

March 2019

Submission – Commonwealth Integrity Commission consultation

Australian Health Reform Association

This submission has been redacted, in accordance with the approach outlined on the Attorney-General's Department's website

here: <https://www.ag.gov.au/Consultations/Pages/commonwealth-integrity-commission.aspx>.



AUSTRALIAN HEALTH REFORM ASSOCIATION (AHReform)

Incorporated in NSW: 1801861
PO Box 298, Kingsgrove NSW 2208
Email: australianhealthreformgroup@gmail.com

PRIVATE AND CONFIDENTIAL

Date: 25 January 2019

A Submission to The Commissioners,

Commonwealth Integrity Commission
C/o The Commonwealth Attorney General's Office
Parliament House
Canberra

By Email: anticorruption@ag.gov.au

From the **Australian Health Reform Association Inc. (AHReform)**

and including the following signatories

Members

Anthony Pun, OAM, PhD (UNSW), President (AHReform – NSW)
Niro Sivathanan, BSc, MB,BS (Lond), FCPCA, FACCs Vice President (AHReform-NSW)
Yen-Yung Yap, MB,BS (Adel) MRMed (UNSW), FRANZCOG, Secretary, (AHReform-SA)
Yolande Lucire, PhD (UNSW), MB,BS (Syd) DPM (London) NSW (AHReform-VIC)
Mei-Khing Loo, BIT (USQ) (AHReform-SA)
Rosemary A Jones, M.B, ChB, FRCOG, FRANZCOG (AHReform-SA)

Non Members

Leong-Fook Ng, MA (Cantab), MB, BChir (Cantab), AMM, FRCP(Edin) (Itinerant)
Chandrika Barman, MB,BS (QLD)
Russ Broadbent, LLB (Bond), FRCS (Edin), FRCSI (retired) (QLD)
Woo Lim Ang (Rev), BE (UNSW), MBiomedE (UNSW), MBA (Deakin), Grad Dip Accounting, BTh (ACT), Dip Theol (VIC)
Domenic Greco, BA (Melb), Grad Dip in Ed Psychology (Monash), Grad Dip in Child Psychology (LaTrobe), Grad Dip in Education (Melb) (VIC)
John Langdon, patient of an FRACP, QLD **volunteers to be a witness in any inquiry**
Praveen Kumar, MB,BS (Fiji), FRACGP, QLD
Yaroslav Teper, PhD (Monash), MSc (UCLA), (ex Medical Student), California, USA – **volunteers to be a witness in any inquiry**
Anthony Mugabe (a pseudonym as case is *subjudice*), MB,BS (Harare) an Eastern State
Sophie Henshaw, BA (Hons); BPsych; DPsych, WA
Karen Miles, B. Occ Thy (UQ)

Supporting Organisations:

National Sikh Council of Australia Inc (President: Ajmer Singh Gill)
Multicultural Communities Council of NSW Inc. (Chair: Anthony Pun)
Chinese Community Council of Australia Inc (President: Anthony Pun)

Dear Commissioners,

Prior to addressing our main submission for inclusion of government appointed medical authorities and private professional governing bodies of the medical profession under the administration of the Commonwealth Integrity Commission, we wish to begin with an introduction on the issue of Sham Peer Review in the medical complaint process.

1. Introduction: Sham Peer Review (SPR)

The ubiquitous Sham Peer Review is best illustrated by a 2009 editorial entitled “Tactics Characteristic of Sham Peer Review” by Dr LR Huntoon, MD, PhD in the *Journal of the American Physicians and Surgeons*¹. A recent talk in a conference organised by UNESCO complements this².

One of the highlights of the paper points to a very disturbing phenomena occurring in our Western democracies where the rule of law and other due processes were breached particularly the principles that we dearly cherished under the Westminster system of Government, viz. the principles of natural justice, the presumption of innocence until proven guilty and fairness in the provision of evidence for and against a matter.

