

## Senate Inquiry into Medical Complaints Process in Australia – RANZCP response

May 2016



The Royal Australian and New Zealand College of Psychiatrists (RANZCP) welcomes the opportunity to respond to the Senate Community Affairs References Committee's Inquiry into the Medical Complaints Process in Australia (the Inquiry).

### Key messages

- The RANZCP takes bullying and harassment in the medical profession very seriously.
- The RANZCP has an important role in championing professionalism, promoting high standards of behaviour, supporting the health and wellbeing of trainees and members and advocating for members – and thereby contributing to the eradication of bullying and harassment.
- The RANZCP considers that the Australian Health Practitioners Regulation Agency (AHPRA) can do much more to improve the transparency and timeliness of the handling of complaints against medical practitioners under the National Law. This includes providing stronger support to medical practitioners who are required to undergo a performance assessment as a result of complaints made against them.
- The RANZCP has recently undertaken a number of initiatives with the aim of supporting trainees and psychiatrists and promoting healthier workplaces. This includes the review of the Trainee Welfare Working Group, and the launch of several new resources developed to assist psychiatrists and trainees in looking after their own personal health and wellbeing.
- Doctors' health programs are also imperative for a well-supported workforce.
- It is essential that workplaces have effective mechanisms in place to respond to issues early and in a supportive manner.
- The process for reporting bullying and harassment should be simple, accessible and cause no additional stress.
- The RANZCP is committed to looking after the welfare of psychiatrists and trainees, and supporting safe and professional environments for training and practice.

The RANZCP has responded to the Inquiry's terms of reference as set out below.

- 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**

The RANZCP takes the issue of bullying and harassment in the medical profession very seriously.

The RANZCP is also aware that bullying and harassment can be a particular issue for overseas trained practitioners, trainees, registrars and part-time employees as these groups can be particularly vulnerable.

Workplace bullying and harassment in Australia's medical profession does not just occur between and among medical professionals. It can occur between students, employees, managers and other health professionals, and any contractors, patients and family members with whom doctors may be dealing (Askew et al., 2012). This point is also illustrated through a recent RANZCP study into the welfare of psychiatrists and trainees, which found that bullying behaviour may originate from a range of sources,

including from supervisors or Directors of Training to general management and nursing staff (RANZCP, 2016).

Employers have a duty of care under a range of laws to ensure the health, safety and welfare of their employees. This includes identifying bullying and harassment and taking steps to eliminate and prevent it. These laws also require employees to take reasonable care of their own health and safety as well as for the health and safety of others who may be affected by their acts in the workplace.

Therefore, from the RANZCP's perspective, a key question is how the relevant workplace deals with bullying and harassment claims and how it conducts and resolves investigations into these claims. If appropriate and supportive mechanisms are not in place, this represents a clear barrier to medical practitioners reporting bullying and harassment.

To obtain a better understanding of these issues for the psychiatry profession, the RANZCP is currently researching and updating its Position Statement 48: Trainee Safety in the Workplace to cover the issue of health and wellbeing of psychiatrists, including trainees.

Another barrier for medical practitioners reporting bullying and harassment is the complex, lengthy and often highly stressful procedures involved in making a complaint about professional conduct, which includes bullying and harassment claims to the Medical Board of Australia and the AHPRA.) This issue is examined further at term of reference (d).

The RANZCP also believes that there should be further practitioner education in regards to bullying and harassment as practitioners are often confused about what should be reported to AHPRA and what should be reported to their workplace.

**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**

The RANZCP notes that the Medical Board and the AHPRA have the regulatory powers to investigate and resolve 'professional conduct' issues, including claims of bullying and harassment whereas the RANZCP has a limited role in this space as it is not an industrial organisation.

Therefore, the RANZCP sees its role as ensuring that bullying and harassment are never tolerated and championing professionalism and high behavioural standards for members of the psychiatric profession. This role includes advocating for and on behalf of the health and wellbeing of its members. Recent RANZCP initiatives in this regard are set out in more detail at term of reference (e).

**d. the operation of the Health Practitioners Regulation National Law Act 2009 (the National Law), particularly as it relates to the complaints handling process**

For its response to term of reference (d), the RANZCP wishes to comment on two particular aspects of the complaints handling process – (i) the need to improve the timeliness and transparency of the complaints handling process and (ii) performance assessments conducted in response to complaints about medical practitioners.

**(i) Timeliness and transparency of complaints**

The RANZCP considers that there is a need to improve the handling of complaints and to have greater transparency in the review and decision making processes involved in both the hearing of complaints and advising relevant parties about their outcomes under the National Law. Timely and necessary action in response to complaints is important in providing effective public protection and confidence in the National Law on the part of both practitioners and patients.

