

Medical Services Committee

Established under the Health Administration Act 1982

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EXPOSURE DRAFT

Health Practitioner Regulation National Law 2009

SUBMISSION

Dear Minister,

The Medical Services Committee has considered this draft legislation and provides comment that is summarised, for ease of reference, in the table below.

It will be noted that there are a number of Sections that are included in the table but for which there is no comment. The Sections were discussed in some depth and it was decided that, in relation to these Sections, specific comment was not presently indicated

	Subject	Section	Page
1	Object of law (b) students. The public should not be placed at risk by students in the course of undertaking a program of study. Students should not be a risk to the public but should also be suitable persons for registration in the profession. It is quite unfair for a student to continue a protracted, and frequently expensive, course of study if because of an impairment, that is identified during the course of training, he or she will not be suitable for registration.	3	1

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2	<p>Guiding principles (c) restrictions on practice</p> <p>It is considered that it would be better if the wording was amended along the following lines: -- restrictions on the practice of a registered health profession are to be imposed under the scheme only as is necessary to ensure that health services are provided safely, are necessary and are of an appropriate quality.</p>	4	2
3	<p>Criminal history of a person means all of the following every conviction for an offence.</p> <p>This definition is totally inappropriate and requires amendment to exclude minor traffic and other offences that have no bearing on the suitability of a person to practice.</p> <p>The definition under Section 6 (c)</p> <p>“the conviction of the practitioner for an offence under another Act, the nature of which may affect the practitioner’s suitability to continue to practice the profession;</p> <p>is much more appropriate</p>	6	4
4	<p>Independent assessor –</p> <p>It may be necessary for there to be more than one Public Interest Assessor or Independent assessor in a jurisdiction.</p> <p>It is not indicated whether some of the functions of the Public Interest Assessor can be delegated, for example, preliminary assessment of minor complaints to junior staff.</p>	6	6
5	<p>Professional misconduct</p>	6	7
6	<p>Reportable conduct.</p> <p>It needs to be identified that “placed the public at risk” may also includes an event that placed an individual at risk of substantial harm and that continuing similar conduct is likely to place other individuals at risk of substantial harm.</p>	6	8

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7	<p>Unprofessional conduct</p> <p>(c) This subclause:-- “the conviction of the practitioner for an offence under another Act, the nature of which may affect the practitioner’s suitability to continue to practice the profession” is preferable to the definition under criminal history.</p>	6	9
8	<p>Ministerial Council -- policy directions</p> <p>It is not appropriate that it could be directed that accreditation standards are to be lowered to meet workforce requirements.</p> <p>Such a situation could significantly effect the recognition of Australian health professional standards abroad and would be seriously to the detriment of health care in this country.</p> <p>It is appreciated that providing adequate training and experience for a health professional at a specialist level is an expensive exercise. The issue will need to be explored at depth with changing circumstances and it may be necessary for the Commonwealth to subsidise an agreed number of training positions in any particular specialty.</p>	10 (3)(d)	11
9	<p>Functions of Advisory Council</p> <p>Subsection (2) (b) It is not clear whether this subsection applies to a particular qualification of an individual or to a particular qualification for a specialty or profession.</p>	17	14
10	<p>Powers of Advisory Council</p> <p>The definition of the Powers of the Advisory Council is extremely broad. This appears to be appropriate, as this is an advisory committee to the Ministerial Council with no power of enforcement or execution of decisions.</p>	19	14
11	<p>Membership of Advisory Council</p> <p>It would be preferable if the membership of the Council was more specifically defined, perhaps along the line of the Australian Medical Council.</p> <p>Under the present proposed composition, the Advisory Council could be composed of persons, none of whom had any experience in the practical delivery of health services. This situation would be untenable and counter-productive to the proper function of the scheme.</p>	20	15

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12	<p>National Agency – functions</p> <p>Subsection (c).</p> <p>It would be much more appropriate for the National Agency to assist boards to establish procedures rather than for an administrative bureaucracy attempting to establish the procedures listed in this subsection.</p>	23	16 -- 17
13	<p>Health profession agreements.</p> <p>(1) (a) Grave concern is expressed as to possible fees, the total cost of the scheme and what costs are to be passed to the professions "for the protection of the public".</p> <p>It appears that there has been no "Cost Benefit Study" performed.</p> <p>No figures have been provided to the professions as to how the costs are to be distributed.</p> <p>Who will pay for all the additional expenses, including those incurred by the Advisory Council, the National Agency and accreditation activities established by the National Boards?</p>	24	17
14	<p>Membership and Functions of Agency Management Committee.</p> <p>It appears that the Management Committee could be composed of persons who have no practical experience in health care delivery, a totally. Inappropriate situation "Expertise in health, or education and training or both" does not indicate that at least one person on the committee must have experience in practical health care delivery.</p>	27 and 29	19
15	<p>Functions of Public Interest Assessor</p> <p>It is considered that the responsibilities of this position will be very significant and that it is essential that there be a provision for the appointment of deputy or assistant Public Interest Assessors under the same conditions of independence as the Assessor.</p>	36	21

