

# Submission to Health Workforce Principal Committee

## Practitioner Regulation Subcommittee

National Registration and Accreditation Scheme  
for the Health Professions

10 September 2008



## Introduction

Physiotherapy commends the Health Workforce Principal Committee on providing the professions with the opportunity to comment on matters which are to be included in the first Bill on the National Registration and Accreditation Scheme for the Health Professions.

The Australian Physiotherapy Council and the Australian Physiotherapy Association (APA) are pleased to submit comments that reflect the consensus position for physiotherapy on these matters. These comments are based on input from the eight physiotherapy registration boards, the universities that offer entry level physiotherapy education programs and the APA.

This submission responds to the matters that are not explicitly covered by the COAG Intergovernmental Agreement (IGA). The profession has considered the content of the consultation paper and the input to the consultation session on 4 September 2008 and herewith submits its position on the issues. For ease of translation by the Project Implementation Team, the responses are set out using the same numbering system as the IGA and the Consultation Paper and relevant text from the Consultation Paper is included in italics.

In addition to specific responses on matters which are to be included in the first Bill on the National Registration and Accreditation Scheme for the Health Professions, the Australian Physiotherapy Council and the Australian Physiotherapy Association submit that:

1. Implementation of the scheme must adhere to the primary objective of the Scheme as set out in 5.3(a) of the IGA -  
*provide for the protection of the public by ensuring that only practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered;*
2. Implementation must ensure any workforce policy considerations satisfy the primary objective are consistent with the subordinate language of 5.3(e) of the IGA –  
*have regard to the need to enable the continuous development of a flexible, responsive and sustainable Australian health workforce and enable innovation in education and service delivery.*

The objective is not “to enable” per se but limited to “regard to the need to enable”.

3. Good governance suggests there should be a period of consultation on exposure drafts of all future legislation related to the National Registration and Accreditation Scheme. Seeking comment on specific matters is expedient and pragmatic but does not provide sufficient detail for informed comments to be made by the professions.
4. The Health Workforce Principal Committee must take note of international evidence that demonstrates the deleterious effect of workforce policy lowering standards of education and practice, and the consequent

impediments to workforce mobility due to lack of broad clinical competence of graduates.<sup>1</sup> Therefore, the power to set practice standards for each profession must be through the relevant National Board and the power to set accreditation standards for each profession must remain independent to the Boards and the Agency. The Ministerial Council must not have the power to set or amend the practice and accreditation standards for each profession.

Please contact the Australian Physiotherapy Council Chief Executive Officer, Margaret Grant, [margaret.grant\[at\]physiocouncil.com.au](mailto:margaret.grant@physiocouncil.com.au) for further information or clarification of any aspect of this submission.

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<sup>1</sup> Based on the numbers and performance of graduates from England in the Australian Physiotherapy Council Clinical examinations in the period 2006 – 2008. In 2006 10 graduates from England completed the clinical examination and all passed; in 2007 18 graduates from England complete the clinical examination and 13 passed and as at 31 August 2008 25 graduates from England have completed the clinical examination and 9 have passed. Based on comments from the candidates and anecdotal information from England, the change in numbers and performance of English physiotherapy graduates appear to reflect outcomes from workforce strategy in England - 1. There is a shortage of jobs in England for recent graduates so they are moving to Australia; and 2. The standard of competence of the graduates has decreased markedly because they are being trained to work in specific areas in the NHS rather than in depth and breadth of physiotherapy practice required for practice in Australia.

## **1. Objects or purposes of the Act and commencement**

*Principle 5.4(c) of the IGA is: "it should recognise that restrictions on the practice of a profession should only occur where the benefits of the restriction to the community as a whole outweigh the costs."*

Physiotherapy

- i) considers the wording of principle 5.4(c) of the IGA would not be appropriate if the cost of restriction of the practice of a profession led to a decision that placed a part of the community at risk.
- ii) contends that the legislative provisions that translate principle 5.4(c) of the IGA must ensure benefits of restriction of the practice of a profession to the community (not necessarily the whole community) remain paramount as this is consistent with objective 5.3(a) of the IGA.

## **2. Australian Health Workforce Ministerial Council**

Physiotherapy recommends that all legislative provisions related to '*directions from the Ministerial Council*' – for example under 5.2, be amended to the words '*policy directions*' to ensure consistency with the stated limits on the role of the Ministerial Council in paragraphs 7.5(a) and 7.8 of the IGA.

