



Victoria's Health Consumer Organisation

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Mr Richard Willis
Senior Secretary, Council Committees
Department of the Legislative Council
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Dear Mr Willis,

Inquiry into the Performance of the Australian Health Practitioner Regulation Agency (APHRA)

The Health Issues Centre promotes improvements to the health care system from the perspectives of consumers, with an emphasis on equity, and promotes and provides expertise on consumer participation in health.

The Health Issues Centre, along with Consumers Health Forum, supports a national approach to health practitioner regulation. We note that the transition to a national system was not easy administratively and caused considerable and reasonable concerns for health practitioners. However, we consider that the public is best protected by a consistent national approach.

In our brief submission, we want to address the performance of APHRA from the consumer's perspective and to argue that any review of the performance of APHRA and its national registration boards needs to reflect the public interest and the experience of those health consumers who take concerns about practitioners to APHRA, as well as from the point of view of health practitioners.

In the transition from a state-based system to a national system of health practitioner regulation, there were good elements of the Victorian approach to its registration boards that were not immediately part of the national registration boards arrangements. The Victorian Medical Board was the first Australian Medical Board to have a Consumer Advisory Committee to provide advice from a community and consumer perspective to the Board in its operations and planning. Health Issues Centre is pleased to see that APHRA is now in the process of establishing a Consumer Advisory Committee. We commend this. Consumers have a key interest in APHRA, as members of the public and as individuals who take their concerns about practitioners to APHRA.

Often, consumers come in contact with APHRA when they make a complaint to the Health Services Commissioner, who refers it on to APHRA. The recent review of the Victorian Health Services (Conciliation and Review) Act will include recommendations about improving consumers' experiences when this happens.

In 2004, the Department of Health commissioned a study of the experiences of consumers who had made a complaint which had been referred to one of the Victorian registration boards¹. Consumer complaints are essential to the regulation of professional misconduct by health professionals. They provide a unique form of information about substandard practice by registered health practitioners. Such information would be difficult to source from anywhere else². While many expressed satisfaction with their experiences, significant issues for consumers were identified, and although recommendations from that study influenced changes in Victorian Registration Boards and the development of the national system, they remain relevant today.

Concerns arise for consumers when having made a complaint about a practitioner, they find themselves referred to APHRA. With the Health Services Commissioner, their status is that of a complainant, but if their concerns are referred to a registration board, their status changes to that of a notifier and potential witness. This reflects different roles: the Health Services Commissioner has a role to mediate and resolve complaints; and Registration Boards have a role to protect the public. However, this is confusing for consumers and is often not their expectation about what will happen.

The role of registration boards and tribunals is to protect patient and public safety in health care by assessing the level of compliance with practice standards by individual practitioners.³ This public interest role may or may not align with the concerns of the particular complainant. This is reinforced by the findings of a recent review of medical board/tribunal decisions in Australia and New Zealand that though:

“...the most prevalent outcome for affected patients was being upset at what had occurred ... in 78% of cases (380/485), there was no mention in the tribunal determination of physical or psychiatric harm to the patient as a result of the misconduct.”⁴

Making a complaint and following it through requires considerable commitment and emotional effort on the part of the complainant. A common theme in the literature on complaints is that consumers make a complaint because they want to see improvement in health care and that what happened to them doesn't happen to others. This is important for how they view resolution of their concerns. From a consumer perspective then, it is important for there to be transparency in APHRA's reporting about the types of concerns raised about practitioners, the actions taken and what improvements were made as a result.

While addressing the public interest in standards of health care and performance of providers is vital to the quality of the health care system, so too is consumer confidence that in making a complaint their individual concerns and expectations will be addressed.

In thinking about the performance of APHRA, from a consumer point of view, the following criteria were identified in the 2004 study. In its management of consumer concerns about health practitioners, APHRA's national registration boards should have processes that are:

- fair and unbiased, and seen to be so

¹ Resolution Resource Network and Health Issues Centre, Bringing in the Consumer Perspective (Consumer Perspective), October 2004 Note this study predates the national health practitioner reforms. Practices may now be more proactive particularly given the stated emphasis on best practice as well as public protection emphasised for example, in the Report of the Chairperson Agency Management Committee [The Australian Health Practitioner Regulation Agency and National Boards](http://www.ahpra.gov.au/Legislation-and-Publications/AHPRA-Publications.aspx) Annual Report 2010-11 p.3 <http://www.ahpra.gov.au/Legislation-and-Publications/AHPRA-Publications.aspx>.

² Resolution Resource Network and Health Issues Centre, Bringing in the Consumer Perspective (Consumer Perspective), October 2004

³ [The Australian Health Practitioner Regulation Agency and National Boards](http://www.ahpra.gov.au/Legislation-and-Publications/AHPRA-Publications.aspx) Annual Report 2010-11 p.3 <http://www.ahpra.gov.au/Legislation-and-Publications/AHPRA-Publications.aspx>

⁴ Katie J Elkin, Matthew J Spittal, David J Elkin and David M Studdert, Doctors disciplined for professional misconduct in Australia and New Zealand, 2000–2009 *Med J Aust* 2011; 194 (9): 452-456. <https://www.mja.com.au/journal/2011/194/9/doctors-disciplined-professional-misconduct-australia-and-new-zealand-2000-2009>

- independent and seen to be so
- transparent
- effective (from a consumer complainant perspective as well as that of the broader public, health services and professions)
- timely
- accountable⁵.

In addition, the health practitioner regulatory system should comply with principles of therapeutic jurisprudence in that it:

- recognises the central role of health care consumers in the regulatory system and its reliance on consumers making complaints in good faith when they perceive poor care or behaviour;
- is designed to meet reasonable expectations of consumers when they make a complaint;
- acts to minimise the harmful impact of its legal processes on complainants;
- acts reasonably in its demands on complainants⁶.

The importance of timely and pro-active communication was stressed throughout.

Health Issues Centre notes that there is to be a three year review of APHRA. We propose to the Standing Committee on Legal and Social Issues that it recommends that the study initiated by the Victorian Department of Health into the experiences of health care consumers who lodged complaints with a statutory health practitioner registration board in Victoria be repeated at a national level and that this study examine the extent to which the concerns identified in that study have been addressed in the operations of the national health practitioner registration boards.

Yours sincerely,



Mary Draper
CEO

⁵ Resolution Resource Network and Health Issues Centre, Bringing in the Consumer Perspective (Consumer Perspective), October 2004

⁶ Resolution Resource Network and Health Issues Centre, Bringing in the Consumer Perspective (Consumer Perspective), October 2004