# C O R R E C T E D  V E R S I O N

**STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES**

**LEGISLATION COMMITTEE**

**Inquiry into the performance of the Australian Health Practitioner Regulation Agency**

Melbourne — 9 August 2013

Members

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| Ms G. Crozier | Ms J. Mikakos |
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| Ms C. Hartland | Mrs I. Peulich |
| Mr A. Elsbury | Mr M. Viney |

Participating members

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| Mr S. Leane | Mr S. Ramsay |

Chair: Ms G. Crozier
Deputy Chair: Mr M. Viney

Staff

Secretary: Mr R. Willis

Witnesses

Ms M. Draper, chief executive officer, and

Ms S. Biggar, senior project officer, Health Issues Centre.

**The CHAIR** — Good afternoon. I would like to welcome Ms Mary Draper, the chief executive officer of the Health Issues Centre, and Ms Susan Biggar, senior project officer at the Health Issues Centre. Welcome to you both this afternoon, and thank you for appearing before this committee. All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Legislative Council standing orders. All evidence is being recorded, and you will be provided with proof versions of the transcript within the next week. Transcripts will ultimately be made public and posted on the committee website. I now invite you to proceed with a brief opening statement in relation to your submission, which we have received — thank you very much for providing that — and then I will ask members of the committee to ask questions in relation to both your verbal evidence and your written submission. Thank you very much.

**Ms DRAPER** — Thank you very much, and thank you for inviting us to present. I will just, in a sense, reiterate the points we made in our submission. We basically have a fairly simple proposition, I think, to the committee. The Health Issues Centre is Victoria's health consumer organisation, and it is our role to ensure that a consumer voice is heard in health services and in policy. In approaching an issue like this, we look at it from the point of view of, in a sense, 'What are the consumer issues here?'. Broadly, in a sense, there are two: there are some public interest issues from a consumer point of view, and then there are the experiences of consumers who make a complaint or take up a concern about a practitioner to AHPRA and its registration boards.

From the public interest point of view, in a sense, broadly we support a national approach. We think it is in consumers' interests that, if a finding is found against a practitioner in one state, they are not able to set up shop in another state. I think the challenge, then, for AHPRA is that there is necessary transparency and to prove that that is effective in protecting consumer interest from that point of view.

What we want to particularly talk about to you is the experience of consumers who take a concern to registration boards through AHPRA. In 2003–04 the Department of Health, as part of a review of legislation at the time, commissioned the Health Issues Centre and another consultant to do some research about the experience of consumers who — I will put it this way — made a complaint to registration boards. We have outlined those findings briefly. The research consisted of interviews with about 60 people, and those 60 people were constructed in a way to get a fairly representative sample of people whose complaints went to different stages and also across the different registration boards. There were five registration boards that cooperated in this study.

In a sense, essentially, I think the issue that it identifies is that, from a consumer point of view, there is a misalignment between what consumers expect is going to happen and what the registration boards are actually set up to do, and I think you have probably seen some of that in some of the submissions you have had before you. There are those issues. Secondly, there are issues about timeliness and communication and people's understanding of the decisions that the registration boards make.

You will be aware that there has been a review of our health complaints legislation, and as part of that we have had a fairly good look at all the research that is around. There is a lot of research around that shows, in a sense, what consumers are looking for when they make a complaint or raise an issue about a practitioner. The first thing they are looking for is an acknowledgement, in a sense — a sincere, human acknowledgement — that they experienced harm in some form. Secondly, they are looking for a sincere apology — again, in a sense, a sort of human, sincere apology.

When people make a complaint, you often hear people saying that they are doing this to make sure that the same thing does not happen to other people, and the research backs that really strongly — that that is a really serious motivation. For people's complaints to be well managed, they need to know that that is the outcome. They need to know, in a sense, what changes have been recommended and what changes have been made and to know that that has happened. We are going to come back and talk about it later, but it is very difficult for consumers to make a complaint; it is not a very easy thing to do. We can perhaps come back to that later on.

