Aboriginal and Torres Strait Islander Health Practice
Chinese Medicine
Chiropractic
Dental
Medical
Medical Radiation Practice
Nursing and Midwifery
Occupational Therapy
Optometry
Osteopathy
Pharmacy
Physiotherapy
Podiatry
Psychology

Australian Health Practitioner Regulation Agency

25 October 2016

Senator Rachel Siewert
Chair
Senate Standing Committee on Community Affairs
PO Box 6100
Parliament House
CANBERRA ACT 2600

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

Dear Ms Siewert

Submission to the Senate Standing Committee on Community Affairs Inquiry into the Medical Complaints Process in Australia

On behalf of the Medical Board of Australia (MBA), the Nursing and Midwifery Board of Australia and the Australian Health Practitioners Regulation Agency (AHPRA), I am pleased to present a joint submission to the above inquiry of the Senate Standing Committee on Community Affairs.

AHPRA, the MBA and the NMBA thank the Committee for the opportunity to make this submission. We recognise the importance of having an effective medical complaints process that supports public safety and is also fair to doctors, nurses and midwives. We are also committed to playing our part to ending bullying and harassment within the medical, nursing and midwifery professions, an issue which has been highlighted by reports such as the investigation into bullying and harassment in the surgical profession by the Royal Australasian College of Surgeons in late 2015.

Our submission to the inquiry sets out our roles in the medical complaints process, particularly as it relates to issues of bullying and harassment, how we work with other entities and partners in the complaints process to protect the public, and how we support the elimination of bullying and harassment from the professions.

We look forward to providing further input into this inquiry via the public hearing on Tuesday 1 November 2016. Our contact for the submission is Andrea Oliver, Manager, Intergovernmental Relations, Strategy and Policy via

.

Yours sincerely

Martin Fletcher
Chief Executive Officer
Australian Health Practitioner Regulation Agency

Dr Joanna Flynn AM
Chair
Medical Board of Australia

Dr Lynette Cusack
Chair
Nursing and Midwifery Board of Australia

Enc: Joint submission to the Senate Committee Inquiry – medical complaints

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Australian Health Practitioner Regulation Agency

Joint Submission from the Medical Board of Australia, the Nursing and Midwifery Board of Australia and the Australian Health Practitioner Regulation Agency

October 2016

Community Affairs References Committee Inquiry: Medical Complaints Process in Australia

Executive summary

The Medical Board of Australia (MBA), the Nursing and Midwifery Board of Australia (NMBA) and the Australian Health Practitioner Regulation Agency (AHPRA), are pleased to provide a joint submission to the Senate Community Affairs References Committee on the medical complaints process in Australia.

The MBA, NMBA and AHPRA acknowledge the unacceptably high rates of bullying and harassment in the health sector that have been cited in numerous reports.[1,4,5] Bullying and harassment can be very damaging to the people who are subject to these behaviours and to the safety of patients. There is no place for these behaviours in the Australian medical, nursing, midwifery or registered health practitioner workforce. Through our role in the national regulation of health practitioners, we are committed to playing our part in supporting the health and well-being of medical practitioners, nurses and midwives and ending discrimination, bullying and harassment.

We also recognise the need to support the psychological health and well being of health practitioners, as demonstrated by high levels of psychological distress reported in the 2013 Beyondblue *National Mental Health Survey of Doctors and Medical Students*.[2] Both the MBA and the NMBA have made significant commitments to fund national health programs for their respective professions.

Protection of the public through effective practitioner regulation is the core focus of, the MBA, the NMBA and AHPRA. It is our primary consideration in managing the registration, notifications and compliance functions of the National Registration and Accreditation Scheme (the National Scheme) including for medical practitioners, nurses and midwives. Our role, along with our co-regulatory partners in New South Wales and Queensland, in dealing with notifications about registered health practitioners is an important component of the overall complaints process in Australia. We must assess all notifications we receive to identify any risks to public and patient safety which may require regulatory action.

Ultimately, the MBA, NMBA and AHPRA must work within the requirements of the Health Practitioner Regulation National Law (the National Law), as in force in each state and territory. Importantly, this means regulatory action can and will only be taken where the legal threshold has been met and there is a risk to patient safety which may require some sort of restriction on the registration of a health practitioner. If the behaviour of a practitioner creates an environment that places patients at risk of harm, the MBA or NMBA can, and do, take regulatory action. However, where the legal threshold for regulatory action is not met, we do not take action. In 2015/16, approximately 60% of notifications were closed following careful assessment.

We recognise the potential for people to make a notification on frivolous or vexatious grounds, although accurately identifying the number of these complaints is difficult. We acknowledge 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. This highlights the need for a rigorous and timely approach to assessment and management of notifications and the importance of our co-operative approaches with other regulators, such as the Australian Competition and Consumer Commission (ACCC).

Notifications and complaints about medical practitioners, nurses and midwives, and bullying and harassment within the health professions, are multi-faceted issues. Employers have a key role to play where such behaviour occurs in hospitals and health services. There are also important concurrent and complementary responsibilities for profession based associations and colleges, health complaints entities and other public sector agencies in different jurisdictions, individual practitioners and their patients. The MBA and AHPRA have made public statements regarding the need for all parties in the health sector to take action.[3]

Our submission sets out the role of AHPRA, the MBA and NMBA in practitioner regulation and responds to the specific terms of reference for this inquiry. It is important to note that there are variations to the notifications/complaints process in two states, consistent with the National Law as in force in those states. These are known as co-regulatory jurisdictions. In New South Wales, all investigations of notifications/complaints of health practitioners are undertaken by separate Health Professional Councils, the Health Professional Councils Authority and the Health Care Complaints Commission – not by the National Boards or AHPRA. In Queensland, complaints are first made to the Queensland Health Ombudsman who may manage the matter directly or refer it to the appropriate National Board for action. Not all complaints regarding registered health practitioners in Queensland are referred to AHPRA and the National Board for consideration.

The objectives of the National Scheme are clearly set out in the National Law. As at 30 June 2016, 657,621 health practitioners were registered across the 14 National Boards and professions. We consider that significant outcomes have been achieved in the six years of operation of the National Scheme.

Attachments

Appendix One: Background information about the National Scheme

Appendix Two: Our role in the medical complaints process

Appendix Three: Overview of the notifications process

Appendix Four: State and territory health complaints entities and decision making matrix

Appendix Five: Comments from the Community Reference Group of AHPRA

Response to terms of reference

a. Prevalence of bullying and harassment in Australia's medical profession

The MBA, NMBA and AHPRA acknowledge the unacceptably high rates of bullying and harassment in the health sector that have been cited in numerous reports, such as the recent report to the Royal Australasian College of Surgeons regarding College Fellows, Trainees and International Medical Graduates being subjected to discrimination, bullying and harassment[1], the 2016 report of the Victorian Auditor-General on bullying and harassment in the Victorian health sector [4] and other research.[5]

A key role for the MBA and the NMBA is to provide guidance on what is expected of registered practitioners in Australia in the form of a 'code of conduct'. Such guidance sets out the principles that characterise good practice and makes explicit the standards of ethical and professional conduct expected by their professional peers and the community. The codes have been developed following wide consultation with the professions and the community and are published on each of the National Boards' websites.

Since the start of the National Scheme, the MBA has had in place guidance on professional practice and conduct for medical practitioners. Its current publication, *Good Medical Practice: A Code of Conduct for Doctors in Australia*[6] was developed to guide individual doctors in their professional practice and roles, and to assist the MBA in its role of protecting the public by setting and maintaining standards of medical practice against which a doctor's professional conduct can be evaluated.

