

**National Registration and Accreditation Scheme
Consultation Paper –**

Other matters for inclusion in Bill B

Submission on behalf of

The Royal Australasian College of Physicians

18 December 2008

Introduction

The Royal Australasian College of Physicians supports the principle of national registration and national accreditation and believes there are benefits to be gained from their implementation. The College has undertaken a review of the Consultation Paper – “Other matters for inclusion in Bill B” - and feels that there are a number of proposals that require its comment.

The College supports the principles that the system must balance the rights and interests of consumers with those of health practitioners and that the system must be a robust one that protects public safety yet functions effectively. The delegation of powers to committees, panels and external bodies will be needed to ensure that this is able to occur. Safeguards must be incorporated within the system to ensure that natural justice occurs and that there is oversight of delegated powers.

The composition of committees and panels must in the majority reflect the relevant practitioners yet also have representation from the community and the legal profession to ensure that natural justice is not only seen to be done but is in fact done.

All efforts must be made to ensure that there is no inconsistency between the Schemes legislation and other State and Commonwealth legislation. The principle upon which the decisions are made to remove inconsistencies should be that of the highest standards prevailing.

In relation to more specific areas and proposals contained within the Consultation Paper the College position on these matters is set out below.

3 Delegation powers of national boards

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 RACP supports the proposal that the Boards have the power to delegate powers however there is a need to clarify these powers of delegation. There is no clarity as to which powers and to what level of delegation a Board could delegate. Although there will be a need for powers of delegation, especially with the larger professions the level and scope of delegation needs to be made clearer.

The proposal does not mention the delegation of powers to external bodies. There must be the power to delegate to external bodies especially in such areas as accreditation.

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 least one member being a community member.

This proposal is supported by the RACP but the College feels the inclusion of a member of the legal profession would aid the functioning of the panel. Such a member would ensure due process is being followed and have the ability to provide advice to the panel at the time of hearings.

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.

The composition of these committees should be prescribed in legislation as is the case with a Statutory Committee. Such a provision will ensure that a representative committee is appointed.

It should also be prescribed that the Board cannot grant such a committee the powers of a Statutory Committee.

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.

This provision should also include a list of powers that may be delegated and to what level such powers can be delegated. Such a provision will provide clarity to the Boards and ensure that they delegate their powers within an approved framework.

In dot point one of 3.6.1 it states that a delegation must be in writing and specify the person or persons – delegations should not be made to an individual or individuals but rather to a position or positions.

Those who occupy positions where powers are delegated or members of committees with delegated powers must receive comprehensive training in their roles and responsibilities in regard to the delegated powers.

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.

The legislation must also provide for the removal of committee members, a term of membership and a method for ensuring that appropriate people are appointed to such committees.

4.1.2 With respect to committees established by boards for the purposes of decision making under delegation from the boards, there are three options:

Option 1:

The legislation empowers boards to appoint persons to such committees in accordance with a process approved by the Ministerial Council. The Ministerial Council process requires:

- an open and transparent process where nominations are sought publicly from individuals and professional bodies
- minimum membership requirements for any committee delegated decision making, to ensure a balance of registrant and non-registrant members, and
- appointments for periods of up to three years.

Option 2: As for Option 1, except that the Ministerial Council's approved process would include a nominee of the Ministerial Council on selection panels, with that nominee not having a right of veto.

Option 3: The legislation makes provision for any person appointed by a board to a committee delegated key decision making to be drawn from a list of persons approved by the Ministerial Council.

The College supports Option 1, as it allows Boards to independantly appoint members without the Ministerial Council being involved with the process. This is a further safeguard of the independence of the Board.

4.1.3 With respect to statutory panels established by boards for the purposes of conducting hearings arising from conduct, performance or health matters, while the legislation would specify procedural matters, there are three options with respect to the appointment process:

Option 1: The legislation empowers boards to appoint persons to such committees in accordance with a process approved by the Ministerial Council. The Ministerial Council process requires:

- an open and transparent process where nominations are sought publicly
- minimum membership requirements for any committee delegated decision making, to ensure a balance of registrant and non-registrant members, and
- appointments for periods of up to three years.

Option 2: As for Option 1, except that the Ministerial Council approved process would include a nominee of the Ministerial Council on selection panels, with that nominee not having a right of veto, and would provide for persons to be appointed to a list. Persons on the list would then be eligible for appointment by a board to sit on a hearing panel arising from a conduct, performance or health matter.

Option 3: The legislation makes provision for any person appointed by a board to a statutory committee or hearing panel to be drawn from a list of persons approved by the Ministerial Council.

The College supports Option 1, as it allows Boards to independently appoint members without the Ministerial Council being involved with the process. This is a further safeguard of the independence of the Board.

5 Interaction of national scheme with other legislative schemes

The national scheme is to operate in concert with, and complementary to, a range of other State and Territory laws. Policy decisions are required in order to determine the nature of the interfaces between the national scheme and these other legislative schemes.

5.1 Options

There are six main options for determining suitable arrangements with respect to the interface between the national scheme and each of the legislative schemes listed. These are:

Option 1: One jurisdiction's law applies (for example Queensland or Commonwealth)

Option 2: All applicable State and Territory laws apply

Option 3: No jurisdiction's laws apply (for example the Bill and/or consequential amendments to other legislation specifically remove the scheme from coverage)

Option 4: Tailor made provisions are included within the legislative scheme itself

Option 5: Consequential amendments to another legislative scheme to recognise the national registration scheme (technically different to option 1, but has the same effect), or

Option 6: Interface is dealt with administratively rather than legislatively.

The RACP supports Option 1. This Option should be used wherever possible and Commonwealth legislation should also be used wherever possible. There must be consistency in all States and Territories in the way that the Scheme functions and how it interrelates and interacts with State and Territory legislation.

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

The College supports this proposal.

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.

The College supports this proposal.

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).

The College supports this proposal.

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

The College supports this proposal.

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).

The College supports this proposal.

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).

The College supports this proposal.

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).

The College supports this proposal.

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).

The College supports this proposal.

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).

The College does not support this proposal. It feels that there is a need for consistency throughout the Commonwealth with regard to provision for working with children. To ensure this consistency and to ensure that standards for working with children are met throughout the Scheme the College supports Option 4.