There are some people who want compensation; they are either, in a sense, looking for compensation or they are looking to recover some costs. In the research that was done, one of the consumers talked about their experience with the registration board as part of their healing journey, and I think, in a sense, that is a good way of describing what consumers are looking for; it is part of healing. I guess the other thing is that when people fail to get those sorts of human responses at the beginning, then their concerns often will escalate to the financial

issues. Sometimes when people do that it is actually not for the money; it is going, 'If you will not take notice of me any other way, then I am going to make it hurt so that you will hear what I am saying'. There are, of course, still some people for whom the question of compensation is important.

From the research, what do we know matters? Similar across all health complaints, really, is timeliness — that the sooner something is resolved the better. People do not want to have this hanging around in their lives for a year, 18 months or two years. In some respects, in terms of effective complaint resolution, things that happen quickly are most effective. The second thing that people were looking for was communication. Research from 2004 said that the staff of the registration boards were very nice to deal with but that they always had to do the chasing. There was no process where people were actively getting back to them and letting them know how their concerns were going.

The next issue is that it be a fair process and that it be seen to be a fair process. When they look at the registration boards a lot of consumers feel that this is the profession looking after their own, despite the fact that all the registration boards have four consumers on them. Firstly, people are often not aware of that, and secondly, they still perceive that the numbers are lined up against them, as it were. There is the issue of a transparent and fair process. The last one is transparency — that it be very clear why decisions are made. Often people would get something to say 'No further action will be taken' or 'This is what happened', but there is no explanation about that.

When AHPRA and the national boards were put in place, there were some aspects of what had happened in Victoria that were not immediately taken up. One of those was that the Victorian medical board had led Australia in setting up a consumer advisory group. In fact the Health Issues Centre worked with the medical board on that. AHPRA has now set up a community reference group, and we welcome that because it provides an avenue to take up consumer issues. I notice that Victoria is quite well represented on that reference group.

**The CHAIR** — Ms Draper, could I interrupt you there? I know committee members have a number of questions. Do you have any concluding comments that you would like to make in relation to your presentation?

**Ms DRAPER** — Yes, just two. We have given copies of the research to both the CEO and state manager of AHPRA. Our simple proposition is that that research provides a good baseline about consumer experiences of registration boards and that, in evaluating how effective AHPRA is, this would be some good research to return to, as well as to look 10 years down the track at the national system to see whether it is working any better for consumers.

**The CHAIR** — Thank you for those concluding remarks. Ms Biggar, would you like to make any comments to the committee before I open it up to questions?

**Ms BIGGAR** — Yes. My only comment would be that I come here as a staff member from the Health Issues Centre but I am also wearing the hat of a consumer carer for the last 20 years over four different health systems. I cannot reiterate strongly enough how much consumers, patients and families feel that they are powerless in the system, that the more involved they are, the more enmeshed in it and the more they need and rely on the system, the more they feel they do not have a voice or do not have much power, control or information. That comes out very strongly through the review.

People are constantly saying, 'I didn't know what was going on; I didn't have information; I didn't know how to access information'. That is something you hear people say in hospitals when they are just trying to deal with their own care and even more so once they have had a negative experience. Whether it was legitimate or not, they feel they were harmed, and it is even more important that the process be seen to be fair, open and that they be informed. I think that is very important.

**The CHAIR** — Thank you for that. I will go to that point about those consumers who have a negative experience, as you described, and the confusion created by the complaints process due to the number of bodies they can go to, whether it be the health services commissioner, AHPRA or the board itself. Do you have a view on that confusion? From the consumer's perspective, should there be one body for the complaints process, understanding that there are various types of complaints? Is there a benefit to having a more streamlined process?

