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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Witnesses

Professor D. Castle, chair, Victorian branch,

Ms C. Kalimniou, legal officer, and

Ms J. Cox, policy and projects officer, Royal Australian and New Zealand College of Psychiatrists.

The CHAIR — Good afternoon. This afternoon's hearings are in relation to the inquiry into the performance of the Australian Health Practitioner Regulation Agency. I would like to welcome Ms Joanne Cox from the Royal Australian and New Zealand College of Psychiatrists; Professor David Castle, the chair of the Victorian branch of the college; and Ms Callie Kalimniou legal officer, from the college. Thank you all for being with us this afternoon; we do appreciate your time.

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's website. I now invite you to proceed with a brief opening statement, and then I will ask members of the committee to ask questions in relation to both your verbal evidence and your written submission, which you have provided to us. Thank you, again, for being with us this afternoon.

Prof. CASTLE — Thank you very much for the opportunity to address you. I will speak to the document which has been provided to you and just run you through the main issues which we have, from a psychiatric perspective, obviously. There is overlap with other disciplines within medicine more broadly, but I will walk you through what our particular concerns and issues are. I should say at the outset, though, that overall our dealings with AHPRA have undoubtedly improved over the last period of time. I think there were quite a lot of teething issues initially, but generally the college has found that with dialogue there is a more effective working relationship. But there are undoubtedly still ongoing issues.

One of them is the fees. Inevitably this is something which we are hearing from our fellows: that the fees are substantially more than they were under the old scheme. It is not quite clear why that is the case. It is not as though we get substantially bigger service which is reflected in the higher fees.

Another perhaps more important point in terms of the overall functioning of AHPRA with regard to our college is concerns about people who are fellows of the college who might be under investigation for a complaint. As you would no doubt be aware, there a number of ways in which complaints can be brought. There is some lack of clarity in many people's minds about this, I should say, because I had the experience of a patient very recently who wanted to bring a complaint and was not sure where to take that. So there is some issue about that.

But there is also an issue about people talking to each other or groups talking to each other about complaints and complaints procedures and outcomes. Our college was finding that we were sometimes only advised very late in the piece about a process or the progress of a complaint against a fellow. We would really request that AHPRA apprise us much earlier in the piece and keep us apprised of the process and resolution, or lack of resolution, of a complaint as one goes along. That is partly just so we know but also partly so that we can be aware of particular fellows having to go through certain complaints procedures and our being able to support them as might be appropriate under our college duties as well.

There is an issue about AHPRA — because the register is a live register, past conditions are not recorded on a practitioner's registration, and there might be inequity in terms of the record, in terms of individuals. We obviously have concerns about stress and the impacts of the stress of going through a complaint procedure on our colleagues.

In Victoria the state government does provide moneys to support the Victorian doctors support scheme, which does offer support, but as far as I am aware, this is not a universal thing across different states. I know that this is a Victorian inquiry but it is something which I think should be addressed more broadly. I am not sure, with the Victorian doctors support scheme, as to what their waiting lists and so forth are and how well they are picking up on offering support or are able to offer support to people going through some of these procedures, because they can be extremely stressful and emotionally difficult to deal with.

Another thing, which I have alluded to already, is the complexity of the different groupings and organisations involved with things such as complaints. For example, we would have our college, the Chief Psychiatrist's office, the Office of the Health Services Commissioner and VCAT, amongst others. There are two issues here: one is for people to know where to go and where to follow; the other is the communication between these different groups, and apropos of that is the lack of consistency across the different states in terms of these

processes. It would seem that there would be utility in having a clear pathway for these and for people to know how the different groupings interface with each other.

We do still have ongoing concerns about inconsistencies between the states in terms of the processes for registration and the management of registration. I should say that the time it takes for doctors to be registered is really unacceptable in many ways. For example, we have a deficit in one of the services we are associated with. We have a doctor who is highly competent, who is registered with another service and wishes to move to our service. It is taking six weeks before we can get her registered.

