

# **AHPRA investigations into the conduct of registered health practitioners**

(Updated August 2012)

## **BACKGROUND**

### **INFORMATION FROM THE AUSTRALIAN HEALTH PRACTITIONER REGULATION AGENCY (AHPRA) AND THE PSYCHOLOGY BOARD OF AUSTRALIA (the Board)**

- The notification process – preliminary assessment and investigation
- Referral to a Panel hearing or a Tribunal hearing

### **APS ADVICE AND RECOMMENDATIONS**

- What information should members seek if a notification is made against them?
- How should members respond to a request for information as part of a Board investigation?

## **BACKGROUND**

The following information is provided to assist APS members who have been contacted by the Australian Health Practitioner Regulation Agency (AHPRA) regarding a notification (complaint) against them. It aims to address concerns communicated by Members that at times they are provided with information from AHPRA which is not sufficiently clear.

Of concern to the APS has been the lack of detail provided on the AHPRA website regarding the processes for dealing with notifications. While it is clear that AHPRA has a legal standing to conduct such investigations, the APS believes that it would be more consistent with the principles of natural justice for AHPRA to be open in their communications, clearly inform registrants of their alleged wrongdoing and the grounds of any notification, and provide clear information to health practitioners regarding the investigation process, and in particular, address concerns regarding the protection of confidential information provided as part of an investigation. In the absence of such information publicly available on the AHPRA website, the APS sought additional information from the Psychology Board of Australia (the Board) and AHPRA on these matters and has included this information below.

### **INFORMATION FROM AHPRA AND THE PSYCHOLOGY BOARD OF AUSTRALIA**

*The following information has been compiled through information sourced from the AHPRA website and through direct correspondence with the Psychology Board of Australia (the Board) and AHPRA.*

#### **The notification process**

AHPRA is responsible for administering the National Registration and Accreditation Scheme which includes psychologists. AHPRA is conferred powers under the Health Practitioner Regulation National Law Act to investigate notifications against health professionals. Hence, AHPRA is now the agency that manages notifications made against psychologists. AHPRA supports the Board in managing notifications. The Board has delegated most of its powers in such matters to its Regional Boards. The exception to this is in NSW where a co-regulatory model exists with the NSW Psychology Council and

the NSW Health Care Complaints Commission.

AHPRA receives notifications about practitioners either by telephone, letter or completion of the online/hardcopy form. Most often the individual making the notification is identified. However, AHPRA also deals with anonymous notifications.

According to AHPRA when a notification about a psychologist is received he or she will be notified of the complaint that has been made and of the notification process, and asked to provide a response as part of the preliminary assessment phase of the notification process. The exception to this is where notification may interfere with the investigation or place someone at risk of harm, harassment or intimidation. If the notification was made about a psychologist working in NSW then the notification is handled by the NSW Health Care Complaints Commission or the NSW Psychology Council. AHPRA is also required to consult with the health complaints entities in some cases.

Information provided to the psychologist generally includes the name of the person making the notification and what the notification is about. In most cases AHPRA sends a copy of the documentation that forms the notification. A response by the psychologist to the information provided in the notification will form part of the preliminary assessment process. If the psychologist fails to respond, then the Board may have no option but to proceed to the investigation.

Following the preliminary assessment the Board will determine what action to take. This may include:

- taking no further action
- taking immediate action such as limiting of the psychologist's registration including imposing conditions
- issuing a caution
- investigating the matter
- referring the case to a panel hearing or a tribunal hearing
- requiring a health or performance assessment
- taking relevant action under Division 10 of the National Law

The initial decision about how to proceed with a notification is made by the Board which comprises psychologists and community members. According to AHPRA, individuals making these decisions are experienced and qualified and their names are available on the Board's website at:

<http://www.psychologyboard.gov.au/About/State-and-Territory-Psychology-Board-Members.aspx>.

According to the Board, the process for the management of notifications is consistent across the states and territories which ensures decision-making that is reliable at a national level.

According to AHPRA, most notifications undergo a preliminary assessment within a 60 day period and an investigation, unless particularly complicated, may take 6 months. If the complainant is not satisfied with the final decision there is no process for review of the Board decision. The psychologist can appeal through the appropriate state or territory tribunal a Board decision to:

- impose or change a condition on their registration or the endorsement of their registration, or to suspend their registration;

- a panel decision to impose a condition on their registration;
- a health panel decision to suspend their registration, or
- a performance and professional standards panel decision to reprimand them.

The complainant or psychologist may contact the National Health Practitioner Ombudsman who may choose to conduct an independent review, but this is a review of the process only, not of the Board's decision. The one National Health Practitioner Ombudsman works across all health professions that are included under the National Registration and Accreditation Scheme.

