Medical Board of Australia | AHPRA

3 March 2017

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 Senator

Submission to the Senate Standing Committee on Community Affairs Inquiry into the Complaints mechanism administered under the Health Practitioner Regulation National Law

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

AHPRA and the MBA recognise the importance of having an effective medical complaints process that is fair to doctors and supports public safety. Our submission to the inquiry sets out our respective roles in the medical complaints process, how the complaints process works and what we are doing to improve the complaints process.

Our contact for the submission is Nick Lord, Executive Officer, NRAS Review, 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

Enc: Joint submission to the Senate Committee Inquiry – Complaints mechanism administered under the Health Practitioner Regulation National Law.

AHPRA

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

Joint submission – the Medical Board of Australia and Australian Health Practitioner Regulation Agency

Inquiry into the complaints mechanism administered under the Health Practitioner Regulation National Law

Summary

- The Medical Board of Australia (MBA) and the Australian Health Practitioner Regulation Agency (AHPRA) are committed to a complaints process that protects patients and the public and is fair for doctors.
- Outcomes of complaints about doctors are decided by a Board or a committee that comprises doctors and community members.
- The complaints system under the Health Practitioner Regulation National Law allows for decisions to be made at any point of the complaints process, either because the Board is satisfied that some form of regulatory action is required to protect the public or the legal threshold for regulatory action has not been met.
- 64% of medical complaints were closed at the assessment stage of the complaints process in the past year, and overall, around 70% of complaints are closed with no further regulatory action being taken.
- We recognise that being the subject of a complaint can be very stressful for doctors. While the purpose of our actions is to protect the public, we recognise that practitioners will sometimes feel that our actions are punitive.
- Both the MBA and AHPRA continue to work to improve the management of complaints mechanism. We are listening to doctors, patients and the public to keep improving.
- Over the past two years we have:
    - revised our letters to doctors and complainants to make our communications clearer and less bureaucratic in tone
    - streamlined how we assess complaints and how we work with other complaints bodies to reduce time and duplication
    - developed an online complaints portal to make the complaints process clearer and to make our triage and assessment of complaints more timely
    - boosted our training of AHPRA staff, including nationally consistent training of investigators
    - worked with the Australian Medical Association, medical specialist colleges and medical defence organisations to address the concerns of the medical profession
    - sought feedback from our Community Reference Group made up of community members who provide an independent voice on issues which are important to patients and the public
    - introduced routine surveying of doctors and complainants on their experience of our complaints process, and
    - worked with governments to propose amendments to our legislation to improve the way we deal with complaints.
- The National Scheme delivers benefits for both the public and doctors:
    - doctors can register once and practise across Australia
    - a patient can check the online register to make sure their doctor is registered and any restrictions on their registration
    - there are national regulatory standards that doctors must meet to be registered, and
    - greater national consistency in managing complaints with regulatory outcomes that apply Australia-wide.

Introduction

The MBA and AHPRA provide this submission to the new inquiry into the complaints mechanism administered under the Health Practitioner Regulation National Law, as in force in each state and territory (the National Law). During the previous inquiry on the medical complaints process, the MBA, Nursing and Midwifery Board of Australia and AHPRA made a detailed submission that set out the various stages of the complaints process. This submission is available at www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/MedicalComplaints45/Submissions. Our new submission focuses on further information about the complaints system within the National Scheme with a particular focus on complaints about registered medical practitioners.

It should also be noted that, under the National Law in most states and territories, the term 'notifications' is used and not the term 'complaints'. In this submission, we use the term complaints to cover both terms. We refer to registered medical practitioners as doctors in this submission.

The implementation of the current complaints system under the National Law, including the role of AHPRA and the National Boards

The National Registration and Accreditation Scheme (the National Scheme) started on 1 July 2010, in all states and territories except Western Australia (which started on 18 October 2010). There are now over 657,000 registered health practitioners across 14 professions. This includes over 107,000 registered medical practitioners in Australia.

At the time of its commencement, each state and territory had a different system to register and manage complaints about registered health practitioners. Communication between the different state and territory bodies on public safety issues (such as a doctor with performance issues that was a risk to the public) was variable, depending on the laws of each state and territory, and the arrangements between health regulatory and complaints bodies that operated at that time.

In designing a national scheme to regulate doctors and other health practitioners, governments aimed to:

- support the mobility of the medical workforce, so that doctors are only required to register once to practise in Australia
- implement a national standards framework, and
- ensure that doctors that placed patients and the public at risk could not avoid regulatory action by moving to a different state or territory.

The National Scheme is underpinned by the National Law. The scheme is self-funded through the fees paid by registered health practitioners for each of the regulated professions.

Who does what in the National Scheme

Given these requirements, the design of the National Scheme for medicine includes:

- the MBA, comprising of medical practitioners and community members, to set regulatory standards for the profession and make regulatory decisions regarding individual practitioners, appointed by the Australian Health Workforce Ministerial Council
- committees of the MBA (which include State and Territory Medical Boards appointed by state and territory health ministers) and notification committees, also comprising medical practitioners and community members, to which the MBA delegates regulatory decision-making, including handling of complaints about individual doctors (except in New South Wales), and
- a statutory authority (AHPRA) to administer the systems and processes of regulation and work in partnership with the MBA (and the other National Boards) to implement the National Scheme.

Three other entities are an important part of the complaints process in the National Scheme.

Firstly, to support independent decision-making in the National Scheme, the National Law provides that the most serious matters of professional misconduct must be independently heard through tribunals that exist in each state and territory. A list of the tribunals is in Appendix A. In 2015/16, state and territory tribunals made decisions in 96 matters about doctors referred by National Boards (see the table in Appendix A for more detail). In addition, tribunals also hear appeals from health practitioners against decisions made by a Board to restrict or refuse registration. The only Board decision which is not

appellable under the National Law is the decision to impose a caution. In 2015/16, of 54 appeals finalised by tribunals for all professions, only four matters resulted in the substitution of a new decision or the original decision being amended.

