



Australian Government

Australian Government response to the Senate
Community Affairs References Committee report:
Complaints mechanism administered under the
Health Practitioner Regulation National Law

August 2018

Introduction

The Australian Government thanks the Senate Community Affairs References Committee (the Committee) for their work during this inquiry investigating issues in the complaints mechanisms that are administered by the Australian Health Practitioner Regulation Agency (AHPRA). This inquiry was initiated following concerns expressed by both practitioners and complainants in the Committee's earlier inquiry into the 'Medical complaints process in Australia'.

Regulation of health practitioners under the National Registration and Accreditation Scheme (the Scheme) is an essential part of ensuring that the Australian health care system is safe and provides quality care. The protection of the public is one of the key objectives of the Scheme. The complaints (known as notifications except in Queensland) process is a critical part of the Scheme in ensuring that the Australian community feels confident that only those practitioners that are safe to practise are able to do so.

The legislation underpinning the Scheme is established by complementary legislation in each state and territory. In regards to the notification processes, it is important to note that both Queensland and NSW are co-regulatory jurisdictions. While there are differences in the way notification processes are managed by both of these states, it is important to note that AHPRA itself has a limited role in notification processes in these jurisdictions.

The legislation which established the Scheme provides a number of mechanisms to address issues that are identified with a practitioner's practice, other than cancelling or suspending a practitioner's registration. These mechanisms include cautions, reprimands and time-limited or permanent conditions on a practitioner's practice. Conditions can include requirements for supervised practice or the need to complete relevant education in an area of professional practice that has been identified as a concern. These mechanisms are important in that while providing public protection, practitioners can be supported to improve their practice following the investigation process.

Health practitioners must feel confident that when a complaint is made against them, they will be treated fairly and that the matter will be resolved in a timely and transparent manner. The Australian Government recognises that being a recipient of a notification can have a significant impact on a practitioner and acknowledges the potential ongoing stress while the matter is being considered. A number of parties to the inquiry particularly noted the impact of vexatious complaints on practitioners.

A person making a notification must also feel that their concerns have been heard and that each notification is taken seriously and assessed appropriately. This is part of the difficult balance that must be achieved between the rights of the notifier (whether that be a practitioner or a community member) and the practitioner who has the notification made against them.

Health Ministers, through the COAG Health Council have the important role of policy oversight of the Scheme. Following the release of the *Independent Review of the National Registration and Accreditation Scheme for health professions* (NRAS Review) in August 2015, Health Ministers requested immediate implementation of a number of recommendations including those to improve the notification process. AHPRA has subsequently made and reported on a number of administrative improvements and has consulted widely with consumers to gain feedback and to gauge community expectations. These improvements have included simplification of the interface for notifiers on the AHPRA website and increased use of social media as an education tool and to promote awareness of the notification mechanisms for both notifiers and practitioners. AHPRA has commissioned research to further understand the incidence of vexatious complaints and is using the findings of this research to improve its processes.

As detailed in the Australian Health Ministers' Advisory Council's submission to this inquiry, legislative reforms to the *Health Practitioner Regulation National Law Act* (the National Law)

are also currently underway as a result of the NRAS review. This is a multi-stage process. The first stage of legislative amendments, the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2017* (the Amendment Act), has been passed and is currently being implemented. The Amendment Act makes a number of improvements to the operations of AHPRA and the National Boards, including improving the ability for AHPRA to communicate and engage with notifiers.

Further stages of legislative reform are underway with additional public consultation to be undertaken on these proposals for reform. Issues under consideration are wide ranging and will go to further improving the operation of the entirety of the Scheme including the notification process.

While recognising that there have been issues with the implementation of the Scheme, its establishment has been a great achievement in realising a nationally consistent approach to health practitioner regulation. The Scheme has been recognised internationally by the Organisation for Economic Cooperation and Development (OECD) as an OECD leader in systems of regulation for health professionals¹. All governments and AHPRA are committed to working collaboratively with professions and with the community to ensure that the Scheme continues to evolve on a national platform and provides the basis for a flexible and responsive future health workforce.

Recommendations and Australian Government responses

The Australian Government has considered the 14 recommendations made in the report and provides the following responses.

Recommendation 1

The Committee recommends that AHPRA review and amend the way it engages with notifiers throughout the process to ensure that all notifiers are aware of their rights and responsibilities and are informed about the progress and status of the notification.

Recommendation 14

The Committee recommends that AHPRA institute a practice of providing monthly updates to complainants and medical professionals whom are the subject of complaints.

Australian Government response to recommendations 1 and 14:

The Australian Government notes that the Amendment Act passed in the Queensland Parliament on 6 September 2017 contains provisions which enhance AHPRA's ability to communicate with notifiers.

The new provisions enhance the requirements in the National Law to provide regular communication with notifiers and health practitioners who are subject to a notification. AHPRA is required to communicate with practitioners at all key points, such as on receipt of the notification, decision to investigate or refer the matter, and to give notice of any proposed decision to take action in relation to the practitioner's registration. The Amendment Act also allows AHPRA to provide notice to notifiers at key decision points. In addition, AHPRA is required to provide progress updates every three months during the course of an investigation to both the practitioner being investigated and the notifier.

