HEALTH SERVICES COMMISSIONER
Level 30, 570 Bourke St
Melbourne VIC 3000 Australia
Telephone: 8601 5222 (administration)
Telephone: 8601 5200 (complaints)
Toll Free: 1800 136 066
Facsimile: 8601 5219
TTY: 1300 550 275
DX: 210182
Email: hsc@dhs.vic.gov.au
www.health.vic.gov.au/hsc/

SUBMISSION OF THE HEALTH SERVICES COMMISSIONER, VICTORIA, TO THE EXPOSURE DRAFT OF THE HEALTH PRACTITIONER REGULATION NATIONAL LAW 2009.

DATE: Friday, 17 July 2009

Thank you for the opportunity of providing a submission on this second piece of legislation to establish the National Registration Scheme – Bill B. I congratulate the people responsible for producing this work and the guide which accompanied it. The Health Services Commissioner (HSC) supports national registration and accreditation and most of Bill B but I do have some concerns. Currently Victoria's legislation provides for consultation between HSC and the 12 registration boards. There is mutual notification of all complaints and HSC has the final say. In practice this has worked very well. HSC considers the loss of this consultation is a deficiency of Bill B. HSC supports the solution proposed by Queensland Health Quality and Complaints Commission (HQCC), namely:

Sections 165 and 166 be combined into one process.

1. The National Boards must 'immediately' or, at most, within 14 days refer all consumer complaints to the local health complaint commissioner (HCC).

2. The local HCC will be the Public Interest Assessor (PIA) for the relevant participating jurisdictions, or the HCCs to be appointed as the State Independent Assessor (IA) for the respective participating jurisdictions. (In the former case, it will be necessary to make consequential amendments to the PIA currently being limited to a 'person' employed by the National Agency.)

3. The Board must discuss its proposed assessment action with the HCC with a view to reaching agreement about the steps each intends to take on the matter – including referral to the HCC. If agreement cannot be reached, the HCC position (as the PIA/IA) will prevail.

The HQCC submits that the decisions for action will include the matters currently listed in section 165(4) but should be expanded to include the ability to refer a matter to the HCC or other entity which has appropriate functions or powers to deal with the matter. This should include relevant State and Commonwealth agencies and employers.

The HQCC submits it is unnecessary to list an order of seriousness. A collaborative approach is preferred, with the HCC having a final power of veto in the unusual event agreement cannot be reached.

We further submit it is unnecessary to stipulate that only one action is appropriate for each complaint. It might, for example be appropriate for a Board to conduct an investigation at the end of which conciliation can be facilitated by a HCC. This flexibility should be reflected in the scheme.

4. If the HCC receives a complaint that involves a registrant of a National Board it will first consult that National Board before the matter is formally referred.

5. If the HCC accepts a matter for assessment or other process, the Board will not take any further action until the HCC process is complete and vice versa, unless otherwise agreed. This will avoid the potential for duplication and inconsistency in the decisions reached and will increase the amount of information available to each other at the time of any later referral.

6. Include a provision to enable the National Boards and HCCs to reject a complaint on the basis it has been adequately dealt with by another entity, including a HCC or disciplinary tribunal (this implies a consultation process).

In the definition section health complaints bodies are referred to as 'disciplinary body.' HSC is not a disciplinary body. Its major focus is on conciliation and alternative dispute resolution.

Independent accreditation functions

HSC supports an independent accreditation function and prefers a model similar to that in existence for medical practitioners as conducted by the Australian Medical Council.

Changes to registers

HSC supports the need for both general and specialist registers.

Support for continuing professional development

This is supported.

Extension of scheme to other professions

Bill B proposals are supported.

Other improvements to quality and safety of health services

- **Mandatory reporting of registrants**

Mandatory reporting is a vexed subject. On the one hand it does appear to provide protection to the public, on the other there will be very difficult problems for hospital administrators in administering this. HSC agrees with the standard of 'substantial risk of harm either through a physical or medical impairment affecting practice or departure from accepted professional standards.' Practitioners abusing drugs or alcohol or those who have engaged in sexual misconduct should be reported. Where the spouse or partner of a health professional is also in a position where they may have to engage in mandatory reporting, this will put them in a very difficult situation. This needs to be taken into account.

Criminal history and identity checks

HSC supports this, however has some concerns about the more stringent requirements in Bill B than are currently in existence in the jurisdictions. This is particularly so with spent convictions. HSC considers that if a jurisdiction has spent criminal history legislation in place, then this should be respected in the new scheme. I have read and agree with the concerns expressed by the Acting Health Services Commissioner (ACT).

Simplified complaints arrangements for the public

At the National Forum on Bill B in Melbourne participants were advised that intense lobbying in New South Wales influenced the section on complaints. The decision has been made that States and Territories will be able to deal with complaints in their own way. This is a shame as it will impede national consistency.

I have concerns about the PIA process, for example how it will work and will it slow things down? For complaint handling to be successful it must be timely and the longer complaints are allowed to exist the more difficult it can be to resolve them. In complaint handling the public needs to be assured that the full range of public interest concerns are taken into account. Therefore the body which proposes the most stringent course of action is the one which should prevail. The proposed model is co-regulatory and similar to that in the Australian Capital Territory (ACT). There are also issues concerning funding for the PIA. Is it reasonable that practitioners should pay, through their registration fees, or should this come from government? HSC does not support section 35(3) which means that the PIA is taken, while holding that Office, to be a member of the staff of the National Agency. This is inconsistent with the independence of the PIA.

I have had the advantage of reading the submissions from other State and Territory HCCs and I support the points made in the Queensland submission.

Student registration

This is supported.

Handling of complaints

It was proposed that if a jurisdiction chooses to handle complaints under State or Territory law, this will be set out in the relevant jurisdictions, Bill C. It will also be up to each jurisdiction to decide whether the prosecution and investigation functions remain with the national boards or be undertaken by the existing health complaints arrangements. HSC supports the use of the word 'complaint' rather than 'notification' as currently exists in the *Health Professions Registration Act* 2005 (HPRA).

Appointments to national boards

HSC is pleased to note that the community member position is retained and valued. Community members bring a unique perspective to these positions which differ from those of professionals.

State and Territory boards

Supported.

New national regulation of cosmetic lenses

Supported.

Area of need arrangements

Supported.

Privacy protection for practitioners and consumers

Supported.

Section 166 relationship with health complaints entity

The proposal that the complaint function should be given to the State or Territory based health complaints entity needs to come very early in the process. Consultation between the two relevant bodies needs to ensure the most appropriate body deals with them. The basis of the type of discussions between the health complaints commissions and the health professions boards needs to be spelled out in Bill C. See also comments on page 1 of this submission.

Section 167 rejection of complaint

The current HPRA includes words 'doesn't warrant investigation.' This is missing from Bill B but should be included because otherwise the board would have to characterise the complaint as being frivolous, vexatious, misconceived or lacking in substance in order to reject it. The category of 'doesn't warrant investigation' is useful and in some cases can be more tactful.

Section 171

The costs of tribunal hearings for Victoria's boards is very expensive and needs to be re-thought.

Section 178 and 179 of Bill B require rethinking. It appears to mix up performance issues with conduct issues and therefore is a bit draconian.

Section 184 legal representation

It is unclear what this is trying to achieve. If a legal practitioner is not entitled to appear on behalf of the practitioner, but can address the panel, this involves some difficult to manage situations.

Section 190(1)(a)(iii)

'to approve an undertaking' is this agreement or a legal undertaking?

Section 243 Reviewable Decisions

If a matter has already been dealt with it should not need to be re-heard. Bill B appears to allow for multiple reviews of the same matter.