Secondly, while the National Scheme is concerned with the regulation of registered practitioners, each state and territory has a separate complaints body to manage complaints regarding health services. These complaints bodies are referred to as Health Complaints Entities (HCE's). We discuss how we work with HCE's later in this submission.

Thirdly, the National Health Practitioner Ombudsman and Privacy Commissioner (NHPOPC) can review complaints made about the administrative processes of AHPRA and the MBA (and other National Boards).

Table 1 below sets out the role of the MBA, AHPRA and other entities in the complaints mechanism in the National Law.

Table 1: Who does what in the National Scheme's complaints process

Who	What
Medical Board of Australia (MBA)	Sets regulatory standards of practice for the Australian medical profession.
State and Territory Medical Boards and committees	Delegated by the MBA to make regulatory decisions about individual doctors concerning their registration and any complaints that are made (except in New South Wales where complaints are managed separately and Queensland where boards only deal with matters referred by the Health Ombudsman).
Australian Health Practitioner Regulation Agency (AHPRA)	Manage the assessment and investigation of complaints.
Tribunals (established under state and territory law)	Independent decision-makers for professional misconduct and appeals in states and territories.
Health Complaints Entities (HCEs)	Resolve health service and system complaints (state and territory based).
National Health Practitioner Ombudsman and Privacy Commissioner	Independent review of complaints about AHPRA and National Boards.

The National Scheme is constantly working to improve

Since its start in 2010, AHPRA and the MBA along with other National Boards have steadily worked to improve the complaints process in the National Scheme.

The following is a brief snapshot of what we have done over the past four years. Over this time, we have:

- established a set of regulatory principles which all members of National Boards and AHPRA staff apply in their decision-making (see Appendix B)
- improved how we engage with the two most important groups in the complaints process by establishing advisory groups for the community and the health professions. As part of this work we asked for advice from the Health Issues Centre in Victoria to improve the experience of patients and the public who make complaints about practitioners. The report can be accessed from our website at www.ahpra.gov.au/News/2014-09-23-media-release.aspx. We acted on this report to significantly change the way we communicate to both complainants and practitioners about the complaints process (see Appendix C for examples of our written correspondence)

- convened an annual workshop with the Australian Medical Association to develop ways to improve practitioner experience of the notifications process and worked with medical specialist colleges and medical defence organisations to address the concerns of the medical profession
- rolled-out a regular national training program for AHPRA investigators and significantly invested in the training of AHPRA staff. The program is based on a recognised program developed by the Council On Licensure, Enforcement and Regulation which has been delivered to over 18,000 participants internationally
- employed an engagement adviser to provide assistance to complainants and practitioners about the complaints process,
- increased clinical input into the complaints assessment process earlier in the process, for example, through earlier and quicker clinical triage and assessment mechanisms
- started routinely surveying both complainants and practitioners about their experiences of the complaints process so we can keep improving, and
- improved accountability and transparency, including through introducing quarterly reporting on our performance, which is publicly available at http://www.ahpra.gov.au/About-AHPRA/What-We-Do/Statistics.aspx.

Whether the existing regulatory framework, established by the National Law, contains adequate provision for addressing medical complaints

The existing regulatory framework in the National Law protects patients, the public and provides for fairness to practitioners. The framework:

- provides for the MBA to set regulatory standards for the medical profession, in consultation with the community and the medical profession
- allows for swift action to be taken if a serious risk to patient and public safety is identified (immediate action)
- ensures that doctors who are the subject of the complaint have the opportunity to respond to complaints prior to a Board making a decision
- allows for expert opinion (including clinical advice) to be provided to the Board or panel to inform decisions being made
- provides for decisions on complaints to be made at any point of the complaints process based on the risks to patients and the public (for example, 64% of complaints are closed following the assessment stage of the process), and
- provides for independent panels to make decisions on serious matters relating to the health, performance or conduct of a doctor, and for independent tribunals to hear matters relating to professional misconduct.

In our submission to the previous inquiry on the medical complaints process, we provided a thorough description of the process. The following is a summary of how the process works in each state or territory, except New South Wales and Queensland.

How does the complaints process work?

When a complaint about a doctor is made, AHPRA and the State or Territory Medical Board (on behalf of the MBA) consider whether the complaint is able to be accepted under the National Law. The complaint can be accepted when it relates to a person who is a health practitioner or student registered by a National Board and when the complaint meets one of the grounds set out in sections 141 - 144 of the National Law (that is, health, performance or conduct). The majority of complaints are voluntary (in 2015/16, 90.3% of complaints were voluntary[1]) although there are circumstances in which mandatory reporting obligations apply.

We also decide whether the complaint is best dealt with by the Board or by a HCE. This makes sure the complaint goes to the right place for consideration. In most states and territories, we do this with HCEs via a process known as 'joint consideration'. We have worked with HCEs to provide information brochures on which entity is best to make a complaint to for most states and territories (see http://www.ahpra.gov.au/Notifications/Further-information/Guides-and-fact-sheets.aspx). .

Once we accept a complaint, we assess the complaint to determine the potential risks to patients and the public, whether regulatory actions are needed to protect the public and what further information may be needed to make the right decision about the complaint. We also decide whether the complaint requires a

formal investigation or an assessment of the practitioner's health or performance. The most serious matters may be referred to an independent panel of experts (known as a health panel or performance panel) or to the independent tribunal in each state or territory (for matters of professional misconduct).

Diagram 1. The complaints process administered by AHPRA (excluding New South Wales and Queensland)

What happens in New South Wales and Queensland?

