ADF Submission

Australian Senate Standing Committee on Community Inquiry into the medical complaints process (AHPRA) in Australia

"*The idea for a national registration and regulation of all healthcare professionals was always loopy, a solution in search of a problem and one of the poorer ideas of the Productivity Commission*" – Professor Judith Sloan, 2 Feb 2011 , former Productivity Commissioner.

"*Yes, It is quite a complicated structure. … It is sort of underpinned by the IGA* [Inter-Governmental Agreement]. *We have a few things a bit like that around.*"[2] – Dr Louise Morauta, 7 May 2009, Project Director of the National Registration and Accreditation Implementation Project which created AHPRA at the direction of 'COAG officials'.

1. The Australian Doctors' Fund (ADF) maintains that the Australian Health Practitioner Regulation Agency (AHPRA), a creation of the COAG driven **National Registration and Accreditation Scheme (NRAS) is a flawed model of medical registration in Australia**. The ADF has outlined these flaws in multiple submissions to the numerous inquiries which have been held since AHPRA's formation in 2009/10. These submissions have been published on the ADF website www.adf.com.au and are listed below.
2. It is not surprising to the ADF that AHPRA (child of NRAS) has already achieved a controversial reputation since inception in 2009/10. Its record includes;
    a. **growing complaints about its performance**,
    b. **escalating medical registration costs** [it promised the opposite]. From the table below, it can be clearly seen that national registration has not reduced medical registration costs. Despite a growing workforce, registration costs have increased considerably. On top of this, AHPRA has absorbed surplus funds from state medical boards and obtained extra funding from COAG.

Category	2009-Before NRAS/AHPRA	With AHPRA 2014/2015	% increase
Medical registration fees	$309[3]	$724[4]	134% (22.3% p.a. average)
Medical workforce	81,639[5]	98,807[6]	21.02%

    c. **growing bureaucratic overreach** (it wants the Federal Attorney General to give it **phone-tapping powers over doctor/patient conversations),**

[1] Judith Sloan (2011) The AHPRA: yet another federal cock-up, Catallaxy Files, http://catallaxyfiles.com/2011/02/02/the-ahpra-yet-another-federal-cock-up/
[2] Dr Louise Morauta, Project Director, National Registration and Accreditation Implementation Project, Senate Hansard, Senate Standing Committee on Community Affairs Inquiry into National Registration & Accreditation Scheme for Doctors & other healthcare workers, 7 May 2009
[3] Dr A M B, Medical registration receipt 2009 NSW Medical Board
[4] Medical Board of Australia, Schedule of fees effective 22/7/2015, www.medicalboard.gov.au/Registration/Fees.aspx
[5] National Health Workforce Series No. 1, AIHW 2012, Series No.1, Cat HWL, pg v1
[6] Australia's medical workforce, Medical professionals in Australia in 2014, www.aihw.gov.au/wf /medical/

d. **claims of abuse of process** in regard to the investigation of complaints against psychiatrists acting as independent medical examiners,
e. Criticism by senior doctors over the **removal of the LRPIOP (Limited registration, public interest, Occasional Practice) registration category**.
f. **an independent inquiry by Mr Kim Snowball**, who made 33 recommendations for improvement including the **amalgamation of nine national boards** of 'low regulatory workload' [this in itself is clear evidence of a flawed legislative architecture],
g. **new state legislation in Queensland** returning the complaints process to that state from AHPRA,
h. **a Victorian Upper House inquiry** into the performance of AHPRA,
i. **recent criticism of AHPRA by the Victorian Health Minister** regarding the sad and tragic events at Bacchus Marsh Hospital, Victoria,
j. **the embarrassing withdrawal and settlement of legal action** brought against AHPRA in the Qld Supreme Court in 2014 by the Australian Society of Ophthalmologists (ASO) and the Royal Australian and New Zealand College of Ophthalmologists (RANZCO), who were defending medical standards in the treatment of glaucoma,
k. **public criticism by Dr Kerry Breen**, **former President of the Medical Practitioners Board of Victoria** and the Australian Medical Council, who called AHPRA and the National Scheme "an expensive five year experiment that had partly failed. Dr Breen called for AHPRA powers to be 'pared back' to that of maintaining a national registration database

3. As stated above, the ADF maintains that AHPRA **model is flawed despite the dedication of those public servants and Board members who attempt to make it work**. The ADF asserts that its failure is not due to inefficiency or poor management, but rather, as Prof Sloan has stated, it is "a solution in search of a problem" i.e. in the case of the medical profession, it is superfluous.
4. **The outcome**, after the expenditure of hundreds of millions of dollars **is an upgraded computer database** (replacing the Compendium of Medical Registries which functioned 10 years prior to AHPRA) **and a website** to publish the statistics drawn from this database and the work of pre-existing committees and boards together with numerous edicts many of which duplicate the work of colleges and other organisations such as the Australian Medical Council.
   Its design faults include:
   a. **It is not accountable to any single jurisdiction** (Health Minister). It answers to a committee of public servant advisors, who in turn report to 9 Health Ministers who have no effective control and little interest in AHPRAs activities given their lack of legislative control. Criticism of its performance is responded to by its CEO, not a Minister since no Minister has direct accountability. The Chairman of the AHPRA Board and the AHPRA Ombudsman maintain a low profile.
   b. It replaces simplicity with unnecessary complexity. Whereas the line of communication for the old model was: 1 health minister → State Medical Board → medical practitioner, with the introduction of AHPRA the line of communication is: 1 health minister → 8 health ministers → COAG → AHMAC →AHPRA → National Medical Board → State Medical Committees → medical practitioner.
   c. **There is no hierarchy** (recognised expertise) **of its 14 National Boards** in regard to clinical decision making. (This is a staggering omission of a critical element of risk management.)
   d. The relationship between AHPRA and National Boards is deliberately blurred. AHPRA states it 'partners' with National Boards (whatever that means). **Hence the public is unsure about whether it is the individual professional National Board or AHPRA which is the final decision maker and accountable entity in any determination by a National Board.**

