

What does it mean to be an intelligent regulator? Perspectives on foresight, kindness and trust

Martin Fletcher

Chief Executive Officer

Australian Health Practitioner Regulation Agency (Ahpra)

Martin.fletcher@ahpra.gov.au



CORO

CONFERENCE OF REGULATORY OFFICERS

23 - 25 OCTOBER 2023

HOTEL GRAND CHANCELLOR HOBART

TASMANIA

Regulation: Dealing with BIG issues





'Hallmarks of distrust': AHPRA staff fear public at risk due to 'super toxic' culture

Exclusive Regulation

'Terrible investigation': Leaked letter claims healthcare watchdog's failures caused death, injury

Check on dodgy docs

Watchdog tells medicos to report colleagues

Race to save the doctors who are dying of 'shame'

Australian medical watchdog announces major overhaul to protect patients from sexual misconduct by doctors

Butler orders review of health regulator

'Monumental waste of time': Why Australia's new cosmetic surgery guidelines will 'do more harm than good'

Letter warns of watchdog failure

EXCLUSIVE
Charlotte Gilman
A senior doctor...
The letter, obtained by The Age, said most of the investigations...
and the quality of AHPRA's work...
"We don't want that out in...
in a statement, Fletcher said...

VIDEO: Do No Harm: The doctors who break their sacred oath but are still allowed to practise

The words set to be banned under new cosmetic surgery guidelines

Doctors may soon get official 'endorsements' to practise cosmetic surgery – but will that protect patients?

Exclusive Regulation

A surgeon was banned from one procedure. It was too late for Taylah Keating's family never knew the health regulator was investigating the operation their daughter underwent before her death. Now, they want answers.

Confronting research shows doctors died by suicide due to flawed complaints system

Call for urgent review into system that allows doctors to practise despite sexual misconduct to keep practising

This doctor is in jail for sexual assault. He can still ask to stay registered

FRIDAY, FEBRUARY 10, 2023 herkban.com.au NEWS 03
Big dose of alarm online

New cosmetic surgery rules leave doctors divided

Pop-up pill pusher fear
Fears pills being prescribed without checks
appear to have been appropriately considered."
Medical Board of Australia chairwoman Anne Tonkin said the telehealth review aimed to "close the gap that's sprung up between online prescribing business models and good medical practice". She said some prescribing after a tick box consultation looked "suspiciously like algorithm-driven prescribing". "There are back