New South Wales and Queensland are known as co-regulatory jurisdictions. This means they manage complaints or notifications differently to the other states and territories. In New South Wales, notifications/complaints about health practitioners are not managed by AHPRA and National Boards. All investigations of notifications/complaints of health practitioners are undertaken by the Health Professional Councils (supported by the Health Professional Councils Authority) and the Health Care Complaints Commission.

In Queensland, complaints are first made to the Queensland Health Ombudsman who is required to retain serious matters and may manage any 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.

We now provide answers to some important questions about the regulatory framework and the complaints process.

How many complaints (or notifications) are made about doctors to AHPRA each year?

The number of complaints made about doctors is steadily increasing.

Last financial year, AHPRA received 3,147 complaints about 2664 individual doctors, an increase of approximately 25% over the previous financial year. These data excludes complaints made about doctors in New South Wales. Appendix C provides further data on this trend. It should also be noted that, consistent with the co-regulatory arrangements in Queensland (as outlined above), AHPRA only reports data relating to matters referred to it by the Queensland Health Ombudsman.

There are many reasons why the number of complaints could be increasing (such as increased public awareness of the complaints process), and it does not necessarily mean that doctors are becoming less safe. There has been no change in the risk profile of complaints received. The rise in complaints about doctors is not unique to Australia. For example, a similar trend has been experienced in the United Kingdom.[2]

Of the doctors in Australia who are the subject of complaints:

- approximately 81% are the subject of one complaint only
- approximately 14% are the subject of two complaints, and
- approximately 5% are the subject of three or more complaints.

(Note – based on 2014/15, 2015/16 and 2016/17 AHPRA data)

However, these data do not differentiate whether doctors were subject to multiple complaints about the same incident/issue or multiple complaints about different incidents/issues. There is published research regarding the identification of doctors subject to recurrent complaints, which may potentially allow for identification of doctors at high risk of multiple complaints.[3]

Who makes complaints (or notifications) about doctors and what are these complaints about?

Figure 1 shows the source of complaints about doctors. The majority of complaints made about doctors come from patients or their relatives.

Figure 1. Sources of complaints about doctors in Australia, based on 2016/17 AHPRA data

Figure 2 provides an overview of the types of complaints made about doctors, with approximately half relating to direct clinical care matters.

Figure 2. Type of complaints about doctors in Australia, based on 2016/17 AHPRA data

What are the outcomes of complaints (or notifications) made about doctors?

Figure 3 provides a breakdown of the outcomes of complaints about doctors. 70% of complaints made result in no further regulatory action being undertaken. A decision to take no further regulatory action does not necessarily mean the complaint had no substance or was made vexatiously. It means that the threshold for regulatory action was not met and regulatory action was not necessary. This includes matters where practitioners have voluntarily taken steps to address the concerns being raised.

Figure 3. Outcomes of closed complaints made about doctors (based on 2016/17 AHPRA data)

How do AHPRA and the MBA receive and consider expert clinical or professional advice in a complaint?

A Board comprises members of the medical profession and the community. Sometimes it is necessary for the Board to obtain expert advice from an independent doctor or other clinician to provide expert clinical advice to inform the Board's decision. When a Board believes it is necessary, AHPRA will:

- approach a recognised expert in the relevant clinical field to provide advice
- ensure that the expert has the right credentials to provide advice in the relevant clinical areas, and
- require the expert to sign a declaration that they do not have a conflict of interest that would stop them from providing impartial advice, similar to a declaration that would be made to a Court.

The expert is provided information regarding the complaint on a confidential basis in order to provide their advice. Following the advice being given to the Board, the doctor is provided the opportunity to review and comment on the expert advice provided.

Identifying the best independent experts to engage for the purposes of providing clinical advice to a Board remains an area of focus for AHPRA. Since early 2016, AHPRA has engaged with the Royal Australian College of Surgeons (RACS) to pilot a referral service for appropriate, independent clinical advice in notifications about surgeons. When expert advice is required in the course of an investigation, AHPRA can liaise with RACS which assists to identify an appropriately qualified Fellow of the College based on the particular issues identified in the notification. The pilot has seen the time taken to identify appropriate surgical experts reduce and engaging RACS and other medical colleges is intended to be incorporated to AHPRA's business-as-usual operations in 2017.

What rights does a doctor have in the complaints process?

AHPRA and the MBA recognise that doctors have a right to procedural fairness. Significant ways that the complaints process allows this is by:

- providing doctors who are the subject of a complaint with the opportunity to respond to the complaint that has been made about them. Unless there are extenuating circumstances (for example because there may be a significant risk to the notifier), we provide a copy of the complaint to the practitioner at the earliest opportunity in the process and prior to any decisions being made

- informing doctors of their rights and options in the process. For example, in Appendix C, we provide templates of our written correspondence in which we advise doctors to contact their professional association, insurance provider or legal adviser for advice and support during the process
- ensuring that Board members and expert advisors to a complaints process have disclosed any relevant conflicts of interest and are excluded from any part of the process, recognising the right for a doctor to appeal a decision, consistent with the National Law, and
- if a doctor is unhappy about the administration of a complaint, they may make a complaint directly to AHPRA for consideration and a response consistent with our published Complaints Policy available at http://www.ahpra.gov.au/About-AHPRA/Complaints.aspx. AHPRA also advises people to contact the National Health Practitioner Ombudsman and Privacy Commissioner if they are dissatisfied with AHPRA's response to their complaint (more invitation is available at www.nhpopc.gov.au).

How long do complaints take to be finalised?

The MBA and AHPRA recognise the importance of finalising complaints as soon as possible, and that complaints are stressful for both doctors and complainants. To improve the timeliness of the process, the Board aims to make a final decision on the complaint as soon as it has all the information it needs to make the right decision, and has ensured procedural fairness by allowing the doctor sufficient opportunity to respond to the available information from a complainant. We also have a focus on dealing as quickly as possible with those matters that do not meet the legal threshold for regulatory action under the National Law.