The recommendations are: to review the fees and services; to try to enhance and improve the time frame for both the handling of complaints and the registration of practitioners as well as the transparency of the review and the communication between particularly our college, because that is the group we are speaking on behalf of, and AHPRA; a clear process for handling such complaints; psychological support services for those under stress; and to ensure that relevant agencies are collaborating on improving public knowledge and practitioner awareness of how all these agencies work, because it is quite complex.

I should say that I did take something to AHPRA recently on behalf of a patient and had a very complicated, detailed letter back in which I found it very difficult to work out all of the different things which they were saying — that they can do and they cannot do. If I was finding difficulty, I would say most people would be finding difficulty. That is the gist of our submission, and we thank you for the opportunity to present and discuss that. I am happy to take questions.

The CHAIR — Thank you. I ask Ms Cox and Ms Kalimniou if they would like to make any comment to the committee.

Ms KALIMNIOU — Not at this stage.

Ms COX — No.

Prof. CASTLE — They are on a vow of silence.

The CHAIR — That is quite all right; thank you for being here. I would like to take up that last point you raised in relation to the assistance you were giving with a complaint — from a patient, I take it?

Prof. CASTLE — Yes.

The CHAIR — That you took that to AHPRA and you received a complex, detailed letter back — to yourself or to the patient?

Prof. CASTLE — I had taken — I will not go into the details for obvious reasons, but essentially it was a patient who was concerned about a certain procedure which she had undergone and thought that there was an issue. She was very reluctant to take this up directly with the authorities because she did not want to be named in anything, so she asked me whether I could take it up as a broad issue. So I framed it as a broad issue. Really the response from them was very dense — very detailed, I should say — but quite difficult to penetrate and to know exactly where to go with.

The CHAIR — Thank you. I take it from the start of your answer that you would not like that document to be given as — —

Prof. CASTLE — I am not in a position to do that; it is a very sensitive issue about a very sensitive procedure.

The CHAIR — I completely understand, but it does highlight the issue in relation to the complaints process, I suppose, and the responses that are being received from AHPRA. So if you are having difficulty interpreting what they are saying, imagine a patient who is perhaps confused.

Prof. CASTLE — That is exactly the point I am trying to make.

The CHAIR — Right. Thank you. Just before I go to other members, you talked about the lack of consistency across the states, and you raised that in relation to registration, or you mentioned the registration

process and other elements. You also mentioned that there was a delay in the time for a particular practitioner to be registered — up to six weeks, I think.

Prof. CASTLE — Yes.

The CHAIR — Prior to AHPRA being in operation, how long would it have taken under the old scheme for that individual to have been registered?

Prof. CASTLE — It is difficult to answer that because different people are dealt with differently. My own experience when I registered here with the old medical practitioners board was that it was extremely quick. I was transferring across from a different state, and that was done very quickly for me. But I think the point of it, and the point I am trying to make, is that services obviously need competent medical practitioners to deliver service; we do have an identified gap in a service. We have an identified individual who has been working in another service within Victoria and doing so very competently. It is in fact somebody we have gone out of our way to recruit to our service and who has indicated she wants to come to our service. Why there should be any delay in this is quite remarkable.

The CHAIR — This is within the same jurisdiction you are talking about, not across state borders?

Prof. CASTLE — She is a foreign-trained doctor, and this is one of the issues about foreign-trained doctors.

The CHAIR — But she has been operating as a foreign-trained doctor in a service within Victoria?

Prof. CASTLE — Yes.

The CHAIR — And to come across to another service within Victoria it took a six-week period?

Prof. CASTLE — We are still in the middle of it, so she cannot work at the moment, which is a bit beyond us, I must admit.

Mrs PEULICH — Thank you, Professor. I will go straight down to the bottom line. You make a number of recommendations — six in fact — really focusing on the outcomes that you want as improvements for your members and your patients. In terms of implications of machinery changes, given your knowledge, how could these be translated into some concrete changes that would actually deliver these outcomes; do you have a view?

Prof. CASTLE — I think that one of the things is it is confusing to people within and outside of the disciplines for whom AHPRA has responsibility, if you like, and how the different components of this complex machine actually work. I think the hope had been — certainly my hope was — that it was going to be an easy, straightforward process and one obviously would not have to re-register with every state.

