

5 August 2020

Senator Rachael Siewert  
Chair  
Senate Standing Committees on Community Affairs – References Committee  
Po Box 6100  
Parliament House  
CANBERRA ACT 2600

Via email: [community.affairs.sen@aph.gov.au](mailto:community.affairs.sen@aph.gov.au)

Dear Senator

**Senate inquiries into the Medical complaints process in Australia and the Complaints mechanism administered under the National Health Practitioner Regulation National Law**

Thank you for your letter of 10 July 2020 seeking further updates on the work Ahpra has undertaken in response to the recommendations made by the Senate Community Affairs Committee (the Committee) inquiries into the Medical complaints process in Australia and the Complaints mechanism administered under the Health Practitioner Regulation National Law.

Since the conduct of these inquiries, Ahpra and National Boards have continued their ongoing work for the National Registration and Accreditation Scheme (the National Scheme) which regulates 16 health professions across Australia, including our work to improve the process of managing complaints / notifications regarding registered health practitioners. Protecting the public and promoting safer healthcare is at the heart of all that we do in the National Scheme. I hope the following snapshot of our work is helpful to the Committee.

**Bullying and harassment in the medical profession**

In their final report into the Medical complaints process in Australia, the Committee recognised the need for all parties with responsibilities for addressing bullying and harassment in the medical profession to work together and undertake sustained action to eliminate these behaviours. In December 2016, the Medical Board of Australia (MBA) and Ahpra noted the Committee's findings and committed to a series of actions to play our part in addressing this serious issue. A brief summary of our work on these actions is provided below.

**Medical Training Survey**

The MBA committed to take the lead in developing and implementing a national, annual survey of medical trainees to give them a voice and an opportunity to provide feedback on their training experiences. The Board and Ahpra have worked extensively with health departments, medical colleges, the Australian Medical Council and employers to implement this survey and we are pleased to advise that the first Medical Training Survey was undertaken in 2019.

Nearly 10,000 doctors in training (around 27%) responded to the survey. In February 2020, the Medical Board and Ahpra published the full report and findings which can be accessed at [www.medicaltrainingsurvey.gov.au](http://www.medicaltrainingsurvey.gov.au).

In general, doctors in training in Australia rate their training very highly, with most trainees rating the clinical supervision and teaching they receive as high quality. The survey confirmed unacceptable levels

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Ahpra and the National Boards regulate these registered health professions: Aboriginal and Torres Strait Islander health practice, Chinese medicine, chiropractic, dental, medical, medical radiation practice, midwifery, nursing, occupational therapy, optometry, osteopathy, paramedicine, pharmacy, physiotherapy, podiatry and psychology.

of bullying, harassment and discrimination with more than one in three trainees reporting that they have experienced or witnessed bullying, harassment or discrimination. Only one third of those who reported experiencing it reported it.

The Medical Training Survey is a very useful tool to open conversations about unacceptable behaviours. We have published the results of the survey and sent them to stakeholders, highlighting the results about bullying, harassment and discrimination and have been explicit that the medical profession has a joint responsibility to strengthen professional behaviour and deal effectively with unacceptable behaviour. The MBA also held a stakeholders' forum to promote sharing of ideas about how to respond to the results.

We plan to run the training survey annually and preparations are now being finalised to conduct the 2020 survey from August 2020. We will continue to publish results and, as we build our understanding of the issues and emerging trends, whether by college, state or territory or even by hospital.

### **Good medical practice**

*Good medical practice – a code of conduct for doctors in Australia* (or Good medical practice) sets out the standard of behaviour and conduct for registered medical practitioners expected by the MBA. The MBA committed to strengthening Good medical practice to make the standards regarding bullying and harassment clearer. The MBA has worked in close consultation with all stakeholders and undertook public consultation on a draft revised code of conduct in mid 2018 (*Good medical practice: A code of conduct for doctors in Australia*). There was a great deal of interest in the consultation with more than 800 submissions received and subsequently analysed. The consultation also included proposed revised guidance regarding vexatious complaints (covered later in this response).

Following this consultation, the Board has recently approved a revised version of the code which will be published in the coming months. As *Good medical practice* is a code of conduct developed under s.39 of the National Law, the code is admissible in proceedings under the Law as evidence of what constitutes appropriate professional conduct or practice.