An analysis of 2718 complaints about doctors which were closed between 1 July 2015 and 30 June 2016 has been undertaken, using data on median timeframes based on the same period.

Key highlights are:

- **Assessment:** 64% of notifications about doctors were closed following assessment. When no regulatory action was taken, the median time to complete a matter was around two months. If regulatory action was taken, the median time was around three and half months which takes account of the need for a show cause process for the practitioner.
- **Investigation, health or performance assessment:** 29% of notifications about doctors were closed following investigation, health or performance assessment. If no regulatory action was taken the median time to complete a matter was just over nine months. If regulatory action was taken, the median time was just over ten months which takes account of the need for a show cause process for the practitioner. If a decision was made to refer a matter to a disciplinary hearing, the median time was around seventeen months.
- **Panel and tribunal:** 7% of notifications involving doctors were completed following referrals to an independent panel or tribunal because of the seriousness of the concerns. Once referred, the median time to compete a panel is around four and a half months. For tribunal matters, the median time to complete a matter is around 21 months, noting that AHPRA and the MBA do not determine the timeframes for hearing a matter once it is lodged with a tribunal.

What feedback have we received from doctors and complainants on the complaints process?

In November 2016, AHPRA started surveying complainants and practitioners (including doctors) in the complaints process in order to:

- better understand the experience of people involved in our complaint processes, and
- understand where efforts are needed to improve the experience of complainants and practitioners involved in our complaints processes.

A link to the online survey is sent to the doctor and the person who made the notification at the end of the process.

A snapshot of the information we have collected to date in Appendix D. Initial survey data was obtained on 12 February 2017, with responses received from 74 notifiers and 129 health practitioners who were subject to a notification. Due to the small sample size it is too early to draw any definitive conclusions from the data until further feedback is received from complainants and practitioners.

AHPRA intends to use the feedback from this survey to continue to work on improving the process.

In summary, is the regulatory framework and the complaints process adequate for complaints about doctors?

The MBA and AHPRA believe the complaints process is fair and works to protect patients and the public.

Strengths of the process include the involvement of the medical profession and the community in decision-making for complaints, and that the process allows for complaints to be finalised at any point in the complaints process when the Board thinks it has sufficient information to make the right decision.

However, we also recognise that the process is inherently stressful for doctors and complainants. We understand that some doctors feel that the process punishes doctors, even where the outcome of the complaint is that no further action is taken. This is not unique to Australia. Recent work in the United Kingdom (using a large scale anonymous survey of doctors who were the subject of complaints) has identified that doctors who have recently been the subject of a complaint are more likely to suffer from depression, self-harm and risk of anxiety than those who have never had a complaint.[4] Indeed, doctors reported they often felt bullied during the complaint process or victimised when acting as a whistleblower in a complaint.

We're continuing to work on improving by:

- working with HCE's to make the joint consideration of complaints easier so the right body manages each complaint
- improving our internal operations to help make the right decision in the shortest timeframe possible
- introducing an online portal to better collect information about complaints and allow more timely assessment of the complaints, and
- routinely surveying both complainants and practitioners about their experiences of the complaints process so we can keep improving.

In addition to this improvement work, national health programs have been established to provide options for doctors experiencing distress to access support or help outside of the workplace. The national health program for medical practitioners and students 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 Australian Medical Association managing the program. While these programs have not been specifically designed for doctors who are the subject of a complaint, they can assist.

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

Earlier in this submission, we outlined who does what in the complaints process in the National Scheme. Under the National Law, there is no formal role for other organisations in the medical profession in the complaints process. This includes medical specialist colleges. However, we recognise that these profession organisations are an important voice for the profession and the MBA and AHPRA are listening and engaging with these bodies. One example of this is our advisory group, the Professions Reference Group, which includes representatives of the Council of Presidents of Medical Colleges and the Australian Medical Association, and meets quarterly to discuss the work of the National Scheme.

The MBA actively consults with the medical profession. A good example of this is the recent extensive consultation on developing a process to support doctors to maintain and enhance their professional skills and knowledge and to remain fit to practise medicine (known as 'revalidation'). The MBA has appointed an expert advisory group to provide technical expert advice, conducted stakeholder forums, released a discussion paper, created an online discussion forum and undertook a survey of the profession. Full details of the work being undertaken by the MBA is available at http://www.medicalboard.gov.au/News/Past-Consultations.aspx.

The adequacy of the relationships between those bodies responsible for handling complaints

We recognise that our relationship with other bodies responsible for handling complaints is vital to ensure effective complaints handling and fairness to practitioners and the public. Our submission to the previous inquiry of the Committee highlighted some of the work we are undertaking with HCEs, such as the development of a *HCE and National Board Matrix – joint consideration, section 150 of the National Law* for use as a guiding tool by experienced AHPRA and HCE staff during joint assessment of complaints. It also includes the development of a plain English brochure describing the roles of each entity about the complaints process and which entity is most suited to respond to different complaints.

We believe that joint consideration processes with HCEs are vital in ensuring timely management of complaints. Since the previous inquiry into the medical complaints process in Australia, the Queensland Parliament's Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (the Queensland parliamentary committee) has released its report on its inquiry into the performance of the Queensland Health Ombudsman's functions. The inquiry by the Queensland parliamentary committee particularly addressed:

- difficulties of the Queensland Health Ombudsman to address complaints within its statutory timeframes
- a perceived limited use of clinical advice in decisions about complaints
- costs and resourcing of the Queensland Health Ombudsman, and the potential impacts upon the fees paid by practitioners, and
- deficiencies in sharing of information between the Queensland Health Ombudsman and AHPRA.

