



Australian College of Ambulance Professionals Ltd.

Submission

on

**Proposed arrangements for handling
complaints, and dealing with performance,
health and conduct matters**

under the

**NATIONAL REGISTRATION AND ACCREDITATION SCHEME
FOR THE HEALTH PROFESSIONS**

**PO Box 345W
Ballarat West
Victoria 3350**

November 2008



Australian College of Ambulance Professionals Ltd.

211108

Ms Bronwyn Nardi,
Chair
Practitioner Regulation Subcommittee
Of the Health Workforce Principal Committee
Level 12/120 Spencer Street
MELBOURNE VIC 3000

By email: NRAIP@dhs.vic.gov.au

Dear Ms Nardi,

Re: Submission To Consultation Paper On Proposed Arrangements For Handling Complaints, And Dealing With Performance, Health And Conduct Matters Under The National Registration And Accreditation Scheme For The Health Professions

The *Australian College of Ambulance Professionals (ACAP)* is the national body representing paramedic practitioners engaged in the delivery of out of hospital emergency health care. ACAP's core business is the professional development and representation of its membership in professional matters.

ACAP has an abiding interest in policy matters that affect the delivery of Emergency Medical Services (EMS) and is uniquely positioned to provide insights into the role of EMS in the continuum of health care.

ACAP thus participates in the development of policy in paramedicine and related health professions, health and community services, education and training, and relevant issues associated with occupational health and safety, health funding and regulation.

ACAP strongly supports the initiatives being taken to introduce a national scheme for the regulation of health professionals and the associated registration, accreditation, complaint and other functions that this process entails.

The integrity of the procedures for complaints management and the investigation, hearing and determination of professional disciplinary matters are particularly significant in achieving a regulatory system that embodies the principles of natural justice and procedural fairness.

Both as health care professionals and informed members of the community, ACAP supports these principles. It notes the importance of due process and the right to timely notification, discovery and representation throughout the process for practitioners who may face disciplinary procedures.

We acknowledge that further consultation papers will be released and that ACAP and other members of the paramedic profession will respond to these as necessary.

Should you have any queries on this submission, I can be contacted by telephone on 0419 338 965 and by email president@acap.org.au .

Yours sincerely
Ian Patrick
National President

Executive Summary

1. The *Australian College of Ambulance Professionals (ACAP)* is the national body representing paramedic practitioners engaged in the delivery of out of hospital emergency health care. ACAP has an abiding professional interest in policy matters that affect the delivery of Emergency Medical Services (EMS) and is uniquely positioned to provide insights into the role of EMS in the continuum of health care.
2. In preparing this submission, ACAP has placed a focus on identifying issues of broad policy significance that affect the integrity of the complaints process.
3. The submission outlines the importance of appropriate health care regulatory regimes and the endorsement by ACAP of the decision to establish a national registration scheme for health practitioners with appropriate complaint processes.
4. The submission draws attention to the underlying purposes of regulation. It notes the deficiencies in the current arrangements for regulation of paramedics and foreshadows the inclusion of paramedic practitioners within the COAG scheme as an urgent priority on the grounds that the practice of the profession poses exceptional risks to public health and safety.
5. The submission makes a number of recommendations to enhance the complaint processes and ensure community and professional engagement, due process, natural justice and effective reporting and management of outcomes. This is done in the form of response statement to various consultation proposals.

For further information, contact:

Mr Les Hotchin
National Secretary
Australian College of Ambulance Professionals
PO Box 345W
Ballarat West
Victoria 3350

Tel: +61 3 5331 9584
Fax: +61 3 5333 2721
Mob: +61 417 336 490
Email: secretary@acap.org.au

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Australian College of Ambulance Professionals

The *Australian College of Ambulance Professionals (ACAP)* is an incorporated body representing the professional interests of paramedics engaged in the delivery of out of hospital emergency medical care. ACAP is a professional association with an abiding interest in policy matters that affect the access, equity, quality and effectiveness of Emergency Medical Services (EMS) in Australasia.

ACAP activities encompass programs of professional development, voluntary regulation, publication and other professional activities designed to enhance the standards of out of hospital emergency care and thereby better protect the health and safety of the community.

ACAP philosophy of health care

The primary goal of ACAP is to help develop the full potential of EMS as part of a system that will deliver quality health care to all Australians. To achieve this objective, ACAP believes that health care policy should:

- recognise the benefits of holistic care delivered by health professionals operating in a multidisciplinary environment;
- ensure an equitable health system by providing EMS for all Australians according to need and regardless of race, creed, gender, location or economic circumstances;
- establish funding arrangements at Federal, State and Territory levels that facilitate the delivery of better integrated health care services and minimise duplication of effort by optimising the use of available physical and human resources of the private, public, not-for-profit and defence sectors;
- ensure responsiveness, quality and high service standards through community engagement that recognises the legitimate role of consumers in the planning and delivery of healthcare as well as appropriate complaint, resolution and feedback mechanisms;
- provide adequate educational opportunities for the recruitment, training and professional development of EMS practitioners to ensure a sustainable workforce; and
- provide a national regulatory regime for health professionals and the accreditation of health care providers with objective performance measures that will ensure consistent service standards, public safety and facilitate the mobility of the health workforce.

