Health Complaints Commissioner Tasmania

Annual Report 2014 - 2015

HEALTH COMPLAINTS COMMISSIONER

ANNUAL REPORT 2014-15

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Letter to Parliament

To:

The Honourable President of the Legislative Council

and

The Speaker of the House of Assembly

Pursuant to section 12 of the *Health Complaints Act 1995*, I present to the Parliament the annual report of the Health Complaints Commissioner for 2014-15.

Yours sincerely

Richard Connock
HEALTH COMPLAINTS COMMISSIONER

30 October 2015

About this Report

This report describes the functions and operations of the Health Complaints Commissioner Tasmania for the year ending 30 June 2015.

It is available in print or electronic viewing format to optimise accessibility and ease of navigation. It can also be made available in alternative formats to meet the needs of people with a disability. Requests should be directed to the Executive Officer at 1800 001 170 or Health.Complaints@ombudsman.tas.gov.au.

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HIGHLIGHTS

- Continued improvements in the quality of healthcare in Tasmania as a result of the assessment, investigation and conciliation of complaints.
- Continuous process improvement to streamline and accelerate handling of complaints within my Office.
- A 2 % decrease in complaints received.
- A 60 % increase in notifications received from AHPRA.
- A 17 % decrease in the number of complaints notified to AHPRA.
- A 50 % decrease in the number of referral made to Registration Boards.
- A 4 % decrease in complaints closed.
- A 13 % decrease in complaints carried forward from 2014-15 into 2015-16.
- An 8 % decrease in cases referred to conciliation.

FROM THE HEALTH COMPLAINTS COMMISSIONER

This annual report is prepared under section 12 of the *Health Complaints Act 1995*, and details the work of my Office under the Act during 2014-15.

Statistics

These are the key statistics for the year:

- a 2 % decrease in complaints received (324 in 2013-14 320 in 2014-15);
- a 60 % increase in notifications from AHPRA (66 in 2013-14 to 106 in 2014-15);
- a 4 % decrease in complaints closed (342 in 2013-14 to 328 in 2014-15);
- 14 % of cases assessed outside the required 90-day period;
- 68 % of cases finalised within 3 months;
- 17 % of complaints took 12 months or more to finalise;
- a 10 % decrease in the number of matters closed in conciliation (30 to 27);
- a 28 % increase in the number of enquiries (397 to 487);
- a 10 % decrease in the number of cases referred to conciliation (25 to 23).

Staffing

As noted in last year's report, staffing levels in the Health Complaints team had been reduced over time and steps were taken to address this two years ago with the abolition of a Band 6 senior conciliation position and the creation a new Band 5 "early resolution" position and creation of a Clinical Advice Committee.

The outcomes achieved last reporting year appeared to vindicate this strategy with an increase in the number of cases resolved in assessment, an increase in number of systemic improvements and fewer cases being carried forward at the start of this reporting year.

It is a credit to the health complaints staff that they have managed to sustain this position throughout this reporting year despite the retirement of a senior conciliator early in the year and the expiration of a Band 5 contract towards the end. Both positions remain vacant at the time of writing this report. The result of this is that staffing levels in the health complaints team are the lowest they have been since 2010-11 despite increased complaint and notification numbers and increased complexity. This has meant other activities, such as audits and monitoring, have fallen off and there have been delays in progressing conciliations.

Efficiencies

We continue to search for efficiencies and have identified that considerable time and effort is expended following up providers for responses, particularly with complaints about public hospitals. This occurs in both the assessment and conciliation stages. We acknowledge that this is partly due to decreased resources across the public sector and the availability of complaint management staff to respond to complaints or attend conciliations. One of my priorities remains to meet with key stakeholders and explore ways in which more timely responses can be provided in both assessment and conciliation.

Legislation – amendment

The delays in receiving responses and the requirement to consult with AHPRA in relation to all complaints about registered practitioners impacts on our ability to assess complaints within the time prescribed in the *Health Complaints Act* 1995. An amendment to the Act is included in the *Justice and Related Legislation (Miscellaneous Amendment) Bill* and, when passed, this will remove part of the problem. The amendment mirrors the provisions of s 34(3) of the *Health and Disability Services (Complaints) Act 1995* (WA) by providing that *if there is a delay in obtaining information requested by* [the Commissioner], *he or she may extend the period within which a decision must be made under* [s25(1)].

Complaint Management

The number of complaints reduced by four but they continue to be more complex, and the number of parties that need to be consulted and managed is increasing.

As reported in the last two years, after several years of growing complaint numbers the gap between opened and closed cases was widening and the number of complaints

carried forward from reporting year to reporting year was increasing. The figures for 2012-13 showed an encouraging reversal of this trend. This was repeated in 2013-14 although to a lesser extent.

The reversal has not however been sustained throughout this year with more complaints being opened than closed.

Conciliation

Only 23 matters were referred to conciliation this year. There remains a significant backlog of conciliation cases which is attributable partly to a reduction in conciliation staff but mainly as a result of the time taken by public hospitals to respond to requests for compensation. This appears, at least in part, to be a consequence of the stringent controls placed on access to the Tasmanian Risk Management Fund by public hospitals.

