

Review of the Royal Australian
and New Zealand College of Obstetricians
and Gynaecologists' complaint
management policies and procedures

By

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Executive summary

My review of the complaint management policies and procedures of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists (College) shows that they comply with the AS/NZS ISO 10002:2018 Guidelines for Complaint Management in Organizations (Standards). In my review, I noted areas of improvement for the College's consideration, such as:

- a dedicated page on the College's website on the College's complaint handling and for submitting a complaint
- adopting assessment and investigation phases and reports in its complaint handling
- avoiding overlaps in the Chief Executive Officer (CEO) and President's determination with those of the Professional Standards Committee (PSC)
- for greater transparency, publishing factors relevant to the CEO and President's determination of outcomes (for example, whether to refer a matter to AHPRA)
- setting out its position on unreasonable conduct by complainants
- reviewing its note on false, frivolous and vexatious complaints.

Introduction

As the Independent External Review (IER), I reviewed the College's complaint handling policy and procedures in response to the request by the CEO. The CEO's request was made in accordance with my appointment to "provide relevant process improvement recommendations to the Board on Complaints and Whistleblower processes".

As part of this review, I reviewed the following documents, taken together as the "College materials":

1. Complaints Policy
2. Conflict of Interest Policy
3. Bullying, Harassment and Discrimination Policy and Resource
4. Managing Complaints Against RANZCOG Members Guideline (Guidelines)

I reviewed the College materials against the Standards.¹ The Standards provide guidance on complaint management, including the planning, design, implementation, operation, maintenance and improvement of a complaint management system. This report follows the Standards' framework as a method to review the College materials. Review of the complaint management system is recommended by the Standards to be performed on a regular basis.

¹ I have also been asked to review the policies and procedures relating to whistleblowers pursuant to the ASIC Regulatory Guide 270 and related guidelines. I will provide a supplement report focusing specifically on handling whistleblower complaints.

I also consulted with the following references for practical tips in implementing the Standards:

1. The New Zealand Ombudsman's Guide on Effective Complaint Handling (October 2012); and
2. The Victorian Ombudsman's Complaints: Good Practice Guide for Public Sector Agencies (September 2016).

While the Ombudsman guidelines apply to the administrative conduct of public sector agencies, they are generally regarded as setting best practices and provide practical guidance on avoiding common problems, such as failure to respond to complaints, delays and poor communication.

Review pursuant to the AS/NZS ISO 10002:2018 Guidelines for Complaint Management in Organizations

The Standards' Guiding Principles

The Standards set out four main guiding principles: enabling complaints, managing complaints, managing the parties and accountability, learning and prevention.

(1) *Enabling complaints* – a complaint handling framework should be people-focused and proactive in seeking and receiving complaints. The Standards recommend that organisations should ensure there is no detriment to the complainant and that there is visibility and transparency and support available to those who wish to make a complaint.

The Victorian Ombudsman describes this as “fostering a receptive culture” by ensuring that complaint handling officers have the right personal qualities and skills, such as empathy, patience, problem solving skills and complaint handling skills.

FINDINGS: I found that the College materials illustrate the organisation's strong commitment to fostering a receptive complaint handling culture. The Complaints Policy embeds the organisation's values (as enshrined in the Code of Conduct) of advocacy, education, excellence, integrity, kindness and respect within all aspects of the complaints process. Importantly, it sets out its approach to a victim-centred practice: engage with a complainant in a way that respects their rights, needs, wishes and dignity, protects them from retaliation, re-traumatisation and discrimination, keeps them informed and supported.

The Complaints Policy facilitates complaint submission from a wide range of parties, including members of the public in regard to the personal or professional conduct of a College member. Complaint submission is free, confidential and accessible. It can be done by email by way of an inquiry with the Training Support Unit or via a formal complaint

addressed to the CEO. The Complaints Policy helpfully sets out external counselling or assistance, recognising that submitting a complaint is often a stressful process for complainants.

While there are clear policies and procedures on complaint handling, I found that it was not easy to find information on the College website from a complainant or respondent's point of view. For example, it may not be intrinsic to a complainant to find the role of the IER within the Governance section of the website. A dedicated page on the College's website for complaints would make it easier for complainants and respondents to access information and encourage a single point of entry for complaint submission. The College should consider setting out the complaints process and key information on the website itself.

The New Zealand Ombudsman suggests that information about an agency's complaints process should be readily available by way of publicising it on the website, at the front counter or reception, in leaflets and in newsletters. Access to the complaints process should be easy for potential complainants to access and understand. Similarly, the Victorian Ombudsman suggests providing a link on the home page to the complaints section. Information could also be provided in welcome packs or induction materials for College members.