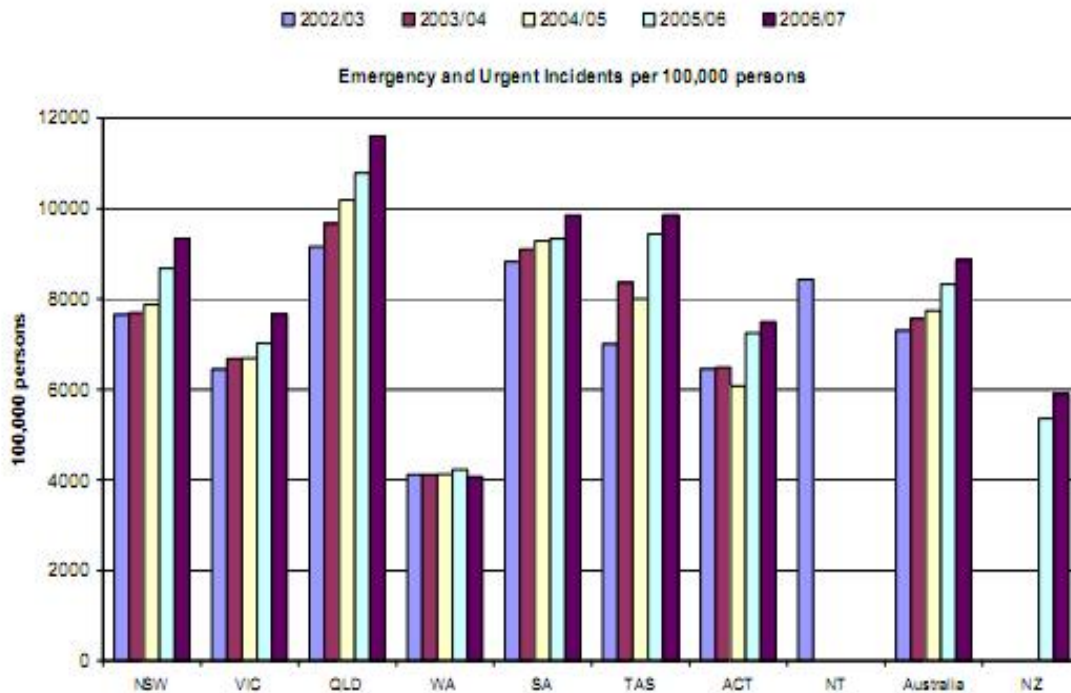
Why is ACAP concerned about regulatory processes?

ACAP's concern for regulation stems from its understanding of the significant impact of EMS and the interaction of paramedics with other regulated health care professionals. EMS providers operating as government agencies or long term contractors are responsible for emergency and allied medical services that affect every level of Australian society.

While the infrastructure made available by these government-sponsored service providers is important in the same way that diagnostic tools and hospitals support other health care practitioners, it is the expertise of paramedics and their clinical interventions that are the mainstay in providing high quality out of hospital emergency health care.

The contribution of EMS to the wellbeing of Australians should not be understated, and is graphically illustrated by *Figure 1* showing the emergency, urgent and non-urgent incidents provided by government-sponsored EMS providers per 100,000 persons.¹

Figure 1 Emergency, urgent and non urgent incidents per 100,000 persons



In 2006/07 there were 11,733 full time equivalent salaried personnel employed by the major government-sponsored providers Australia-wide, with the majority (80.9%) employed primarily for operational purposes.² According to the Productivity Commission's Report³ the number of full time equivalent (FTE) salaried personnel in the categories of qualified ambulance officers and clinical staff was 6582 in 2006-07 and the number of volunteer ambulance operatives was 5265 with no indication of their actual contribution on a FTE basis.

While the number of personnel employed by these service providers is significant, they tell only part of the story. The figures do not include the contributions made by the Royal Flying Doctor Service, the private sector, by industrial paramedics in the field or the paramedics who work in the defence force, universities, and other peacekeeping and humanitarian roles funded by the Australian Government and Aid agencies.

¹ 2006-07 Annual Report, The Council of Ambulance Authorities

² 2006-07 Annual Report, The Council of Ambulance Authorities, Flinders Park, South Australia 5025

³ SCRGSP (Steering Committee for the Review of Government Service Provision) Report on Government Services 2008. Table 9A.20 Ambulance service organisations' human resources, Productivity Commission, Canberra.

<http://203.0.25.146:7988/gsp/reports/rogs/2008/emergencymanagement/chapter09.pdf>

In the absence of an appropriate regulatory regime and a statistical framework that would offer more suitable and accurate data, the case-load capacity of persons engaged in delivering out of hospital paramedic (or equivalent) level services and not captured by the databases above, is estimated at 10-12% of the total reported caseload capacity. In ACAP's view, this potential (but unknown) exposure of the community to practitioners unregulated in health care terms, and operating outside the ambit even of the disparate and non-accredited major infrastructure providers constitutes an unacceptable level of risk.

It is alarming that paramedic practitioners who administer powerful restricted medications and perform critical medical interventions have to date fallen outside the scope of any national regulatory system. This is despite the fact that paramedics work from a position of unique responsibility and community trust and deal with people in their most vulnerable circumstances. Trauma and medical emergencies know no borders and paramedics exercise their clinical skills wherever and whenever the need arises regardless of jurisdictional boundaries that serve more to hinder than to assist in delivering care.

ACAP cannot stress too highly the concerns it holds for public safety because of the continued absence of an appropriate national system of registration of paramedics.

This absence of formal regulatory arrangements has been partially addressed by ACAP which currently offers a voluntary self-regulation program known as the "Certified Ambulance Professional" (CAP) program. Among the functions of the CAP program are the maintenance of a public register of practitioners, the fostering and endorsement of continuing development activities, and the referral of practitioner complaints.

Underpinning the CAP program is the desire to enhance public safety by embracing a quality-based regime through the ongoing certification of practitioner competence.

At the same time, ACAP acknowledges the limitations of any voluntary regulatory program and the absence of a legislative basis for enforceable complaint and professional discipline processes which would be needed for a truly effective regulatory regime.

There is no doubt that paramedics undertake clinical interventions directly related to health care and that a rigorous system of regulatory oversight is required to ensure the competency of practitioners. These aspects are recognised by the profession and employers alike.⁴

Of particular concern to the profession however, is that in lieu of an independent national regulatory regime, the major infrastructure providers propound the use of individually applied and jurisdictionally-bound employer-based controls. Public safety supposedly is ensured by the providers exercising service controls through engagement practices and clinically credentialing each employee and applying disciplinary processes to practitioners.