An ongoing problem is the length of time it takes to investigate and resolve complaints. In recent years, investigations have taken far too long, causing unnecessary stress for both complainants and practitioners under investigation and leaving both in the dark as to the outcome.

Further, in the RANZCP's experience, we are often not informed that AHPRA is undertaking an investigation of an RANZCP member or of an investigation's outcome. Or, if AHPRA does inform the RANZCP, this communication may take place well after the investigation has commenced. We believe that the RANZCP should be routinely informed about complaints and their resolutions in a timely manner given the RANZCP's role as a relevant party. On some occasions, conditions or suspensions may have a direct impact on a trainee – for instance, if a Fellow has a supervisory or examiner role.

Another issue is – given that the AHPRA register is live - past conditions are not recorded on a practitioner's registration, once they have been complied with or the practitioner has applied to have them removed. On many occasions, the RANZCP is not aware that the practitioner may have been subject to disciplinary matters.

We urge the National Boards and AHPRA in each jurisdiction to work more closely together to improve the timeframe for handling complaints and for greater transparency in the review and decision making process involved in the hearing and determining of complaints.

The RANZCP also recommends that AHPRA works with the Medical Colleges and registration / medical boards to develop a clear procedure for handling notifications and informing the various parties concerned of any outcomes or restrictions on a practitioner.

To assist with this process, we suggest regular meetings between AHPRA, the Medical Board and the Medical Colleges – through, for instance, the Committee of Presidents of Medical Colleges. This would help to improve AHPRA's understanding of different medical specialities, their ethical standards and also provide a regular forum for all relevant bodies to discuss issues of mutual interest concerning the operation of the NRAS's complaints and notifications scheme. We note that the Medical Council of New Zealand regularly meets with the New Zealand Medical Colleges.

#### ***(ii) Performance assessments conducted in response to complaints about medical practitioners***

One outcome of the complaints process under the National Law is that the Medical Board can require a medical practitioner to undergo a performance assessment if the Medical Board believes that the way they practice their profession is or, may be, unsatisfactory.

The Medical Board will decide whether a medical practitioner needs to undergo a performance assessment based on the information contained in the complaint, the practitioner's response, their clinical records and the relevant professional standards.

However, the RANZCP considers that AHPRA can do much more to support members of the medical profession who are required to undergo performance assessments as a result of complaints made against them.

One issue of concern is the selection of an assessor for a practitioner's performance assessment. The Board's aim is to select an assessor whose scope of practice is similar to that of the practitioner being assessed. In the field of surgery, it may be relatively straightforward and easy to find an appropriate supervisor.

This is more challenging in the field of psychiatry. In particular, the Medical Board has no guidelines for how sub-specialities, including psychiatrists are assessed, making it difficult to ascertain what a performance assessment may look like in this context. For the speciality of psychotherapy – where practitioners often have patients with whom they have established a relationship and treatment program over many years – it is very difficult for an outsider to develop an adequate understanding of, and assess practitioners' performance with, such patients over merely one or two sessions. In addition, the RANZCP queries how practitioners who undertake medico-legal work can have their performance assessed as they have no established patient / client relationship with the people they are assessing and may often only see a particular person once.

**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**

In the RANZCP's view, one key factor that contributes to the best health outcomes for patients, patient safety and a world-class standard of medical care in Australia is: highly qualified, competent medical practitioners who can deliver the best possible standard of medical care.

However, in order to deliver high quality patient care, it is essential that practitioners are also aware and take care of their own health and wellbeing.

To this end, the RANZCP is committed to looking after the welfare of psychiatrists and trainees, and supporting safe and professional environments for training and practice. In April 2015, the RANZCP Board established a short term Trainee Welfare Working Group (the Working Group) to review current issues, make recommendations and prioritise initiatives that the RANZCP could develop further. In consultation with RANZCP trainees, the Working Group only received a small number of reports of experiencing bullying and harassment (RANZCP, 2015).

The final report of the Working Group featured a range of recommendations, including a number focused on welfare and training support, as follows:

- ensure all RANZCP orientation programs for trainees include welfare and support
- create a list of best practice standards for employers
- develop a best practice local support model for each RANZCP branch
- assess the feasibility of a confidential trainee or member support line within the RANZCP
- advocate for hospitals and training establishments to have strong policies to combat bullying and harassment in the workplace and to raise awareness amongst psychiatrists trainees of the importance of such policies
- incorporate Working Group findings into the Specialist Training Program (STP) mentoring pilot scheme
- examine options for formal peer support groups for trainees
- undertake systems-level advocacy for trainees particularly in relation to education and training issues (RANZCP, 2015).

