



27 October 2016

Chair, Senate Community Affairs Reference Committee
Inquiry into the Medical complaints process in Australia
c/o Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra, ACT 2600

Via email: community.affairs.sen@aph.gov.au

Dear Senator

Senate Inquiry into the medical complaints process in Australia

The Australian Nursing and Midwifery Federation (ANMF) welcomes the opportunity to provide comment to the Senate Community Affairs Reference Committee to assist in their deliberations on the *Inquiry into the medical complaints process in Australia*.

Established in 1924, the ANMF is the largest professional and industrial organisation in Australia for nurses and midwives, with Branches in each State and Territory of Australia. Our core business is the professional and industrial representation of ANMF members and the professions of nursing and midwifery.

Our membership of over 258,000 nurses, midwives and assistants in nursing, are employed in a wide range of settings in urban, rural and remote locations in both the public and private health and aged care sectors.

As the largest professional organisation for nurses and midwives in Australia, the ANMF has, on behalf of our members, a genuine interest in, and concern for, matters relating to the regulation and practice of registered health practitioners.

The ANMF has been a long-standing supporter of the move to the national registration and accreditation scheme (the Scheme) for health professions in Australia. In providing a national regulation process, the Scheme has enabled consistency of registration standards for the nursing and midwifery professions.

A submission to this Inquiry had not been made by the ANMF to date as the focus was on the medical profession. Nursing and midwifery, as separate and distinct professions in their own right, do not consider themselves part of 'Australia's medical profession'. In our response we will, therefore, focus on the nursing and midwifery professions.

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ANMF Journals

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*The industrial and
professional organisation
for Nurses, Midwives and
Assistants in Nursing
in Australia*

The ANMF was only made aware of the late inclusion of nurses and midwives to the notes on the Terms of Reference, immediately prior to the submission closing date in May 2016. This did not provide sufficient time for response before dissolution of the Senate occurred.

Prevalence of bullying

It is difficult to quantify the prevalence of bullying and harassment in the nursing and midwifery professions as there is currently no national data to provide a point of reference. However, the then Australian Nursing Federation (now Australian Nursing and Midwifery Federation), the ANF Victorian Branch and the Queensland Nurses Union provided submissions to a House of Representatives Standing Committee on Education and Employment Inquiry into Workplace Bullying held in 2012, which highlighted that workplace bullying is a significant issue for nurses and midwives¹. A more recent submission by the ANMF Victorian Branch to the Victorian Auditor-General in 2015² reiterated the prevalence of workplace bullying among ANMF nurse and midwife members, through evidence provided in a study undertaken by Monash University³. Similarly, research undertaken in various Australian states/territories by nurse academics indicate significant levels of workplace harassment/bullying. Farrell et al⁴ found 32% of their nurse and midwife respondents had experienced bullying, mostly from colleagues or from their managers/supervisors.

In a study of Australian undergraduate nursing students' experiences of bullying and/or harassment during clinical placement⁵, half (50.1%) of the students indicated they had experienced this behaviour from nursing colleagues in the previous 12 months. The majority of students reported the experience of being bullied/harassed made them feel anxious (71.5%) and depressed (53.6%). Almost a third of students (32.8%) indicated that these experiences negatively affected the standard of care they provided to patients with many (46.9%) reconsidering nursing as their intended career.

The findings of the studies referred to above are worrying in view of forecast national shortages for the nursing workforce and the need, therefore, to improve recruitment and retention in the profession.

¹ Submissions made to the House of Representatives Standing Committee on Education and Employment Inquiry into Workplace Bullying, 2012 by: Australian Nursing Federation (ANF). Submission Number: 85; Queensland Nurses' Union. Submission Number: 23; and ANF Victorian Branch. Submission Number: 117. Retrieved on 13 October 2016 from:

http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=ee/bullying/subs.htm

² ANMF Victorian Branch. 2015. *Submission to the Victorian Auditor-General on Bullying and Harassment in the Public Health Services*. Retrieved on 14 October 2016 from: <http://www.anmfvic.asn.au/news-and-publications/publications?type=submissions&page=1>

³ Ibid. p.3. Monash University and Institute for Safety, Compensation and Recovery Research (ISCRR). April 2015. *Leading indicators of occupational health and safety: A report on a survey of Australian Nursing and Midwifery Federation (Victorian Branch) members*.

