



SUBMISSION OF THE HEALTH SERVICES COMMISSIONER, VICTORIA, TO THE NATIONAL REGISTRATION AND ACCREDITATION SCHEME FOR THE HEALTH PROFESSIONS CONSULTATION PAPER: OTHER MATTERS FOR INCLUSION IN BILL B

DATE: 30 January 2009

Thank you for the opportunity of commenting on this important national initiative which the Health Services Commissioner (HSC) supports. National registration is an important initiative in promoting harmonisation throughout Australia and promoting a unified set of standards in the public interest. It is an opportunity for genuine cooperative federalism rather than Federal domination.

3.2 The national scheme environment

HSC notes that the consultation has taken note of the fact that we should not impose through national legislation a set of requirements which, while suitable for medicine or nursing, would be unnecessary and inefficient for much smaller professions.

3.3 Types of committees

As noted in previous consultation responses, once again, the national scheme must take into account the smaller boards by not imposing an unnecessary burden on them.

3.4 Key decisions

HSC supports this.

3.5 More flexible committee arrangements

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.

The broad delegation power to allow a national board to delegate any of its functions, except the power of delegation, is supported.

Proposal 3.5.2: It is proposed that the only statutory committees in the new scheme would be panels convened for the purposes of hearing individual matters (health, performance or conduct).

HSC supports this.

Proposal 3.5.3: It is proposed that the legislation require a minimum of three members on a panel for the purposes of statutory decision-making with at least 50 per cent and no more than two thirds of the members being registrants from the profession concerned and at last one member being a community member.

HSC supports this.

Proposal 3.5.4: It is proposed that the legislation provide that a panel should not include any person who was a member of the board or committee that took the decision to refer the matter to the panel.

The proposal that the legislation provide a panel that should not include any person who is a member of the board or committee that took the decision to refer the matter to the panel is supported but is probably unnecessary.

Proposal 3.5.5: It is proposed that where a board establishes any committee other than a statutory committee or panel that the composition is not prescribed in legislation but rather is a matter for the board to determine in line with any directions from Ministerial Council.

HSC supports this.

3.6 Further safeguards around delegations

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.

HSC supports this.

4 Appointments to board (non-statutory) committees or (statutory) panels

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.

HSC supports this.

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

Option 1 is supported. HSC supports this although it is unclear what "the stakeholders" actually means. It would need some kind of definition to make it practicable and workable.

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

See comments under 4.1.2.

5 Interaction of national scheme with other legislative schemes

5.1 Options

No comment necessary.

5.2 Criteria

Proposal 5.2.1: With respect to freedom of information, it is proposed that the Commonwealth Freedom of Information Act apply (Option 1).

Option 1 is supported. The Commonwealth Freedom of Information Act should be the applicable legislation.

Proposal 5.2.2: With respect to confidentiality and lawful disclosure, it is proposed that tailor made provisions along the lines of Clause 53 of the National Law Bill be included in the second stage legislation (Option 4).

Option 4 is supported.

Proposal 5.2.3: With respect to the application of a privacy regime, it is proposed that the existing Commonwealth private sector privacy regime and the National Privacy Principles apply, and are incorporated by reference into the national scheme legislation (Option 1).

Option 1 is supported.

Proposal 5.2.4: With respect to ombudsman legislation, it is proposed that the Commonwealth Ombudsman Act 1976 apply (Option 1).

Option 1 is supported.

Proposal 5.2.5: With respect to financial accountability, it is proposed that tailor made provisions be included in the second stage legislation (Option 4).

Option 4 is supported.

Proposal 5.2.6: With respect to the employment arrangements and accountability of staff and board members under the scheme, it is proposed that tailor made provisions be included in the second stage legislation (Option 4).

Option 4, tailor made provisions should be included.

Proposal 5.2.7: With respect to statutory interpretation, it is proposed that tailor made provisions be included in the second stage legislation (Option 4).

With respect to statutory interpretation, the proposal that tailor made provisions be included in the second stage legislation Option 4 is supported.

Proposal 5.2.8: With respect to warrant powers, it is proposed that the national scheme legislation require application for a warrant to be made via existing State and Territory legislation (Option 2).

A national legislation scheme with respect to warrant powers can be made via existing State and Territory legislation.

Proposal 5.2.9: With respect to working with children legislation, it is proposed that existing State and Territory legislation, where it exists, continues to apply (Option 2).

Option 2 is supported using the existing State and Territory legislation.

Proposal 5.2.10: With respect to special events legislation, it is proposed that existing State and Territory legislation, where it exists, continues to apply (Option 2).

Again, Option 2 is supported because State and Territory legislation is sufficient.

Proposal 6.1: It is proposed that the national scheme legislation and any consequential amendments be framed in a way that allows for the Trans-Tasman Mutual Recognition Principle, and preserves the linkages between Australian and New Zealand regulatory authorities and supports joint standard setting and accreditation.

HSC supports this.