

Avant Mutual Group Limited

Submissions to the Legal and Social Issues Committee Inquiry into the Performance of the Australian Health Practitioner Regulation Agency

1. Introduction

Avant Mutual Group Limited ("Avant") is Australia's leading medical defence organisation and one of Australia's leading mutuals, offering a range of insurance products and expert legal advice and assistance to over 60,000 medical and allied health practitioners and students in Australia. Our insurance products include medical indemnity insurance for individuals, practices and private hospitals and private health insurance, which is offered through our subsidiary The Doctors' Health Fund Pty Limited.

We also provide extensive risk advisory and education services to our members, as well as access to medico-legal assistance via our Medico Legal Advisory Service. We have offices throughout Australia, providing personalised support and rapid response to urgent medico-legal issues. Our Victorian office assists members in complaints managed by AHPRA and the Victorian Board of the Medical Board of Australia.

It is from this perspective that we provide our submissions on the performance of the Australian Health Practitioner Regulation Agency (AHPRA).

Avant supports the National Registration Scheme for reasons of national consistency and to support doctors moving interstate, and would not support Victoria withdrawing from the Scheme.

However Avant's members do on occasion have concerns about how AHPRA manages complaints made against them, both in Victoria and elsewhere. The regulatory efficiency of AHPRA could be improved by better processes for dealing with complaints. This would help to reduce the stress that health practitioners face in responding to complaints, and would assist in increasing public confidence in AHPRA's ability to fulfil its objective of protecting the public.

We have provided some examples of matters which were in our view poorly handled by AHPRA in Victoria in the hope that AHPRA's complaints process can be improved, rather than returning the power to bring complaints to a Victorian body.

2. The Performance of AHPRA in Victoria

While in the majority of cases AHPRA manages complaints against our members in a fair way, Avant has concerns about how AHPRA has managed a number of complaints against our members. From our experience in Victoria, our particular concerns are:

- delays and administrative errors and
- denial of natural justice.

These issues go to the heart of the effectiveness of the National Scheme because deficiencies in managing complaints against health practitioners have a direct impact not only on the health practitioners concerned but also on the protection of the public. Better processes for dealing with complaints against health practitioners will improve the regulatory efficiency of AHPRA.

2.1 Delays and administrative errors

We have assisted members who have been subject to lengthy delays. Delays cause significant stress and disruption to the health practitioner concerned, as well as to the notifier, and risks reducing public confidence in the complaints handling system.

Below are some recent examples of cases in which delays have been significant.

Dr X

In May 2011, AHPRA received notification about Dr X's conduct from a person whose name was undisclosed. AHPRA decided to investigate the matter. On 26 August 2011, Dr X was advised that the Victorian Board of the Medical Board of Australia (the Board) proposed to take immediate action in relation to Dr X's registration. Dr X was invited to put in a written submission to the Board by 30 August 2011 and to attend a hearing before the Board on 1 September 2011. He complied with these requests. Immediate action was not taken following the hearing on 1 September 2011.

AHPRA continued to investigate Dr X's conduct. AHPRA wrote to Dr X on 2 September 2011, seeking a further submission. The correspondence was not received by Avant or Dr X until 30 January 2012. Dr X provided written submissions to AHPRA in February 2012.

On 30 March 2012, AHPRA wrote advising that the matter was under investigation and "*every effort is made to complete investigations as expeditiously as possible*". Almost a year later, we have heard nothing further. Despite the passing of two years after AHPRA received notification about Dr X's conduct, the matter continues, and this is unsatisfactory.

Dr A

On 31 August 2012, AHPRA wrote to Dr A, seeking a response to a complaint. Dr A responded on 2 October 2012.

On 8 February 2013, AHPRA wrote to Dr A again, seeking a response to a particular issue arising from the complaint. It was clear that this issue had already been responded to in Dr A's previous response. Dr A felt this matter had been hanging over him for over 7 months and could not deal with AHPRA further. He instructed us to take over conduct and we repeated the response he previously provided on 2 October 2012.

In essence, Dr A felt this matter should have been investigated and concluded in a far more expeditious fashion. He has had the stress and agitation of dealing with an ongoing investigation. This was a straightforward matter that should in our view have been dealt with in a much shorter space of time.

Dr B

Dr B received a complaint on 10 May 2011 which was investigated by AHPRA. On 14 November 2012, the Board advised that the matter was going to be referred to the VCAT for a formal hearing. Dr B was informed of the potentially serious consequences of a referral to VCAT and became distressed.

Given a lack of developments, we contacted Victorian Government Solicitors (VGS), who were acting for the Board, on 19 February 2013 for an update. In the interim, Dr B had forwarded us a letter he received from the Board indicating the matter was now going to a Performance and Professional Standards Panel (PPSP). There was no reference in this letter to the previous letter regarding the VCAT hearing. We sought an explanation from VGS and were informed AHPRA had obtained further advice and had decided to refer the matter to an informal hearing before the PPSP rather than a formal hearing before VCAT.

