

RACGP submission

National Health Practitioner
Ombudsman: Vexatious notifications
framework review

December 2022



1. Introduction

The Royal Australian College of General Practitioners (RACGP) is Australia's largest professional general practice organisation, representing more than 43,000 members working in or towards a career in general practice including four out of five general practitioners (GPs) in rural Australia.

The RACGP sets and maintains the standards for high-quality general practice care in Australia and advocates on behalf of the general practice discipline. As a national peak body, our core commitment is to support GPs to address the primary healthcare needs of the Australian population.

The RACGP welcomes the opportunity to provide a submission to the National Health Practitioner Ombudsman's (NHPO) review of the Australian Health Practitioner Regulation Agency's (Ahpra) vexatious notifications framework.

1.1. The Ahpra notifications process requires significant improvement, particularly in regard to identifying vexatious and frivolous complaints

A well-functioning and fair notifications process is valued by our members and has become of greater importance during the COVID-19 pandemic, during which significant pressures were placed on society and the provision of safe and timely high-quality healthcare in the community was challenging.

GPs have placed their own health and safety at risk during the pandemic by continuing to see patients in-person. At times, they have been forced to contend with abusive patients who disagree with pandemic restrictions and public health measures, and burnout within the profession is also a significant challenge. On top of this, GPs are facing a growing regulatory burden, which is adding additional strain to the sustainability of general practices that were already suffering due to years of chronic underfunding. 'Regulatory burden' was reported as a challenge by two-thirds (60%) of GPs who completed the RACGP's 2022 [Health of the Nation](#) survey.

The Ahpra notifications process can place significant additional stress on practitioners. This is particularly of concern where it eventuated that the notification was vexatious or frivolous in nature and the additional stress placed on the practitioner was completely unwarranted.

The RACGP is keen to work closely with key stakeholders to minimise the impact of regulatory processes on GPs, reduce overreach, and ensure GPs can focus their attention on providing high-quality care to patients.

1.2. Submission outline

The RACGP sought feedback from our members regarding current issues relating to vexatious notifications and received close to 60 detailed responses. This submission summarises feedback from our members on:

- the volume of notifications
- defining vexatious notifications
- types of vexatious notifications and motivations of complainants
- management of vexatious notifications
- conditions imposed by Ahpra on practitioners
- the impact of vexatious notifications on practitioners
- Ahpra's vexatious notifications framework
- suggested improvements or reforms from members.

2. Key concerns and recommendations

In summary, key concerns and recommendations are captured below.

Concerns or issues	Recommendations
<p>Ahpra receives thousands of complaints about health practitioners each year, and current processes for separating frivolous or trivial complaints, vexatious complaints, and those that raise genuine concerns about patient safety and the behaviour of health practitioners, are insufficient.</p>	<p>The RACGP recommends an overhaul of the notifications process with the intention of easing pressure on Ahpra and the National Boards. A revised process can ensure that complaints are directed appropriately for vetting and assessment, freeing up resources for Ahpra to appropriately manage legitimate notifications.</p>
<p>Our members have provided numerous examples of frivolous complaints that may have been prompted by a patient being dissatisfied about rules imposed by a practice or the clinical advice they received. These differ from vexatious complaints where there is a genuine attempt to cause harm to the practitioner. However, frivolous complaints can still result in a substantial time commitment to respond to concerns and stress for the practitioner.</p>	<p>A mechanism should be established to identify frivolous complaints early on in the process, as these are not dealt with by Ahpra's vexatious notifications framework.</p>
<p>Prematurely releasing details of complaints and restrictions can lead to reputational damage and significantly harm a practitioner's mental health.</p>	<p>Information about practitioners should not be published online prior to a complaint being resolved and the practitioner being formally notified of the outcome and any conditions imposed on their registration.</p>
<p>All complaints can have a serious impact on a practitioner's mental health and wellbeing, their family life, future job prospects, and their reputation amongst members of the medical profession. This is particularly so for vexatious and trivial complaints, which place a great burden of stress on practitioners and provide little value for health system improvement.</p> <p>Member feedback indicates that Ahpra staff display little empathy during the notifications process.</p>	<p>Ahpra must provide more support to practitioners who are the subject of vexatious notifications.</p> <p>Practitioners must be referred to appropriate support services and provided with resources to assist them during this process.</p>
<p>Our members have raised concerns about the fact that complainants face no consequences for making a notification that is deliberately intended to cause harm and reputational damage to the practitioner.</p>	<p>A greater effort must be made to deter people from making vexatious complaints. The RACGP recommends that Ahpra emphasise the potential outcomes of providing false or misleading information when making a notification.</p>
<p>Systemic changes are needed to reduce the regulatory burden on health practitioners by managing complaints in a transparent and timely manner.</p>	<p>The NHPO should carefully consider the feedback provided by RACGP members on both the types of complaints that are arising and Ahpra's handling of vexatious notifications and its framework document, and make recommendations to minimise the impact on health practitioners who have acted in the best interests of patients.</p>