⁴ Farrell, G.A. and Shafiei, T. 2012. Workplace aggression, including bullying in nursing and midwifery: A descriptive survey (the SWAB study). Division of Nursing and Midwifery, La Trobe University, Mental Health Professional Development & Research Unit, Austin Health, Melbourne, Australia. *International Journal of Nursing Studies*. DOI: <http://dx.doi.org/10.1016/j.ijnurstu.2012.06.007>

⁵ Budden, L.M., Birks, M., Cant, R., Bagley, T., and Park, T. 2015. Australian nursing students' experience of bullying and/or harassment during clinical placement. *Collegian*. DOI: <http://dx.doi.org/10.1016/j.colegn.2015.11.004>

The ANMF considers that the first level for raising a bullying complaint is within the workplace. The ANMF has a policy statement: *Bullying in the workplace*⁶ in which we encourage nurses and midwives to “...report to management any work-related bullying hazard or incident as soon as they become aware of it in order to enable preventative measures to be implemented”. Our policy outlines a risk management approach to addressing and preventing recurrence of workplace bullying.

When that first level of making a complaint in the workplace fails, then the nurse or midwife is able to report the perpetrator of bullying to a range of state or territory based authorities including Occupational Health and Safety Regulators (such as WorkSafe Victoria, SafeWork NSW, WorkSafe Queensland or SafeWork SA), the Fair Work Commission, and the Equal Opportunity Commissioner, amongst others.

The Australian Health Practitioner Regulation Agency (AHPRA) are unlikely to be able to deal with reporting of bullying in a useful manner, particularly in dealing with the underlying issues which are usually organisational, rather than individual. A report to AHPRA actually negates the occupational health and safety nature of bullying, and the need for a risk management approach to be implemented, as well as investigating the root cause of the issue. It is possible for a vexatious or mischievous report to be made to AHPRA where it is the making of the report itself which is part of the pattern of bullying behaviours, rather than the perpetrator being subject to such a report that is the issue.

Bullying should only be reported to AHPRA if the nurse or midwife believe that there are sufficient grounds to do so under section 144 of the National Law. Nurses and midwives additionally have an obligation to make a notification to AHPRA regarding conduct that is deemed to be “notifiable conduct” under section 140 of the National Law.

Role of the Australian Health Practitioner Regulation Agency

As nurses and midwives comprise the largest component of the health workforce, a nationally consistent approach to regulation is essential. The ANMF supports the role of the Nursing and Midwifery Board of Australia (NMBA) in providing for the protection of the public through its registration and accreditation approval activities legislated under the Health Practitioner Regulation National Law (2009) (the National Law) as enacted in each state and territory. In particular, the ANMF upholds the core role of the NMBA of “ensuring that any person who is registered is safe and competent to practice”.

The implementation path from state/territory based registration system to a national regulatory process has been complex and fraught with difficulties. The ANMF Federal Office, through our Branches, has been made aware of many problems encountered by our members in their interactions with AHPRA on behalf of the NMBA. However, given our commitment to the success of this important Scheme, the ANMF has committed to working with AHPRA and the NMBA, on issues which have had the potential to undermine the credibility of the national Scheme.

It is the experience of the ANMF that, in the past, nurses and midwives have not always been aware of the AHPRA complaint process. However, we acknowledge that both AHPRA and the NMBA have made improvements to their websites by placing a clear notice “Make a Complaint” on their home pages, with links to relevant documentation.

⁶ Australian Nursing and Midwifery Federation. 2015. ANMF Policy statement: Bullying in the workplace. Available from the ANMF website at: http://anmf.org.au/documents/policies/bullying_in_the_workplaceFINAL.pdf

It is the complaint process itself which raises concerns for the ANMF. Our concerns relate chiefly to the length of time taken to investigate a complaint (stated on the AHPRA website as 9-12 months and on the NMBA website as 3 months), and, inconsistencies in the principles of decision-making on complaints. We have in fact recently written to the NMBA outlining our concerns about the notifications process for nurses and midwives currently being applied across the country. We repeat these points of concern here due to their relevance to the Inquiry's Terms of reference, as follows:

- the level of consistency in application of criteria employed by state/territory AHPRA officers in their recommendations to the NMBA;
- inconsistencies in the processes for decision-making on notifications, between individual AHPRA officers and between jurisdictions;
- lack of transparency on decisions made for imposing conditions on practice – while principle statements are provided there is an absence of the reasoning or evidence used to arrive at the final decision; and,
- lack of consistency in the notifications decision-making processes between the national Boards (for example, while a nurse may be de-registered for sexual misconduct, a medical practitioner may be allowed to continue to practice under the condition of a chaperone).