ACAP rejects this self-centred view as restrictive and unacceptable, inimical to good healthcare outcomes and not in the public interest on several grounds:

- there is no set of uniform, transparent and nationally accepted standards, protocols or clinical practice guidelines against which the performance and fitness to practice of a professional paramedic may be judged;
- The standards applied by the major infrastructure providers vary significantly between the States and Territories and demonstrably fail to deliver equitable standards of care. Widely variable and non-transparent standards are contrary to the NHHRC Principles of Health Care;

⁴ Council of Ambulance Authorities: Position Paper on the Regulation of Paramedics, August 2008
<http://convention.ambulance.net.au/>

- In two jurisdictions (WA and NT) the infrastructure provider is a contracted organisation operating with variable oversight, varying clinical practice guidelines, and with no obvious accountability to the community. The contract of service does not appear to have transparent clinical dimensions that are available for public scrutiny;
- The major service providers themselves do not hold independent and objective accreditation that validates their performance against nationally accepted health care standards including mandatory clinical performance audits;
- By rejecting a national regulatory scheme the major service providers choose to ignore the additional risks posed to members of the community by those paramedics operating outside the ambit even of a service provider;
- Jurisdictional constraints with employer-based controls make it difficult for paramedics to move and retain their professional standing. Flow-on effects include undesirable cross-border integration and operational issues, more difficult recruitment of personnel and restrictions on practitioner mobility and career development. These factors all have an adverse impact on workforce sustainability and community access to qualified care, resulting in outcomes that are contrary to the underlying Principles espoused by the NHHRC for Australia's Health System;
- Some government-sponsored infrastructure providers do not have transparent complaint and investigation processes that effectively engage the community, ensure due process and natural justice and mandate appropriate reporting of outcomes. Their systems are internalised and severely conflicted such that they do not hold public confidence;
- The existing internalised complaint practices do not exhibit transparent processes that will ensure the separation of professional competence, fitness and impairment issues from matters related to management discipline and provider deficiencies and failings;
- Existing practices do not provide for a single register of practitioners able to be accessed by the public and potential employers, the publication of disciplinary actions and outcomes regarding practitioners, or adequate statutory reporting obligations providing operational transparency; and
- Existing management practices have been shown in some cases to give rise to harassment, bullying and other unsatisfactory outcomes likely to detract from the quality of health care and thus not in the public interest.⁵

To ensure an informed community and to assist employers, there should be universal and national regulatory coverage of paramedics whether operating as full time, fractional time or volunteer practitioners. This coverage should cater for private practitioners and qualified members of the defence forces as well as those paramedics operating in industrial settings, in Occupational Health and Safety roles and on relief and humanitarian endeavours.

Only a mandatory national regulatory scheme would have the scope to realise the desirable regulatory objectives. National registration of paramedics therefore should form part of the reform agenda for health care in Australia. Accordingly, it is the intention of ACAP to seek registration of paramedics under the COAG National Registration and Accreditation Scheme for Health Professions at the earliest possible date.

⁵ New South Wales Parliament. Legislative Council. General Purpose Standing Committee No. 2 The management and operations of the NSW Ambulance Service, Report No 27 October 2008. NSW Parliament, Sydney NSW, ISBN 978192128285

Faced with the current unacceptable regulatory environment in EMS and armed with the experience of paramedics' daily struggles to realise good health care outcomes, ACAP is morally and ethically compelled to examine the proposed complaint mechanisms in the light of their potential application to a regulated paramedic profession as well as their application to other health professions.

ACAP philosophy of regulation

ACAP welcomes the COAG decision to introduce a national professional registration scheme for health practitioners and implement a national course accreditation scheme.

Internationally, the impact of regulatory activities on the professions has become part of the public policy agenda. The reasons advanced to justify regulation are typically founded on three main premises:

- Market interest (to create an informed market place)
- Public interest (to protect the public through quality standards)
- Self interest (to protect exclusivity, status and economic welfare of practitioners)

Some professions stress the need for self-regulation, on the basis that only a rigorous system of peer review is sufficient to limit the risk of poor quality service. These calls have been particularly strident in the health sector. The self-regulatory model however, suffers from perceptions of self-interest, conflict of interest and lack of accountability.

Other calls for regulation may stem from private interest. That is, the regulation of professional services might be a self-seeking objective because it is in the interests of the members of a profession. Regulation in this context may tend to operate like a cartel. In theory, selective professional licensing may restrict supply, increase the perceived value and incomes of practitioners and promote exclusivity and status.

ACAP eschews such approaches as being contrary to its professional objectives and not in the public interest. Regulation of the health care professions is needed for more fundamental reasons.

The market-based rationale for regulation suggests that when faced with a choice of service providers, many consumers may be unable to make a rational choice. Because of their specialist nature, professional services are taken at face value, with the consumer generally having to rely on the expertise of the practitioner and not well placed to assess the type and quality of the service.

Regulation in that case may be justified if it can provide protection for the consumer through guaranteeing quality of service based on the regulatory body having more information and expertise at its disposal than the average consumer.

If the practitioner level service is delivered in conjunction with the infrastructure provider function - as occurs with employed professionals in (say) hospitals and EMS settings, the public interest becomes multi-dimensional and regulatory obligations encompass both the individual and the infrastructure provider (or employer as the case may be).

Regulation also may be justified by a failure to have an open market. Consistent with the NHHRC Principles 2 and 3, EMS in Australia has been regarded generally as falling within the context of a public good. This has given rise to major government-sponsored providers responsible for all community-based EMS within each State and Territory.

However, the aggregation of facilities and allied restrictions applied to practice have not guaranteed a level of service that is uniform or equitable even within the confines of a State. For example, in Western Australia, the contracted infrastructure provider operates effectively as two separate business units each with different funding levels, different staffing structures, different operational standards and vastly different contributions from a variety of funding sources.

Given the significant risk posed by EMS interventions to the health and welfare of the community, both the infrastructure providers and professional paramedics are subject to greater than normal public interest and consumer protection considerations. These warrant examination of the regulatory mechanisms under which the infrastructure provider and paramedic professional are likely to be accredited or registered.

