

# Chapter 4

## Responses and recommendations

4.1 As this report highlights, the committee has received evidence of considerable concern about the way in which medical complaints in Australia are handled, including the use of notifications as a tool of bullying and harassment.

4.2 While the focus of the terms of reference for this inquiry was on the medical complaints process, the committee is concerned by evidence that clearly shows that bullying and harassment remain prevalent across the medical profession, affecting patients and their families, medical practitioners, students and trainees.

4.3 The committee notes that, in principle, the medical profession has a 'zero tolerance' approach to bullying and harassment. The committee is encouraged by evidence it received from parts of the medical profession, particularly some of the speciality colleges, outlining recent steps they have taken to better address these issues.

4.4 However, as discussed in chapter 3, evidence to this committee highlights that bullying and harassment is a widespread and significant problem. The committee is concerned that despite assurances from witnesses representing medical professionals, including speciality colleges, a sector-wide change to the way bullying and harassment is addressed and managed remains to be seen. The committee was particularly concerned by evidence suggesting that medical students and junior doctors continue to be among the most frequent subjects of bullying and harassment.

4.5 The committee recognises that addressing bullying and harassment can only be addressed with the cooperation of all sections of the medical profession, including Commonwealth, state and territory governments, hospitals, speciality colleges and universities. Without a coordinated, sector-wide response to preventing such behaviour, it will continue to put patient safety at risk, and see capable and dedicated people leave the sector, to the detriment of the Australian health system.

4.6 The committee is particularly concerned by the number of individual submissions it has received from medical practitioners, nurses and patients sharing their experience with the complaints process. The committee recognises the substantial impact that a notification investigation can have on both the notifier and subject of the complaint. As outlined in chapter 2, the committee has heard from multiple practitioners and members of the public about the consequences of lodging a notification. Individuals have written to the committee detailing the significant and ongoing effects they have suffered. The calls for a Royal Commission from some submitters are just one illustration of the level of community concern about the prevalence and impacts of bullying and harassment in Australia's medical profession.

4.7 The committee agrees that these cases demonstrate possible systemic problems with the medical complaints process that go beyond the scope of this inquiry related to both the administration of the process, and the regulatory framework that governs it.

4.8 The committee agrees that the evidence it has received to date highlights the need for a new line of inquiry, including:

- the relationships between and roles of the different bodies involved in the complaints process;
- the administration and implementation of the complaints process; and
- the adequacy of the regulatory framework for managing complaints under the National Law.

4.9 This chapter recommends that the committee initiate a new inquiry to investigate these matters.

### **New areas for inquiry**

4.10 This inquiry focused on the intersection between bullying and harassment in the medical profession – a problem identified to be prevalent across the profession by a number of studies – and the medical complaints process in Australia. As such, its primary focus was on the ways in which the complaints process may be open to misuse as a tool of bullying and harassment within the profession. However, in the course of investigating this issue, the committee identified the following aspects of the medical complaints process that warrant further inquiry.

#### ***Relationships between different bodies***

4.11 One point made by many of the submitters and witnesses to this inquiry was that there are unclear boundaries and responsibilities amongst the many bodies involved in the regulation and administration of the medical profession. As illustrated in chapters 2 and 3, responsibility for different aspects belongs to the Australian Health Practitioner Regulation Agency (AHPRA), the National Boards for each profession, the health complaints entities in each state and territory, professional colleges and individual workplaces.

4.12 The management of a notification lodged against an individual practitioner may involve most or all of those bodies. Evidence to the committee in this inquiry suggests that there is some confusion among patients and medical practitioners as to the specific roles of each of these bodies in resolving complaints.

4.13 The committee agrees that these relationships – and the different responsibilities held by each of these bodies – require further investigation to determine whether any improvements can be made to better assist all parties to the complaints process achieve a satisfactory outcome.

4.14 The committee is particularly interested in examining the roles of and relationships between AHPRA, the National Boards, the State and Territory Boards, panels established by National Boards and the health complaints entities in relation to the complaints-handling process.

#### ***Administration and implementation of complaints process***

4.15 As discussed in chapter 2, one of the key concerns raised by many submitters was about the administration and implementation of the complaints process. Submitters identified a wide range of concerns, including:

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- the timeliness of the process;
  - the level and manner of communication from AHPRA;
  - the adversarial nature of the process;
  - perceived issues with conflict of interest;
  - the qualifications of AHPRA investigators; and
  - the failure to recognise that bullying and harassment within the medical profession is a patient safety issue.