The Queensland parliamentary committee recommended that measures be taken to improve complaint handling timeframes and address the current duplication in the Queensland complaints process, including a joint consideration process of complaints and the development of options to avoid complaint matters being split between the Queensland Health Ombudsman and the National Boards. These recommendations are supported by both AHPRA and the MBA.

Whether amendments to the National Law, in relation to the complaints handling process, are required

Following the decisions of health ministers on the recommendations of the 2014 independent review of the National Scheme, and other policy decisions of health ministers, a draft amendment bill for the National Law has been prepared for the consideration by the Australian Health Workforce Ministerial Council. AHPRA understands that the Chair of the Australian Health Ministers' Advisory Council is writing to the Committee with further information on this process.

References

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3. Bismark MM, Spittal MJ, Gurrin LC, et al. Identification of doctors at risk of recurrent complaints: a national study of healthcare complaints in Australia. Quality and Safety in Health Care. Published online first: http://hsla.org.au/wp-content/uploads/Bismark-2013.pdf

4. Bourne T, Wynants L, Peters M, et al. The impact of complaints procedures on the welfare, health and clinical practise of 7926 doctors in the UK: a cross-sectional survey. BMJ Open 2015; 4:e006687.doi;10.1136/bmjopen-2014-006687

Appendix A. Further statistics on the complaints process.

Trends in complaints about doctors

2014/15
Total: 2,514

2015/16
Total: 3,147

2016/17
Total: 1,783

Comment: The above graph, which shows the number of complaints (notifications) by quarter since 2014/15 shows that the number of complaints about doctors is increasing. Note this data excludes complaints made about doctors in New South Wales.

Breakdown of complaints by profession (the number of complaints expressed as a percentage of registrant base)

Profession	Total 2015/16
Chiropractor	**2.80%**
Dental practitioner	**4.70%**
Medical practitioner	**5.00%**
Nurse	**0.50%**
Pharmacist	**1.90%**
Physiotherapist	**0.40%**
Psychologist	**1.60%**
All registered professions 2015/16	***1.50%***

Comment: This table shows the complaints received as a percentage of the total number of registered practitioners in the different professions. Note that it does not show the percentage of doctors that receive a complaint each year, as a doctor who is subject to a complaint may receive more than one complaint.

Given that the risk profile of the practice of different professions can differ, direct comparison on the safety or quality of care by different professions cannot be made.

Breakdown of medical complaints by speciality (as a percentage of registrant base with complaints)[a]

Comment: This data shows the complaints received for the different medical speciality areas as a percentage of the registrant base for that speciality. The line at 5% indicates the general level across the medical profession.

[a] Extracted from 2014/15, 2015/16 and 2016/17 AHPRA data

Difference in regulatory outcomes between notifications made by patients and relatives as opposed to those made by practitioners and employers[b]

Comment: This graph compares the regulatory outcomes where a complaint is made by another practitioner or employer, compared to complaints made by a patient, a relative of a patient, or another member of the public.

Tribunals in each state and territory

Jurisdiction	Tribunal
New South Wales	NSW Civil and Administrative Tribunal
Australian Capital Territory	Civil and Administrative Tribunal
Northern Territory	Health Professional Review Tribunal
Queensland	Civil and Administrative Tribunal
South Australia	Health Practitioners Tribunal
Tasmania	Health Practitioners Tribunal
Victoria	Civil and Administrative Tribunal
Western Australia	State Administrative Tribunal

[b] Extracted from 2014/15, 2015/16 and 2016/17 AHPRA data

Outcomes of matters referred to tribunals

Outcome of tribunal referrals of notifications about medical practitioners, 2015/16	
Accept undertaking	1
Cancel registration	13
Caution	2
Fine registrant	5
Impose conditions	18
No further action	12
Not permitted to reapply for registration for 12 months or more	5
Reprimand	8
Suspend registration	28
Withdrawn by applicant	4
Total	*96*

Appendix B – The National Scheme's Regulatory Principles

These regulatory principles underpin the work of the Boards and AHPRA in regulating Australia's health practitioners, in the public interest. They shape our thinking about regulatory decision-making and have been designed to encourage a responsive, risk-based approach to regulation across all professions.

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 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 their 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.

Appendix C. Sample correspondence to practitioners

In this appendix, we provide sample letters that AHPRA sends to practitioners as part of the complaints process. We provide four examples:

- when a practitioner is notified of a complaint and invited to provide a response
- when a practitioner is advised proposed action to be taken by the Board
- when a practitioner is advised that they are required to attend a health assessment, and
- when a practitioner is advised that no further action will be taken about a notification.

Sample 1. Template letter advising a practitioner that a notification has been received about them

AHPRA

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

Private and Confidential

Dear [practitioner / student]

Notification we have received about your [detail]

The Australian Health Practitioner Regulation Agency (AHPRA) receives and manages notifications (complaints) about registered health practitioners or students on behalf of the (the Board).

On [notification received date] AHPRA received a notification from [notifier name] about you under the /(the National Law). A copy of the notification is enclosed for your information/a summary of the notification is enclosed.

Both the Board and AHPRA appreciate that having a notification made about you can be upsetting and cause stress. Your professional association, professional indemnity insurer or independent legal adviser can provide support and assistance during the notification process. We can also assist by clearly explaining our processes and managing the notification as quickly as possible.

What do you need to do?

You are invited to provide a written response to the notification and any information you consider relevant **by no later than [letter date + 21 days]**. Please include a clear copy of your clinical notes, copies of any relevant letters and summaries or any other relevant information.

The response you provide will be presented to the Board along with a copy of the notification we have received. This is an opportunity to provide information that you think is relevant for the Board to consider when making decisions about the notification. Please note that should your response not be received by the due date, the Board will conduct an assessment of the notification without the benefit of your response.

It is important to note that any response or information you provide may also be made available to [notifier name]. If your response contains any sensitive or confidential information which you do not authorise to be provided to [notifier name], please also include another version of the response that can be provided to [notifier name].

