

# A framework for identifying and dealing with vexatious notifications

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## Position statement

Ahpra and the National Boards understand that practitioners who feel that they may be the subject of a vexatious notification are more likely to experience stress and anxiety. All notifications that are considered to be potentially vexatious, or where a practitioner raises concerns that the notification is vexatious, must have the notifications assessed against the vexatious notifications framework. Any Ahpra staff member or Board or Committee member can identify a notification as potentially vexatious at any stage of the notification process and require the framework to be applied.

## Purpose

This framework provides guidance on identifying and managing vexatious notifications within Ahpra's regulatory system.

The purpose of the framework is to assist Ahpra and National Boards to more effectively manage notifications by:

- identifying the features of a potentially vexatious notification for the purposes of the National Law
- outlining how to manage notifications where those features are identified<sup>1</sup>
- ensuring the utilisation of the resources of the national registration and accreditation scheme in an appropriate way
- reducing the serious impact vexatious notifications can have on practitioners and their wellbeing, and
- ensuring the process is fair and open for all involved.

## Background

Vexatious notifications can have a significant impact on practitioners and the integrity of the regulatory process. This framework aims to balance public safety with protections against the misuse of the notifications process and to ensure a strong reporting culture so that genuine concerns about patient safety are reported and appropriately addressed.

## What is a vexatious notification?

Within this framework, a vexatious notification is defined as a notification that lacks substance and is made in bad faith, often with the intent to:

- harass, intimidate, cause harm or punish the practitioner,
- disrupt their professional standing without valid cause, or
- misuse the complaints system for personal, competitive or financial motivations.

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<sup>1</sup> Morris, Canaway and Bismark, *Reducing, identifying and managing vexatious complaints*, University of Melbourne, 2017

## Unreasonable versus calculated conduct

Vexatious notifications differ from *inadequate, incomplete, frivolous or misconceived* notifications, which may lack sufficient detail but are not made with malicious intent to harass, intimidate, harm or punish the practitioner. It is also important to distinguish between unreasonable conduct, where a notifier has unrealistic expectations, a misconceived understanding of the concerns or exhibits excessive or obsessive emotional behaviour but does not demonstrate calculated conduct. Calculated conduct includes such conduct as a deliberate misuse of the notification process in a strategic way to achieve a particular outcome, often in the context of professional competition, relationship breakdowns, political motivations or in the context of family violence, and is an indicator of a vexatious notification.

## Principles for managing potentially vexatious notifications

- The consequences for a practitioner being the subject of a vexatious notification can be serious and damaging, both professionally and personally.
- Some notifications made with an intent to cause distress or detriment, nevertheless disclose a genuine patient safety issue or concern and care must be taken to avoid dismissing these as vexatious for that reason alone.
- Evidence is available to suggest that vexatious notifications are rare<sup>2</sup>.
- Identifying vexatious notifications is inherently difficult, as classification primarily rests on identifying the motivation of the notifier, and this is often concealed from Ahpra and the National Board.
- The standard of proof required to establish a notifier's intention to use the regulatory process to cause harm or distress to the practitioner is a reasonable belief.
- Understanding pre-existing relationships between notifier's and practitioners and the broader context, can help to identify potentially vexatious notifications. It may be possible to explore these with a notifier and where possible, a practitioner.
- A practitioner who is subject of a potentially vexatious notification may be able to provide additional information to assist with our assessment under the Framework, however a practitioner's opinion that a notification may be vexatious maybe based on denial of the concerns raised, lack of insight or an opposition to the accepted standards.
- Care is required to avoid the risk of deterring good faith notifications. Section 237 of the National Law provides protection for people who make a notification in good faith.
- A notification may include several indicators of being vexatious but after review be determined as not vexatious. The indictors may be present but there may not be any identified intent to harass, harm or punish the practitioner.
- Obtaining independently verifiable information as soon as possible will assist in preventing delayed decision making on vexatious notifications.
- The time and resources required from Ahpra and the National Boards in dealing with vexatious notifications can adversely impact their work in protecting patients and the community.
- Professional and community confidence in the National Registration and Accreditation Scheme may also be adversely impacted by vexatious notifications.