I will tell you my personal history, if you are interested. I came here from abroad. I was in WA for a while. I had a register there, and I had a register in Victoria. It always seemed a bit peculiar to me that that process had to be undertaken. So it seemed a great opportunity to streamline things — that is, in terms of registration. It also seemed a nice opportunity to be able to streamline where you take complaints around colleagues, if patients wish to take complaints, or general issues about the profession. If I can give you an example of that, which does not speak quite to your point but I think gives an indication about the sort of thing I would like to see streamlined, it is an issue, for example, about certain sub-disciplines within medicine and surgery being able to advertise in certain ways direct to the public. I actually do have an issue with that. I have taken that to AHPRA, and they have essentially said, 'Not our business either'. So it is not what I personally had hoped for: a one-stop shop, and streamlined — quick.

Mrs PEULICH — And if I may just ask a supplementary, what we have received is evidence from a number of witnesses saying that the new sort of national body has been slow and that having all of the health ministers sitting around the table without a single person having the ultimate responsibility for making a decision also means that you end up having indecision. Notwithstanding some of the positive outcomes that your profession wants to see as well as others, previously a state-based body was faster in making those decisions. Coming back to the machinery, how could we achieve some of the benefits that you have alluded to but work towards resolving some of the sluggishness, perhaps, of a national body?

Prof. CASTLE — I think there would generally be the perception at least that it is a slower machine, and where you enter the machine and what you can put into the machine for a desired outcome are not clear. So I think some articulation by all the different groupings of how they actually integrate with each other and what you take to whom in what form, I think, would be very useful just as an educational process. I do not know if Callie wants to comment about some of the minutiae.

Ms KALIMNIOU — I think in terms of the progression forward the experience that the college certainly has had in dealing with AHPRA on a day-to-day basis is the lack of consistency with the state. A clear process would outline how each staff member internally would deal with, for example, an investigation or the stages in a complaint, which relevant parties need to be consulted with, advised et cetera. From our experience there is little consistency within the states or even nationally. The college is sometimes informed of the outcome of an investigation or notified, and I understand that there is an internal process, but our experience is that it is not followed appropriately, correctly or consistently across the board or within investigations. I think that once we have a clear process that is adhered to and the relevant parties are informed of that process as well as the public then some of these issues in terms of consistency and streamlining may be resolved.

Mrs PEULICH — So just one last question: the implications of that lack of consistency and the sluggishness for your members, for patients and for the public — are you able to just tease those out?

Ms KALIMNIOU — For example, we have noticed that for similar situations, for a similar nature of complaint, there is an inappropriateness or an inconsistency in the outcome. There is an inconsistency in the conditions or undertakings being placed on an individual practitioner. So for example, if there is a boundary violation in Queensland, we have noticed that there is an inconsistency within the time of the punishment, for want of a better word, to that of someone in Victoria for example. So there is a bit of an inconsistency between the outcomes of the investigations.

We have also noticed that in terms of the international medical graduates, touching on what Professor Castle was mentioning before, there is an inconsistency in how the national law is being applied. We have noticed certain states have applied a more literal approach of the national law in terms of the four-year rule that is in the legislation as opposed to other states, which take into consideration other factors, including the demand for individuals to fill the lack of professionals in services et cetera, but that has caused issues for our international medical graduates in terms of losing registration and then having to begin from scratch.

Mr ELSBURY — You said there was a differentiation in time between Queensland and Victoria with regard to when an outcome is derived from an investigation. Can you give me some idea of what the time frames are that you are experiencing for your members here in Victoria?

Ms KALIMNIOU — We have been made aware, usually by our members informing the college, that there is an investigation taking place and that depending on the nature of the investigation it could be anywhere from a few months to a few years.

Mr ELSBURY — Okay, and what was your expectation under the old regime of investigation? What would you have seen as being a normal time frame?

Ms KALIMNIOU — I would not be able to comment on the old regime, because I was not at the college at the time. However, my understanding of when the college was investigating some of these complaints, which was a role of the college at the time, is that these things were usually dealt with within some months, depending of course on the nature of the complaint.