Australian Health Practitioner Regulation Agency

This was the fifth year of operation of the National Registration and Accreditation Scheme (NRAS) for members of the principal health professions. The scheme is administered by the Australian Health Practitioner Regulation Agency, which works in conjunction with fourteen National Boards for the various professions covered by the scheme.

A Memorandum of Understanding entered into in 2010 to guide the interaction between health complaint entities and AHPRA, particularly with respect to the operation of section 150 of the *Health Practitioner Regulation National Law Act* remains in place.

In accordance with the intergovernmental agreement that underpins the National Scheme, the Australian Health Workforce Ministerial Council (AHWMC) commissioned an Independent Review following the first three years of operation. That review has highlighted a number of concerns with the current mechanisms for dealing with complaints about registered health practitioners and will be an opportunity to address the impact the current arrangements have on the ability of this Office to meet its statutory time limits and progress matters in a timely and efficient manner.

Systemic Improvements

A number of significant improvements in the delivery of health services have been identified or implemented over the reporting year as a result of actions taken by health providers, either on their own initiative or as a result of the assessment and conciliation of complaints received by this Office. Examples will be published on our website.

In appropriate cases, where improvements have been identified through OHCC processes, we have disseminated relevant information to other organisations and health care providers both intra and interstate in the hope that the broader community will continue to benefit from the work we do. I would like to thank the healthcare providers we have worked with for their continued commitment towards improving the delivery of services in 2014-15.

Conclusion

I would like to thank my Health Complaints staff for the quality of their work, for their dedication, and for sustaining their remarkable levels of activity over a very busy year.

Richard Connock
HEALTH COMPLAINTS COMMISSIONER

30 October 2015

THE OFFICE OF THE HEALTH COMPLAINTS COMMISSIONER

The Office of the Health Complaints Commissioner was established in 1997 by the *Health Complaints Act 1995*. The major functions undertaken by the Office are to:

- receive, assess and resolve complaints from health service users;
- assist health service providers in developing procedures to resolve complaints;
- encourage health service users to resolve complaints directly with health service providers; and
- identify and review issues arising out of complaints, and suggest ways of improving health services.

The Commissioner is an independent statutory officer who does not represent the interests of, nor act as an advocate for, either party to a complaint. The functions of the Commissioner are carried out independently, impartially and in the public interest. It is not the role of the Commissioner to attribute fault or blame, but to seek improvements in the delivery of health services in Tasmania and, where possible, resolve complaints between the parties through conciliation.

It has been the practice since the commencement of the Act for the appointments as Ombudsman and Health Complaints Commissioner to be held by the same person. The functions which go with these two separate appointments are delivered by the same Office, the Office of the Ombudsman and Health Complaints Commissioner.

COMPLAINT AND ENQUIRY ACTIVITY IN THE REPORTING YEAR

Enquiries

Enquiries, many of which do not develop into a complaint, represent a substantial workload for the Office (see Table 1).

Table 1. Enquiry activity

	2013-14	2014-15	Variance
Health enquiries	350	448	28%
Out of jurisdiction enquiries	47	39	-17%
TOTAL ENQUIRIES	**397**	**487**	**23%**

Complaints

By way of explanation, in addition to managing complaints made direct to this Office, staff also deal with complaints about registered health practitioners which are made to registration boards through AHPRA. These are called notifications rather than complaints. There was a 61% increase (66 to 106) in the number of cases notified to this office by AHPRA.

Table 2. Complaint activity

	2013-14	2014-15	Variance
Complaints carried forward	133	115	-13%
Complaints received	324	320	-1%
Complaints closed	342	328	-4%
Complaints active	115	107	-7%

As reported last year, after several years of growing complaint numbers the gap between opened and closed cases was widening and the number of complaints carried forward from reporting year to reporting year was increasing. Although the figures over the last two years showed an encouraging reversal of this trend, this has not been sustained throughout this year with more complaints being opened than closed.

This is attributable to a reduction in staffing levels through expiration of contracts and the inability to recruit new staff throughout the reporting year. We continue to seek appropriate efficiency gains across all our processes to ensure that, to the best of our ability and within the limited resources at our disposal, we can still provide Tasmanians with an effective health complaints scheme that meets their needs. We look forward to this situation being corrected through recruitment of new staff which is progressing at the time of writing this report.

Who complained?

While the person who makes the complaint is usually the consumer of the health service, the Act provides for other people, such as the parent or guardian of a child, or a person appointed by the consumer, to lodge a complaint on their behalf. I also have discretion to accept complaints from third parties where a user is unable to complain on their own behalf.

Figure 1 provides details on these matters for the reporting year.