The functions of regulation

The characteristics of good *regulatory governance* are increasingly being recognised as: clarity, predictability, autonomy, accountability, participation, and open access to information. ACAP endorses these principles as being fundamental requirements of an effective transparent system. ACAP also supports the views of Sir David Clementi who, in his landmark review of legal services,⁶ identified the key functions of regulation as:

- setting minimum entry standards and training;
- formulating professional roles to which individuals are expected to adhere;
- monitoring the individuals providing services;
- enforcing professional roles where necessary;
- implementing a complaints procedure; and
- implementing a disciplinary procedure for individuals who are negligent or breach the professional roles of practice.

There is also a consistent view that to properly command public support⁷ the management of complaints should be handled independently of a profession or service provider.

Regulators also face the challenge of building the demand, awareness, and capacity of consumers and other stakeholders to participate effectively in the regulatory process. Strategies to involve patients and heighten public awareness of the regulatory role and complaints mechanism need to be implemented (*NHHRC Principles 2, 3 and 12*).

While accepting that the regulated professions at first may be limited to the nine occupational groups that are currently subject to statutory registration in all jurisdictions, ACAP draws attention to these underlying purposes of regulation and urges the inclusion of other health occupations within this framework, based on their meeting the criteria outlined in the Intergovernmental Agreement.⁸

In view of the importance that ACAP attaches to public safety and the glaring deficiencies in the present system of quality and complaints management by the major EMS providers in Australia, it is the intention of ACAP to seek national regulation of paramedic practitioners as an allied health profession as an urgent priority.

⁶ Review of the Regulatory Framework for Legal Services in England and Wales Final Report, Sir David Clementi., December 2004

<http://www.legal-services-review.org.uk/content/report/report-chap.pdf>

⁷ The Future of Legal Services: Putting Consumers First , Response of the Legal Aid Practitioners Group, January 2006

<http://www.lapg.co.uk/docs/LAPG%20response.pdf>

⁸ <http://www.coag.gov.au/meetings/260308/index.htm#related>

Complaint mechanisms and the accountability of infrastructure providers

In his extensive study of regulation, Sir David Clementi formed the view that for effective regulation and public confidence it was desirable for some regulatory functions to be carried out by bodies that are wholly separate from the professional associations or service providers. The chief of these externalised functions are client complaints, disciplinary matters and the setting of practice rules.

Furthermore, it was Clementi's view that clients should have access to a single body in order to make complaints and not be expected to navigate a complex series of complaint processes. (*NHHRC Principle 10*). To serve the public interest, the complaints body also needed to have a very substantial non-professional membership (*NHHRC Principle 12*).

ACAP agrees with these principles and believes they should be embodied in any COAG regulatory scheme.

Professional disciplinary matters may or may not involve a direct patient complaint. Conversely, a service complaint may be unrelated to the performance of a practitioner. In some cases service quality is impacted through an intermingling of causes with both the practitioner and infrastructure provider contributing to adverse outcomes. However, both types of event may affect the ability of the practitioner to continue to practice.

A system where the employer sets the rules, processes complaints and determines the outcomes across both professional issues and employment is fundamentally conflicted and contrary to natural justice. The public interest in the fairness and transparency of the professional disciplinary process also demands that there be meaningful lay representation (*NHHRC Principle 3*).

The absence of independent and objective examination of professional practice matters (as distinct from supervisory accountability) is perceived to severely disadvantage the individual practitioner and is a further powerful argument for a national regulatory regime such as that provided by the COAG model.

An independent complaint mechanism is also needed to meet community expectations of engagement and user-focus, rather than profession or agency-focussed.

Just as practitioners must perform competently and be held accountable, so also must those who provide the supporting infrastructure. Thus, the principles of independent quality assurance and complaint management should apply to hospitals, nursing homes, diagnostic facilities and EMS providers (public, private and not-for-profit). Service delivery must be conducted under a periodic, quality based, certification or accreditation scheme.

The end result should be two separate quality assurance and complaint modes to cater for matters pertaining to the professional on the one hand, and infrastructure service delivery issues on the other.

Under a properly constituted set of complaint mechanisms these two modes could be combined in the form of a "one-stop-shop" either nationally or more likely within each jurisdiction, to simplify the complaint process and make the process easier for the user/client/patient.

Service and practitioner complaints often overlap and persistent service complaints may indicate there is a professional conduct or disciplinary issue. Information gathered from dealing with service complaints therefore should be available to inform and improve professional practice (and vice versa) and strong formal links should be developed to make sure that related issues are not ignored through process barriers. Each complaint or notification activity must be suitably informed by the outcomes of the other.

There should be appropriate enforcement remedies should a fee, charge or levy not be paid e.g. removal of an individual's right to practice. In the case of infrastructure service deficiencies, restitution, penalty fines, transparent reporting and even loss of operating licence may form some of the remedies to be considered.

All infrastructure providers should be required to complete a prescribed accreditation process at least once in each three-year period and meet all of the quality requirements set out in nationally benchmarked standards, thus providing public assurance of their quality regimes and enabling comparable performance measures to support funding and other initiatives.

As part of this accreditation, service providers should be required to implement internal complaint management processes that include representation from the public and appropriate peer groups and that are consistent with COAG guidelines and other statutory complaint arrangements.

ACAP's response to the consultation details

ACAP's response to the consultation paper outlines the views of a significant professional group with first-hand experience of health care and the vagaries of medical misadventure occasioned by both practitioner and infrastructure issues. These views have been formed in the context of the general regulatory principles outlined above.

ACAP believes the commitment to a stronger patient-oriented approach to health care with greatly enhanced community engagement is overdue. ACAP supports the view that the users (the public) should play a significant role in the regulatory process associated with both individual practitioners and the performance of the supporting infrastructure providers. In both cases the integrity, transparency and objectivity of the complaint mechanisms play a key role.

In the following observations, comment is made on the consultation proposals only where deemed necessary to reinforce, select a preferred option or offer a contrary viewpoint or alternative.

Proposal 1.5.1: It is proposed that the provisions of the legislation relating to the management of complaints and matters of conduct, health and performance be framed in a way that:

- a. provides for a robust system to protect public safety that deals effectively with complaints, conduct, health and performance matters and focuses on prevention and early intervention
- b. builds on the best aspects of State and Territory schemes, rather than replicating one existing disciplinary scheme
- c. balances the rights and interests of consumers with those of health practitioners
- d. is compatible with nationally and internally accepted standards and consistent with Australia's international obligations, and
- e. reflects the wording and intent of the Intergovernmental Agreement.