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16	<p>National Boards – membership,</p> <p>To ensure that the professional members of the National Boards have adequate understanding and experience in registration, complaint and accreditation matters, it should be a pre-requisite for appointment to have served on the relevant board of a state jurisdiction or be a member of a State Committee under the Law.</p>	45	24
17	<p>National Boards -- vacancies to be advertised.</p> <p>If the conditions recommended above are not applied, the selection of professional members should be by way of nomination as has been the case for membership of the New South Wales Medical Board.</p>	47	26
18	<p>Functions of National Boards.</p> <p>Under 49 (g), (h), (l) and (j) there should be provision for the National Board to either perform the functions under these subclauses or ensure that there are adequate mechanisms for those functions to be performed at the level of a participating jurisdiction.</p>	49	27
19	<p>Requirement to consult other National Boards.</p> <p>This requirement is strongly supported.</p> <p>When an additional health service is being considered for the requirement for practitioner registration, it is considered essential that National Boards are consulted as to whether such registration is necessary for the protection of the public.</p>	51	28
20	<p>State and Territory Boards</p> <p>It is considered that the establishment of State and Territory Boards for the medical profession is a pre-requisite for the scheme to functions efficiently and cost effectively.</p> <p>(5) Appointment by the Minister should be from nominees of learned colleges along the lines established in NSW. Legal and community members should be on selection by the Minister following advertisement of those vacant positions. This would provide for open and transparent mechanisms of appointment.</p>	54	29
21	<p>Registration standards and codes and guidelines</p>	56	30

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	National Boards should establish registration, codes and guidelines in consultation with State and Territory boards in order that there would be uniformity in these matters throughout Australia.		
22	Ministerial Council -- external accreditation entity. This section permits the continuation of the Australian Medical Council in accrediting training courses and conducting examinations for overseas graduates. The independence of the role of accreditation from registration and other external influences, to alter standards, is considered to be essential.	60	32
23	Approval of accreditation standards. There is no indication in the proposed law as to the settlement of an impasse between an accreditation authority and the National Board.	65	33
24	Accreditation of programs of study and approval. An accreditation authority can accredit a program of education and the National Board approves the accredited program for the purpose of registration. It appears that, under the proposed law, a program would not be accredited until accreditation is approved by the Board. This section should be reworded.	66 -- 67	34
25	Monitoring approved courses of study. If an accreditation authority considers that a program of study no longer meets an approved accreditation standard for the health profession the accreditation authority must inform the Board that accreditation should be revoked, unless deficiencies in the program are addressed.	68	35
26	Registration, eligibility, qualifications examination and insurance.	69/73	36 -- 37
27	Specialist registration It is considered that there is no justification for a requirement for annual renewal of specialist registration.	75	38
28	Provisional registration.	80	40
29	Limited registration (area of need -- ministerial control.	83	41

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30	Non-practicing registration. Seek comment under Section 313	92	43 – 44
31	Criminal history check. Section (4) implies that any restriction on the provision of information to the Board under another law does not apply.	95	44
32	Endorsement of registration (drugs). It would appear that this division does not apply to medical practitioners, apart from those who have a condition imposed upon their registration.	110	51
33	Endorsement -- nurse practitioners and midwives. Any endorsement related to drugs is in addition to the endorsement to use the titles nurse practitioner or midwife.	111 – 112	52 -- 53
34	Endorsements for approved areas of practice. Endorsements for approved area of practice must be closely monitored and approved areas of practice must not be varied by an individual board without consultation with other boards that have significant responsibility for practice in the area concerned.	113	53
35	Decision about renewal -- Section (3), (b) For the medical profession there are serious reservations in relation to this subsection (non-practicing registration) that will be addressed later in the submission.	125	59
36	Restriction on use of titles -- Table It is recommended that the title acupuncturist be deleted from the profession “Chinese medicine” as not all practitioners of Chinese medicine practice acupuncture or train in that mode of treatment and many other health professionals, including medical practitioners and physiotherapists, are trained in this mode of therapy.	129	61 -- 62
37	Practice protections-dental acts- optical appliances— spinal manipulation.	135-137	65-67

