

17 July 2009

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Dear Dr Morauta

**Re: National Registration and Accreditation Bill B
Comments from the NSW Physiotherapists Registration Board**

Thank you for the opportunity to provide comments on Bill B. At the outset there are some key points the NSW Physiotherapists Registration Board would like to highlight in respect of complaints handling.

Although NSW will have a different complaint handling mechanism from that proposed in Bill B, it is hoped that we arrive at a shared understanding of the definitions of what amounts to professional misconduct, unprofessional conduct and unsatisfactory professional performance. The definition of 'unprofessional conduct' in Bill B needs to be clarified because it incorporates the concept of unsatisfactory professional performance.

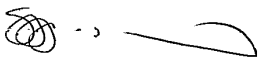
There appears to be no provision for the settlement of low level complaints by consent as was proposed in the IGA (Attachment A paragraph 1.25(g))

There also appears to be a heavy reliance on the use of an external tribunal to deal with low level complaints of unprofessional conduct at first instance as well as health and performance matters where the practitioner elects to have the complaint dealt with by the tribunal.

It was envisaged by the IGA (Attachment A) that low level complaints could be dealt with by the National Board, which has the expertise to manage clinical complaints. It was also envisaged by the IGA that an external tribunal would hear the most serious complaints (professional misconduct) in first instance. In the present framework the Tribunal would need to be adequately resourced to deal with the increased workload.

More specific comments are set out in the table attached.

Yours faithfully



Sue Hardman
Registrar

87-91	<p>Limited registration Suggest that limited registration be capable of being extended beyond the 2 year period. This is pertinent to the tenure of visiting overseas academics and registrants working in an area of need. These provisions need to be clear as to the intent and the process for extending the 2 year period or leave the period of limited registration to the discretion of the Board.</p>
137	<p>Restrictions on spinal manipulation The current NSW provisions in the Public Health Act 1991, which are wider than this clause are supported on the basis of increased public safety.</p>
276	<p>Records Records kept should also include any conditions imposed on the registrant and undertakings given by the registrant.</p>
<p>271 and 275</p> <p>271</p> <p>271(2)((b)</p> <p>271(3)c</p> <p>273</p> <p>275</p>	<p>Register Recommend that the legislation distinguishes more clearly between the public register and the details kept by Board. For instance, contact details should not be on the public register but are required by the Board.</p> <p>Suggest that the register also records the acceptance of a surrender of registration and any relevant time frame/s.</p> <p>Inclusion of suburb and postcode could lead to the identification of the registrant's home address. This is particularly so in rural and remote areas. The risk to the registrant's privacy and safety outweighs the limited public purpose, if any, of including such information in the public register.</p> <p>There is no utility in having details of conduct resulting in cancellation included in the public register. Full details of the decision will be published and accessible. There is a great risk that the summary put into the register will be misleading given the length and complexity of cases that result in cancellation.</p> <p>Recommend that the contact details and other personal information may not be available on extracts/copy of register available on payment. The legislation seems to imply this but it could be explicit. Requests for mailout etc where they are appropriate and in the public interest can be accommodated by the Board organising a mailing house and the applicant covering costs. Accordingly restricting release of contact details in legislation does not affect practical operation.</p> <p>Similarly, information required of students should be consistent with that required of health practitioners including sex of the individual.</p>

126	<p>Eligibility for restoration This clause appears to permit restoration without reference to recency of practice. If a practitioner has not been registered for 8 years but was previously registered in any jurisdiction to be covered by the national scheme, is that person automatically entitled to be restored to the register if the National Board considers that registration under the earlier Act is equivalent to registration under the National Scheme?</p>
6	<p>Reportable conduct This concept should extend to registered students with the obligation being on the education provider to make the report. The power of the National Board under Bill B to deal with student impairment is limited to cases where the student makes a self referral. Anecdotal evidence suggests that a number of affected students are resistant to self referral. Early intervention by the National Board and referral of the student to a health panel is in both the public and the student's best interests.</p>
ACCREDITATION	
61	<p>External accreditation entities It should be made clear that this clause is operative only in the event of absence of, or a vacancy in, the appointment of an external accreditation agency. Otherwise, the Agency can appoint an additional external accreditation entity without regard to existing arrangements.</p>
COMPLAINTS Conduct, Performance and Health	
6	<p>Unprofessional conduct The definition has reference to a standard reasonably expected of the health practitioner by the public. It is not appropriate to assess clinical conduct by reference to public expectations. The standards should refer to the standards reasonably expected of health practitioners with an equivalent level of training and experience.</p> <p>The definition also includes reference to unsatisfactory professional performance which blurs the conduct and performance pathways in dealing with complaints.</p>
153(1)	<p>Making complaints For the sake of clarity, complaints made telephonically or by any other verbal means should be confirmed in writing.</p> <p>There is no distinction between a person notifying the Board of the particulars of the complaint and the complaints which are referred to the conduct, performance or health pathways.</p>