3. Background

The RACGP [previously identified](#) a series of issues regarding the Ahpra notifications process as part of the 2017 *Senate inquiry into the complaints mechanism administered under the Health Practitioner Regulation National Law*. We received an overwhelming response from our members who have experienced, or knew of practitioners who had experienced, issues relating to Ahpra's notifications and complaints mechanism. A key concern was the apparent inability of the complaints mechanism to sufficiently vet vexatious complaints.

The Senate Committee agreed with the RACGP and recommended that Ahpra develop and publish a framework for identifying and dealing with vexatious complaints. The RACGP welcomed the release of Ahpra's vexatious notifications [framework](#), as it represented a move towards recognising issues within the notifications system and an increase in Ahpra's appetite to appropriately address them.

In 2021, the RACGP provided a [submission](#) to the *Senate inquiry into the administration of registration and notifications by Ahpra and related entities under the Health Practitioner Regulation National Law*. The RACGP's response to this inquiry identified outstanding issues that had not been resolved in previous inquiries, namely the communication, transparency, and timeliness of the complaints mechanism, and the importance of appropriate recognition of the impacts of assessment and investigation on a practitioner's mental health.

Among the [proposals](#) put forward in the final report produced by the Senate Standing Committee on Community Affairs were limiting Ahpra complaints to clinical patient safety concerns, as well as dropping mandatory reporting obligations. The report also acknowledged the 'significant amount of stress' involved in the current notifications process, as well as the challenges posed by vexatious notifications.

Despite these earlier inquiries, it is clear that GPs have little faith in Ahpra's handling of vexatious complaints, and previously identified issues remain a concern. A [newsGP](#) poll open from 7–14 November 2022 asked, 'Do you think Ahpra's processes for dealing with vexatious complaints are working effectively?' More than 1700 votes were received, and the results were as follows:

- Yes – 1%
- No – 81%
- Don't know – 17%

It is essential that there is an avenue available for notifications to be made regarding healthcare and health services. We support a notifications system that balances patient safety with sensible processes that do not unduly impact the delivery of high-quality care.

4. Volume of notifications

Ahpra's [2021-22 annual report](#) revealed that it received almost 10,900 notifications about 8146 medical practitioners nationwide – equivalent to 6.2% of the profession in 2021-22 – including Health Professional Councils Authority (HPCA) and Office of the Health Ombudsman (OHO) data. The RACGP understands 6176 notifications were lodged directly with Ahpra about 4652 medical practitioners. The majority (61.7%) were lodged by a patient or member of the public, and 44.7% related to clinical care.

Of the 5874 notifications that were closed, around 3400 (58.2%) resulted in no further action, while only 0.8% resulted in a practitioner having their registration surrendered, suspended or cancelled. Just over 70% of all closed notifications were closed on average in less than six months.

