to notifications received based on prior practitioner history, potentially resulting in serious matters which require expedited decisions in order to protect public safety not being progressed within appropriate timeframes. Opportunities to look behind civil law settlements may assist in highlighting systemic risks and issues.

EXECUTIVE
SUMMARY

BACKGROUND

FINDINGS:
CULTURE

FINDINGS:
RISK
MANAGEMENT

FINDINGS:
SYSTEMS &
PROCESSES

FINDINGS:
COMMUNICATION

APPENDICES

CONTACT US

3. Detailed Findings

3.6 Information sharing to support regulatory and clinical governance responses to risk

THEME:
COMMUNICATION



Recommendation(s)

Management should:

1. facilitate a Roundtable to clarify and formalise the respective roles and information sharing requirements of strategic partners, to inform the regulatory and clinical governance decision making of all parties.
2. develop strengthened communication between Deputy Secretary, Health Service Performance and Programs and AHPRA CEO.
3. consider the broadest possible interpretation of existing information sharing provisions under the National Law (information sharing project underway).
4. identify where legislative change may be required to drive increased collaboration and communication to facilitate continuous improvement and address risks to public safety.
5. proactively engage with interstate counterparts to support stronger cross-border collaboration in relation to notifications.
6. examine opportunities to look behind civil law settlements in order to assist in highlighting systemic risks and issues.

EXECUTIVE
SUMMARY

BACKGROUND

FINDINGS:
CULTURE

FINDINGS:
RISK
MANAGEMENT

FINDINGS:
SYSTEMS &
PROCESSES

FINDINGS:
COMMUNICATION

APPENDICES

CONTACT US

3. Detailed Findings

3.7 Information sharing with employers

THEME:
COMMUNICATION



Context

Whether or not AHPRA should disclosure notification information to employers, and if so, at what part of the process, is a challenging area for consideration.

Currently, in circumstances where the employer is not the notifier, information about a notification or its outcome will only be shared when regulatory action is taken (s.206, National Law). There is no communication with employers at any other point in the process, or if No Further Action is decided. KPMG notes that AHPRA's submission to the NRAS review called for legislative change to clarify information sharing obligations with employers in circumstances where a condition does not appear on the register.

Where a practitioner is no longer employed, communication does not occur, as information sharing provisions do not apply to past employers.

Findings

Stakeholders considered whether a positive duty to disclose notification information to an employer should exist. There were widely varying opinions on the value and fairness of such an approach.

On one hand, some stakeholders identified benefits in terms of transparency, the ability for employers to provide strengthened clinical governance and, fundamentally, increased patient safety if employers were alerted to an investigation being undertaken by AHPRA in relation to a practitioner in their employment.

Those opposing information sharing with employers pointed to the potential for serious repercussions for practitioners (for example, in terms of ongoing employment) if information was shared, along with a fundamental lack of procedural fairness given no case had been proven.

It was considered this would be exacerbated if information was shared before a decision to undertake an investigation or for matters other than high risk matters. Confined information sharing to matters scheduled for a Panel or Tribunal hearing could be another threshold.

It was further noted that if AHPRA can make further progress in improving timeliness of its notifications process, thus reducing the period of untreated risk and increasing confidence in public safety, the need for information sharing with employers could be mitigated.

These stakeholders also pointed to contractual obligations that may exist between a practitioner and their employer in relation to a duty to disclose the outcome of a notification process, as well as the fact a health service should be alerted to a notification where a medical file is requested.

In relation to file requests, AHPRA staff have confirmed requests for files are made directly to the relevant medical records officer. In some cases where health services are not responsive, the matter may be escalated to a more senior officer (for example, a legal officer) however it would not be escalated to the health service Executive or the CEO. Accordingly, it would be challenging for a health service to take a strategic view of the implications of an incoming file request, and the possible implications around the practice of a practitioner in their employment, unless established processes were in place to interrogate AHPRA file requests more closely (note that only a patient's name is mentioned in the request).

EXECUTIVE
SUMMARY

BACKGROUND

FINDINGS:
CULTURE

FINDINGS:
RISK
MANAGEMENT

FINDINGS:
SYSTEMS &
PROCESSES

FINDINGS:
COMMUNICATION

APPENDICES

CONTACT US

3. Detailed Findings

3.7 Information sharing with employers

THEME:
COMMUNICATION



Findings (cont.)

Visiting Medical Officers (VMOs)

Challenges around communicating with employers have been raised with respect to VMOs, which is a common employment approach for specialty disciplines in Victoria's public and private hospital systems. This is because a VMO's status as an 'employee' or an 'independent contractor' is not sufficiently clear.