The implementation of these recommendations has the potential to reduce a number of stressors experienced by trainees, including bullying and harassment.

In November 2015 the RANZCP launched several new resources developed to assist psychiatrists and trainees (including those in rural and remote areas) in looking after their health and wellbeing. These include a webpage dedicated to self-care, including support around recognising stress and burnout, building effective coping mechanisms and maintaining an effective support network.

The RANZCP also recognises the value of doctors' health programs in supporting medical students and practitioners to access confidential assistance when they have health concerns, including stress, mental health problems and substance use issues. We welcome the Medical Board of Australia's announcement that such services are being expanded in NSW, the ACT, SA and NT. We have been concerned however that this expansion may be at expense of funding for some of the established services, such as the Victorian Doctors Health Program (VDHP) which has been providing confidential services for doctors and medical students with health concerns since 2001. We strongly recommend that funding for these programs be enhanced overall, commensurate with the importance of the services they provide. Resources such as these have an important contribution to play in preventing and intervening early in bullying and harassment. Supporting trainees to maintain effective support networks can contribute to the reduction of barriers, both real and perceived, to reporting bullying and harassment. Assisting to reduce stress and burnout can also decrease risk factors for problematic behaviours in the workplace and challenge 'cultures of abuse' (Jamieson et al., 2015).

Based on available research and evaluations, bullying and harassment is not widespread within the discipline of psychiatry. A recent survey of the RANZCP members by the Membership Engagement

Committee regarding sources of stress found that a small number of psychiatrists and trainees had experienced stress to do with recent episodes of bullying (less than 2% of respondents). Comments indicated however that these episodes came from team members from other disciplines or professions (RANZCP, 2016). Nevertheless, the RANZCP is strongly committed to setting standards as far as professional skills and expertise is concerned, and contributing to a safe and supportive working environment for all medical professionals.

One area that causes particular stress for practitioners is: if they are under investigation by AHPRA and / or the results of the investigation require them to implement the outcomes of their investigation such as undertake a performance assessment.

Therefore, the RANZCP recommends that AHPRA develop transparent and consistent mechanisms for how practitioners are investigated and how the outcomes of investigations will be implemented - especially in relation to sub-specialities of the medical profession.

**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**

The RANZCP is concerned about the idea of ‘benchmarking’ complaints of medical practitioners.

While it may be straightforward to ‘benchmark’ complaints about complication rates for particular surgical procedures, it is not the case that one size fits all when it comes to all medical specialities.

For instance, in the psychiatry profession, one cannot benchmark the ‘recovery’ of one patient with a mental illness against another patient with the same mental illness. Given the complex and episodic nature of mental illness, what ‘recovery’ from mental illness may mean for one individual patient and their treating practitioner may be very different to what it means for another patient with the same condition. Therefore, the RANZCP considers that a patient’s ‘recovery’ from mental illness cannot be easily generalised or quantified in a way that would lend itself to a proposed ‘benchmarking’ complaints process.

Similarly, as with conducting performance assessments, the RANZCP asserts that one cannot readily ‘benchmark’ psychiatrists who practice in sub-speciality areas against one another as well as practitioners who practice in the medico-legal field given that their work will not lead to ‘complication rates’.

**g. the desirability of requiring complainants to sign a declaration that their complaint is being made in good faith**

The RANZCP does not consider it desirable to require complainants to sign a declaration that their complaint is being made in good faith.

The National Law already provides protection from civil, criminal and administrative liability for people who make a notification in good faith.

A potential complainant – whether patient or health practitioner – may already be anxious about lodging a complaint with AHPRA in addition to feeling detrimentally affected or aggravated by the behaviour they are seeking to complain about. Therefore, requiring complainants to take an additional step of having to sign a declaration that their complaint is being made in good faith may make complainants feel that their integrity or honesty is being questioned and, in fact, deter them from ultimately making a complaint to AHPRA.

Also, in the context of this Inquiry, the RANZCP is concerned that that this issue is under consideration in regards to complaints about ‘medical practitioners’ and not all registered health practitioners. This issue should be opened up to wider consultation and feedback for the consideration of all registered health practitioners.

**RANZCP resources**

- Trainee Welfare Working Group [summary of findings and recommendations](#) and [full report](#):

- Support for psychiatrists – where to get help: A list of resources for psychiatrists and trainees who are facing health or personal issues
- Self-care for psychiatrists: Advice for psychiatrists and trainees on self-care and wellbeing, including three self-care e-modules
- Position Statement 48 'Trainee safety in the workplace': RANZCP recommendations for incorporation into all training schemes (under review)

## References

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