Figure 1. Profile of complainants

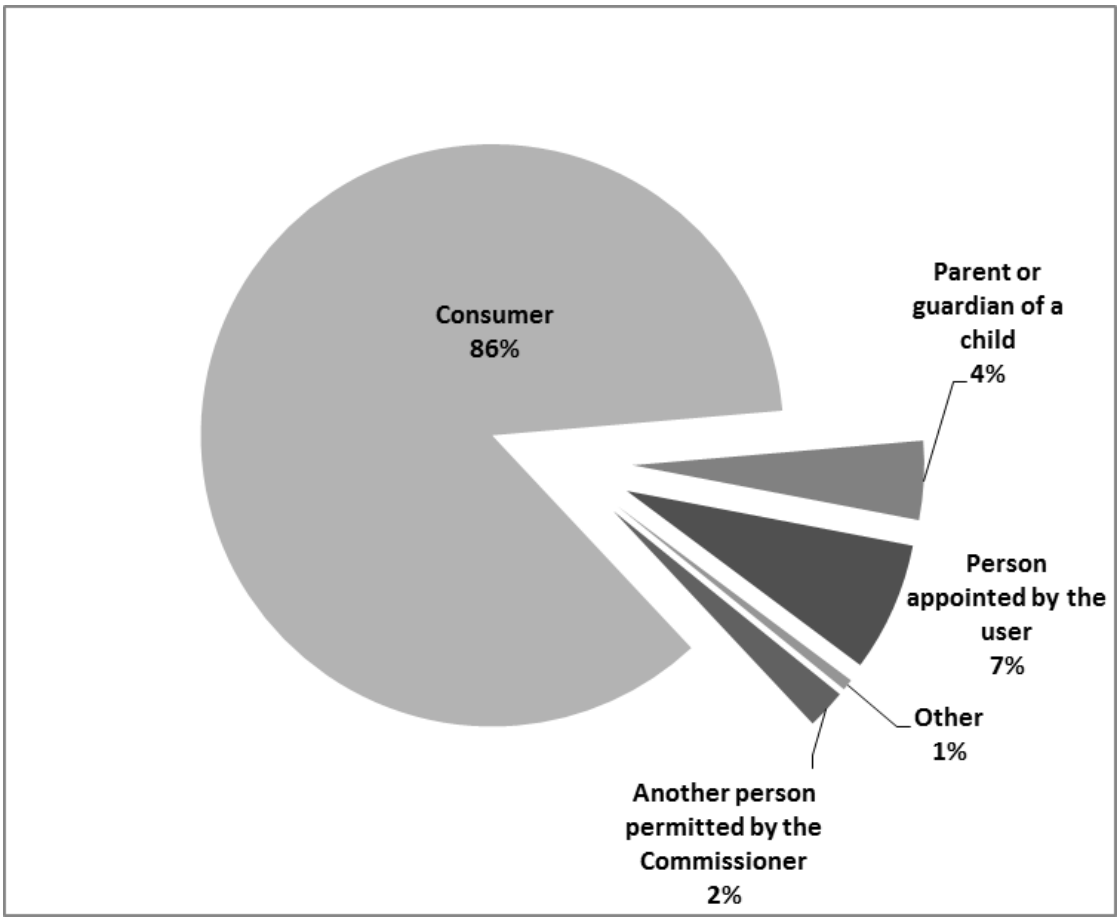
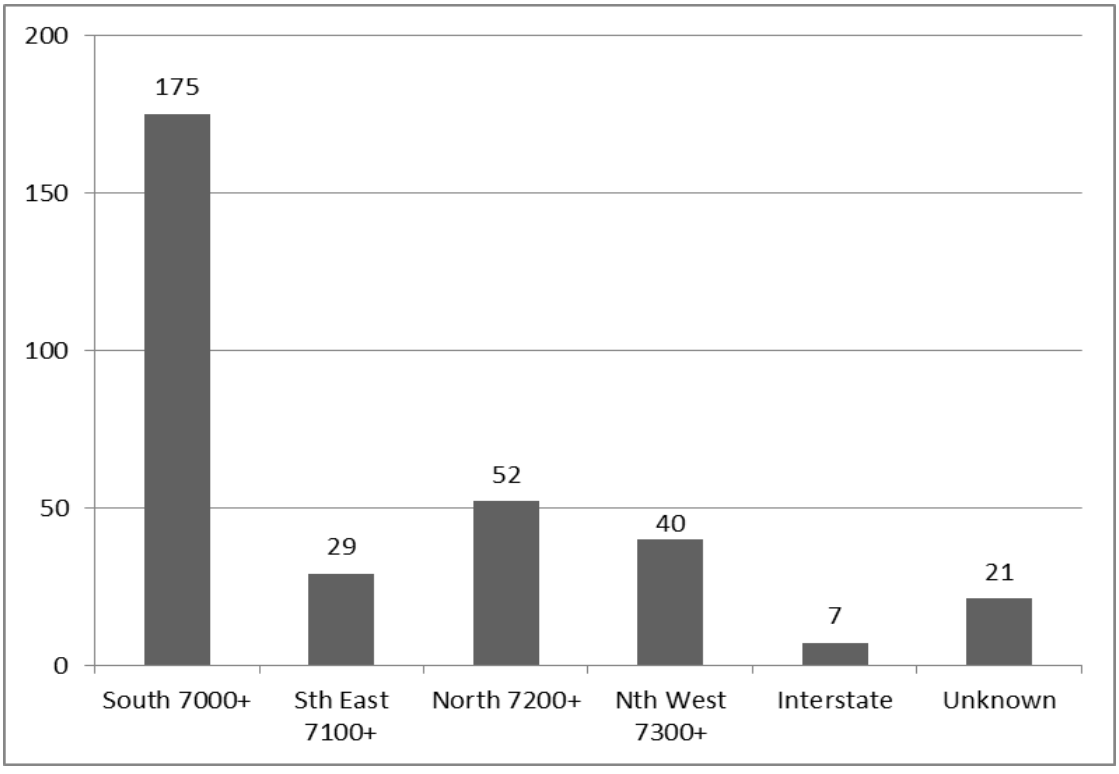


Figure 2. Geographical location of complainants



What did they complain about?