### **2.1 Publication of decisions**

*It is proposed that all interventions by the Ministerial Council should be transparent. It is therefore proposed that when the Ministerial Council gives written directions to the National Agency, or any of the professional boards, that the legislation require the written directions to be:*

- *published by the Ministerial Council on its internet site, and*
- *included in the National Agency's annual report, which is to be tabled in the Houses of Parliament of all participating jurisdictions.*

Physiotherapy

- i) supports the proposal that all interventions by the Ministerial Council must be transparent.
- ii) recommends that the legislation require publication by the Ministerial Council, on its internet site, details of all interventions including policy directions, and decisions in relation to legislative changes, appointments and registration and accreditation standards.
- ii) proposes that the legislation requires written directions to be published no later than 15 working days after the Ministerial Council gives directions to the National Agency, or any of the professional boards.
- iii) proposes that the National Agency establishes an email alert service to provide notification whenever decisions and directions are made by the Ministerial Council. The email alert service should include mandatory recipients such as national boards and committees and a subscription service for interested stakeholders. This type of email alert service is in place for other agencies such as the Australian Competition and Consumer Commission.

### **3. Australian Health Workforce Advisory Council**

#### **3.1 Decision making procedure**

*The Advisory Council will have powers to:*

- *regulate its own proceedings, subject to directions from the Ministerial Council*
- *conduct meetings via contemporary and electronic means of communications, and*
- *discuss matters and make advisory resolutions without formal meetings.*

Physiotherapy

- i) recommends that the legislation provisions require a formal record of all resolutions made by the Advisory Council even where these are made without a formal meeting.

#### **3.5 Resignation and removal**

*It is proposed that the legislation make provision for members of the Advisory Council to resign their appointments by written notice to the Chair of the Ministerial Council. It is further proposed that the Chair of the Ministerial Council, acting with the authority of the Ministerial Council, have power to terminate the appointment of an Advisory Council member, but only on the grounds specified in the legislation. This could include grounds such as bankruptcy and engaging in paid employment that conflicts, or could conflict, with the performance of duties.*

Physiotherapy

- i) supports the proposal that the Chair of the Ministerial Council, acting with the authority of the Ministerial Council, has the power to terminate the appointment of an Advisory Council member, but only on the grounds specified in the legislation.
- ii) recommends that the legislation sets out statutory duties of the Advisory Council members within the legislation such as to:
  - a) Act honestly
  - b) Act in good faith in the best interest of the community
  - c) Exercise the degree of care and diligence that a reasonable person would exercise if they were in the Advisory Council member's position
  - d) Act in the best interest of the community and, if there is a conflict between the community interest and interests of the profession, to give priority to the community interest
  - e) Not make use of information acquired through being an Advisory Council member in order to:
    - i. Gain, directly or indirectly, an advantage for themselves or another person; or
    - ii. Cause detriment to any other person
  - f) Not make improper use of their position as an Advisory Council member in order to:
    - i. Gain directly or indirectly, an advantage for themselves or another person; or
    - ii. Cause detriment to any other person

- g) Take all steps that a reasonable person would take, if they were in the Advisory Council member's position, to ensure the Advisory Council complies with the Act and all related instruments.
- iv) recommends that a code of conduct/code of ethics is developed for Advisory Council, Boards and Committees within the scheme<sup>2</sup> and that a statutory requirement to comply with this is included in the duties or that the code is referenced in the legislation.
- v) recommends that the grounds specified in the legislation include personal bankruptcy, conviction for a serious indictable offence, or breach of the duties.
- vi) does not agree that the grounds specified in the legislation should be limited to include engaging in paid employment that conflicts, or could conflict, with the performance of duties.
- vii) recommends that the legislation should include a requirement for all members of the Advisory Council, Boards and Committees within the scheme to declare pecuniary and other interests that conflict, or could conflict, with the performance of duties.
- vii) proposes that the legislation provides the Chair of the Ministerial Council, acting with the authority of the Ministerial Council with the power to suspend the appointment of an Advisory Council member, or require the member to step down, but only on the grounds specified in the legislation. The grounds should include situations such as during the investigation of an allegation of breach of the duties by the member, or trial of the member for a serious indictable offence in Australia or outside Australia, or when the member has declared pecuniary interests that conflict, or could conflict, with the performance of duties.
- viii) Proposes that the legislation make provision for members of the Advisory Council to cease to be members if they are absent without notice to the Chair, for three consecutive meetings.