4.16 Evidence received during this inquiry indicates that the process as it currently operates does not have the confidence of the entire medical profession. In particular, the process' vulnerability to misuse as a tool of bullying and harassment warrants further investigation.

4.17 In particular, the committee considers that the question of the effectiveness of the current notifications and investigation process merits further attention. AHPRA's legislated purpose is ensuring public safety, yet the concerns raised with the notifications process by submitters to this inquiry were focused, in the main, on the use of this process as a tool of bullying and harassment. The committee intends to investigate the process more broadly to gain an understanding of how well it is fulfilling its role in protecting public safety and responding to complaints from patients and others.

4.18 The committee notes that the administration of AHPRA has already been the subject of an inquiry by the Senate Finance and Public Administration References Committee in 2011. However, that inquiry focussed specifically on the AHPRA's role in health practitioner regulation following the introduction of the national scheme in 2010, and only addressed the complaints process as a related issue. The committee agrees with the conclusion of that inquiry that 'further development of the complaints process is urgently required'.<sup>1</sup>

#### ***Adequacy of regulatory framework***

4.19 Following on from the previous area of further inquiry, the committee considers that there is scope for a broader investigation of the framework underpinning medical regulation in Australia. The committee notes that the National Registration and Accreditation Scheme (NRAS) has been the subject of several reviews since its implementation in 2010, most notably the 2015 Independent Review

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1 Senate Finance and Public Administration References Committee, *Inquiry into the administration of health practitioner registration by the Australian Health Practitioner Regulation Agency (AHPRA)*, 3 June 2011, p. 93, [http://www.aph.gov.au/parliamentary\\_business/committees/senate/finance\\_and\\_public\\_administration/Completed%20inquiries/2010-13/healthpractitionerregistration/index](http://www.aph.gov.au/parliamentary_business/committees/senate/finance_and_public_administration/Completed%20inquiries/2010-13/healthpractitionerregistration/index) (accessed 24 November 2016).

for the Australian Health Ministers' Advisory Council.<sup>2</sup> However, these reviews have not focussed specifically on the regulatory principles and practices of the complaints process, which the committee regards as warranting detailed examination.

4.20 On the basis of evidence received as part of this inquiry, the committee does not have sufficient information to judge whether the concerns discussed throughout this report are problems with the administration of the National Law, or whether the underlying regulatory framework is itself in need of review. The committee therefore considers this an important area for more focused investigation.

### **Conclusion and recommendations**

4.21 The committee thanks all those who assisted in this inquiry by making submissions or appearing at the public hearings. Through the large volume of submissions and correspondence received for this inquiry, the committee was able to gain an understanding of the concerns expressed by many submitters at the forms bullying and harassment in Australia's medical profession takes.

4.22 The committee has established that there are significant concerns about the way in which medical complaints in Australia are handled, particularly the use of notifications as a tool of bullying and harassment. The cases highlighted by submitters have demonstrated to the committee that there are broader issues with the administration and regulation of the current medical complaints process that warrant investigation.

4.23 In particular, the committee was concerned by the evidence suggesting that Australia's medical complaints process – a system designed to ensure public safety and optimal patient outcomes – has been misused by some for their own purposes. A world-class health system requires an open, transparent and rigorous process for patients and others to raise concerns with the healthcare they receive, and the undermining of this process for vexatious purposes is unacceptable.

4.24 The committee recognises that the NRAS, now just over six years old, faced some implementation problems, particularly with regard to the management of individual complaints. The committee notes that AHPRA, along with the MBA and NMBA, has worked to improve this process. However, it is clear from the evidence received for this inquiry that the process does not have the confidence of the entire medical profession. Just as a complaints process is a necessary component of a health system, practitioner confidence in the fairness and transparency of that system is necessary.

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2 See: COAG Health Council, *Independent Review of the National Registration and Accreditation Scheme for health professionals*, 2015, <http://www.coaghealthcouncil.gov.au/Projects/Independent-Review-of-NRAS-finalised> (accessed 24 November 2016).