While Ahpra's annual report made no mention of vexatious complaints, the NHPO [reports](#) that in 2021-22, it received only 14 complaints about potentially vexatious notifications being made and Ahpra's handling of these – compared to 17 complaints of the same nature the previous year.

Given the low number of complaints made to the NHPO in comparison to the volume of feedback received by the RACGP on perceived vexatious notifications, it appears practitioners might not be aware of the NHPO's role in dealing with complaints about Ahpra and its processes.

5. Defining vexatious notifications

RACGP members have expressed concern that Ahpra's definition of vexatious notifications is too narrow. The 2017 Ahpra commissioned research [Reducing, identifying and managing vexatious complaints](#) identified that vexatious complaints account for less than 1% of notifications received. However, our members report this figure is likely inaccurate and the true volume of vexatious notifications is considerably higher. They advise that this does not include many frivolous claims that are not classified as vexatious, and a clear and transparent approach is needed for dealing with these.

Concerns have also been raised about the literature review upon which the <1% figure is based, which members have described as limited. There is very little published independent evidence regarding the rate of vexatious or frivolous complaints against health practitioners across the world.

Given the potential harms of vexatious complaints, they must be treated with a high degree of sensitivity to avoid any adverse outcomes for practitioners who are not at fault. Our members suggest any complaint that is found meritless by other practitioners should be deemed vexatious.

6. Types of vexatious notifications and motivations

Our members note that in some cases, notifications made to Ahpra are warranted. However, the RACGP has been contacted by many GPs who feel that complaints made against them were vexatious.

Some of the reasons for these complaints* include:

- refusing to provide a mask exemption to a patient during the COVID-19 pandemic. The patient was denied entry to the practice and offered a telehealth consultation instead, however they refused
- GPs recommending that patients be vaccinated against COVID-19 in line with evidence and clinical/government guidelines
- not providing opioid prescriptions to patients. Multiple members report instances of patients 'doctor shopping' to get the medications they want which resulted in a complaint
- refusing to issue prescriptions for Schedule 8 medications where the medication was deemed not clinically relevant
- being accused of prescribing excessively and unnecessarily to patients by pharmacists
- complaints made in retaliation for reporting doctors who had prescribed inappropriately to drug affected patients
- being accused of bullying practice staff where the practitioner believes their actions did not constitute bullying
- calling out bad behaviour of colleagues
- telling a patient they could die if they do not undergo recommended tests/examinations
- showing patients alleged graphic images of skin conditions
- failing to diagnose an extremely rare condition sooner
- refusing to see a patient who made a fraudulent appointment
- refusing to see patients who arrived very late for appointments
- patients being unhappy with practice policy changes, such as the introduction of missed appointment fees or no longer offering longer appointments.

**Please note that some of these notifications were made prior to the introduction of the Ahpra framework in 2020. The RACGP is not in a position to verify claims made by members about perceived vexatious notifications, and it is therefore unclear if some of these examples would be excluded by the Ahpra framework. However, the feedback we have received indicates that the framework has not alleviated practitioner concerns about Ahpra's ability to filter vexatious complaints.*

6.1. Behaviour of complainants

As identified below in section 9, the notifications process in itself can result in irreparable damage to a practitioner's mental health and reputation. It also needs to be recognised, however, that vexatious notifications are often coupled with other inappropriate and concerning behaviour by complainants that creates an additional layer of stress for the practitioners and practices involved.

Our members report instances of perceived inappropriate and harmful behaviour by patients and other complainants, such as:

- violent and abusive behaviour towards GPs
- sending threatening emails
- providing private messages as evidence to Ahpra
- tampering with private messages
- lying about events that have occurred
- falsely accusing GPs of having inappropriate relationships with patients
- filing a complaint as retribution because the GP reported their colleague for inappropriate behaviour
- threatening to report GPs to Ahpra if the GP will not see the patient
- waiting more than 20 years to report a GP.