ACAP response

This proposal is endorsed

Proposal 2.1: It is proposed that the following terminology be adopted with respect to the complaints handling and disciplinary functions of the boards:

List of terminology items
2.1.1 through 2.1.19 including options

ACAP response

Item 2.1.1 – the term notification would be preferred as it is more general in application – suitable consequential changes are endorsed.

Item 2.1.2 – the term preliminary assessment would be preferred as it is more consistent with the level of review – suitable consequential changes are endorsed.

Item 2.1.3 – the term notifications assessment committee is endorsed.

Items 2.1.4 – 2.1.14 – endorsed

Item 2.1.15 – no preference

Item 2.1.16 – 2.1.16 – endorsed

Item 2.1.17 – endorsed with suggested amendment to take account of possible lapses in time viz. “ ... below the standard reasonably expected of a practitioner of an equivalent level of training or experience at the time of the alleged breach...”

Item 2.1.18 – endorsed with amendment to state “... to describe a less serious breach of professional conduct that is unlikely to result in ...” It is further noted that in Attachment 1 subsections (h), (i), (j), and (k) may fall within the scope of other legislation as Official Misconduct for employed professionals in the public sector.

Item 2.1.19 – the general objectives are endorsed with substantial reservations and a strong recommendation to review. There is an unfortunate mixing of behavioural, ethical and practice issues in the subsections (b) and (c). In (b) there appears to be acceptance of the unrelated characteristics of good repute or competency as alternates whereas it would be expected that any comparison should be made with practitioners of both good repute and competency. In subsection (c) the terminology should match the final definition chosen under item 2.1.15 (not of good character).

Comment: Although not explicitly covered in this section, the process of assessment should also identify the need to establish whether the notification is properly a matter confined to the practitioner, the infrastructure provider (such as a hospital, diagnostic centre, clinic or EMS provider), or reasonably should be considered in conjunction.

Proposal 3.3.1: The definitions of unsatisfactory professional conduct, professional misconduct, and unsatisfactory professional performance contained in Attachment 1 are proposed for inclusion in the legislation.

ACAP response

Endorsed subject to the observations immediately above on proposal 2.1.

Proposal 4.1.1: It is proposed that the legislation provide for any person (including an organisation) to make a notification to a board, rather than listing in legislation the particular persons or classes of person who may make a notification.

ACAP response

Endorsed.

Proposal 4.2.1: It is proposed that the legislation provide that a notification must:

- be made in writing
- contain the particulars of the allegations
- identify the practitioner against whom the notification is made, and
- identify the notifier.

ACAP response

Not endorsed. The process of assessment should establish the degree to which additional verification and written documentation is required. Not all cases are clear cut, and the formality of a written submission to initiate the process can be quite daunting to many, especially if they are old or infirm (as they well may be).

Best practice in corporate governance now goes further in providing a user-friendly environment in which to raise matters of concern and in many jurisdictions recommends the use of ‘hotlines’ to facilitate the discovery of unethical, corrupt and unprofessional behaviour.

Proposal 4.2.2: It is proposed that the legislation provide a role for the responsible board to ensure that a person who wishes to make a notification is given reasonable assistance to do so.

ACAP response

Endorsed.

Proposal 4.3.1: It is proposed that the legislation set out the grounds on which a notification may be made about a registered health practitioner, and that these include an allegation that:

- the person’s registration was improperly obtained, or
- the registrant’s capacity to practise is affected because of:
 - physical or mental impairment, or
 - habitual misuse of alcohol or other drugs, or
- the registrant lacks the competence to practice because of insufficient knowledge and skill, including communication skills (such as competency in the English language), or
- the registrant has engaged in unsatisfactory professional conduct or professional misconduct (however termed), or
- the registrant is not of good character.

ACAP response

Endorsed.

Proposal 4.3.2: It is proposed that the legislation provide for a notification to be made (and accepted by the board and acted upon) in relation to a practitioner who was registered at the time of the conduct in question but has since ceased to be registered under this Act or a previous enactment.

ACAP response

Endorsed.

Options for mandatory reporting

A number of options with respect to mandatory reporting by registered practitioners are set out below. One or a combination of these could be provided for in the legislation:

Option 1a: All registrants – limited obligations (treating relationships)

Under this option, the legislation would include provisions that require a registered health practitioner to notify the responsible board where they are in a treating relationship with a registrant from any of the regulated professions whom they reasonably believe to be placing the public at risk in their practice due to a physical or mental impairment, health condition or habitual use of alcohol or other drugs.

Option 1b: All registrants – extended obligations

Under this option, the legislation would include provisions that require, from any of the regulated health professions, a registered health practitioner to notify the responsible board of a registrant whom they reasonably believe is placing the public at risk in their practice:

- due to a physical or mental impairment or health condition, or
- by practising while intoxicated by drugs or alcohol, or
- by practising in a manner that constitutes a gross or flagrant departure from accepted professional standards, or
- by engaging in sexual misconduct in connection with their practice.

Option 2a: Employers – limited obligations (impairment)

Under this option, the legislation would include provisions that require a registered health practitioner's employer to notify the responsible board where they reasonably believe that the registrant's practice is placing the public at risk in their practice due to a physical or mental impairment, health condition or habitual use of alcohol or other drugs.

Option 2b: Employers – extended obligations

Under this option, the legislation would include provisions that require an employer to notify the responsible board of a registrant whose conduct may constitute unsatisfactory professional conduct or professional misconduct.

Registrants would only be expected to report major departures from professional standards where it is within their competence to make such a judgement.

Interested parties are invited to advise of their views with respect to the options for imposing mandatory reporting obligations.

ACAP response

The objective of regulation is to protect the public, and the underlying obligation of professional practice (duty of care) is to ensure that the regulatory objectives are achieved. The nature of the relationship (treating or employment) may give a better insight and opportunity to recognise problems, but that is not the only issue at stake. Given the overarching responsibilities Options 1(b) and 2(b) are preferred.