Having clear oversight of VMOs is essential in maintaining public safety across the health system, and information sharing in this context is an area warranting further examination. AHPRA has adopted a broad interpretation of 'employer' and does advise health services of regulatory action taken with respect to VMOs. KPMG is encouraged by this example of AHPRA taking a liberal approach to legislative interpretation, which is in line with other recommendations within this report.

Recommendation(s)

Management should:

1. consider the merits of further information sharing with employers in relation to notifications against practitioners employed in their facilities, including VMOs (ie. before a decision to take regulatory action).
2. continue to improve timeliness of notification processes to address extended untreated risk and improve confidence in public safety.

EXECUTIVE
SUMMARY

BACKGROUND

FINDINGS:
CULTURE

FINDINGS:
RISK
MANAGEMENT

FINDINGS:
SYSTEMS &
PROCESSES

FINDINGS:
COMMUNICATION

APPENDICES

CONTACT US

Appendix 1 – Objective, scope and approach

OBJECTIVE

The objective of this project was to review the end-to-end design and operating effectiveness of the notification process in Victoria in the context of recent revelations about the Djerriwarrh Health Service and other high profile notifications, and identify:

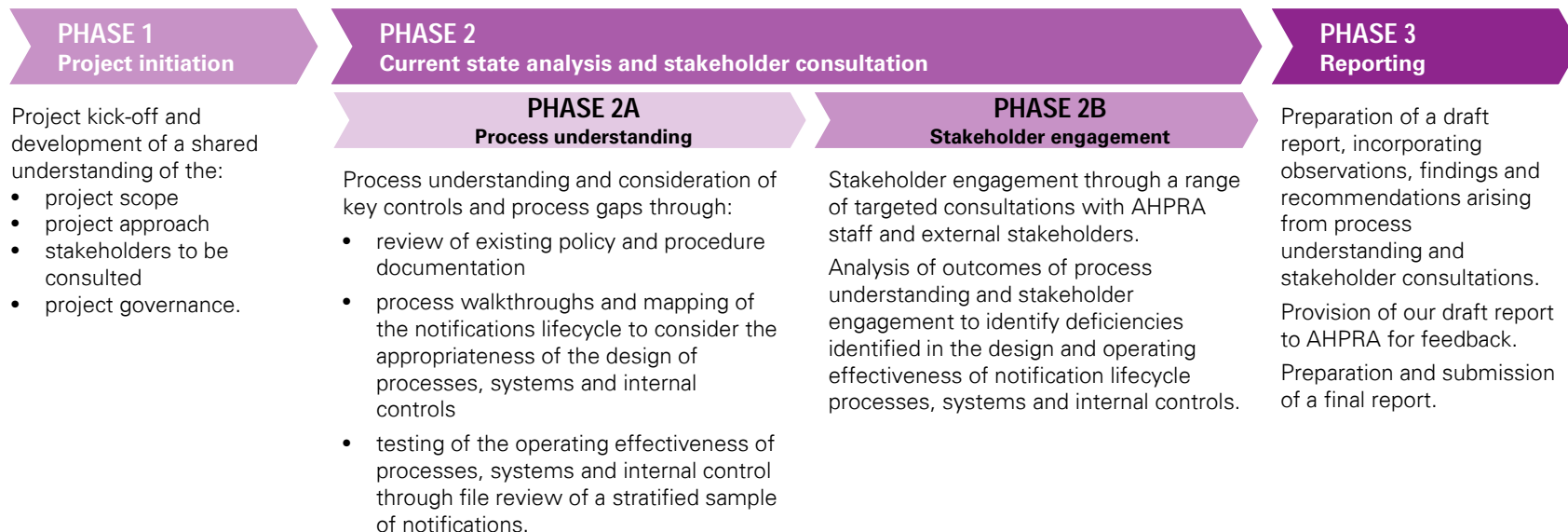
- where evidence indicates the notification systems and processes are well designed and are being implemented effectively
- where evidence indicates the notification systems and processes are well designed, but are not being implemented effectively
- options for improving these systems/processes, both within the constraints of the current Pivotal ICT system and in the future, once the Pivotal system is replaced.

SCOPE

The scope of the project is outlined below.

- Review of the end-to-end notification and investigation system and processes in Victoria ('notification lifecycle') including all notification categories and process paths they can take within the overarching process.
- Identification and testing of the adequacy of the design of processes, systems and internal control to provide timely notification lifecycle outcomes, and meet notification lifecycle objectives and requirements.

APPROACH



Appendix 2 – Glossary of key terms

The following table provides glossary of key terms used throughout this report, relating to AHPRA’s notifications processes. Definitions are derived from the National Law and definitions provided by AHPRA.