¹ OECD. (2015) *OECD Reviews of Health Care Quality: Australia 2015; Raising Standards*, OECD Publishing, Paris.

AHPRA is preparing a protocol to support the amendments relating to improved communication with notifiers. The protocol is being prepared in consultation with key stakeholders representing consumers, notifiers and practitioners.

Practitioners and notifiers are able to contact their notifications officer within AHPRA at any time for an update on the progress of their notification.

It should be noted that different requirements and processes apply to notification and complaint management undertaken by the Health Care Complaints Commission (HCCC) in NSW and the Office of the Health Ombudsman (OHO) in Queensland.

Recommendation 2

The Committee recommends that AHPRA and the national boards develop and publish a framework for identifying and dealing with vexatious complaints.

Recommendation 4

The Committee recommends that AHPRA and the national boards institute mechanisms to ensure appropriate clinical peer advice is obtained at the earliest possible opportunity in the management of a notification.

Recommendation 5

The Committee recommends that AHPRA immediately strengthen its conflicts of interest policy for members of boards and that the Chair of the board should make active inquiries of the other decisions makers about actual or potential conflicts of interest prior to consideration of a notification.

Recommendation 6

The Committee recommends that AHPRA develop a transparent independent method of determining when external advice is obtained and who provides that advice.

Recommendation 7

The Committee recommends that AHPRA consider providing greater remuneration to practitioners called upon to provide clinical peer advice.

Recommendation 8

The Committee recommends that AHPRA formally induct and educate board members on the way the regulatory powers of the board can be used to achieve results that both manages risk to the public and educates practitioners.

Recommendation 9

The Committee recommends that AHPRA conduct additional training with staff to ensure an appropriately broad understanding of the policies it administers and provide staff with ongoing professional development related to the undertaking of investigations.

Recommendation 13

The Committee recommends that AHPRA take all necessary steps to improve the timeliness of the complaints process and calls on the Australian Government to consider avenues for ensuring AHPRA has the necessary additional resources to ensure this occurs.

Australian Government response to recommendations 2, 4-9 and 13:

The Australian Government will recommend that the COAG Health Council write to AHPRA requesting advice on how AHPRA is addressing these recommendations. AHPRA provides regular updates to the COAG Health Council on its operations and updates on progress can be provided to Health Ministers as part of this process.

With regard to Recommendation 13, which calls on the Australian Government to consider avenues for ensuring AHPRA has the necessary additional resources to ensure that the timeliness of the complaints process is improved, under the Intergovernmental Agreement (IGA) which established the Scheme, AHPRA does not receive government funding for its operations.

While governments provided funding for the establishment of the Scheme and for reform projects such as the amendments to the National Law, the IGA stipulates that the Scheme is to be self-funding. National Boards set registration fees for practitioners to cover the costs of their regulatory functions. If AHPRA requires additional resourcing to deal with increased numbers of complaints, this should be managed through the streamlining of National Board operations or, if necessary, an increase in practitioner registration fees. It is important to note that AHPRA is continuing to make improvements to its processes with the aim of improving the timeliness of the notifications process.

Recommendation 3

The Committee recommends that the COAG Health Council consider whether recourse and compensation processes should be made available to health practitioners subjected to vexatious claims.

Australian Government response to recommendation 3:

The Australian Government does not support Recommendation 3. Where a notification is clearly vexatious, the National Board has the ability under the National Law to take no further action following initial assessment. Where legitimate public safety concerns are raised, AHPRA and the National Boards have a responsibility to investigate.

The proposed source of the compensation is not clear from the recommendation. The Australian Government does not support actions that could discourage people from raising their concerns with AHPRA.

AHPRA has commissioned research to better understand the extent of vexatious complaints. The currently available evidence suggests that the incidence of vexatious notifications is very low, and that greater risk is posed to the public from people not reporting their concerns. It is acknowledged however that vexatious notifications can have a significant impact on practitioners. AHPRA will use the research to improve its processes and inform best practice for reducing, identifying, and managing vexatious complaints.

Recommendation 10

The Committee recommends that the COAG Health Council consider amending the National Law to reflect the Psychology Board of Australia's policy on single expert witness psychologists acting in family law proceedings.

Australian Government response to recommendation 10:

The Australian Government will recommend that the COAG Health Council seek advice from AHPRA on this matter, including how their current policies and processes operate when dealing with notifications about practitioners who are involved in legal proceedings as part of their practice. While the Government acknowledges that the AHPRA notification process could potentially be used vexatiously in the context of practitioners acting in legal proceedings, it is important that legitimate concerns about the practice of these practitioners can be assessed by AHPRA, where appropriate.

Recommendation 11

The Committee recommends that the COAG Health Council consider making a caution an appellable decision.

Recommendation 12

The Committee recommends that the COAG Health Council consider whether notifiers should be permitted to appeal board decisions to the relevant tribunal.

Australian Government response to recommendations 11 and 12:

The Australian Government is currently involved in scoping work which is underway for the second stage of amendments to the National Law. The issues raised by Recommendations 11 and 12 are being considered by all jurisdictions as part of this process. The second stage of amendments will include a public consultation process, including stakeholder consultation forums and release of a consultation paper.