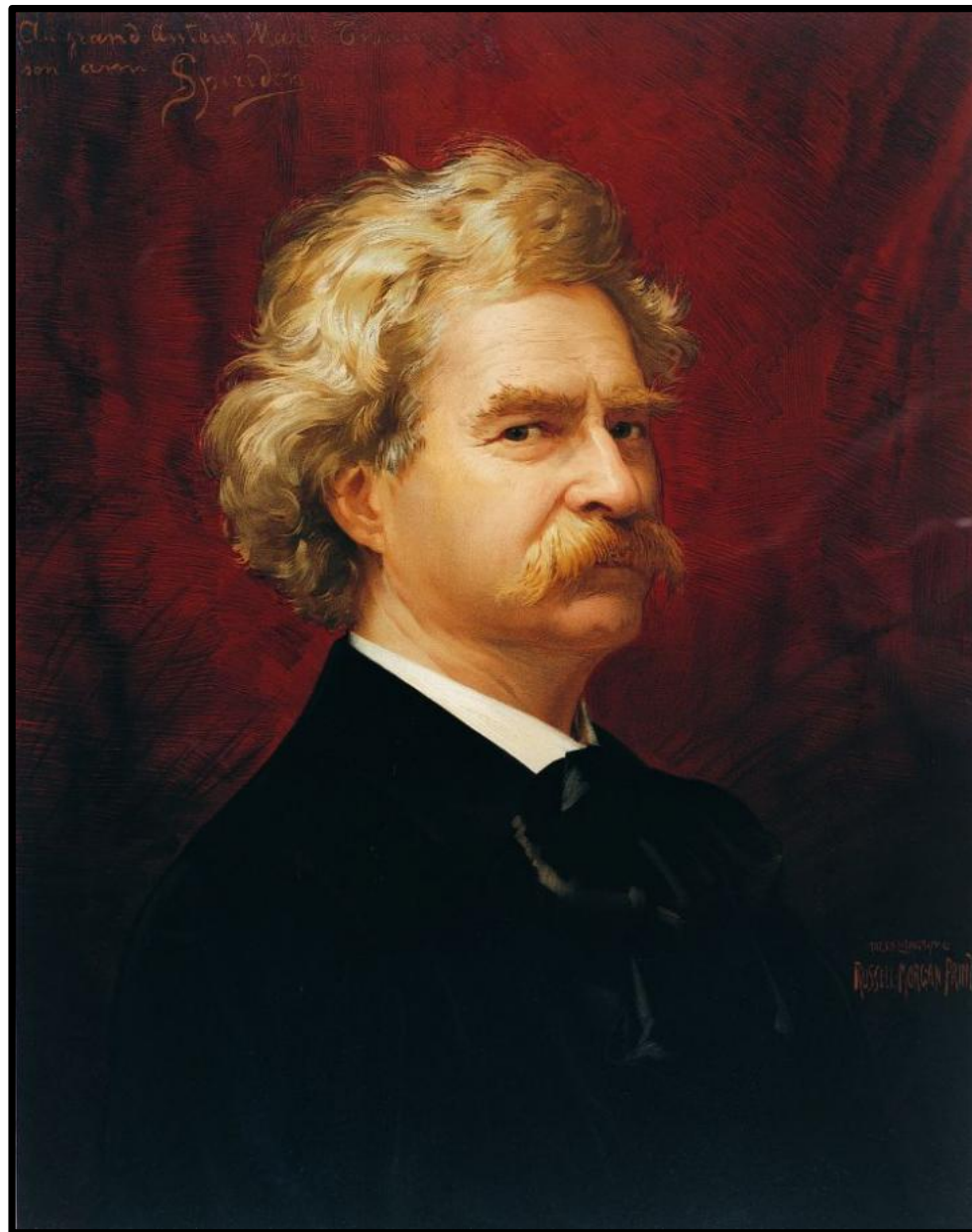
Medical complaints increase as patients hold doctors to account



'Throw \$50 down a toilet bowl': Doctors slam IV therapies

Slow, unaccountable and riven: Is the national healthcare watchdog sick?

What would Mark Twain say?