**Ms DRAPER** — In the submission that the Health Issues Centre made for the review of the complaints legislation — the report is with the minister so I cannot talk about that — we argued that there needed to be parallel handling. At the moment if somebody comes through the health services commissioner and they decide there is a professional issue, they will refer it to AHPRA, the complaint goes on hold, and it might stay like that for quite a long time. We argue that the health services commissioner should continue to manage the complaints process. That would go quite a long way to addressing this confusion in the role, because the boards do have a role — that is their role — but there is still a complaint.

**The CHAIR** — We have certainly heard evidence to back up what you said. It does stop when it is passed onto AHPRA, and the consumer has no idea what is going on; in fact they had not known that their information had been passed on to AHPRA.

**Ms DRAPER** — That is right.

**Ms BIGGAR** — Often their expectations or what they were hoping to get out of the process really cannot be achieved through AHPRA. Often that would need to be achieved — reconciliation or some other expectation they might have — through the health services commissioner. So even if they come out with a particular action from AHPRA, they do not necessarily get what they need from the process.

**Ms MIKAKOS** — Following on from that comment, what suggestions or advice would you give us in terms of what could be done at the front end of the process to better inform consumers about what the likely outcomes are going to be or what the types of issues are that AHPRA is going to be dealing with, and directing them to consider other alternatives or giving them the range of alternatives? What practical things could happen at the start of the process so that people know that these are the options?

**Ms DRAPER** — AHPRA has produced a document for notifiers that provides some clarity about what their role is. That has been referred to the committee reference group to have a further look at. But I think some of those things will be addressed when the review of the Victorian legislation is implemented, because the role of the health services commissioner is quite critical. One of the challenges is to make people aware that organisations like that are there. People often do not know that.

It is a little bit easier for people who go to health services, because health services have ways — of various quality — of managing complaints, and it is the front line. But for people who go to private practitioners, often the health services commissioner or registration board is the first line. So I think it is about strengthening the role of the health services commissioner's office and having good information linking into that as a source of advice for consumers about what to do and where to go.

**Ms BIGGAR** — Having read quite a lot of this I still struggle with thinking, 'If I was coming at this, if I had a complaint, how would I weigh up these two organisations?'. I still wonder whether or not, even if there is a parallel process, there should be one source of communication to the consumer — that it just be the health services commissioner — and that this process should run its course. It seems to me that one of the things about mixed expectations is that the first focus for AHPRA is not about that particular consumer; it is about the practitioner, but the consumer comes into it assuming that it is about them and their experience. With the health services commissioner it is a bit more about the consumer and their experience. I think it is tricky. It is a very hard thing for someone from the outside to understand.

**Ms MIKAKOS** — So if a consumer were to contact your organisation, your advice would be to go to the health services commissioner in the first instance?

**Ms DRAPER** — We do get quite a few people who ring us, and we would normally refer them to the health services commissioner. At some stage I anticipate we will also do that on our website; we will provide information on our website that directs people there.

**Mr ELSBURY** — Just in relation to AHPRA's approach being about the practitioner and looking at practitioners, some of the evidence we have received today has been a little bit scathing of how they treat the complainant — the patient — when they do make a complaint because they feel that they are completely shut out of the process. Do you feel that there is a need for AHPRA to do some work on actually making someone feel that they are included and also listening to what that person is saying rather than just saying, 'We are doing our investigation. Keep out of the way'?

**Ms DRAPER** — Yes, I think that is absolutely right. It is one thing to be clear about what AHPRA and the boards can and cannot do — I think that is useful — but they need to, in a sense, understand that when consumers come to them, this is where they are coming from, and they need to manage that. It is reasonable for consumers to expect them to manage that.

**Mr ELSBURY** — On the converse of that as well, we are talking about people's health. As you can understand, people get emotional whenever it is about their health — if something has gone completely wrong with surgery or they feel that something has gone completely awry with treatment they have been receiving. How would you suggest that there is some sort of circuit-breaker between the emotion of what is happening to someone and AHPRA actually getting information that is of use to an investigation?

