

Complaints mechanism submission-Anne Malatt

Dr Anne Malatt

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To: Ms Jeanette Radcliffe
Committee Secretary
Senate Standing Committee on Community Affairs

Via online submission and email: community.affairs.sen@aph.gov.au

Dear Ms Radcliffe

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

Thank you for taking the time to read my submission.

I am a senior consultant ophthalmologist (eye surgeon) working in both public and private practice in the Northern Rivers Region of New South Wales, based in [REDACTED]

I have been working as a doctor since 1984 and as an eye surgeon since 1992. In that time, I have had one complaint made against me, which the HCCC handled well, taking the time and trouble to call me personally and say they realised the complaint was probably vexatious, but that they were obliged by law to ask for a written response from me. I have also been sued once, by a public patient who experienced complications from surgery in the hands of a registrar, and who claimed he would have gone private if he had known I would not be operating on him, which was not true, as he had been given fully informed consent in this regard.

I have perhaps been fortunate to have such slight blemishes in a long career, but many of my friends and colleagues have been less fortunate. I could tell many stories of personal distress, financial devastation, relationship breakdowns, physical and mental health problems and untimely deaths, but I am sure you have heard it all before.

A close friend killed himself last year, as a direct result, not of the complaint itself, but of the complaints process. Financially ruined, publicly humiliated, and personally devastated, when he could not take the strain any more, he took his own life, stating his innocence until the end. Of course, his death allowed people to think they were entitled to a presumption of guilt, but this presumption had been there from the beginning. Why is this?

Why are doctors and other health professionals treated worse than common criminals?

- A criminal is regarded as innocent until proven guilty.
- They are entitled to a free and fair trial.
- They are entitled to free legal representation.
- They are compensated if found to be unjustly accused.

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Yet accused doctors are deemed guilty until proven innocent.

- We pay large sums of money in insurance for legal representation.
- If accused, rightly or wrongly, we are sometimes denied the right to continue to practise until the matter is settled, which can take years.
- There is no question of compensating us for loss of earnings, let alone loss of personal and professional reputation, if we are found innocent in the end.
- We are left to pick up the tatters of our lives with no support of any kind.
- And if we cannot, our family and friends are left with the devastation of our death.

I shall respond to the terms of reference of this inquiry one by one.

a. the implementation of the current complaints system under the National Law, including the role of the Australian Health Practitioner Regulation Agency (AHPRA) and the National Boards

AHPRA serves as judge, jury and executioner in this process, a situation with no parallel in ordinary law. How has it come to this, that an organisation has such unprecedented power – the power to ruin a person on hearsay alone.

There is not yet accountability in terms of:

- Identifying potential vexatious complaints and treating them as such, giving the practitioner the benefit of the doubt until and unless proven otherwise.
- Supervising and supporting health practitioners through the complaints process, allowing them to continue to work if they are fit to do so, and compensating them for loss of earnings if they are not.
- Conducting investigations in a fair and timely manner, so that justice can be served and people can go back to living their lives as soon as possible.
- Rehabilitating those who need it, treating them as patients in distress who need support rather than criminals who need to be punished.
- Being honest, open and transparent throughout the whole process, so that everyone involved is aware of what is going on.
- Respecting the rights of all the individuals involved, practitioners and patients alike, to be treated equally as people, first and foremost.
- Making the process about caring for all people in the system equally, not about protecting the system at the expense of the people in it.

By and large, doctors and other health professionals go into medicine because they care deeply about people and want to help them, not hurt them.

If a patient is hurt by a doctor or other health practitioner in the system, sometimes it is a human error, and sometimes it is a system error, with people looking for someone to blame. Either way, the health practitioner needs to be supported as a person in the system, while justice is done, not vilified by the system or used as a scapegoat to divert attention from system failures.

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

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So few of us truly offend, and almost never deliberately or maliciously, yet most live in fear of the regulatory bodies. Why is that? What is it about the culture of medicine that trains us to accept bullying, harassment and discrimination as acceptable, even normal? And why do we accept this behaviour from our regulatory bodies?

We have created a culture of medicine that is far from the truth of our origins; a medicine that was based on a way of living that was in harmony with ourselves, each other and the All. In straying far from this truth, we have settled for a medicine that is about symptom relief, medicating, fixing, curing, with no regard for dealing with the underlying way of living that made us ill in the first place.

As a result, we have a system that is not affordable or sustainable and that is not coping itself, as evidenced by our rising rates of illness and disease, despite the best and most expensive health care we have ever had. And the people working in the system are not coping either, as seen by the increasing rates of exhaustion, burnout, physical and mental illness, and suicide. ⁽¹⁾

We are trained not to care, to just get on and do what needs to be done with little regard for the whole person standing before us, and when that person reacts, as they sooner or later do, and complains about the process, we want to demonise the doctor or other health practitioner, refusing to see that the system we have trained them in has made them so.

