

FINAL REPORT

Review of interface between AHPRA and NHPOPC

Rae Lamb, 26 March 2019

Executive summary

The importance of having an independent ombudsman able to assess complaints and make judgements about the fairness and effectiveness of the processes followed by a decision making agency, cannot be overstated. It enhances public trust in the decision making processes, particularly those of Government agencies and regulators.

The Australian Health Practitioner Regulation Agency (AHPRA) recognises this and is working with its Ombudsman, the National Health Practitioner Ombudsman and Privacy Commissioner (NHPOPC) to ensure complaints about it are valued and responded to as quickly and appropriately as possible.

Both agencies have been working to improve their internal processes and procedures to strengthen the handling and response to such complaints. During this review it was clear that staff from both agencies have a tremendous amount of professional respect for each other and support changes made to date. Where criticisms were raised, it was in the interests of identifying areas for further improvement.

There are issues with the interface between the two agencies which, in the face of ongoing heavy workloads and rising complaints work, are causing delays and a disproportionate and less efficient approach to some complaints. Formal notifications and investigations are being used more than should be necessary. Appropriate outcomes for complainants are sometimes taking too long and unnecessarily formal processes to achieve.

NHPOPC and AHPRA need to engage earlier in the assessment of complaints with a focus on what AHPRA can do to assist early resolution. There needs to be more flexibility in the ways NHPOPC can engage with AHPRA on complaints, with an escalated approach to formality. NHPOPC needs written guidance for staff in deciding how to handle complaints, in the interests of consistency and transparency.

For this to be successful, AHPRA will need to actively commit to ensuring it has the capacity to work with NHPOPC earlier and less formally on complaints, as it rolls out its new administrative complaints process and policy. Culture change is also needed within AHPRA and better arrangements for information sharing.

I have set out the information on which these observations are based along with my conclusions and recommendations in the following report.

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Background

In February 2019 the National Health Practitioner Ombudsman and Privacy Commissioner (NHPOPC) and the Australian Health Practitioner Regulation Agency (AHPRA) jointly commissioned me¹ to independently review the interface between the two agencies.

There has been, and continues to be, a significant increase in complaints to the NHPOPC, particularly about AHPRA and the various national health practitioner boards (National Boards) handling of registrations and notifications about registered health practitioners.

In the first six months of this financial year, approaches to NHPOPC were tracking at 34 per cent up on the same period in 2017–18. It received 47 per cent more complaints in the first half of 2017–18 compared with the same period the previous year².

The NHPOPC conservatively estimates its complaints and enquiries workload this financial year will increase by around 22 per cent (based on the average number received each month)³.

The office is also taking on significant additional functions which will increase its workload.

Increased complaints to NHPOPC also mean additional work for AHPRA in providing information and responding to these matters. It too has been receiving a growing number of complaints directly to it about its process and service delivery (administrative complaints). Last year it commissioned an external audit of its administrative complaints handling. This found inconsistencies in complaints processes and practices across the AHPRA state offices. The audit identified the need for stronger governance, and better process and technology, as well as the need for an overarching internal complaints framework with clearly defined accountabilities and improved reporting⁴. In response AHPRA has developed a comprehensive new administrative complaints policy and procedure and appointed a national complaints manager to lead this work. It is recruiting two dedicated staff to assist with complex matters and NHPOPC work. It is also planning training and greater support for frontline AHPRA registrations and notifications staff to empower and enable them to more successfully deal with simple concerns early and directly.⁵

In light of these developments, NHPOPC and AHPRA decided the time is right for fresh eyes to review the interface between them. I was asked to look for opportunities to improve the efficiency and effectiveness of dealing with Ombudsman complaints, with particular focus on complaints about notifications. This is to ensure the work is sustainable and achieves the best possible outcomes for complainants.

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

² Workload forecasting document, NHPOPC

³ See footnote 2

⁴ Deloitte Audit of Internal Administrative Complaints, February 2018

⁵ AHPRA Amended Administrative Complaints Handling Policy and Procedure, December 2018

Scope

In reviewing the interface between the two agencies in dealing with complaints about AHPRA and the National Boards I was asked to consider:

1. Opportunities to streamline the interface and achieve earlier and quicker triage and assessment of complaints to NHPOPC, to facilitate earlier resolution wherever possible.
2. Thresholds and criteria for different approaches to complaint resolution by NHPOPC in areas such as investigation, transfer (including warm transfer), and assisted referral of complaints.
3. New models and ways of working which respond to common themes and achieve outcomes for complainants. Eg. The need for better explanation of regulatory processes and outcomes, and the potential role of 'audit' of AHPRA's response to complaints.
4. Opportunities to make the sharing of information and documents more efficient during NHPOPC investigations.
5. Lessons learned from experience to date and from other Ombudsman and complaints handling bodies.

I was asked to make recommendations for improvements to optimise the interface and support better ways of working which streamline processes wherever possible and build on the new administrative complaints process within AHPRA.

Resourcing levels are out of the scope of this review.

Method

A full list of the documents and other materials considered can be found at the end of this report along with a list of people spoken to. I have:

1. Reviewed all relevant information provided by NHPOPC and AHPRA and identified and/or requested by me.
2. Interviewed by telephone key staff at NHPOPC and AHPRA.
3. Obtained and considered information about complaints handling models in other Ombudsmen, including interviewing key staff.
4. A draft report will be given to both agencies for consideration and comment/questions and these will be taken into account prior to finalisation.

A meeting/workshop with key NHPOPC and AHPRA staff is anticipated following finalisation of my report.

Interface between NHPOPC and AHPRA

The NHPOPC receives complaints about AHPRA and the National Boards' handling of registration and notifications as well as Freedom of Information and Privacy matters.

This review's focus is on notification and registration complaints - where the NHPOPC's role is examining concerns about the process and making recommendations. It cannot examine or change a notification or registration decision.

Like the Commonwealth Ombudsman, NHPOPC operates under the *Ombudsman Act 1976 (Cth)*. This means that once complaints are assessed and deemed to be within its jurisdiction, essentially it has three options - it can decide to make preliminary inquiries to help it determine whether to investigate; it can decide to investigate, or it can decide not to investigate. The latter decision can be made initially or following either of the previous two steps.

When complaints are received by NHPOPC and are in scope, staff first consider whether the complainant has approached AHPRA and tried to resolve their concerns directly with them. Complainants are encouraged to do so. Another early consideration is whether the matter complained about has been finalised by AHPRA or is still ongoing. NHPOPC staff also try to establish what outcome the complainant expects to achieve through the complaint and discuss what they can and can't do to assist.

Based on NHPOPC and AHPRA staff interviews with me and the NHPOPC process flowchart (below) it is common for NHPOPC to seek further information from complainants in assessing new complaints but uncommon for it to informally talk to AHPRA at this stage.

NHPOPC has discretion to decline complaints on various grounds such as age (eg. it has been more than 12 months since the matter occurred), and the availability or involvement of other avenues of review and appeal, legal proceedings and entities such as tribunals, coroners and the police.

NHPOPC staff say that in practice it is difficult to decline to investigate matters on the grounds of age as people will say the reason they have waited more than 12 months to seek NHPOPC assistance is because they did not know about the Ombudsman earlier.

A Memorandum of Understanding (MOU) and a written Acknowledgement of Administrative Arrangements, guide the interface between the two agencies. The latter document in particular sets out a formal process where NHPOPC must, among other things, quote the source of its power to investigate in notifying and requesting information. Even where preliminary inquiries are made, formal written notice is given that this power is being used when information is requested.

Under these arrangements the Ombudsman and AHPRA's CEO and senior managers or team members from both agencies, meet at least quarterly to discuss trends and any concerns and strategic issues. In practice, there are monthly interagency meetings.

The MOU and the supporting administrative agreement date back to 2016 and are past their review dates.

