

Joint Response

29 August 2019

Review of interface between the National Health Practitioner Ombudsman and Privacy Commissioner and the Australian Health Practitioner Regulation Agency

Introduction

In February 2019, the National Health Practitioner Ombudsman and Privacy Commissioner (NHPOPC) and the Australian Health Practitioner Regulation Agency (AHPRA) jointly commissioned Rae Lamb¹ (the reviewer) to independently review the interface between the two agencies. This followed a significant increase in complaints to the NHPOPC. A final report was handed down in March 2019. This document provides a summary of the recommendations and the agreed joint response from the NHPOPC and AHPRA.

Recommendations

1. The Memorandum of Understanding (MOU) and Administrative Arrangements Agreement between NHPOPC and AHPRA need urgent review and updating. In doing this, consideration should be given to reflecting the following recommendations:
 - Once jurisdiction is established, NHPOPC complaints assessment should start with consideration of whether early resolution can be achieved unless a complaint issue is so serious that on its merits it meets the threshold for investigation.
 - Unless there is good reason not to, AHPRA should be contacted informally by telephone or email when complaints are assessed. Basic information should be sought and discussion had regarding AHPRA's willingness and capacity to try to resolve the matter itself and the extent of NHPOPC involvement. This contact needs to be soon after receiving a complaint, with AHPRA's response provided within just a few days. This will inform NHPOPC's decision on how to proceed and could be modelled on the Victorian Ombudsman approach.

¹ Former Australian Aged Care Complaints Commissioner (2016–2019), Aged Care Commissioner (2011–2016) and New Zealand Deputy Health and Disability Commissioner (2005–2010).

- NHPOPC and AHPRA should consider introducing a second option to warm transfer, whereby AHPRA is given an opportunity to resolve the matter but the case remains open with NHPOPC and there is a report back. NHPOPC can provide some guidance to AHPRA as to what steps are needed and it retains the right to take the matter further if it is not satisfied the matter has been sufficiently addressed. This will have to be an agreed process between the agencies with consideration given to how it works under NHPOPC's existing powers. There are various versions of its in use by other ombudsmen and complaints bodies.

Joint response:

The MoU and associated administrative arrangements will be reviewed in the light of these recommendations and finalised by December 2019.

The NHPOPC and AHPRA agree that it is in the interest of complainants as well as both agencies that complaints are dealt with as quickly as possible and with a focus on the best outcome achievable for the person making a complaint. It is agreed that the best outcome for a complainant is not always achieved by investigating a complaint and that consideration should be given, where it is appropriate, to whether a less formal option is available to respond to a complaint.

The NHPOPC and AHPRA agree that the two agencies will work together to implement an 'Early Resolution' mechanism to efficiently and effectively resolve/respond to complaints brought to the NHPOPC. This will include:

- establishing a regular meeting during which complaints received by the NHPOPC can be jointly discussed, background information sought and consideration be given to if there are opportunities to resolve the complaint less formally
- trialing a process through which the NHPOPC will keep the complaint open while AHPRA provides further information or takes some action in an attempt to resolve the complaint informally and/or satisfy the NHPOPC that the matter has been appropriately dealt with.

The established warm transfer process will continue to be used to transfer complaints that the NHPOPC considers should be appropriately dealt with by AHPRA. The NHPOPC will continue to investigate matters that it considers are more appropriately dealt with via that method, including when the NHPOPC considers that it will not be possible or appropriate to resolve a complaint less formally at any point in time.

The NHPOPC and AHPRA will establish a working group populated with representatives from both agencies to implement a trial of the early resolution mechanism outlined above, and develop appropriate guidelines.

2. NHPOPC should develop written guidelines setting out for staff the criteria to consider when deciding which complaints are suitable for early resolution or warm transfer, which should be investigated and when not to investigate. Many of the criteria used by other ombudsmen looked at in this review will be applicable, but some will need to be subject and jurisdiction specific. AHPRA should be consulted on this.

Joint response:

The NHPOPC will develop guidelines setting out the criteria for:

- early resolutions (possibly using preliminary inquiry power)
- warm transfers
- assisted referrals
- investigations
- decisions not to investigate.

These guidelines will be formalised following the agreed trial of the new early resolution mechanisms and consultation with AHPRA.