***“If you don’t read the papers,
you are uninformed.
If you do read the papers, you
are misinformed.”***

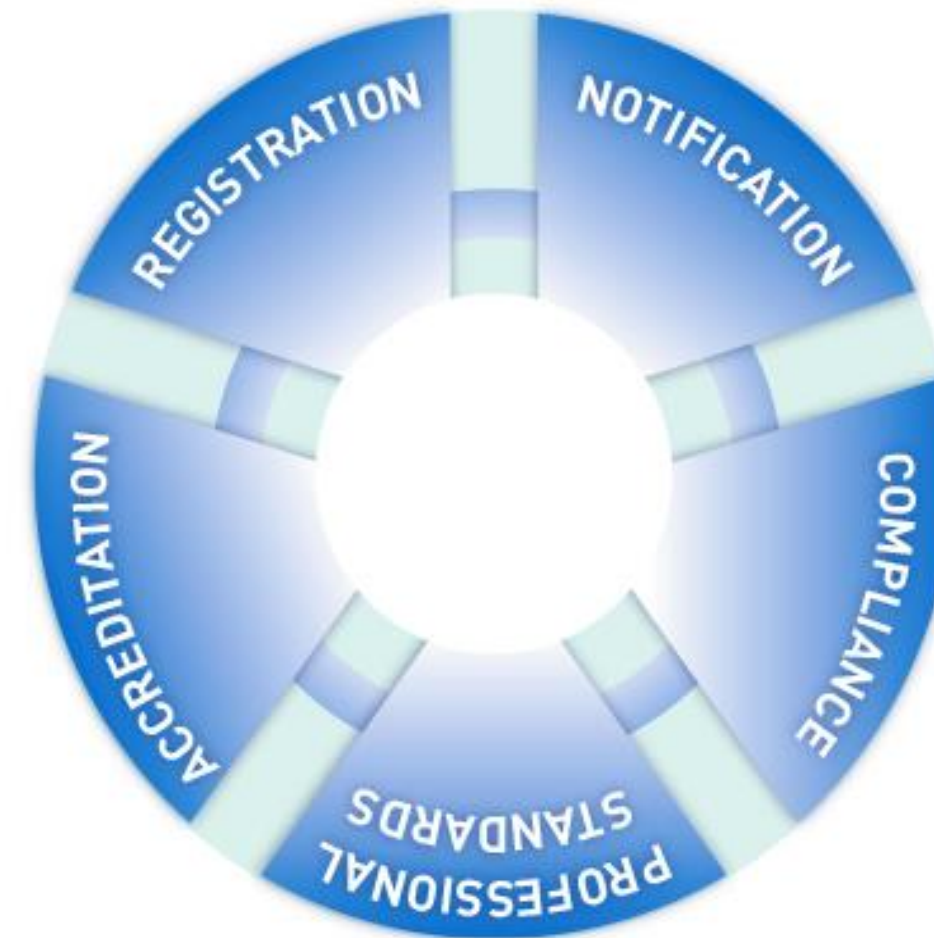
875,000 registered health practitioners

- Aboriginal and Torres Strait Islander Health Practitioners
- Chinese Medicine Practitioners
- Chiropractors
- Dental practitioners
- Medical Doctors
- Medical Radiation Practitioners
- Nurses
- Midwives
- Occupational Therapists
- Optometrists
- Osteopaths
- Paramedics
- Pharmacists
- Physiotherapists
- Podiatrists
- Psychologists

National Registration and Accreditation Scheme

Ahpra works in partnership with 15 National Health Practitioner Boards and accreditation authorities to:

- Set professional standards
- Register and renew practitioners
- Publish a national register
- Manage notifications (complaints)
- Accredite programs of study
- Prosecute offences



National, multi profession statutory regulatory scheme underpinned enabled through a National Law model

Concerns raised in notifications

eyebrow lift did not achieve desired result

senior midwife lacked skills to interpret CTG traces

dentist overcharged and performed unnecessary work

surgeon was rude to and bullied other staff in theatre

nurse administered a fatal dose of insulin on her first shift as a registered practitioner after graduation

practitioner posted on social media, in support of parents not vaccinating their children

nurse charged with domestic violence against his partner

cognitive impairment in an ageing physiotherapist

Ill fitting dentures

psychologist providing biased assessment as a Family Court appointed expert

physiotherapist massaged groin of a patient and brushed their genitals when treating a knee injury

doctor made sexualised comments when performing a PAP smear

chiropractor claims to cure cancer by spinal manipulation

contrast dye administered to patient with a documented allergy

optometrist failed to detect a detaching retina



(Some) challenges in a system under pressure?