6.2. Third parties

In some situations, complaints are made by third parties who may not have been present during the consultation or have not engaged directly with the GP. Examples include:

- distant family relatives making complaints, with a family conflict being the motivating factor
- family members seeking access to a patient's medical records
- complaints resulting from disagreements around the decision-making capacity of patients with dementia
- employers wanting GPs to rescind medical certificates they have provided.

6.3. Motivating factors

Some members have expressed concerns around the influence of the media, and how perceived inaccurate or misleading reports might prompt patients to make a complaint about the GP. Concerns have also been raised about doctors who are politically active or who may hold contentious views on certain topics being at higher risk of vexatious notifications.

Other perceived factors that may prompt a complaint include:

- race
- gender
- being an international medical graduate (IMG)
- working in a rural or remote area
- managing more complex patients.

7. Management of vexatious notifications

Ahpra's process for managing vexatious notifications (and complaints more broadly) has significant consequences for our members. GPs have raised a multitude of concerns in relation to the process, and it appears that Ahpra's vexatious notifications framework has done little to address these. There is a prevailing sense that the process is unfair, lacks transparency, and can have devastating effects on practitioners who are not at fault.

Our members advise that:

- practitioners are assumed to be guilty until proven innocent

- the process is unnecessarily onerous for frivolous complaints
- there is no corroboration of the complaint or questioning of the patient
- practitioners are offered no firm timeline for a complaint to be investigated. The process is unreasonably long with unexplained delays
- complaints are very light on detail. Further information is rarely provided, even when the practitioner enquires about the progress of the complaint via their medical defence organisation (MDO)
- practitioners are advised of complaints over the phone, with no forewarning or explanation
- practitioners are given very little time to respond to a complaint (eg two weeks)
- Ahpra provides little support to practitioners who are subject to a notification
- Ahpra employees display little to no empathy when notifying doctors of a complaint over the phone and are dismissive of the stress and anxiety experienced by GPs
- engagement with Ahpra is often via a generic email address
- Ahpra tends to believe complaints raised by third parties who were not present during the consultation and have no access to clinical records
- delays in the Ahpra notifications process have meant that investigations continue after a GP has moved to a new practice, preventing them from accessing files from their old workplace needed to defend themselves
- character references and eyewitness accounts of incidents are disregarded
- notifications work to silence GPs. For example, they stop GPs reporting patients to Centrelink for incorrectly claiming payments because such actions may be perceived as retaliation
- the process is inconsistent, and it is unclear why some GPs are targeted
- Ahpra can be unresponsive, with medical indemnity insurers representing GPs needing to follow up
- there is no formal acknowledgement by Ahpra of no wrongdoing by the practitioner once the matter has been closed
- practitioners are expected to apologise and not contest the notification even if it is false and vexatious
- to avoid an incident being escalated to Ahpra, GPs have been advised by Ahpra that they should have performed an unnecessary cursory examination as a means of reassuring the patient
- they are told by lawyers that appeals are rarely successful.

8. Conditions imposed by Ahpra

RACGP members have described the conditions imposed by Ahpra in response to vexatious notifications as punitive. They can be imposed at short notice to whatever degree Ahpra deems appropriate.

Our members advise that:

- restrictions and conditions are made public before a proper investigation has been conducted, to the detriment of a practitioner's reputation for an undefined, indefinite amount of time. Alternatively, GPs are instructed to keep details of complaints confidential
- GPs are forced to accept harsh terms (eg admitting guilt, agreeing to counselling) in order to avoid a permanent record of the incident
- there is an attitude of 'no second chances' and immediate restrictions are imposed.

Though not related to vexatious notifications specifically, members advise that there is no attempt by Ahpra to contextualise conditions imposed on doctors. They could therefore appear quite alarming to a patient, colleague, friend, family member or potential employer.

While GPs can be subject to harsh restrictions while awaiting the outcome of a notification or after the matter has been resolved, there are very little – if any – repercussions for complainants. This is true even if the GP is not at fault. Our members consider this blatantly unfair – while patients should have an avenue to make complaints, there must be some deterrent to prevent future vexatious notifications being made.