We also need to know where you currently practise. Please provide the details of each place that you are currently practising with your response. You must provide these details even if you decide you don't want to respond to the notification.

It is not appropriate for you to discuss this matter with the notifier / patient.

What are the next steps?

The Board will assess the notification and any response you provide. We try to have assessments completed within 60 days. Your cooperation in providing any response to the notification quickly will assist us to meet this timeframe.

If the Board can make a final decision about the notification at assessment, you will be advised of the outcome in writing.

Sometimes the Board needs more information before it can decide what to do about the notification. The Board gathers more information by investigating, or sometimes by requiring a performance assessment or health assessment. You will be advised in writing if this is necessary.

The Board is independent and does not represent the profession. Nor does it represent the person who made the notification. We have processes in place to ensure that any conflicts of interest are managed so that the Board's decision is fair, impartial and transparent.

Need more information?

I have included a copy of our *Regulatory principles for the National Scheme* with this letter. The principles guide AHPRA and the Board in how to make decisions under the National Law.

Further information about the notifications process is always available on our website, at www.ahpra.gov.au/Notifications/Fact-sheets.aspx.

You can also contact [assigned AHPRA officer] on [contact details] quoting the reference number below if you have ongoing questions.

Yours sincerely

Reference Number: [notification number]

Enc: Regulatory principles for the National Scheme
Employer details request form
Copy/Summary of notification

PRA09

Sample 2. Template letter advising a practitioner of the proposed action by the Board

Private and Confidential

AHPRA
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

Dear [practitioner / student]

Notice advising you of *proposed* action

Recently, we wrote to advise you that (the Board) was assessing a notification from [notifier name] about you. Thank you for providing your response to the notification, which the Board considered as part of its assessment.

The decisions a National Board can make during the assessment stage fall into three broad categories:

1. Enough information is available to decide no further action by the Board is necessary to protect the public.
2. Enough information is available to decide to take action now.
3. Not enough information is available, seek more information.

In about 10% of all matters that are assessed, the National Board decides it has enough information to take appropriate action to keep the public safe.

On [date], the Board considered the information it had available through the notification process. The Board formed a view that the way you practised AND/OR your professional conduct is or may be unsatisfactory and is proposing to:

OR

On [date], the Board considered the information it had available through the notification process. The Board formed a view that you have, or may have, an impairment and is proposing to:

[As determined by the Board]

- caution you;
- accept an undertaking from you as enclosed;
- impose the enclosed conditions on your registration requiring you:
    - to complete specified further education or training within a specified period; or
    - to undertake a specified period of supervised practice; or
    - to do, or refrain from doing, something in connection with your practice; or
    - to manage your practice in a specified way; or
    - to report to a specified person at specified times about your practice; or
    - not to employ, engage or recommend a specified person, or class of persons;
- refer the matter to another entity, including, for example, a health complaints entity, for investigation or other action.

IF CONDITIONS OR UNDERTAKINGS

Where a condition refers to an approved form these can be found on our website at http://www.ahpra.gov.au/NationalRestrictionsLibrary.

The Board proposes that the conditions will be reviewed in timeframe e.g. 12 months from date of imposition. During a review period the conditions cannot be changed or removed unless there is a material change in circumstance.

The Board is proposing to take this action because [insert reasons].

The material considered by the Board in proposing this action, which has not previously been provided to you, is enclosed.

What do you need to do?

You now have the opportunity to make a written or verbal submission to the Board. The Board must consider that submission before deciding whether it will take the action proposed.

More information about the opportunity to make a submission is provided in the *Information sheet for Practitioners about relevant action* attached.

Please provide your written submission or contact [assigned AHPRA officer] to make arrangements to present verbal submissions **by no later than [date]**. Alternately, please advise if you do not wish to make a submission.

If no submission or contact is made by this date, the Board will proceed to make its decision on the information it already has.

If you haven't already done so, you may wish to contact your professional association, professional indemnity insurer or independent legal adviser, who can provide support and assistance during the submission process. If you wish to seek their assistance, please do this immediately so that you can meet the deadline for submissions.

What are the next steps?

The Board does not always take action that it has proposed to take. It will carefully consider any submissions that you make and then Board will decide what to do next.

We will inform you of the Board's decision as quickly as possible once the final decision is made.

Need more information?

The *Information sheet for Practitioners about relevant action* attached provides general information about the process and decisions available to the Board.

Information about notification processes and outcomes is also available on our website www.ahpra.gov.au/notifications.

If the information attached and available via the website is not sufficient, you can contact [assigned to employee first name] [assigned to employee last name] on [assigned to employee phone number] or [assigned to employee email address] quoting the reference number below.

Yours sincerely

Enc. Information sheet for Practitioners about relevant action

Proposed conditions

MA01

Sample 3. Template letter advising a practitioner that a health assessment is required

AHPRA

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

Private and Confidential

Dear [practitioner / student]

Notice advising you of the Board's decision to require a health assessment

Recently, we wrote to advise you that the (the Board) was assessing/investigating a notification from [notifier name] about you. Thank you for providing your response to the notification, which the Board considered a part of its assessment.

The information that the Board considered on [date] raised a concern that a health impairment might be detrimentally affecting your ability to practise safely. It is very important to us that both you and the people who rely on you as a health practitioner are safe.

Under the (the National Law), the Board can seek advice from an independent practitioner about your health by requiring a health assessment. The Board made the decision to require a health assessment so that it can fulfil its obligations of protecting the public.

First and foremost, we want to make sure that you are okay. We appreciate that having these concerns raised with you is stressful. If you haven't already made contact with a support service, your professional association, professional indemnity insurer, an independent legal adviser, your general practitioner or another health care provider, we encourage you to do so.