The CHAIR — Could I have some clarification? Did you say that your members are notifying the college that they are under investigation?

Prof. CASTLE — There is no explicit process for them to have to do that.

The CHAIR — But they are, and AHPRA is the one that should be notifying you?

Prof. CASTLE — Callie might comment again about this, but my understanding is that after feedback to AHPRA from the college that information is flowing better, but all of this should be absolutely clear and explicit in terms of an understanding and the time frame for that. If AHPRA is notified about something that is

going to impinge upon one of our fellows, I think it is reasonable for our college to know about that pretty quick smart and also about the process of it. And that is not done consistently and it is not clearly articulated when they do that in that sort of way.

The CHAIR — Thank you for that.

Mr O'BRIEN — Thank you for coming. One part of your submission I would just like to draw out — and you have touched upon this — is that you say in the final full paragraph:

> There are also inconsistencies between the states regarding the way in which they manage the registration, investigation and management of practitioners.

And you have given a range of medical practitioners, including trainees. Could you just highlight by way of example or further explanation what some of those inconsistencies are? You have touched upon some with complaints. I know Ms Cox had a hand in preparing this.

Ms KALIMNIOU — From the college's understanding and experiences in this, the inconsistencies mentioned were in relation to complaints and also the application of the legislation in terms of international medical graduates. Certain things like that have been highlighted in those key areas, and that is basically the inconsistencies that we were able to see in terms of the complaint handling, the investigations and the auditing of practitioners who have conditions on their registration. Some sections in some states are more proactive than others in terms of informing the college, but as Professor Castle mentioned, that is also because the college has been actively engaged with AHPRA in recent years. We have had conversations with them and we attempt to keep on top of the staff who are relevant to each state, whether it is the directors of notifications or the directors of registrations in each state. We are able to work on that relationship with them to be able to get that information as required.

Mr O'BRIEN — You mentioned in your example there are conditions on practitioners. That can be a bit of a sensitive area because it can raise concerns about public safety, which is one of our terms of reference for this inquiry. We have heard evidence in relation to overseas trained doctors that sometimes there is not enough regulation, and in a sense there are underqualified doctors being put to the practice, and other times, particularly for specialties, there is an over-bureaucratic response: it is stifling doctors coming in in sufficient time, and that may be part of the inconsistency problem. But particularly in relation to the risks to the public, are you able to identify from those inconsistencies any dangers that may result from that sort of approach?

Ms KALIMNIOU — As far as I am aware, we have had no concerns in terms of public safety for our members or affiliate members.

Prof. CASTLE — I concur.

Mr O'BRIEN — Okay.

Prof. CASTLE — Sorry, just to pick up on this, I think there is consistency not just for what AHPRA do but what we do as a college, because sometimes complaints come directly to the college. We should be very clear what happens and with whom one communicates at what stage. I think all of that would make a lot of sense to have. I am a great believer in simple sheets of A4 paper which make very clear who does what and when.

Mr O'BRIEN — Yes. So, for example, if a complaint comes to your college directly, when and how do you involve AHPRA? Could you tell us?

Prof. CASTLE — I am not sure that this is written down anywhere and exactly the form in which this is done. As Callie says, we have had lots of discussions now with AHPRA, so we are getting better at sharing this information mutually early on in the piece, but I think it would help everybody if it were very clear.

Mr O'BRIEN — I am going to take you, then, to the reverse of that — if a complaint is made to AHPRA. I think you have said this in answer to the Chair. This has been changing, or evolving, through the process. Perhaps, then, if you could take us to how it existed at the start and to where it is at now in terms of your notification and how you would like to be involved.

Prof. CASTLE — I will ask Callie to answer because she has been closer to this than I have. I have only recently taken on this role, so I lack some of that history.

Mr O'BRIEN — Sure.

Mrs PEULICH — It is called the deep end of the pool!

