



The Pharmacy  
Guild of Australia

**Response to the Consultation Paper on  
Other matters for inclusion in Bill B  
for the National Registration and Accreditation Scheme for health professions**

**December 2008**

The Pharmacy Guild of Australia  
PO Box 7036  
Canberra BC ACT 2610  
tel: 02 6270 1888  
fax: 02 6270 1800

<b>Proposal No.</b>	<b>Brief Description of Proposal</b>	<b>Proposal</b>	<b>Comment</b>
3.5.1	<p><b>Powers of delegation</b></p> <p><b>Further safeguards relating to delegation</b></p>	<p>It is proposed that the Board will have a broad power of delegation.</p> <p>The major decisions reposed in a board are identified as being:</p> <p><i>Registration function:</i></p> <ul style="list-style-type: none"> <li>▪ Decision to register</li> <li>▪ Decision to refuse to register</li> <li>▪ Decision to impose conditions on registration</li> <li>▪ Decision to refuse to endorse registration or impose conditions on an endorsement</li> </ul> <p><i>Complaints handling and performance, health and conduct management functions:</i></p> <ul style="list-style-type: none"> <li>▪ Decision to immediately suspend registration in response to possible risk to public health and safety</li> <li>▪ Decision following preliminary assessment of a notification</li> <li>▪ Decision to impose conditions on registration or accept undertaking</li> <li>▪ Decision following a hearing</li> <li>▪ Decision to refer to external tribunal for hearing</li> </ul> <p><i>Course approval function:</i></p> <ul style="list-style-type: none"> <li>▪ Decision to approve a course of study for registration purposes</li> <li>▪ Decision to refuse to approve a course of study for registration purposes.</li> </ul>	Generally satisfactory.

		<p>The implicit presumption is that a Board will simply not have the time or capacity to make decisions relating to, in particular, individuals.</p> <p>It is proposed that a board can delegate powers (other than the power of delegation) to committees of the board.</p> <p>Delegations will be in writing and will specify the power who may exercise powers, as well as any restrictions that a board may place on the delegate.</p> <p>These are regarded as ‘further safeguards relating to delegations’:</p> <ul style="list-style-type: none"><li>▪ 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)</li><li>▪ 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</li><li>▪ 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;</li><li>▪ conflicts of interest that will 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</li><li>▪ general provisions with respect to procedural fairness, such as separation of powers between original decision making and review of decisions.</li></ul>	
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<p>3.5.2 3.5.3 3.5.4 3.5.5 4.1.1 4.1.2</p>	<p><b>Hearing Panels</b></p> <p><b>Ad Hoc Committees</b></p> <p><b>Advisory Committees</b></p> <p><b>Appointment to committees exercising delegated board powers</b></p>	<p>The paper proposes what it says is a change from proposals contained in previous discussion papers.</p> <p>It is now proposed that the only committee that will be recognised in the legislation will be <b>panels</b> convened for the purposes of hearing individual matters (health, performance or conduct).</p> <p>On these committees, there will be a minimum of three members on a panel 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.</p> <p>A panel will not include any person who was a member of the board or committee that took the decision to refer the matter to the panel.</p> <p>For other purposes, 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.’</p>	<p>Previous discussion papers proposed that following a preliminary assessment, an underperforming practitioner could be referred to either:</p> <p>(a) ‘health management committee’, ‘conduct management committee’ or a performance management committee’, which could recommend (but not compel) a practitioner to modify behaviour or enter into undertakings with a Board;</p> <p>(b) a ‘health management panel’, ‘conduct management panel’ or a ‘performance management panel’, which could impose conditions on registration, or require a practitioner to give an undertaking to behave in a particular way; or</p> <p>(c) a tribunal, if a matter is so serious the practitioner could be suspended or have registration cancelled.</p> <p>The paper is most unclear, but it appears to suggest the ‘committee’ level of managing poor practitioners will not be contained in the legislation.</p>

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		<p>These are committees performing functions and powers conferred on a board, such as initial registration of applicants, pursuant to a delegation from the Board.</p> <p>For these types of committees, three options are set out, specifying who can be appointed to them.</p> <p>It proposes three options to do this.</p> <p>The <b>first</b> option will require a committee to appoint people in accordance with processes approved by the Ministerial Council.</p> <p>This will require a nomination process, with nominations sought from individuals and professional bodies. Committees will be balanced between health professionals and non-health professionals, with appointments for periods up to three years.</p> <p>The <b>second</b> option proposes placing a Ministerial Council nominee on selection panels.</p> <p>The <b>third</b> option requires a board to draw committee members from a list of people approved by the Ministerial Council.</p>	<p>It is not clear whether:</p> <p>(a) a practitioner whom a preliminary assessment concludes is not meeting required standards will be referred straight to a panel, or</p> <p>(b) the legislation will be designed to permit a delegated person (or ad hoc committee) to ‘work cooperatively with a practitioner’ in an endeavour to correct any professional shortcomings in a non-disciplinary environment (the idea behind the management committee concept).</p> <p>It appears that the health management committee, performance management committee and conduct management committee concept will not be created by statute, and the proposal needs further consideration in regard to how a practitioner with identified shortcomings are to be managed outside of a disciplinary paradigm.</p> <p>The concept of the permitting ad hoc committees to consider (for example, State-based committees making decisions relating to original registration of an applicant) will have to act in a manner consistent with ‘any directions from Ministerial Council’ is curious.</p>