There are health services that have been set up specifically to help practitioners who have a health concern raised with the Board. [For doctors we insert details of relevant health services]

What happens next?

We are making arrangements for you to see a [DETAILS OF PRACTITIONER] to carry out the assessment.

[The assigned AHPRA officer] will make contact with you to schedule an appropriate time for the assessment. We need to arrange the assessment within the assessor's available times, so we cannot always ensure that your preferences for the assessment time can be met. We will do our best to accommodate your schedule.

The assessment will focus on:

[details of health impairment identified by the Board]

To assist in the assessment process, please review and complete the following enclosures and return to [the assigned AHPRA officer] **by no later than [date]**:

- consent authorisation form, and
- nomination to receive assessment report.

You will be notified in writing of the details of the assessment as soon as possible.

Where can I get further information about health assessments?

An information sheet about health assessments is enclosed. We also recommend that you access information about health assessments available on our websites. You can visit www.ahpra.gov.au/notifications to access up to date information.

Not all health assessments lead to action by a Board. Data on the rates of referral to health assessments and rates of action following health assessments are routinely published in our annual reports, available at http://www.ahpra.gov.au/Publications/Corporate-publications/Annual-reports.aspx.

We aim to complete most health assessments within three months. Sometimes, however, where there are delays in our ability to make suitable arrangements with independent assessors, that timeframe cannot be met. We will let you know as possible whether we expect that your assessment will take longer than anticipated.

If you have any queries, please contact [the assigned AHPRA officer] on [contact detail] quoting the reference number below.

Yours sincerely

Enc:

- Information sheet about health assessments
- consent authorisation form
- nomination to receive assessment report

HPA01b

Sample 4. Template letter advising a practitioner that the Board has decided to take no further action

Private and Confidential

AHPRA

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

Dear [practitioner / student]

Notice of Board decision to take no further action

The Australian Health Practitioner Regulation Agency (AHPRA) receives and manages notifications (complaints) about registered health practitioners or students on behalf of the (the Board). Further information about AHPRA and the notifications process is available at www.ahpra.gov.au/Notifications/Fact-sheets.aspx.

On [notification received date] AHPRA received a notification from [notifier name] about you under (the National Law). A copy of the notification is enclosed for your information/a summary of the notification is enclosed.

Recently, we wrote to advise you that the [Board name] (the Board) was assessing a notification from [notifier name] about you. Thank you for providing your response to the notification, which the Board considered as part of its assessment.

On [Decision date], the Board decided to take no further action under section 151(1)[(a)(b)(c)(d)(e)] of the National Law.

The Board decided this because:

[PROVIDE REASONS AS APPROPRIATE]

Both the Board and AHPRA appreciate that having a notification made about you can be upsetting and cause stress. Your professional association, professional indemnity insurer or independent legal adviser can provide support and assistance to you if required.

This matter has now been closed.

Your feedback

Your feedback is important to us. Telling us about your experience with AHPRA can help us improve what we do and how we do it.

To provide your feedback, please visit https://www.surveymonkey.com/r/CTF7BCN.

Providing your feedback is voluntary and anonymous. We ask that you do not identify yourself or any other person when responding. The information you provide will be handled in accordance with AHPRA's Privacy Policy and SurveyMonkey's Privacy Policy. Links to these privacy policies can be accessed when you access the survey link.

If we can be of assistance, please contact [assigned AHPRA officer] on [phone number] or [email address] quoting the reference number below.

Yours sincerely

Reference Number: [notification number]

Enc: Notification experience survey

PRA10a

Appendix D. Practitioner and complainant experience – national baseline surveys

In November 2016, AHPRA started surveying complainants and practitioners (including doctors) involved in the complaints process to allow AHPRA to:

- better understand the experience of parties involved in our complaint processes, and
- understand where we need to improve the experience of complainants and practitioners involved in our complaints processes.

A link to the online survey is made available to the person who made the notification and the practitioner when the process is completed.

While the survey is in its early days, we provide a snapshot of information we have collected to date. Initial survey data was obtained on 12 February 2017, with responses received from 74 notifiers and 129 health practitioners who were subject to a notification.

Note: This data uses the term 'notification' instead of complaint, consistent with the terminology in the National Law.

Notifier surveys

The information below refers to feedback provided by notifiers (complainants), covering:

- the ease of making a notification
- communication during a notification
- management of a notification, and
- the outcomes of a notification.

The ease of making a complaint or raising concern with AHPRA (overall)

When asked to respond to the statement 'It is easy to find information about how to make a complaint or raise a concern with AHPRA':

- 49% of respondents agreed or strongly agreed
- 30% neither agreed nor disagreed, and
- 21% disagreed or strongly disagreed.

When asked to respond to the statement 'Making a complaint or raising a concern with AHPRA is a simple process':

- 53% of respondents agreed or strongly agreed
- 27% neither agreed nor disagreed, and
- 20% disagreed or strongly disagreed.

Since 9 January 2017, notifiers have had the option of making notifications via a new, online notification form (online form) in addition to using the traditional notification form or making a notification over the telephone. Feedback is systematically obtained from users of the online form to assess whether it improves the experience for notifiers.

In response to a statement about the ease of locating the online form:

- 94% of respondents reported that it was very easy, easy or average to locate, and
- 7% of respondents reported that it was difficult or very difficult to locate the online form.

In response to a statement about the ease of using the online portal:

- 95% of respondents reported that it was very easy, easy or average to use, and
- 5% of respondents reported that it was difficult or very difficult to use.

Communication at assessment

When asked to respond to the statement 'The letter confirming that my complaint or concern had been received by AHPRA clearly explained how it was going to be managed':

- 64% of respondents either agreed or strongly agreed
- 23% neither agreed nor disagreed, and
- 13% disagreed or strongly disagreed.