## Features of a vexatious notification

Key indicators of a vexatious notification may include:

- Anonymous notifications that provide no specific details or supporting evidence
- Notifications that arise from or are linked to a personal, professional or commercial dispute, rather than genuine public safety concerns

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<sup>2</sup> Morris, Canaway and Bismark, *Reducing, identifying and managing vexatious complaints*, University of Melbourne, 2017

- Repetitive notifications about the same practitioner that lack relevant or new information and evidence
- Exaggerated, unsubstantiated or irrelevant allegations intended to damage a practitioner's reputation.

While vexatious notifications can come from anyone including patients, colleagues or members of the public, they are not motivated by legitimate concerns about patient safety. Instead, they often stem from personal grievances, conflict or retaliation and are used to obtain a calculated outcome or advantage or to cause harm.

By ensuring notifications are assessed objectively and fairly, this framework aims to identify and manage vexatious notifications, protecting practitioners from undue harm and upholding confidence in the regulatory system without deterring legitimate concerns about public safety.

## Identifying a vexatious notification

Determining whether a notification is vexatious can be challenging, as it often requires assessing the motivation of the notifier, which may not always be apparent, and is often concealed from Ahpra and the National Board.

To assess whether a notification is vexatious, Ahpra will consider:

- Notification history – Has the notifier submitted multiple unsubstantiated notifications, and/or previously been identified as a vexatious notifier?
- Details of the allegations – Are the claims vague, exaggerated or unrelated to public safety?
- Connection to known disputes – Is the notification linked to an active or former personal, professional or legal conflict?
- Lack of supporting evidence – Does the notification rely on accusation without verifiable facts?

**When assessing a notification for potential vexatious intent look out for the following indicators:**

### Notification format

- use of excessive emphasis (e.g. multiple bold, underlined or italicised or capitalised words)
- Inclusion of rhetorical questions rather than clear factual statements
- Overly dramatic or inflammatory language to exaggerate concerns
- Unnecessary repetition or a lengthy, convoluted structure without adding relevant information
- Providing excessive and irrelevant supporting documents that do not substantiate concerns.

### Notification content

- Poorly defined or irrational concerns lacking in specific details
- Request for unreasonable or unrealistic outcomes as a result of the notification
- Giving forceful and unlikely instructions for specific actions regarding how the notification should be managed
- Overstating personal impacts, such as claims of reputational damage, financial loss, social status unrelated to the actual concerns
- Inclusion of false and misleading information
- Allegations of widespread conspiracy involving multiple agencies or practitioner without supporting evidence
- Politically motivated concerns.

## A notifier's behaviour

- Frequent, repetitive, demanding or prolonged contact regarding the notification
- Historical pattern of making notifications about the practitioner or issue
- Inconsistent of shifting concerns over time with new issues being introduced as previous ones are addressed
- Aggressive, confrontational or threatening behaviour towards Ahpra staff, Board members or the practitioner, including:
  - Direct threats towards others
  - Threats of self-harm if demands are not met.
- The notifier wishes to remain confidential but the reason for this is unclear and does not align with genuine safety concerns
- Strong criticism of a practitioner's approach to treatment on issues where there is valid disagreement and acceptance of different opinions among the broader profession.

**Important note:** If a notifier exhibits signs of mental health concerns, their notification should not be automatically considered vexatious. The substance of the notification must still be assessed objectively.

## Relationship between the notifier and practitioner

- The notifier appears to have no known connection at all with the practitioner, indicating that the notifier's sole intent was to cause harm or disruption to the practitioner.
- The notifier has (or had) a personal relationship with the practitioner.
- The notifier and/or practitioner are parties to ongoing criminal, civil, or family law disputes, which may suggest the notification was raised to retaliate against the practitioner or to gain an advantage or control.
- The notifier has a competitive or historical connection with the practitioner.
- A close associate to the notifier has a pre-existing motivation to cause damage to the practitioner's reputation.
- The notifier and practitioner work at the same location or have an employer/employee relationship where there's an existing workplace dispute between the parties, including concerns relating to bullying and harassment.
- While a pre-existing relationship or relationship breakdown as described above may indicate a vexatious notification, many notifications may raise legitimate concerns in such contexts.

**Important note:** Where a notification is suspected to be vexatious in the context of family or domestic violence, consideration must be given to the Interim Framework for Family Violence Notifications.