- Pandemics
- Climate change
- Racism
- War
- Misinformation
- New technologies



10

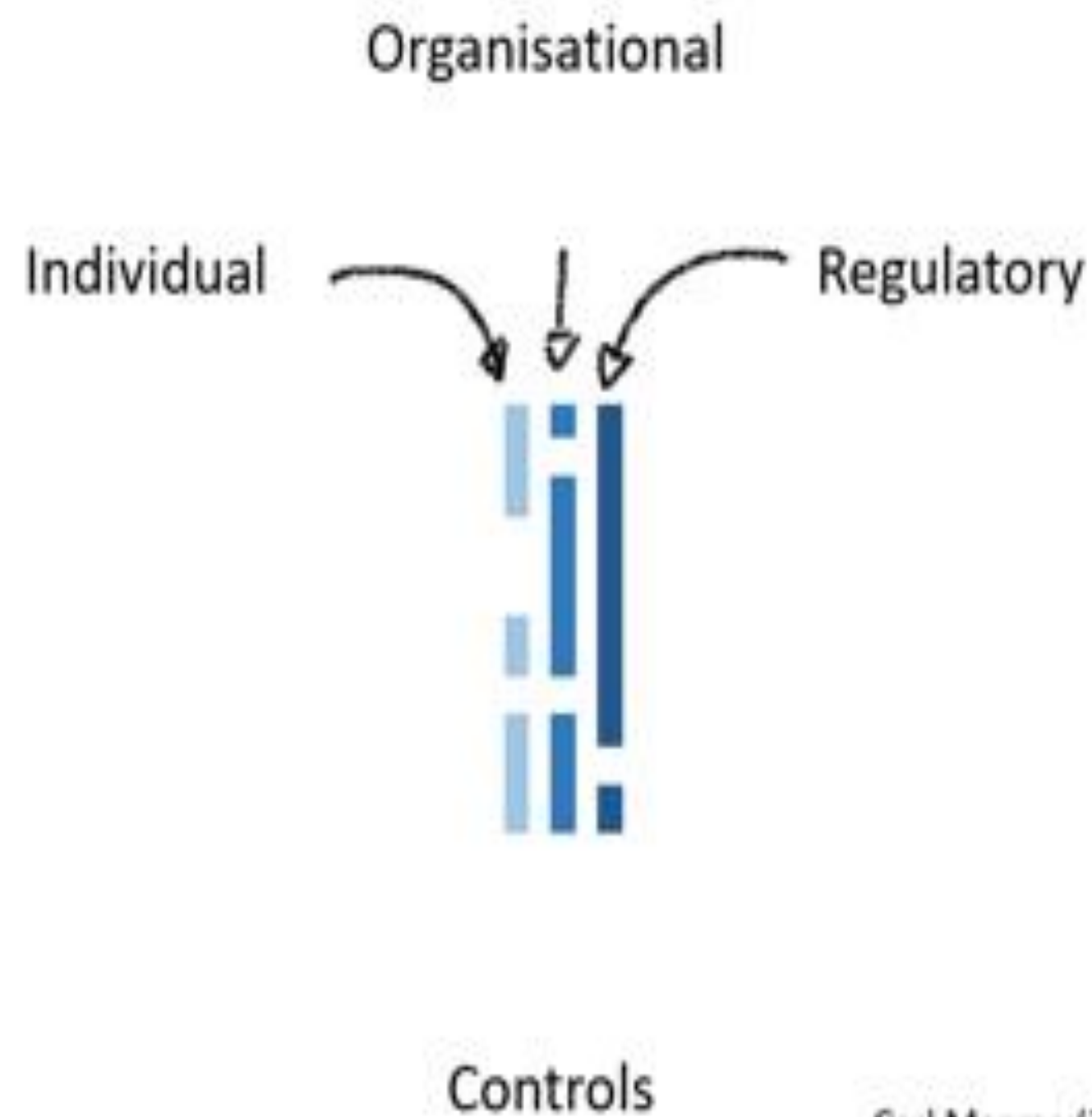
