

SUBMISSION ACT MEDICAL BOARD

on the

CONSULTATION PAPER

Other matters for inclusion in Bill B

Proposal 3.5.1: It is proposed that the second stage legislation provide a broad delegation power (as in Clause 46 of the National Law Bill), that would allow a national board to delegate any of its functions, including all of the key decisions listed above, to committees of the board or to staff or other persons, other than the power of delegation. Under such an arrangement, a board would have the discretion to determine the constraints or boundaries placed on any delegation, as well as the number and make up of any committees it requires in order to make key decisions listed above.

Board Submission

The board agrees with the approach as suggested. It retains, however, some concerns with the separation of powers between committees and panels and would suggest in this regard that the power to refuse to register, impose conditions on registration and the power to immediately suspend should not be delegated to an individual. The board agrees that it is appropriate to delegate the powers but equally believes that given the potential gravity of such decisions that they rest with a delegated panel.

The board further believes that in delegating powers, boards need to ensure that such delegations are consistently applied down to the jurisdictional (state office) level.

See also the board submission in relation to proposal 3.6.1.

Proposal 3.6.1: It is proposed that the legislation provide for safeguards relating to the delegation of board powers as follows:

- a delegation must be in writing and specify the person or persons to whom the delegation made, the decision or decisions that may be taken under delegation, and the period to which the delegation relates, as well as any conditions the board has attached to the exercise of the decision making under delegation, and include the ability to rescind a delegation
- a right of review for a person whose interests are affected by a decision made under delegation similar to the rights of review against decisions of the board itself (with powers for the board to delegate the conduct of such a review)
- a statutory limit on the length of time a practitioner's registration may be suspended without review by the board (or delegate of the board)
- a right of review for key registration and panel hearing decisions, as outlined in section 10 of the complaints consultation paper, to the relevant State or Territory tribunal for decision
- general and specific provisions with respect to conflicts of interest that require a person to exclude themselves from decision-making in the event of a conflict,

including, for example, where a small number of practitioners operate in a single geographical area, and

- general provisions with respect to procedural fairness, such as separation of powers between original decision making and review of decisions.

Board Submission

The board agrees with:

- Written, specified delegations.
- The right of review of any decision.
- The conflict of interest provisions.
- Procedural fairness provisions.

As expressed in its submission on complaint handling, the board continues to believe that committees established to manage processes (such as complaints) should not have any other punitive powers, such as the power to suspend. The board continues to believe most strongly that there should always be a separation of the powers of assessment or investigation from powers of discipline including suspension in the public interest.

Proposal 4.1.1: With respect to advisory committees, it is proposed that the legislation, while providing powers for boards to establish such committees, would be silent on the process through which a board might select members of its advisory committees. This would afford a board maximum flexibility to determine their terms of appointment.

Board Submission

This board agrees to this proposal.

The ACT Medical Board currently maintains list of practitioners as well as community representatives who are willing to serve on committees and panels established by the board. The board recommends this approach be considered for the scheme.

Proposal 4.1.2: The stakeholders are asked to advise of their preferred option for appointments to committees to which board powers are delegated.

Board Submission

The board agrees with Option 1 as it provides a degree of flexibility to the boards (and their professions) in the process whilst functioning with a framework approved by the Ministerial Council. Such an approach would help allay fears of political interference whilst addressing the need for an open and transparent process.

Proposal 4.1.3: Stakeholders are requested to advise of their preferred option for appointments to statutory hearing panels.

Board Submission

For the same reasons outlined under proposal 4.1.2, the board would recommend acceptance of Option 1.

TABLE 1: State and Territory laws that will interface with the national registration scheme

Board Submission

The committee might wish to seek advice from Megan on the legal complexities involved. The support described below is ‘gut feeling’ only.

5.2.1 The board supports Option 1.

5.2.2 The board supports Option 4.

5.2.3 The board supports Option 1.

5.2.4 Whilst supporting Option 1, the board would prefer to see further discussion on this proposal.

5.2.5 Option 4 would appear to be most appropriate.

5.2.6 Option 4 would appear to be most appropriate.

5.2.7 Option 4 would appear appropriate.

5.2.8 Option 2 would appear appropriate.

5.2.9 Option 2 would appear appropriate.

5.2.10 Option 2 would appear appropriate.