In NSW, nurses and midwives are regulated under a co-regulatory model in which complaints and notifications are managed by the Health Care Complaints Commission and the Nursing and Midwifery Council of NSW. It is the experience of the NSW Branch of the ANMF (also known as the New South Wales Nurses and Midwives' Association) that respondents to complaints often experience lengthy delays in the management of the complaint/notification and notable inconsistencies with the application of professional standards by the adjudicating bodies (i.e. Professional Standards Committees and the NSW Civil and Administrative Tribunal).

Resourcing of AHPRA

AHPRA should provide a centralised and consistent approach to the management of complaints made and subsequent notifications, involving regulated health practitioners. Although work has been undertaken by AHPRA to streamline the complaints process, the current timeline for lodgement, assessment and determining the outcome of a complaint remains far too long – as stated above a period of 9-12 months. This unacceptably prolonged timeframe for the management of the notification/complaint may detrimentally affect the people involved in the investigation – both the complainant and the respondent. This may include professional embarrassment, loss of confidence and exposure to professional practice, and financial loss and hardship.

The ANMF is unsure whether this prolonged timeframe is a result of under-resourcing or inadequate processes for notification management. We submit that AHPRA and the NMBA must be adequately resourced for their role as the national regulatory body, so that the regulation process can serve its purpose of protecting the public. Adequate resourcing is also essential so that nurses and midwives are dealt with fairly, equitably and efficiently within the Scheme. The Australian Government has invested financially in the education of nurses and midwives and thus has a stake in ensuring a well-functioning workforce. It would seem reasonable then, if the issue is under-resourcing, that the Australian Government should sufficiently fund AHPRA and the NMBA so that they have the capacity to administer a national complaints system for health practitioners effectively and in a more streamlined and timely manner than at present.

Signed declaration

Nurses and midwives may, in the course of their personal and/or professional lives, have cause to make a complaint, voluntary notification or mandatory notification about another registered health practitioner to AHPRA.

When sufficient information is provided by the complainant when making a notification or complaint, AHPRA and the NMBA are obliged under the National Law to assess the notification or complaint. Despite the existence of documentary guidance from AHPRA, complaints of a vexatious nature may still be made. The experience of being the subject of a complaint or notification can be very distressing for the nurse or midwife involved. This can be compounded when the complaint is of a vexatious nature.

It is unusual that even if a complaint appears to be vexatious, that AHPRA would state such a conclusion. The more likely finding would be that there isn't sufficient evidence available to support the notification or complaint or that the conduct alleged would not amount to unsatisfactory professional conduct or professional misconduct as defined under the National Law.

Whether or not a complaint is vexatious is often a subjective test. Many respondents form the view that a complaint that has been made about their practice has been done so with an ulterior motive whilst the complainants are usually vehement about the veracity of their claims.

It is the view of the ANMF that nurses and midwives should be encouraged to make a complaint, voluntary notification or mandatory notification if they believe that such a notification is warranted having regard to the National Law and having consulted the relevant publications, including: *Guidelines for Mandatory Notifications*⁷ and *A guide for practitioners: Notifications in the National Scheme*⁸

An idea has been proposed that there be a requirement for a complainant to sign a declaration that their complaint is being made in good faith. Such a declaration would unlikely prevent unnecessary notifications being made, however, it has the potential to serve as a deterrent to practitioners who are making a valid complaint for fear that it could be determined 'vexatious' and that they may suffer some kind of professional retribution if the complaint is not proven. Therefore, the ANMF does not support the introduction of a requirement for a declaration to be made.

In order to improve the AHPRA complaints system the ANMF recommends:

- that AHPRA and the NMBA provide better education and advice to both registrants and the public about what constitutes a complaint or notification to AHPRA and NMBA; and
- that the Australian Government review the funding of AHPRA and other relevant complaint handling bodies (such as the Health Care Complaints Commission and the Nursing and Midwifery Council) to ensure they possess the adequate resources to effectively deal with notifications in an efficient manner to ensure the protection of the public and procedural fairness to the respondent.

⁷ <http://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Codes-Guidelines/Guidelines-for-mandatory-notifications.aspx>

⁸ <http://www.ahpra.gov.au/documents/default.aspx?record=WD13%2F10669&dbid=AP&checksum=pDOQEA5grtYh1Jhhd6%2Fh0A%3D%3D>.

The foregoing comments are offered to assist the Senate Committee in deliberations on the AHPRA complaints process.

Should you require further information on this matter, please contact Julianne Bryce, Senior Federal Professional Officer, ANMF Federal Office, Melbourne on 03 96028500 or julianne@anmf.org.au.

Yours sincerely

Lee Thomas
Federal Secretary