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| Investigation policy |
| Version 1 – February 2023 |

# Purpose

1. This document sets out the office of the National Health Practitioner Ombudsman (the NHPO)’s investigation policy for complaints to the National Health Practitioner Ombudsman (the Ombudsman).
2. Our office strives for fair and positive change in the regulation of registered health practitioners for the Australian community. We provide an independent complaints service that is free and open to all to ensure our health practitioner regulation system is accountable and fair.
3. The Ombudsman can investigate complaints about how the Australian Health Practitioner Regulation Agency (Ahpra), the National Health Practitioner Boards (the Boards) and accreditation organisations (including specialist medical colleges) have handled a matter.[[1]](#footnote-1)
4. We maintain our independence and impartiality at all times. We do not advocate for the complainant or the organisation that is the subject of the complaint. Instead, we make decisions based on evidence and without taking sides.

# The role of investigations

1. Complaint investigations are an important way that we can identify and address potential issues in the National Registration and Accreditation Scheme (the National Scheme). Investigations can:
   * + enable us to provide the complainant with information, or suggest remedies, that resolve their concern/s
     + determine whether there are areas for improvement that require an organisation’s attention
     + result in the Ombudsman making formal comments or recommendations to the organisation about how they can address the issue/s raised.
2. The Ombudsman can also choose to investigate an issue without specifically receiving a complaint about it. This is called an ‘own motion’ investigation. Find out more about own motion investigations on our [website](https://www.nhpo.gov.au/own-motion-investigations): <www.nhpo.gov.au/own-motion-investigations>.
3. Individuals and organisations are protected from contravening any laws when disclosing information to us in response to our investigations. [[2]](#footnote-2) Information given to us as part of an investigation:
   * + cannot be used in evidence against the person (other than for giving false or misleading information)
     + does not breach the Privacy Act 1988 (Cwlth)
     + does not affect a claim that may be made for legal professional privilege.

# Deciding whether to investigate a complaint

1. We are committed to efficiently resolving complaints by minimising the time taken and focusing on achieving practical outcomes. This is why we finalise most complaints without the need for in-depth formal investigation.
2. Our early resolution processes are designed to make engaging with our office easier and more straightforward. In contrast, our investigations are more comprehensive, which means it can take longer to gather and assess the relevant information.
3. Before deciding to investigate, we consider whether our early resolution complaint-handling pathways are appropriate. We may, for example, explore whether to make preliminary inquiries or suggest transferring the complaint to the relevant organisation as part of our early resolution transfer process.

## When we may decide to investigate

1. We may decide to investigate where we believe there is a need to:
   * + examine concerns that are very serious and complex, or appear to be widespread
     + obtain extensive correspondence, documents or analysis (for example, all documents about the complainant’s interaction with the organisation)
     + gather further information or consider new issues after we have made preliminary inquiries or completed an early resolution transfer process
     + consider more than one complex complaint issue
     + consider whether to formally suggest the organisation makes a systemic improvement or takes a specific action.

## When we will not investigate

1. We may decide that an investigation is not warranted for a range of different reasons. This can include if:
   * + the complaint response provided to the complainant by the organisation in question was fair and reasonable
     + we are unlikely to be able to achieve what the complainant wanted from making a complaint. In these cases, we generally seek to refer the complainant to another service where possible.
     + the relevant matter is still active with the organisation and involvement from our office at this stage would not be appropriate
     + we have not received the information we needed from the complainant to progress the complaint
     + the complaint was made more than 12 months after the events that led to the concerns.
2. We may decide it is better to make preliminary inquiries rather than investigate if it appears that:
   * + we need more information to decide whether we can, or should, investigate a complaint
     + we are seeking an answer to a straightforward and/or limited inquiry.
3. We may decide it is better to suggest using our early resolution transfer process rather than investigate if it appears that the:
   * + complainant has not yet made a formal complaint to the organisation
     + issues may be able to be resolved quickly and easily
     + complaint, or the matter it relates to, is open or ongoing with the organisation being complained about
     + complainant is seeking a response from the organisation related to a delayed process.

## The investigation process

1. If we decide to investigate a complaint, an investigator is generally assigned to manage the complaint. The Ombudsman delegates certain powers to our investigators to allow them to conduct investigations.
2. The investigator, with guidance from the Ombudsman, can decide on the best way to approach an investigation.
3. Investigations are conducted in private, and mostly through telephone and/or email contact between our office and the organisation.
4. Investigators must conduct their investigations impartially and without bias. Investigators must declare any actual or perceived conflicts of interest regarding complaints allocated to them.

### Notice of investigation

1. The investigator generally first contacts the complainant to discuss the ‘complaint issues’ raised. This is an essential part of the investigation process because we often receive complaints that are complicated and raise multiple concerns, some of which we cannot consider.
2. We generally inform the complainant in writing that we are investigating their complaint.
3. The investigator also provides written notice of our investigation to the organisation that is the subject of the complaint.[[3]](#footnote-3) Written notice of investigation generally includes:
   * + the complainant’s name (if the complainant has consented to its release)
     + sufficient details about the complainant’s concerns to enable a response
     + the complaint issues being considered
     + the information requested to consider these issues
     + when the organisation should provide the information by. This is generally two weeks for simple information requests.