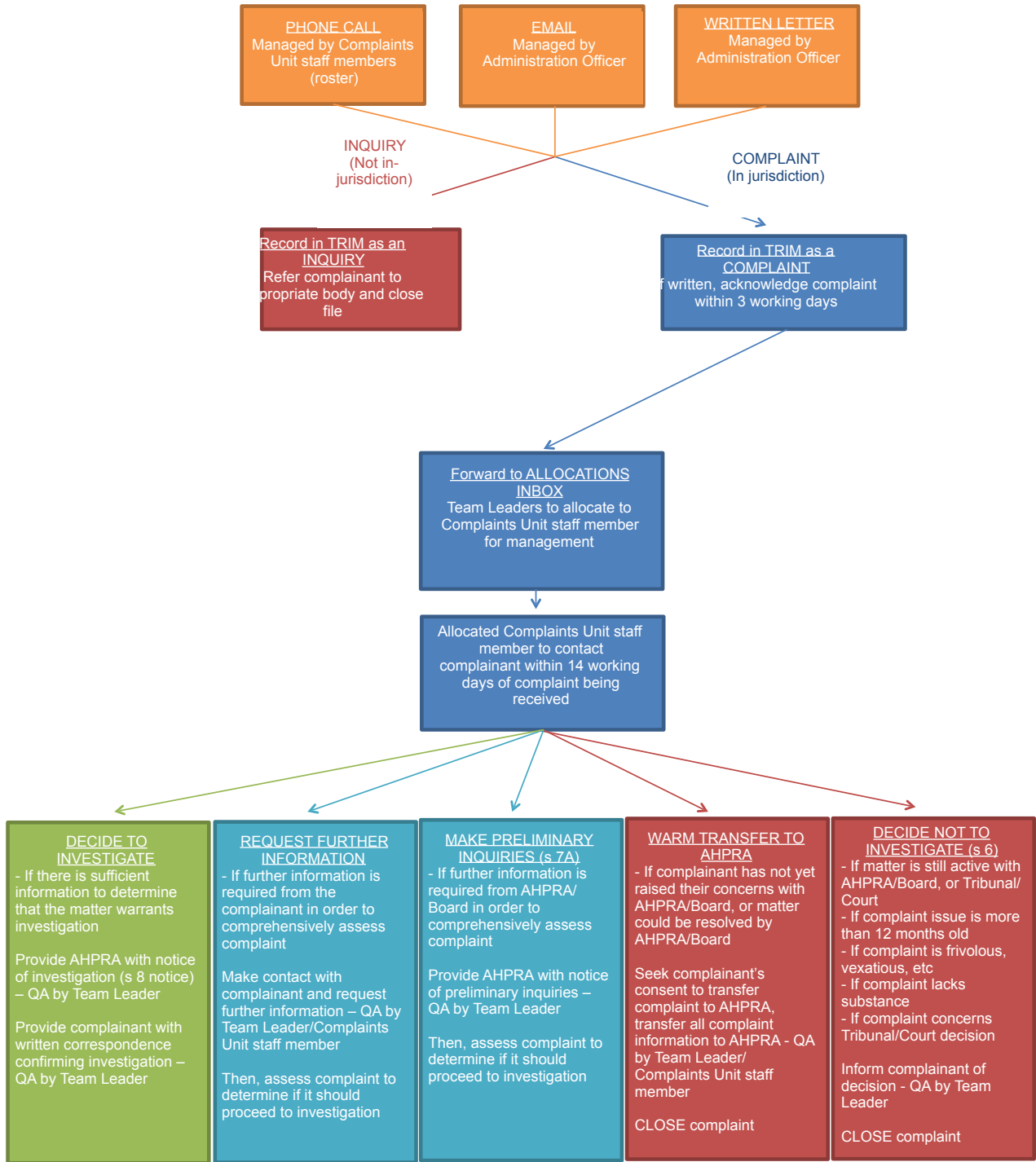
There are a relatively small numbers of reviews sought in relation to NHPOPC processes.

Warm transfers

Last year a warm transfer process was introduced where, with the complainant's agreement, the complaint is transferred by NHPOPC to AHPRA for resolution.

Warm transfer is now commonly used where a complainant has not raised their concern with AHPRA in the first instance and given AHPRA reasonable opportunity to address it.

Summary of NHPOPC frontline process



Staff from both agencies say warm transfer is working better now than in the first year, when there was a high failure rate with people returning to NHPOPC because AHPRA had not replied to them within the agreed timeframes⁶ or they were unhappy with AHPRA's response. An administrative officer in AHPRA is now responsible for monitoring due dates and following up late responses. NHPOPC staff say complainants are generally happy to agree to a warm transfer on the basis it may lead to a quicker outcome for them.

Both agencies report that the warm transfer process is more successful with complaints about registration matters than notifications. This is attributed to the nature of the issues raised. Concerns about delays or lack of communication or updates when someone has applied for registration can be quickly and satisfactorily addressed once transferred to AHPRA. Issues relating to notification are harder to resolve given the complainant is often also unhappy about the decision.

Between 1 July 2018 and 31 January 2019 NHPOPC warm transferred 84 complaints to AHPRA. This is 26 per cent of all complaints received in this period. Most of these transfers were registration complaints (54 per cent). Forty per cent related to notifications.

Nineteen of the 84 complainants (23 per cent) returned to NHPOPC. Most of these (58 per cent) were not happy with AHPRA's response. Some still had not received acknowledgement or a response in the agreed timeframes (42 per cent).

Notification matters accounted for 84 per cent of the failed warm transfers. This is disproportionate to the number of warm transfers made about notifications (40 per cent)⁷ and supports the staff observation that warm transfers are more successful in resolving registration complaints.

After a warm transfer, the matter is closed at NHPOPC. There is no feedback regarding the outcome unless the complainant is unhappy and goes back to NHPOPC.

The Ombudsman Richelle McCausland says generally about 30 per cent of all complaints are warm transferred, about 30 per cent are closed without investigation by NHPOPC and about 30 per cent are investigated. The remainder are dealt with in other ways such as referral to other agencies or are withdrawn.

Preliminary inquiries and investigation

NHPOPC is a small office and the complaints handling powers are widely delegated to staff, as in many such agencies. The case manager makes the decision on whether to warm transfer, make preliminary inquiries, or investigate or not - usually in consultation with their team leader.

It takes up to 14 days to make the initial assessment, decide how to proceed and draft correspondence. Generally AHPRA is not engaged with about the complaint until after this. It is usually contacted in writing. There are exceptions where early telephone calls have been made but NHPOPC staff say this has had mixed success. If there is not a prompt response to a call, it can delay the case.

⁶ AHPRA has agreed to acknowledge receipt of the complaint (to the complainant) within 7 days and respond within 45 days - complainants are told this.

⁷ NHPOPC data and analysis

Both agencies acknowledge that there are sometimes issues with duplication - where NHPOPC warm transfers a case, or begins an investigation based on information from the complainant and notifies AHPRA, then finds AHPRA is still dealing with either the matter at issue or an administrative complaint⁸.

Like other ombudsmen, the NHPOPC can ask questions and gather information prior to going to an investigation and can resolve a complaint relatively informally as a result of this. It can do this under its formal power to make preliminary inquiries⁹ to seek information to help it decide whether to investigate.

NHPOPC staff say there have been cases successfully resolved where, for instance, they have worked with AHPRA and it has telephoned and spoken to complainants or written to them. It has sometimes involved clinical advisors to explain decisions. This can work well when someone has come to them with new information they think a National Board needs to consider, or wants a status update.