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## Recommendation 1

**4.25 The committee recommends that all parties with responsibility for addressing bullying and harassment in the medical profession, including governments, hospitals, speciality colleges and universities:**

- **acknowledge that bullying and harassment remains prevalent within the profession, to the detriment of individual practitioners and patients alike;**
- **recognise that working together and addressing these issues in a collaborative way is the only solution; and**
- **commit to ongoing and sustained action and resources to eliminate these behaviours.**

4.26 The committee agrees that bullying and harassment should be addressed at the very first opportunity – at university. The committee considers that it is imperative that students are prepared at university to feel comfortable about making a bullying and harassment complaint, to know who has responsibility for them during placement and subsequent employment, and to know their options in making a complaint and any appeal processes that may be available to them.

## Recommendation 2

**4.27 The committee recommends that all universities adopt a curriculum that incorporates compulsory education on bullying and harassment.**

4.28 The committee is particularly concerned by evidence that indicates a lack of clarity around reporting bullying and harassment for medical students while on placements in hospitals. The committee notes evidence from Ms Elise Buisson, President of the Australian Medical Students' Association, who told the committee:

In a hospital, if you are being taught by a doctor—which does not mean that they are employed at the university anyway, it just means that you are following them around for perhaps three months at a time—and you make a complaint against that doctor, that complaint needs to be made to the hospital ostensibly, but you are not covered by hospital policy. That generally covers employees and volunteers, and you are neither.<sup>3</sup>

4.29 The committee agrees that universities need to accept responsibility for students who are on placement in a hospital so these students do not fall through the cracks of the system.

## Recommendation 3

**4.30 The committee recommends that all universities accept responsibility for their students while they are on placement and further adopt a procedure for dealing with complaints of bullying and harassment made by their students while on placement. This procedure should be clearly defined and a written copy provided to students prior to their placement commencing.**

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3 Miss Elise Buisson, President, Australian Medical Students' Association, *Committee Hansard*, 1 November 2016, p. 27.

4.31 The committee considers that all hospitals should be required to have a provision in their code of conduct that specifically states that bullying and harassment in the workplace is not tolerated. The code of conduct should also state that this applies to students and volunteers.

#### **Recommendation 4**

**4.32 The committee recommends that all hospitals review their codes of conduct to ensure that they contain a provision that specifically states that bullying and harassment in the workplace is strictly not tolerated towards hospital staff, students and volunteers.**

4.33 The committee is concerned that despite the apparent prevalence of bullying and harassment identified by the speciality medical colleges, few practitioners have been formally sanctioned. The committee notes evidence from Mr John Biviano, Director of Fellowship and Standards, Royal Australasian College of Surgeons (RACS), who told the committee that RACS had 7 000 members; however, to date, none had been sanctioned for bullying and harassment.<sup>4</sup>

4.34 The committee considers that there should be a requirement on all speciality colleges to report each year on how many complaints their members have been subject to and how many sanctions they have imposed.

#### **Recommendation 5**

**4.35 The committee recommends that all specialist training colleges publicly release an annual report detailing how many complaints of bullying and harassment their members and trainees have been subject to and how many sanctions the college has imposed as a result of those complaints.**

4.36 While this inquiry's focus has been on bullying and harassment, it has also identified broader systemic issues with Australia's medical complaints process that go beyond the scope of this inquiry's terms of reference. For that reason, the committee intends to establish a new inquiry focused on the process itself, rather than this inquiry's examination of the ways in which the process can be used and misused.

#### **Recommendation 6**

**4.37 The committee recommends that a new inquiry be established with terms of reference to address the following matters:**

- **the implementation of the current complaints system under the National Law, including role of AHPRA and the National Boards;**
- **whether the existing regulatory framework, established by the National Law, contains adequate provision for addressing medical complaints;**
- **the roles of AHPRA, the National Boards and professional organisations – such as the various Colleges – in addressing concerns within the medical profession with the complaints process;**

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4 Mr John Biviano, Director, Fellowship and Standards, Royal Australasian College of Surgeons, *Committee Hansard*, 1 November 2016, p. 45.

- **the adequacy of the relationships between those bodies responsible for handling complaints;**
- **whether amendments to the National Law in relation to the complaints handling process are required; and**
- **other improvements that could assist in a fairer, quicker and more effective medical complaints process.**

**Senator Rachel Siewert**

**Chair**

