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AMA submission to the Standing Committee on Community Affairs: Inquiry into the complaints mechanism administered under the Health Practitioner Regulation National Law

The Australian Medical Association (AMA) is the peak representative body of the medical profession. The AMA represents doctors in training, general practitioners, specialists and clinical academics across the spectrum of salaried doctors and private practitioners throughout Australia.

The AMA welcomes the opportunity to provide a submission to the Committee's inquiry into the complaints mechanism administered under the Health Practitioner Regulation National Law. This submission is in addition to our submission to the Committee's inquiry to the medical complaints process in Australia, conducted in 2016.

The AMA is satisfied that the National Registration and Accreditation Scheme (NRAS) has met the expectations of the medical profession in respect of:

- registration arrangements that enable medical practitioners, who are qualified and safe, to work anywhere in Australia;
- independent accreditation of medical education and training that meets international guidelines; and
- medical practice registration standards set by the Medical Board of Australia, with clear jurisdiction over all health care provided by medical practitioners.

The National Scheme '...remains acknowledged as amongst the most significant and effective reforms of health profession regulation in Australia and internationally'[1], Its achievements in supporting mobility for health professionals, improving protection for the health system and ensuring that the community can have confidence that health professionals meet a national standard based on safe practice are appreciated by the community.

[1] COAG Health Council. (2015) Communiqué – The Independent Review of the National Registration and Accreditation Scheme for Health Professions. www.coaghealthcouncil.gov.au/Announcements/ArtMID/527/ArticleID/71/ReissuedCommunique-Final-Report-of-the-Independent-Review-on-the-National-Accreditation-Scheme-forhealth-professionals

The complaints handling mechanisms under the NRAS could be improved through:

- greater alignment between the various systems, in particular, streamlining the interaction between the Queensland Office of the Health Ombudsman and Australian Health Practitioner Regulation Authority (AHPRA);
- increased transparency during the investigation process;
- reducing the time taken to action notifications; and,
- developing a system to triage and remove complaints that are clearly vexatious.

These issues are discussed in the remainder of this submission.

Finally, regulatory systems should be subject to oversight and periodic review. However, the AMA believes that the significant level of review of the NRAS is beginning to undermine the public's confidence in all of the professions that it represents.

Greater alignment of the various systems

In particular, between AHPRA and the Queensland Office of the Health Ombudsman (OHO)

The complaints process varies between the various states and territories. The processes are defined in the National Law, which in each state is slightly. Further work on harmonising the application of the National Law by the medical boards would remove some of the variation. To this end, AHPRA have recently published a National Restrictions Library to provide a consolidated structure for common restrictions used across the regulatory functions of the National Boards and to support:

- consistency in recommendations from AHPRA to the National Boards and delegates
- consistency in the restrictions appearing on the national public register of health practitioners, and
- a best practice approach to monitoring compliance with restrictions.

This initiative and its adoption by the boards will need to be evaluated after a suitable time period.

The AMA supports a system where a there is a clear set of roles and responsibilities. This is particularly important for efficiently and effectively managing complaints at both an individual and a systemic level.

The move by the Queensland Government to establish a semi-independent organisation to manage complaints with AHPRA has unnecessarily complicated the system. However it is noted that the dual system in NSW has not caused the same level of concern for our NSW colleagues.

The AMA has major concerns that Queensland OHO, as it currently operates, weakens the national regulatory system through the creation of differing standards and thresholds between itself and the Medical Board of Australia. This, in turn, reduces the consistency of decisions, the comparability of data, and the ability of both medical practitioners and patients to have confidence in the decisions of both bodies.

Matters that are considered minor by the OHO are closed or not accepted without any consideration by, or referral to, the Boards and AHPRA. Where matters are referred to AHPRA, they generally occur at the very end of the assessment window before the legislated timeframes are exceeded. Once a matter is referred to AHPRA the acceptance, assessment and investigation process begins anew, further adding to delays in timely resolution.