Last year 31 cases were resolved by NHPOPC working with AHPRA and/or National Boards without investigating¹⁰. This is significantly more than the seven cases closed through 'assisted resolution' in 2016-17. It achieved good outcomes for complainants such as a better explanation or an apology. NHPOPC says it can take a long time and considerable work to make it happen as it needs various levels of approval at AHPRA and discussion about scope. At times an investigation has had to be notified to get to this same outcome.

NHPOPC staff say they would like to resolve more complaints informally and without investigating but based on previous experience they are not confident AHPRA has the capacity (given its workload, staffing and the way it deals with administrative complaints) to work with them more often to resolve these matters informally and quickly.

As a result, AHPRA is frequently formally notified of an investigation in writing without preliminary inquiries being made first. This is often the first it hears of the complaint to NHPOPC. As part of the notification, initial information is requested.

NHPOPC staff say directly notifying a formal investigation is often quicker than other approaches to the complaint. It helps to reduce the delays that come when responses to a preliminary inquiry are late and/or incomplete or inadequate and/or the issues are such it is possible they will need to investigate anyway. They have had difficulty getting prompt responses to previous preliminary inquiries. For instance, a preliminary inquiry made at the end of last October was not responded to until January¹¹. Another response was requested on 12 November 2018 and received on 7 January 2019¹².

⁸ AHPRA was aware of seven warm transfers so far this year, and 'at least' one investigation last year where it was already dealing with a complaint and it came to them again from NHPOPC.

⁹ S 7a of the *Ombudsman Act 1976*

¹⁰ NHPOPC Annual Report 2017-18

¹¹ Case reference OCF/18/389

¹² Case reference OCF/18/424

Notifying an investigation also addresses concerns that have been expressed to NHPOPC by AHPRA staff that in seeking information using the preliminary inquiries power they are in effect carrying out de facto investigations under the wrong power, or AHPRA is not sufficiently protected in responding and providing information.

NHPOPC staff say at times when they have asked targeted questions in making preliminary inquiries they have had pushback on the basis they are overstepping the mark by asking questions and seeking information that suggests they have made up their mind and/or are carrying out an investigation.

Previously the office used its preliminary inquiry powers much more widely and did few investigations. Since the appointment of the current Ombudsman, it has moved away from this to put more rigour into its processes and make them more in line with those of the Commonwealth Ombudsman. This was done in consultation with AHPRA.

For their part, AHPRA staff acknowledge that at times they have found questions and information sought in preliminary inquiries to be wide ranging and high volume and more appropriate for an investigation. They also raise concern that sometimes the focus seems to them to be more on the merits of the decision, which is out of scope, than the process.

Nonetheless they say there are matters that are being investigated that could be resolved less formally and without investigation, if telephone contact was made or meetings held during NHPOPC's early assessment of complaints. They point to matters where the outcome is likely to be a better explanation of a notification decision, or those where NHPOPC knows AHPRA already has action underway to improve relevant processes so further similar recommendations are potentially unnecessary. They question what, if any, criteria NHPOPC considers in deciding to investigate a complaint because it is not clear to them.

Criteria for investigation

NHPOPC has no set written criteria or guidelines regarding the types of complaints and issues that should be investigated or managed less formally and what should be considered in making these decisions. Nonetheless the NHPOPC staff consistently report that when a complainant has already been to AHPRA with their complaint and remains concerned, or a warm transfer has been unsuccessful and the complainant returns to NHPOPC, they will usually directly move to an investigation.

NHPOPC also goes directly to an investigation on occasions where someone has not raised their concern directly with AHPRA but their personal circumstances are such that this is unreasonable to expect; or the complaint issues are so serious and/or potentially systemic that it is obvious an investigation is needed and it is not appropriate to send the complaint to AHPRA.

Other considerations in deciding to investigate are whether the complainant has clearly identified or can articulate a potential administrative error by AHPRA or a National Board rather than simply being unhappy with the decision. Given the experience with warm transfers another consideration is increasingly whether the complaint is about a notification process.

As noted earlier, the Ombudsman says generally about 30 per cent of complaints are investigated. Last year it was fewer than this. In 2017-2018, 414 complaints were closed and 87 of these (about 21 per cent) were closed following an investigation.

Notably, more than half the investigations (55 per cent) were closed on the basis that NHPOPC gave the complainant a better and further explanation of the reason for the decision or action complained about. No major deficiency in the administrative actions of AHPRA or a National Board, was found.

Information sharing

The MOU and administrative agreement provide that AHPRA will respond to information requests in 14 days. As noted earlier, information is usually sought in writing regardless of whether it's a preliminary inquiry or an investigation. AHPRA can seek extensions of time for its responses.

Also as indicated earlier, delayed responses are an issue. NHPOPC analysis of AHPRA response times for investigations in the last half of 2018 shows that 77 per cent of responses (30 of 39 investigations) did not arrive within 14 working days of the request. The average time taken by AHPRA to respond to a request for information at the commencement of an investigation was 23 days. The average overdue period was 13 days. The longest was 73 days.

An extension of time was sought for 19 of the 30 overdue responses (63 per cent) but the response was often not provided by the new due date and NHPOPC say the responses were often incomplete (requested documents or information were not provided).

Queensland is the AHPRA office that most frequently failed to meet the 14 day timeframe in the period examined (10 overdue responses).

During the same period, six preliminary enquiries were made by the NHPOPC. In four of these (approximately 67 per cent) the responses from AHPRA were late. The average time taken by AHPRA to respond to preliminary enquiries was 18 days. The average overdue period was 27 days. The longest overdue period was 58 days¹³. Of the four overdue responses, an extension of time was sought only once (25 per cent).

AHPRA staff say it can be very time consuming and labour intensive identifying and gathering the information requested. Their system does not lend itself to one person getting notice of an inquiry or investigation and then being able to call up the case electronically and get a good sense of it. It takes a lot of manual work to identify and piece together the information, sometimes from multiple sources. They would like to reduce the transactional burden.

Also AHPRA's policies and procedures are not in one place. The Regulatory Operations Procedural Documentation Repository is used mainly by the registrations team. It's not complete in terms of policies and process documents used for other regulatory functions such as notifications. Some documents are also held on an intranet site. There is a project underway to improve this but meantime it is acknowledged that even for AHPRA staff, finding relevant process and policy documents can be time consuming and challenging.

¹³ Case reference OCF/18/389

NHPOPC staff who have worked for other ombudsmen say when a complaint is received usually the onus is on agencies to explain why the ombudsman should not investigate. They have found many agencies will do whatever they can to assist the relevant ombudsman to conclude matters informally and/or during preliminary inquiries and avoid investigation. They don't get a sense of this response from AHPRA.

The Ombudsman Richelle McCausland acknowledges that when AHPRA has not provided its response in a reasonable time despite more than one request, it is open to her to simply proceed on the basis of the information she holds. In such cases NHPOPC could end up making findings and recommendations based on the complaint and the notification decision letter provided by the complainant. She has not taken this step to date, choosing instead to escalate concerns about delays for individual cases to AHPRA senior managers and the CEO Martin Fletcher.

Both agencies say that after the initial information request is met, NHPOPC frequently goes back seeking further information during its investigations. NHPOPC says there are often gaps or missing information, or it identifies further questions that need to be answered. AHPRA staff question the need for some of the information that is asked for both initially and subsequently.

NHPOPC says it has been working to improve the clarity and quality of its information requests. There is room in the investigations notification template now for staff to insert targeted questions but there has been AHPRA feedback that responding to such questions is onerous and it would rather provide documents and information. NHPOPC staff say they have a good idea of the key relevant documents to request from AHPRA when making inquiries or notifying investigations. Nonetheless they say it would help if AHPRA provided more guidance and analysis and answered specific questions rather than just uploading sometimes large amounts of information and leaving it to NHPOPC staff to work it out.

NHPOPC staff have not had training by AHPRA to learn more about its policies and processes and key documents although an AHPRA manager said it has been talked about.

