

EXPOSURE DRAFT: COMMENT as requested.

Dr Frank New

17/7/09

Re: Bill B National Registration and Accreditation Implementation Scheme for Health Professions.

I was impressed that those charged with the development of the Bill have been, and will continue to be, interested in and responsive to comments provided.

I was reassured that the consideration of Government setting accreditation standards has been lessened, to the extent that the current approach will continue. As Q Health Minister Paul Lucas said it is essential for there to be some reserve powers for Government in regard to overseeing accreditation standards, just in case things get out of hand. Eg if a particular body started inappropriate approaches.

It is also good to note that there will be both a General Medical and a Specialist Register in each State, as in Qld at present, and that current accreditation standards, and authorities (Colleges), will be used with no change intended for the foreseeable future.

I understand that students are to be registered but without the same checks (eg criminal history) as other Health Practitioners. They will be registered by the Universities sending a list of students, at a time during their training yet to be decided. This section did seem to require further development, eg to consider the response to past criminal activity and whether they are of sufficiently good character enter a profession. I have treated several Medical and other health professional students who, in my opinion did not meet this standard. Approaches to the University were met with the response that the only criterion they used was academic success. There currently exists in the community a double standard in this regard, tolerating the poor behaviour of some Uni students some of the time, in a manner appropriate different to other adults. I am unaware of studies that would demonstrate any predictability from the behaviour of this period, and anecdotally most Med students recall the excesses of their peers who are now eminent and very responsible practitioners. The issue is not simple. A clear threshold could be placed at a point where inappropriate behaviour interferes with study, involvement in training activities (eg attendance), attitude (though this is to some extent subjective, so significant tolerance of variation is appropriate, especially if no interference in the progress of care and of study is evident), etc. Essentially I am recommending that this is an area that does require further attention, and development of standards to be satisfied by students of professions.

A worrying issue is the definition of Criminal History for the purposes of a Criminal History check for all registrants, as it includes ALL charges, even those that have been found to be not proven, not 'recorded' (a quaint legal distortion of our language as they obviously are recorded), dismissed, or with no further proceedings, etc. This is a problem, especially given the problems for Malcolm Turnbull, and in the SA State Parliament when intelligent people have proceeded on the basis of false, potentially malicious, information. The forum was informed that this was usual practice, to include all information for consideration, especially as the information from the investigations related to the charges would also be

available for consideration. I remain unsatisfied with this approach, as it is not the *information* submitted that is the problem but the interpretation *of the information*, especially when proper interpretation may require an extensive and proactive search for all the information that would be relevant. I have been associated with several situations when there have been serious errors made, with injustice resulting, because of this approach. This has followed situations when unskilled people have made decisions, on the information presented to them, without all the information available being included, resulting in the person essentially being tried and judged for a second time, resulting in the cases I remember, in great adversity. Several decisions have subsequently been overturned, but at great personal cost, with no consequence to the person who made the (administrative) error. The argument in favour of this approach is that it is useful to identify a pattern of behaviour, which may be serious but very difficult to identify in a manner that satisfies usual standards of evidence required by a Court, in each isolated case. This may apply for example in relation to offences against children, and some less conspicuous examples of medical malpractice. There may be some better definition of the purposes of the provision of information, especially differentiating investigation / assessment from imposing restrictions.

I understand that in the Draft Bill that 'or' actually means 'and/or'! I would recommend changing the wording from 'or' to 'and/or' where this is what is intended.

Mandatory Reporting.

Apparently the Universities have submitted that they are supportive of mandatory reporting 'to give them protection when reporting students', especially in relation to the Privacy Act. I do not accept this, as in our current act there are provisions to protect people acting in good faith with reasonable care.

There is concern that the proposed approach will deter practitioners from seeking help, and others from providing treatment and other assistance. It was accepted that the earlier drafts were 'too adversarial', with the possibility of inducing 'stress, depression and suicide', and changes were made as a result. The current draft is improved but not sufficiently.

During the Teleconference of the Coalition for Doctors' Health Australasia on Thurs 9/7/09 reports were provided that the number of referrals had dropped, and the number of doctors willing to provide on call/ first call services for DHAS had reduced, with this attributed to the introduction of mandatory reporting provisions in some jurisdictions. This is supported by comments made by experienced doctors who withdrew their voluntary services. This reduction in voluntary reporting reflects previously reported international experience, risking a worsening rather than an improvement as a consequence of such a change, especially as voluntary reporting has been demonstrated to occur at an earlier, more easily remediable stage of development of the problems.

It is noted that the emphasis (by those drafting the Bill) is on 'substantial'. Clearly the issue of reporting only above a reasonable threshold has been considered, though there was widespread concern that the current wording was not successful in adequately conveying this intent, or clarity regarding the actual threshold.

I have considered, and support the changes proposed by Professor Joan Lawrence, as follows.

“ Only practitioners identified as definitely impaired, and at serious risk of harming patients as a result of their impairment, and who refuse or are non-compliant with reasonable therapeutic interventions should be required to be reported .”

This approach could well have the benefit of actually **encouraging** practitioners to present for assistance, or at least to comply when they have been confronted by a colleague who has recommended an appropriate intervention.

Consequent issues regarding the type of assessment, treatment, and credentials of treating practitioners need to be considered, especially to develop the confidence of all relevant parties. The system needs to be more open, accountable and transparent for these purposes. Any party relying only on a 'trust me' approach will be unlikely to attract support of all parties. Perceptions are important especially for this politically charged issue. This raises the issue of developing agreed standards for assessment, treatment and rehabilitation of health practitioners, and accreditation in some form of those providing those services. A good start could be made quite easily by providing a publicly available list of doctors who currently have the confidence of the Boards in this regard, and / or others who have completed training provided by the DHAS organizations, and Divisions of General Practice in their “Docs” programmes.

I would be willing to provide further information, and /or discussion should this be requested.

Yours sincerely,

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