It is recommended that the College considers the possibility of establishing a dedicated page for complaint handling where all relevant policies and procedures are set out. The dedicated page would highlight the College's important work on the Fostering Respect project and set out key points of the complaints process for visibility and easy access. Key points could include the following non-exhaustive list: general timeframes for assessments and investigations, limitations to the College's complaint handling and a matrix of possible outcomes (more below on setting out relevant factors).

Both the Victorian Ombudsman and the New Zealand Ombudsman recommend accepting complaints by telephone, letter, email, online and in person. It is also best practice to provide assistance to people who need to communicate with the organisation in a particular way due to a disability or a language barrier.

(2) *Managing complaints* - The Standards encourage organisations to:

- be responsive
- be impartial and fair
- address complaints in an equitable manner
- manage personal and confidential information
- provide simple and effective communication tools to its complaint handlers.

It encourages early acknowledgement of a complaint, preferably within three working days of receipt. It highlights the importance of assessing complaints and giving priority in accordance with the urgency of issues raised. It is important to inform the complainant as soon as practicable where the organisation is unable to deal with the complaint.

FINDINGS: I found that the College materials provided a fair and equitable process for complainants and respondents, by carefully setting out a responsive system and outlining the process to be heard (procedural fairness). For instance, the table on page 7 of the Complaints Policy describes what parties can expect during the complaints process in an effective and concise manner. It addresses critical areas such as confidentiality and privacy.

The Complaints Policy identifies the main pillars of the College's complaints process: the College's Code of Conduct, a victim-centred approach and its values. The organisational values supporting the complaints process are consistent with, if not exceeding, the Standards' guiding principles on complaint management.

The College's Conflict of Interest Policy requires that College participants remove themselves from positions of decision-making authority with respect to any situation where there is a real or perceived conflict involving College functions. This policy helps assure that each complaint will be managed in an impartial and unbiased manner. I recommend that the College considers adding "potential conflict of interest" to the policy as this is also a source of conflict.

(3) *Managing the parties* - According to the Standards, organisations should set out policies that make clear the expected behaviours of parties to the complaint and its own complaint handlers. For organisations that manage high volumes of complaints, it is recommended that organisations develop work health and safety policies for staff involved in complaints. Front-line staff should be empowered to implement its complaint management system as relevant to their role.

FINDINGS: I recommend that as best practice, the College considers setting out its policy on managing unreasonable conduct by complainants (for example, as an appendix to the Complaints Policy). Such a policy would provide a clear message to complainants on the College's expectations about complainant behaviour towards complaints handling staff. A small number of complainants can sometimes be aggressive and verbally abusive towards the organisation's staff. Not only does this policy signal the College's zero tolerance to complainant behaviour that is abusive, threatening or consumes disproportionate resources, it also seeks to support complaint handling officers' wellbeing and provide them with the tools and strategies when faced with unreasonable conduct. Examples of unreasonable conduct include unreasonable persistence, unreasonable demands and unreasonable lack of cooperation, unreasonable arguments and unreasonable behaviour (for example, extreme anger or threats of harm to self).

I also recommend that the College reviews the College materials relating to false, frivolous and vexatious accusations/claims.

According to the Australian Health Practitioner Regulation Agency (AHPRA), identifying vexatious complaints is “inherently difficult” because it rests on two elements: complainant veracity and complainant intent. AHPRA commissioned a research study on vexatious complaints resulting in the report, “Reducing, identifying and managing vexatious complaints” (AHPRA report).²

While the National Health Practitioner Ombudsman is currently reviewing AHPRA’s framework for identifying and dealing with vexatious notifications, there remains important practices relevant to complaint management. The AHPRA report notes:

...it is important to distinguish between: vexatious versus other sub-optimal complaints, calculated versus unreasonable complainant conduct, and complaints about practitioners versus complaints about the complaints-handling process. Any efforts to address vexatious complaints need to take these differences into account, and not consider vexatious complaints or complainants as homogenous groups.

The AHPRA report also found that vexatious complaints account for less than 1 percent of notifications received. The study found that there is greater risk of people not reporting concerns than of people making truly vexatious complaints.

The College materials refer to false, frivolous or vexatious complaints and state that the College will “deal with such cases quickly, firmly and fairly”. They also state that “the College will take great care when dismissing a claim on these grounds, undertaking at least sufficient inquiries to establish that the complaint is either frivolous or vexatious”. I wonder whether it is necessary to set out specifically how quickly or fairly the College will assess false, frivolous or vexatious complaints when these types of complaints are just like any kind of complaint that will be assessed with the College’s usual rigour and timeliness. Most complaints that are unsupported by evidence would not normally be tagged as “false, frivolous or vexatious” because such as designation could be inflammatory or upsetting to the complainant. As highlighted by the AHPRA report, identifying a vexatious complaint is difficult because the College would have to form a view about the complainant’s veracity and intent. Both elements are very difficult to determine.