A summary of topics covered by Dr Huntoon is as follows:

- Ambush Tactic and Secret Investigations
- Depriving Targeted Physician of Records Needed to Defend Himself
- Guilty Until Proven Innocent
- Numerator-Without-Denominator Tactic
- Misrepresenting the Standard of Care
- Trumped-Up and/or False Charges
- Abuse of the “Disruptive Physician” Label
- Dredging Up Old Cases to Justify Summary Suspension
- Ex-Parte Communications
- Hospital Attorney or Conflicted Attorney Used to Influence the Peer Review Process.
- Bias
- Peer Validation of Tactics Characteristic of Sham Peer Review
- Implications for Physicians Who Conduct Peer Review

Dr Huntoon has made convincing arguments that the authorities charged with the responsibility of registration and governing professional conduct of medical practitioners, have spuriously turned themselves in “kangaroo” courts without much respect for the rule of law and include practices such as manipulating evidence for personal agendas or gain, harassment by professional or legal means almost acting like a vexatious litigant. The end result is the ruin of many Doctors’ careers, putting them in very stressful and traumatic situations where some ended up in committing suicide.

In Australia, SPR does exist and does so abundantly and the modus operandi are very similar to the US as described by Dr Huntoon.

The Australian experience in SPR is best illustrated in a paper by Dr Leong Ng *et al*³ from the Health Practitioners Australia Reform Association (HPARA) published in the *Journal of the American Physicians and Surgeons* and the paper is reproduced here. Below is an extract:

“The phenomenon of sham peer review, first described in the U.S., is spreading internationally. Three case reports at different stages in their proceedings, taken from the files of Health Practitioners Australia Reform Association (HPARA), illustrate similarities to the methods used in the U.S.

Sham peer review contributes to Australia’s current unenviable record of having some of the world’s highest rates of medical litigation. Medical litigation has descended into contests of fact and circumstance, aided by the “expert witness” who may provide sham reviews.”

Dr Ng’s article highlights three cases of SPR in Australia and describes the injustice, sufferings, stress and trauma the victims have to go through as well as ruining their careers. A thorough reading of this article will give the reader an appreciation how a complaint process can deteriorate so much and so deep that it makes a mockery of our judicial process. A reading of such cases can only excite compassion in the reader to completely empathize with the victims as well as wondering how the rule of law in our democracy has gone so wrong!

It is sad to learn that two cases associated with possible SPR mentioned in that paper have ended in the victims committing suicides. Information on suicide statistics on the medical profession has been reported in an article entitled *“There are serious problems in our medical industry with an alarming number of doctors taking their own lives”* in news.com and figures are quoted as follows:

Data shows that medical professionals are more likely to die by suicide than the general population — female doctors 2.2 times more, male doctors 1.4 times.

Young doctors at significant risk, with 20 per cent of trainees experiencing suicidal thoughts.

A cluster of suicides among doctors over the past two years sent shockwaves through the profession and prompted an urgent response from the Australian Medical Association.

Reliable, recent figures are difficult to come by but the most indicative data shows that there were 369 suicides by health professionals between 2001 and 2012.

Source: <https://www.news.com.au/lifestyle/health/mind/there-are-serious-problems-in-our-medical-industry-with-an-alarming-number-of-doctors-taking-their-own-lives/news-story/ce098d0408daaef6cde812389230e2df>

There are cases in Australia where the complaints have not been finalised and as the public awareness of SPR becomes more widely published and understood, it is expected such cases will clog up the system and it would take years to resolve.

It is also expected that more cases will be receiving apologies from medical authorities in the next 12 months but it is still too slow to alleviate the harm done to the victims.

A change of culture and proper compliance of medical authorities to natural justice principles and rule of law, would assist the fast track of all un-adjudicated cases and prevent future vexatious complaints from harming potential victims.

SPR is a destructive force and should be stopped in order to give health practitioners a safe and healthy environment to work with so they can contribute to a safe, efficient and high standard of patient care that would benefit all Australians. It is with these sentiments, that we wrote this submission.

It is with this introduction, we based on submission and recommendations for the Commonwealth Integrity Commission.

2. Our covering letter - A Plea to further suggest planning for optimally effective function of the Commonwealth Integrity Commission (CIC)

Dear Commissioners,

Some of our medical practitioner members of AHReform, were at one stage of their lives, Specialist Doctors in Australia having emigrated from overseas. Others are associated with healthcare in some form or another.

Some time or other, they have been directly or indirectly related to the country's regulator of health practitioners, the Australian Health Practitioners Regulatory Agency (AHPRA) and before that, the State Medical and other boards.

They are delighted, following many years of frustration in dealing with stubborn, indecisive and allegedly erroneous and corrupt bureaucrats and moving targets – with the formation of the Commonwealth Integrity Commission (CIC).