The baseline results from the national survey compare favourably with earlier data obtained in Victoria[c] where, when asked to respond to the statement 'You were given information on the process':

- only 38% of respondents rated the provision of information as excellent or good
- 25% rated the provision of information as adequate, and
- 37% rated the provision of information as 'needs improvement' or 'needs significant improvement'.

We believe that significant work to improve the nature and content of our earliest communications with notifiers is contributing to the improved results in the national baseline survey.

[c] 2016 Victoria survey of notifiers

Timeliness, updates and contact point in the complaint process

When asked to respond to the statement 'My complaint or concern was managed in a timely manner':

- 39% of respondents either agreed or strongly agreed
- 30% neither agreed nor disagreed, and
- 31% disagreed or strongly disagreed.

When asked to respond to the statement 'AHPRA regularly updated me on the progress of my complaint or concern':

- 42% of respondents either agreed or strongly agreed
- 24% neither agreed nor disagreed, and
- 34% of respondents disagreed or strongly disagreed.

The baseline results from the national survey compare favourably with earlier data obtained in Victoria where, when asked to respond to the statement 'You were kept updated':

- only 25% of respondents rated the provision of information as 'excellent' or 'good'
- 19% rated the provision of information as 'adequate', and
- 56% rated the provision of information as 'needs improvement' or 'needs significant improvement'.

Auditing of the frequency and nature of the communication provided to notifiers throughout the management of a notification is continuing.

When asked to respond to the statement 'I know who to contact at AHPRA if I have questions about the process or the outcome of my complaint or concern':

- 46% of respondents either agreed or strongly agreed
- 28% neither agreed nor disagreed, and
- 26% disagreed or strongly disagreed.

The baseline results from the national survey compare favourably with earlier data obtained in Victoria where, when asked to respond to the statement 'You had a contact point':

- only 39% of respondents responded 'excellent' or 'good'
- 15% responded with 'adequate', and
- 46% responded 'needs improvement' or 'needs significant improvement'.

Advising the notifier of the outcome

When asked to respond to the statement 'The letter advising me of the outcome of my complaint or concern explained the reasons for the Board's decision':

- 44% of respondents either agreed or strongly agreed
- 34% neither agreed nor disagreed, and
- 22% disagreed or strongly disagreed.

The ability to inform all notifiers about the reasons for decision is often fettered by the drafting of the National Law, which, for decisions to take no further action, restricts information being provided to the notifier over and above the actual decision. In those cases, reasons for the decision are not able to be communicated to the notifier.

The baseline results from the national survey compare favourably with earlier data obtained in Victoria where, when asked to respond to the statement *'Advised of Board decisions and reasons'*

- only 38% of respondents rated advice about the Board's decision and reasons 'excellent' or 'good'
- 16% responded with 'adequate', and
- 46% responded 'needs improvement' or 'needs significant improvement'.

When asked to respond to the statement 'I am satisfied with the outcome of my complaint or concern':

- 27% of respondents either agreed or strongly agreed
- 26% neither agreed nor disagreed, and
- 47% disagreed or strongly disagreed.

Advising the notifier of the outcome

When asked to respond to the statement 'Overall, I was satisfied with how the complaint or concern was managed by AHPRA':

- 31% of respondents either agreed or strongly agreed
- 27% neither agreed nor disagreed, and
- 42% disagreed or strongly disagreed.

Practitioner experience surveys

In the surveys completed by practitioners on completion of a notification:

- 54% of respondents identified as a medical practitioner
- 26% identified as a nurse or midwife, and
- 7% identified as a psychologist.

The remaining respondents identified as being health practitioners registered with the following professions: Chiropractic, dental, medical radiation practice, occupational therapy, pharmacy, physiotherapy or psychology.

Of the medical practitioners who responded to the survey, 35% responded that they were a registered specialist. Of those who identified as a specialist, 71% are registered as general practitioners.

Initial contact and information to support initial contact

When asked to respond to the statement 'The letter advising me of the complaint or concern clearly identified the process AHPRA would undertake to manage it':

- 63% of respondents either agreed or strongly agreed
- 19% neither agreed nor disagreed, and
- 19% disagreed or strongly disagreed.

When asked to respond to the statement 'It was easy to find information about how complaints and concerns are managed by AHPRA':

- 42% of respondents either agreed or strongly agreed
- 33% neither agreed nor disagreed, and
- 25% disagreed or strongly disagreed.

Timeliness, updates and contact point in the complaint process for the practitioner

When asked to respond to the statement 'I was given adequate opportunity to respond to the complaint or concern made about me':

- 53% of respondents either agreed or strongly agreed
- 19% neither agreed nor disagreed, and
- 28% disagreed or strongly disagreed.

When asked to respond to the statement 'AHPRA regularly updated me on the progress of the complaint or concern':

- 29% of respondents either agreed or strongly agreed
- 19% neither agreed nor disagreed, and
- 52% disagreed or strongly disagreed.

When asked to respond to the statement 'The complaint or concern was managed in a timely manner':

- 37% of respondents either agreed or strongly agreed
- 22% neither agreed nor disagreed, and
- 41% disagreed or strongly disagreed.

Advising the practitioner of the outcome

When asked to respond to the statement 'The letter advising me of the outcome of the complaint or concern clearly explained the reasons for the Board's decision':

- 60% of respondents either agreed or strongly agreed
- 22% neither agreed nor disagreed, and
- 18% disagreed or strongly disagreed.

When asked to respond to the statement 'I am satisfied with the outcome of the complaint or concern':

- 53% of respondents either agreed or strongly agreed
- 24% neither agreed nor disagreed, and
- 23% disagreed or strongly disagreed.

When asked to respond to the statement 'Overall, I was satisfied with how the complaint or concern was managed by AHPRA':

- 40% of respondents either agreed or strongly agreed
- 23% neither agreed nor disagreed, and
- 37% disagreed or strongly disagreed.