



AUSTRALIAN MEDICAL
ASSOCIATION
ABN 37 008 426 793

T | 61 2 6270 5400
F | 61 2 6270 5499
E | ama@ama.com.au
W | www.ama.com.au

39 Brisbane Ave Barton ACT 2600
PO Box 6090 Kingston ACT 2604

Vexatious notifications framework review

AMA submission to National Health Practitioner Ombudsman – Vexatious notifications framework review

By email: submissions@nhpo.gov.au

Receiving a notification from the Australian Health Practitioners Regulation Agency (Ahpra) is a distressing and destabilising event in a medical practitioner's life. Vexatious notifications made against medical practitioners and other health professionals are a significant issue which continue to be a major concern for many AMA members and are a regular focus of requests for support to our State branches.

Years of AMA advocacy led to the establishment of the Vexatious Notifications Framework (the Framework) which was a positive development in taking the necessary steps to identify vexatious notifications and then minimise the impact these notifications have on a practitioner's life. The AMA believes that it was the beginning of the story not the end.

The AMA supported the Framework and we would like it to succeed in:

- *identifying the features of a potentially vexatious notification for the purposes of the National Law*
- *outlining how to manage notifications where those features are identified*
- *ensuring the utilisation of the resources of the national registration and accreditation scheme in an appropriate way*
- *reducing the serious impact of vexatious notifications on practitioners, and*
- *ensuring the process is fair and open for all involved.¹*

The AMA has been assured by Ahpra that the Framework has led to improvements, but it is difficult to comment on the scale of the impact in the absence of any analysis, metrics or evaluation outcomes being made available. The broad view of the medical profession is that handling of vexatious notifications – and the notification process broadly – must be improved. It is imperative that Ahpra address the growing distrust of them amongst the profession, and minimising the impact of vexatious notifications is a key step in achieving this.

¹ Ahpra and the National Boards (2020). [A framework for identifying and dealing with vexatious notifications](#).

The introduction of the Framework does not mean that work by Ahpra on minimising the impact of and managing vexatious notifications is complete, instead it has been an important initial step. The next steps must include:

- an independent evaluation of the impact framework,
- the transparent publishing of notifications and their handling, and
- the provision of the detailed plans that we have been informed Ahpra and the Medical Board are working on to see vexatious notifications dismissed as early in the process as possible.

The AMA remains committed to work with Ahpra and the Medical Board to take these next steps.

Vexatious notifications

As noted in the recent Senate Committee review of Ahpra, “vexatious complaints are some of the most distressing notifications received by health practitioners, as they are intended to bully or harass a practitioner, as a result of a commercial dispute, or for other inappropriate reasons.”²

At the Committee Hearing, AMA spokesperson Dr Antonio Di Dio explained the injustice of vexatious notifications:

“If you want to ruin a doctor's life, all you really have to do is make a complaint against them and walk away. There will be no consequences against you. Certainly 90 per cent of the time the doctor will be found to have done nothing wrong, but you will have ensured that that doctor has a year of utter misery.”³

This quote speaks to one of the significant outstanding issues related to vexatious complaints – an individual can make a completely false complaint against a doctor and face no repercussions regardless of the impact on the doctor’s life.

The ramifications of a vexatious notification can be mentally and financially damaging to doctors. The more serious the complaint, the more significant the impact on the life of the doctor. For example, a doctor cannot practise without a supervisor should the notification require a supervision order. This can take months to establish.

As Ahpra is funded from registration fees, the fact that these doctors pay for the vexatious notification process and the resources it consumes adds to this injustice.

The AMA would like to see improvements in the timeliness of managing all notifications, but vexatious notifications in particular.

² The Senate Community Affairs Reference Committee (April 2022), [Administration of registration and notifications by the Australian Health Practitioner Regulation Agency and related entities under the Health Practitioner Regulation National Law](#). p. 70.

³ *Ibid.*

Application of the Framework

Many of the key issues identified by NHPO relate to the application of the Framework. The AMA is unable to provide evidence on volume as we do not collect this information, and more importantly Ahpra does not report on vexatious notifications.

