

## **Submission by the Australian Psychological Society (APS) Family Law and Psychology Interest Group to the Senate Standing Committee on Finance and Public Administration References - Inquiry into the administration of health practitioner registration by the Australian Health Practitioners Regulation Agency (AHPRA)**

And specifically

- The impact of AHPRA processes and administration on health practitioners
- AHPRA's complaints handling processes

Since the introduction of the new Australian Health Practitioners Regulation Agency (AHPRA) to investigate complaints about psychologists' professional conduct, those psychologists who work in the family law arena have been beset with complaints. It is the view of this Interest Group that AHPRA's handling of these types of complaints has been negligent, incompetent and uninformed. Further, psychologists have been placed in untenable positions where they could potentially face legal ramifications and consequences if they follow the demands of AHPRA staff and investigators.

Psychologists who undertake assessments in family court matters are routinely regularly reported to AHPRA following family court assessments.

This has been recognised internationally in family law to be reflective of the nature of Family Law processes, and generally represent the litigant's attempt:

- To invalidate the opinion of the clinician,
- To use legal leverage by excluding the psychologist from future court proceedings, and
- To gain revenge and retribution on the psychologist when the opinions expressed in reports do not favour them.

AHPRA fails to consider the particular professional, financial and physical risks for psychologists specialising in Family Law and the potential for competing responsibilities between their duty to the court and current parameters for professional practice.

While we do not suggest that Family Law psychologists should be exempt from complaints about their professional practice, we submit that the high number of complaints to psychologist registration boards and professional bodies, not just in Australia but internationally, represents a base rate problem that we are seeking AHPRA acknowledge in their initial investigation of complaints.

We submit that there needs to be some changes in the way AHPRA approaches these complaints.

Firstly, some of our concerns relate to the failure of AHPRA to consider the motivations of complainants. We submit that there needs to be some mechanism where these complaints are screened to avoid wasting time, energy and money in undertaking investigations where the litigant

obviously has malicious motives.

We also emphasise that AHPRA consistently fails to appreciate the legal context and our obligations under the *Family Law Act 1975* and the *Family Law Rules 2004*. For example, it is not uncommon for AHPRA to demand our file or reports when the disclosure of such information is constrained under section 121 of the *Family Law Act 1975*.

AHPRA also routinely ignores the rights of other parties and children involved in assessments. It is typical practice for AHPRA to rely on the complainant's view without seeking input from the other party and to demand files and reports without consideration for the other participants' rights and our ethical and legal responsibilities to them.

It has also become clear that some Family Law litigants who do not get the professional psychological opinion that they expect in a Family Law assessment, frequently use the complaint process to pervert the legal process.

In Victoria, the Psychologist's Registration Board of Victoria had historically recognised that complaints about psychologists arising from litigants in Family Court matters have particular attributes and require some consideration about the motivations of the complainants, the context of the complaint and the legal jurisdiction.

Importantly, up until AHPRA assumed responsibility, the Psychologist's Registration Board of Victoria had refused to investigate complaints about psychologists who had been appointed by the court to undertake assessment for the court, when the matter was still proceeding through the court. As having an ongoing AHPRA investigation of a complaint naturally forces the psychologist to withdraw from the case, this was some recognition that litigants can use the complaint process to exclude the psychologist in the legal matter, and reject the psychological opinion given in a report as part of a legal gambit.

We also know of examples where lawyers have encouraged clients to make a complaint as a legal strategy, to prevent an unfavourable opinion of their client being admitted to the Court.

Since the evolution of APRHA, complaints are now being actioned and investigated during the progress of the legal matter. We submit that AHPRA should develop some protocols to prevent this occurring. If a litigant is unhappy with a psychological opinion, the proper jurisdiction to challenge this in the first instance is before the Court, not AHPRA.

We are also concerned about the confusion of investigation and judicial powers, and we question that AHPRA does not have open and transparent processes. We have grave concerns about the lack of independence, and have noted that investigating board members may also sit on the Board and participate in decision making.

Additionally, APRHA have typically had psychologists assess these complaints whose experience does not allow them to be fully equipped to evaluate the practice of the psychologist, as it is well recognized that the family court arena poses specific challenges that are outside the expertise of most psychologists. Soon our members may be forced, under new mandatory reporting rules, to begin making allegations of professional incompetence against psychologists working for AHPRA for undertaking forensic interviews and investigations without competence in either forensic investigations or psychological practice in family law.

It is a significant failure of AHPRA's operations that there has been no education of their staff or

attempts to understand these issues.

We submit that changes should be made in how investigations of complaints by AHPRA are undertaken, specifically:

- § That complaints are not actioned until the legal proceedings are completed,
- § That complaints are initially screened by someone who has Family Law experience to avoid unnecessary investigations by vexatious litigants,
- § That AHPRA investigators acknowledge our legal responsibilities, including appreciating that the court is our client, that a health model is not appropriate, and an understanding of the legal parameters under which we work so they do not repeatedly demand that we violate those responsibilities,
- § That AHPRA psychologist investigators have competence in forensic investigation and family law experience,
- § That investigation and judgement become independent and separate processes.

Signed

Dr Jennifer Neoh

Secretary APS Family Law and Psychology Interest Group

On behalf of members

11 April 2011