### **3.6 Coverage for legal liability – indemnities and immunities**

*It is proposed that the legislation make provision for any immunities for members of the Advisory Council, as is necessary and appropriate to the exercise of their advisory role.*

#### Physiotherapy

- i) proposes that the provisions for any immunities for members of all bodies within the Scheme must be worded in such a way that members performing the duties of the position be absolutely covered rather than "as is necessary and appropriate". Members of bodies within the scheme will, from time to time, be required to make decisions that have the potential to affect the professional reputation and future of one or more health practitioners in order to protect the community – for example to suspend a practitioner's registration whilst allegations of professional incompetence are investigated. The words "necessary" and "appropriate" are too broad to cover the members' immunities

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<sup>2</sup> An excerpt from the Physiotherapists Board of Queensland information paper for board members is included as an appendix

in this context. There is real potential for legal debate regarding the tests for “necessary” and “appropriate” in such a situation – that is, when is it necessary to suspend a practitioner’s registration and when is it “appropriate” to do so? Unless the wording of the provision covers all decisions made in the performance of duties, there will be a tension between the potential personal risk to a member making a particular decision and the potential public risk if the member does not make the decision.

- ii) proposes that the legislation’s indemnity provisions provide protection from personal liability for members and officers of all bodies within the Scheme through wording such as “acted in good faith and in a manner consistent with that expected of a person in the position”.

### **3.8 Reporting requirements**

*It is proposed that the legislation will require the Advisory Council to submit to the Ministerial Council an annual report with respect to its role, as soon as possible after 30 June each year after the first year of operation, and for the Ministerial Council to have capacity to make directions concerning the matters to be reported.*

#### Physiotherapy

- i) agrees that the legislation will require the Advisory Council to submit to the Ministerial Council an annual report with respect to its role and for the Ministerial Council to have capacity to make directions concerning the matters to be reported.
- ii) proposes that the legislation requires the annual report to be submitted not later than four months after the end of the financial year. This allows sufficient time for completion of an audit and is consistent with requirements for corporations.

## **4. National agency**

### **4.2 Terms of office – length of appointments, payment of members etc**

*Consistent with membership of the Advisory Council, it is proposed that the legislation specify that the length of appointment of members of the Agency Management Committee be for a period of three years.*

#### Physiotherapy

- i) proposes that the legislation specify that the length of appointment of members of the Agency Management Committee be for a period of four years.
- ii) proposes that the legislation also needs to specify the maximum of number of consecutive terms of appointment of members of the Agency Management Committee with provision for exceptions subject to ministerial approval.
- iii) suggests that the length of terms of appointment of members of the Agency Management Committee should be staggered so that expertise of these members is not “lost” simultaneously.

- iv) proposes that the legislation specifies that members of the Agency Management Committee may serve a maximum of three consecutive terms with a minimum and maximum number of members completing a term each year to balance regeneration with loss of expertise.
- v) contends that the sitting fees must provide reasonable remuneration for the different responsibilities of committee members. Further details are provided in 5.3 below.
- vi) proposes that the legislation make provision for members of the Agency Management Committee to cease to be members if they are absent without notice to the Chair, for three consecutive meetings.

#### **4.4 Decision making in management committee**

##### Physiotherapy

- i) recommends that the legislation provisions require a formal record of all resolutions made by the Management Committee even where these are made without a formal meeting.

#### **4.6 Coverage for legal liability – indemnities and immunities**

*It is proposed that the legislation's indemnity provisions provide protection from personal liability for a person assisting the National Agency in the performance of its functions (including Agency Management Committee and staff), provided the person has acted honestly and reasonably.*

##### Physiotherapy

- i) proposes that the provisions for any immunities for members of all bodies within the Scheme must be worded in such a way that members performing the duties of the position be absolutely covered rather than "as is necessary and appropriate". Members of bodies within the scheme will, from time to time, be required to make decisions that have the potential to affect the professional reputation and future of one or more health practitioners in order to protect the community – for example to suspend a practitioner's registration whilst allegations of professional incompetence are investigated. The words "necessary" and "appropriate" are too broad to cover the members' immunities in this context. There is real potential for legal debate regarding the tests for "necessary" and "appropriate" in such a situation – that is, when is it necessary to suspend a practitioner's registration and when is it "appropriate" to do so? Unless the wording of the provision covers all decisions made in the performance of duties, there will be a tension between the potential personal risk to a member making a particular decision and the potential public risk if the member does not make the decision.
- ii) contends that "acted honestly and reasonably" is not sufficient to provide protection from personal liability for a person assisting the National Agency in the performance of its function. There is real potential for legal debate regarding the tests for "reasonably" in the context of the Scheme.