The code sets clear expectations on medical practitioners to act and communicate respectfully to both patients and colleagues. For example:

- section 4.2 of the code discusses the importance for doctors to respect the contribution of all health professionals involved in the care of the patient
- section 4.4 requires doctors to understand the nature and consequences of bullying and harassment
- section 10.3 sets out that good medical practice includes being honest, objective and constructive when assessing the performance of colleagues (including students).

The NMBA *Codes of Professional Conduct for midwives and nurses*[7] require that the conduct of both nurses and midwives conform to professional standards expected of the professions, to enhance the safety of people in their care including colleagues. There are also requirements to report the unlawful conduct of colleagues.

The NMBA is in the process of reviewing its codes of conduct for nurses and midwives. As a part of this review, the NMBA worked with AHPRA to undertake an analysis of notifications made about nurses and midwives from 2010 to 2015. Notifications classified as being related to conduct, behaviour or boundaries were analysed in depth for issues of violent behaviour, quality of care or a breach of law. Aggression (such as physical or verbal abuse) and bullying (verbal, non verbal and electronic) were shown to be the largest categories. A focus of the review process is on ensuring that the revised codes address these issues and set clear requirements for expected behaviours.

The NMBA will be consulting publicly on revised codes in early 2017. Subject to the outcome of this wide ranging consultation, the Board expects that the revised codes will be approved later that year.

b. Any barriers, whether real or perceived, to medical practitioners reporting bullying and harassment

Under the National Law, a person can make a notification that a practitioner's professional conduct is or may be, of a lesser standard than that which might reasonably be expected of the practitioner by the public or the practitioner's professional peers. Most notifications received are voluntary but the National Law also sets out requirements for mandatory notifications by practitioners, employers and educational providers. See Appendix 2.

In our experience, allegations of bullying or harassment can be made by a practitioner about another practitioner. In these circumstances, we seek a response from the individual medical practitioner, nurse or

midwife in relation to notifications/complaints made regarding their practice to the MBA or NMBA. Consistent with the National Law obligations and our regulatory principles, we assess these responses and all of the information related to a notification in light of our public safety obligations.

Not all allegations of bullying and harassment that involve medical practitioners, nurses or midwives are appropriate for action by the MBA or NMBA as the threshold for regulatory action may not be met. However, if the behaviour of a practitioner creates an environment that could place the public at risk of harm, the MBA or NMBA can take action consistent with the National Law.

In 2016, AHPRA and National Boards conducted a national education and awareness campaign to help inform employers of their mandatory reporting responsibilities under the National Law – https://www.ahpra.gov.au/News/2015-12-31-obligations-for-employers.aspx This includes the concept of reasonable belief as a threshold for making a mandatory notification (complaint) that a practitioner has behaved in a way that constitutes notifiable conduct and that their belief is based on reasonable grounds.

An important barrier to reporting is addressed by section 237 of the National Law which provides protection from liability for persons who in good faith make a notification or otherwise provide information, particularly during the course of an investigation. In creating the National Law, Australian health ministers determined that the public interest is best served if unnecessary barriers are not created so that people can raise concerns about patient and public safety which may require regulatory action.

AHPRA, the MBA and NMBA recognise that making a notification about another practitioner can be a significant step for a practitioner, and that being the subject of a notification is also highly stressful. National health programs have been established to provide options for registered practitioners experiencing distress to access support or help outside of the workplace. While these programs have not been specifically designed for registered practitioners who are the subject of a notification, they can assist. The national health program for medical practitioners and students in Australia provides options to address stress, anxiety, substance abuse or other health issues. This is a joint initiative between the MBA and the Australian Medical Association, with the MBA providing funding and the AMA managing the program.

Similarly, the NMBA is funding a National Health Support Service for nurses and midwives. The service will commence in early 2017 and is being managed through an external organisation (Turning Point). As with the MBA, the service will provide support to nurses, midwives and students with a health impairment or at risk of developing a health impairment. In addition, the National Health Service will provide information for employers and others with respect to the mandatory reporting responsibilities under the National Law.

c. The roles of the Medical Board of Australia, the Australian Health Practitioner Regulation Agency and other relevant organisations in managing investigations into the professional conduct (including allegations of bullying and harassment), performance or health of a registered medical practitioner or student

Under the National Law, a concern that is raised about a medical practitioner, nurse or midwife is known as a notification. Managing notifications regarding professional conduct is a joint responsibility between a National Board (such as the MBA or the NMBA) and AHPRA. The National Board is responsible for regulating the profession by setting and maintaining the standards that health practitioners must meet, and making decisions regarding notifications where practitioners may have failed to meet these standards. AHPRA receives the notifications and manages the notifications process, including investigating registered health practitioners and provides information for consideration in the decisions to be made by the National Board. AHPRA does not deal with notifications in NSW and only receives those matters referred by the Office of the Health Ombudsman in Queensland.

In managing notifications and complaints, as in all of our regulatory work, our aim is to ensure that public protection occurs via a consistent, responsive and risk based approach to regulation. With this in mind, a statement of our regulatory principles has been developed and endorsed via public consultation. The regulatory principles for the national scheme are outlined in Table 1.

1	The Boards and AHPRA administer and comply with the Health Practitioner Regulation National Law, as in force in each state and territory. The scope of our work is defined by the National Law.
2	We protect the health and safety of the public by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered.
3	While we balance all of the objectives of the National Registration and Accreditation Scheme, our primary consideration is to protect the public.
4	When we are considering an application for registration, or when we become aware of concerns about a health practitioner, we protect the public by taking timely and necessary action under the National Law.
5	In all areas of our work we: • Identify the risks that we are obliged to respond to • Assess the likelihood and possible consequences of the risks, and • Respond in ways that are proportionate and manage risks so we can adequately protect the public. This does not only apply to the way in which we manage individual practitioners but in all of our regulatory decision-making, including in the development of standards, policies, codes and guidelines.
6	When we take action about practitioners, we use the minimum regulatory force appropriate to manage the risk posed by the practice, to protect the public. Our actions are designed to protect the public and not to punish practitioners. While our actions are not intended to punish, we acknowledge that practitioners will sometimes feel that our actions are punitive.
7	Community confidence in health practitioner regulation is important. Our response to risk considers the need to uphold professional standards and maintain public confidence in the regulated health professions.
8	We work with our stakeholders, including the public and professional associations, to achieve good and protective outcomes, We do not represent the health professions or health practitioners. However, we will work with practitioners and their representatives to achieve outcomes that protect the public.

Table 1. Regulatory principles of the National Scheme

A detailed description of the notifications process is outlined in Appendix 2. The process is designed to ensure sufficient rigour exists to allow for the facts to be established and due consideration to be given to the risks to the public arising from the notification. It also ensures that the health practitioner is afforded procedural fairness, with opportunities for the registered health practitioner to respond or show cause within the process.

The majority of notifications do not require or receive a full and formal investigation and can be closed following assessment. In 2015/16, of the complaints completed by AHPRA about medical practitioners, 32.5% required further enquiries in the form of an investigation or a specialised assessment of health or performance.[1]

[1] *This does not include complaints received by the Health Professional Councils Authority in New South Wales*.

Numbers of notifications

In 2015/16 there were 3,147 notifications received by AHPRA about medical practitioners (with a further 2,224 notifications made to the Health Professional Councils Authority (HPCA) in New South Wales) and 1,435 notifications received by AHPRA about nurses and midwives (with 610 received by the HPCA in New South Wales). The numbers of notifications identified as related to bullying and harassment were very small.

