AUSTRALIAN AND NEW ZEALAND
COLLEGE OF ANAESTHETISTS
ABN 82 055 042 852

Advancing anaesthesia,
improving patient care

PRESIDENT
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Committee Secretary
Senate Standing Committees on Community Affairs
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Parliament House
Canberra ACT 2600
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Dear Senators

Re: Inquiry into the Medical complaints process in Australia.

Thank you for your invitation to make a submission in relation to the above inquiry.

The Australian and New Zealand College of Anaesthetists (ANZCA or "College"), which includes the Faculty of Pain Medicine, is committed to high standards of clinical practice in the fields of anaesthesia and pain medicine. ANZCA is the education and training body responsible for the postgraduate medical training programs and continuing professional development in anaesthesia and pain medicine for Australia, New Zealand and parts of Asia.

The National Registration and Accreditation Scheme (NRAS) for health practitioners commenced on 1 July 2010. The NRAS was established by state and territory governments through the introduction of consistent legislation in all jurisdictions to achieve six key objectives:

- Protection of public safety
- Facilitation of workforce mobility
- Facilitation of high-quality education and training
- Facilitation of assessment of overseas-trained health practitioners
- Promotion of access to health services
- Development of a flexible, responsive and sustainable workforce

Further to the above objectives the National Scheme has guiding principles that state it must achieve a balance between safety and quality through protection of title, without restricting competition or limiting access to health services.

ANZCA understands that the overarching issue under inquiry is the prevalence of bullying and harassment within Australia's medical profession and the committee is seeking to explore the links between this issue and the key objectives of the national scheme.

ANZCA's response the inquiry terms of reference are outlined below:

a) the prevalence of bullying and harassment in Australia's medical profession;

ANZCA strongly believes that there is no place for discrimination, bullying or sexual harassment in any modern workplace. This is consistent with our College's mission "to serve the community by fostering safety and high quality patient care in anaesthesia, perioperative medicine and pain medicine." The College wishes to reiterate that these problems require a culture of zero tolerance. Specialists have a responsibility to take a stand against such behaviour if they witness it and support junior staff in any discipline. It is the only way this unacceptable behaviour will ever be stamped out.

The issue of bullying and harassment in Australia's medical profession become a matter of public discourse in 2015 due to the whistleblowing efforts of a number of women at the Royal Australasian College of Surgeons (RACS). RACS responded by appointing an Expert Advisory Group (EAG) to advise on strategies to prevent discrimination, bullying and sexual harassment in the practice of surgery in Australian and New Zealand hospitals and in the College.

ANZCA has been observing (and contributing where appropriate) to the work of the EAG. We are keen to ensure that initiatives developed by RACs to deal with this problem are considered and implemented (if appropriate) by ANZCA. To this end ANZCA has established a high level working party under the chair of the Vice President to consider this matter within the College.

The preliminary findings of this working group are that bullying and harassment does occur within anaesthesia and pain medicine, as it does throughout the health sector, although perhaps to a lesser extent than has been identified by other Colleges. ANZCA considers it important that the profession remains vigilant and provides a range of mechanisms to support trainees and Fellows who may encounter this in their workplace.

b) any barriers, whether real or perceived, to medical practitioners reporting bullying and harassment;

Addressing systemic issues such as discrimination, bullying and sexual harassment, will never be straightforward. The causes of discrimination, bullying and sexual harassment are diverse and while in some cases may be linked, are likely to originate for a number of reasons. Formally acknowledging these issues is an important first step towards making shifts in the culture that has enabled them to subsist.

ANZCA cannot comment on any local barriers that may exist within individual workplaces to report behaviour of this type, however the College does provide a range of measures to support both trainees and Fellows to ensure that they can identify and report bullying and harassment if it occurs.

Anaesthesia trainees are selected, employed and work in hospitals, while the training program is managed by the College. The College policy on bullying, discrimination and harassment (for Fellows and trainees acting on behalf of the College or undertaking College functions) acknowledges at the outset that Fellows and trainees are expected to comply with the relevant hospital policies. The College also provides clear pathways for the handling of complaints in the feedback management policy and whistleblowers policy (http://www.anzca.edu.au/resources/corporate-policies). The ANZCA training agreement is signed annually by trainees and draws attention to both the trainee's responsibilities and resources available. In addition, the ANZCA orientation ("part zero") course is being adapted to include additional information on discrimination, bullying and sexual harassment.

The Welfare of Anaesthetists Special Interest Group (SIG) (http://www.anzca.edu.au/fellows/special-interest-groups/welfare-of-anaesthetists/introduction.html) has provided support for anaesthetists in dealing with issues including discrimination, bullying and sexual harassment since 1995. The Welfare of Anaesthetists SIG is a tripartite body governed by the College, Australian Society of Anaesthetists and New Zealand Society of Anaesthetists. The group was formed to raise awareness of the many personal and professional issues which can adversely affect the physical and emotional well-being of anaesthetists at all stages of their careers. The group provides a forum for colleagues to discuss difficult issues through meetings, newsletters and developing and maintaining a series of resource documents on topics such as sexual misconduct, depression and anxiety,

mentors, bullying and harassment and mandatory reporting. The Welfare of Anaesthetists SIG supports educational courses that teach collaboration and stress self-management.

