



Aboriginal and Torres Strait Islander Health Practice	Occupational Therapy
Chinese Medicine	Optometry
Chiropractic	Osteopathy
Dental	Pharmacy
Medical	Physiotherapy
Medical Radiation Practice	Podiatry
Nursing and Midwifery	Psychology

Australian Health Practitioner Regulation Agency

26 November 2013

Mr Richard Willis
Secretary
Legal and Social Issues Committee
Legislative Council
Parliament House
East Melbourne Vic 3002

Dear Mr Willis

Update addressing issues raised in oral evidence and written submissions to the Victorian Parliamentary Inquiry – Legal and Social Issues Legislation Committee/Inquiry into the Performance of the Australian Health Practitioner Regulation Agency

I am writing to provide additional information to the Legal and Social Issues Legislation Committee in relation to its Inquiry into the Performance of the Australian Health Practitioner Regulation Agency (AHPRA). This provides data and information about our work in Victoria since our submission in February 2013. It also informs a number of the issues raised in oral evidence and written submissions to the inquiry during the year.

Appendix One provides a detailed response to specific questions and issues raised. Appendix Two updates the data provided in our earlier submission (relating to the 2012 calendar year), to align it with the national data published in the 2012/13 annual report of AHPRA and the National Boards (copies of which have also been made available to the Committee). We make Victoria-specific and national comparisons and explain differences or emerging trends as needed. Other appendices provide additional relevant information about our work that we have published during the year, much of it focused on providing clearer information to health consumers.

Complaints (Notifications)

While the Health Practitioner Regulation National Law Act (National Law) sets out the mechanism for complaints handling across Australia, the scheme in operation is effectively a state-based complaints system for the largest professions. In Victoria, 86% of notifications (complaints) received in 2012/13 were dealt with by the local boards of medicine, nursing/midwifery and psychology. These boards are made up of Victorian practitioner and community members appointed by the Minister for Health in Victoria. These boards are supported by staff in the Victorian AHPRA office who receive and manage notifications and provide advice to inform board decision making. The complaints handling system in Victoria relies on the Health Services Commissioner, the Victorian Civil and Administrative Tribunal, boards and AHPRA to deliver effective and timely outcomes and protect the public.

Ensuring timely and effective responses to notifications about the conduct, health or performance of registered health practitioners is an important ongoing focus for AHPRA working with boards. Our shared priority is improving the effectiveness, timeliness and efficiency of notifications management to ensure that risks to the public are effectively managed. AHPRA is implementing Key Performance Indicators to set benchmarks for the timeliness of notifications management. See Appendix Three. We will routinely publish performance data against these KPIs commencing financial year 2014/15, in addition to extensive data published in our Annual Report which is tabled in all parliaments in Australia.

There is an overall increase in notifications, with Victoria recording a 17% increase over the past year, compared to a 14% increase nationally. During 2013, as part of a major investment in improving notifications management, AHPRA has significantly increased staff in our notifications teams.

Nationally, we have committed to recruiting 48 additional staff to new positions. 8.5 of these additional staff are based in the Victorian AHPRA office, and include investigators and lawyers.

Consumer concerns

AHPRA recognises the concerns expressed by some health consumers about the transparency and clarity of processes between AHPRA/National Boards and the Health Services Commissioner (HSC) in dealing with notifications and complaints. While we believe that these arrangements work well in most cases, we also recognise that there is scope for improvement. In this regard, we look forward to the government response to the recommendations arising from the review of the *Health Services (Conciliation and Review) Act 1987*. Implementing these recommendations may constructively address some of the issues raised to this committee in this inquiry, in a Victoria-specific context. Ahead of this, we continue to review and improve our management of notifications and our working relationship with the HSC.

Improved community engagement has been a significant focus for AHPRA during 2013. We have established a Community Reference Group. We have worked nationally in partnership with the Consumers Health Forum to increase community engagement. We have published new, clear information for consumers about how we manage their concerns. We are establishing a partnership with the Health Issues Centre in Victoria to advise on opportunities to improve confidence, transparency and understanding of the joint consideration process in Victoria.

