



**Senate Community Affairs References Committee:
Medical Complaints Process in Australia
OCTOBER 2016**

The Australasian College for Emergency Medicine (ACEM) welcomes the opportunity to provide feedback to the inquiry into the medical complaints process in Australia currently being conducted by the Senate Community Affairs References Committee.

ACEM is a not-for-profit organisation responsible for the training and ongoing education of emergency physicians, and for the advancement of professional standards in emergency medicine, in Australia and New Zealand. As the peak professional organisation for emergency medicine in Australasia, ACEM has a vital interest in ensuring the highest standards of emergency medical care are maintained for all patients across Australasia.

Prevalence of bullying and harassment and barriers to reporting

ACEM considers bullying to be prevalent within the Australian medical profession and hospital system. ACEM contends that a significant factor contributing to bullying in the medical profession, within the hospital setting is the non-consultative nature and “blame culture” that is common throughout the management or executive teams of some hospitals. As leadership is responsible for setting the overall culture of the workplace, poor leadership practices will facilitate an environment where bullying is overlooked or is an accepted and normalised organisational behaviour.¹

ACEM notes that, in this environment, medical practitioners can be discouraged from reporting cases of bullying, as they are concerned that they will be blamed for causing the incident to arise, or that their career will be impacted upon should they make a report. Furthermore, medical practitioners are less likely to make a report if they are not confident that the issue will be dealt with in a way that will bring about meaningful and positive outcomes, and/or if they believe that their day-to-day lives in the workplace will be impacted upon negatively as a result of making a report.

Despite the prevalence of a bullying culture in some hospitals, ACEM considers that management or executive teams are not appropriately held accountable for their actions, meaning that positive

¹ The King’s Fund, [Developing Collective Leadership for Health Care](#) (London: The King’s Fund, 2014), 10.

outcomes cannot be achieved for those who have been a target of bullying. This can therefore also prove to be a significant barrier for medical practitioners who wish to report cases of bullying.

In order to address the culture of bullying, ACEM considers that hospital management or executives, as well as hospital governing bodies, must be held accountable for the culture of the organisations that they lead. Through addressing bullying issues associated with those who are responsible for establishing the culture of a workplace, positive changes for those working at all levels within the hospital could be achieved.

The roles of the Medical Board of Australia (MBA) and the Australian Health Practitioner Regulation Agency (AHPRA)

Whilst ACEM considers that the MBA and AHPRA have important roles in medical complaints procedures, there are a number of processes and aspects of these procedures that could be reviewed in order to ensure that the best outcomes are being achieved for medical practitioners and patients.

ACEM notes that one of the outcomes of a notification process may be to place restrictions upon a practitioner against whom a complaint has been made. These restrictions can be in the form of conditions or undertakings, and can remain in force for a short period of time, or for many months or years. For a workplace with a prevalent bullying culture at the management or executive level, and where an individual has received a complaint against them, ACEM considers that long periods of restrictions can allow for the necessary timeframes to change this culture.

However, in order to improve this process, ACEM suggests that regular staff reports to an independent source, in order to monitor cultural change, will also assist in truly addressing a bullying culture.

Furthermore, ACEM considers that there are two specific perspectives from which to view the roles of the MBA and AHPRA; that of the individual who wishes to make a complaint or notification against another medical practitioner, and that of the individual against which the complaint has been made.

Practitioners making a notification

The culture of a workplace, and a lack of meaningful change are not the only barriers that can be identified in regards medical practitioners' reluctance to report incidents of bullying. ACEM considers that a lack of local avenues through which to resolve allegations of bullying can also deter complaints or notifications. ACEM therefore suggests that a local approach to reports of bullying or harassment could assist in reducing the reluctance of medical practitioners to report such incidents.

Complaints to AHPRA should therefore be reserved for serious misconduct that may have undergone local or district investigation, but requires escalation to a national body.

For individuals who wish to make a notification against a medical practitioner, ACEM suggests that there should be a “local” approach to reports of bullying or harassment. Such an approach could involve weekly meetings at the hospital level between the individuals affected, including patients if appropriate. If these notifications then require escalation beyond the local level, the next approach could involve investigation at the “district” level.

Practitioners against whom a notification has been made

ACEM notes that the notification process, whilst accessible, does not encourage local investigation. For example, there is no gradual escalation of a complaint, rather the mandatory notification legislation recommends rapid referral to AHPRA. This process also denies the individual against whom the complaint has been made the opportunity to respond or attempt to locally resolve the complaint prior to its escalation to AHPRA.

ACEM therefore considers that practitioners, both those making a complaint and against whom a complaint has been made, are entitled to consideration of local management of an allegation, and that appropriate policies and procedures are in place to enable this to occur at the local level.

Furthermore, ACEM notes that, whilst a preliminary assessment may have taken place, complaints requiring further investigation can be visible on the AHPRA website. If a complaint or notification is yet to be further substantiated, its visibility on the AHPRA website can not only be damaging to the individual’s career, but can also place significant strain on their emotional wellbeing. ACEM therefore considers that a complaint made against a practitioner should not be made visible on the AHPRA website until it is proven and the investigation is completed.

The operation of the *Health Practitioner Regulation National Law Act 2009* and the National Registration and Accreditation Scheme (NRAS)

ACEM considers that the *Health Practitioner Regulation National Law Act 2009* (the National Law) operate effectively, and offer reasonable timeframes within which the complaints or notifications handling process should be undertaken. For example, following referral of a notification to the relevant National Board, the National Board must, within 60 days, conduct a preliminary assessment of the notification.² ACEM considers this timeframe as optimal in the progression of a complaint or notification, and suggests that this should not be extended, so as to ensure efficiency.

² [Health Practitioner Regulation National Law \(Victoria\) Act 2009](#).

Furthermore, ACEM also considers the NRAS as efficient and effective in the provision of better health outcomes for patients. ACEM therefore suggests that the current national approach reduces jurisdictional administrative burdens and also ensures that medical practitioners across Australia and held to the same standards of care.

The benefits of “benchmarking” complaints

ACEM notes that there are limited benefits to benchmarking complaints, particularly if reporting of complication procedure rates is voluntary. Benchmarking complaints could potentially result in variability, which would produce inaccurate figures presenting multiple challenges. ACEM therefore considers that the use of reporting for comparative purposes as appropriate, but not for benchmarking.

The desirability of complainants signing a declaration that their complaint is being made in good faith

As noted, ACEM considers that complaints can be damaging to the career of the individual against which it has been made. Complaints can be particularly damaging for those who have been cleared of the complaint made against them, since the allegations have previously been made visible on the AHPRA website during the complaints process.

ACEM therefore considers it vital that complainants or notifiers sign a declaration that their complaint is being made in good faith, acknowledging the psychological, financial and career-related impacts that their complaint could have upon the individual.

Thank you for the opportunity to provide feedback to the Senate Community Affairs Reference Committee. If you require any clarification or further information, please do not hesitate to contact the ACEM Manager Policy and Advocacy Fatima Mehmedbegovic

Yours sincerely,

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