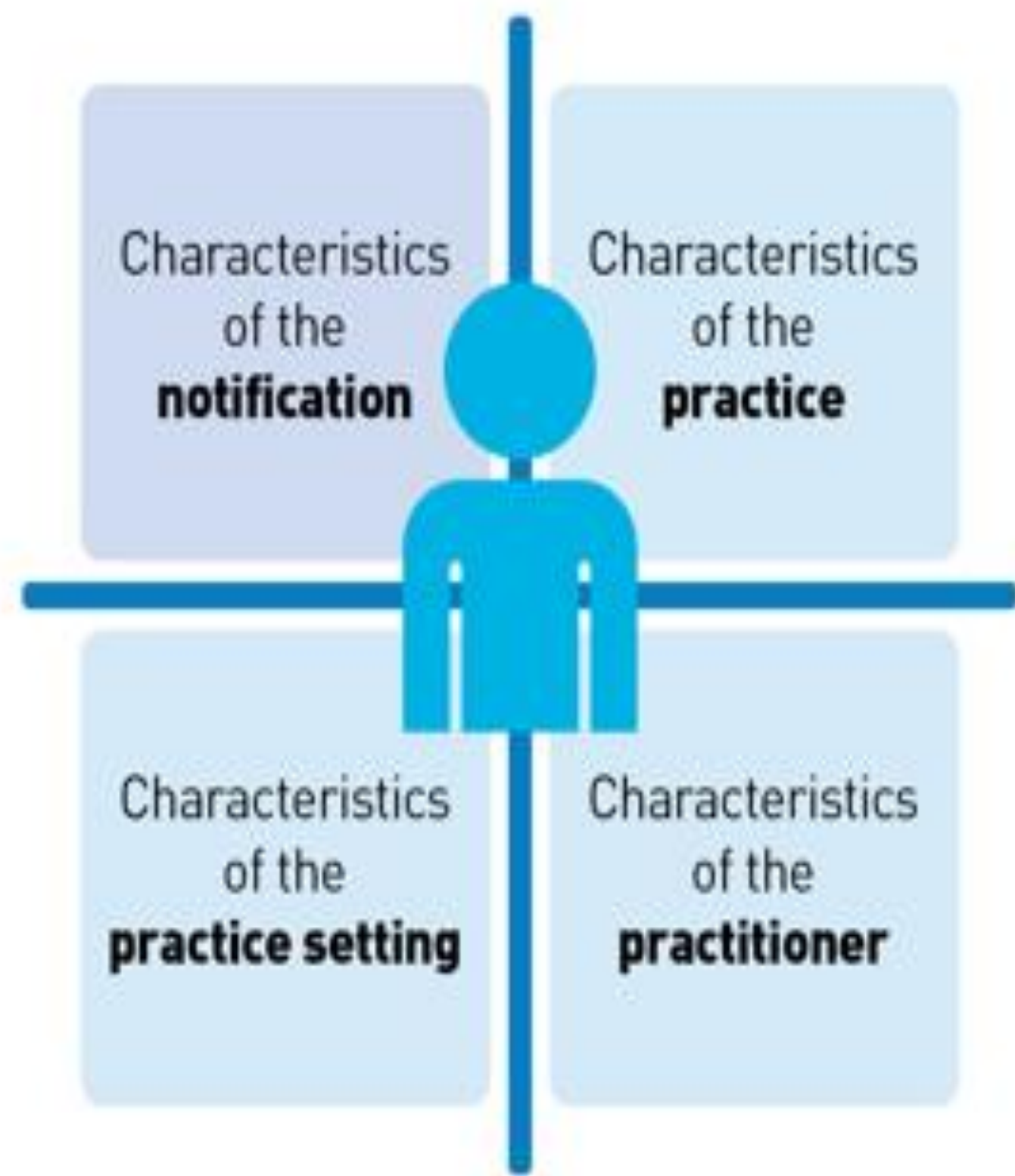
"Fundamental rethinking of regulation is needed more often than we expect"

