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**Ombudsman recommends improvements to how notifications made to harm health practitioners are managed**

Today National Health Practitioner Ombudsman, Richelle McCausland, published her [**independent review**](https://www.nhpo.gov.au/vexatious-notifications-framework-review) into the Australian Health Practitioner Regulation Agency’s (Ahpra) framework for identifying and managing vexatious notifications. The review was commenced at Ahpra’s invitation to examine whether the framework has been effective, or if it has had any unintended consequences. The report outlines that the framework is the first of its kind in Australia’s health regulatory landscape.

The Ombudsman made 17 recommendations to improve the framework and its application, and strengthen how Ahpra manages notifications in cases involving domestic and family violence allegations and unreasonably persistent notifiers.

“Many health practitioners have told us that having a notification made about them is distressing. My recommendations seek to ensure the notifications process remains open and accessible, while also ensuring health practitioners are treated fairly and better protected from groundless notifications that have been made with the intent to cause them harm,” said the Ombudsman, Richelle McCausland.

The Ombudsman has welcomed Ahpra’s acceptance of her recommendations and its development of a plan for implementation. Ahpra’s response is available on its [**website**](https://www.ahpra.gov.au/Notifications/How-we-manage-concerns/Vexatious-notifications.aspx).

The review supported existing evidence that truly vexatious notifications are rare. It found, however, that allegations that a notification is vexatious were not always recorded by Ahpra, meaning the amount of times the framework should or could have been applied is likely higher than Ahpra reported. The review found that Ahpra should be more transparent about how and when the framework is applied.

The report outlines that Ahpra staff received comprehensive guidance on the framework when it was introduced. However, the review found that Ahpra does not have a tailored or specific process to manage allegations that a notification was made in the context of domestic and family violence. The review also did not find a consistent approach to dealing with unreasonable conduct by notifiers and patterns of repetitive notifications. The Ombudsman recommended that Ahpra strengthens how it manages these types of notifications to help reduce the negative impacts of the notifications process on health practitioners.

“Each notification about a health practitioner needs to be carefully considered to determine if it is necessary for regulatory action to be taken to protect the public. However, Ahpra also needs to ensure that it protects health practitioners, including those experiencing domestic and family violence, from abuse of its processes,” said the Ombudsman.

The report has been endorsed by the Health Chief Executives Forum, and recommendations regarding potential legislative reform have been referred to the Health Workforce Taskforce.

The report is available on the [NHPO’s website](http://www.nhpo.gov.au/vexatious-notifications-framework-review) <www.nhpo.gov.au/vexatious-notifications-framework-review>. For media enquiries, please contact: media@nhpo.gov.au

## Summary of recommendations

### **Improving understanding of vexatious notifications**

1. Ahpra should ensure allegations that a notification is vexatious are appropriately documented and managed in line with the Framework, with relevant information about the assessment of the allegations recorded and provided to decision makers for consideration.
2. Ahpra should clearly outline, and publish information about, the different types of notifications that commonly result in a decision to take no further action, including the criteria and approach used to assess whether a notification meets the definition of being ‘sub-optimal’ rather than vexatious.

### **Better identifying vexatious notifications**

1. Ahpra should improve how it receives notifications to ensure it more clearly requests information about the notifier’s concerns, the notifier’s relationship to the practitioner and what the notifier is seeking from making the notification.
2. Ahpra should provide extra guidance to staff about how to address concerns that an anonymous or confidential notifier has made a vexatious notification.
3. Ahpra should update the Framework to distinguish ‘calculated conduct’ from ‘unreasonable conduct’ when considering the characteristics of a notifier. The Framework should also include more specific indicators of calculated conduct, such as references to the types of relationship breakdowns and workplace disputes that may lead to a vexatious notification and references to making a retaliatory notification as an indicator that a notifier may have intended to harm the practitioner in making the notification.
4. Ahpra should provide more guidance on how a notifier’s intent to cause harm to a practitioner can be shown and the standard of proof required to demonstrate an intent to cause harm by making a vexatious notification.

### **Improving how potentially vexatious notifications are assessed**

1. Ahpra should strengthen the assessment of indicators that a notification may be vexatious and the assessment of information gathered about a ‘suspected vexatious’ notification.
2. Ahpra should reduce the escalation points in the internal approval process for the Framework by lowering the threshold for approval to consider a ‘suspected vexatious’ notification.

### **Supporting improved recommendations and decision making about vexatious notifications**

1. Health Ministers should consider amending the National Law to create a new subsection under s. 151(1) to distinguish a decision by a Board to take no further action because a notification is vexatious. Consideration should also be given to whether ‘vexatious’ should be a defined term in s. 5 of the National Law.
2. Ahpra and the Boards should distinguish previously received vexatious notifications from other notifications when undertaking a risk assessment of a new notification. Consideration should be given by Health Ministers to amending s. 151(2) of the National Law so the power to consider previous notifications as part of a pattern of conduct or practice does not extend to previous notifications that were found to be vexatious.
3. Ahpra should be transparent about how and when it applies the Framework, where appropriate. Ahpra should update its library of reasons to ensure clear and appropriate reasons are provided for a decision that a notification is vexatious. Ahpra should also update the associated template notification outcome letters regarding vexatious notifications.

### **Determining appropriate consequences for making a vexatious notification**

1. Ahpra and the Boards should form a position on when they would seek to fine a person for providing false or misleading information or documents to an Ahpra investigator.
2. Health Ministers should consider amending the National Law to make it an offence to provide false or misleading information to Ahpra when making a notification and at the assessment stage of the notifications process.
3. Ahpra and the Boards should clarify processes related to own motion investigations into practitioners who have made vexatious notifications about other practitioners, including by ensuring there are clear guidelines for staff when an own motion investigation is initiated.

### **Strengthening guidance and training for Ahpra staff about vexatious notifications**

1. Ahpra should deliver ongoing training to staff on applying the Framework, including any changes implemented in response to the review’s recommendations.

### **Appendix 1: Addressing notifications in cases involving domestic and family violence allegations**

1. Ahpra should improve how it manages notifications in cases involving domestic or family violence allegations.

### **Appendix 2: Addressing unreasonably persistent notifier conduct**

1. Ahpra should strengthen how it identifies and manages unreasonable conduct and unreasonably persistent notifiers.