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Senate Submission: Medical Complain process in Australia

A joint submission by Multicultural Communities Council of New South Wales and Chinese Community Council of Australia.

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Senate Standing Committees on Community Affairs
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Introduction

1. This submission is jointly written by the Chinese Community Council of Australia Inc. (CCCA) and the Multicultural Communities Council of New South Wales (MCC NSW). The author of this submission, Dr Anthony Pun, OAM, is National President of CCCA and Chair of MCC NSW.
2. The author worked in St. Vincent's Hospital, Sydney, for nearly 20 years and retired as a Chief Medical Scientist and therefore retains a good understanding of the medical hierarchy in Australia.
3. The author has worked with community organisations for nearly three decades and has a good appreciation of social justice requirements and recognises the insidious nature of discrimination. His experience as member of the NSW Administrative Decisions Tribunal and the Federal Immigration Review Tribunal also has enhanced his understanding of natural justice.
4. The author relies on the substantial information given to him by Dr Leong-Fook Ng, MA, MB, B Chir (Cantab), FRCP, AMM to make an assessment of his case based on the author's experience described in Items (2) and (3). This assessment caused the author to make a formal submission to the Senate enquiry into "Bullying in Medicine".

The Submission

5. The terms of reference, listed below, is broad and our organisations wish to restrict our submission to a community perspective and without repeating facts already presented to the Senate enquiry.

a. the prevalence of bullying and harassment in Australia's medical profession;
b. any barriers, whether real or perceived, to medical practitioners reporting bullying and harassment;
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;
d. the operation of the *Health Practitioners Regulation National Law Act 2009* (the National Law), particularly as it relates to the complaints handling process;
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;
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;
g. the desirability of requiring complainants to sign a declaration that their complaint is being made in good faith; and
h. any related matters.

6. Our organisations are disturbed and concerned about the allegations made against the medical institutions and their professional bodies. If these allegations are proven to be true, then the community will lose public faith and confidence in these establishments, normally considered to be highly respected and trustworthy by the general public.

7. In particular the complaints which occurred in the last decade include allegations of:
(a) improper peer reviews;
(b) making malicious and false statements to authorities;
(c) covering up of facts; and
(d) "silencing" victims through confidential deeds of release.

These allegations, if proven, would give the public perception that the medical establishments have no respect for the rule of law. The lack of natural justice and due process would also imply that the medical establishments have behaved like "Kangaroo Courts" when dealing with

complaints and other grievances from medical practitioners. At worse, it could be accused of breaching the human rights of the victims.

8. Establishments under the control of State or Federal "Health" acts are answerable to the government and ultimately to the people. However, the regulatory bodies are immune to such public scrutiny. The Freedom of Information Act is not applicable to them hence they are able to "conceal" information. They have "deep" pockets thus it is difficult to launch a law suit against them. The rare individuals who have dared to challenge them in a court of law usually have suffered serious financial loses. Thus, this type of scenario is akin to "David" vs Goliath and the result, borrowing the ancient Roman arena conclusion, is "Lions one", "Christians nil".

9. If the Medical Self-Regulatory bodies are not able to deliver a fair system of adjudication, especially when the complaints are vexatious, the procedures are not transparent, there is lack of independent review, natural justice and due process of law, then the regulatory power should be transferred back to the State. A Medical Tribunal under Commonwealth jurisdiction should be set up to bring back public confidence in the adjudication of complaints in the medical profession.

10. If there has been victimisation, it appears there is a lack of a means to make amends, such as an apology or victim compensation. This issue should be addressed to alleviate the sufferings of the victims in the social, mental and financial areas.

11. As most victims are of CALD (culturally and linguistically diverse) backgrounds the Inquiry could consider whether these cases have racial overtones, despite this suggestion not being within the terms of reference of the Inquiry.
reference of the Enquiry.

Submitted by

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Chair, MCC NSW
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