- iii) proposes that the legislation's indemnity provisions provide protection from personal liability for members and officers of all bodies within the Scheme through wording such as "acted in good faith and in a manner consistent with that expected of a person in the position".

#### **4.9 Staffing arrangements – capacity to employ, set terms and conditions**

*It is proposed that the legislation make provision for the National Agency to be empowered to directly engage its own staff and decide the terms and conditions of employment, subject to any relevant industrial instrument. This will among other things enable flexibility for the agency having regard to the previous employment arrangements of staff transferring from existing boards into the new agency.*

##### Physiotherapy

- i) proposes that, through the terms of individual service agreements for each National Board with the National Agency, a National Board must be empowered to advise the National Agency with respect to specific aspects of recruitment, selection, appointment and dismissal of the staff that provide services to that National Board.
- ii) contends that the scheme must adhere to good governance principles and reflect relevant recommendations of the Uhrig report.
- iii) contends that the governance model must enable effective and responsive regulation that reflects the objectives of the scheme.
- iv) contends that the legislation must include provisions consistent with paragraph 6.11 of the IGA<sup>3</sup> in dealing with staffing and recruitment arrangements. The National Agency must consult with existing State and Territory Boards in implementing the transitional mechanism to retain existing staff.

#### **4.10 Financial provisions**

##### *Agency funds*

*It is proposed that the legislation make provision for the Agency Management Committee to have financial powers, including the ability to:*

- *keep a fund under the name of the National Agency, into which all fees, fines and penalties paid or recovered by the Agency under the Act must be paid*
- *pay any other money received by it into the fund, including income from the investments of the fund administered by the Agency Management Committee, and*
- *pay the expenses incurred by the Agency in the administration of the Act.*

##### Physiotherapy

- i) contends that the chart of accounts for the fund under the name of the National Agency, into which all fees, fines and penalties paid or recovered by the Agency under the Act must be paid must include cost centres or sub-accounts for each

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<sup>3</sup> Paragraph 6.11 states "A mechanism will also be developed to give first consideration to existing jurisdictional registration board staff to operate the State and Territory presence of the national office of the national agency."

profession within the scheme. All fees paid by registrants for each profession will appear in the accounts as revenue within the cost- centre or sub-account for the relevant profession.

- ii) proposes that the terms of individual service agreements are established between the National Agency and each National Board. The agreement would include a fee for service arrangement between the National Agency and the National Board. The National Agency would establish standard charges for the cost of specific services and charge each National Board on a pro-rata basis reflective of the number of registrants and the amount of activity undertaken by the National Agency in servicing that profession.
- iii) contends that there must be no cross-professional subsidisation of the cost of the National Agency.
- iv) proposes that there is provision for funds to be allocated by the National Board to research and education specifically related to issues of public protection.

### ***Fee setting powers***

*It is proposed that the legislation clarify that the agreement on fees between the agency and each board may include the provision for fee refunds, waivers or reductions, and the imposition of late or restoration fees.*

### Physiotherapy

- i) supports the option for provision for fee refunds, waivers or reductions, and the imposition of late or restoration fees in the agreement on fees
- ii) contends that the current reserve funds held by each State or Territory Registration Board as well as funds in some States that are currently set aside for research and education activities related to protection of public must be held in trust under the control of the relevant National Board to ensure adequate provision for liabilities arising from events related to the current arrangements and the transition to future arrangements such as matters that are ongoing and pending as well as for staff entitlements and other costs arising from the current registration scheme for each profession.

### **4.12 Reporting requirements for agency**

*It is proposed that the legislation will also require the National Agency to prepare an annual report each financial year, submitted to the Ministerial Council, to be tabled in the Houses of Parliament for each jurisdiction. The annual report of the Agency may be consolidated with reports from the National Boards.*

### Physiotherapy

- i) proposes that the wording is amended to 'The annual report of the Agency *will* be consolidated with reports from the National Boards.'