Professor Zubin Austin, Leslie Dan Faculty of Pharmacy, University of Toronto



***‘Intelligent regulation
must eliminate the really
poor performers without
distorting the activities of
the majority of
performers’***

Onora O’Neill 2014



Carl Macrae (2018)

What is a market disruptor?



Harry Cayton

“A new way of doing things which catches us off guard and which we don’t fully understand”.

Fugees Rapper Pras Michel Says Lawyer Used A.I. for 'Ineffectual' Defense

Prakazrel Michel was convicted in April in an illegal foreign influence scheme. In a motion for a new trial, he said his lawyer's closing argument was "frivolous."



Journal of Nursing Regulation
Volume 12, Issue 3, October 2021, Pages 11-19

ELSEVIER

Innovation

Use of Artificial Intelligence in Regulatory Decision-Making

Robert Jago BA, M.Phil.(Cantab), Anna van der Gaag MSc, PhD, Kostas Stathis PhD, Ivan Petej PhD, Piyawat Lertvittayakumjorn MSc, Yamuna Krishnamurthy MSc, Yang Gao PhD, Juan Caceres Silva PhD, Michelle Webster BA, MSc, PhD, Ann Gallagher SRN, RMN, BA, MA, PhD, Zubin Austin BSc, Phm, MBA, MSc, PhD

Show more

+ Add to Mendeley Share Cite

Get rights and content



Grace
WORLD'S FOREMOST NURSING ASSISTANT ROBOT
SingularityNET

TORONTO STAR

Sale: \$3.33/month

CANADA

How Canada is using AI to catch immigration fraud — and why some say it's a problem

The little-known Integrity Trends Analysis Tool has mined the data set of 1.4 million study permit applications and 2.9 million visitor applications.

Gone in 38 seconds: Regulator using AI to reject serious criminal complaints

Nick Bonyhady and Sarah Danckert
March 6, 2023 – 5:01am

Save Share

The corporate regulator ASIC is using an automated system to dismiss allegations of serious wrongdoing by company directors in as little as 38 seconds, allowing thousands of bosses who oversaw failed firms to escape scrutiny over the past five years.

One report lodged by veteran liquidator Michael Brereton, of firm William Buck, accused the directors of a company that failed while owing creditors up to \$250,000 of withholding records, trading while insolvent for more than two years, and breaching their legal duties.

IN NUMBERS

28,000

The number of reports ASIC received from liquidators between the 2018 and 2022 financial years that included allegations that directors had broken the law

3 per cent

of those reports were referred to another part of ASIC for more action

38 seconds

The time it took for an auto-generated email to respond to one report, declining to investigate



Ahpra's Data strategy 2023–2028



Statements of intent

Our community, including the public and practitioners, have trust and confidence in the data we hold

We collect, use and disclose data to protect the public and enable a sustainable health workforce

Our approach to collecting and using data considers cultural safety for Aboriginal and Torres Strait Islander Peoples