Student registrants and mandatory reporting

If student registration is to apply under the regulatory scheme, then decisions will also be required on whether mandatory reporting obligations should extend to requiring registered practitioners and/or educational institutions to notify the responsible board with respect to a registered student and under what circumstances (impairment, or impairment and conduct matters, such as criminal charges or convictions laid for example, for drug trafficking). The obligations on students would also need to be considered.

Interested parties are invited to advise on whether registered practitioners and/or educational institutions should be required to report registered students to their respective boards, and if so, for what types of matters. Advice is also sought on whether any reporting obligations should be placed on student registrants.

ACAP response

The idea of differential registration is not supported, on the basis that it would create an unwieldy and impractical distinction between classes of registration. ACAP's view is that a person is either registered or not, and once registered, the obligations and responsibilities of professional practice then apply, with uniform application of the notification (complaint) processes. No sufficient reason has been advanced for a student registration category and it is not supported.

If student (or other special classes of) registration were to apply, then ACAP would submit that the same level and type of reporting obligations should apply to all.

Proposal 4.5.1: It is proposed that the legislation provide that a person making a notification is not liable for defamation because of the notification, and the making of a notification does not constitute a ground for civil proceedings for malicious prosecution or for conspiracy. It is proposed that this protection extend to any person who, in good faith, provided the notifier with any information on the basis of which the notification was made, or was otherwise concerned with the making of the notification

ACAP response

Endorsed. These provisions need to be harmonised with any statutory protected disclosure (whistleblower) legislation.

Proposal 4.6.1: It is proposed that a board have the power to initiate an investigation into a matter on its own motion, without a notification.

ACAP response

Endorsed. This power is seen as necessary to ensure action in certain situations.

Proposal 4.7.1: It is proposed that the legislation include provisions that empower a responsible board or a notifications assessment committee to immediately suspend the registration of a practitioner for a period of up to three months, and to impose a second or subsequent period if it considers the registrant’s continued practice poses a significant risk to public health and safety and the proceedings have not yet been finalised.

Alternative options: Alternative options for the length of time a board may immediately suspend a practitioner pending completion of an investigation and/or disciplinary process are:

- six months
- 12 months, or
- specify no term at all and leave it to the board’s discretion

ACAP response

The operative term is “immediately” and this raises the issue of due process. It is ACAP’s view that a period of three months is appropriate but that power be granted to extend that suspension period by further three monthly periods for good cause. It is recommended that the maximum period of suspension be twelve months by which time a more definitive resolution is required to be reached.

Proposal 4.7.2: It is proposed that a practitioner whose registration has been suspended pending completion of an investigation and/or disciplinary process have the right to seek a review of this decision by the responsible State or Territory tribunal. However the suspension would continue to apply while the matter is being heard by the tribunal.

ACAP response

Endorsed.

Proposal 4.7.3: It is proposed that the legislation include provisions that empower a responsible board (or a notifications assessment committee) to accept an undertaking from a practitioner as an alternative to immediate suspension of the practitioner’s registration. Details of any undertaking would be entered on the public register against the practitioner’s name.

ACAP response

Endorsed with reservation. ACAP expresses some concern about the logic of accepting an undertaking from a person who is already under notification but notes that guilt cannot be presumed. The more pertinent concern is the manner in which any undertaking can be monitored and/or enforced. ACAP suggests an alternative provision which would enable continued practice under the supervision of a competent appointed or approved person.

5.1 Powers following receipt of a notification

The legislation will need to make provision for a board (or a committee of the board) to make a preliminary assessment of a notification, with a view to determining:

- whether it is within the jurisdiction of the board to deal with the notification
- if so, whether the notification is also within the jurisdiction of an HCC, and if so, whether it should be retained and dealt with by the board, or referred to the responsible HCC for conciliation, and
- whether the notification should be dealt with, in the first instance, as a performance matter, a health matter or a conduct matter.

ACAP response

Endorsed with amendment. The notification may arise from events which involve a practitioner alone or in conjunction with infrastructure failings - for example, equipment failure, miscalibrated or faulty resources, or in the case of EMS, exogenous events such as traffic incidents that create delays with an adverse impact on patients. Explicit guidance should be provided to the assessment board or committee to determine whether the notification should also be considered in the context of infrastructure failure. A fourth category might be added as follows:

- whether the notification should be extended to embrace consideration of infrastructure or third party provider deficiencies.

Proposal 5.1.1: It is proposed that the legislation provide for boards to receive a notification and determine whether the notification is within its jurisdiction to deal with and if so, what action should be taken.

ACAP response

Endorsed.

Proposal 5.2.1: It is proposed that the legislation provide for boards to decide not to investigate a notification on the following grounds:

- the board determines the notification to be frivolous, vexatious, misconceived or lacking in substance, or
- given the amount of time that has elapsed since the matter arose, it is not practicable for the board to investigate or otherwise deal with the matter, or
- the board determines the notification does not warrant investigation, or
- the health practitioner is not or is no longer registered by the board and it is not in the public interest to pursue the matter.

ACAP response

Endorsed with reservations. A notification may be ‘misconceived’ but still refer to valid concerns that warrant investigation. This word should be struck out.

Proposal 5.3.1: In light of the IGA, it is proposed that both the national registration and accreditation legislation and the State and Territory health complaints legislation set out the nature of the relationship between the national boards and the respective State and Territory HCCs and the obligations and powers of the respective bodies, et seq. (details of proposed arrangements follow)

ACAP response

Endorsed. ACAP places a particular stress on the importance of robust operational protocols and good communications between all potential regulatory and enforcement bodies, with the lead agency to take carriage of an investigation determined at an early stage.

Proposal 5.4.1: It is proposed that the legislation contain powers for a responsible board to establish any number of ‘notification assessment committees’ to oversee the preliminary assessment of notifications and make decisions on what actions to take. It is proposed that, when duly constituted under the legislation, a notifications assessment committee would be empowered to make all the initial decisions that the responsible board would otherwise be empowered to make, as to how a matter should be dealt with.