## 5. National Boards

### 5.1 Names of Boards

Physiotherapy

- i) recommends that the National Board be established with the title '**Physiotherapy Board of Australia**'. The first reason for this recommendation is that the National Board is responsible for regulation of physiotherapy practice, including physiotherapy students and physiotherapy assistants, not just physiotherapists. The second reason is that members of the public who wish to contact the Board regarding a matter will search for contact details for the Physiotherapy Board (under P in the telephone directory).

### 5.2 Decision making procedure

*The legislation will specify that the National Boards will have powers to:*

- regulate their own proceedings, subject to directions from the Ministerial Council
- conduct meetings via contemporary and electronic means of communications, and
- make resolutions without formal meetings.

Physiotherapy

- i) recommends that the legislation provisions require a formal record of all resolutions made by the National Board even where these are made without a formal meeting.

### 5.3 Sitting fees and allowances and length of appointment

*It is proposed that the legislation provide that sitting fees and allowances for members of the Boards will be determined by the Ministerial Council. It is proposed that the legislation specify that the length of appointment be for a period of three years.*

Physiotherapy

- i) contends that the legislation must provide reasonable remuneration for the different responsibilities of members of the Boards, not merely sitting fees, and be indexed to the Consumer Price Index. The following table is an example of the current fees in Queensland:

	Category	Chair	Members
Daily Meeting - Board	E1	\$406.00	\$334.00
Special Assignment-Board	E1	\$84.50 per whole hour up to a maximum of \$338.00 for any one assignment undertaken in a single day	\$69.50 per whole hour up to a maximum of \$278.00 for any one assignment undertaken in a single day

Daily Meeting - Committee established by Board	F1	\$215.00	\$191.00
Special Assignment-Committee established by Board	F1	\$44.75 per whole hour up to a maximum of \$179.00 for any one assignment undertaken in a single day	\$39.75 per whole hour up to a maximum of \$159.00 for any one assignment undertaken in a single day

- ii) contends that the legislation must provide for all necessary and reasonable expenses incurred by members of the Boards whilst travelling on approved business and to attend meetings. This must include consideration of travel time where this is in excess of one hour each way.
- iii) proposes that the legislation specify that the length of appointment of members of the National Board be for a period of four years.
- iv) proposes that the legislation also needs to specify the maximum of number of consecutive terms of appointment of members of the National Board with provision for exceptions subject to ministerial approval such as where a member of the National Board who has served two terms subsequently takes the position of Chair and the profession seeks to have the person serve two terms as Chair.
- v) suggests that the length of terms of appointment of members of the Boards should be staggered so that expertise of these members is not “lost” simultaneously.
- vi) proposes that the legislation specifies that members of the Boards may serve a maximum of three consecutive terms with a minimum and maximum number of members completing a term each year to balance regeneration with loss of expertise.

## 5.6 Resignation and removal

*It is proposed that the legislation make provision for members of the National Boards to resign their appointments by written notice to the Chair of the Ministerial Council.*

*It is further proposed that the Chair of the Ministerial Council, acting with the authority of the Ministerial Council, have power to terminate the appointment of a Board member, but only on the grounds specified in the legislation. This could include grounds such as bankruptcy and engaging in paid employment that conflicts, or could conflict, with the performance of duties.*

*It is further proposed that the legislation make provision for members of the National Boards to cease to be members if they are absent without notice to the Chair, for three consecutive meetings.*

### Physiotherapy

- i) supports the proposal that the legislation make provision for members of the National Boards to resign their appointments by written notice to the Chair of the Ministerial Council.

- ii) supports the proposal that the legislation make provision for the Chair of the Ministerial Council, acting with the authority of the Ministerial Council, to have the power to terminate the appointment of a Board member, but only on the grounds specified in the legislation.
- iii) recommends that the legislation provides the Chair of the Ministerial Council, acting with the authority of the Ministerial Council, with the power to make provision for members of the profession appointed to the National Board to be removed if their registration has been suspended or revoked for reasons of professional misconduct.
- iii) recommends that the legislation sets out statutory duties for members of the National Boards within the legislation such as to:
  - a) Act honestly
  - b) Act in good faith in the best interest of the community
  - c) Exercise the degree of care and diligence that a reasonable person would exercise if they were in the Board member's position
  - d) Act in the best interest of the community and, if there is a conflict between the community interest and interests of the profession, to give priority to the community interest
  - e) Not make use of information acquired through being a National Board member in order to:
    - i. Gain, directly or indirectly, an advantage for themselves or another person; or
    - ii. Cause detriment to any other person
  - f) Not make improper use of their position as a National Board member in order to:
    - i. Gain directly or indirectly, an advantage for themselves or another person; or
    - ii. Cause detriment to any other person
  - g) Take all steps that a reasonable person would take, if they were in the National Board member's position, to ensure the National Board complies with the Act and all related instruments.
- iv) recommends that a code of conduct/code of ethics is developed for Advisory Council, Boards and Committees within the scheme<sup>4</sup> and that a statutory requirement to comply with this is included in the duties or that the code is referenced in the legislation.
- v) recommends that the grounds specified in the legislation include personal bankruptcy, conviction for a serious indictable offence, or breach of the duties.
- vi) does not agree that the grounds specified in the legislation should include engaging in paid employment that conflicts, or could conflict, with the performance of duties.
- vii) recommends that the legislation should include a requirement for all members of the Advisory Council, Boards and Committees within the scheme to declare