**Ms DRAPER** — One of the comments in the research was that people, in a sense, found themselves in an adversarial situation and did not actually expect that and were not looking for that. This again is the advantage of keeping the complaint in the complaints management system as well. I have worked in a hospital that had a very active complaints management process, and, in a sense, when issues like that came as a complaint or a concern, the first thing we would usually organise was to sit down with the clinicians involved, with the consumer and their family and the support of the consumer advocate and, in a sense, have a talk about what had happened. Sometimes that may address the issues or at least clarify the issues. I think you need, in a sense — if you think that what people are looking for is acknowledgement or an apology, I think the opportunity to actually meet with them in a non-adversarial way with the clinicians is important.

**Mr ELSBURY** — Considering that we are talking about things like an apology in some instances and maybe a small amount of compensation to actually just cover the cost of whatever has had to happen for remedial treatment or something along those lines, do you think it is a bit of a sledgehammer to crack a walnut, then — the AHPRA mechanism? It is a big, heavy beast that takes a very long time to do its job.

**Ms DRAPER** — Yes.

**Mr ELSBURY** — Is there some leeway, perhaps, that we could be looking at — some sort of state mechanism that would be able to be there for the minor cases? But when we are talking about something of a serious nature — we are talking about a practitioner's registration — that is perhaps where AHPRA could come in.

**Ms BIGGAR** — The only thing I would say is that when there is a serious case, then it is even more important that there be that parallel follow-up. We do not have to say, 'This is a really serious case, so for the sake of the practitioner we need to run this through AHPRA'. We need to then think about what the consumer's journey is on that. It has been even more traumatic for them, presumably, so there would have to be a very clear support process. I think a consumer cannot imagine that they would not be asked their story; it has to, in some place, happen, I think. They have to be asked what their view is on it.

**Mr O'BRIEN** — Thank you for your evidence and your summary of the things that you believe the consumers want, from your experience — the acknowledgement, the sincere apology and maybe compensation but particularly timeliness and communication of the whole process. I think you emphasised fairness as well. If that is the ideal, if you like, from your experience, of what can happen in hospitals and what should happen for medical complaints, how far presently do you think AHPRA is from conducting itself along those lines?

**Ms DRAPER** — I cannot tell you that, because we do not know, but I did go to the consumer consultation that AHPRA held earlier in the year. My sense is that, in a sense, some of those same issues are there. I think AHPRA does now understand that those issues are there, so I suppose it is — —

**Mr O'BRIEN** — So it has emerged and has these problems, and now it is aware of them and how it deals with them.

**Ms DRAPER** — Watch this space. Yes.

**Mr O'BRIEN** — Were you aware of the system that existed before the national scheme in terms of the state model? Did you feel that it was conducted more along those lines? Maybe AHPRA can get there one day, but it has to now deal with — —

**Ms DRAPER** — I think that some advances have been made in Victoria. It came out of that review process back in 2004 that I think we had the medical board in particular kind of leading. There were some issues about — the Victorian boards had a look at how you address the issue of the perception that it is fair by sometimes appointing a chair that was not a clinician and that there was, in a sense, a legal representative. I think these are all issues still on the table.

**Mr O'BRIEN** — You mentioned the transparency and the explanation as very important to a fair process.

**Ms DRAPER** — Yes.

**Mr O'BRIEN** — Mr Elsbury alluded to situations where complainants, or patients, have not been given any explanation at all as to what was to happen, particularly if something is not going to be investigated, effectively. I might be over summarising there, but could you just elaborate on the importance of that communication, again with any specific examples of either good or bad conduct you can identify?

**Ms DRAPER** — I am not sure that I can answer that specifically. I think quite a high proportion of the referrals to AHPRA do not go past the first stage, and they are the ones where you do sometimes wonder, in a sense, if they really need to go down that track. Somebody will just get back something that says, 'No further action'; it does not actually say why there is no further action.

