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Ms Richelle McCausland
National Health Practitioner Ombudsman
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Submitted via email: submissions@nhpo.gov.au

Dear Ms McCausland

APS Submission to the National Health Practitioner Ombudsman's Independent Review into Ahpra's Framework for identifying and dealing with vexatious notifications

The Australian Psychological Society (APS) is the peak body for psychology in Australia, representing more than 28,000 members nationally. We welcome the opportunity to provide a submission to the National Health Practitioner Ombudsman's (NHPO) independent review into Ahpra's Framework (the Framework) for identifying and dealing with vexatious notifications.

The APS acknowledges the need for a balance between ensuring that notifiers are encouraged to raise their concerns and providing procedural fairness for practitioners who are the subject of a notification. In addition, we recognise the considerable work undertaken by Ahpra staff in dealing with and managing all notifications, not just those assessed as vexatious.

In this submission, we have given voice to psychologists' experience of their interactions with Ahpra when having received a notification that is determined as vexatious in nature. We have identified key themes from our internal consultation with members and from information received from members via our Professional Advisory Service.

The APS presumes that members are only likely to contact us when they require support or assistance or have had a negative experience as a result of a vexatious notification. Notwithstanding this, our hope is that the information contained in this submission will serve to assist the NHPO in their review of the Framework for identifying and dealing with vexatious notifications.

The feedback we have received from members regarding their experience of being the subject of a vexatious notification is particularly relevant to the following aspects of the review:

- The application/implementation of the Framework.
- Ahpra's approach to identifying and managing vexatious notifications that are not working well.
- The experience of health practitioners involved in a vexatious notification.
- Potential harms or adverse outcomes associated with vexatious notifications and their management.

- The adequacy of the provision in the National Law making it an offence for an individual or organisation to knowingly providing false or misleading information or documents to an Ahpra investigator.
- Any suggestions for improvements or reforms in relation to how Ahpra identifies or manages vexatious notifications.

APS members who have had contact with our Professional Advisory Service, or other teams within the APS, consistently report distress resulting from interactions with Ahpra in response to vexatious notifications, and describe challenging aspects of the experience, for example:

Inefficient processes which result in increased time pressure placed on members to respond to vexatious notifications. Members commonly report not being given sufficient time to respond to notifications from Ahpra. One member reported that despite the original notification being received by Ahpra in September 2021, they were not notified until 14 December 2021, and were asked to provide a response before Christmas.

Contradictory information provided in verbal and written exchanges with Ahpra, e.g., verbal statements made by Ahpra staff contradicting information in letters regarding the definition of, and threshold for, a vexatious notification.

The lack of a clear definition for vexatious claims (this is acknowledged in the Framework in terms of the National Law) and the ambivalence around the threshold for determining whether a notification is vexatious (or simply 'frivolous') and naming it as such in a transparent way for the practitioner. APS members have indicated that they would like vexatious complaints to be clearly identified as such by Ahpra.

The lack of information and the lack of transparency in the process and decision-making provided by Ahpra to assist the practitioner to understand the reasons for the final decision, with "no natural justice or procedural fairness" according to members who have experienced a vexatious notification. Practitioners are asked to reflect on their practice and justify their actions before any allegations of wrongdoing have been sustained.

A lack of respectful engagement from Ahpra, for example, with members reporting that they were referred to in the third person in correspondence from Ahpra.

No redress for the practitioner with either Ahpra or the complainant, i.e., no apology or acknowledgement of the distress that the matter may have caused the practitioner. In addition, members report that the National Law does not adequately account for it to be an offence for an individual or organisation to knowingly providing false or misleading information or documents to an Ahpra investigator, with one member stating that no action was taken against a complainant despite the notification being treated as vexatious.

In addition, APS members have reported experiencing significant depression and anxiety in response to vexatious notifications, and receiving limited support while the notification is being processed and an outcome determined. Further, early career psychologists have reported that they have considered leaving the profession, or have left, in response to a process that is experienced as punitive.

Suggestions to improve the process of responding to vexatious notifications include:

- Reducing the administrative burden on health practitioners as much as possible by allowing different options for information and evidence gathering, e.g., written or oral. Different pathways need to be available so that practitioners' input can be received (in the interests of natural justice) to consider a 'concern' without a full investigation being opened if it is likely that the notification is vexatious.

- Ensuring that even *potentially* vexatious notifications are dealt with in a timely fashion with full transparency, a clear timeline, and rapid resolution – especially when there is clearly no basis for the notification. Practitioners also need to be given sufficient time to provide a respond.
- Working collaboratively with practitioners and peak bodies to establish a standardised process and approach to the investigation of notifications that are potentially vexatious.
- The provision of free counselling support and/or supervision for practitioners who are subject to a vexatious notification to help them manage the associated stress and harm of the notification and help them perform optimally going forward.
- Establishing a regular forum between Ahpra and the APS for the sharing of anonymised trends/insights about vexatious notifications, which would enable the APS to up-to-date provide support and guidance to members.
- Training for Ahpra staff to ensure a respectful, consistent approach to how vexatious notifications are dealt with and managed, and an understanding of the potentially distressing impact on health practitioners. This would need to include training in appropriate, respectful, and effective communication – both verbal and written. Such communication requires an impartial approach, which is particularly significant in the instance of a vexatious notification.

Thank you again for the opportunity to provide a submission to the NHPO's independent review into Ahpra's Framework for identifying and dealing with vexatious notifications. If any further information is required from the APS, I would be happy to be contacted through the National Office on (03) 8662 3300 or by email at z.burgess@psychology.org.au

Kind regards

Dr Zena Burgess FAPS FAICD
Chief Executive Officer

The APS would like to acknowledge and sincerely thank the members who so kindly contributed their time, knowledge, experience, and evidence-based research to this submission.