We respect and protect the privacy of an individual's data

We are transparent about our collection, use and disclosure of data

Data is fit for purpose, rigorously protected and secure

Regulatory decisions are made by humans, supported by data

Expanding the tools of regulation 2.0

Standards

Registers
Protected titles

Discipline

Education

Stakeholder
involvement
& collaboration



Research

Public involvement
in regulation

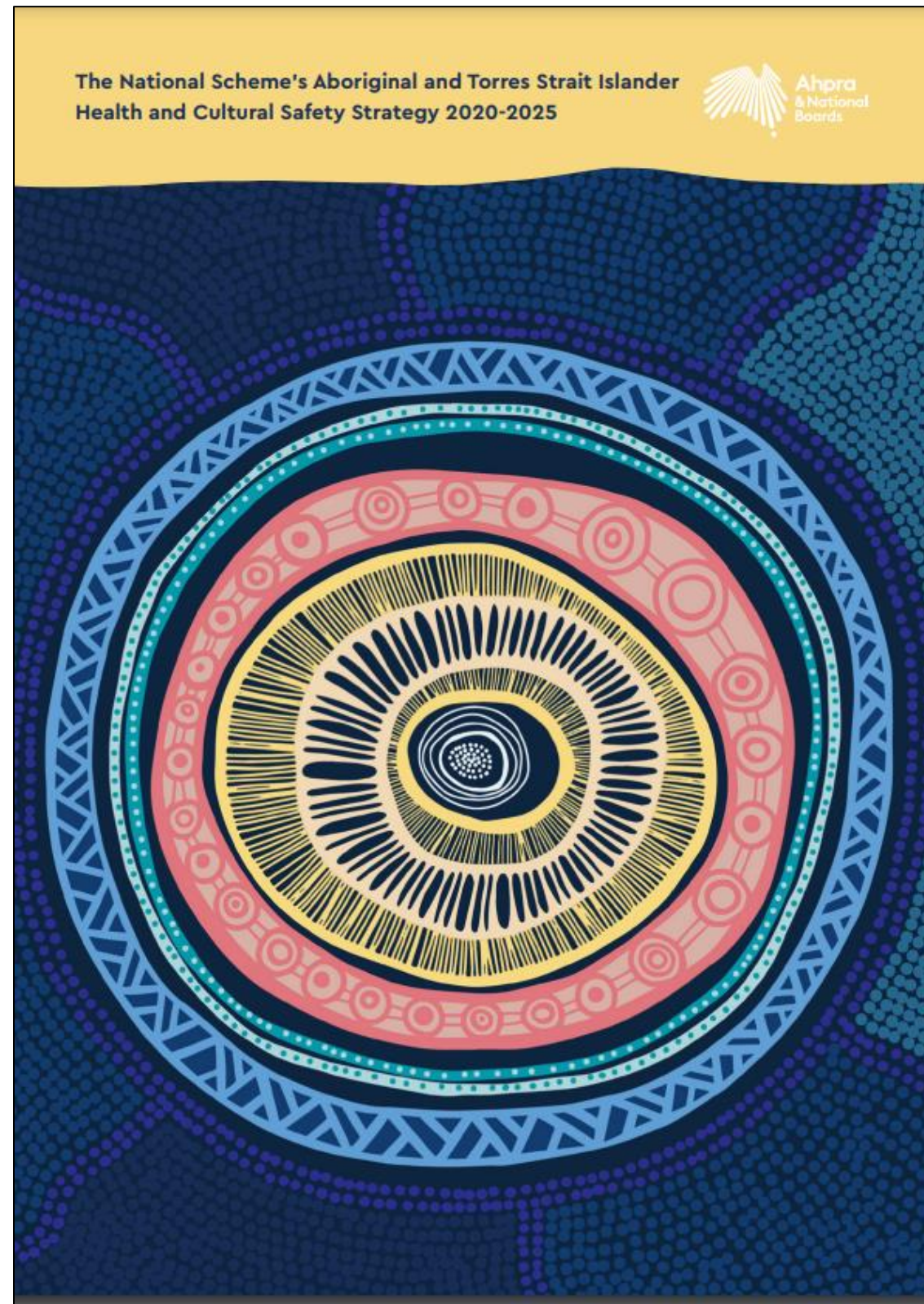
Use of alternatives to
regulation

Data science
Data linkage

Intelligent regulation

- Make the best use of diverse sources of informal and formal information and data combined with regulatory subject matter expertise
- Wholistic, integrated and comprehensive
- Make invisible risks visible
- Enable Ahpra to better predict, prepare and prevent:
 - make most informed decisions using both internal and external data
 - Prediction and prevention – early identification, action and prevention
 - Maximise impact – focus our work on the highest potential risks

Aboriginal and Torres Strait Islander Health and Cultural Safety Strategy



- Legislative amendment
- Increased participation
- Registration outreach
- Culturally safe notifications process
- Moong moong Gak Cultural Safety Training.

Should regulation be kinder?

International Journal for Quality in Health Care, 2023, 35(4), 1–12
DOI: <https://doi.org/10.1093/intqhc/mzad076>
Advance Access Publication Date: 26 September 2023
Original Research Article

OXFORD

‘Virtually daily grief’ — understanding distress in health practitioners involved in a regulatory complaints process: a qualitative study in Australia

Susan Biggar^{1,*}, Anna van der Gaag², Pat Maher¹, Jacinta Evans¹, Lakshmi Bondu¹, Manaan Kar Ray³, Rachel Phillips⁴, Anne Tonkin⁵, Catherine Schofield⁶, Kym Ayscough¹, Matthew Hardy¹, Sarah Anderson¹, Eva Saar¹, Martin Fletcher¹

¹Australian Health Practitioner Regulation Agency, Melbourne GPO 9958, Victoria 3001, Australia

²School of Health Sciences, University of Surrey, Guildford, Surrey GU2 7YH, United Kingdom

³Princess Alexandra Hospital, Brisbane, Queensland, Australia

⁴Psychology Board of Australia Melbourne GPO 9958, Victoria 3001, Australia

⁵Medical Board of Australia, Melbourne GPO 9958, Victoria 3001, Australia

⁶Nursing and Midwifery Board of Australia, Melbourne GPO 9958, Victoria 3001, Australia

*Corresponding author. Australian Health Practitioner Regulation Agency, Melbourne, Australia, 3000, GPO Box 9958, Victoria 3001, Australia, E-mail: Susan.biggar@ahpra.gov.au

Handling Editor: Prof. David Greenfield.