A breakdown of the issues arising from complaints closed in the reporting year is set out in Table 3.

Table 3. Issues by category

Category	Issue	2013-14	2014-15
Access	Access to facility	0	1
	Access to subsidies	0	1
	Refusal to Admit or Treat	17	16
	Remoteness of Service	0	1
	Service Availability	18	32
	Waiting lists	16	9
	Sub-total	**51**	**60**
Communication & Information	Attitude/Manner	45	43
	Inadequate information provided	26	19
	Incorrect/misleading information Provided	13	10
	Special needs not accommodated	7	4
	Sub-total	**91**	**76**
Consent	Consent not obtained or inadequate	6	8
	Involuntary admission or treatment	5	5
	Uninformed consent	1	2
	Sub-total	**12**	**15**
Discharge & Transfer Arrangements	Delay	1	0
	Inadequate discharge	6	3
	Mode of transport	0	1
	Patient not reviewed	0	1
	Sub-total	**7**	**5**
Environment / Management of Facilities	Administrative processes	10	2

Category	Issue	2013-14	2014-15
	Cleanliness/hygiene of facility	4	0
	Physical environment of facility	4	2
	Staffing and rostering	1	0
	Statutory obligations or accreditation	0	0
	Sub-total	**19**	**4**
Fees & Costs	Billing Practices	16	17
	Cost of treatment	2	2
	Financial consent	4	8
	Sub-total	**22**	**27**
Grievance Processes	Inadequate / no response to complaint	13	10
	Information about complaints procedures not provided	0	1
	Reprisal/retaliation as result of complaint lodged	1	0
	Sub-total	**14**	**11**
Inquiry Service only	Request for information about the Commissioner	0	0
	Requestion for information from a health service	0	0
	Request for information - Other	1	0
	Sub-total	**1**	**0**
Medical Records	Access to/transfer of records	12	8
	Record keeping	6	4
	Records management	1	0
	Sub-total	**19**	**12**
Medication	Administering medication	7	5
	Dispensing medication	3	6
	Prescribing medication	51	67
	Supply/security/storage of medication	0	1
	Sub-total	**61**	**79**

Category	Issue	2013-14	2014-15
Professional Conduct	Assault	2	5
	Boundary violation	0	2
	Breach of condition	0	1
	Competence	37	24
	Discriminatory conduct	1	1
	Emergency treatment not provided	0	1
	Financial fraud	0	1
	Illegal practice	0	0
	Impairment	0	0
	Inappropriate disclosure of information	4	3
	Misrepresentation of qualifications	1	0
	Sexual misconduct	0	0
	Sub-total	**45**	**38**
Reports/Certificates	Accuracy of report/certificate	6	0
	Refusal to provide report/certificate	5	1
	Report written with inadequate or no consultation	0	1
	Timeliness of report or certificate	0	3
	Sub-total	**11**	**5**
Treatment	Attendance	1	2
	Coordination of treatment	19	9
	Delay in treatment	23	19
	Diagnosis	40	32
	Excessive treatment	0	2
	Experimental treatment	0	0
	Inadequate care	30	32
	Inadequate consultation	3	2
	Inadequate prosthetic equipment	6	5
	Inadequate treatment	57	33

Category	Issue	2013-14	2014-15
	Infection control	3	0
	No/inappropriate referral	9	4
	Public/Private election	0	0
	Rough and painful treatment	16	8
	Unexpected treatment outcome/complications	30	32
	Withdrawal of treatment	7	3
	Wrong/inappropriate treatment	19	10
	Sub-total	**263**	**193**
GRAND TOTAL		**616**	**526**

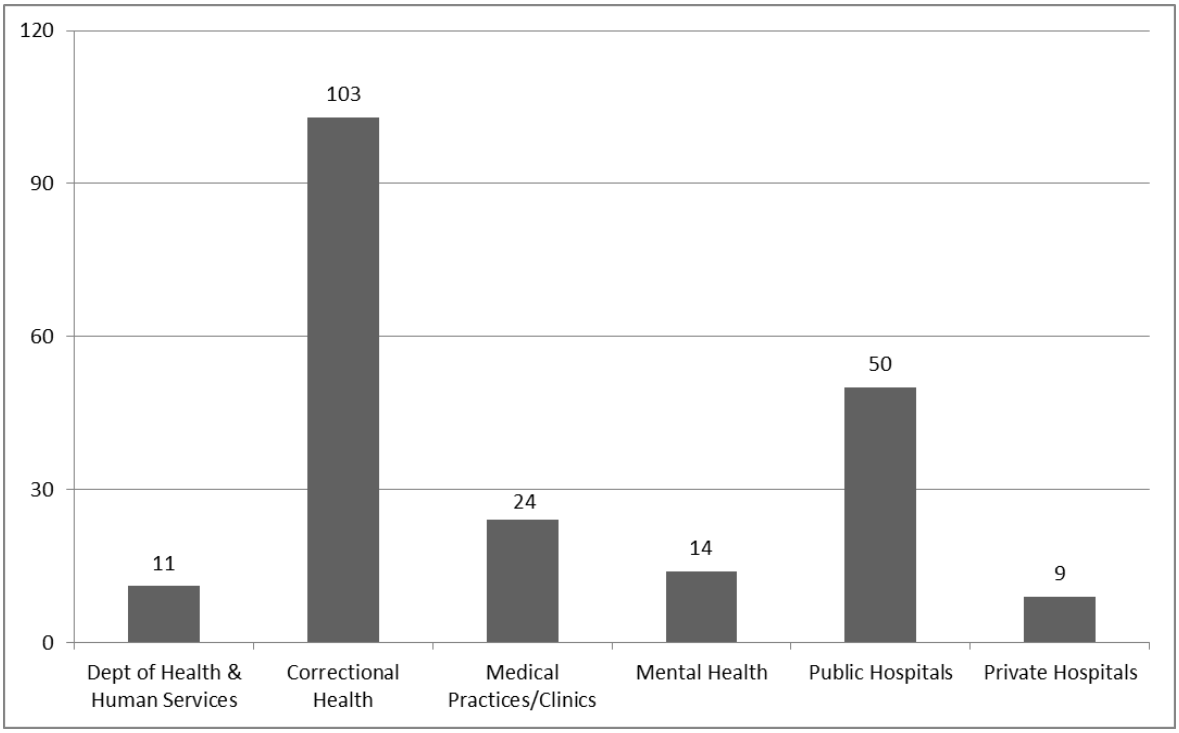
Who did they complain about?