The ANZCA Code of Professional Conduct (http://www.anzca.edu.au/resources/professional-documents/pdfs/Code-of-Conduct.pdf) provides guidelines for the professional behaviour expected of Fellows of the College. In addition, the College has sought to formally acknowledge the many roles in practice a specialist anaesthetist performs including being a medical expert, communicator, collaborator, manager, health advocate, scholar and professional. These roles provide a framework as part of the College curriculum as well as the foundation for the College's recently launched Supporting Anaesthetists' Professionalism and Performance: A guide for clinicians (http://www.anzca.edu.au/resources/professional-documents/pdfs/Supporting%20Anaesthetists%20Professionalism%20and%20Performance%20FINAL%20201500428.pdf). The guide outlines expected patterns of behaviour, defined by a series of positive and negative behavioural markers to provide specialists with a tool for self- assessment to encourage reflection of their own practice.

c) the roles of the Medical Board of Australia, the Australian Health Practitioners Regulation Agency and other relevant organisations in managing investigations into the professional conduct (including allegations of bullying and harassment), performance or health of a registered medical practitioner or student;

ANZCA has noted some lack of timeliness managing investigations into the professional conduct (including allegations of bullying and harassment), performance or health of a registered medical practitioner or student.

In this area justice delayed is justice denied.

It is important for the health professional to have any concerns speedily dealt with; at the same time if the concerns are sustained, then it is important for public protection that appropriate action is taken, including changes to the registration status.

There are substantial improvements needed within the complaints and notifications system. These relate to clarity of purpose, communication, support for the complainant but importantly the professional about whom the complaint is made, a requirement to be able to resolve the concern through more than one avenue and dominantly through conciliation / mediation rather than an adversarial system and particularly timeliness.

Communication and support are vital. This is both for the public who have raised the concern and the practitioner about whom the concern is raised. These complaints are often devastating to both parties. Everything should be done to reduce this stress and the time over which any investigation lasts.

There needs to be a substantial move from the adversarial and legally based system that is currently evident to one that is focused on conciliation and rapid resolution wherever possible. There is no doubt that the concerns, aggravation and angst of complaints are magnified enormously when delays are multiplied and the process becomes adversarial.

It was noted in the Snowball consultation document that Ontario Canada appears to achieve the benchmark in resolving complaints with a required completion at 150 days. Extensions can be allowed but only for specific reasons. None of the complaint mechanisms within Australia be they state based, co-regulatory or through AHPRA come close to achieving this type of benchmark.

ANCZCA would strongly support the development of KPIs in this area.

ANZCA is unaware of any specific examples of individuals or institutions using the threat of reporting to AHPRA vexatiously to intimidate registrants. However there is some anecdotal evidence that suggests allegations against private specialists are being used to exclude them from being credentialed in private institutions. This has the impact of restricting their ability to practice which in small towns could be quite devastating.

d) the operation of the Health Practitioners Regulation National Law Act 2009 (the National Law), particularly as it relates to the complaints handling process;

The National Law is an appropriate framework for the administration of the National Scheme. ANZCA does not have a view on whether legislative refinements could enhance the capacity of AHPRA to handle complaints.

e) whether the National Registration and Accreditation Scheme, established under the National Law, results in better health outcomes for patients, and supports a world-class standard of medical care in Australia;

ANZCA remains supportive of the move from a state-based registration system to a nationally consistent registration scheme. Overall the introduction of the new scheme has been positive and some key benefits of the new scheme include:

- Greater workforce mobility.
- Decreased fees for those professionals who previously had to register in multiple jurisdictions.
- Improved public accountability through consistent reporting of notifications across all registered health professions.

However some concerns still remain regarding the ability of AHPRA and the Board to appropriately respond to notifications and complaints in a reasonable timeframe. Our concerns in this area have been addrressed under under ToR C.

f) the benefits of 'benchmarking' complaints about complication rates of particular medical practitioners against complication rates for the same procedure against other similarly qualified and experienced medical practitioners when assessing complaints;

ANZCA believes that health outcome and performance data have the potential to contribute significantly to quality improvement in the health sector, and also that public hospitals and health services need to be transparent. Done well, it would be beneficial to collect high quality medical outcome data.

However if this data is then used to benchmark complication rates when assessing practitioner performance there could be some unintended consequences.

First and foremost there may be limited utility and a lack of context in assessing data at the individual level. Medical interventions are delivered by teams rather than individuals, meaning that medical outcomes are not solely dependent on one specialist. Specialists, RMOs, nurses, allied health and technical and other hospital staff all play an important role in patient care. Collecting and assessing data about unit and hospital performance would allow whole teams to assess their performance and benchmark against others, contributing to quality improvement. Furthermore, major failings in healthcare (e.g. Mid Staffordshire NHS Foundation Trust, Bristol Royal Infirmary) have often been due to systemic issues. Collecting data about team and hospital performance may be more likely to identify such issues, than focusing on the performance of an individual.

Publishing and comparing outcome data at the individual level may also negatively impact team work, by driving individualistic, competitive behaviour. For example, individuals may become less likely to support their peers or embrace team culture with other disciplines if they are striving for their results to appear better than their colleagues'. Conversely, public reporting at the unit level provides all team members with a strong incentive to improve everyone's performance, not just their own performance.

Medical outcomes depend on many different factors, including how unwell the patient is, how complex the intervention is, the performance of the whole team of health practitioners involved in treatment, and the quality of care the patient receives post intervention. This context must be considered when assessing performance so that it can be interpreted meaningfully.

Finally patients often follow complex pathways, are admitted for several different reasons, and may be treated by multiple different teams. It may be more useful to collect information and identify patterns from each patient's journey through the healthcare system, rather than assessing information based on a singular intervention.

g) the desirability of requiring complainants to sign a declaration that their complaint is being made in good faith; and

ANZCA is unaware of any evidence to suggest vexatious complaints are being made anonymously. The case for change in this area is not strong.

h) any related matters.

There are no further issues that ANZCA wishes to raise with the committee.

Thank you for your consideration of the important issues regarding the role of the various stakeholders involved in managing the medical complaints process in Australia. Should you require any further information, please contact Virginia Lintott, Senior Policy Adviser via email

Kind Regards

Genevieve Goulding
President