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<sup>4</sup> An excerpt from the Physiotherapists Board of Queensland information paper for board members is included as an appendix

pecuniary and other interests that conflict, or could conflict, with the performance of duties.

- viii) proposes that the legislation provides the Chair of the Ministerial Council, acting with the authority of the Ministerial Council, has the power to suspend the appointment of a National Board member, or require the member to step down, but only on the grounds specified in the legislation. The grounds should include situations such as during the investigation of an allegation of breach of the duties by the member, or trial of the member for a serious indictable offence in Australia or outside Australia, or when the member has declared pecuniary interests that conflict, or could conflict, with the performance of duties.

## **5.7 Coverage for legal liability – indemnities and immunities**

*As for National Agency it is proposed that the legislation's indemnity provisions provide protection from personal liability for Board members and persons acting on their behalf in the performance of functions conferred on them by the Act provided the person has acted honestly and reasonably.*

### Physiotherapy

- i) supports the proposal that the legislation's indemnity provisions provide protection from personal liability for Board members and persons acting on their behalf in the performance of functions conferred on them by the Act.
- ii) contends that "acted honestly and reasonably" is not sufficient to provide protection from personal liability for Board members and persons acting on their behalf in the performance of functions conferred on them by the Act.
- iii) proposes that the legislation's indemnity provisions provide protection from personal liability for members and officers of all bodies within the Scheme through wording such as "acted in good faith and in a manner consistent with that expected of a person in the position".
- iv) proposes that the provisions for any immunities for members of all bodies within the Scheme must be worded in such a way that members performing the duties of the position be absolutely covered rather than "as is necessary and appropriate". There is potential for legal debate regarding the tests for "necessary" and "appropriate". Unless the wording of the provision covers all decisions made in the performance of duties, there will be a tension between the personal risk to a member making a particular decision and the public risk if the member does not make the decision. See 3.6 above for further details.

## **5.8 Reporting requirements**

*It is proposed that the legislation require the National Boards to prepare a contribution on their functions and operations for the Agency-coordinated annual report on the scheme.*

### Physiotherapy

- i) contends that the proposed wording is too general and capable of mis-interpretation.

- ii) proposes that preparation of an annual report on their functions and operations by the National Board to the National Agency is expressed as a function of the Board – such as “to issue an annual report on its functions and operations.”

### **5.9 Arrangements for Ministerial Council to review composition of boards**

*It is proposed that the legislation clarify that the initial decision by the Ministerial Council on the size and composition of boards at the beginning of the new scheme can be reviewed by the Ministerial Council as is necessary from time to time, and in consultation with the relevant profession.*

#### Physiotherapy

- i) proposes that the legislation clarify that “...and in agreement with the relevant National Board and the relevant profession”. The profession and National Board are not synonymous terms.
- ii) proposes that the relevant National Board and the relevant profession can initiate a review by the Ministerial Council.
- iii) proposes that the legislation specifies a minimum number of members of a National Board.
- iv) proposes that the Ministerial Council must publish reasons for a review and change to composition and size of a National Board.
- v) proposes that any changes by the Ministerial Council to composition of a National Board do not change the ratio of professional and community members specified at the beginning of the new scheme.