Table 4. Complaints received about Health Organisations

Health Organisation	2013-14	2014-15
Aged Care	0	2
Ambulance	1	5
Community Health	3	4
Correctional Health	81	103
Dental	6	1
Dept of Health & Human Services	2	6
Diagnostic Services	2	6
Disability Services	1	1
Medical Practices/Clinics	27	24
Mental Health	14	15
Optometrist	2	2
Oral Health Services	3	3
Other	5	8
Pathology	0	2
Pharmacy/Pharmaceutical	1	7

Health Organisation	2013-14	2014-15
Physiotherapy	1	0
Private Hospitals	14	9
Public Hospitals	68	54
TOTAL	**231**	**252**

Figure 3. Most complained about organisations



Hospitals

Issues in relation to private hospitals are set out in Table 5, and issues in relation to public hospitals are set out in Table 6.

Table 5. Issues relating to Private Hospitals

Category	Issue	2013-14	2014-15
Private Hospitals	Access	0	0
	Communication & Information	7	1
	Discharge & Transfer Arrangements	3	3
	Environment/Management of Facilities	2	1
	Fees & Costs	2	4

Category	Issue	2013-14	2014-15
	Grievance Processes	4	1
	Medical Records	2	0
	Conduct	2	0
	Treatment	16	11
TOTAL		**38**	**21**

Table 6. Issues relating to Public Hospitals

Category	Issue	2013-14	2014-15
Public Hospitals	Access	16	9
	Communication & Information	29	11
	Consent	7	2
	Discharge & Transfer Arrangements	3	0
	Environment/Management of Facilities	7	0
	Fees & Costs	1	3
	Grievance Processes	6	2
	Medical Records	8	2
	Medication	9	4
	Professional Conduct	10	13
	Reports/Certificates	0	1
	Treatment	81	42
TOTAL		**177**	**89**

Individual Providers

Table 7 (below) gives a breakdown of complaints recorded against individual providers during 2014-15. To put these numbers in perspective, it is important to bear in mind that as at 30 June 2015 there were 366 dentists and 2,203 medical practitioners registered as having their principal place of practice in Tasmania.

Table 7. Complaints received about Individual Providers

Provider	2013-14	2014-15
Chiropractor	0	1
Complementary and Alternative Therapy	1	0
Dental	8	8
Medical Practitioner	63	49
Medical Radiation Technologist	0	1
Nurse	3	5
Optometrist	0	0
Other/Unknown	0	0
Pharmacist	0	0
Physiotherapist	0	0
Podiatrist / Chiropodist	0	1
Psychologist	1	0
TOTAL	**76**	**65**

How were complaints resolved?

Table 8 shows the stages at which complaints were finalised. Figure 4 illustrates the time taken to finalise complaints.

Table 8. Stages when complaints were finalised

Stage	2013-14	2014-15
Assessment	276	258
Conciliation	30	27
Investigation	0	4
Referred	57	39
TOTAL	**363**	**328**