ACAP response

Endorsed.

5.6 Notifiers’ rights of review of preliminary assessment decisions

.... It is considered important that the legislation be transparent, that those affected know where they stand, and that the legislation balance the rights of registrants and those of consumers. It is also important to attempt to address, at least in part, the perception that registration boards may at times act to protect the interests of registrants rather than those of notifiers, particularly when the board decides no further action is required, and the notifier disagrees.

There are two options with respect to review rights for notifiers arising from board or committee decisions at the stage of preliminary assessment:

Option 1: No right of review of preliminary assessment decisions for notifiers.

Option 2: A right of review of preliminary assessment decisions for notifiers – along the lines of the model outlined above, that is, a review panel established internal to the board, with or without a level of independent input from, for example, a nominee of the responsible HCC. Reviewable decisions would be the decision to take no further action following preliminary assessment, and the decision to refer a matter to a conduct management committee or performance management committee of the board rather than to an external tribunal for hearing. The notifier would have no right of review with respect to matters being dealt with by the board under the health stream.

ACAP response

The principles of transparency and due process are strongly endorsed. Option 2 is preferred as providing the potential opportunity to resolve matters more expeditiously, providing a fairer service and in recognition that in certain circumstances it actually forms the end of the assessment process.

Proposal 6.1.1: It is proposed that the legislation make provision for boards to deal with practitioners whose performance is unsatisfactory (though not sufficiently serious to amount to professional misconduct or unsatisfactory professional conduct) through a cooperative and educative process, rather than through a disciplinary process. The legislation would include powers for a board:

- at the time of annual renewal of a practitioner's registration (in response to data generated through application of continuing competence requirements), or through receipt and investigation of a notification, to request a practitioner undergo a performance assessment, and
- to provide guidance and/or direction to the practitioner designed to address any deficits identified in their skills or knowledge, via further education or supervised practice or other matter, which could include conditions on the practitioner's registration.

ACAP response

The underlying philosophy of counselling and educative improvement is endorsed in those cases where the performance is marginal and there is a demonstrable opportunity to reach an acceptable standard. While this proposal is endorsed, it is conditional on there being appropriate means to monitor and assess the outcomes.

Proposal 7.1.1: It is proposed that the legislation make provision for boards to deal flexibly with practitioners who have a health condition, or whose habitual use of alcohol or other drugs, is compromising or may compromise their capacity to practise. Such provisions would enable a board to:

- accept a self-referral from a practitioner who is unwell, and enter into an agreement with the practitioner (or their representative if they have arranged for power of attorney) to:
 - suspend their registration for an agreed period, or
 - limit their practice via the imposition of conditions on their registration, and/or
 - accept an undertaking or enter into some other form of agreement
- refer the practitioner to a range of support programs designed to assist with resolution of their health issues and successful return to unrestricted practice if possible, and
- monitor compliance of the registrant with any agreement reached or conditions placed on registration.

ACAP response

The proposal to deal flexibly with some cases of impairment is endorsed. In general, this flexibility should be dependent on there being self-notification as evidence of the practitioner’s good character and willingness to comply with treatment or a suitable support regime.

Proposal 7.1.2: In addition to boards having the powers to conduct health assessments, deal cooperatively and flexibly with impaired registrants (rather than through the disciplinary stream) and monitor their compliance with conditions (if any) on their registration, it is proposed that the legislation provide for boards, at their discretion, to offer health programs for impaired registrants nationally.

There are two options for funding such programs:

Option 1: Health programs, if provided for by a board, are funded by the board through a component of all registrants’ fees for their respective profession.

Option 2: Health programs, if provided for by a board, will be funded by the board through charges to the registrants receiving health programs in addition to a component of all registrant fees

ACAP response

Option 2 providing for a co-contribution is preferred.

7.2 Health management

If the board’s preliminary assessment has found evidence that the practitioner may have a physical or mental impairment, or may be habitually using alcohol or other drugs, and that any of these is affecting or may affect their capacity to practise, then the board may refer the matter to a health management committee.

ACAP response

While ACAP accepts that various forms of drug dependency may be among the most prevalent causes of impairment, the nomination of a generic definition and general use of the terminology “physical or mental impairment” elsewhere would be preferred for clarity, brevity and in recognition of the broader scope and other legitimate causes of impairment.

Proposal 8.3.2: As outlined above, it is proposed that the legislation empower a responsible board to initiate an investigation without a notification, and to proceed to refer a matter to a conduct management committee or tribunal without an investigation.

ACAP response

Endorsed. The power to initiate an investigation for any due cause is important to overcome any potential for intimidation, bullying or cronyism which might stifle complaints.

Proposal 8.3.4: It is proposed that the legislation empower the board or an investigator to decide not to give notice to the practitioner of the investigation if such notice might prejudice an investigation or place at risk a person's health and safety, or place a person at risk of intimidation or harassment

ACAP response

Not endorsed in its present form. An investigator acting alone should not be in a position to make a decision to over-ride the obligations for due process and notice in the conduct of an investigation, The investigator may however, recommend such an action for approval by the board which shall not be unreasonably withheld. Moreover, this proposal generally places no time limit on the notice embargo which could severely damage the rights of the practitioner. ACAP also draws attention to the more onerous investigative procedures, monitoring controls and evidentiary conditions which normally apply to the management of covert investigations.

Proposal 8.3.5: It is proposed that the legislation require an investigation to be conducted as quickly as practicable having regard to the nature of the matter, and that at least the following timelines be included in legislation:

- provide notice of a decision on the outcome of an investigation (with reasons if required) to the registrant and notifier – within 14 days of the decision
- provide progress reports to notifier and registrant – at least three monthly, and
- require the responsible board to keep both the notifier and the registrant informed of progress with the investigation, at a minimum of three monthly intervals.

ACAP response

Endorsed in principle as an appropriate mechanism to ensure regular reporting which will assist in minimizing the time for investigation.