Of the 3,147 notifications received by AHPRA about medical practitioners, 369 of these notifications were made by other medical practitioners, including 59 notifications that were self disclosures by medical practitioners. 33 notifications about medical practitioners identified threatening or bullying behaviour as the primary issue in the complaint. Of these, 14 were made by another registered health practitioner about a medical practitioner who they alleged exhibited bullying or threatening behaviour towards them. Examples included verbal insults by a medical practitioner about a nurse, an example of a medical practitioner losing his temper and being aggressive in his manner in the workplace, and an example where a nurse alleges that a medical practitioner used social media to invite complaints about her on the social media platform.

Of the 1,435 notifications received by AHPRA about nurses and midwives, 620 of these notifications were made by other nurses and midwives, including 88 notifications that were self disclosures by a nurse or midwife. 30 of the notifications identified threatening or bullying behaviour as the primary issue in the complaint. Of these, 14 were made by another registered health practitioner about a nurse or midwife who they alleged exhibited bullying or threatening behaviour towards them. Examples included allegations by students on clinical placements that supervisors unfairly judged their performance, allegations by a nurse that a colleague was abusive to other staff in a nursing home and an allegation that a nurse posted derogatory remarks about a colleague on a social media platform. A matter is currently being investigated including by the Coroner and Police, where it is alleged that a registered nurse intimidated a co-worker to the point that the bullied practitioner committed suicide.

This categorisation can include a wide range of behaviors, such as threatening communication to patients or work colleagues or intimidatory managerial practices of practitioners. We recognise that bullying, harassment and intimidatory behaviours can take many guises, and hence accurate classification and measurement of notifications that are primarily related to such behaviours is difficult.

Vexatious notifications, transparency and working with partners

Under section 151 of the National Law, a National Board may decide to take no further action on a notification if it reasonably believes the notification is frivolous or vexatious. However, determining that a notification is vexatious can be difficult, and hence data on vexatious complaints and notifications are difficult to quantify. For example, a complaint may relate to performance and risks to public safety but there may be elements of self interest from a notifier in relation to their professional or commercial interests. This highlights the need for a rigorous and independent approach to assessment of notifications and the importance of our co-operative approaches with other regulators, such as the Australian Competition and Consumer Commission (ACCC). AHPRA and National Boards have been engaging with the ACCC on issues related to anti-competitive behaviour and advertising, and we are keen to further develop this relationship to appropriately deal with complaints of this nature.

Greater transparency is also an important part of the integrity of the complaints process. The MBA and AHPRA have also worked to improve the publication of information about the assessment of international medical graduates (IMGs) who are overseas trained specialists seeking specialist registration in Australia or who are applying for an area of need specialist level position in Australia. Data are now available on the MBA website (via http://www.medicalboard.gov.au/News/Statistics.aspx) which includes the number and type of applications for specialist recognition and area of need, the outcomes of the assessments of IMGs and timeframes for completion of assessments.

We also work with other entities to strengthen standards and requirements. The Australian Medical Council, as the accrediting authority for medical education and training, has been reviewing all its accreditation standards (including specialist training) to increase the focus on junior doctor wellbeing, and learning environments that are supportive of junior doctors. The revised specialist accreditation standards came into effect on 1 January 2016. The revisions to the national standard for intern programs were approved by the Medical Board in September 2016.

Improving how we manage notifications

AHPRA, the MBA and the NMBA recognise that the management of notifications and complaints has not always met community expectations, including concerns about delays in the management of some notifications and confusion in roles with partners such as the health complaints entities.

AHPRA, the MBA and the NMBA have been working to improve the timeliness and communications in managing notifications. This work includes:

- Implementing processes that deliver early triage of notifications and greater clinical input to ensure we continue to improve the timeliness of assessment of notifications,
- Working with health complaints entities to ensure roles and processes are as clear as possible for notifiers and practitioners. A common assessment matrix has been developed and agreed to determine which entity is best placed to manage each matter and public information has also been produced, and
- Correspondence with notifiers and practitioners has been reviewed and improved and more meaningful progress reports are now being provided to notifiers and practitioners during the course of investigations.

Improvements have been made. However, complex matters will take time to investigate and not all matters can be finalised quickly. It is important that investigations are robust, as the implications for the practitioner being investigated and the notifier alike are significant.

d. The operation of the Health Practitioner Regulation National Law (the National Law), particularly as it relates to the complaints handling process

The work of the AHPRA, the MBA and the NMBA is consistent with the provisions of the National Law, as in force in each State and Territory.

The National Law:

- provides for any person to notify the MBA or NMBA of concerns regarding the health, conduct or performance of a medical practitioner, nurse or midwife,
- obligates the MBA and the NMBA to properly consider notifications regarding a practitioner, in accordance with its duties to protect the public,
- provides definition to important components of the notifications / complaints process, such as grounds for making notifications, mandatory notifications and notifiable conduct, impairment and professional misconduct,
- sets out the grounds for action by the MBA and the NMBA and the actions available to it in managing notifications concerning a practitioner, including circumstances where interim 'immediate action' may be taken, and
- provides for the powers of investigators in the investigation process, and sets out how AHPRA, the MBA and the NMBA can work with and share information with HCE's.

Importantly, the National Law also provides for the practitioner who is the subject of a notification to be afforded procedural fairness, including providing show cause provisions and an appeals process to an external, independent tribunal.

The National Law also provides National Boards with the power to register students, and both the MBA and NMBA register students from recognised programs in their professions. The student register is not publicly available and is established from data provided by universities. Summary statistics are reported in the AHPRA Annual Report which is tabled in the parliament of each participating jurisdiction and the Commonwealth.

The establishment of a student register enables National Boards to manage notifications regarding students:

- whose health is impaired to such a degree that there may be a substantial risk of harm to the public, or

- who have been charged with an offence, that is punishable by 12 months imprisonment or more, or
- who have a conviction of, or are the subject of, a finding of guilt for an offence that is punishable by imprisonment, or
- who have contravened an existing condition or undertaking.

National Boards and AHPRA have no role to play in the academic progress or conduct of students and this rests with the relevant education provider.

Finally, through the independent review of the National Scheme, Health Ministers have agreed to a range of National Law amendments[8] that are designed to improve the notifications process through closer co-operation between AHPRA, National Boards and other entities to resolve complaints and enhancing the information provided to notifiers and practitioners regarding notifications within acceptable timeframes.

e. Whether the National Registration and Accreditation Scheme, established under the National Law, results in better health outcomes for patients, and supports a world-class standard of medical care in Australia

The objectives of the National Scheme have been clearly set out in the National Law. We consider that significant outcomes have been achieved in the six years of the operation of the National Scheme. As at 30 June 2016, 657,621 health practitioners were registered across the 14 National Boards and professions.

The most notable achievements of the National Scheme include:

- **National mobility** - a single registration for medical practitioners, nurses and midwives and other registered health practitioners Australia wide which has removed the need for practitioners to re-register when they move interstate or practise across state and territory boundaries
- **Greater public protection** - a national on-line register of practising practitioners and cancelled health practitioners which can be accessed by the public at any time, and prevents health practitioners who have committed misconduct and faced regulatory action to practise undetected in other states or territories
- **Consistent national standards** - a consistent set of registration standards for medical practitioners, nurses and midwives that supports public protection, and
- **Better workforce data** - for the first time, nationally consistent set of data on the Australian registered workforce for government policy and planning purposes.

In 2014, an independent review of the National Scheme was completed for the Australian Health Workforce Ministerial Council. The review included comprehensive consultation with stakeholders and international comparisons. In his final report the independent reviewer noted the overwhelming support for the National Scheme from stakeholders as 'a positive step forward in the regulation of the nation's more than 619,500 health professionals now listed on the national register'.[8] In considering their response to the recommendations of the independent reviewer, Health Ministers noted that the National Scheme '...remains acknowledged as amongst the most significant and effective reforms of health profession regulation in Australia and internationally', and 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.[9]

The success of the National Scheme was also recently recognised by the Organisation for Economic Cooperation and Development (OECD) which recognised the National Scheme 'as a leader among OECD countries' in the regulation of health professions.[10]

We also provide examples of how nationally consistent standards for medical practitioners, nurses and midwives are supporting quality clinical practice in Australia and improving patient safety.