I encourage the College to review the College materials’ note on false, frivolous or vexatious complaints to ensure that it does not discourage individuals with genuine concerns coming forward.

² The AHPRA report can be accessed here: <https://www.ahpra.gov.au/Notifications/How-we-manage-concerns/Vexatious-notifications.aspx>

(4) *Accountability, learning and prevention* - The Standards encourage setting out clearly the officers accountable for the operation of the complaint management system. It also encourages organisations to have systems and processes that facilitate learning from complaints and that prevents complaints escalating into ongoing disputes.

FINDINGS: I found that the College materials set out clearly the officers accountable for the complaints framework. The College materials encourages early resolution of complaints and allows for dispute resolution and the application of the Vanderbilt model. It also facilitates learning and insight from complaints data. Both the Complaints and Bullying, Harassment & Discrimination Policies refer to the College's recordkeeping to assist in identifying patterns of behaviour or continuing problems. They also refer to the College's advocacy role when sharing information and collecting data on complaints and strengthening advocacy for all members in their workplaces.

Complaint management framework

According to the Standards, a successful complaint handling system is supported by its executive leadership and senior management. This commitment is expressed in the development and adoption, implementation and promotion of the policies and procedures, including ensuring adequate resourcing is allocated to complaint management. The organisation's policies and procedures should set out how complaints will be managed, who will be involved in the process and their roles (responsibility and authority). These policies and procedures should be accessible to all staff and be widely accessible to the public.

FINDINGS: In my review, I found that the College has taken great care and thought in setting out a complaint management process that encourages complaints to be submitted to the College. The Guidelines set out the alternate approaches to complaint resolution and formal resolution. The Guidelines set out clearly the four levels of sanctions that may be allied to the College's Fellows. The recent addition of my role, as the Independent External Reviewer, attempts to deepen the College's expertise and to extend its capacity to manage complaints.

The College's Code of Conduct sets out the standard of professional and social behaviour expected of its membership. It is, in some ways, aspirational, high level and may be difficult to enforce. I recommend to the College that it considers, the next time it reviews the Code of Conduct, to draft more concrete standards of communication, a common complaint issue, based on historical complaints. For example, is there a minimum standard of communication expected of trainees and supervisors? Does the College expect that treating others with respect and kindness mean that supervisors should not criticise or ridicule trainees in front of other people? To this end, the College could consider providing examples or case studies of what is and what isn't respectful communication.

To increase transparency and to help manage complainant expectations, I encourage the College to consider setting out in its policies the relevant factors it may consider (non-exhaustive list) when determining the outcome of a complaint. For instance, the College might wish to describe why the College (through the CEO and President) would view a complaint to be more suitable for direct mediation than advice or counselling through a third party. Providing some guidance on the College's decision-making would help explain the basis for the College's discretion and provide greater transparency to the complaints process.

I reviewed the flow chart for complaints against members and noticed that there are overlapping outcomes (ie referral to external body, referral to IER, and informal resolution) available to the CEO and President during its assessment with outcomes available to the PSC after a complaint has been referred to it. This model is not ideal because the PSC could be seen as effectively reviewing or undoing the CEO and President's assessment. This parallel decision-making could be perceived as redundant or inefficient. It is more common in complaints processes that once the options have been considered by a decision-maker, then the next level of decision-making has a different set of options (for example, sanctions or referral to the Board). In addition, it is not clear to me how the President and the CEO could determine a Level 1 or 2 sanction, as set out in section 4 of the Guidelines, as Code of Conduct determinations are determined by the PSC.

I think there is also potential for confusion when a matter could be referred to or considered by the PSC. According to the PSC's Terms of Reference, a matter is referred to the PSC where the CEO and the President consider that the matter or complaint falls within the scope of the Terms of Reference of the PSC. Similarly, upon referral of a matter or complaint, the PSC shall decide whether, prima facie, there is a case to answer. Based on these two standards, there could be potential for conflict and inconsistency. There is also potential for replication where a determination had already been made that the matter ought to be considered by the PSC. There is also potential that the CEO and the President unintentionally limit the PSC's ability to review a matter if, on its own determination, decides it is not appropriate for the PSC to consider.

I recommend that the College considers establishing a panel to decide the outcome of a complaint (following assessment and/or investigation) composed of the CEO, President and the Chair of the PSC. Establishing the panel may address the issues raised above and avoid the possible repetition of decisions and the possible inadvertent subversion of the other's powers.