## What happens when a decision is made that a notification is vexatious?

Any notification that contains any indicators of vexatiousness or that is flagged as potentially vexatious by a Board or Committee, Ahpra staff member or practitioner should be assessed against the Framework. Where required, further information should be obtained from the notifier and if appropriate, the practitioner particularly to understand the notifier's reasons for raising a concern and any pre-existing background or relationship between the notifier and practitioner. If any objective third party information is identified that will assist in the assessment of the notification in line with the Framework, this should be identified.

Where the framework has been applied and a notification is subsequently suspected to be vexatious, this must be referred to an Operations Manager to confirm whether to proceed with a recommendation that the National Board takes no further action under s151(1)(a).

In the event a National Board determines that a notification is made vexatiously, the Board will decide to take no further action under section 151(1)(a) or section 167 on the grounds that the notification is vexatious. The notifier and practitioner will receive notice of the Board's decision to take no further action and the reasons for that decision.

Repeat vexatious notifier's may be flagged on our case management software and required to provide additional evidence before future notifications are considered.

Ahpra may work with other health complaint entities to track repeated misuse of the notifications system.

## Vexatious notifications made by other health practitioners

Vexatious notifications made by a registered health practitioner with the intent of harming another practitioner are taken seriously. A Board may take action against a practitioner who makes a vexatious notification about another health practitioner. This may include investigating the practitioner and, where vexatiousness is apparent, taking action that could affect the practitioner's registration. Vexatious notifications do not have good faith protections under the National Law.

## Tiered approach to managing a vexatious notification

To ensure a structured, proportionate and fair response to vexatious notifications, Ahpra applies a tiered approach to assessment and management of notifications that are suspected to be vexatious. This approach categorises notifications based on the identified indicators of vexatiousness and determines the appropriate level of scrutiny and response.

### Overview of the tiered system

Notifications are classified into three tiers based on their characteristics. A notification may move up or down the tiers based on further information obtained.

#### **Tier 1: Some indicators of vexatiousness – Proceed with additional scrutiny**

Notifications that contain some public safety concerns but also exhibit minor vexatious indicators. These notifications are reviewed with caution, ensuring any valid concerns are assessed while applying the framework and monitoring for potential misuse of the regulatory process as the notification progresses.

#### **Tier 2: Multiple indicators of vexatiousness – Require additional justification before proceeding**

Notifications that demonstrate multiple vexatious indicators such as repetition, exaggerated claims or connections to personal disputes. These notifications require additional scrutiny and the notifier may be asked to provide further supporting evidence before the notification continues to progress.

#### **Tier 3: Strongly suspected to be vexatious – Expedited resolution**

Notifications that show a clear pattern of vexatious intent or indicators, including repeated unsubstantiated allegations, a history of complaints against the same practitioner without evidence, or attempts to misuse the notifications process for personal or professional gain. These notifications should be progressed to a decision maker as soon as possible to prevent misuse of the regulatory system and limit the impact on involved parties.

### Ensuring consistency in applying the tiered system

To maintain fairness and uniformity across all National Boards, Ahpra will implement a quality assurance process to ensure consistency in assessing and managing vexations notifications.

This includes:

- Standardised training for decision-makers
- Periodic audits of the application of the Framework to identify inconsistencies
- A structured review process where potentially vexatious notifications are escalated for review by a manager prior to a recommendation being made to a decision maker
- Regular review of related processes and guidance documents for regulatory staff managing potentially vexations notifications.

## Supporting practitioners who are the subject of a vexatious notification

Vexatious notifications are likely to have significant, negative impacts on the practitioner who is subject to the notification, including

- stress and anxiety
- damage to reputation and career
- fear or apprehension for self and family
- feelings of being under attack, victimised and / or powerless
- emotional exhaustion
- mental and physical health impacts
- financial damage.

In instance where a vexatious or potential vexatious notification has been identified, the practitioner who is the subject of the vexatious notification should be made aware of [available support services](#) and other entities that may be able to assist, particularly where the notification has been raised in the context of family or domestic violence. In some circumstances, it may be appropriate to consider withholding notice of the notification from the practitioner under s152(3)(b) of the National Law.

## Transparency and accountability

This Framework will undergo formal review every **12 months** to ensure ongoing improvements.