1. Continuing professional development (CPD). Evidence exists that high quality, relevant CPD supports safe practice by practitioners. Prior to the National Scheme, considerable variations existed in the CPD requirements of the state and territory based Medical Boards. These varied in the mandatory requirements, the amount and the type of CPD, and regulatory powers (if any) to act where medical practitioners, nurses or midwives did not regularly complete CPD. With the

commencement of the National Scheme, all medical, nursing and midwifery practitioners in Australia are required to do CPD that is relevant to their practice. The MBA is currently managing consultation on the issue of revalidation for medical practitioners. Major components being considered in the course of this are strengthened CPD, multi-source feedback on practitioner performance, and peer review.

2. The introduction of improved standards for the registration of International Medical Graduates (IMGs) that balances the need to maintain public safety, standards of the Australian medical profession and sufficient flexibility to support workforce and service needs across the diverse Australian community. Through the introduction of consistent national standards and guidelines:

    - all IMGs in Australia have to have customised supervision to the level needed by the IMG and the specific medical role they are working in
    - all supervisors of IMGs must hold specialist registration (or if they only have general registration, have to put a proposal to the Board about why that is appropriate)
    - all supervisors are now required to demonstrate that they understand their supervisory responsibilities
    - all IMGs have a consistent assessment before being considered for registration – (according to their assessment pathway)
    - recognition that IMGs from competent authority countries are well trained and are granted provisional registration rather than limited registration, therefore streamlining their registration.

3. NMBA standards for practice/competency standards for nurse practitioners, registered nurses, enrolled nurses and midwives. The standards are well publicised and used consistently for the following purposes:

    - communicate to the general public the standards that can be expected of nurses and midwives
    - determine the eligibility for registration of people who have completed a nursing program of study in Australia
    - determine the eligibility for registration of nurses who wish to practise in Australia but have completed courses elsewhere
    - assess nurses who wish to return to work after being out of the workforce for a defined period, and
    - assess nurses who need to show that they are competent to practice.

    The standards for practice for nurse practitioners, registered nurses and enrolled nurses have all recently been revised by the NMBA to ensure that they reflect current nursing practice in all contexts, are up to date, relevant and useful. The NMBA is currently developing the midwifery standards for practice.

4. Recency of practice registration standard. Prior to the National Scheme the approach to the requirements for recency of practice varied across states and territories with some jurisdiction having no requirement for nurses and/or midwives to demonstrate recency of practice to remain on or return to the register. The application of the recency of practice registration standard means that all nurses and midwives must meet a minimum standard of hours of practice to retain their registration. These hours also ensure a consistent approach to assessing nurses and midwives who are seeking to be re-registered following a break in practice to ensure greater public safety.

f. The benefits of 'benchmarking' complaints about complications rates of particular medical practitioners against complication rates for the same procedure against other similarly qualified and experienced medical practitioners when assessing complaints

AHPRA and the MBA are aware that benchmarking of a medical practitioner's performance may occur within health services, as part of the approach to clinical governance and patient safety. An investigation or audit conducted by AHPRA into the performance or conduct of a medical practitioner may also include consideration of the complication rates of a particular medical practitioner, and/or benchmarking of complication rates of other similarly qualified medical practitioners.

Analysis of complication rates and benchmarking (including as part of a performance assessment) may assist the MBA and/or its delegates to make an informed judgement as to the level of risk posed by the practice of the medical practitioner and appropriate actions to be taken by the MBA.

Benchmarking is a complex undertaking that must consider factors such as the speciality of the field of medical practice and the patient cohort involved. It is, therefore, important to note that where benchmarking is undertaken, AHPRA seeks the opinion of an independent expert and does not undertake its own benchmarking.

g. The desirability of requiring complainants to sign a declaration that their complaint is being made in good faith

Section 237 of the National Law provides protection from liability for persons who in good faith make a notification or otherwise providing information, particularly during the course of an investigation. In designing the National Law, Australian health ministers determined that the public interest is best served if barriers are not created to people raising concerns about patient and public safety which may require regulatory action. Importantly, the law does not protect the liability of individuals who make notifications in bad faith from civil claims.

Notifiers to AHPRA, the MBA and the NMBA have not historically been required to sign a declaration that a complaint or concern is being made in good faith, given these legislative provisions. We will soon launch a portal to enable complaints and concerns to be made online. Complaints and concerns made via the portal will invite a declaration from the notifier that the content of their complaint or concern is true and correct to the best of their knowledge and belief. A change in the hard copy complaint form will also be made to coincide with the launch of the online portal.

AHPRA will monitor the impact of these changes to ensure there are no unintended consequences for people wanting to raise concerns about registered health practitioners.

h. Related matters

Appendix 4 of this submission provides comments from the Community Reference Group on the issues raised in the terms of reference of this inquiry. The Community Reference Group was established in 2013 by AHPRA to provide a strong community voice on how health practitioner regulation meets the needs of the community. The CRG membership and terms of reference are available from the AHPRA website: http://www.ahpra.gov.au/About-AHPRA/Advisory-groups/Community-Reference-Group.aspx

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

Appendix 1. About the National Registration and Accreditation Scheme

The National Registration and Accreditation Scheme (National Scheme) commenced in 2010. Prior to this, each state and territory individually and separately regulated health practitioners, including managing complaints regarding health practitioners. The work of the National Scheme is directed by the Health Practitioner Regulation National Law (the National Law), as in force in each State and Territory. The National Law is not Commonwealth legislation.

Section 3 of the National Law sets out the objectives of the National Scheme which include:

- to provide for the protection of the public by ensuring that only health practitioners who are suitably trained and qualified to practice in a competent and ethical manner are registered;
- to facilitate health workforce mobility across Australia by reducing the administrative burden for health practitioners wishing to move between participating jurisdictions or practice in more than one jurisdiction;
- to facilitate rigorous and responsive assessment of overseas trained health practitioners; and
- to facilitate access to services provided by health practitioners in accordance with the public interest.

To fulfil the objectives set out in the National Law, the National Scheme is made up of the following main entities established by the National Law:

- Fourteen National Boards
- Australian Health Practitioner Regulation Agency
- Australian Health Practitioner Regulation Agency Management Committee (Agency Management Committee)
- Accreditation authorities
- The National Health Practitioner Ombudsman and Privacy Commissioner.

National Boards

The National Boards are the principal regulatory decision-makers in the National Scheme and set regulatory policy for their profession. They bring professional experience, content expertise and community perspectives to practitioner regulation. The main functions of National Boards include:

- registration of practitioners
- development of registration standards, codes and guidelines
- approval of accredited programs of study
- oversight of the assessment of overseas trained applicants for registration
- provision of advice to the Ministerial Council on issues relating to the National Scheme; and
- in those jurisdictions that are not co-regulatory jurisdictions, oversee the assessment and investigation of notifications regarding registered practitioners (see section below for further explanation on co-regulatory jurisdictions.

AHPRA

AHPRA administers the National Scheme by:

- providing administrative assistance and support to the National Boards
- in consultation with National Boards, develop and administer procedures for the purpose of ensuring the efficient and effective operation of the National Boards
- establishing procedures for the development of standards, codes and guidelines to ensure the National Scheme operates in accordance with good regulatory practice; and
- provide advice to the government(s) in connection with the administration of the National Scheme.