3. Agreed timeframes for information responses need to be renegotiated by the two agencies so that they are realistic and will be routinely met by AHPRA. Where more time is needed this should be raised with NHPOPC by AHPRA and extensions sought and met. Realistic but prompt timeframes for responses during complaints assessment and action during early resolution should also be discussed, agreed and honoured. (AHPRA needs to relook at the response timeframes in its new policy as well.)

Joint response:

Timeframes for AHPRA responding to queries for the NHPOPC will be agreed and monitored. These timeframes will be included as a schedule to the MoU and subject to periodic reviews.

AHPRA has also revised the response timeframes in its new Administrative Complaints Policy which will be reviewed after one year as follows:

- change from 1 business day to acknowledge to 2 business days to acknowledge all complaints,
- change from 2 business days to respond to 5 business days to respond to Stage 1 complaints.

The timeframes to respond to Stage 2 complaints will remain as originally approved.

The Ombudsman has confirmed that she is comfortable with these timeframes and considered that this would assist to ensure consistent delivery of promised timeframes.

4. NHPOPC should make greater use of its preliminary inquiries power to resolve matters without investigation. It needs to reach agreement with AHPRA regarding boundaries for this and when it needs to be done with a formal notification that section 7A of the *Ombudsman Act 1976* (Cwlth) is being used. The process should be as informal as possible to avoid delays. AHPRA staff will need to know and understand the process and parameters that have been agreed. It may assist NHPOPC staff to have guidelines and supervision along the lines of the Commonwealth Ombudsman's policy (adjusted to reflect the boundary discussion with AHPRA) and some practical examples of the types of information that can be sought and questions that can be asked.

Joint response:

The NHPOPC and AHPRA agree that the two agencies will work together to implement an early resolution mechanism to efficiently and effectively respond to complaints brought to the NHPOPC. This mechanism may involve use of the NHPOPC's preliminary inquiries power.

The NHPOPC and AHPRA will establish a working group populated with representatives from both agencies to implement a trial of the early resolution mechanism and develop appropriate guidelines.

The NHPOPC will also develop specific guidelines for its staff setting out the criteria for early resolutions using the preliminary inquiry power.

5. NHPOPC should invite AHPRA staff to visit annually and provide a training session on relevant AHPRA practices and procedures.

Joint response:

These training sessions will be scheduled on at least an annual basis.

6. In rolling out its new administrative complaints policy, AHPRA should ensure staff are educated about the importance of the independent Ombudsman's role and the way that NHPOPC oversight and input adds value to AHPRA's customer services. This messaging needs to be reinforced by more widespread sharing of de-identified outcomes from NHPOHC investigations and other complaints work. The findings and outcomes from specific cases should be sent to relevant AHPRA managers for feeding back to the individual staff concerned in an appropriate, non-punitive way. Having administrative and NHPOPC complaints as a standing agenda item at the Regulatory Management Committee meeting should be part of this as it sends a powerful message and strengthens governance. The Ombudsman could be invited to attend these meetings quarterly and provide feedback on how the interface and, in particular, early resolution, is working.

Joint response:

Information about the role of the NHPOPC will be integrated into the AHPRA staff induction program.

Feedback loops to AHPRA staff will be strengthened by improved communication on the outcomes of NHPOPC review.

Regular data on complaints will be included on the agenda of the AHPRA Regulatory Performance Committee.

The Ombudsman will be invited to meet with the Agency Management Committee and the NRAS Forum of Chairs at least annually to provide feedback on the interface with AHPRA and National Boards.

7. Current arrangements for sharing documents and other information should be reviewed and advice sought from the relevant AHPRA business unit about technical ways to simplify access for NHPOPC and reduce the impost on AHPRA staff where a large amount of sensitive information² is involved. Particular consideration should be given to:
- Including in the current intranet improvement project, access for NHPOPC staff to AHPRA policies and procedures (once they are all in the same place).
 - Different ways in which NHPOPC can have electronic access to case related information depending on the amount of documentation needed, such as NHPOPC officers attending AHPRA in Melbourne and being given access through a computer there; certain NHPOPC staff having remote access with various controls and limitations placed on it.
 - Training requirements so that NHPOPC staff know how to use the system and what relevant information is available to them.

Joint response:

Options for streamlining information exchange protocols and arrangements will be further considered as part of the MoU review.

² Wherever possible the least formal means of information sharing should be considered – with most ombudsmen this is use of email despite the privacy and security risks it entails.