The confusion about what was happening with this matter caused Dr B a great deal of unnecessary anxiety and distress. Dr B's lawyers (on the record) were not notified of the change and only received information about it when they requested it.

Ms C

AHPRA received a formal notification about Ms C in early August 2010. On 10 November 2010 AHPRA requested a written response by 1 December 2010. Ms C provided a written response to AHPRA on 15 December 2010.

On 27 February 2012, Ms C was informed that the matter had been referred to the PPSP.

In May 2012, Dr C was notified that PPSP would hear the matter on 18 June 2012. Nearly seventeen months after AHPRA received Ms C's written response, Ms C was effectively given five weeks to prepare for and attend a PPSP hearing. We wrote to AHPRA in May 2012 requesting an adjournment and the hearing was re-fixed within a period of less than three months.

Following the PPSP's hearing, we were advised (on the day) that the Panel would reserve its decision and provide written reasons "in due course". When we asked what this meant, we were advised this could take weeks. Ultimately, we received the PPSP's reasons over eight weeks after the PPSP hearing.

Effectively the investigation and hearing process took nearly 27 months which is again unsatisfactory.

Dr D

On 5 September 2011 a complaint against Dr D was lodged by a patient with the Health Services Commissioner (HSC). On 12 October 2011, the HSC referred the complaint to AHPRA. On 24 October 2011, AHPRA advised Dr D that it had received a notification about his conduct.

On 21 May 2012, AHPRA wrote to Dr D seeking a written response by 12 June 2012, which was extended to 13 July 2012 and a response was provided on that date.

On 28 November 2012 (over a year after the initial complaint) AHPRA wrote directly to Dr D, despite there being lawyers on the record, advising that the investigation was continuing. Dr D was dismayed because of the length of time the investigation was taking. However, one week later, on 6 December 2012, the Board decided to take no further action.

This matter took over a year to finalise. AHPRA should have made the appropriate decision in a timely fashion. What occurred in this case caused unnecessary stress for the doctor. Our member's distress was added to by the fact that this letter was sent directly to them and not to their lawyers on the record.

Delays have a significant impact on both the health practitioner and the notifier. Because of these delays Avant is unable to provide any reliable guide to members about the likely time frame of the investigation or when members may expect to be advised of AHPRA's determinations.

There have also been a number of instances when a medical practitioner has responded to a request for a response to a preliminary investigation, only to be advised some weeks or months later that the Board has determined to investigate the notification and requesting that the medical practitioner provide a "formal response" to issues he or she has already addressed. It then becomes apparent that the initial response was not considered by the Board or even misplaced or misfiled. These examples suggest that AHPRA's processes are inefficient and cumbersome.

Submissions:

- The Committee should investigate delays promptly.
- Investigations should be streamlined wherever possible.
- There needs to be system in place to improve inefficient processes.

2.2 Denial of Natural Justice

We have assisted members who have been denied natural justice and procedural fairness in not being provided with relevant documentation, both in the context of a complaint and in relation to decisions about renewal of registration. Time is then taken negotiating the release of information, which adds to the cost and impedes the timely resolution of the matter.

For example, on many occasions we have assisted members who have been asked by AHPRA to provide an initial response to an incident which occurred years ago and sometimes in a hospital or clinic in which he or she no longer works. Our member does not have access to the relevant clinical records. These requests come in the context of AHPRA conducting a preliminary investigation prior to deciding whether to take further action, and the practitioner is asked to provide a response within 21-28 days.

Frequently, when asked, AHPRA itself does not have the relevant records.

The medical practitioner therefore is in the difficult position of having to provide a response from memory. Given the potential ramifications for the medical practitioner's registration/career, this is unsatisfactory. AHPRA should obtain the records and make them available to the medical practitioner.

AHPRA's *Service Charter* states that AHPRA will apply principles of procedural fairness in dealing with notifications. A fundamental rule of natural justice requires the disclosure of relevant information to a medical practitioner in relation to the notification to enable him or her to properly prepare a response to the allegations. This also applies to any new issues which may arise during the course of an investigation.

Submission:

- AHPRA should adhere to its *Service Charter* and the rules of natural justice.

3. Conclusion

AHPRA and the state and territory boards have an important role in protecting the public, but must ensure that health practitioners who are the subject of complaints are treated fairly within an appropriate time frame so as not to cause them undue anxiety. Complaints have a significant impact on health practitioners. Delays and administrative errors create further unnecessary anxiety.

Better resourcing, administrative systems and staffing of AHPRA nationally, not Victoria seeking its own solution, will provide the National Scheme with the ability to protect the Victorian public.

Avant contact details

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