Under the National Law, the National Boards and AHPRA are jointly responsible for keeping the registers of health practitioners and students. In 2015, following public engagement, the AHPRA and National Boards also adopted a set of regulatory principles to ensure a responsive, risk based approach to regulation and support a consistent application of regulatory force for similar levels of risk.

AHPRA Agency Management Committee

The Agency Management Committee is established the National Law and its main functions include:

- Control of the affairs of AHPRA
- Decide the policies of AHPRA; and
- Ensure that AHPRA performs its functions in an effective and efficient way.

Accreditation authorities

Accreditation authorities perform accreditation functions assigned by the National Board. The authorities develop accreditation standards for National Board approval, accredit programs of study, monitor approved programs of study and assess overseas trained practitioner applying for registration in Australia.

National Health Practitioner Ombudsman and Privacy Commissioner

The National Health Practitioner Ombudsman and Privacy Commissioner is responsible for providing ombudsman, privacy and freedom information oversight of the National Boards, AHPRA and the AHPRA Agency Management Committee.

Australian Health Workforce Ministerial Council

The Australian Health Workforce Ministerial Council (AHWMC), comprising health ministers from each state, territory and the Commonwealth, is responsible for providing policy direction and oversight of the National Scheme, including:

- appointing the members of the National Boards and the Agency Management Committee,
- agreeing on the inclusion of new professions to the National Scheme,
- proposing legislative amendments to the National Law, and
- approving registration standards developed by National Boards, recognition of specialities in professions, and endorsement of areas of practice. (Note that not all functions of the National Boards are under the direction or control of the Ministerial Council, including a decision of the National Board in relation to an individual person, such as the outcome of an application for registration).

Relationship of the entities of the National Scheme

The diagram below shows the relationship between the main entities of the National Scheme, noting that the Australian Health Workforce Advisory Council is current not operating.

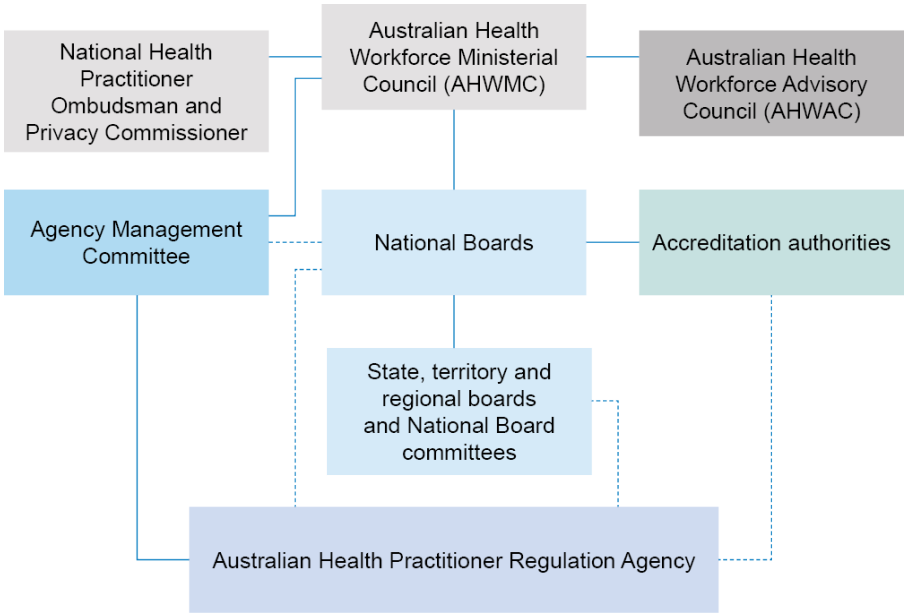


Diagram 1 – The National Registration and Accreditation Scheme

Appendix 2. The National Scheme's role in the medical complaints process

Under the National Law, when a concern is raised about a medical practitioner, nurse or midwife, this is known as a notification (except in Queensland where it is known as a complaint). This is called a notification because AHPRA and the National Boards are notified about concerns or complaints. A person can make a voluntary notification to a National Board about a health practitioner where:

- the practitioner's professional conduct is or may be, of a lesser standard than that which might reasonably be expected of the practitioner by the public or the practitioner's professional peers
- the knowledge, skill or care exercised by a practitioner in the practice of their profession is below the standard reasonably expected
- the practitioner is not a fit and proper person to be registered in the profession
- the practitioner has or may have an impairment
- the practitioner has contravened the National Law or a condition of the practitioner's registration, or
- the practitioner's registration as or may have been improperly obtained.

The National Law also provides that an employer or another health practitioner must notify the National Board if they hold a reasonable belief that the practitioner is practising the profession while intoxicated by alcohol or drugs, engaged in sexual misconduct, placed the public at risk of harm because of an impairment, or is practising the procession in a way that is a significant departure from accepted professional standards. We report publicly on our performance on the complaints and notifications process on a quarterly and annual basis, available at www.ahpra.gov.au.

It is also important to note that there are variations to the notifications/complaints process in two states, consistent with the National Law as in force in those states. These are known as co-regulatory jurisdictions. In New South Wales, all investigations of notifications/complaints of health practitioners are undertaken by the Health Professional Councils Authority and the Health Care Complaints Commission – not by the National Boards or AHPRA. In Queensland, complaints are first made to the Queensland Health Ombudsman who may manage the matter directly or refer it to the appropriate National Board for action. Not all complaints regarding health practitioners in Queensland are referred to AHPRA and the National Board for consideration.

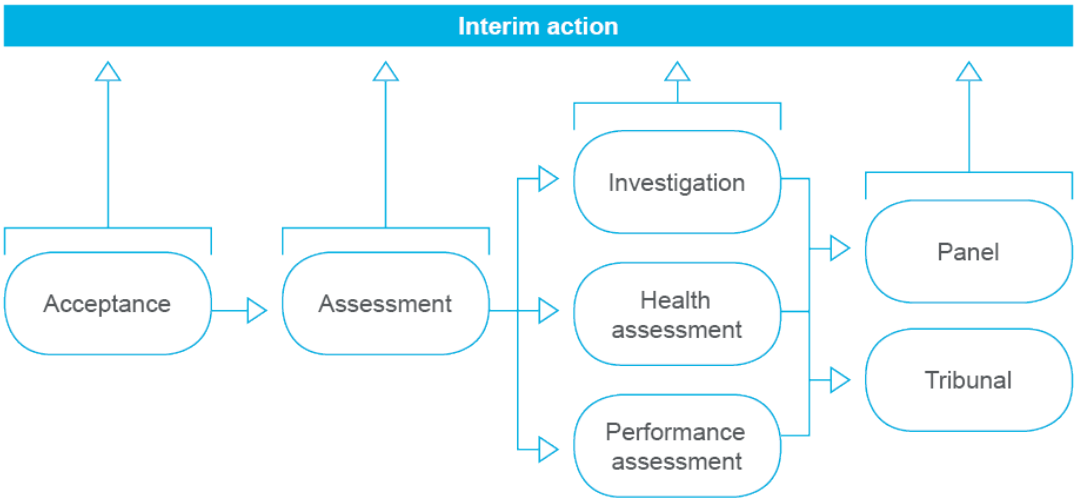
Health complaints entities

Aside from the arrangements in co-regulatory jurisdictions, there are also a number of organisations responsible for looking into complaints or concerns about health services and the health practitioners that work in them. Health complaints entities (HCEs) are set up in every state and territory with varying scope and powers to act in relation to safety and quality concerns in the health system. While each HCE has a different role and operates under different legislation, AHPRA, the MBA and the NMBA work closely with HCEs to ensure that the right organisation is managing the complaint or notification.