While the current public version sets out expectations regarding professional behaviour towards other health practitioners, the revised version introduces a specific section on vexatious complaints, explaining what is a vexatious complaint and explicitly requiring medical practitioners not to make complaints about other practitioners that are vexatious.

The revised code has strengthened information about unacceptable behaviours and is available in draft form at **Appendix A**. While the revised code has been approved by the MBA, it has not yet been released publicly, and we respectfully request this information is treated in confidence. While the process of revisions has been undertaken, the Board has continued to communicate its expectations to practitioners via its newsletters and other communications.

### **Managing vexatious complaints**

In December 2016, we publicly committed to commissioning research on vexatious complaints to improve our understanding of how and why people are driven to make them and what more we, as the regulator of health practitioners, can do to address them. The research was commissioned from the School of Population and Global Health, University of Melbourne and a research report was published in April 2018. In April 2018, we wrote to the Committee with the summary report of this work and noted our ongoing work to improve the complaints process, including to improve the experience of both notifiers and practitioners in the process.

Ahpra and National Boards have had a substantial focus on improving the experience of both notifiers and practitioners over the past three years. Part of this work has been acknowledging and seeking to mitigate the significant emotional and professional impact on practitioners when a notification is made about them.

From our [research](#) and that of others, it appears that this impact is magnified in the rare circumstances where a notification is vexatious. However, our approach has been focused on reducing stress across all notifications.

This work has included:

- training for staff in responding to people (notifiers and practitioners) in distress and/or threatening suicide or self-harm,
- developing resources for staff responding to those situations and increasing our focus on improving welfare of our staff to ensure they are well-prepared and supported,
- developing two videos of practitioners who have been through the notifications experience which are available on [Ahpra's website](#), providing firsthand reflections and insight into the process,
- creating quick access 'postcards' with critical information to understand the notifications process. The postcards address myths and misunderstandings that our research has found were commonly held and often caused unnecessary stress for practitioners.

Additionally, in response to an Ahpra commissioned National Health Practitioner Ombudsman and Privacy Commissioner (NHPOPC) report on [Privacy and confidentiality safeguards for notifiers](#), Ahpra will be consulting with professional and community stakeholders on the further development of our approach for managing vexatious notifications.

In seeking new and more proactive ways to engage with registered health practitioners and the public, we have also launched in 2020 a [series of podcasts](#) featuring interviews and conversations with practitioners and people in the community. We discuss current issues, address myths and common questions, to promote discussion about what we can all do to best protect the public and support the safe delivery of healthcare in Australia.

In one such podcast, we specifically look at the complex issue of vexatious notifications. The episode provides the defining characteristics of vexatious notifications and how common they are. It also looks at the impact they have on practitioners and explores how Ahpra is working to identify, respond to and prevent vexatious notifications from occurring. This podcast is our second most popular with almost 1,800 listens.

### **Other actions taken to improve the complaints process and protect the public**

The National Scheme continues to improve the complaints process. In this section we comment briefly on this work and would be happy to discuss further in the private briefing requested by the Committee.

Of note is our work to:

- improve transparency of regulatory decision making for both practitioners and notifiers,
- implement mandatory notifications legislative reforms to support practitioners to seek help when they need it,
- increase the input of clinical advice and expertise into the complaints process,
- strengthen our conflict of interest protocols,
- refine our identification and assessment of risk,
- provide further professional development of Ahpra staff,
- improve timeliness in managing complaints,
- change our practices regarding sexual misconduct allegations about practitioners,
- improve the experience of both the notifier and the practitioner when a notification is made
- survey notifiers and practitioners on their experience of our complaints process.

### **New regulatory guide released to improve transparency in regulatory decision making**

In July 2020, Ahpra publicly released a new guide to build a better understanding of how the Health Practitioner Regulation National Law (the National Law) is applied in the management of complaints / notifications. The regulatory guide explains how the National Law may be applied by Ahpra and the National Boards in the management of concerns regarding a practitioner's performance, conduct or health. The guide is available on [Ahpra's website](#). A shorter executive summary of the guide has also been developed to support accessibility and is attached at **Appendix B**.