TERM	DEFINITION
Caution	A formal caution may be issued by a National Board or an adjudication body. A caution is intended to act as a deterrent so that the practitioner does not repeat the conduct. A caution is not usually recorded on the national register. However, a National Board can require a caution to be recorded on the register of practitioners.
Condition	A National Board or an adjudication body can impose a condition on the registration of a practitioner or student, or on an endorsement of registration. A condition aims to restrict a practitioner’s practice in some way, to protect the public. Conditions can be placed on a practitioner’s registration for both disciplinary and non-disciplinary reasons. Current conditions which restrict a practitioner’s practice of the profession are published on the register of practitioners. Conditions relating to a practitioner’s health are not usually published on the register of practitioners.
Undertaking	An undertaking means the practitioner agrees to do, or to not do something in relation to their practice of the profession. Current undertakings which restrict a practitioner’s practice of the profession are published on the register of practitioners. Current undertakings which relate to a practitioner’s health are mentioned on the national register but details are not provided. An undertaking is voluntary, whereas a condition is imposed on a practitioner’s registration.
Mandatory notifications	Notification that an entity is required to make to AHPRA under Division 2 of Part 8 of the National Law. Mandatory notifications may be made to AHPRA by registered health practitioners, employers of registered health practitioners, and education providers. Registered health practitioners and employers have a legal obligation to make a mandatory notification if they have formed a reasonable belief that a health practitioner has behaved in a way that constitutes notifiable conduct in relation to the practice of their profession.
Immediate Action	A National Board has the power to take Immediate Action (IA) at any time, if it believes this is necessary to protect the public. The practitioner is always advised and given the opportunity to Show Cause. IA refers to: <ul style="list-style-type: none"> the suspension, or imposition of a condition on, the registered health practitioner’s or student’s registration, or accepting an undertaking from the registered health practitioner or student, or accepting the surrender of the registered health practitioner’s or student’s registration.
High risk	Notifications where the concerns presented indicate serious concerns which if proven would certainly require some action from the board. Matters evaluated as high risk will be processed with urgency and must be progressed to assessment within 14 calendar days of receipt. Increased efforts and an overall focus on timeliness are expected, particularly with respect to assessing and preparing information for the board to consider.
Normal risk	Notifications where the concerns presented do not fall into either clinical input required, or high risk category. There will be triaged to undergo AHPRA’s approved standard assessment methods prior to presentation to the board, and must be either progressed to assessment within 30 calendar days of receipt, or closed with insufficient particulars/no practitioner identified within 30 calendar days of receipt.
Performance assessment	Notifications that raise concerns regarding the way the practitioner practises the profession will be considered under the clinical input required pathway. Where a performance issue has been identified, consideration must be given to whether the clinical opinion of a professional officer or allocated board member (assessment) suggests the knowledge, skill or judgement possessed or care exercised by the practitioner is below the standard expected by the profession.
Health assessment	Where a health issue has been identified that poses a potential risk to the public, the board will refer the practitioner for a health assessment to determine the nature, extent and severity of any potential impairment and the potential impact on the practitioner’s capacity to safely practise the profession.

Appendix 3 - Consultation list

KPMG conducted consultations with a range of AHPRA staff and external stakeholders, outlined below.



Name	Title
AHPRA stakeholders	
Martin Fletcher	Chief Executive Officer
Michael Gorton AM	Chair, Agency Management Committee
Kym Ayscough	Executive Director, Regulatory Operations
Matt Hardy	National Director, Notifications
Diana Newcombe	National Director, Legal
Mary Russell	State Manager (Victoria)
Kath Kelsey	Director, Notifications (Victoria)
Monica Lambley	Team Leader, Notifications (Victoria)
Abigail Brand	Investigations Officer, Notifications (Victoria)
Graham Holmes	Investigations Officer, Notifications (Victoria)
External stakeholders	
Hon Jill Hennessy	Victorian Minister for Health
Dr Jo Flynn AM	Chair, Medical Board of Australia
Dr Lynette Cusack	Chair, Nursing and Midwifery Board of Australia
Dr Peter Dohrmann	Chair, The Victorian Board of the Medical Board of Australia
Naomi Dobroff	Chair, The Victorian Board of the Nursing and Midwifery Board of Australia
Francis Diver	Deputy Secretary, Department of Health and Human Services
Dr Grant Davies	Health Services Commissioner
Dr Bill Kelly	Chair, Notifications Committee, MBA Vic
Dr Caroline Clarke	ED Performance and Improvement, Victorian Eye and Ear Hospital

Contact us

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EXECUTIVE
SUMMARY

BACKGROUND

FINDINGS:
CULTURE

FINDINGS:
RISK
MANAGEMENT

FINDINGS:
SYSTEMS &
PROCESSES

FINDINGS:
COMMUNICATION

APPENDICES

CONTACT US



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