Under the National Law, the Boards and AHPRA share complaints and notifications with HCEs, and decide on who should deal with each one. If a complaint or notification is best managed through a resolution process available through a HCE and does not raise significant issues about professional standards, it is likely to be managed by the HCE. We provide a list of HCEs in **Appendix 4**, as well as a decision matrix that has been agreed to between the National Boards, AHPRA and HCE's to assist in determining the most appropriate body to deal with a complaint.

Appendix 3: A description of the notifications and complaints process in the National Scheme.

A high level diagram of the notifications process is provided below. While the diagram shows the flow of the process, we highlight that as the process of notifications progresses, interim or final action may be taken at any of the stages of the process, and that the majority of notifications are concluded without the need for a panel or tribunal hearing.



In this attachment, we provide information on the process in each stage and what information may be shared.

Interim action (Immediate action)

From the time that we first receive a notification, we evaluate the types and magnitude of risks that a practitioner might pose to the public. This has a significant influence on how we manage the notification.

If a notification discloses a serious risk to the public, the Board has the power to take interim action. This follows the principles of procedural fairness by informing the practitioner, who has the opportunity to make submissions to the Board.

Nevertheless, these interim actions can (and do) occur with or without the cooperation of the health practitioner. They can take place at any time once the notification has been received. They do not end the matter – they protect the public while the orderly process of managing the notification continues.

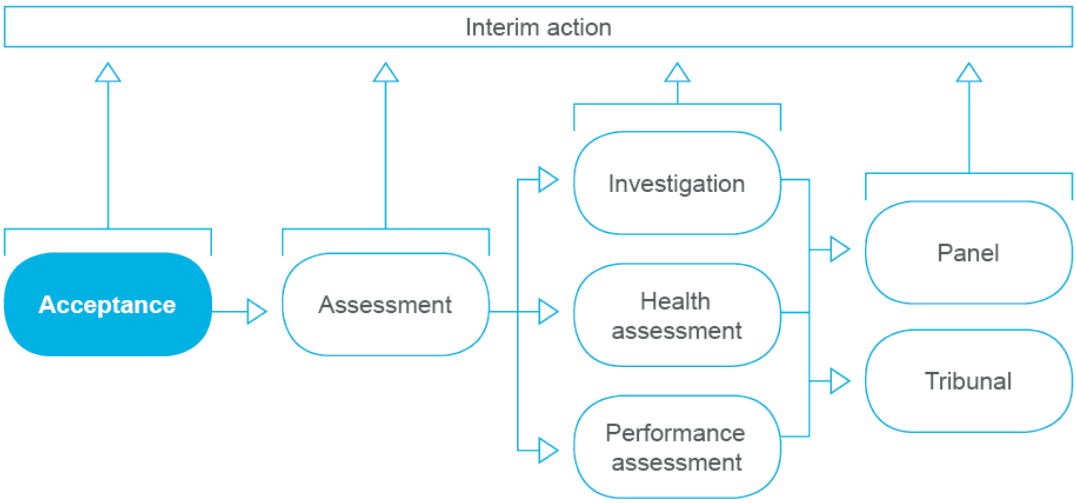
As a result of interim (immediate) action, the Board can:

- accept an undertaking by the practitioner
- impose conditions on the practitioner's registration
- suspend the registration of the practitioner pending further investigation
- accept the surrender of registration by the practitioner.

Changes to registration as a result of interim action are published to the online register of practitioners.

The need for interim action can be initiated at any stage in the management of a notification.

1. Acceptance



What occurs in this stage?

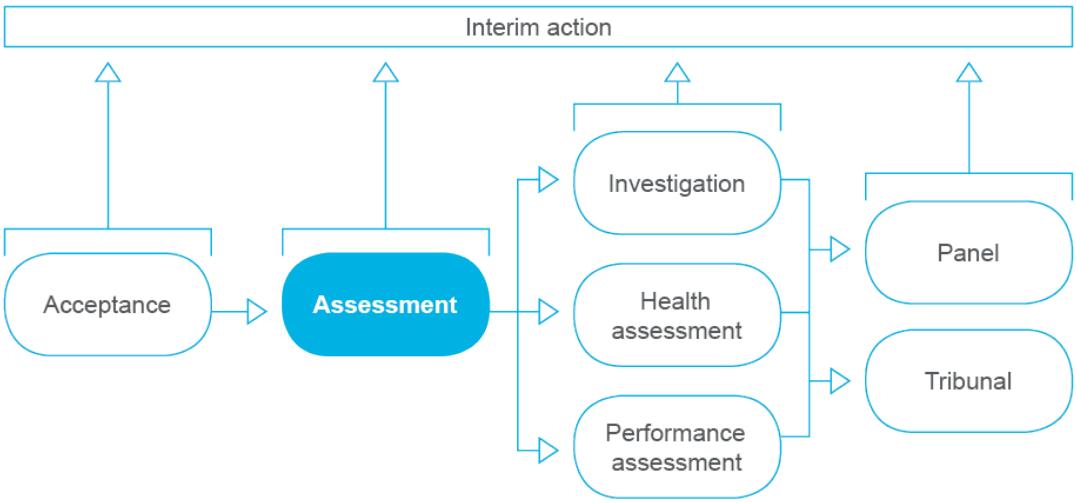
When a new notification is received it is reviewed by an experienced, senior member of the AHPRA team. It is usual to ask the medical practitioner to provide a response to the concerns at this early stage, except where the issue is something that the Board does not have jurisdiction to deal with, or where AHPRA considers that the notification raises issues that might pose a serious risk to the public. Sometimes, the early response will allow the Board or their delegate to decide to take no further action, avoiding the need for further investigation.

At acceptance, AHPRA appraises:

- whether or not the notification relates to a person who is a health practitioner or a student registered by the Board
- whether or not the notification relates to a matter that is a ground for notification, and
- whether or not the notification could also be made to a health complaints entity.

If the notification isn't about a registered health practitioner, or doesn't relate to a ground for notification, then it can't be accepted for management by AHPRA.

2. Assessment



What occurs in this stage?

Following acceptance, notifications regarding a practitioner are assessed by the Board. AHPRA may ask the person who made the notification for more information. It will usually send the health practitioner a copy of the notification and ask them to respond. This is not done if it would:

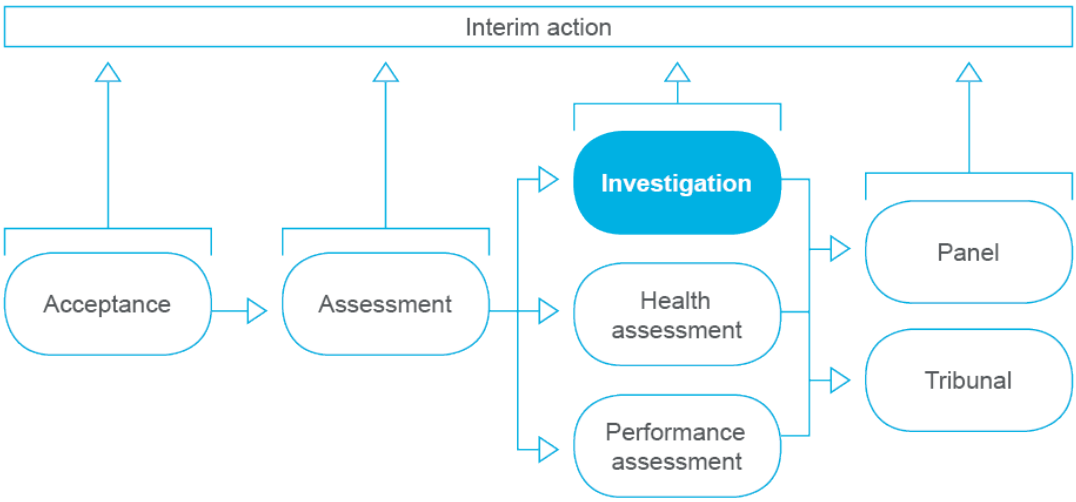
- prejudice an investigation
- place a person's safety at risk, or
- place a person at risk of intimidation.