### **Implementation of mandatory notification reforms**

In 2019, the Queensland Parliament passed amendments to the National Law proposed by Health Ministers to support registered practitioners to seek help about their health without fearing a mandatory

notification to their National Board. The amendments provide for a lift in the threshold for when a treating practitioner is required to notify a National Board regarding another registered practitioner's impairment.

To support the amendments, Ahpra and National Boards ran a public campaign, that was developed in close consultation with professional bodies, to encourage practitioners to seek help for their health concerns when it is needed. Supporting materials from this campaign are available on [Ahpra's website](#).

### **Improved clinical input across all professions**

The National Scheme has always enabled expert opinion to be provided to a National Board or delegated committee to inform regulatory decision making. If needed, this usually forms part of the investigation process. When a National 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.

More recently, Ahpra has also recruited registered practitioners across all professions as clinical advisors, ensuring clinical input is available throughout our regulatory processes, including the initial assessment.

All performance and conduct related notifications are screened by a clinical advisor from the relevant profession at the first step in our notifications management process. We have established a dedicated team to manage all requests for clinical input advice, improving consistency, strengthening expertise and improving timeliness in managing requests.

### **Strengthening conflict of interest protocols**

Ahpra and National Boards have clear procedures in place to manage actual or potential conflicts of interest for members of any Board or delegated committee that makes regulatory decisions on behalf of the National Board. Members of Boards and committees that make regulatory decisions are routinely and actively asked to disclose actual or potential conflicts of interest.

In August 2019, the Conflict of Interest Policy and Procedure for Ahpra staff was reviewed and updated to reflect contemporary standards.

The policy and procedure provides:

- a clear explanation of the meaning of conflict of interest,
- the process required to be taken in the event of a conflict of interest, and
- the roles and responsibilities of the various staff members involved in identifying and managing a conflict of interest.

Any staff conflicts of interest, once disclosed and managed, are included on a register maintained by the Director of Corporate Risk and Compliance.

The *Guidelines for Board and committee members with respect to conflict of interest* was also reviewed in 2019 to ensure that it is consistent with the requirements of the Ahpra policy and procedure. In addition to the general requirements (which are consistent with the Ahpra policy and requirements), there is a specific requirement to have a standing item on the agenda of all Board and committee meetings to ask members if there are any conflicts of interest. This step serves to remind all members of their obligations and to ensure that any interests disclosed are formally recorded.

### **Professional development and training of staff, board and committee members**

We have previously advised the Committee that we have implemented a national training program for investigators, consistent with Recommendation 28 from the *Independent Review of the National Registration and Accreditation Scheme for Health Professions*. The training program was developed in partnership with the Council on Licensure, Enforcement and Regulation (CLEAR) based on a National Certified Investigator Training program which has been delivered in the USA and Canada for more than 30 years. More than 19,000 investigators have completed this program internationally.

Ahpra continues to build on the foundations of the partnership with CLEAR in progressing this training.

We have developed and implemented an additional module relating to the investigation of sexual boundary notifications, consistent with the recommendations of a 2017 *Independent review of the use of chaperones to protect patients in Australia* and established specialised decision-making committees.

### **Improvements to timeliness**

We believe that our ongoing work on timeliness is producing benefits. For example, we are pleased to report that, during:

- 2017/18, our average time to complete notifications reduced to 198 days, down 2% on 2016/17.
- 2018/19, our average time to complete notifications reduced to 187 days, down 5.6% on 2017/18.
- 2019/20, our average time to complete notifications reduced to 177 days, down 5.3% on 2018/19.

These reductions in timeframe have been achieved despite a 48.4% increase in notifications in the period 2016/17 to 2019/20. However, the increased number of notifications continues to put pressure on our timeframes to complete investigations.

### **Changes in regulatory practice since the independent review of the use of chaperones to protect patients in Australia**

In late 2019, Ahpra and the MBA commissioned the author of the 2017 *Independent review of the use of chaperones to protect patients in Australia*, Professor Ron Paterson, to assess what had been achieved and identify what more could be done to improve their handling of sexual misconduct allegations.

Professor Paterson found that Ahpra and the MBA have fully implemented 'nearly all' his recommendations and made significant changes to regulatory practice.

A full copy of the report and media release can be found on [Ahpra's website](#).