Abstract

Protection of the public is the paramount aim for health practitioner regulation, yet there has been growing concern globally on the association between regulatory complaints processes and practitioner mental health and wellbeing. The objective was to understand the experience, particularly distress, of health practitioners involved in a regulatory complaints process to identify potential strategies to minimise future risk of distress. Semi-structured qualitative interviews were conducted with health practitioners in Australia who had recently been through a regulatory complaints process, together with a retrospective analysis of documentation relating to all identified cases of self-harm or suicide of health practitioners who were involved in such a process over 4 years. Data from interviews and the serious incident analysis found there were elements of the regulatory complaints process contributing to practitioner distress. These included poor communication, extended time to close the investigation, and the management of health-related concerns. The study found external personal circumstances and pre-existing conditions could put the practitioner at greater risk of distress. There were found to be key moments in the process—triggers—where the practitioner was at particular risk of severe distress. Strong support networks, both personal and professional, were found to be protective against distress. Through process improvements and, where appropriate, additional support for practitioners, we hope to further minimise the risk of practitioner distress and harm when involved in a regulatory complaints process. The findings also point to the need for improved partnerships between regulators and key stakeholders, such as legal defence organisations, indemnity providers, employers, and those with lived experience of complaints processes. Together they can improve the support for practitioners facing a complaint and address the stigma, shame, and fear associated with regulatory complaints processes. This project provides further evidence that a more compassionate approach to regulation has the potential to be better for all parties and, ultimately, the wider healthcare system.

Keywords: health practitioner distress; self harm; suicide prevention; health professional regulation; complaints handling

Introduction

There has been growing concern globally about the association between regulatory complaint processes and the mental health and wellbeing of the practitioner who is subject to a complaint [1–6]. Previous research suggests that health practitioners involved in such a process can experience heightened levels of distress, anxiety, and shame, which impacts their personal lives and their families, as well as their professional identity and practice [2, 3]. There have also been tragic cases of practitioners involved in complaints processes who have died by suicide [1].

Worldwide, there is consensus that patient safety must be the paramount aim for healthcare systems and regulators. Those regulating the workforce are responsible for ensuring that practitioners are suitably trained, qualified, and safe to practise. Regulators consider complaints and concerns raised by patients, families, and others, about the performance, conduct or health of practitioners. For example, complaints about performance might relate to whether a practitioner obtained appropriate patient consent for a procedure, missed a diagnosis or made a serious prescribing error. Complaints about conduct include inappropriate relationships with a patient,

Received 27 June 2023; Editorial Decision 7 September 2023; Revised 24 August 2023; Accepted 21 September 2023

© The Author(s) 2023. Published by Oxford University Press on behalf of International Society for Quality in Health Care.

This is an Open Access article distributed under the terms of the Creative Commons Attribution-NonCommercial License (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits non-commercial re-use, distribution, and reproduction in any medium, provided the original work is properly cited. For commercial re-use, please contact journals.permissions@oup.com

Downloaded from <https://academic.oup.com/intqhc/article/35/4/mzad076/7282442> by guest on 22 October 2023

- Managing health concerns
- Being open, transparent and maintaining practitioner hope
- Supporting practitioners
- Learning from practitioner experience.

What makes a good regulator?



*Professor Valerie Braithwaite
Professor of Regulatory Studies,
Australian National University*

- The best stories are about the opportunities seized to advance statutory objectives
- Exhibit both a risk management and opportunity orientation
- Demonstrate leadership from above and below
- Close the gap with those they want to protect from harm
- Engage with the community with integrity to build trust, confidence and empower

The importance of trust



"A final challenge ...three things endure in regulation: proportionality, transparency and trust and the greatest of these is trust."

Professor Anna van Der Gaag University of Surrey, England