If the Board decides that they have sufficient information to deal with the matter at assessment they may:

- close the notification, with an outcome of no further action, OR
- propose to take 'relevant action' such as to caution the practitioner, impose conditions on the practitioner's registration or accept undertakings from the practitioner, OR
- refer the notification for investigation, health or performance assessment, or directly to hearing if warranted.

We aim to complete assessments within 60 days, but the process can take longer if a Board proposes to caution the practitioner, impose conditions on a practitioner's registration or accept an undertaking from a practitioner. In those circumstances, a final decision cannot be made until a practitioner has an opportunity to *show cause* as to why the National Board should or should not proceed with its proposal.

3. Investigation



What occurs in this stage?

Not every notification lodged is investigated, and not every investigation arises from a notification. A Board has the power to initiate an investigation without a notification. It might do this when it becomes concerned about a practitioner through information that is in the public domain, or when information about a practitioner is revealed in an investigation about another practitioner.

A Board may also conduct an investigation to ensure that a practitioner or student is complying with conditions imposed on their registration or an undertaking given by the practitioner or student to the Board.

If the Board decides that the notification requires further information, it can instruct AHPRA to investigate the practitioner, arrange a performance assessment by peers of the practitioner, or arrange a health assessment. The investigation is usually carried out by a trained AHPRA staff member. The investigation process actively seeks the necessary information to inform the Board's decision through a variety of means such as obtaining:

- further information from the notifier
- responses and explanations from the practitioner about whom the notification was made
- information from other practitioners involved in the care of the patient
- independent expert opinions
- police reports where relevant
- data from other sources such as pharmacy records, Medicare Australia etc.

If an expert opinion is required, the relevant professional college might be asked to nominate appropriate experts that AHPRA can approach. When AHPRA approaches a professional college for expert advice, it does not reveal the name of the practitioner being investigated.

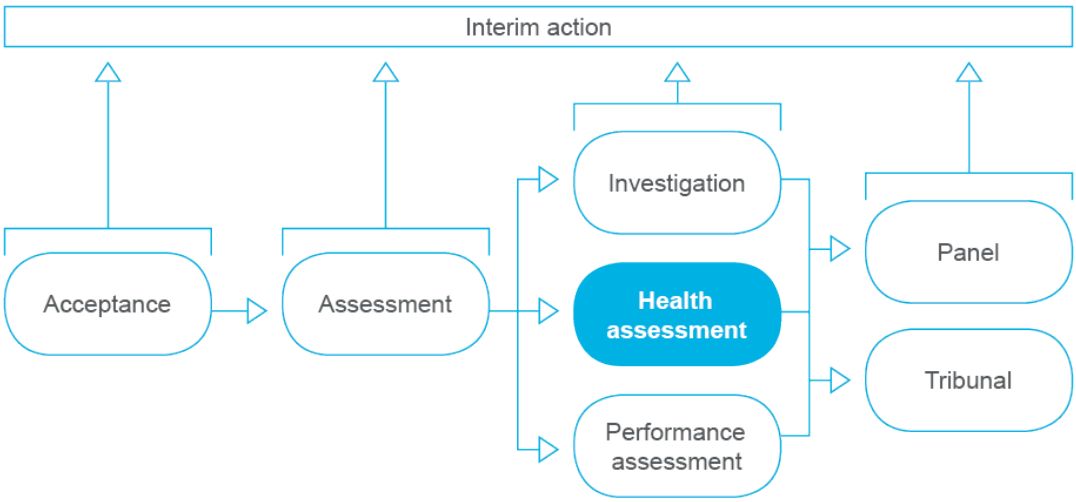
Once the investigation has been completed, the Board attempts to form a reasonable belief as to whether a practitioner

- has behaved in a way that constitutes unsatisfactory professional performance
- has behaved in a way that constitutes unprofessional conduct
- has a health impairment, and/or
- has behaved in a way that constitutes professional misconduct.

If the Board cannot form a reasonable belief based on the available information, it may make a decision to take no further action.

We aim to complete investigations in under six months. But sometimes gathering the information needed to complete the investigation is complex, and the investigation takes longer. All investigations are audited at six, nine and 12 months to make sure that the information we are gathering is necessary to complete the investigation.

4. Health assessment (may include a panel hearing)



What occurs in this stage?

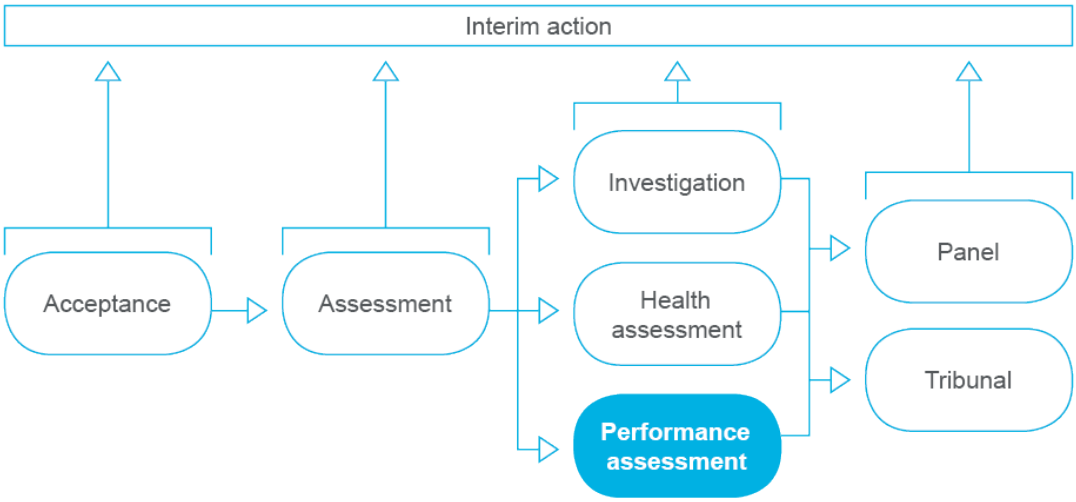
A health assessment may be required if a practitioner's health is believed to be impaired and impacting on their ability to practise safely. On the basis of the health assessment and any other information, the Board will decide whether regulatory action needs to be taken to manage risk to the public. A practitioner always has a right to make submissions to the Board before any of these actions are taken.

The results of the health assessment are discussed with the practitioner. This allows an honest discussion of any adverse findings, and ways to deal with them. It also gives the practitioner the chance to discuss any recommendations made by the assessor.

After a health assessment, a Board may decide to:

- take no further action
- caution the practitioner
- accept an undertaking from the practitioner
- impose conditions on the practitioner's registration
- refer the matter to another entity
- investigate the matter further
- require the practitioner to undergo a performance assessment
- refer the matter for hearing by a panel, or
- refer the matter for hearing by a tribunal.

5. Performance assessment (may include a panel hearing)



What occurs in this stage?

A Board may require a practitioner to have a performance assessment if it believes that the way they practise is or may be unsatisfactory.

A performance assessment is an assessment of the knowledge, skill, judgement and care shown by a practitioner in their work. It is carried out by one or more independent practitioners who are not Board members.

The results of the performance assessment are discussed with the health practitioner. This allows an honest discussion of any adverse findings, and ways to deal with them. It also gives the health practitioner the chance to discuss any recommendations for upskilling, education, mentoring or supervision made by the assessor.

