Submission to the Review of the National Registration and Accreditation Scheme for health professions

This brief submission addresses the issue of pathways for making and managing complaints and notifications, but may also relate to issues of protection of the public or of a particular patient, costs of the National Scheme and implications for changes to the National Law.

The greatest fault in the system of regulating health professionals with regard to complaints and notifications is that AHPRA serves as both police prosecutor and as Judge. This creates a biased situation which is unlikely to let either notifiers or health professionals feel that the process is fair and just. These roles need to be separated, with the National Boards hearing cases brought to it by another body whose task it is to receive notifications, make an initial assessment of whether the matter warrants any action, and if so conduct an investigation, and present the case to the Board. There should be room for matters to be resolved by consent or by conciliation before matters still in contention are taken to a hearing of the Board. The changes needed to rectify this situation go beyond any of the options proposed in the consultation paper, but discussions made about having a health ombudsman may be a starting point.

It was refreshing to read in the Consultation Paper that "no-on wants to see health professionals over-regulated", as this does seem to be occurring, with complaints over rather minor matters which carry little risk to the public sometimes leading to onerous and costly consequences for the practitioner where their practice may not be of a standard significantly lower than that of their peers.
An example of over-regulation through hearing minor matters can be seen in notifications made by Workcover and TAC to the Psychology Board of Australia concerning case notes. These agencies seek to use AHPRA to require practitioners to write case notes in such a manner as to demonstrate the cause of the condition being treated. This kind of analysis may belong in an academic case study, but does not comprise a necessary or normal part of health care delivery, as many conditions can be treated without establishing their cause. This kind of requirement by external agencies amounts to interference with the day to day practice of health professionals and does nothing to protect patients from harm. In these instances it is the health practitioner who needs protection from powerful notifiers, but the National Law puts the opposite bias on these matters, assuming the health practitioner to be the more powerful party when complaints are made. It seems that health Insurance Companies, who also pay for health services, have not taken up the habit of complaining about practitioners on a regular basis, while Medicare takes responsibility for its own audits in the first instance, thus not using registration fees to do its work for it.

It is understood that Workcover and TAC need to establish cause to determine whether they are liable for the costs of treatment, but this should not become a demand on the treating practitioner. They may ask the treating practitioner whether they do have an opinion as to cause, but not require such an opinion or expect case notes to show this. The question of probable cause of an injury or illness, is an issue appropriately dealt with by a forensic health practitioner, not a general treating practitioner. This issue concerning case notes and fee liability does not pose a risk to patients and should not be considered by Boards. To the extent that such notifications warrant any action, these matters should be dealt with by HCEs. Allowing such matters to be investigated by Boards on a frequent basis is taking up a significant amount of costs to registrants. Boards need to implement the directive that "When a National Board takes action, it must use the minimum regulatory force needed to keep the public safe and manage the risk to patients".

It could even be that Boards are intimidated by large government agencies which could have the capacity to bankrupt Boards if the Boards do not comply with their demands. Boards need the National Law to be written to protect them from such a form of misuse, and only investigate matters posing a real risk to the public. Only repeated complaints about a specific health practitioner's behaviour showing a pattern of lesser transgressions should be heard by a Board.
In the case of psychology, it may be that the adoption by the Psychology Board of Australia of the Australian Psychological Society’s Code of Ethics may have seemed a good idea, saving confusion between the PsyBA and the APS, but it has meant that the PsyBA has established somewhat idealistic standards rather than the minimum ones required to protect the safety of the public. This may have led the Board to investigate some matters which do not impact upon the safety of patients. These lesser matters would be better handled by a subordinate Health Complaints Entity. It would seem helpful if a situation can be established where there are HCEs in all jurisdiction which can deal with more minor matters with the possibility of more commensurate outcomes.

The consequence of having a notation made on the registrant's entry on the register may seem necessary to uphold the standard that registration represents, but Boards should also be mindful that while they have not deemed the offence sufficient to warrant suspension of registration or expulsion from the register, this consequence can destroy a practitioner's business and make it impossible to obtain new employment, giving the same result to the practitioner as a much more severe penalty. Boards should not disown this. However, if more minor types of complaint were dealt with by HCEs, outcomes would not involve any entry on the practitioner's registration.

Also, Boards currently receive and assess many notifications about which they decide to take no further action. Whilst it is important not to suppress genuine notifications from vulnerable individuals, it may be that the grounds for notification are somewhat too broad, allowing any deviation from expected behaviour of a health professional rather than significant deviation to be grounds for complaint. The grounds as listed in the legislation do not match the purpose of protecting the public, and it may be that by tightening the grounds a little, some complaints which lack substance might not be made. Alternatively, more minor complaints could be dealt with by a HCE and handled in a conciliatory manner. While organisations can make notifications, perhaps anyone who is not the direct patient or client of the practitioner or the guardian of a patient should only be able to make notifications at the level of mandatory notifications for serious professional failings.
It is recommended that:

1. that the roles of investigator/prosecutor and that of judge be separated with Boards only conducting hearings and another body receiving notifications and investigating those that warrant it.
2. that more minor complaints be handled by HCEs and only serious behaviours posing risk to the public or repeated lesser behaviours showing a pattern of substandard or inappropriate conduct be dealt with by Boards
3. that there be a single point of entry for all complaints about health services
4. that limiting the grounds for notification by third parties to serious or repetitious transgression similar to the grounds for mandatory notification be considered

It is hoped that these suggestions are helpful.

Please do not hesitate to contact the writer if any other information is required.

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I am a Fellow of the Australian psychological Society and winner of the Award of Distinction of the College of Clinical Psychologists in 2013. Amongst many honorary positions I have held within the APS, I served on its Ethics Committee for 12 years and its Ethical Guidelines Committee for a further 5 years. I have held several academic positions including 17 years half time lecturing in Psychology at Deakin University and I work as a Clinical and Forensic Psychologist in my independent practice. Perhaps it is helpful to note that I have not been subject to any notification by Workcover or TAC myself.