Access to documents

NHPOPC does not have direct access to AHPRA policies and procedures or case information. As much of the case information is sensitive, care is needed in how it is shared.

When notifications are made, the requested documents are uploaded by AHPRA onto a platform known as KiteWorks for access by NHPOPC. Both agencies say this is better than previously when information was put on a secure USB and picked up by NHPOPC staff. However for the reasons outlined above, staff from both agencies find the information sharing process is onerous when large amounts of documents are needed.

Recently a new method for gathering information from AHPRA was explored as part of an NHPOPC review of how AHPRA handles anonymous and confidential notifications. The Terms of Reference for that review state that NHPOPC will review 20 notification files where the notifier was either anonymous or confidential. When these files were requested, NHPOPC was given only two documents per file.

After NHPOPC requested access to AHPRA's files to obtain further relevant information, AHPRA set up a Melbourne office room with computer access to its systems. NHPOPC staff could not amend or change files and it was agreed beforehand which files would be reviewed, so it was very clear what the search parameters would be.

NHPOPC found this worked well and it obtained the relevant information quickly. Notably, the staff also discovered there is more helpful information on AHPRA's systems than what they are regularly provided with.

Administrative complaints handling changes at AHPRA

Like NHPOPC, AHPRA considers more complaints could be successfully resolved without need for investigation, particularly given the most common outcome of an NHPOPC investigation is a better explanation to the complainant. It is keen to move away from what one manager described as 'letters at twelve paces' and engage earlier, more regularly, and more informally with NHPOPC. Its new administrative complaints policy and associated changes sets up a framework that should assist with this.

Senior AHPRA managers spoken to believe having a national complaints manager to coordinate and oversee the work, will improve the quality of their responses and reduce the inconsistencies and inaccuracies that came with responses to NHPOPC from different people around the country. They recognise this has to be an oversight and leadership role, with wider staff involvement. New training and supporting materials are going to be produced to assist notifications and registration staff to deal with administrative complaints and work is planned internally to raise the profile of administrative complaints and the new complaints policy and procedure and what it means for staff.

The AHPRA managers recognise cultural change is also needed so that complaints are seen more positively by AHPRA staff and individuals feel less defensive when responding to complaints in the first instance or when NHPOPC seeks information. They acknowledge that busy staff at times find it difficult seeing administrative complaints as a priority when they have so much else to do.

Under the new policy currently being rolled out, there will be three categories of administrative complaints. Those that can and will be dealt with early and directly and relatively informally through training and better supporting and empowering frontline AHPRA staff to address people's concerns; and those that are more complex or have gone to NHPOPC that need the oversight and involvement of the national complaints manager and her team of two¹⁴.

Along with the stakeholder engagement work AHPRA is doing to improve communication and customer experience¹⁵, the new policy should, with time and commitment, reduce numbers of complaints that go to NHPOPC about AHPRA. However it includes some tight timeframes¹⁶ which could lead to further NHPOPC complaints if these prove too aspirational to realistically achieve.

¹⁴ Currently being recruited and will be at the same level of seniority as AHPRA investigators.

¹⁵ For instance, since September 2018 notifications team members generally telephone notifiers before writing to them with decisions.

¹⁶ One business day to acknowledge easy complaints with a response in two days; one business day to acknowledge more complex complaints with 10-20 days to respond.

In AHPRA decision letters, the recipients are usually told to call the case manager if they have any questions, rather than given details of how to complain to, or raise concerns with, AHPRA and/or NHPOPC. There is some concern internally that if such information is in the standard letters, it will simply encourage more administrative complaints and/or send people to NHPOPC rather than getting concerns raised and dealt with wherever possible by the AHPRA case manager. If people ring with concerns that cannot be addressed directly then they are given information orally about how to make a complaint to AHPRA.¹⁷ If they are unhappy with AHPRA's handling of their complaint, they are told about NHPOPC. There is no process at AHPRA for internal review of concerns about administrative complaints handling prior to sending people to NHPOPC.

Administrative complaints and NHPOPC investigations are not a standing item at AHPRA's agency management or executive management committees although the CEO gets a weekly status report on key matters and a monthly data report from NHPOPC goes to AHPRA's national executive and the National Boards.

AHPRA acknowledges that these reports and any discussion is somewhat limited and could be improved by having the Ombudsman attend such meetings more often to discuss trends and by strengthening internal complaints reporting in line with the recommendations from the audit. CEO Martin Fletcher says that Regulatory Management Sub-Committee of the Executive could be the place to strengthen the complaints oversight and reporting at a governance level.

Senior staff from the CEO down are often involved with complaints on a case by case basis when they are escalated, and through the regular meetings with NHPOPC.

Closing the loops

Lessons from complaints are fed back by NHPOPC to AHPRA through formal comments and suggestions for improvement letters at the conclusion of investigations, as well as more generally through correspondence and meetings. Where there are critical or adverse findings and recommendations or comments are going to be made, AHPRA has the opportunity at senior levels to submit a response before investigations are finalised. AHPRA does not see the final letter sent to complainants by NHPOPC. Each party receives tailored correspondence.

As part of the new administrative complaints policy and process changes, AHPRA is looking to improve the feedback to its staff, including from NHPOPC cases. NHPOPC is not clear whether the original staff involved in cases complained about, are told the outcome and findings.

AHPRA uses an internal engagement dashboard to provide some feedback to staff with positive messaging but acknowledges that getting such information out to busy staff across the country is challenging.

Staff don't commonly see the comments and recommendations from NHPOPC or see and hear stories of how administrative complaints are handled internally or through NHPOPC.

¹⁷ There is also information on how to complain on AHPRA's website, and about NHPOPC

Other Models

NHPOPC has much in common with other ombudsmen in Australia and New Zealand despite its smaller jurisdiction covering just the one agency, AHPRA.

As noted earlier it works under the same legislation as the Commonwealth Ombudsman and has modelled some of its approach to complaints on practices there. Its powers are also similar to those of ombudsmen in large states like New South Wales and Victoria. The New Zealand Ombudsman doesn't have a preliminary inquiry power but is essentially empowered as the others are to gather information to assess complaints and inform decisions whether to investigate. It can formally notify agencies and investigate.

Each of the four ombudsmen finalise most complaints about Government agencies using what they call early resolution, without formal investigation. They do this for 80 to 90 per cent of complaints. All report that it is rare to notify an investigation on receipt of a complaint without making inquiries and engaging with the agency first.

All essentially rely on their preliminary inquiry powers (in New Zealand's case, information gathering pre-notification) when they resolve complaints informally. They usually close such cases on the basis of deciding not to investigate for various reasons.

All acknowledge that successfully resolving complaints this way and achieving good and timely outcomes for complainants while at the same time reducing formality and administrative burden depends heavily on strong co-operative working relationships with agencies.

All acknowledge and actively manage the risk that in seeking information and remedial action by agencies without formally notifying investigations they must avoid carrying out de facto investigations without the right authority and protections.

Staff from the different ombudsmen say that agencies have different thresholds for this. Some are prepared to do whatever it takes to resolve a matter without investigation while others are quick to push back.

In New Zealand there is a particular issue that some agencies prefer an investigation to be notified because it brings an exemption from freedom of information¹⁸ requests.

Of the four agencies spoken to, the Commonwealth and NZ Ombudsmen are the most conservative in using preliminary or pre-notification powers to ask questions and seek information from agencies to resolve complaints early and without investigation. Even so, staff at both offices are actively exploring how they can use early resolution more extensively.

In New South Wales and Victoria preliminary inquiry powers are used widely.

Relevant key points of interest for each of the four models are set out below.

¹⁸ Official Information is the term used in NZ

Commonwealth Ombudsman

On receipt of an in-scope complaint about a Government agency Commonwealth Ombudsman staff consider if it can be dealt with using early resolution. If so, once they have enough information from the complainant, under their s7A preliminary inquiry power they ask a few relatively simple questions of the agency, such as seeking a copy of a decision letter and straight forward information that will help them understand the matter.