Ms KALIMNIOU — If I might, just in terms of touching on the question you raised before, the college does have a complaints handling procedure. Any complaint that is received from the public we do refer to AHPRA almost immediately. We are very aware that we do not have the investigative powers to be able to investigate matters such as those involving patients or the practice of an individual doctor, so we do refer them either to the appropriate health services commissioner in the state or to AHPRA, but there is a little bit of confusion, both for the college and for patients, as to which of those two bodies — or sometimes three — each individual complaint should be referred to. We are trying to refer each individual complainant to the most appropriate body because we are aware that these processes are quite cumbersome and tedious and stressful for the public, so we do try to refer those complaints to the most appropriate body each time.

Mr O'BRIEN — Just to answer the reverse situation, then: as far as you are aware, what process has been in place through the course in relation to complaints that went directly to AHPRA and maybe should have gone to you — or you at least had notice of their existence — and what would you like to see happen there, I suppose?

Ms KALIMNIOU — I think in terms of the college we would just like some consistency between the states, and we would be made aware of these issues as appropriate. Once a complaint has been deemed to have some basis, an investigation will occur. We believe it is important to be notified, at least at a very basic level, that an investigation will be occurring. On many occasions fellows or trainees are representing the college — or supervisors or directors of training — in different services, and it would be important for us to be made aware if there are concerns or if there are any concerns that would relate to our training and education or provision of education and training and also if there are any conditions, undertakings, notations, suspensions or removal at the end of that. We are on very few occasions notified that an investigation has ceased. Again, we are seeing more information coming through AHPRA's representatives to the college, but we would like some consistency.

Mr O'BRIEN — Thank you.

The CHAIR — Could I ask: you said you would like those complaints to go to the most appropriate body. Do you have a view of which body that should be?

Ms KALIMNIOU — The complaints vary. The complaint calls that we get to the college vary from fees to Medicare issues to practice concerns, and, as it stands, I believe there are bodies that are able to cover that. If there is a miscommunication with a practitioner, we do suggest that they go to the commissioners because that is more of an informal process, but if there are grave concerns about the practice or they do not believe that they or their family members are being treated appropriately, we definitely do refer them to AHPRA because they are the most appropriate body to be able to deal with these issues.

The CHAIR — Thank you. If a complaint goes directly to the health services commissioner or directly to AHPRA and you are not notified and there is a delay in that process — if it is of significance, and we have heard evidence to suggest that some of these complaints are significant — and there is a time delay, in your experience is there potential to put the public at risk of various practitioners you might have as members of the college?

Prof. CASTLE — We are not aware of any untoward events which have occurred, but, clearly, lack of communication is not going to assist the process for the complainant or for anybody else.

The CHAIR — And that was your point earlier.

Prof. CASTLE — Yes. Also, I should say specifically about trainees that we have a lot of trainees, and if there are issues with them, that would be very important because there are issues about, then, their support, which we can provide to them, and so forth, because they are often young, vulnerable individuals who do need a lot of support. Being told earlier on in the piece would be helpful for everybody.

Mr ELSBURY — Just in relation to when an investigation is undertaken by AHPRA, we have heard some evidence that a complainant feels that they are not really empowered when there is an investigation under way. I am just wondering what the points of view of your members are when an investigation is under way — how they feel when an investigation is being undertaken. I know it is a problem because of the extended period of time, but when a complainant puts forward their case and says, 'I've had an issue here', but then there is limited opportunity to actually provide information, how does your membership base feel when they are under investigation?

Prof. CASTLE — I have not canvassed them and, happily, have not been through this myself. Suffice to say — and it touches on something I pointed out earlier around this — for those individuals this is an extremely stressful time. I think, again, it would be enormously helpful for people to have certainty about certain time lines, because psychiatrists are very conscious about the fact that uncertainty is enormously difficult to deal with. If you have a complaint against you and you know what the process is and you know who is going to follow it up and what time frame that is adhered to — or, if it is not going to be adhered to, that there is some communication as to why — it is enormously easier to deal with it at an emotional level.

Mr ELSBURY — Thank you.

The CHAIR — I now believe there are no further questions, so on behalf of the committee I thank all of you for being before us this afternoon. Your evidence has been most helpful, and we do appreciate your time. Thank you very much indeed.

Prof. CASTLE — Thank you very much for the opportunity.

Witnesses withdrew.