After a performance assessment, a Board may decide to:

- take no further action
- caution the practitioner
- accept an undertaking from the practitioner
- impose conditions on the practitioner's registration
- refer the matter to another entity
- investigate the matter further
- require the practitioner to undergo a health assessment
- refer the matter for hearing by a panel, or
- refer the matter for hearing by a tribunal.

Panels

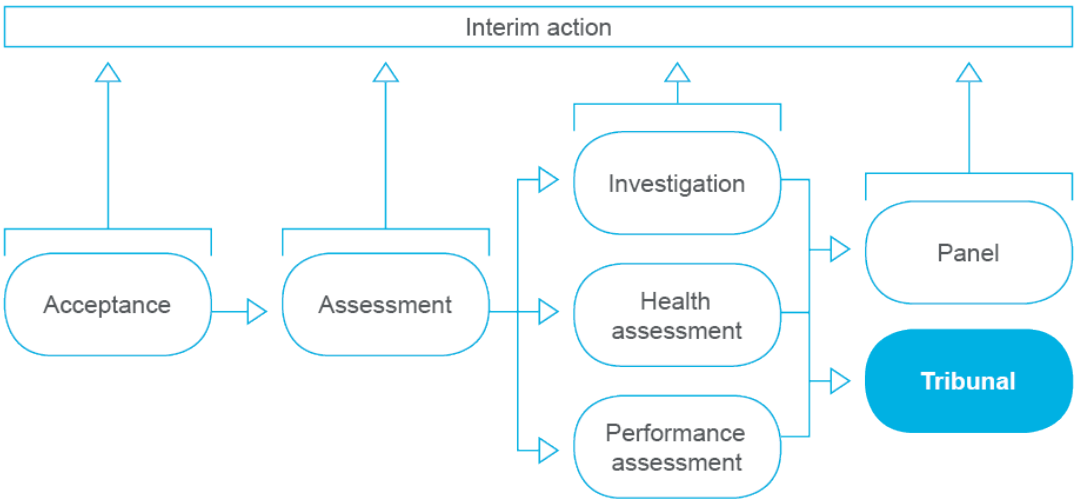
A Board can refer a matter to a health panel or a performance and professional standards panel.

A health panel is formed if a Board believes that a practitioner or student has, or may have, an impairment that impairs their ability to practise.

A performance and professional standards panel is formed if a Board believes that the way a practitioner practises is, or may be, unsatisfactory, or that the practitioner's professional conduct is, or may be, unsatisfactory.

The panel has all of the powers that the Board has, but can also reprimand a practitioner. A reprimand appears on the national, public register of practitioners, as do conditions and undertakings.

In 2015/16, of the total complaints regarding medical practitioners completed by AHPRA, only 3.2% required completion at a panel hearing (*note – does not include complaints regarding medical practitioners received by the Health Professions Councils Authority in New South Wales*).Tribunal (professional misconduct)



What occurs in this stage?

If a Board forms a view that a practitioner's conduct or performance amounts to professional misconduct, then the matter *must* be referred to a tribunal. Generally, tribunals are presided over by a judge or magistrate together with at least one member of the profession and a community member of the tribunal. The tribunal has a wide range of powers and can cancel the registration of the practitioner if necessary. In 2015/16, of the total complaints regarding medical practitioners completed by AHPRA, only 3.5% required completion at a tribunal hearing (*note – does not include complaints regarding medical practitioners received by the Health Professions Councils Authority in New South Wales*).

Appendix 4. State and Territory Health Complaints Entities and decision making matrix.

Health complaints entities in each State and Territory

State/Territory	Tribunal	Website
New South Wales	Health Care Complaints Commission	http://www.hccc.nsw.gov.au/
Australian Capital Territory	Health Services Commissioner	http://hrc.act.gov.au/health/
Northern Territory	Health and Community Services Complaints Commission	http://www.hcscc.nt.gov.au/
Queensland	Office of the Health Ombudsman	http://www.oho.qld.gov.au/
South Australia	Health and Community Services Complaints Commissioner	http://www.hcscc.sa.gov.au/
Tasmania	Health Complaints Commissioner	http://www.healthcomplaints.tas.gov.au/
Victoria	Office of the Health Services Commissioner Mental Health Complaints Commissioner	http://www.health.vic.gov.au/hsc/ http://www.mhcc.vic.gov.au/
Western Australia	Health and Disability Services Complaints Office	https://www.hadsco.wa.gov.au/home/

Decision making matrix – guidance on the most appropriate entity to manage a complaint

Which entity is to deal with the matter?		Source of the complaint or notification	Notifier's or complainant's desired outcome	Is the timeframe for making a complaint due to expire?	Nature and severity of the complaint/notification
1	Must be AHPRA and National Board			• The timeframe for prosecution of offences under the National Law has not expired in the Criminal Procedure Act (WA) 2004 or equivalent	• Severe allegation that may result in a risk to public safety and there is an urgency to take action (including taking immediate action) • Mandatory notification with allegations that a health practitioner has engaged in notifiable conduct under National Law • Offences under the National Law • Practitioner or student has a health impairment • Breach of conditions or undertaking • Allegations relating to professional misconduct • Allegations relating to unprofessional conduct
2	More likely AHPRA and National Board	• Anonymous • Coroner • Police • Employer • Health practitioner	• The notifier or complainant refuses to engage with the HCE process • The practitioner refuses to engage with the HCE process • Disciplinary action e.g. cancellation or suspension of practitioner's registration	• The timeframe for making a complaint to the HCE has expired and Commissioner is not satisfied that the complainant had good reasons for not making the complaint within the specified timeframe	• Moderate allegations relating to unsatisfactory conduct or unsatisfactory professional performance • Pattern of conduct or performance
3	More likely HCE		• Explanation • Doesn't want it to happen to someone else • Apology • Refund • Compensation • Access to records • A policy change • A practice change	• The timeframe for claiming compensation or making a complaint to the HCE is due to expire in Statute of Limitations • Timeframe for prosecuting offences under the National Law has expired in the Criminal Procedure Act (WA) 2004 or equivalent.	• Less severe allegations relating to unsatisfactory conduct or unsatisfactory professional performance e.g.: o Communication issues or manner of practitioner o Manner of providing a health service for the user o Refusing to provide a service o Breaches of confidentiality o Denying or restricting access to records o Charging excessive fees or acting unreasonably with respect to a fee

4	Must be HCE				• Complaint involves a health professional not regulated by a National Board • Complaint about a health or community service • Complaint about systemic issues

Appendix 5. Comments from the Community Reference Group, Australian Health Practitioner Regulation Agency

Members of the AHPRA Community Reference Group (CRG) have reviewed the Terms of Reference for the Senate's Community Affairs References Committee Inquiry into the Medical Complaints Process in Australia and make the following comments.

The CRG recognises the importance of eliminating bullying and harassment within the medical profession, and the devastating impact that bullying and harassment can have upon patient safety. However, we also wish to highlight that the primary purpose of the National Registration and Accreditation Scheme is to protect the safety of the public. As such, we expect both AHPRA and the National Boards to carefully consider the safety of patients and consumers when a complaint is made about a doctor, a nurse or a midwife.

We would urge the committee to consider that complaints that are made in good faith can provide important signals on where individual health practitioners, as well as the health system, can improve.

Whilst vexatious or frivolous complaints should not be accepted within any complaints system, it should also be considered that many complainants may wonder whether it is worth the personal and reputational risk to report a bad experience of healthcare, and that any requirement for complainants to sign a declaration 'that their complaint is being made in good faith' may not deter vexatious complainants, but may deter genuine complainants.