Like NHPOPC they have warm transfer agreements with some agencies. They use these even where people have already been to the agency directly with concerns, as having the Ombudsman's staff involved can be enough to make a difference the second time round. They are in discussion with some agencies about setting up feedback loops so they receive better information about the outcomes of these transfers.

Where early resolution is the approach, they now go further than they have previously in trying other options such as writing to agency heads saying this is what we have seen, these are the issues, and seeking a response that could resolve it.

The Commonwealth Ombudsman had stopped using the preliminary inquiry power because of concern staff were using it to investigate without enlivening the appropriate powers under section eight of their legislation. However, having seen other ombudsmen using it more widely, this has been reconsidered. They have put internal controls in place to mitigate the risk.

They have a written policy¹⁹ which sets out that preliminary inquiry can be used only once in each complaint - with rare exception such as when the wrong document is sent in error by an agency. Only basic and straightforward inquiries may be made, and there are internal quality assurance and approval processes.

Staff are told the guiding principle is 'to use time as efficiently and effectively as possible' and that preliminary inquiries are expected to result in the following:

- Confirmation there is no jurisdiction or a discretion not to investigate applies.
- Confirmation that an investigation is not warranted (for example after obtaining a relevant document).
- Confirmation a warm transfer is appropriate.
- An investigation is not required as the information that has been obtained makes it unnecessary - for example a complaint that an agency has not responded to concerns and the agency advises it will do so.
- Confirmation an investigation is warranted.

Given the emphasis on using time well and avoiding delay, the policy also states that where it is clear in complaint assessment that an investigation is warranted based on the merits of the issue, the office will commence an investigation and seek information formally rather than using preliminary inquiry first.

The policy says staff can ask basic, factual questions or obtain specific information to determine whether the action or decision complained about is in jurisdiction, or whether a discretion under their legislation applies.

¹⁹ Preliminary Inquiries. How to use section 7a preliminary inquiry powers, policy endorsed April 2018.

In appropriate circumstances, they can use preliminary inquiry to obtain key documents from an agency quickly instead of waiting for a complainant to provide the information.

Contact should be made with the agency within a day of approval to use preliminary inquiry and agencies are given five days to respond.

Separate to this, with some of the bigger Government departments where there are many complaints, the office has developed specific decision making tools and guidance material for staff in assessing complaints and determining if they can be warm transferred to the agency.

With most complaints being closed in early resolution, the Commonwealth Ombudsman uses internal tracking and monitoring to look for trends and systemic issues that need following up separately through investigations or own motions, or by engaging with the relevant agency directly.

Information sharing is done in various ways. Most contact is in writing due to Government agency preferences. Different agencies provide requested information in various ways - by email, through a secure information service, or the Ombudsman's staff will visit the agency to access it. If there is so much information that a site visit is needed, usually an investigation is notified.

Where cases are closed without investigation, people can seek an internal review of the process. Most ombudsmen, including NHPOPC have an internal process. What is interesting with the Commonwealth Ombudsman is that while it is not a statutory right, it is offered and there is a two stage process with internal reconsideration encouraged first.

A review request is assessed by a manager and reviews are assigned to dedicated review officers. Before a review, people are encouraged to raise concerns directly with their case manager and seek a reconsideration by that person. It is thought this initial step may be the reason why fewer than one percent of complaints resulted in reviews last quarter.

The office is reviewing its KPIs for timeframes and considering if 20 days is a reasonable time in which to expect to close most early resolution matters.

A separate branch of the office handles complaints about 'industry' - non-government agencies such as Australia Post, private health insurers and those dealing with overseas students. It has some additional resolution tools such as mediation, depending on the jurisdiction.

Of most interest is that Commonwealth Ombudsman staff find they generally don't need to quote their formal powers in seeking information and action from the 'industry' agencies. They say it's a different paradigm when there is an agency focus on keeping customers happy. There is also less constraint in relation to the complaint outcomes that can be negotiated compared with government agencies. For instance there may be financial payments.

Relevant to all types of complaints is the amount of work put into getting good relationships with both Government and industry agencies. Commonwealth Ombudsman staff say an agency's attitude to complaints handling and resourcing it internally makes a difference to how informally and quickly complaints can be resolved.

Trust by the organisation in the dealings of the Commonwealth Ombudsman is seen as vital. So is recognition that the Ombudsman adds benefit to the agency's dealings with customers and there is value in complaints and in working with a specialist organisation that understands complaints for the benefit of the business.

NSW Ombudsman

The NSW Ombudsman has an extensive written fact sheet²⁰, publicly available on its website that sets out the criteria that guide staff in accepting or declining complaints. Preference is given to complaints about:

- systemic (structural or procedural) deficiencies in public administration
- individual cases of serious abuse of power
- significant public interest issues
- an agency's failure to properly deal with complaints
- issues which, if investigated, are likely to lead to recommendations resulting in significant changes or amendments to law or policies
- significant cross-jurisdictional issues (ie. issues involving or concerning the conduct or policies of two or more agencies or their staff)
- sensitive issues which are unlikely to be (or be seen to be) properly addressed by the agencies concerned (due to such factors as the seniority of the staff who are the subject of the allegations, conflicts of interest on the part of the agency or its senior staff, significant sensitivity, etc), or serious maladministration or detrimental action as defined in the *Public Interest Disclosures Act 1994*.

Consideration is also given to the circumstances of the complainant and whether a matter can be quickly resolved with their intervention.

Some of the grounds set out in the same fact sheet for declining complaints are statutory. Others have been put in to ensure complaints are about more than just the merits of a decision or someone's advice or opinion.

Most cases start informally with information gathering. The staff take the most informal approach possible and escalate as needed. They telephone or email inquiries to agencies. If the response is unsatisfactory they formalise the inquiry with a letter to the agency. There are designated people who are the first point of contact for them in making phone calls and sending emails to agencies.

For straight forward matters NSW Ombudsman staff may ask the agency to take action such as telephoning the complainant to discuss how a matter can be addressed. Requests for information at this stage range from simple and brief to pages of questions.

Agencies are given 21 to 28 days to respond and can ask for more time. The quality of responses is an issue and can mean subsequent inquiries are needed or a meeting is arranged. Where delays and/or the quality of the response becomes a concern, it is escalated to senior staff who may contact their agency counterpart. An investigation may be considered.

²⁰FS_PSA_25_Complaint_assessment_criteria_web

Preliminary inquiry powers are used not only for deciding whether to investigate but also to resolve complaints by providing outcomes and explanations and to satisfy the ombudsman that no investigation is needed. More than 80 per cent of cases (80.6 per cent) handled this way are finalised within 16 weeks.

Where the NSW Ombudsman is unhappy with how a complaint has been responded to by an agency in early resolution but does not think it serious enough to warrant moving to an investigation, staff will draft a letter or 'mini report' to the head of the agency regarding the concerns and what needs to happen. They usually tell the complainant about this as part of finalising the case. Agencies tend to accept this use of preliminary inquiry powers as it avoids an investigation with the potential consequences that can bring.

In the 12 months from 1 March 2018 to 28 February 2019 the NSW Ombudsman made 39 suggestions to agencies following preliminary inquiries. In contrast, 57 recommendations were made following formal investigations.

Last year 60 per cent of 2411 complaints about NSW public sector agencies were either rejected at the outset or referred back to the relevant agency for resolution (with no report back). The remaining 40 per cent underwent preliminary inquiries ranging from simple phone calls to complex formal letters with multiple questions and requests for information and documents. About 40 per cent of these were closed to the Ombudsman's satisfaction or resulted in some suggestions for action by the agency. The rest were finalised due to satisfaction with the agency's explanation. Only three complaints resulted in a formal investigation.