Figure 4. Time taken to finalise complaints

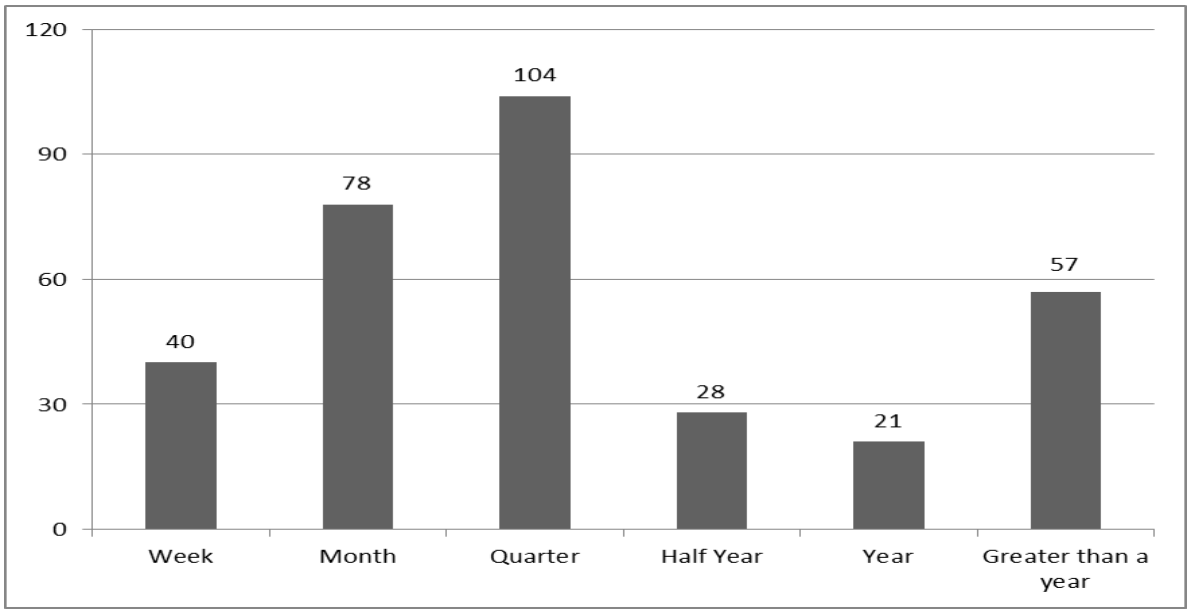


Figure 4 illustrates the time it takes to finalise the various types of complaints received by my Office. As previously noted, the less complex complaints are generally resolved within three months; these complaints generally make up around 60% of all complaints received. The remaining 40% tend to be more complex.

The statistics for this reporting year show a disappointing increase in the percentage of complaints taking more than 12 months to finalise. This is attributable to the increased complexity of complaints, decreased staffing levels and delays and difficulty in receiving necessary advice and information from various sources.

Table 9. Percentage of complaints finalised over time 2008-09 to 2014-15

	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15
Week	7%	11%	13%	13%	13%	15%	12%
Month	23%	23%	34%	35%	32%	31%	24%
Quarter	53%	63%	59%	55%	62%	72%	32%
Six Months	75%	75%	76%	71%	82%	84%	9%
12 months	84%	86%	87%	81%	91%	91%	6%
More than 12 months	16%	14%	13%	19%	9%	9%	17%

Consultations with Registration Boards

The relationship between this Office and the national boards and AHPRA is governed both by the *Health Practitioner Regulation National Law Act (National Law)*[1] and the *Health Complaints Act 1995*. A Memorandum of Understanding is in place between AHPRA and the various health complaints entities to assist in managing the requirements imposed on them by the National Law. The consultation process has been described in detail in earlier annual reports.

As outlined in Table 10, there has been a 17% reduction in the number of notifications this Office has made to AHPRA and a significant increase in the number of direct notifications made to AHPRA. Information was exchanged between this Office and AHPRA in relation to 193 matters. Of those 106 were matters lodged with AHPRA and 87 were matters related to complaints lodged with OHCC. Of the 87 matters arising from OHCC complaints 17 were formally referred to AHPRA for consideration by the respective registration boards. This represents a 50% reduction in the number of referrals made from this Office to AHPRA.

National Law requires the boards (through AHPRA) to notify health complaint entities of any notification that would also provide a ground of complaint. National Law also requires the Boards to notify health complaint entities when action is taken by the Board in relation to a registered health practitioner. There was a significant increase again this year in the number of notifications advised to this Office by AHPRA (66 to 106) and a number of these resulted in issues being referred to this Office to follow up on systemic issues or undertake resolution processes.

Table 10. Consultations with AHPRA

Registration Board	OHCC Notifications to AHPRA	Referrals to AHPRA	Retained by OHCC	Ongoing as at 30/6/15	AHPRA Notifications to OHCC #
Medical Board of Australia	75/59	24/11	43/39	27/9/9	29/44
Chiropractors Board of Australia	0/1	0/0	0/1	0/0	0/1
Dental Board of Australia	9/7	3/2	6/5	0/0/0	3/5
Medical Radiation Practice Board of Australia	0/1	0/0	0/1	0/0	0/0
Nursing and Midwifery Board of Australia	18/17	5/4	12/12	12/1/1	27/30
Occupational Therapy Board of Australia	0/0	0/0	0/0	0/0	0/1

1 This was applied in Tasmania by the *Health Practitioner Regulation National Law (Tasmania) Act 2010*.

Registration Board	OHCC Notifications to AHPRA	Referrals to AHPRA	Retained by OHCC	Ongoing as at 30/6/15	AHPRA Notifications to OHCC #
Optometrist Board of Australia	0/0	0/0	0/0	0/0	0/1
Pharmacy Board of Australia	1/1	0/0	0/1	0/0	0/19
Physiotherapy Board of Australia	1/0	1/0	0/0	0/0	0/1
Podiatry Board of Australia	0/1	0/0	0/0	0/1	0/0
Psychology Board of Australia	1/0	1/0	0/0	0/0	4/4
TOTAL	**105/87**	**34/17**	**61/59**	**10/11**	**66/106**

These cases, are not counted as complaints – they are in addition to the complaint work. They also include notification of action taken by the relevant registration board.