e. **It has no unique purpose**. In the case of the Medical Profession, the day-to-day work is still undertaken by former State and Territory Boards (councils) under AHPRA control with NSW and Qld responsible almost entirely in regard to complaints handling,
f. **It has virtually unchecked ability to fund itself** from levies on health professionals who have no other alternative than to use its services as a regulation monopolist without direct Ministerial jurisdictional oversight.
g. **It duplicates the role and work of professional medical colleges and the Australian Medical Council** in regards to ethical and professional guidelines, CPD benchmarking and compliance.

5. In general, the ADF maintains that the AHPRA model introduces a **centralised one size fits all method of top-down regulation** which detracts from the uniqueness and diversity of the Australian Medical Profession. As Australia's leading medical ethicist and Professor of Medicine at Monash University, Prof Paul Komersaroff has said, "The fine details of the conduct of clinical relationships cannot be represented in a set of injunctions relating to styles or outcomes of behaviour, no matter how elaborate."[7]
6. As a result of the above, **it is not surprising that issues have arisen between those doctors whose practises may differ from the stereotype assumptions** that 'the system' has been designed to regulate. This has included (but is not limited to) **psychiatrists who are independent medical examiners** who will attract higher rates of complaints because of the unique nature of their work as neutral referees and not therapists, **senior doctors who wish to step down from a full clinical workload** but still maintain continuity and contribution to their profession, including limited use of clinical privileges, **doctors who are treating patients for whom no other modality of treatment has either worked or holds little if any prospect** of working. Currently, this includes those doctors who are treating patients who have been labelled as suffering from Lyme or Lyme-like disease.
7. The ADF is well acquainted with the **complexity of issues surrounding treatment of patients who have been diagnosed or labelled as suffering from Lyme or Lyme-like pathogens and other disabling disorders**.
8. **The ADF supports vigorous scientific debate** and continued analysis of all forms of medical treatment as being critical to the advancement of medical science. **However the ADF also acknowledges the need for compassion and understanding for those patients for whom the medical professions recognised modalities of treatment have failed or are considered inappropriate for their treatment.** In such cases, it is understandable that some patients will turn to those medical practitioners who are prepared to offer more experimental modalities of treatment in the hope that the patient's condition can be improved or their symptoms alleviated. In this case, it is important that patients be fully aware and informed of the costs of their treatment and the likelihood of success and the ability to obtain alternate opinions.
9. In regard to the above, **the ADF supports the development of a clinical and ethical framework that will allow those doctors who are treating patients who are suffering from debilitating conditions to provide maximum support without the fear of unwarranted bureaucratic interference.**

[7] Prof Paul A Komesaroff and Ian H Kerridge, "The Australian Medical Council draft code of professional conduct: good practice or creeping authoritarianism?", Med J Aust 2009; 190(4): 204-205. https://www.mja.com.au/journal/2009/190/4/australian-medical-council-draft-code-professional-conduct-good-practice-or

Recommendations

1. The ADF recommends (as previously stated in multiple submissions), that the **Australian Medical Profession not be included in the AHPRA (NRAS) system** and that all registration and regulation activities currently supervised by AHPRA be transferred to well-resourced State and Territory Boards Medical Boards with direct jurisdictional responsibility to State and Territory Health Ministers.
2. **That State and Territory Medical Boards be licensed to operate the National Registration database** (as they were previously operating the National Compendium of Medical Registries) so that **all medical practitioners can nationally register with any state or territory medical board.**
3. **That the Presidents of all State and Territory Medical Boards be constituted as a National Medical Board under the auspices of the Australian Medical Council** and that this National Medical Board coordinate with the AMC to ensure where possible seamless administration of medical registration and cross-border medical regulation.
4. That a **framework be established by this new National Board to support the ethical treatment of patients with debilitating diseases** without unwarranted and unnecessary bureaucratic interference. **The ADF believes that Prof Paul Komesaroff should be approached to assist in the resolution of these complex ethical, clinical and compliance issues**.

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ADF Papers on AHPRA

2009/04/30 – Senate Inquiry into National Registration & Accreditation Scheme for Doctors and other Health Workers
2009/07/12 – ADF Submission on the exposure draft of the Health Practitioner Regulation National Law 2009
2010/03/12 – Inquiry into Heal Practitioner Regulation (Consequential Amendments) Bill 2010
2011/04/18 – Inquiry into the administration of health practitioner registration by the Australian Health Practitioner Regulation Agency (AHPRA)
2013/01/29 – Victorian Legislative Council Inquiry into the Performance of the Australian Health Practitioner Regulation Agency (AHPRA)
2014/10/09 – Review of the National Registration & Accreditation Scheme for Health Professions