The office is about to undertake a project to better define what goes to investigation. Generally, for a matter to be considered significant, it needs to raise potentially serious issues of public interest, evidence of serious maladministration or significant impact on the individual, be particularly complex (eg legal issues) and/or involve more than one agency or be a complaint from another agency.

If an agency has been a poor responder to complaints previously that is also considered in deciding whether to investigate. Media interest and the likely outcome such as comprehensive suggestions are also considered.

As with other ombudsmen, information sharing is challenging when there are large volumes of sensitive material involved.

In assessing complaints, NSW Ombudsman staff have access to the intranets of some key agencies so they can directly access relevant policies and procedures used by staff in those agencies. This means that at assessment they can at times work out a complaint and provide a process explanation to a complainant without engaging with the agency.

A few large agencies have also given the NSW Ombudsman access to their databases. Access is limited in various ways through the use of tokens, special log in arrangements, and designated staff. It has been negotiated. It is also monitored to guard against abuse.

The NSW Ombudsman has a secure portal on its website where agencies can drop information. It was set up for child protection reporting and is not widely used otherwise. Work is underway to see if the portal can be used more widely.

Staff from agencies that are subject to large numbers of complaints are invited into the office to give training so that ombudsman staff have better understanding of how the agencies and their systems work.

Victorian Ombudsman

Of the four models looked at, this office appears to be making greatest use of early resolution and informal processes to resolve complaints such that it has published a book of case studies²¹ showing the good outcomes that can be achieved.

In the case studies book, early resolution is described as “an approach to assessing complaints which prioritises identifying and resolving them at the first possible opportunity”.

It says the early resolution team focuses on resolution, working flexibly toward informal outcomes. The objective is to deal with a complaint quickly and to prevent issues becoming more complex. Staff are encouraged to think creatively about resolving disputes. In practice, this means working collaboratively with agencies – often on the phone – and making assessments about the prospects of resolving matters without the need for investigation.

This follows a decision about three years ago that they were spending too much time on simple matters and being overly bureaucratic by writing long letters seeking files and copies of policies and procedures. I was told ‘we don’t do that anymore’.

Now, once the Early Resolution team have established a complaint is not premature²² and is in scope, they make early informal inquiries including seeking a response from the agency. They almost always telephone the agency to tell it what the complaint is about and seek relevant information. They may ask for an explanation of the agency’s actions and ask it for a proposed resolution. Depending on what’s involved, they give the agency two days to a week to respond but this is open to negotiation.

Around 90 per cent of all complaints are finalised like this, in early resolution - usually within 30 days.²³ If this can’t be achieved the complaint is escalated to the assessment team who may make more detailed inquiries or - less commonly - decide to investigate. Where complaints are likely to involve voluminous documentation, or involve complex technical or legal questions, they may be sent straight to the assessment team. Other considerations include whether a certain agency or other similar complaints are being looked at by the office in relation to potential systemic issues, a poor track record by the agency for responding to complaints, and challenging complainant behaviour.

Where a complaint is going to be transferred from early resolution to assessment this has to be cleared by a senior investigation officer. Even in the assessment stage most cases are resolved without an investigation.

The Victorian Ombudsman’s office says initially there were challenges in getting agencies used to the new, less formal approach.

²¹ Complaints to the Ombudsman Resolving Them Early, accessed at www.ombudsman.vic.gov.au

²² The matter has been completed and the complainant has tried if they can to raise their concerns with the agency.

²³ 92 per cent last year according to the Annual Report

Now they can telephone and ask if they will consider doing something in relation to a complaint and the agencies are open to it. This is done under the provision in their legislation²⁴ which allows them to make enquiries to determine whether a matter may be resolved informally or needs to be investigated.

Page 29 of the Victorian Ombudsman's 2017-18 Annual Report features a useful flowchart for the resolution process which, similar to the process in NSW, suggests a largely stepped approach to all complaints with enquiries made before any investigation is considered. Notably, it states that an investigation is done when the matter cannot be resolved by the office and it is in the public interest. The starting point is trying to resolve most matters rather than investigating.

The Victorian Ombudsman's Early Resolution Policy²⁵ indicates early resolution is more likely where:

- the administrative action is clearly identifiable and uncomplicated in nature
- the parties are unlikely to resolve the matter promptly unless the Ombudsman intervenes
- an outcome is likely to be reached within a short time, whether this means mutually agreeable resolution or the complaint being closed after contact with the agency
- modest intervention is likely to support ongoing improvements in administrative practice being achieved by the Ombudsman in collaboration with the agency concerned.

The policy also sets out certain matters that are not suitable for early resolution. These include, but are not limited to:

- protected disclosures
- complaints and referrals where there is a legal obligation for the Ombudsman to conduct an investigation
- complaints where there appears to be administrative error and where an enquiry/ investigation with formal proposals/recommendations would be a more appropriate or effective means of the Ombudsman highlighting the error
- complaints involving unclear, complex and/or systemic issues and require detailed consideration.

Where information is requested from public agencies it is usually sent to the Victorian Ombudsman by email, although USBs are sometimes used where highly sensitive information is being provided for an investigation.

NZ Ombudsman

Inquiries are also the starting point for most complaints to the NZ Ombudsman.

There is an intake and early assistance team which undertakes initial inquiries with the complainant and the agency. These inquiries usually focus on fact checking and whether the NZ Ombudsman has the correct, most up-to-date relevant correspondence between the agency and the complainant. They also check the status of the matter (eg whether it has been completed) and look at whether the complainant has already sought review by the agency concerned.

²⁴ The *Ombudsman Act 1973* (s13A).

²⁵ Found on their website

If the complaint is not finalised here, it goes to the early resolution team who will also telephone or email the agency to seek more information. More comprehensive questions are asked. These can be along the lines of pointing out issues the agency has failed to respond to and asking it to review and see if further action is needed. This team will also seek relevant documents.

Notably, early resolution staff also discuss with the agency whether it is willing to try and resolve the matter with the complainant. Where agencies are willing to try to resolve the complaint, the office leaves it to them to work directly with the complainant rather than acting as a go-between. It asks to be copied into the correspondence. Depending on the agency the Ombudsman may seek an agreed timeframe for action. The office subsequently follows up with the complainant to see if they are satisfied with the outcome.

Outcomes can include the provision of a letter of explanation to the complainant or perhaps an apology. As with the other models looked at, cases may be closed if the NZ Ombudsman's delegate is satisfied with the outcome even when a complainant is still not satisfied. Consideration is given to whether anything different is likely to be achieved through an investigation.

Staff commented that sometimes they have to say to complainants that the result of an early resolution process is the best possible outcome and nothing different can be achieved by six months investigation.

With early resolution, agencies are given five to 10 working days to respond. When an investigation is notified, more comprehensive questions are asked and information sought so agencies have 20 days under the legislation to respond. Up to 20 per cent of complaints are notified as investigations but this seldom happens directly after a complaint is first assessed. Some agencies want notification as it means the information they provide is exempt from official information requests, but the cases may still be handled taking more of a resolution approach than an investigation.

Agencies email information or use a dropbox or USBs. Staff commented that where there is a large amount of information it is sometimes more efficient to visit the agency to meet key people and be shown the material or have electronic access to it.

As with the other ombudsmen, delayed responses are chased up and escalated where necessary. The NZ Ombudsman has gone straight to issuing a provisional opinion on the basis of information held after an agency failed to respond to information requests in an official information matter. It is rare for this to occur. A warning letter was sent to the agency head beforehand.

Conclusions

There is significant opportunity for more complaints to NHPOPC about AHPRA's notification and registration processes to be resolved earlier and less formally in the interests of better, more timely outcomes for complainants and reducing the administrative burden on both agencies.