### Collecting information

1. Information we commonly collect and consider during an investigation includes:
   * + documentation related to the complaint
     + correspondence or records of conversations between the complainant and the organisation
     + relevant reports produced by, or decisions made by, the organisation
     + the organisation’s policies and procedures that are relevant to the complaint.
2. We can obtain information to investigate complaints in different ways, including by:
   * + requiring a person or organisation to provide documents or other written records relevant to the investigation[[4]](#footnote-4)
     + requiring a person to attend a specified place and answer questions[[5]](#footnote-5)
     + examining witnesses on oath or affirmation.[[6]](#footnote-6)
3. In response to our investigation notice, the organisation is responsible for providing our office with the requested information by the due date via the agreed secure information exchange platform. If the organisation is unable to meet the required deadline, it must contact our office to request an extension of time.

### Analysis and review

1. Once the investigator has the necessary information, they will consider all the information to develop their proposed findings on the investigation issues.
2. The investigator will analyse the information gathered to consider whether the organisation handled the matter:
   * + fairly and reasonably
     + in line with the relevant law and applicable policies and procedures.
3. The investigator will provide the complainant with an update every six weeks on the progress of the investigation (unless this is not practical or appropriate).
4. Complainants may choose to withdraw their complaint during an investigation. This may be because they are satisfied with information provided or remedies offered or provided throughout the investigation process, or due to a change in their personal circumstances.
5. Investigations can take about:
   * + three to six months for standard complaints
     + nine to 12 months for more complex complaints.

### Proposed decision and outcome

1. Once the investigator has come to a proposed decision about the outcome of the complaint, their proposed decision is presented to the complainant.
2. The complainant is generally provided two weeks to respond to the investigator’s proposed decision. This is the complainant’s opportunity to provide new information about their complaint, ask questions or suggest corrections of factual information.
3. If our proposed decision either implicitly or explicitly, criticises the organisation being complained about, we must first provide the organisation with the opportunity to provide a response before we decide on the outcome.[[7]](#footnote-7)

# Possible outcomes

1. After providing the opportunity to review the proposed decision, the investigator considers any additional information provided before making their final decision on the investigation issues. Written notice of the investigation’s outcome is provided to both the complainant and the organisation.
2. Investigation outcomes generally depend on the individual circumstances of the complaint. Outcomes may include, for example:
   * + a remedy for the complainant, such as a better explanation of a decision
     + an apology being offered by the organisation
     + agreed arrangements between the complainant and the organisation to progress the matter, such as reconsidering or reviewing the organisation’s decision
     + the organisation agreeing to review or improve a process or policy
     + a finding that the handling of the matter was reasonable and further investigation is not needed.
3. When appropriate, the Ombudsman may make formal comments, suggestions for improvement or recommendations to the organisation.
4. We focus on quickly identifying and resolving issues raised by the complainant. We do not seek to blame individuals who represent an organisation, but rather to provide practical suggestions to improve processes for everyone.
5. We do not have the power to force an organisation to change a decision it has made.
6. We may use deidentified information about complaints in submissions, own motion investigations or analysis of systemic issues to influence improvements in the National Registration and Accreditation Scheme.

# Review of our decisions

1. As an office that handles complaints, we understand the unique value of hearing concerns about a decision we have made (such as a decision not to further investigate a complaint). We call the review of a decision an ‘internal review.’
2. All internal review applications are carefully assessed by a staff member who has not previously made a decision related to the complaint to decide if there is sufficient reason for a review.
3. We accept applications for internal review, ideally by using an application form, by:
   * + [email](mailto:complaints@nhpo.gov.au) <[complaints@nhpo.gov.au>](mailto:complaints@nhpo.gov.au)
     + post to National Health Practitioner Ombudsman, GPO Box 2630, Melbourne, Victoria, 3001
     + phone on [1300 795 265](tel:%201300%20795%20265) (a translating and interpreting service is available via 131 450). Our office hours are 9:00am to 4:30pm Melbourne time, Monday to Friday (excluding Victorian public holidays). A voicemail service is also available.

# Privacy

1. We collect and use information in line with our privacy policy. We:
   * + use the information gathered through the complaint process to manage or resolve concerns, or to address issues arising from the complaint
     + record all complaints and relevant information in our case management system
     + may disclose information publicly (either in data or a case study or story) in a de-identified format, such as in our annual report.
2. Please contact our complaints and FOI team with any further questions about how we record complaints on 1300 795 265 or by [email](mailto:complaints@nhpo.gov.au) at <complaints@nhpo.gov.au>.

# Policy review

1. The Ombudsman will review this policy every three years in consultation with staff and relevant stakeholders.

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To receive this document in another format phone 1300 795 265, using the National Relay Service 13 36 77 if required, or [email our complaints team](mailto:complaints@nhpo.gov.au) <complaints@nhpo.gov.au>.

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1. See s. 8 of the Ombudsman Act 1976 (Cwlth) (Ombudsman Act) [↑](#footnote-ref-1)
2. See s. 7A of the Ombudsman Act [↑](#footnote-ref-2)
3. See s. 8 of the Ombudsman Act. [↑](#footnote-ref-3)
4. See s. 9 of the Ombudsman Act [↑](#footnote-ref-4)
5. See s. 9 of the Ombudsman Act [↑](#footnote-ref-5)
6. See s. 13 of the Ombudsman Act [↑](#footnote-ref-6)
7. See s. 8(5) of the Ombudsman Act. [↑](#footnote-ref-7)