Critics have stated that this move may be perfunctory – but let us hope not and may the Commission have sharp teeth!

One of our Malaysian-born signatory (LN), was an initial non-migrant recruited from the UK, feels he is not alone in welcoming this move to right things matters.

We are particularly pleased that the plan is for the CIC to widen its scope by teaming up with various bodies including Royal Commissions past and present and are confident that many of our country's problems can be examined through the lens of a new perspective.

Vital, but not mentioned, are the important three institutions: Australian Charities & Not-for-Profits Commission (ACNC), the Australian Institute of Criminology (AIC)⁸ and the Australian Law Reform Commission (ALRC).

We rely on this link (and its secondary links) in the crafting our current submission:

<https://www.ag.gov.au/Consultations/Pages/commonwealth-integrity-commission.aspx>

In this submission whilst referring to the peculiarities of one or more of our individual cases (members and non-members) affected and illustrating this, influenced by systemic issues as in the Appendix. We would also like to clarify the general principles of easily escaping from the operational methods which underpin the intended work of the CIC in the body of this note. There appears to be multiple commonalities in more than two completely different cases.

These have already been well outlined dividing its scope into two parts – one enforcing the rules and another examining public sector integrity.

This is, in our view insufficient. The deceitfully intertwined private sector which has subcontracted public sector work must be included in the scope of inquiry by the proposed CIC and be a specific subject of proposed effective enforcement.

Penultimately, a keynote on “Sham Peer Review” recently presented in Israel tells us the magnitude of this problem which not only affects Australia². This not only applies to colleagues but to dishonest practices as in s 136 of “the National Law”.

To date, no vexatious patient, relative, practitioner or clinic had been prosecuted whilst many registrants have been falsely accused, compromising their livelihoods. Australia might consider leading the way to stem the corruption by prosecuting such tortfeasors.

A recent public consultation commissioned by AHPRA⁴ shows multiple independent repugnant and woeful remarks which are pertinent to the thrust of this submission.

Finally, a Health Professionals Australia Reform Association recent submission (written by RB and LN, two signatories here) to the Royal Commission into Misconduct in Banking, Superannuation and Financial Services must be read with this⁵.

Yours sincerely

Anthony Pun, OAM, PhD (UNSW), President (AHReform – NSW)

[Also signed on behalf of the following the rest of the above: (note: the final abbreviation after each name represents the person’s residential State in Australia)]

Disclosure: This Submission and accompanying letter were crafted by Drs Pun and Ng.

3. THE SUBMISSION

No Terms of Reference available, therefore submission in free-style.

Jurisdiction - introduction

Jurisdictional issues are admittedly sometimes not clear or overstepped by administrators in their enthusiasm to exercise their powers and many Tribunals such as those provided for the Australian Health Professionals Regulatory Agency (AHPRA) appear too weak and poorly focussed to recognise such abuses of the system.

The Tribunals focus on the alleged violation of the victim to the detriment of good governance and administration and permit abuses of legal process and human rights to prevail.

Such are exemplified by minimal if any investigations and simple desktop shuffling of allegations to create or substantiate falsities posing as facts.

Time:

The difficulty and frustration of the time jurisdiction of 6 years on civil matters can be easily enhanced by Respondent delay and non-response and this is the upper hand of the corrupt government bureaucrat. It allows the tortfeasor to discover another position and subtly move on.

Geographic:

There is in existence the jurisdictions of the Commonwealth and the State and the laws are enacted to merge but to favour the State when there is wrong simply by stating that the tortfeasor was breaching a State statute of another Commonwealth jurisdiction.

A good example in health matters is when a State employee (who is under the state statute) deliberately breaches a Commonwealth state and gets away using a jurisdictional argument as it is the Commonwealth Law. The intended drafting of a Commonwealth law (and interim prosecutions) to cover the State must also avoid conflicting with the State statutes⁴ but when it does, it prevails (Leeming's well known "Repugnancy in Laws" book published in Australia several years ago)

Entity:

The Commission must cover the work of the public and private sectors outsourced to perform Public Duties. In addition, it must cover both State and Commonwealth public servants through the power of its legislation.

The Criminal Jurisdiction & Commercialism

It is easy for any white/blue collar criminal to escape to a different geographic jurisdiction and remain free like in the US. Furthermore, the perpetrator escapes as a charged tortfeasor to another geographic destination.