The success of this will depend on active commitment by both NHPOPC and AHPRA to build on existing good relationships at senior levels and support and empower relevant staff. In particular, AHPRA will need to ensure its new administrative complaints policy and associated changes improve its capacity to work less formally and more quickly and responsively with NHPOPC and as well as directly with complainants.

NHPOPC appears to be investigating a greater proportion of complaints and notifying investigations more quickly than other models looked at here. Even the Commonwealth Ombudsman, its benchmark agency, is moving to greater use of early resolution and fewer investigations in the interests of all parties.

NHPOPC does this because, while still time consuming for both agencies and delay prone, it considers investigation and the associated formal process is often quicker than trying other approaches first. This is based on its past experience of delays, negative feedback regarding use of preliminary inquiry powers, and modelling on previous Commonwealth Ombudsman approach.

While understandable, it is not the best use of resources for either agency when in many cases similar outcomes may be achieved more quickly for complainants with greater early communication and co-operation between NHPOPC and AHPRA. The most common outcome from an NHPOPC investigation is an explanation or the provision of better information. The same outcome may be achieved without formal investigation if AHPRA is prepared and able to respond appropriately either directly to the complainant or with NHPOPC assistance. It needs the capacity to do so.

NHPOPC does not routinely engage with AHPRA early and informally in the process in ways that could enhance its complaints assessment and facilitate early resolution, other than through the relatively new warm transfers process. Other ombudsmen are doing so with some success, particularly in telephoning and emailing agencies early to seek initial information and asking if they are open to trying to resolve the matter and discussing resolution options.

Although NHPOPC staff appear to have common understanding based on experience regarding which complaints should be warm transferred, which should be investigated and when to use preliminary inquiries, written guidelines would help to ensure that decisions are consistent, proportionate to the issues and make the process more transparent. There are good criteria and guidelines used by other ombudsmen, as outlined elsewhere in this report, some of which could be used. The starting point for every in-scope complaint should be whether early resolution is an appropriate option.

In particular the approach of the Victorian Ombudsman should be carefully considered.

Even where preliminary inquiries powers are used by NHPOPC they are generally enacted formally, through written requests. There have been tensions relating to the extent to which NHPOPC can seek information and make enquiries under these powers to resolve matters. As a result it is not using the power as widely or flexibly as some other ombudsmen who will inquire informally to begin with and become more formal only when escalation is needed.

The documents that guide the interface between the two agencies are outdated and promote formal and prescribed processes that don't encourage early, less formal engagement. These need review and updating.

The warm transfer process is not working as well for complaints about notifications as it is for registrations. NHPOPC then moves to investigate. However, given that people come back to NHPOPC largely because they are not happy with the AHPRA response, working with AHPRA to improve the response may be just as successful as an investigation when the most likely outcome is a better explanation of the decision and/or process. If AHPRA is falling short of the mark in responding to some of the notification complaints through the warm transfer process, using NHPOPC expertise to help it respond better has the added benefit of showing AHPRA staff how to improve responses more generally.

Similarly, when someone has already tried to resolve their concerns directly with AHPRA and been unsuccessful, a warm transfer may be inappropriate but going back to AHPRA and getting it to respond again, with NHPOPC input and oversight, could be as effective as investigating.

There needs to be an agreed additional option for handling complaints, where AHPRA will respond to a complaint, but unlike warm transfer, there is more ongoing involvement by NHPOPC. It may be helpful to introduce a process along the lines of that of the NZ Ombudsman (but also similar to processes used by the NZ Health and Disability Commissioner and the former Australian Aged Care Complaints Commissioner) whereby after mutual discussion, the complaint is essentially referred to AHPRA. It agrees to respond to the complaint within an agreed timeframe and copy in or report back to NHPOPC on actions taken. NHPOPC subsequently touches base with the complainant as necessary and can close the case on the basis an investigation isn't warranted because the matter has been resolved (either to the satisfaction of the complainant, or the Ombudsman or both) or no better outcome is likely to be achieved.

The 14 day timeframe for AHPRA to provide information to NHPOPC is clearly unrealistic. Once a more realistic timeframe is agreed, priority has to be given by AHPRA to meeting it wherever possible and formally seeking and complying with extensions of time where necessary. The response times in AHPRA's new administrative complaints policy are also likely to be difficult to meet and set up the agency for failure.

AHPRA staff need educating more widely about the importance of administrative complaints, the role of NHPOPC and how it and the complaints add value to the way they serve the public and other stakeholders. Greater feedback and sharing of complaint outcomes across AHPRA is needed.

NHPOPC staff would benefit too from having presentations or training that enhances their working knowledge and understanding of AHPRA processes and practices when they are dealing with complaints.

The information sharing arrangements are technically cumbersome, time consuming and difficult for both agencies. There are potential solutions in the way some others do this such as access to intranets, giving electronic access to certain staff in limited and controlled ways and the recent experience where NHPOPC staff went to AHPRA to access information. Some of these solutions can be adopted more quickly than others.

Recommendations

The 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:

1. 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 threshold²⁶ for investigation.
2. 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 days²⁷. This will inform NHPOPC's decision on how to proceed and could be modelled on the Victorian Ombudsman approach.
3. 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 this in use by other ombudsmen and complaints bodies.
4. 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.
5. 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.)
6. 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 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.
7. NHPOPC should invite AHPRA staff to visit annually and provide a training session on relevant AHPRA practices and procedures.

²⁶ See recommendation 4

²⁷ See recommendation 5

8. 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 NHPOC 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.
9. 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 information²⁸ 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.

Other Matters

I have also considered whether to make recommendations regarding the matters outlined below. I have decided instead to simply draw these to the attention of both agencies for consideration.

Information about complaints process in AHPRA decision letters

AHPRA staff say it has moved away from telling people how to complain in its decision letters, opting instead to encourage them to contact the case officer in the first instance if they have 'questions'. The words 'concerns' and 'complaints' are no longer commonly used. If any 'questions' can't be resolved this way, the person is told about the internal administrative complaints process and/or NHPOPC.

While I acknowledge this is in the interests of resolving matters at the lowest possible level in line with good practice, at the very least people need clear upfront information about where to go if they are unhappy. Such letters should tell them how to raise complaints or concerns.

²⁸ 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

Further, NHPOPC staff say they have some difficulty exercising the discretion to decline a complaint on the basis the matter is more than 12 months old because people don't find out about them early enough.

I acknowledge responsibility rests with both agencies to raise the profile of NHPOPC. However if AHPRA provides early written information about both its internal process and NHPOPC either with its decision letters or subsequent to any unresolved follow up concern, this could reduce the number of old matters accepted by NHPOPC. Such cases are very difficult for both agencies to investigate and address. One solution would be a one page flyer or fact sheet that is emailed or sent to people after the case officer has been unable to address any concerns.

Internal review of administrative complaints handling

AHPRA CEO Martin Fletcher raised whether AHPRA should have an internal review process for its administrative complaints. While this is an option, I consider it unnecessary. The administrative complaints process is, in effect, an internal review process and following that the best place for people to go is the independent Ombudsman. Offering to internally review the complaints process would add another lengthy and administratively burdensome step, particularly when NHPOPC can work with AHPRA to better address the complaint and fix any complaints process issues that are identified. It would potentially draw out the process further for complainants and staff.

Sharing NHPOPC letters to complainants with AHPRA

I also considered whether there is merit in NHPOPC routinely sharing its outcome letters to complainants with AHPRA. One option would be to do as some other agencies do, and write just one letter at the end of a complaint - addressed to the complainant and copied to AHPRA (with a covering note drawing attention to any relevant specifics). This should be done after taking the natural justice steps of seeking responses from AHPRA to proposed comments or findings at the preliminary findings stage. While I was persuaded by both agencies that this will not necessarily be more efficient or save time, it is worth considering whether sending AHPRA a copy of NHPOPC's final letter to the complainant will help improve its understanding of NHPOPC work and improve its complaints handling.