### **Further investigation and assessment of the psychologist**

The Board will require AHPRA to undertake an investigation if it considers that the notification may raise professional conduct issues. In most cases the investigation will be conducted by an AHPRA Investigation Officer who may seek additional evidence such as statements from relevant people, client notes and telephone records.

If a psychologist declares an impairment at the time of registration the Board may request a treating practitioner's report to establish the psychologist's fitness to practice. If the Board believes at any stage that a psychologist has or may have an impairment, an independent health assessment may be required under s80 or s169 of the National Law. In the case of unsatisfactory practice the Board may ask the psychologist to undertake a performance assessment.

### **Referral to a Panel hearing or a Tribunal hearing**

The Board may decide to refer a particular case to a panel hearing or a Tribunal. Referral to a Tribunal in a psychologist's State or Territory will occur if there is an allegation of 'professional misconduct'.

A panel is made up of both registered psychologists and community members who have been appointed by the Board for the specific purpose of considering evidence related to notifications about psychologists. According to AHPRA, the decision to refer a matter to a panel hearing is not for punitive reasons but based on the level of insight of the practitioner and/or the seriousness of the matter.

At any point in the steps outlined above, immediate action can be taken by the Board which may include suspending the psychologist's registration, imposing conditions under which the psychologist may practise, or accepting an undertaking from the psychologist with regard to his or her practice. Once a decision has been made and an action imposed the psychologist will be offered the opportunity to 'show cause' as to why the proposed action should not be taken.

## **APS ADVICE AND RECOMMENDATIONS**

### **What information should members seek if a notification is made against them?**

The APS recommends that members insist on specific information about the notification to enable a satisfactory response to be provided. If you receive notice of a notification from AHPRA it should include the particulars and nature of the notification. If you believe you have not received sufficient information then you should contact AHPRA to ask for clarification and further information. The contact details of the AHPRA officer assigned to your notification will appear on the notice.

If members become the subject of a notification they should contact their professional indemnity insurer to access legal representation. It is part of the malpractice policy requirement to inform your insurer regarding any event which may lead to a civil claim, such as would be the case for a notification.

### **How should members respond to a request for information as part of a Board investigation?**

#### *Members who are the subject of the notification*

It is important that members cooperate if they have received documentation from AHPRA regarding an investigation. Generally speaking, a letter from an investigator appointed by AHPRA will include either reference to, or extracts of, the National Law relevant to the conduct of the investigation. We recommend that psychologists read through any such extracts to understand the context in which information is being requested.

The investigative provisions of the National Law specifically authorise AHPRA investigators to require a person to provide information for the purpose of conducting the investigation. The National Law also requires AHPRA to give notice to anyone who is under investigation, so that a person under investigation should have already received notice before anyone else is asked to provide information to an investigator. The exception to this is where providing such notice would prejudice an investigation or place a person's health or safety at risk or place a person at risk of intimidation or harassment

Therefore, it is in the psychologist's interest to formulate a response as this may avoid the complaint progressing to the next level. In responding, the APS recommends that the psychologist should work with his or her professional indemnity insurance provider to develop a reply which details the facts and provides as much information as possible to enable the Board to make an informed decision.

#### *Members who have had a professional relationship with a health professional who is the subject of a notification*

AHPRA investigators may require information from a psychologist who is not the subject of the notification but has had a professional relationship with a health professional who is under investigation, for example, a treating practitioner or an employer. AHPRA policy is to request reports without payment unless the writing of the report goes significantly beyond what would normally be furnished to other members of a treating team (for instance, a standard report back to a referring GP would be considered the norm). What this means for psychologists is that questions from an investigator should be answered in the most straight forward way possible. The psychologist should stick to the facts and provide a systematic response of events and actions, and may do this in consultation with a lawyer where necessary. For advice on how to prepare a response in such a matter, psychologists insured with AON can contact the legal hotline in their State or Territory. Contact details for the AON legal hotline can be found at <http://www.psychology.org.au/Content.aspx?ID=3858>

Be aware that a report made to an investigator will be considered in the investigative process and may be used to support recommendations about actions to be taken in regard to a registered practitioner. Any psychologist providing information to an investigator will be protected from legal repercussions or breach of an ethical duty pursuant to section 237 of the National Law.

AHPRA provides a summary of notifications and its findings in its annual report, and outcomes of tribunal hearings are available to the public on the AHPRA website.

**How is client confidentiality protected during an AHPRA investigation?**

The APS has been particularly concerned about the request for client notes as part of an investigation and access to such notes by AHPRA staff who may not be appropriately qualified. This is of particular concern with conduct investigations where investigators are unlikely to be psychologists and where Board members, including non psychologists, will have access to the material. In contrast, the APS has received assurances from AHPRA that any performance or health assessors who may have access to client notes must be registered psychologists who are not Board members.