REFERRAL OF COMPLAINTS

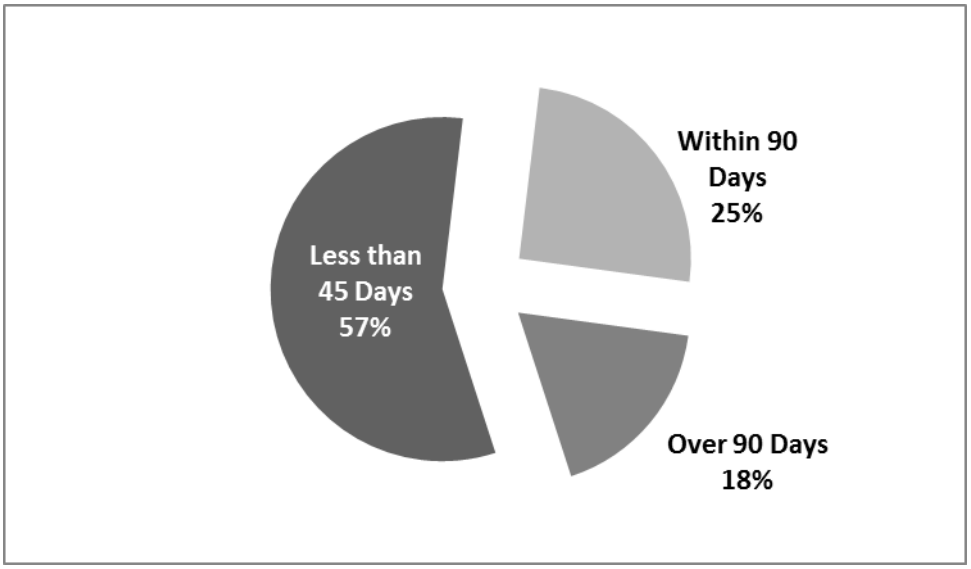
Some complaints received by me require attention by agencies other than registration boards. For example, complaints against aged care facilities might be referred to the Office of Aged Care Quality and Compliance, and complaints relating to mental health facilities might be referred to the Mental Health Official Visitor Scheme established under the *Mental Health Act 1996* and now covered by the *Mental Health Act 2013*. Appropriate consultation occurs prior to referral. These matters are generally closed in the assessment stage because, unlike referrals to registration boards, they do not generally require further consideration by me. There were three such cases this year, the same as in the last reporting year.

CASES ASSESSED UNDER PART 4 OF THE *HEALTH COMPLAINTS ACT*

The Act requires that a complaint be assessed within 45 days. This can be extended to 90 days. There are a number of circumstances, described in the last three annual reports, which have an impact on OHCC's ability to meet these statutory time frames. These include delays in receiving responses and other information necessary to undertake an assessment from providers, and delays occasioned by the required consultation process with AHPRA as well as a conscious decision by my predecessor to retain matters capable of resolution (with the provision and analysis of information, such as independent clinical advice or research on current and best practice, without the need to refer the complaint to formal investigation or conciliation) in assessment rather than referring them to investigation or conciliation.

In 2011-12, 2% of complaints were assessed outside the 90-day period. In 2012-13, 23% of complaints were assessed outside the 90-day period. In 2013-14, 26% were assessed outside the 90 day period. This reporting year 18% were assessed outside the 90-day period (Figure 5 below).

Figure 5. Time taken to assess complaint



The majority of complaints received are closed within the assessment stage. This was the case for 258 complaints closed this year. In the language of the Act, complaints closed in assessment are recorded as having been "dismissed" (as opposed to being referred to investigation, conciliation, a registration board, or elsewhere). This terminology is unfortunate, as it fails to portray the extent of the work undertaken during the assessment phase and the significant outcomes achieved from the assessment process.

The various reasons for a complaint being closed in assessment are set out in Table 12. These reasons are in accordance with the language of s 25(5) of the Health Complaints Act, which stipulates circumstances in which a complaint must be dismissed. Most of these relate to threshold issues, which can result in a complaint being dismissed at an early stage in the assessment process. The remaining two reasons, which account for 90% of all complaints dismissed in assessment during the reporting year, are that the complainant has been given a reasonable explanation about the incident that led to the complaint, or that the complaint has been resolved.

Table 11. Reasons for Closure in Assessment Stage

Reason	2013-14	2014-15
Dismiss - Section 25 (5) (a) Complainant not a person entitled under s22	5	1
Dismiss – Section 25 (5) (b) Complaint does not disclose a subject matter referred to in s23	0	1
Dismiss - Section 25 (5) (c) Complainant became aware of the circumstance more than 2 years ago	1	3

Reason	2013-14	2014-15
Dismiss - Section 25 (5) (d) Complainant has not attempted direct resolution	3	2
Dismiss - Section 25 (5) (e) Issues adjudicated by court or tribunal	1	1
Dismiss - Section 25 (5) (g) Complainant has been given reasonable explanation and information	157	173
Dismiss - Section 25 (5) (h) The complaint lacks substance	12	2
Dismiss – Section 25 (5) (i) The complaint is frivolous vexatious or was not made in good faith	0	0
Dismiss - Section 25 (5) (j) Complaint has been resolved	81	61
Other	6	6
Out of Jurisdiction	5	5
Section 25 (1) (a) Complaint referred to the Ombudsman or a relevant Board or another person	3	3
Section 30 (1) The complaint has been withdrawn in writing	2	0
TOTAL	**276**	**258**

Of the complaints closed in the assessment stage, the most common outcome was an explanation. Other outcomes that resulted in complaints being resolved included apologies, provision of services, refunds of costs, concerns being noted, and recommendations for (and the implementation of) quality improvements such as changes in policy or procedure.

