

12th January 2017

Committee Secretary,
Senate Standing Committees on Community Affairs
P.O. Box 6100,
Canberra ACT 2600.

Dear Sir/Ms,

Re: Medical Complaints Process in Australia

This submission relates to my personal experience concerning a vexatious complaint of cognitive impairment made by a former colleague against myself. The subsequent handling of my case by AHPRA was also unjust or with no apparent recognition of the fact the accusations made were possibly vexatious.

I summarise my case without using the names of the individuals involved as I understand this submission is not protected by Parliamentary Privilege.

My submission relates primarily to Terms of Reference “c” and “d” of the inquiry.

Up to the point of the vexatious claim being made against me, I had been employed as a Senior Consultant for 29 years at a tertiary teaching hospital. My clinical practice was unblemished. Every annual performance review had been exemplary throughout those 29 years.

The complaint, I feel was a reaction to (and retribution for) a letter I and two colleagues had written to the Deputy CEO of my employing institution in September 2012 in regard to the unsuitability of my former colleague’s appointment to a state-wide position. The reply from the Deputy CEO was dismissive and failed to address the real issue regarding the appointee’s lack of qualifications for the particular position in question. It transpired that the appointment was later quashed on appeal by another applicant who was duly appointed. In the aftermath my colleague’s attitude toward me became unpleasantly abrupt, rude, and uncivil. Prior to this our working relationship had been cordial. Similarly, the Deputy CEO’s previously cordial attitude toward me changed and became openly hostile.

In September 2013 I took long service leave during which I received an email from the Chief of my general area to attend a meeting on 8th October 2013. The nature of the meeting was not disclosed. At the meeting I was presented with a letter that limited my scope of practice to non-clinical duties/research. This was on the basis of a claim submitted to AHPRA. Understandably, this was a significant shock. The meeting was described by my Salaried Medical Officers Association as an “ambush.” Moreover, my employer had accepted the claim and proceeded to involve AHPRA without there having been any due process regarding my performance. At no stage had there been any concerns raised with me by my director. The complaint made included personal opinion in regard to my appearance and contained exaggerated and biased adverse undocumented statements about the manner in which I handled very

minor aspects of one or two unspecified patients. Despite there having been no due process regarding my performance AHPRA overlooked the possibility of the complaint being vexatious, especially as the complaint stated my director had “longstanding concerns” in regard to my performance yet my annual performance reviews (2010 and 2011) were exemplary. AHPRA failed to see that my director had neglected her duty having not previously acted upon her alleged concerns. More recent annual performance reviews were apparently “lost” by Human Resources.

Subsequent to the “ambush interview” the AHPRA process was set in train. I readily underwent the required neuropsychological testing by a specialist appointed by AHPRA whose report was ambiguous and recommended that I have a MRI on the basis that I did poorly in one or two simpler tests but excelled in more complex tests. The MRI was entirely normal. AHPRA did not call upon the neuropsychologist to provide a final report despite my request to AHPRA to do so. I had an independent examination by a senior gerontologist whose report was submitted to AHPRA which showed I had no cognitive impediment and in fact placed me in the top 2% of the population for cognitive performance. AHPRA chose to ignore the gerontologist’s report. During the AHPRA process I met with a representative of the Medical Board (accompanied by an administrative officer). The Medical Board representative strayed from his brief of discussing the neuropsychologist’s report and suggested I must have practiced the Rey-Complex figure test drawing inferring that my score was therefore higher than expected! This unobjective, insulting comment caused me to briefly lose my train of thought possibly to my detriment in the final analysis.

AHPRA recommended I be clinically supervised for 6 months. In the interim, the Credentialing Committee of my institution refused to re-credential me and therefore was unable to commence supervised clinical practice. I learnt that members of the Credentialing Committee included my director and the Deputy CEO both of whom had failed to absent themselves from voting on my case. The Chairman (Chief of my general area) also failed in his duty to see their votes as invalid due to their both being hostile contributors.

The final result of this unjust, unfair, mishandled situation I was left with little option but to resign. After negotiations with my employer I resigned on mutually agreed terms on 30th June 2015. Ageism and a deliberate vexatious claim specifically created to lead to this situation seem well founded, given that I was immediately replaced.

In retrospect, at the outset of this affair, my legal counsel (appointed by my defence association), advised me to take a conciliatory line to demonstrate to the Board (AHPRA) that I had ‘insight’ into my situation and as a result the vexatious nature of the claim was not set down in my defence. I regret taking his advice but I was naïve in these dealings and with hindsight I should have defended myself vigorously.

In October 2016 I requested a meeting with the Medical Board to help resolve my situation in relation to my registration status and to remove certain undertakings attached to my registration as these still pertained to my previous employment. [I continue to practice in my capacity as a provider of expert opinion to the Courts and as a practitioner undergoing medical Research (through my affiliation with a local university)]. As a result of my verbal submission to the Board, AHPRA requested I

have *another* neuropsychological examination (with the same neuropsychologist) which I duly underwent and was found to be without any cognitive impairment.

I would like to see certain safeguards be imposed on AHPRA to prevent it becoming an accessory to vexatious claims. It would seem feasible that specific checks and measures be undertaken to help exclude vexatious claims. Performance issues should be thoroughly investigated and documented by employers before supporting any claim to go forward to AHPRA. Had this happened in my case, I would still have my job and I would not have had to suffer the indignity of AHPRA's failure to detect the vexatious nature of the complaint, and its unjust, officious restrictions and impositions. The Senate Inquiry might consider ways of making those responsible for vexatious complaints subject to severe legal consequences. It is inconceivable that these unethical and undesirable members of the profession should remain immune.

I hope this submission is helpful to the enquiry.

I would be willing to provide verbal evidence should I be called upon to do so.

Yours faithfully,