Trends and systemic issues

During this review I did not see particular issues with the identification of trends and systemic issues, or the follow up with AHPRA by NHPOPC. As a small agency, it is easier than in a larger one to appropriately monitor, identify and act on matters where a particular complaint trend or systemic issue is exposed or emerges. NHPOPC practices seem in line with those of other ombudsmen I looked at. The monthly meetings and other regular engagement at senior levels along with more formal correspondence provide appropriate opportunity to raise these matters and seek action by AHPRA.

Appendices

PEOPLE INTERVIEWED²⁹

AHPRA

- Martin Fletcher, Chief Executive
- Amanda Watson, National Manager Complaints
- Catherine Miedecke, Acting National Manager, Registration
- Matthew Hardy, National Manager, Notifications
- Susan Biggar, National Engagement Advisor
- Kym Ayscough, Executive Director Regulatory Operations

NHPOPC

- Richelle McCausland, National Health Practitioner Ombudsman and Privacy Commissioner
- Chris Jensen, Team Leader
- Alana Licastro, Team Leader
- Jessica Sayer/Hunter, Senior Investigator

COMMONWEALTH OMBUDSMAN

- Louise MacLeod, Senior Assistant Ombudsman, Complaints Management & Education Branch
 - Dermot Walsh, Senior Assistant Ombudsman, Industry Branch
- (With thanks to Commonwealth Ombudsman Michael Manthrope)

NSW OMBUDSMAN

- Sanya Silver, Manager Projects and National Investigations
- (with thanks to NSW Deputy Ombudsman Chris Wheeler)

VICTORIAN OMBUDSMAN

- Sasha Rudakov, Assistant Ombudsman Early Resolution
- (With thanks to Victorian Ombudsman Deborah Glass and Deputy Ombudsman Megan Philpot)

NZ OMBUDSMAN

- Rachel Petterson, Manager Early Resolution
 - Scott Martin, Manager Intake and Early Assistance
- (With thanks to NZ Ombudsman Peter Boshier)

²⁹ Further information was also supplied by many of these people, by email.

DOCUMENTS AND OTHER MATERIAL REVIEWED

- 2019.02.06 - Letter to Rae Lamb - Review into AHPRA-NHPOPC interface.pdf
- AHPRA and NHPOPC MoU signed 29 Mar 2016.pdf
- NHPOPC and AHPRA Acknowledgement of Administrative Arrangements - signed 31 May 2016.pdf
- Summary of NHPOPC roles.pptx
- NHPOPC organisational chart - staff copy.pdf
- NHPOPC FLOWCHART - Summary of frontline process.docx
- NHPOPC Instrument of Delegation - Ombudsman Act - January 2019.pdf
- NHPOPC Bi-annual Complaints Report - 1 Jul 2018 to 31 Dec 2018.pptx
- NHPOPC Reporting - Warm transfers 1 July 2018 - 31 Jan 2019.xlsx
- NHPOPC Monthly complaints report - Jan 2019.pdf
- NHPOPC - Workload forecasting.docx
- Complaint handling models.docx - from NHPOPC
- NHPOPC Annual Report 2017-18
- AHPRA Annual Report 2017-18
- Complaints lodgement forms and service charters, AHPRA and NHPOPC (off both websites)
- NHPOPC website - About us, making a complaint etc
- AHPRA website complaints and feedback section
- Deloitte internal audit report on AHPRA administrative complaints process and AHPRA response, February 2018
- AHPRA revised Complaints Management Policy and Procedure, December 2018 (approved by the Agency Management Committee, implementation anticipated March 2019)
- AHPRA analysis of themes emerging from NHPO feedback on matters they have reviewed and AHPRA has followed up.
- NHPOPC Waiting times data - timeliness of AHPRA responses 1 July - 31 December 2018

NHPOPC examples of correspondence

- Ref: OCF/18/231 - demonstrating how AHPRA and the NHPOPC worked together to resolve the complaint; at the request of the NHPOPC, AHPRA wrote to the complainant to provide further information.
 - NHPOPC investigation notice
 - NHPOPC investigation outcome letter to complainant
 - NHPOPC investigation outcome letter to AHPRA
 - NHPOPC email to AHPRA providing positive feedback regarding resolution of complaint.
- Ref: OCF/18/389 – demonstrating how NHPOPC used preliminary inquiries power to resolve complaint (noting that the preliminary inquiries notice was sent to AHPRA on 31 October 2018 and was not responded to until 11 January 2019).
 - NHPOPC preliminary inquiries notice
 - AHPRA response to preliminary inquiries
 - NHPOPC outcome letter to complainant
- Ref: OCF/19/89– demonstrating how NHPOPC used preliminary inquiries power to quickly resolve complaint.
 - NHPOPC preliminary inquiries notice
 - AHPRA response to preliminary inquiries

- Ref: OCF/17/221– demonstrating how AHPRA and the NHPOPC worked together to resolve the complaint; at the request of the NHPOPC, AHPRA prepared an additional response for the complainant.
 - NHPOPC investigation notice
 - NHPOPC investigation outcome letter to complainant
 - NHPOPC investigation outcome letter to AHPRA
- Ref:OCF/17/105 – demonstrating difficulties in having a matter promptly reconsidered by a Board (NHPOPC first raised concerns about the decision-making process in December 2017 and the matter was not reconsidered by a Board until August 2018)
 - AHPRA reconsideration letter
 - NHPOPC investigation outcome letter to complainant
- Ref:OCF/17/239 – demonstrating a complex investigation involving multiple notifications, which resulted in formal comments to AHPRA
 - NHPOPC investigation notice
 - NHPOPC investigation outcome letter to complainant
 - NHPOPC investigation outcome letter to AHPRA
- Ref: OCF/18/52– demonstrating a complex investigation which resulted in AHPRA apologising to the complainant (NHPOPC wrote to AHPRA on 15 November 2018 requesting an apology and this was actioned 22 January 2019)
 - NHPOPC letter to AHPRA requesting AHPRA apologise to complainant
 - AHPRA letter to complainant providing apology
- Ref: OCF/18/313, 514,515 – demonstrating a complaint that did not result in formal comments to AHPRA, but involved discussions regarding ‘new information’ from the complainant
 - NHPOPC investigation outcome letter to complainant – proposed decision
 - NHPOPC investigation outcome letter to complainant – final decision
 - NHPOPC investigation outcome letter to AHPRA
- Ref: OCF/18/328 – demonstrating a failed warm transfer to AHPRA
 - Correspondence from a complainant regarding failed warm transfer
- Ref: OCF/19/83 - demonstrating a successful warm transfer to AHPRA
 - Correspondence from a complainant regarding successful warm transfer
- Combined letters – demonstrating how NHPOPC brings complaint themes to the attention of AHPRA
- Combined letter to AHPRA – re management of boundary violation matters
- Combined letter to AHPRA – re management of threats of harm.

Victorian Ombudsman

- www.ombudsman.vic.gov.au - relevant materials including Annual Report 2018
- Complaints to the Ombudsman: resolving them early, July 2018 *available on website
- Early Resolution Complaints Policy

NSW Ombudsman

- www.ombo.nsw.gov.au - relevant materials
- Complaints Assessment Criteria (Public Administration Jurisdiction) fact sheet, August 2014.

Commonwealth Ombudsman

- www.ombudsman.gov.au - relevant materials including Better Practice guides
- Preliminary Inquiries. How to use section 7a preliminary inquiry powers. Internal policy, endorsed April 2018

NZ Ombudsman

- Review of Reviewers, a paper by David McGee, Former Ombudsman NZ, March 2010
- www.ombudsman.parliament.nz