### **Responding to the policy directions of Ministers**

In January 2020, Health Ministers of the Commonwealth, States and Territories (as the Ministerial Council) issued Ahpra and National Boards with two policy directions which reinforce that Ahpra and National Boards are to prioritise public protection in the work of the National Scheme. A copy of these policy directions is available on [Ahpra's website](#).

A policy direction is a direction or instruction from the Ministerial Council about the policies to be applied by Ahpra and/or National Boards when exercising their functions under the National Law (refer to section 11 of the National Law).

The first policy direction, PD 2019-1 sets out that public protection is the paramount consideration in the administering of the National Scheme. It also provides that Ahpra and National Boards must, when determining whether to take regulatory action regarding a registered practitioner, consider the potential impacts of the practitioner's conduct on the public, including vulnerable people in the community. The second policy direction, PD 2019-2 requires National Boards to consult with patient safety bodies and consumer bodies on registration standards, codes and guidelines when they are being developed or revised. It also provides that National Boards and Ahpra must:

- consider the impacts of the new or revised registration standard on vulnerable members of the community and Aboriginal and Torres Strait Islander people, and
- prepare and publish a 'patient health and safety impact statement' with each new or revised registration standard, code or guideline.

Ahpra and National Boards have consulted with stakeholders, including professional bodies in the implementation of the policy directions and established processes to ensure the requirements of both policy directions are met in its regulatory decision making. In implementing these policy directions, Ahpra and National Boards will continue to ensure procedural fairness for health practitioners in regulatory processes.

## Conclusion

In summary, Ahpra and National Boards have continued work on the notifications/complaints process to ensure it supports the protection of the public, improves the experience of practitioners and notifiers and maintains fairness for practitioners. This work supports the objectives of the National Scheme. Last financial year, over 90% of matters referred to independent Tribunals across Australia resulted in regulatory action being taken to protect the public. We believe this indicates that our risk-based approach to assessing complaints regarding practitioners and determining appropriate regulatory action is appropriate.

We hope the information in this response assists the Committee. In support of our response, Ahpra is available to provide a private briefing to the Committee as requested during the August 2020 parliamentary sittings.

Our contact to assist in making these arrangements is Mr. Nick Lord, National Director, Engagement and Government Relations via \_\_\_\_\_ or \_\_\_\_\_. Please do not hesitate to contact Mr. Lord regarding this or other queries that the Committee may have regarding the information we have provided in this response.

Yours sincerely

**Martin Fletcher**

Chief Executive Officer

Encl.

## Useful links

Medical Training Survey	<a href="https://medicaltrainingsurvey.gov.au/">https://medicaltrainingsurvey.gov.au/</a>
Managing vexatious complaints	<a href="https://meridian.allenpress.com/jmr/article/106/1/7/435351/How-Can-We-Make-Health-Regulation-More-Humane-A">https://meridian.allenpress.com/jmr/article/106/1/7/435351/How-Can-We-Make-Health-Regulation-More-Humane-A</a> <a href="https://www.ahpra.gov.au/News/2019-06-26-practitioner-experience-video.aspx">https://www.ahpra.gov.au/News/2019-06-26-practitioner-experience-video.aspx</a> <a href="https://www.ahpra.gov.au/Publications/Podcasts.aspx">https://www.ahpra.gov.au/Publications/Podcasts.aspx</a>
Regulatory Guide	<a href="https://www.ahpra.gov.au/Publications/Corporate-publications.aspx">https://www.ahpra.gov.au/Publications/Corporate-publications.aspx</a>
Mandatory Notifications	<a href="https://www.ahpra.gov.au/Notifications/mandatorynotifications.aspx">https://www.ahpra.gov.au/Notifications/mandatorynotifications.aspx</a>
<i>Independent review of the use of chaperones to protect patients in Australia</i>	<a href="https://www.ahpra.gov.au/News/2020-07-30-Chaperone-Report-Three-years-on.aspx">https://www.ahpra.gov.au/News/2020-07-30-Chaperone-Report-Three-years-on.aspx</a>
Policy directions of Ministers	<a href="https://www.ahpra.gov.au/About-AHPRA/Ministerial-Directives-and-Communiques.aspx">https://www.ahpra.gov.au/About-AHPRA/Ministerial-Directives-and-Communiques.aspx</a>