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	These practice protections are considered to be essential for the protection of the public.		
38	Certificates of registration and review of conditions and undertakings. No particular comment.	138 139	67 -- 69
39	Information to be provided to the Board	142 -- 143	70 -- 71
40	Advertising	145	72
41	Directing or inciting unprofessional conduct or professional misconduct. It is considered to be totally inappropriate that it is in order for a person, who is the owner or operator of a public health facility or another health facility, that is licensed under a law of the Commonwealth or a participating jurisdiction, to be able to direct or incite unprofessional conduct, or professional misconduct by a registered health practitioner, including one in training, and not be subject to penalty. The situation is not acceptable and not compatible with the provision of safe health services.	148 (2)	74
	Complaints, performance, health & conduct		
42	Part applicable to former registered practitioner. It is not clear whether this relates to events occurring while the person was a registered practitioner or subsequent to the cancellation or lapse of registration. There is nothing in this law that prohibits a previously registered practitioner from providing a particular, or any, health service. The only penalty that could apply would be a fine.	150	75
43	How complaint is made If a complaint is made, other than in writing, there must be a mechanism in place for the complaint subsequently to be confirmed in writing and signed.	153	75
44	Grounds for complaint. A complainant should be able to lodge a complaint in general terms and it should be the responsibility of the Agency to	155	76

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	<p>determine which, if any, of the grounds is appropriate.</p> <p>It is not reasonable to expect lay persons to determine "a ground for complaint". The complainant should be able to identify the incident and the reason for lodging the complaint.</p>		
45	<p>Mandatory reporting by health practitioners.</p> <p>The definition of reportable conduct should be included in this section.</p> <p>It should be made quite clear that the requirement for mandatory reporting in no way impinges upon the activities of peer-review programs and the ability of practitioners to participate in these activities without constraint.</p>	156	76
46	<p>Mandatory reporting by employers.</p> <p>It is interesting to note that in this Section an employer who incited an employee to perform an act that could be construed as professional misconduct would not be responsible for inciting the action but would be responsible to report it.</p>	157	77
47	<p>Agreement with Independent assessor. ***</p> <p>It is noted that if agreement cannot be reached between the National Board and the Independent Assessor, in regard to the action to be taken in relation to a complaint, the most serious action proposed by either party must be taken.</p> <p>It is considered that a mechanism should be developed whereby such an impasse can be resolved because under the present proposal a health practitioner could be incorrectly subject to protracted, unnecessary anxiety, insecurity and financial loss.</p>	165	80
48	<p>Relationship with health complaints entity ***</p> <p>This Section identifies the requirement of the National Board and a health complaints entity to exchange information concerning complaints. It does not identify what action is to be taken following the exchange of that information.</p>	166	81
49	<p>Immediate action</p> <p>This section would replace section 66 of the NSW Act</p>	168 (6)	83

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50	<p>Parties to the proceedings (before a tribunal).</p> <p>There should be a provision for a health complaints entity to be a party to the proceedings.</p>	171	85
51	<p>Action that may be taken by a tribunal</p>	173	86
52	<p>Performance standards matters</p> <p>appointment of– assessor</p> <p>Concern is expressed that on many occasions a single assessor would not be seen as being appropriate.</p> <p>There should be a provision for more than one assessor to perform an assessment and that under subsection (2) at least one of the assessors must be of the same discipline as the person being assessed. Assessors should be selected from a list of persons experienced in the discipline concerned.</p>	175	87
53	<p>National Board's decision.</p> <p>Should a National Board also have the ability to determine that a practitioner suffers an impairment and should be appropriately referred?</p> <p>Under this Section there does not appear to be a provision for the National Board to make this determination.</p>	178	88
54	<p>Decision of professional standards panel.</p> <p>The decision of a professional standards panel should be reported to the Board and include recommendations as to the most appropriate action to be taken by the Board.</p> <p>It should be the responsibility of the Board, not a panel, to impose and record sanctions upon a health practitioner's right to practice.</p>	189	92
55	<p>Action by professional standards panel at the end of proceedings</p> <p>The action to be taken by a professional standards panel at the end of proceedings should be to report to the National</p>	190	92