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		<p>The legislation will finally allow a board to appoint advisory committees.</p> <p>The paper suggests that so as to provide maximum flexibility, the legislation would be silent on the process through which a board might select members of its advisory committees.</p>	<p>The Guild reserves its position as to whether it is appropriate for committees created by a national board to make decisions under a delegation to have their functions conditioned by Ministerial Council direction until it sees the exposure draft of the legislation.</p> <p>Assuming that the Pharmacy Board, rather than a Ministerial Council, should determine who should sit on committees that report to the Board Option 1 appears preferable.</p> <p>The law should require that professional organisations must be consulted before a list of possible appointees is formulated.</p> <p>It is also unclear why it is necessary to give a board a statutory power to appoint a committee to (undoubtedly) research a particular area and give the board advice. This would appear to be something that a committee could inherently do, without legislation. Nevertheless, the provision is satisfactory.</p>

<b>Proposal No.</b>	<b>Brief Description of Proposal</b>	<b>Proposal</b>	<b>Comment</b>
5.2.1	<b>Freedom of information</b>	<p>This discussion deals with the contents of proposals 5.2.1 - 5.2.10.</p> <p>They deal with how other legislative schemes relating to matters such as corporate governance, the use of the judiciary to issue warrants (and so forth) are to be dealt with.</p> <p>Ordinarily, relationships are reasonably clear.</p> <p>For instance, the State Ombudsman would have jurisdiction over a State board; the State Auditor-General would have the capacity to conduct performance audits over the board.</p> <p>However, the National Law creates a body corporate (the Agency), and a number of national boards that, whilst created by the Queensland Parliament, are really suppose to be a 'national body'.</p> <p>Therefore, the question is how a national body not created by the national parliament should deal with these types of governance matters.</p>	<p>Satisfactory.</p> <p>However, this means that the Federal AAT and Federal Court will have jurisdiction to consider FOI matters that arise under the national registration scheme.</p> <p>State and federal legislation will have to ensure that a Commonwealth officers can perform functions that are conferred under what is (nominally) State legislation.</p>

		<p>The paper identifies six ways of dealing with this issue:</p> <p><b>Option 1:</b> One jurisdiction's law applies (for example Queensland or Commonwealth)</p> <p><b>Option 2:</b> All applicable State and Territory laws apply</p> <p><b>Option 3:</b> No jurisdiction's laws apply (for example the Bill and/or consequential amendments to other legislation specifically remove the scheme from coverage)</p> <p><b>Option 4:</b> Tailor made provisions are included within the legislative scheme itself</p> <p><b>Option 5:</b> Consequential amendments to another legislative scheme to recognise the national registration scheme (technically different to option 1, but has the same effect), or</p> <p><b>Option 6:</b> Interface is dealt with administratively rather than legislatively.</p> <p>With respect to FOI issues, the current legislation applies Queensland Freedom of information law.</p> <p>The paper proposes the application of Commonwealth Freedom of Information legislation.</p>	
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5.2.4	<b>Ombudsman</b>	It is proposed to use the Commonwealth Ombudsman to investigate any complaints.	Agreed.  However, State and federal legislation will have to ensure that the constitutional steps are taken to ensure that a Commonwealth officer can perform functions that are conferred under what is (nominally) State legislation.
5.2.5	<b>Financial Accountability</b>	It is proposed that specific legislation will be designed for the national registration scheme to deal with issues relating to financial, auditing and reporting accountabilities.	It is assumed that the (somewhat basic) provisions currently contained in the recently passed National Law ('Bill A') will be enhanced.
5.2.6	<b>Employment of staff</b>	It is proposed to allow the Agency to directly employ people, rather than treat them as public servants.	Agreed.
5.2.7	<b>Rules as to how to interpret the national legislation</b>	Rather than using a law such as the Acts Interpretation Act 1901 (Cth), it is proposed that the rules setting out how to interpret the law establishing the national health registration scheme will be contained in a Schedule to the National Law.	Agreed.

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5.2.8	<b>Warrant Powers</b>	It is proposed to use the laws of the States and Territories to govern how a warrant is to be issued.	Some States and Territories have different provisions relating to how and when a warrant may issued, which may depend on the circumstances of the case and the class of public officer seeking the warrant.  Further consideration will be needed with respect to this subject in the exposure draft of the legislation.
5.2.9	<b>Checks for working with children</b>	It is proposed to use the laws of the States and Territories to govern whether a particular class of person requires to have their background checked because they work closely with children.	Satisfactory. It is presumed that the legislation will be silent on this point.
5.2.10	<b>Registration for special events</b>	Because of national registration, current State-based legislation permitting interstate practitioners to practise in a particular jurisdiction to cover the needs of a particular event is unnecessary.  However, jurisdictions will be permitted to decide whether foreign practitioners may be registered so they can practise to cover the needs of a specified event.	Satisfactory.

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6.1	<b>Trans-Tasman recognition</b>	<p>To protect the Trans-Tasman Mutual Recognition Principle, it is proposed that a New Zealand pharmacist will be automatically eligible for registration in that occupation in Australia (and vice versa).</p> <p>Existing joint standard setting, assessment and accreditation processes will continue.</p>	Agreed.