The AMA will meet with Ahpra for a notifications workshop in December and we hope to discuss the impact of the Framework at that meeting. We would welcome the sharing of information, examples of case handling and practical examples of how vexatious complaints are identified by Ahpra staff. The AMA is not convinced that the often-reported figure that less than one per cent of notifications are vexatious is accurate,⁴ and we would like to better understand the distinction between notifications that occurs now that the Framework has been in operation for 12 months.

A survey of Ahpra's own staff on the effect of the Framework and how they are using it to identify vexatious notifications would be useful to inform the impact, future training requirements and potential improvements.

Issue with the National Law

The AMA strongly objected to the recent amendments to the National Law. We agree that the protection of the public is a critical role of the National Registration and Accreditation Scheme (the National Scheme), however it is also essential that the wellbeing and state of mind of the practitioner be at the forefront of any investigations. This is key to reducing the negative impact on the mental health of the medical professionals we rely on for our healthcare.

Under the former arrangements, the Medical Board could issue a media statement at the conclusion of the tribunal process, which the AMA believes is entirely appropriate. The recent changes which allow the Medical Board or Ahpra being able to issue a public warning before a tribunal has completed its actions do not maintain an appropriate balance of public protection and individual practitioner rights and autonomy.

This change implies guilt and has the potential to ruin a practitioner's reputation, as well as erode the trust of existing patients. A public warning is a severe and non-retractable step and should be undertaken only after a health practitioner has been shown to have breached a code of conduct or convicted of a relevant offence.

The reality is that media organisations that publish the initial statement have no obligation to publish the correction or revocation. The AMA believes that this will lead to significant reputational damage and personal suffering being inflicted on medical professionals who are subject to this process.

The AMA has consistently argued that the changes introduced will have major impacts on the lives and work of medical practitioners without improving standards of care for patients or reducing the risk of harm to the general public. There must always be an appropriate balance

⁴ Morris, Canaway and Bismark (2017), [Reducing, identifying and managing vexatious complaints](#).

between regulatory power and the risk that is being regulated. We do not believe that all the proposed changes deliver this balance.

Medical practitioners strongly object to this amendment. It is entirely possible that a completely fictitious complaint against a doctor could be severe enough to warrant action as outlined above. This amendment means that the issue of identifying and managing vexatious complaints is more crucial than it was before.

General Comment

Vexatious complaints are highly impactful, accordingly the AMA would like to see the Framework succeed. Following significant AMA advocacy, Ahpra have finally made some positive initial steps, but this is not the end of the process, significant further effort is critical to properly manage this important issue.

The AMA has consistently advocated, in previous reviews for a National Scheme that supports:

- registration arrangements that enable medical professionals, who are qualified and safe, to work anywhere in Australia;
- independent accreditation of medical education and training that meets international guidelines;
- medical practice registration standards set by the Medical Board, with clear jurisdiction over all health care provided by medical practitioners; and
- a notification process for the Medical Board to receive, consider and determine concerns about the health, performance or conduct of individual medical practitioners where there is a risk of harm to the public, and which is efficient and affords due process to the medical professional under review.

The AMA is satisfied that the National Scheme has met the expectations of the medical profession in respect of the first three points. We continue to work collaboratively with the Medical Board and Ahpra to improve the notification and compliance functions that impact so strongly on doctors. This is particularly the case for vexatious notifications.

The AMA would like to see Ahpra functioning well, with a solid level of trust in the process amongst the profession. Unfortunately, we do not see this, noting that the NHPO's annual report found that complaints against Ahpra increased by 42 per cent in the past financial year.⁵

Improving transparency on how vexatious complaints are managed would improve how the profession views Ahpra and its processes. We need to see how the Framework has changed behaviour and improved vexatious notification handling. We would like to see this as a driver to improve the Framework. The AMA is committed to working with Ahpra to achieve this.

December 2022

⁵ NHPO (2022), [Annual report 2021-22](#)