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	<p>Board, including recommendations, as noted under comments for section 189.</p> <p>As an example under subsection (2) this could be reworded to read along the following lines: -- If the professional standards panel decides that it should be recommended that conditions are imposed on the registered health practitioners registration.</p>		
56	Health assessments.	193 -- 199	94 -- 98
57	Health panels. This subsection has been interpreted as indicating that the member of the panel referred to in subsection (2) (b) could be an additional medical practitioner member of the panel.	200 (4)	98 --
58	Action by health panels at the end of proceeding. The action to be taken by a panel at the end of proceedings is to report its decisions to the National Board with recommendations as to appropriate action to be taken. As indicated previously panels cannot impose conditions or suspend a practitioner's or student's registration.	209	101
59	When investigation may be conducted. It is considered that there should be published guidelines as to when it would be considered appropriate for a National Board to decide to investigate a registered health practitioner.	211	102
60	Giving of notice of investigation. (3) -- -- progress of the investigation to:	212	102
61	Investigators. There should be a provision for an investigation to be performed by an investigator on behalf of a health complaints entity rather than the Board. It is essential that two investigations of the same complaint are not being performed at the same time.	214	103
62	Offence for failing to produce or attend	218	104
63	Under Division 9 – Investigations, there are numerous offences, what is the mechanism of appeal against these		102

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	<p>offences?</p> <p>Note: (It appears these are offences chargeable before a court)</p>		
64	<p>Powers after entering places</p> <p>It must be specified, under this Section, that only records specifically pertinent to the matter under investigation can be inspected, taken or copied. This is particularly important with personal records, to protect the privacy of patients and especially relates to the records of gynaecological and psychiatric patients.</p>	225	108
65	<p>Agreement with Independent assessor</p> <p>If agreement cannot be reached between the National Board and the Independent assessor, the registered health practitioner should be given written notice of the outcome of the investigation, the action to be taken and the reasons for the difference in opinion between the two parties.</p>	241 (4) & 242	114
66	<p>Review of reviewable decision</p> <p>There is no provision In subsection (2) to revoke the reviewable decision.</p>	245	116
67	<p>Appealable decisions –</p> <p>There is no provision for the responsible Tribunal to revoke the decision. <i>Note: -- "An appealable decision" can be one made by a professional standards panel</i></p>	249	117
68	<p>National Board to publish certain decisions</p> <p>(c) – Typographic omission and further information required as to what information will be published in relation to individuals.</p> <p><i>Note: -- Division 5 of Part 8 relates to immediate action suspension or imposition of condition.</i></p>	266	125
69	<p>Information to be recorded in registers.</p> <p>If a previously registered health practitioner was not registered at the time of a decision by the tribunal that there was a restriction on his or her ability to be reregistered this should be</p>	271	128

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	recorded under subsection (3).		
70	Records to be kept by National Boards – Information regarding complaints and investigation, indemnity insurance matters and criminal record history should not be available, other than to the National Board	276	131
71	Protection from liability for persons making complaint or otherwise providing information	281	134
72	Conduct may constitute an offence and be subject of disciplinary proceedings It appears under subsection (2) this could result in the same penalty being given twice for a single offence.	283	135
73	National regulations – To be made by the Ministerial Council.	285	136
74	Parliamentary scrutiny of National regulations – The only method of repeal is by disallowance by a House of the Parliaments of a majority of the participating jurisdictions. ? MSC review.	286	136
75	Accreditation functions exercised by existing accreditation entities. It is considered that accreditation should be a separate function from registration and that it is therefore essential, particularly in the case of the medical profession, to be, as was recommended by the Australian Health Ministers Conference in 1984, an independent organisation. It is considered necessary that the experience of the Australian Medical Council be maintained and that it continues to act indefinitely as the Independent accrediting body for medical practice. It should report to the Ministerial Council annually.	290	138
76	Non-practicing registration. It is considered essential that as many medical practitioners, and probably nurses, maintain registration including non-	313	145

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	<p>practicing registration.</p> <p>Every encouragement should be given for those retiring, temporarily or permanently, from active clinical practice, to remain on the register for up to 10 years so that in an emergency they can be called upon to provide services, in public health facilities, such as was found necessary at the time of the Newcastle earthquake disaster.</p> <p>In providing those services in public health facilities, as registered health practitioners, they would be providing skills and knowledge, not otherwise available and personal indemnity insurance would not be required. It is most likely that under such circumstances the health practitioners would be prepared to provide the services gratuitously.</p>		
77	<p>Local registration authorities -- assets and liabilities</p> <p>It is considered totally inappropriate that the assets and liabilities of a local registration authority should be transferred to the National Agency. These funds, that have been provided previously by the relevant health practitioners in a jurisdiction, should be retained to provide for the continuation of services, relating to that health profession, within that jurisdiction.</p>	331	151 -- 152

The Committee would be pleased to elaborate further regarding the Draft if that is considered necessary.

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Chairman