Planning and design

According to the Standards, organisations should plan and design a complaint management system that is impartial and fair and that is seen to be impartial and fair. The Standards recommend establishing three tiers of escalation where the decision of frontline staff can be

escalated by a dissatisfied complainant to another person (usually at a more senior level) or area other than frontline staff. This model aims to address the majority of complaints at the frontline level and provides room for escalation.

The Standards point out the importance of continually reviewing the adequacy of resources provided to staff managing complaint, such as training, templates and any specialist support.

FINDINGS: The College could consider the best practice model of three levels of escalation. There are advantages to a three-tier escalation model, including being clear on who is conducting the investigation and providing an internal review process. The third level is an external assessment, investigation, ADR or review. However, given the College does not receive high volumes of complaints, the current structure is probably sufficient.

Operation of the complaint management system

The Standards encourage organisations to apply a criteria when assessing complaints: severity, health and safety implications, complexity, impact on the individual, the general public or the organisation, potential to escalate, the need and possibility of immediate action, jurisdiction, outcomes sought by the applicant and whether other organisations or areas within the organisation need to be involved.

After the initial assessment, the Standards recommend considering how to address the issues raised in the complaint. The Standards suggest the possibility of working with the complainant to see if the issues can be appropriately addressed, information inquiries or a formal investigation in the complaint. Due to the diverse nature of complaints, the nature and scope of any inquiry or investigation will depend on the circumstances of each complaint, the issues raised, the parties involved and the possible outcome.

The Standards recommend quarterly reporting to the governing body on complaints data, including average response timeframes, number of open complaints, in total and by status, percentage of open complaints within the stated timeframes, identification and rectification of systemic issues.

FINDINGS: In line with the Standards, I recommend that the College considers adopting assessment and investigation phases in its complaint handling. During the assessment phase, the initial query for the College is whether the matter ought to be investigated by the College. It is recommended that an assessment report is drafted for every complaint it receives. In some cases, the assessment report is expected to be brief due to the truncated nature of the assessment. For example, in matters relating to clinical practice, the more appropriate body to consider the matter would be AHPRA. The assessment report could set out the following:

- a complete record of the actions taken and attach any file notes of discussions
- the basis or reasoning for any determination or recommendation, including referrals

- indicate timeframes for updates, if awaiting investigations from external entities, such as training hospitals (tracking external investigations)
- the issues raised and the complexity of the complaint
- outcomes sought by the complainant
- any need for urgent action, for example where there are health or safety concerns for any person
- whether the complaint raises systemic issues, and the impact on the person and broader community
- the potential for the complaint to escalate
- whether the complaint is about an officer/s, and needs to be handled by an independent, impartial person
- whether the complaint involves other agencies.

As part of the assessment, College may need to speak to the complainant to clarify the details of the complaint and the outcome they are seeking. Complaint handlers should document any discussions with parties to the complaint by creating file notes.

Where a matter is accepted by the College for investigation, there ought to be an investigation report that sets out the evidence considered by the decision-makers, the factual findings, the standards applied and the outcome.

Maintenance and improvement

The Standards recommend organisations develop and adopt policies for identifying, gathering, classifying, maintaining, storing, securing and disposing of complaint related records. Complaints data is a rich source of information that require classification and analysis in order to identify systemic, recurring and single incident problems and trends.

The Standards also emphasise the importance of auditing and reviewing the complaint management system on a regular basis.

- (1) An audit would provide information on process relating to the consistency of practice with the complaint management procedures and suitability to achieve the complaint management objectives.
- (2) A review of the complaint management system would:
 - a. ensure its continuing suitability, adequacy, effectiveness and efficiency
 - b. identify and address instances of nonconformity with requirements
 - c. identify and correct deficiencies
 - d. assess opportunities for improvement
 - e. evaluate potential changes to the complaint management policy and procedures
 - f. assess whether the organisation appropriately identified and addressed the known vulnerabilities of customers.

The review should assess any changes to the internal policies and resources, changes in legislation, complainant satisfaction survey, audit results and status of corrective actions and any recommendations for improvement.

FINDINGS: I found the College materials supportive of “identifying patterns of behaviour or continuing problems”. They also refer to proper recordkeeping in accordance with the College’s Retention & Disposal Policy and Procedure.

The College’s request to review the College materials satisfies the Standards’ requirement that the complaint management system is reviewed on a regular basis. Similarly, my current audit of complaint files for financial year 22-23 satisfies the Standards’ requirement for a periodic audit of the complaint management system.

Conclusion

My review shows that the College’s complaint handling policies and procedures complies with the AS/NZS ISO10002:2018. As part of continuous improvement, the College should consider the recommendations set out in this report to increase transparency, improve access to information and reflect best practices.