Finally, our Queensland members have consistently raised concerns regarding the considerable delays in OHO decision-making, even where the matter is trivial or vexatious. Given the mandated time frames were a key feature of the Health Ombudsman Bill 2013 (Qld) they should be strictly followed and, if not, appropriate explanations must be given as to why not. This is aggravated by the 'bounce' phenomena wherein complaints are part handled by the OHO and AHPRA further adding to delays in resolution.

The effectiveness of the Queensland arrangements has been considered by a recent Queensland Parliamentary Committee's inquiry into the performance of the Queensland Health Ombudsman's functions. The report can be found here http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2016/5516T2268.pdf

At the time of writing, the AMA is awaiting a response from the Queensland Government as to whether it will accept those recommendations.

Greater Transparency

The AMA has received very few complaints about the notification system in the past 12 months, indicating that the system is bedding down well.

The notification system seeks to ensure that when someone has a concern about a practitioner, that these concerns are reviewed and if needed, addressed. Given that close to 70 per cent of notifications closed in 2015 resulted in no disciplinary action, it would appear that other concerns are contributing to a person's decision to make a notification. To better understand these concerns, practitioners seek data around the characteristics of people making the complaints. Are there groups of patients who have unworkable expectations that require a different communication strategy from practitioners, i.e. is there an expectation management problem in some circumstances? Information about the complainants, particularly if there are trends, would be beneficial. This information is currently not available publicly.

Vexatious claims, drawn out timeframes and a veritable vacuum of information during the investigation are three key elements that directly affect the mental health of doctors subject to the process. Greater transparency during the notification process would be beneficial for practitioners. There have been a few cases raised with the AMA where the practitioner or their representative indicated that they were unsure of the nature of the investigation and therefore how to respond. It was not clear from the investigator's correspondence whether a response was required immediately, or whether further information from the investigator was forthcoming. Often the person communicating may change – meaning a loss of continuity and of understanding with the key contact for the medical practitioner. This unnecessarily complicated the investigation from the perspective of the practitioner. This is particularly important for cases that have lengthy investigation processes. During these investigations, changes in circumstances can occur before the investigation is completed. These changes can place a doctor in an untenable and unworkable position.

In one case there continued to be significant time delays in progressing what appears to be a potentially important case from both the practitioner and the patient's perspective. The concerns that AHPRA held regarding the practitioner were not made clear for a considerable period of time. This caused significant angst for the practitioner and it is expected that the time delays would have caused significant angst to the patients involved.

In both instances, broader investigations were foreseen by AHPRA, and this should have been communicated to the practitioner at the time they were initially contacted by AHPRA. Whilst the

AMA understands that there are limits to the information that can be communicated to the practitioner under review and to the notifier, the brevity of the explanation of the scope and potential length of the investigation, was such that the practitioner could not know what was happening.

These complaints indicate that further clarity in communicating the exact nature of the allegations against a practitioner was needed, particularly early in the process.

Time taken to investigate a notification

There is no doubt that lengthy investigations are detrimental to the wellbeing of practitioners and colour consumer views about the effectiveness of the process. It is one of the more common member complaints.

The AMA has noted the average time it took AHPRA and National Boards to assess notifications continued to reduce during the 2014-15 reporting year. The time it took AHPRA and the Boards to close notifications in assessment, including any show cause process required under Division 10 of Part 8 of the National Law, reduced from 142 days in 2013-14 to 73 days in 2014-15. The time it took AHPRA and National Boards to move notifications from assessment to another stage of the notification process (where further enquiries were required to resolve the notification) reduced from 54 days in 2013-14 to 46 days in 2014-15[2].

A common complaint in previous years from AMA members had been that the directing of notifications/complaints to either the Health Care Complaints (HCCs) entities or AHPRA was ineffective and inefficient.

AHPRA and the Board have been working with the HCCs to make sure the interface between the entities is smooth. There are differences in the legislation and functions for the HCCs across the jurisdictions that has made this work difficult.