<p>155 (1)(d) 155 (2)(b)</p>	<p>Grounds for complaint Suggest that the wording ‘has an impairment’ may be discriminatory and that it is modified to ‘has an impairment that may adversely affect the practitioner’s/student’s ability to practise the health profession in a safe and competent manner’. There are a number of practitioners who successfully manage physical disabilities to practice their profession. A physical disability falls within the definition of impairment. This section should equally apply to student registrants.</p>
<p>Division 4 160</p>	<p>Dealing with complaints This deals with the complaints handling process and takes into account the possible registration of practitioners or students in one or more professions. Clause 160 relates to notification of receipt of a complaint to the subject practitioner/s or student/s. The National Board should also notify other relevant boards when registration in another discipline is known or suspected so that other complaints in relation to the same practitioner/student may be dealt with collaboratively as established in Section 162.</p>
<p>175</p>	<p>Appointment of assessor to carry out assessment The Board suggests that a fairer process would allow for the appointment of two assessors to assess a health practitioner’s performance.</p>
<p>179(1)(a)(v) 188 & 207</p>	<p>Performance assessment Given the ambit of the decision made by the National Board in cl 178, there appears to be no basis on which the National Board can refer the practitioner for health management under cl 179(1)(v) because there has not been an assessment or finding of impairment.</p> <p>Referral to Tribunal Query the efficiency and cost effectiveness of permitting the practitioner at any time following referral to a health or performance standards panel to unilaterally have the matter heard by an external Tribunal. National Boards and performance and health panels are expert bodies ideally equipped to deal with these issues. Referral to an external tribunal will add delay to achieving effective outcomes and will see issues dealt with in a more adversarial context.</p>
<p>173, 190(1), 209(1) 190(1)(vi)</p>	<p>Tribunal and panel determinations In making orders/determinations there should be flexibility in choosing a combination of options, if they are suitable to the circumstances of the case rather than making them alternatives. Fettering outcomes by expressing orders in the alternative will undercut their effectiveness and the protection of the public.</p> <p>No utility at the end of the professional standards panel hearing in having the matter referred to another entity for investigation. Double handling of the complaint results in unnecessary costs. The scheme should permit cases of professional misconduct to be referred to the Tribunal, at the earliest opportunity, rather than at the conclusion of a performance panel hearing.</p>

192(1)(a)	<p>Health matters & self referral</p> <p>As with conduct and performance matters, the National Board's ability to take action in this context should not be limited to the options listed as alternatives but could include "one or more but not limited to the following". Successful management of impaired practitioners will depend on the development of a supportive framework and program that will assist in and monitor their rehabilitation. The National Board requires flexibility in tailoring the program to the particular practitioner or students circumstances.</p>
6	<p>Health assessment</p> <p>Physical, psychiatric or psychological examination does not have flexibility to include other assessments such as functional capacity or cognitive function.</p>
194 (2)	<p>Appointment of assessor</p> <p>Note that only medical practitioners or psychologists are mentioned. Recommend that there be a broad provision to enable the National Board to consider other options eg for functional capacity assessment or assessment of cognitive function.</p>
200 (5)	<p>Establishment of a health panel</p> <p>Suggest adding at 'or has been or is currently treating the practitioner' at the end of this sub paragraph.</p>
212(3)	<p>Investigations</p> <p>Query how feasible it is to give interim reports at 3 monthly intervals of the progress of the investigation. The obligation to carry out the investigation in a timely fashion is more important than compliance with arbitrary time frames, which may bear no correlation to the complexity of the case being investigated.</p>
241(3)	<p>Procedure post investigation</p> <p>There is no efficient and cost effective option for the National Board to deal with low level complaints or complaints which are capable of being settled. If the complaint is not serious or does not fall into the performance, health or conduct areas it would see that no further action can be taken.</p>
	<p>FINANCE</p>
257(4)	<p>Investment of monies by National Agency</p> <p>The Agency appears to be given unfettered powers of investment. There appears to be no external check on the investment of these public monies. Unwise investment will bankrupt the National Scheme. There should be external audit requirements and compliance with appropriate investment strategies given the functions of the Agency.</p>

263(2)	<p>Request for information for workforce planning It is not a function of the Board to act as a conduit for the collection of statistical data for workforce planning or for the Ministerial Council.</p>
	<p>TYPO'S</p> <ul style="list-style-type: none"> • cl 109(2) – (4) – the education provider is giving the notice so this doesn't make sense • cl 23(i) line 3 change "person" to "persons" • cl 173(1) – reference should be to s. 172(1)(a) • cl 188(1) – line 2 should refer to the National Board that established the panel • cl 190 (1) line 2 the reference to Board should read "professional standards panel" to read correctly • cl 191(2) – delete "making" in line 1 • cl 192(1) - delete "advised" in line 1 and insert "discloses" or "informs" • cl 227 – 233 refer to seized "things" suggest a better word would be "items" • cl 241(3)(b) – delete reference to "health practitioner" and insert "matter" • cl 249(2) – line 3 should refer to health "panel" • cl 266(1)(c) – should refer to health "panels" • cl 125(4)(c) should refer to subclause 3(c), not 1(c)