

4 September 2008

Ms B Nardi
Chair
Practitioner Regulation Subcommittee
Of the Health Workforce Principals Committee
BRISBANE QLD 4001

NRAIP@dhs.vic.gov.au

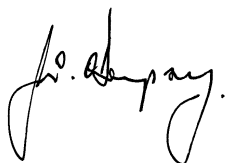
Dear Bronwyn

Please find attached the submission of the Health Practitioner Registration Boards in response to the Consultation Paper issued by the Subcommittee on 13 August 2008. This submission is on behalf of the following Boards:

- Chiropractors Board of Queensland
- Dental Board of Queensland
- Dental Technicians and Dental Prosthetists Board of Queensland
- Optometrists Board of Queensland
- Osteopaths Board of Queensland
- Pharmacists Board of Queensland
- Physiotherapists Board of Queensland
- Podiatrists Board of Queensland
- Psychologists Board of Queensland

Should you require any further information or clarification please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jim O'Dempsey', written in a cursive style.

Jim O'Dempsey
Executive Officer

Submission by the Health Practitioner Registration Boards¹

on the

Issues Supplementary to the Intergovernmental Agreement on a National Registration and Accreditation Scheme for the health professions to be included in the first bill

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.

Submission of the Boards

The inclusion of such requirements will ensure transparency and are supported by the Boards. It will also ensure accountability in the use of the power of direction by the Ministerial Council and achieve an appropriate balance with the principle of professional self regulation. Similar provisions are contained in current Queensland registration legislation and have worked effectively in achieving these objectives.

3.4 Leave of absence and acting members

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.

Submission of the Boards

This proposal is supported by the Boards. Provision should also be made for the Ministerial Council to terminate the appointment of an Advisory Council member who is a registered health practitioner whose registration is cancelled by the relevant Board under the disciplinary processes. Similarly, power to suspend membership should also be included if such a member is being investigated for, or has been charged with, serious professional misconduct under the disciplinary processes.

¹ Chiropractors Board of Queensland, Dental Board of Queensland, Dental Technicians and Dental Prosthetists Board of Queensland, Optometrists Board of Queensland, Osteopaths Board of Queensland, Pharmacists Board of Queensland, Physiotherapists Board of Queensland, Podiatrists Board of Queensland, Psychologists Board of Queensland.

There is no provision for such actions under current Queensland legislation and the Boards have had to rely on the power of directions given to the Minister by the legislation. A copy of the relevant Ministerial direction is attached (A) for information.

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.

Submission of the Boards

This proposal is supported.

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.

Submission of the Boards

This proposal is supported.

4.2 Terms of office – length of appointments, sitting fees and allowances

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.

Submission of the Boards

It is the position of the Boards that three years is insufficient to ensure the development of skills of members and balance this against appropriate regeneration of membership with the retention of corporate knowledge. It is proposed that the length of appointment be for four years and that a policy commitment be made to appropriate regeneration in membership over time.

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.

Submission of the Boards

This proposal is supported.

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.

Submission of the Boards

This proposal is supported.

4.10 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.

4.10 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.

Submission of the Boards

This proposal is supported.

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.

Submission of the Boards

This proposal is supported.

5.1 Names of boards

It is proposed that the ten National Boards be established with the following titles:

- Australian Chiropractors Board
- Australian Dental Care Practitioners Board
- Australian Nurses and Midwives Board
- Australian Medical Practitioners Board
- Australian Optometrists Board
- Australian Osteopaths Board
- Australian Pharmacists Board
- Australian Physiotherapists Board
- Australian Podiatrists Board
- Australian Psychologists Board

Submission of the Boards

This proposal is supported.

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.

Submission of the Boards

It is the position of the Boards that three years is insufficient to ensure the development of skills of members and balance this against appropriate regeneration of membership with the retention of corporate knowledge. It is proposed that the length of appointment be for four years and that a policy commitment be made to appropriate regeneration in membership over time.

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.

Submission of the Boards

This proposal is supported by the Boards. Provision should also be made for the Ministerial Council to terminate the appointment of a Board member who is a registered health practitioner whose registration is cancelled by the relevant Board under the disciplinary processes. Similarly, power to suspend membership should also be included if such a member is being investigated for, or has been charged with, serious professional misconduct under the disciplinary processes.

There is no provision for such actions under current Queensland legislation and the Boards have had to rely on the power of directions given to the Minister by the legislation. A copy of the relevant Ministerial direction is attached (A) for information.

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.

Submission of the Boards

This proposal is supported.

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.

Submission of the Boards

This proposal is supported.

5.10 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.

Submission of the Boards

This proposal is supported.

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.

Submission of the Boards

It could be argued that this is extending the power of the Ministerial Council. It would not appear to be necessary to provide the Council with a power of this nature given clause 1.25(b) of the InterGovernmental Agreement. This clause provides that each National Board is responsible as part of its role to manage the development of accreditation standards 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. In addition, clause 1.34 clarifies that as a transitional measure, current accrediting bodies will continue to function subject to the requirement that within the first twelve months they meet standards and criteria set by the national agency which include criteria for the operation of the accreditation function.

It would appear to be unnecessary to provide a legislative basis for the Ministerial Council to assign development of the standards to particular accreditation bodies/committees given clause 1.25(b) and clause 1.34 of the InterGovernmental Agreement.

ATTACHMENT A

Dear

The following direction has been requested by your Board, and I consider that giving such a direction is in the public interest and consistent with the objects of the *XX Registration Act 2001* ('the Act').

Section 35 of the Act relates to a person who has a direct or indirect interest in an issue that is being considered, or is about to be considered, by a board or committee of which that person is a member. The member concerned must disclose his or her interest as soon as possible to the relevant board or committee.

Section 35 further provides that, unless the board or committee, in the absence of the interested person, otherwise directs, the latter must not be present when the board or committee considers the issue in question, or take part in a decision about it.

While section 35 is limited to a member's participation in discussions and decisions about an issue in which the member is interested, I accept the advice of the Integrity Commissioner that a wider prohibition is desirable in cases where a member is the subject of a complaint by a patient, client, or other person.

Accordingly I direct, pursuant to section 36 of the Act, that a member of the XX Board or committee of the Board against whom any such complaint is made must not participate in any function of the Board or committee thereof during the period commencing when the Board determines under section 51, 53 or 63 of the *Health Practitioners (Professional Standards) Act 1999* that a complaint or information received appears to provide a ground for disciplinary action against the member, and ending when the complaint is finally resolved, whether by the Board or committee, or an external authority to which it is referred.

However, this prohibition shall not apply in either of the following cases:

1. Where a majority of the Board, in the absence of the interest person (as required by section 35) decides that the complaint is sufficiently minor that it should not disqualify the member from continuing participation in the affairs of the board or committee, other than an inquiry into the complaint; or
2. where the complaint is one against the Board or committee in general. In any such case the Board or committee, as a matter of necessity, may consider and decide the complaint, if it is one that the Act strictly requires the Board or committee to decide. Otherwise the complaint must be referred to an appropriate external authority.

For the purposes of this directive, an issue may be deemed minor, if, in the opinion of a majority of the Board or committee, arrived at in the absence of the person accused, the complaint, if upheld, would not reasonably require any sanction more severe than those provided for in section 165 of the *Health Practitioners (Professional Standards) Act 1999*.

Yours sincerely

Stephen Robertson MP
Minister for Health