I think we have focused, in a way, on perhaps the end that might be well addressed by apology and acknowledgement, but we also need to remember that at the heavy end, as it were, there are serious issues of practitioner behaviour and conduct and serious issues of harm to consumers. Particularly that end, I think, is probably the end at which there most needs to be —

**Mr O'BRIEN** — Improvement.

**Ms DRAPER** — really good communication about what is happening here, what the decisions are and why the decisions go that way.

In the research, people did talk about — in some respects the most satisfied people were sometimes the ones that did actually go the whole way to a tribunal. They would sometimes say, 'We understood why that decision was made; we are not completely happy with it, but we understand why it was made, and we understand that the board does not have power to do this'. In a sense I think having that kind of understanding means that from the consumer's point of view in terms of getting — at least they are taking something away. They are not feeling like they just batted their head up against a bit of a brick wall.

**Ms BIGGAR** — I think one of the difficult things is that if no further action is taken — if you go to the health services commissioner, you are moved over to AHPRA and no further action is taken — that is really the end of the road for your complaint. There is nothing else you can do, and that might not have been what you wanted anyway. So you have ended up in a place where there is no opportunity for reconciliation, there is no opportunity for sitting down and there is no further process, and I think that is difficult. I think also, in the view of appearing fair, that is not the same with a practitioner. They can appeal a judgement; a notifier cannot. There may be good reason for that, but I think from the perspective of being seen to be fair it might feel a little bit for the consumer like it is not weighed in their favour or is not moving in their favour.

**Ms DRAPER** — I should also say, perhaps, that there is some liaison in place between AHPRA and the health services commissioner, and one of the ex-staff of the health services commissioner is in AHPRA — so with a good understanding, in some respects, of how the two bodies work.

**The CHAIR** — Thank you for that clarification.

**Mrs PEULICH** — I have three quick questions. The last paragraph of the document we have before us refers to the three-year review of AHPRA as well as a study of complaints instigated by the Victorian Department of Health. Are they two separate studies, or is one a part of the other?

**Ms DRAPER** — No, the study that was undertaken was a study undertaken in 2004. So what we are essentially proposing is in fact that study be used as the basis — —

**Mrs PEULICH** — Be done at a national level.

**Ms DRAPER** — Be done nationally as the basis. It would give AHPRA, I think, a good sense of what needs to be addressed.

**Mrs PEULICH** — An insight into where they are?

**Ms DRAPER** — Yes.

**Mrs PEULICH** — In view of the fact that a notifier cannot take action further once a conclusion has been reached and might involve comments such as, 'No further action will be taken', other professional bodies are required to stipulate a reason. Do you think they should be mandated to do so? Obviously you are advocating either a form of appeal to a notifier or a parallel system, one that deals with complaints and the other one that deals with registration and disciplinary matters for medical practitioners with a good dose of transparency and communication between those two parallel systems. Is that basically what you are advocating?

**Ms DRAPER** — Yes, and I think the capacity of the health services commissioner to continue to manage the complaint aspect of it and in a sense provide an element of support to the consumer as they deal with AHPRA.

**Mrs PEULICH** — So essentially the bottom line is there is a conflict of interest.

**Ms DRAPER** — Yes.

**Mrs PEULICH** — And that is basically what you are saying — and legitimately.

**Ms DRAPER** — Yes.

**Mrs PEULICH** — There is a different perspective that is brought to the — —

**Ms DRAPER** — That is right.

**Ms BIGGAR** — And there are different expectations about what the consumer hopes to achieve from the process, and they are probably not the right expectations based on the way the organisations are set up currently.

**Mrs PEULICH** — So when AHPRA says no further action is being taken should they be required to stipulate a reason?

**Ms DRAPER** — Yes.

**The CHAIR** — I do not believe there are any further questions from the committee, so on behalf of the committee I thank you both for appearing before us this afternoon and providing the evidence you have. It has been most helpful. Thank you very much indeed.

**Ms DRAPER** — Thank you.

**Witnesses withdrew.**