We understand that _____ living in QLD at the border area, has made a separate submission on a tort of misfeasance in public office. One of us shared a common tort with her.

In a case which remains unresolved, there is an intent of Criminal Act being imposed and apparently, the matter is in the hands of the State Attorney General and Healthcare Complaints Commission of NSW.

This is related to dishonesty which is common to all our cases. The technical term used in public function is “misfeasance in public office”.

New Legislation must be able to “catch all” and place good ethical medical care to prevail over commercialism.

The Operation of Private Companies as Delegates of the Minister under Commonwealth Law in addition to Natural Law.

A very good example is operation of the Health Insurance Act 1973 (Cth). The Australian colleges are monopolistic delegates of the Commonwealth Health Minister in administering the alternative path to recognition as a Consultant Physician or Specialist (e.g. s 3SD). However, the Australian Specialist Medical Colleges are charities and private companies set up by incorporation.

This is unlike the Royal Colleges of the UK, Ireland and Canada which are all accountable to the Parliament. Australian colleges are Registered Companies pretending to be Charities. For a ‘charity’ to possess huge monetary assets is highly irregular.

In Australia, these Colleges are only accountable to the Australian Securities and Investment Commission indirectly and directly (and prevailed by the law of some less rigorous bodies (e.g. the ACNC).

They are certainly overshadowed by the law on Human Rights, signed internationally by Australia in the 1970s and 1980s.

In other words, Medical Colleges in Australia are ‘wealthy’ and can do what they like – without any form of accountability – and they do since they were founded, especially pre-WWII.

Some monopolistic colleges (only the GP specialist colleges are non-monopolistic) frame continuing education schemes to be solely controlled (in the name of ‘standards’) by themselves only and impose large sums of monies as ‘subscription’.

This invites corrupt practice and an example which is kept ‘internal’ is the Royal Australasian College of Physicians’ dubious dealings⁷.

Reforms or new enactment must include this point to make these Colleges accountable especially with flagrant breaches of Human Rights (Australia has signed several International conventions)

The challenge of self-regulation and public regulation

The Australian system (Australia, being in a relatively young country) has evolved from the established self-regulation model (which can be abused by monopolies) to increasing government-controlled regulation.

The Australian Health Practitioners Regulatory Agency (AHPRA) is a very good example of over-regulation and mendacious conduct by poorly and inconsistently trained bureaucrats acting to purportedly “protect the public”⁸, inheriting their woes from some past Medical and other Boards.

In either system, abuse is ‘allowed’ and errors and tortfeasors go Scot free by law. In our view, it was hurriedly drafted with multiple flaws in the law and is acting *ultra vires* in many aspects. Rampant bullying is not uncommon and as this is done by the Colleges, there are no statutory breaches as they are private companies.

Conflicts of interest and Tribalism/Bullying

The present operation of self-disclosure of conflicts of interest (especially when tribalism creeps in – see the Queen’s Christmas Message of 2018) is at best muddled and loose. The same goes for “bullying” or “bullying conduct” which may be deemed as an “Administrative procedure” and not “Bullying”. This is not truly so.

Numerous Conflicts or perceived conflicts operate in daily affairs to suggest that this is not so. It would be good that to enact that non-declaration of a conflict of interest may be treated as a crime with the intention to deceive or mislead.

One example is that the Internal Code of Conduct of Fellows of most Australasian Medical Colleges would conflict with any action by Fellow or employee of the College against corruption, excessive managerialism or irregularities. This may apply to Commonwealth Law regarding the conduct of its administrative officers (e.g. the Consumer and Competition Act 2013) so it is *in their interest to act in conflict*.

Another is the force of commercialism as in Medical Indemnity Organisations which fall into the remit of investigation by the Royal Commission into Misconduct in the Financial and Banking Sectors. This may prevail over that of professional practice guidance and not unlawful in Australia (as practised in the USA).

In summary there are numerous other issues which lead to corruption and the international Transparency Index¹⁰ does not rate Australia well in terms of tackling corruption despite its internal chest beatings that ‘we are the best.’

The use of the adversarial method

The use of a post Napoleonic inquisitorial method in law is preferred. Sadly, the Australian system apes to the UK system of an adversarial approach. This is not in keeping with the contemporary application of law.