AHPRA has developed a decision matrix for use by AHPRA and the HCC entities. This matrix steers the complaints and notifications to the right pathway, and the AMA has noted its impact in the significant improvement in the timelines in which preliminary assessments are undertaken.

Whilst the AMA notes the complications inherent for some investigations, particularly if there is more than one notifier, we stress that these complex cases must also be dealt with expeditiously.

The investigation process must also identify the source of the complaint, whether it is the individual practitioner or the system within which the practitioner operates in a timely manner. The investigation process can uncover information relating to systemic flaws. This information must be identified, reported, and referred to the relevant body or bodies for immediate action. However, the discovery of systemic flaws within a system should not lengthen the investigation of the practitioner unnecessarily.

In a welcome development, the MBA in 2014 announced that it would fund external doctors' health programs in Australia to complement the regulatory process for impaired doctors who may place the public at risk. At that time, Dr Joanna Flynn noted, 'One message is clear: we care about the wellbeing of medical practitioners and students and we are improving their access to health service'[3].

[2] https://www.ahpra.gov.au/annualreport/2015/downloads.html Page 57

[3] Medical Board of Australia. Media release – Medical Board to fund strong national health programs for doctors. Canberra: MBA, 2014. Search PubMed

The willingness of AHPRA and the Medical Board of Australia to work with the profession and improve case management practices will allow the complaints process to continue to improve.

Vexatious claims

A fair system must not expose practitioners to obviously vexatious or spurious complaints. Vexatious complaints undermine the system, use up valuable resources and must be discouraged.

AHPRA acknowledges the potential for people to make a notification on frivolous or vexatious grounds and the negative impact that unfounded allegations may have upon individual practitioners. Being subject to any formal complaint investigation is highly stressful for any registered practitioner.

AHPRA and the national health practitioner boards state that they take a responsive, risk-based approach to regulation[4]. Such an approach requires regulators to take the least intrusive course of action that will protect the public from the risk of harm, and to respond in ways that are proportionate to the risk. Early assessment and triage should confirm the authenticity of the complaint, and identify apparent vexatious or inappropriate complaints and remove them from the system as soon as practicable. Complaints that are made from a political standpoint should be considered bullying and vexatious; this is not what the complaints system is designed to achieve. These types of complaints unreasonably consume resources from the Practitioner, their Medical Defence Organisation and the organisation that they may represent.

Unfortunately, people do make vexatious claims. The AMA is concerned that the recommendations from the independent review on the use of chaperones to protect patients, due to report shortly, will provide for an instant suspension of a practitioner prior to an allegation being investigated. A requirement to immediately and indefinitely suspend a practitioner from practice would give vexatious complainants an avenue to inflict permanent damage to the practitioner through the loss of employment or the closure of their business. In a rural setting, this may mean the only practitioner would no longer be able to practice.

Summary

The primary role of the Medical Board of Australia and AHPRA is public protection; ensuring Australians have access to safe, high quality health practitioners. The role incorporates a compliance function in order to address concerns about registered health practitioners.

AMA supports a compliance system which is transparent and accountable. It is vitally important that the profession retains the confidence of the public, and a transparent, easy-to-access complaints and disciplinary system is essential to achieve this goal. This system needs to be fair and uphold the principles of natural justice for all stakeholders. It is vital that the system shows a commitment to impartiality and due process. It is also vital that the wellbeing and state of mind of the practitioner be at the forefront of AHPRA's considerations – particularly in investigations that are predicted to be long running.

[4] Australia Health Practitioner Regulation Agency. Regulatory principles for the national scheme. Canberra: AHPRA, 2014. Available at www.ahpra.gov.au/About-AHPRA/Regulatory-principles.aspx.

The AMA recognises the work done by AHPRA and Medical Board of Australia to improve processes and their willingness to continue to work with the professions to continually identify areas for improvement and act upon them.

The AMA supports this work continuing.

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