A number of significant quality improvements were achieved through the assessment process this year. Examples of these improvements appear in the case studies which have been published on our website throughout the reporting year.
Table 12 shows the outcomes achieved during the reporting year.

Table 12. Outcomes from Assessment

Outcome	2013-14	2014-15
Apology Given	42	21
Change in Policy	0	3
Change in Procedure	0	7
Compensation Received	0	0
Concern Registered	72	90
Declined/Referred	0	8
Dismissed (no other outcome)	0	16

Outcome	2013-14	2014-15
Explanation Given	182	173
Fees/Costs - Refunded, waived or reduced	19	7
Information Obtained	22	5
Quality Improvement	46	12
S25(1)(a) Referral to Registration Board or other person	0	4
Service Obtained	45	47
TOTAL	**428**	**393**

CONCILIATIONS UNDER PART 5 OF THE *HEALTH COMPLAINTS ACT*

In the complaints we receive, complainants generally want to understand what happened and why and, in appropriate cases, to receive an apology, ongoing care and/or compensation. They also want to know what can or is being done to prevent the same thing happening to someone else.

Conciliation under Part 5 of the Act is confidential and privileged, and as such provides a safe forum within which the parties can have open and honest discussions about these issues. It provides a number of benefits over litigation. To identify just a few - it is far cheaper; it can be therapeutic; it avoids the blame, acrimony and confrontation which arises with litigation; it can restore and preserve the relationship between clinician and patient; and it is less destructive of the morale and self-confidence of clinicians.

To achieve these benefits, the parties need to be brought together as early as possible and there needs to be an honest commitment from both sides to do whatever is necessary to progress the process. Grievances that are allowed to fester can develop out of all proportion and end up consuming unnecessary time, money and energy to resolve. In the meantime, the damage originally done is amplified. Likewise, delays in getting legal advice which is necessary for the process to continue, or to formalise an agreement reached, detract from the goodwill engendered between complainant and clinicians within the conciliation meeting.

The average age of matters closed in conciliation this reporting year was 715 days. This time includes the assessment period and often lengthy periods of time waiting for the outcome of AHPRA investigations. Another significant factor in the time it takes to bring conciliations to conclusion is the limited availability of provider representatives to attend conciliation meetings, coupled with significant delays in receiving the necessary legal advice for the matter to be finalised.

As reported in the last two years there were a number of cases involving public hospitals or public health services where once again there have been significant delays in obtaining this advice. These delays (which keep a complainant's expectations of a favourable outcome alive), coupled with poor communication about the reasons for the delay, not

only damages any good will or rapport established between the parties at conciliation but has the tendency to exacerbate the original complaint.

I agree with the previous two Commissioners that publicly-funded health providers should continue to set the example in this area – that they should err in favour of conciliation rather than litigation; they should commit to the conciliation process when this is embarked upon; they should make realistic compensation offers in conciliation where this is called for; and they should insist their legal advisors provide the advice or documentation that may be needed to continue with the conciliation quickly or to formalise it in a timely manner at the end. Facilitating a change in attitude and process remains a primary focus.

Recent cases have given me cause for concern that current budgetary pressures may make publicly-funded health providers disinclined to conciliate and more inclined to shift their focus towards litigation. In my view, any such shift would be retrograde and would defeat one of the prime objectives of the *Health Complaints Act*.

The number of complaints referred to conciliation this year decreased from 25 to 23. The number of matters closed decreased from 30 to 27. Of these cases, six resulted in the payment of compensation and twelve resulted in significant quality improvements, including changes in policy or procedure. In a number of cases, the complainants' concerns were resolved by receiving further information or an explanation, in language they could understand, or simply by having those concerns acknowledged and receiving an apology.

Examples of outcomes achieved through the conciliation process will be published on our website.

Table 13. Outcomes from Conciliation

Outcome	**2013-14**	**2014-15**
Apology Given	14	20
Compensation Received	5	6
Concern Registered	0	13
Explanation Given	18	21
Fees and costs – Refunded, waived or reduced	0	1
Information obtained	0	1
Quality Improvement	22	15
Service Obtained	0	6
TOTAL	**59**	**84**

INVESTIGATIONS UNDER PART 6 OF THE *HEALTH COMPLAINTS ACT*

A decision was made five years ago that formal investigations would only be conducted into complaints which give rise to a matter of public interest, and that conciliation would be used more extensively. The reasons for this were that findings of fact made by the Health Complaints Commissioner following an investigation are not legally enforceable, and that providers would in most cases be keen to implement whatever systemic changes were necessary to prevent adverse events.

While I agree that it is not necessary to undertake an investigation in order to drive change, I have formed the view that there would be benefit in future in referring more matters to investigation for the purpose of information gathering rather than prolonging the assessment stage.

Five matters were referred to Investigation during the reporting year and five other matters were closed in investigation during the reporting year and summaries of these will be published on our website in due course.