Queensland

Having carefully reviewed our work across Australia, we believe that the issues in Queensland that have led to legislative change and the planned creation of a Health Ombudsman are largely specific to Queensland. They reflect unique features of the transition to the National Scheme in Queensland including limited transition of staff from the former Medical Board of Queensland, a relatively large number of ongoing open matters, much less clarity about roles and responsibilities among related complaint handling bodies, and a continuously changing environment for practitioner regulation. The establishment of a Health Ombudsman in Queensland by 1 July 2014 will be the fourth major change to medical regulation in that state in seven years. This level of change has not been a feature of the environment in Victoria and many aspects of the National Law build on the previous arrangements and legislation in Victoria.

There are many examples from around the world of different models of complaint handling and there is no international consensus about the right balance of professional and community involvement in decision making. The scheduled three-year review of the National Scheme commissioned by Health Ministers is an important opportunity for a considered review of performance and debate about the need for further legislative or structural change to Australia's regulatory arrangements. There are a number of improvements to the transparent operation of the scheme, particularly for those making complaints about health practitioners, for which AHPRA and National Boards will continue to advocate during the review.

Given the ambitious regulatory reform introduced in 2010, we see the outcomes of the three year review as an important opportunity for Ministers to make national changes to the operation of the scheme where required, informed by three years experience and learning. Any major legislative change on a state-by-state basis risks the fragmentation of the National Scheme and may increase risk to the public, while decreasing the return on government investment now resulting from the major transition in 2010.

Governance and accountability to Victorian parliament and Minister for Health

AHPRA recognises the importance of effective local accountability arrangements to the Health Minister and parliament in each state. Insofar as the Committee may be considering the need for legislative amendment in Victoria relating to governance and performance oversight of the complaints system, it is important to note that a number of changes are expressly available under the Minister's current powers within the National Law. For example, the Victorian Minister of Health maintains the power to appoint members to boards for professions that have a state or regional board.

The National Law requires that at least half, but not more than two-thirds of members are practitioner members from the profession being regulated by a board. There is no existing barrier to the Minister determining that half of the members of a state board are to be community members. Similarly, the Minister maintains the power to appoint a Chair for each of the state boards. AHPRA submits that

changes to strengthen community member participation can be made without fundamentally changing the structure of the National Scheme and its complaints (notifications) provisions.

If the Committee is considering the need for any legislative amendment, these could be made to the *adopting legislation* of a participating jurisdiction, including Victoria, to increase oversight of the operations of AHPRA and boards in an individual participating jurisdiction. For example, the Victorian parliament has the power to amend the legislation that adopts the National Law in Victoria, determine a set of performance measures for the management of notifications in Victoria and require AHPRA to report to the Minister of Health or parliament about those performance measures.

As regulators, the Boards and AHPRA must act lawfully (including within privacy principles, confidentiality and consent requirements, the National Law and any other legislation that applies). This limits what the National Boards and AHPRA can say about individual matters. We are not able to publicly disclose the evidence gathered or reports prepared in investigations into the professional conduct of individual practitioners. This constrains our response to the committee about issues raised by individual practitioners or notifiers during this inquiry and necessarily limits the committee's access to balanced and complete information. However, as previously mentioned, we see Ministers' three year review of the scheme as an important opportunity to address any concerns of transparency through revision of the legal framework we must work within.

The national standards and robust public protections that are cornerstones of the National Scheme were made possible when Australia's governments led a world first reform in health practitioner regulation. Well-regulated practitioners are the foundation of a healthcare system that provides safe, high-quality health care. The legal framework set by governments when creating the National Law as in place in each state and territory, is designed to protect patients and be fair to practitioners, while facilitating access to health services. This is a carefully managed balance.

The National Scheme brings together 14 professions of vastly different scope, size and complexity into a single regulatory framework. Nowhere else in the world are the largest and most complex professions – medicine, nursing and midwifery, dental, pharmacy and psychology –regulated in the same scheme as smaller professions. One in every 20 working Australians is a registered health practitioner. Most of the rest of us are patients from time to time. Directly or indirectly, regulation matters to all Australians.

The National Registration and Accreditation Scheme is working effectively in Victoria to protect the public and facilitate access to health services. Improvements to support transparency, consistency, timeliness and service have been made. More are scheduled. We welcome feedback and suggestions that strengthen our current plans and response within the current regulatory framework.

We look forward to appearing before the committee to answer questions and look forward to recommendations to strengthen the work of the scheme in Victoria, and how it serves the interests of all Victorians.

Yours sincerely



Peter Allen

Chair

Agency Management Committee

Appendix One: Response to specific questions and issues raised

Appendix Two: Updated data

Appendix Three: Key Performance Indicators for Notifications Management