Until we allow ourselves to truly see the rot that has set into our medical training and systems and culture, we will see no true change in an arm of it like the complaints process.

c. 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

We cannot expect to find band-aid solutions to the grave problems we are facing here if we are not prepared to make true and systematic change to the culture of medicine. Until we restore the art and science of true care, for doctor, patient and all other health care workers alike, we will struggle with and within these systems. When we learn to truly care for and appreciate ourselves, we will be more able to truly care for all others, and they will feel this as a genuine level of care.

And as we know, if someone feels cared for, and is truly communicated with, most problems can be resolved without recourse to official and legal processes.

This does not just apply to the medical people in the process, but to all of us, because all of us were educated in a system that made *what we do* more important than **who we are**; that trained us to value our learned skills and knowledge over the innate beauty, love and wisdom of who we truly are as people.

When we re-learn to value ourselves as **people**, first and foremost, over and above anything we may do or not do, people who are equals, no matter what their roles, we will start to see true change in the systems that, after all, we are responsible for creating.

d. the adequacy of the relationships between those bodies responsible for handling complaints

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One of the main problems with the current complaints system is the perceived lack of transparency and the lack of communication. All relationships stand or fall on the quality of the communication between the parties involved, and in the case of this process, our relationships are not good. Doctors almost universally distrust the regulatory bodies and the atmosphere of fear and loathing has been heightened by the poorly understood application of mandatory reporting. Doctors feel they cannot even turn to their own colleagues for help, and are self-medicating, delaying treatment and increasing the risks of harm, to themselves and others. Lip service is paid to the fact that help is available, but it is not offered in a way that allows people to open up and ask for, let alone receive it.

e. whether amendments to the National Law, in relation to the complaints handling process, are required

Even the fact that there is an inquiry into this subject following a previous inquiry shows there is need for change.

The National Law needs to be fair and just, consistent across all states and territories, and in line with our National Law generally, treating the accused party as innocent until proven guilty, providing a fair and free system of investigation, and offering support and rehabilitation when needed, not just disciplinary action. In addition, proceedings should be completely confidential until the outcome is determined, as any accusation of any wrongdoing amounts to a presumption of guilt in the eyes of all at present, which destroys a practitioner professionally and personally, no matter what the final outcome.

The edict “first, do no harm” could well be applied to this complaints process, as could the principle “do unto others as you would have them do unto you.”

How would you like to be treated if you were the subject of a complaint? That is the simplest way to proceed.

f. other improvements that could assist in a fairer, quicker and more effective medical complaints process.

Until we start to treat everyone in this process as a **person**, with equal rights to be treated in a fair and caring manner, nothing is going to change. Doctors are people too, and it would seem the pendulum has swung so far in the direction of making sure that the regulatory boards are being seen to do the ‘right’ thing by the public, that we have lost sight of this.

Our doctors and other health care professionals, who work tirelessly in a system that long ago stopped supporting them as people and treats them only as cogs in a money-driven bureaucracy, are really struggling, as evidenced by the rising rates of physical and mental illness, burnout, exhaustion, dropout and suicide^(1,2,3).

It starts early. Medical students have high rates of suicidal ideation⁽¹⁾ and it just gets worse. We are under enormous stress from the beginning, with no training in how to deal with this stress and no support as we try to find our way in an increasingly harsh and competitive system.

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We need support, not pre-emptive punishment. Not at anyone else's expense, but no longer at ours either. We cannot keep being the convenient scapegoats for a system which trains us to be anything but caring, patient, open and honest with our patients, all qualities which reduce the risks of complaints being made in the first place.

The most effective way to speed up the complaints process would be to reduce the numbers of complaints coming in! A health care system that is overloaded, with long waiting times for assessment and treatment, run by exhausted, burnt out and depressed practitioners, is inevitably going to give rise to problems that manifest as complaints against individuals.

Addressing these deficits at a system level, rather than keeping the focus on individuals who buckle under the weight of the pressure they are subject to daily, will go some way to effecting the true change this health care system and its processes so desperately need.

To do this, we need to work together, not at loggerheads with each other, in a way that re-establishes openness, honesty and trust. We must keep the focus on the purpose of these processes, which is to ensure the safety of people, practitioners and patients alike.

We have a wonderful health care system in Australia and we need to support it and the people who work in it, as well as those who are served by it. If we make it about people first, and everyone equally, true change will be possible.

Thank you for your time and attention,

Yours truly,

Dr Anne Malatt
MBBS, MS, FRANZCO, FRACS

References:

1. https://www.beyondblue.org.au/docs/default-source/research-project-files/bl1132-report--nmhdmss-full-report_web
2. <http://www.jgme.org/doi/abs/10.4300/JGME-D-09-00054.1?code=gmed-site>
3. <http://jech.bmj.com/content/55/5/296.full>