



SUBMISSION ON EXPOSURE DRAFT “BILL B”

HEALTH PRACTITIONER REGULATION NATIONAL LAW

July 2009

Submission by the Health Consumers Alliance Inc of South Australia (HCA)

HCA is a not for profit, independent peak body. We are a membership based organisation with both individual and organisational members who work together to provide a strong, independent and effective health consumer voice in South Australia. HCA welcomes the opportunity to comment on policies and legislation, position papers and participation frameworks as it considers it is fundamental that consumers be involved throughout all aspects of the health system in Australia.

Overview

HCA appreciates a number of features included in the exposure draft “Bill B “and acknowledges the inclusion of several key recommendations from the health consumer movement. Most notably HCA welcomes the simplified complaints arrangements and the provision of a single point of contact for consumers. The provision of assistance to consumers is a critical requirement in these arrangements and HCA is confident that it will expedite the appropriate handling and resolution of many concerns. The addition of a Public Interest Assessor also provides scope for improved consumer protection. It is vital that consumers are involved across healthcare decisions to ensure safety and quality in services and to facilitate self-responsibility.

Specific recommendations for further improvements have been identified to enable this involvement to continue and develop. There are also several matters not included in the bill but are significant in the light of it’s creation and require consideration at this time. The importance of ensuring a committed national community information strategy on the national law is also such that it requires consideration immediately the draft bill is agreed upon.

Recommended Changes

1. Student Registration

South Australian health consumers are currently protected from medical unfitness or unprofessional conduct of medical students. The failure to include this requirement in the national legislation is quite unacceptable as it effectively lowers current SA standards. It is our understanding that the purpose of the legislation is to adopt the highest standard available and this is clearly not being done in this instance. It is understood that student registration is currently not widely applied across the professions and there are perceived difficulties associated with full registration of



students. The South Australian experience is that all stakeholders are very satisfied with the impact of comprehensive medical student registration. As a result HCA urges that this decision be reconsidered at least in relation to medical students in the first instance.

Recommendations

- **The legislation be amended to require the National Medical Board to enact the full registration of medical students.**
- **The Australian Health Workforce Ministerial Council consider of the application of full registration for all professional groups.**

2. Public Interest Assessor (Clauses 35-37)

There is some uncertainty as to what is intended in regard to this role; however certain principles need to be included in the act. In particular clarification is needed on the relationship between the definition of public interest to be utilised by the PIA and the nationally agreed Australian Charter of Healthcare Rights. What is clear is that the PIA requires independent funding and the capacity to undertake investigations and consultations in order to properly protect the public interest. The matters investigated by the PIA should cover the range of minor recurring concerns through to major failings of practitioners and systems. Findings of the PIA also need to be made publically available. Consideration could also be given to the Public Interest Assessor acting as an appeals agency for consumers and to the establishment of a consumer advisory panel. The establishment of a panel with state and territory representatives is particularly important in order that awareness of the impact of the national law on state jurisdictions is maintained overtime.

Recommendations

- **The PIA should be adequately funded to operate as an independent agency with investigation and consultation capacity.**
- **Establishment of a Consumer Advisory Panel with representatives from all states and territories to provide advice to the Public Interest Assessor.**

3. Advertising Penalties (Clause 145)

The penalties for advertising identified in this clause appear grossly inadequate from a health consumer perspective. Given the potentially lucrative nature of commonly advertised services and the vulnerability of certain consumers, the current maximum penalties appear too low and may be viewed as simply a cost of doing business.

Recommendation

- **Maximum penalties for advertising to be reviewed to ensure an effective disincentive applies for false or misleading advertising and the offering of inducements or unreasonable hopes of benefit from treatment.**

4. Timeliness of complaints handling processes and notifications to complainants (Clause 210-13)

There is cause for concern by consumers about possible delays in the processing of complaints and about the absence of a legislated notification of progress report to the complainant. These concerns have been tackled in South Australia over recent years and it is now accepted that the complainant should be provided with a progress report, particularly in relation to serious complaints. It is vital that this is included in the national legislation as the impact of decisions and processes on consumers and their families can be profound. It would be a very unfortunate consequence if the national law served to prolong proceedings and reduce information flows to consumers after significant work has been undertaken in South Australia to reduce these difficulties.

Recommendation

- **That progress reports to the complainant be mandated as part of the formal notification process and that stronger wording in relation to timeliness be considered.**

5. Consumer rights to representation, assistance and appeal

It is pleasing to see the inclusion of assistance to consumers by the National Agency. However it is noted that there is no acknowledgement of the potential need for emotional and financial support to consumers, their carers or families at any hearings which may require their attendance as witnesses. There is a clear understanding within the health consumer movement of the potentially traumatic impacts of some complaints on complainants and their families and carers and a growing appreciation of this issue within the medical profession. The establishment of a consumer advisory panel to the Public Interest Assessor would provide the vehicle through which wider questions of appropriate support to consumers might be canvassed and developed overtime.

Clarification is also sought regarding a consumer's right to appeal the decisions made by National Boards and on the role of the PIA in this process. At present SA health consumers have options available to them in order to appeal decisions made by local professional boards and the Health Consumers Alliance is a proscribed representative body in relevant South Australian legislation. The subsuming of this state legislation by the new national law could see a reduction in appeal options for SA health consumers and would be an unsatisfactory outcome.

Recommendations

- **Consumer complainants require a legislated right to have a support person present during any formal hearings where their attendance is required.**



- **Wider questions of support to complainants and their families and carers to be considered a high priority by the PIA or the proposed Consumer Advisory Panel to the PIA.**
- **Clarification of the appeal processes available to consumers to be made specific in the national law.**

6. Review of the National Law

South Australia has undergone significant legislative reform in the health sector in recent years and has included the requirement for legislative review in order to fine tune the operation of new structures and processes. The Health Consumers Alliance recently participated in the review of the Health and Community Services Complaints Act. This type of legislative review, in cooperation with the health consumer movement, is an activity which could reasonably be replicated at a national level. It would ensure that this significant reform achieves the desired improvements in safety and quality in healthcare and in the public's confidence in our health system.

Recommendation

- **That the legislation stipulates a timeframe for review of the legislation that includes consultation with the proposed Consumer Advisory Panel in addition to other key stakeholders.**

7. Midwifery issues

It is a positive development that all health practitioners must now be insured however the lack of available professional indemnity insurance for privately practicing midwives requires urgent attention. Where private markets fail to provide for the public good there is a clear role for governments to act. It is unrealistic to expect that home births will not continue to be the choice of some Australian women. Equally the right to choose a homebirth should not be removed by default via legislation designed to protect the public interest. Well supported home births, facilitated by registered, insured health professionals is a reasonable consumer right.

Recommendation

- **The Australian Health Ministers ensure access to publically sponsored insurance scheme for private midwives.**

Summary

Consumer involvement in all levels of health decision-making and community concern for safe, quality healthcare are now established features of the Australian healthcare landscape. The creation of national regulations for health practitioners is a key reform which can both enable safe, quality healthcare and reinforce the role that consumers can play in the realisation of this goal. This submission by HCA identifies that mechanisms for consumer and community participation need to be woven



throughout this new legislation in order that the public interest is served both now and into the future.

For further information regarding this submission please contact the Health Consumers Alliance of South Australia, Ms. Diana O'Neil, Policy and Research Officer on (08) 82245545 or email doneil@hcasasa.asn.au