The role of Private Specialists

Private Specialists get Medicare rebates indirectly through the patients they see. In turn, it is the patient who claims these from Medicare. The exceptions are cosmetic and aesthetic surgeons. Therefore, by definition, the Colleges should be scrutinized as their members derive indirect benefit from the public purse.

Alleged Judicial Corruption and Incompetence

Whilst Australia claims to be a developed country, there is now ample private evidence of judicial corruption as boldly stated in a privately-run website for which Mr Shane Dowling has been imprisoned more than once¹¹.

Furthermore, there has been subtle criticism from within¹² by a retired High Court Judge¹³. We do not know how widespread it is but there are always bad apples everywhere.

The abuse of Public Funds

The issue of double dipping when the State intentionally robs the Commonwealth using doctors continues but is concealed and no action taken. This is a white-collar crime where the tax payers and Commonwealth are defrauded. The reason residents do not get prosecuted is that of privacy policy discriminates against non-immigrants in that their contracts are revealed fully to Medicare.

Another example of the abuse of public monies is the use of them to fund unnecessary Administratively wrong battles commenced by public and privatised bureaucrats.

The whole affair is summed up in a presentation to the HPARA 2018 Annual Scientific Meeting¹⁴ by Dr Ng.

We give full consent for the non-confidential part of this to be published. If there are any clarifications needed from any of us, please write to us at the lead signatory, Dr A Pun at australianhealthreformgroup@gmail.com

References:

1. Huntoon L Editorial JPANDS 2009 14,3: 64 – 66 <http://www.jpands.org/vol14no3/huntoon.pdf>
2. Huntoon L 2018 Keynote Speaker in 13th UNESCO World Conference on Bioethics, Medical Ethics & Health Law <https://youtu.be/ZpAKds3dsZI>
3. Ng, Broadbent, Teper JPANDS 2016, 21,4, 118-123 <http://www.jpands.org/vol21no4/ng.pdf>
4. AHPRA Public Consultation on a revised Code of Conduct for the Medical Profession 2018 <https://www.medicalboard.gov.au/News/PastConsultations/Consultations-June-2018.aspx>
5. Royal Commission into Misconduct in Banking, Superannuation and Financial Services Submissions to Round 6 <https://financialservices.royalcommission.gov.au/Submissions/Documents/Round-6-written-submissions/POL.9006.0001.0127.pdf>
6. The Judiciary Act 1903 (Cth) http://www5.austlii.edu.au/au/legis/cth/consol_act/ja1903112/index.html
7. Paul Smith 2017 Australian Doctor - The Komesaroff Report 2017 <https://www.australiandoctor.com.au/news/background-board-director-calls-independent-inquiry-physicians-college>
8. Ng Leong 2017 Submission 35 to the Senate of Australia's Inquiry. https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Complaints_Mechanism/Report

With Hansard recorded for 31 March 2017

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Complaints_Mechanism/Public_Hearings

And Report, followed by a formal Government Response i.e.

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Complaints_Mechanism/Report

&

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Complaints_Mechanism/Government_Response

9. Transparency International Jan 2019
https://www.transparency.org/news/feature/corruption_perceptions_index_2017?utm_medium=email&utm_campaign=Global%20Newsletter%2021%20December%202018&utm_content=Global%20Newsletter%2021%20December%202018+CID_a8a98f419a977aea8c8569ab161cbd1b&utm_source=Email%20marketing%20software&utm_term=Corruption%20Perceptions%20Index
10. Rick Brown 2018 AIC internal publication “Understanding law enforcement information sharing for criminal intelligence purposes” <https://aic.gov.au/publications/tandi/tandi566>
11. The Kangaroo Court of Australia: <http://kangaroocourtofaustralia.com/>
12. Walsh Katie 2018 The Financial Review <https://www.afr.com/business/legal/why-cant-politicians-criticise-judges-heydon-dices-victorias-appeal-court-20180308-h0x8bg>
13. Hayden’s 2019 Weekend Australian Commentary (edited address at Graduation Ceremony at Campion College). P16 “Living up to the worthy ideals of Sainted Namesaki”
14. Health Professionals Australia Reform Association Annual Scientific Meeting 2018 <https://drive.google.com/file/d/1WG-JGvc7Tx1DBm9cjFW9Yvzvqrae658X/view>

Appendices (Confidential)