The RACGP's view is that to release the name and details of a GP before the investigation or during a period of appeal is concluded will imply culpability and is a denial of natural justice.

9. Impact of vexatious notifications

The impacts of vexatious notifications on GPs are far-reaching and can have devastating consequences. One unfounded complaint against a practitioner can lead to irreparable reputational damage, the potential for financial ruin (as restrictions and suspensions may last well over 12 months), as well as significant mental health consequences. Ahpra's vexatious notifications framework acknowledges the significant impacts of vexatious notifications on practitioners and Ahpra's resources. These notifications also have the potential to damage public trust in the process and confidence in regulatory measures.

Examples of adverse outcomes reported by our members include:

- strain on marriage and home life
- a reduction in consultation hours while a response is prepared (eg members report spending between 24–36 hours responding to complaints that are subsequently dismissed), impacting access to care for other patients
- financial damage (eg being forced to sell their practice) in order to cover costs associated with responding to a notification
- lost employment while cases are investigated
- poor employment prospects due to the need to mention notifications in job applications. GPs report that vexatious notifications have reduced their employability in both clinical and non-clinical roles
- being unable to work in other countries
- feelings of being under attack, victimised and/or powerless
- emotional exhaustion – being unable to sleep at night, uncommunicative with friends and family, and prone to bouts of deep depression
- having suicidal thoughts or being driven to suicide
- wanting to leave general practice altogether or retire from medicine.

Losing a competent GP from the workforce due to poor handling of the notifications process is extremely concerning, particularly given current poor workforce projections in the sector. In areas of workforce need, such as rural and remote areas, the loss of a GP may leave whole communities without access to medical care.

10. Additional comments on Ahpra's vexatious notifications framework

Member feedback indicates that the framework:

- simply states how Ahpra should manage vexatious claims, but does not improve the process for managing and vetting them
- outlines no avenue of compensation for the practitioner involved, or deterrents/disincentives for the person making the vexatious complaint
- does not fully address the high level of distress for practitioners involved in the process.

11. Suggested improvements or reforms from members

RACGP members support an avenue for patient complaints, however there needs to be a greater balance between protecting patient safety and avoiding prematurely punishing practitioners before proper investigative processes have occurred. The RACGP's recommendations to improve the notifications process are outlined above in section 2. During our consultation with members on this topic, several suggestions surfaced which the NHPO may also wish to consider in regard to improvements and reforms to Ahpra's process for managing vexatious notifications, including:

- a robust process for filtering trivial or outlandish complaints
- an immediate stop to publishing details of restrictions imposed on practitioners prior to a proper investigative process being conducted and publishing complaints online before they are verified

- implementing a reasonable time limit for completing investigations if restrictions imposed on practitioners are to be upheld
- advising GPs to seek advice from their MDO before engaging with Ahpra
- dealing with lower tier complaints through a separate process
- implementing suitable deterrents/penalties for those who make complaints that are deemed to be vexatious
- conducting a royal commission into Ahpra and its processes
- reviewing the way complaints made by patients with serious mental health conditions are dealt with
- not requiring doctors to undergo training or similar processes if they are found not to be at fault
- charging a notification fee to complainants, which is non-refundable if the complaint is found to be vexatious
- requiring complaints to be made under statutory declaration, and ensuring complainants are aware of the penalties they face for making false declarations
- requiring cases that are not clearly in favour of the complainant to be assessed by a doctors-only council to determine if they should proceed further through Ahpra process.

12. Conclusion

The RACGP thanks the NHPO for the opportunity to respond to this consultation. As our submission highlights, this is a topic of significant interest and concern to our members.

We support measures aimed at reducing the impact of vexatious and frivolous notifications and are keen to contribute to any discussions aimed at strengthening the process and minimising adverse outcomes for GPs.

Should you have any queries or comments regarding the RACGP's submission, please contact Michelle Gonsalvez, National Manager – Policy and Advocacy on (03) 8699 0490 or via michelle.gonsalvez@racgp.org.au.