### **5.11 Responsibility for developing accreditation standards (accreditation committee or bodies)**

*In relation to the development of accreditation standards, the IGA implies that the National Boards will not develop the standards, but will ensure that this development occurs. It is proposed that the legislation clarify this point by stating that the accreditation standards will be developed by any accreditation body or committee assigned by Ministerial Council to perform the accreditation functions.*

#### Physiotherapy

- i) contends that it is not necessary for the legislation to clarify this point as the IGA states at 1.25(b) that it is a role of the National Boards to:  
*“manage the development of registration, practice, competency and accreditation standards and CPD requirements for approval by the Ministerial Council that comply with the objects of the legislation, any policy directions of the Ministerial Council and the framework and requirements for standards developed by the agency management committee”*
- ii) contends that it is beyond the scope of the responsibilities of the Ministerial Council stated in paragraph 7.5 of the IGA to assign the development of the accreditation standards to any accreditation body or committee assigned to perform the accreditation functions.

- iii) contends that the legislation must define the accreditation functions to include all elements such as accreditation of education programs, in Australia or overseas, accreditation of the institutions offering the education programs and assessment of individual practitioners educated in Australia or overseas.

## **Appendix 1 – Duties and responsibilities of board members**

*An excerpt from the information paper for those considering nominating as a member of the Physiotherapists Board of Queensland*

Over and above the duties and obligations placed upon their private sector counterparts, members of Government boards such as the Physiotherapists Board of Queensland assume a public trust and confidence by virtue of their role in the public administration. Under the common law (as opposed to statute law) they have a fiduciary relationship or a duty to the Board which has been developed by the Courts. A fiduciary relationship is a relationship between a person in a position of special power and responsibility (the fiduciary) and the person for whose benefit the fiduciary acts. The 'person' in the position of special power and responsibility in this instance will be the Board.

Board members must act ethically so as to support the continuance of public trust in the Government and to observe the highest standards of behaviour and accountability. Fiduciary responsibilities are onerous, particularly because members are responsible for the expenditure of taxpayers' money (which is received as fees paid by registrants and applicants for registration) and the custody and control of public assets.

Aside from general issues such as the public trust and confidence placed in Board members as trustees of public monies, there are numerous other sources of responsibility placed upon Board members. These include common law obligations such as the duty to take reasonable care, specific legislation such as the *Financial Administration and Audit Act 1977* and a broad range of policy statements whether specifically applying to the Board, or more generally applicable.

Therefore sources of legal responsibility for Board members include: (a) the Act; (b) the HPPSA; (c) the HPRBA; (c) the common law, especially as regards the fiduciary nature of the relationship between the member as a director and the Board; and (d) any relevant specific legislation.

### **Common Law**

Under the common law a Board member has a number of obligations which include the following:

#### Act honestly and exercise powers for their proper purposes

Members must act openly and honestly at all times in the performance of their duties. They must ensure that they do not use information acquired by virtue of their position to gain directly or indirectly an advantage for themselves or any other person.

#### Avoid conflicts of interest

Members should avoid conflicts between their duties to the Board and their personal interests or their duties to others. Section 35 of the Act prescribes the legal responsibility for disclosure of interests by Board members.

### Act in good faith

Because of their position of trust, members' actions and standards of behaviour are required to be exemplary. Members should act *bona fide* in the interests of the Board and not in their own interest or to pursue personal or the agendas of other organisations. Members are expected to act in the best interests of the Board, the State and the community.

### Exercise diligence, care and skill

Members have to ensure that they exercise diligence, care and skill in the performance of their duties. They must also take reasonable steps to inform themselves about the functions of the Board, its business and activities and the circumstances in which it operates. A member must give close attention to Board affairs and should obtain sufficient information and advice and exercise an active discretion at all times to enable her/him to make conscientious and informed decisions. A member should also maintain confidentiality of Board discussions and of information made available. Specific confidentiality obligations are provided for under section 211 of the Act and section 392 of the HPPSA.

### Bennetts -v- The Board of Fire Commissioners of New South Wales and Others (1967) 87 WN 307

This case clearly delineates the above noted common law duties and provides some direction to members of statutory bodies as to their responsibilities as directors of an organisation. This issue has been found by previous members to be an important concept to grasp, in particular, for those members nominated by representative and consumer associations.

Extracts from this judgment are placed at Appendix 2. In summary Mr Justice Street found that:

- a great many public undertakings are controlled by boards or commissions set up in a manner consistent with the matter before him;
- by the terms of their statutes such boards were comprised of a number of persons nominated or chosen by various groups which have a direct interest in the public undertaking controlled by the board; and
- each of the persons on such a board owes her/his membership to a particular interested group, but a member would be derelict in their duty if they used such membership as a means to promote the particular interests of the group which chose or nominated her/him.