Proposal 8.4.1: It is proposed that the legislation provide for investigators to exercise the following powers:

- by written notice, require a person to:
 - provide information, and
 - attend the investigator to answer questions or produce documents
- enter the premises of a registrant's practice (unless it is also their private residence), during ordinary business hours and, with the consent of the occupier, inspect and search premises generally and request the production of documents or other items and the provision of information, and
- obtain a warrant to enter and search premises and seize evidence (see below).

ACAP response

Endorsed in principle. Care should be exercised in terminology as premises may take many forms, including mobile clinics, field hospitals and ambulances and the concept of registrant's practice must cater for employed health professionals.

Proposal 8.4.2: It is proposed that the legislation empower investigators or other persons authorised by a board to obtain and execute a warrant to enter and search premises and seize documents or other items. The legislation would provide for, amongst other things:

- in general terms, where a warrant may be obtained (via local State or Territory Magistrates Court or similar authority)
- what a warrant may authorise (subject to the applicable State/Territory law), that is, powers to:
 - enter premises
 - require information including name and address
 - require production of documents and other items, and
 - seize evidence
- how seized evidence is to be handled, for example, receipts, storage, damage, compensation, etc
- safeguards on the exercise of enforcement powers
- evidentiary requirements, and
- various offences for failure to comply, obstruction of an authorised inspector, etc.

ACAP response

Endorsed with agreement that the powers of investigation should be clearly defined. However ACAP holds reservations as to the extent to which the actual details of investigative procedures should be outlined within the primary legislation, preferring to use suitable references to best practice investigative guidelines such as those adopted by law enforcement agencies.

Proposal 9.1.1: The following options are suggested relating to the procedural fairness and public interest mechanisms in the scheme:

Option 1: No additional provisions are required beyond the review, appeal and other mechanisms already described in this paper.

Option 2: Provisions that establish a statutory office, possibly within the national agency, to assess prosecution decisions, along the lines of the 'director of proceedings' in the *Health Care Complaints Act 1993* (NSW) and *Health and Disability Commissioner Act 1984* (NZ). The director of proceedings not the boards would make the decisions on referrals to tribunals.

Option 3: Provisions that establish a mechanism for automatic review of all board decisions on conduct matters in relation to whether or not they should be brought to a tribunal, with processes for resolution of disagreement between a board and the reviewer.

ACAP response

ACAP sees merit in all three options but on balance supports Option 2 as providing greater separation, independence and transparency without the imposition of an unwieldy structure.

Proposal 9.1.2: It is proposed that the legislation establish public interest criteria on which any decision to prosecute a matter before a State or Territory tribunal should be based.

Relevant criteria could for example include:

- the protection of the health and safety of the public
- the seriousness of the alleged conduct, and
- the likelihood of proving the alleged conduct.

ACAP response

Endorsed.

Proposal 9.2.1: It is proposed that the legislation include provisions that allow boards to deal jointly with matters that relate to two or more practitioners who are registered by different boards. This would allow boards to conduct joint investigations of several practitioners arising from a single notification, and any other registrants identified during the investigation as involved in the same events that led to the notification.

ACAP response

Endorsed. See also ACAP comment on Section 5.1 above regarding assessment.

There are a number of options with respect to legal representation:

Option 1: The legislation is silent on the matter of a registrant's right to legal representation at a board hearing.

Option 2: The legislation specifies that the registrant has the right to be legally represented at a board hearing.

Option 3a: The legislation specifies that the registrant has no right to be legally represented at a board hearing.

Option 3b: The legislation specifies that the registrant has no right to legal representation except with the leave of the panel.

Option 4a: The legislation specifies that the registrant has no right to legal representation, but can have a person who is not an Australian legal practitioner accompany them and, with the leave of the panel, that person may speak on their behalf.

Option 4b: The legislation specifies that the registrant has no right to legal representation, but can have a person accompany them, who may or may not be an Australian legal practitioner, and that person may speak on their behalf with the leave of the panel.

ACAP response

Option 4b is endorsed. This is not to suggest that legal action could not be taken in a court of law on other grounds as a consequence of the practitioner's performance.

Proposal 9.4.1: It is proposed that the legislation make provision for the proceedings of a panel hearing to be closed to the public, and for it to be an offence for any person to publish the name of a notifier, witness or the practitioner concerned. With respect to conduct hearings, it is proposed that the legislation enable a notifier, with the leave of the panel, to make a submission to the panel if the notifier is not called as a witness.

ACAP response

Endorsed. It is recommended that provision also be made for other forms of representation and protection of the notifier if the need is seen, This may include the use of privacy screens, teleconference and videoconference arrangements.

Proposal 9.5.1: It is proposed that the legislation provide for the notifier to be present at a hearing to give evidence (if required by the board), and to speak with the leave of the panel. It is not proposed that the notifier would have a right under legislation to seek a review of a decision of a hearing panel.

ACAP response

Endorsed with comment. It is recommended that “present” be interpreted both as a physical and secured electronic (remote) presence. ACAP further notes that the two matters of attendance and review appear unrelated in this proposal.

Role of Commonwealth, State and Territory ombudsmen

...

There are two options for dealing with the scope and application of ombudsman legislation with respect to the national registration scheme:

Option 1: Apply the Commonwealth *Ombudsman Act 1976* to the national registration scheme.

Option 2: Apply existing State and Territory Ombudsman legislation to administrative decisions made by the boards and National Agency. This would require clarity about which Ombudsman Act would apply in individual circumstances, and if not carefully handled, might provide multiple avenues of review for an individual matter.

ACAP response

Option 1 is preferred.

Proposal 10.6.1: It is proposed that the legislation make provision for a tribunal hearing panel to be constituted with a minimum of three members, at least two must be from same profession.

ACAP response

Endorsed with alternative. The importance of community engagement is stressed, and the provision might better be stated in an alternative manner as a minimum of three persons of which at least one is drawn from the community and not from the same profession as the practitioner. In this way the primacy of the public interest is explicitly maintained.

Proposal 11.10.1: It is proposed that the legislation include powers for a responsible board to monitor compliance of a registrant with:

- determinations or orders made by a responsible tribunal
- decisions made by a performance, health or conduct panel
- conditions placed on registration, at other times, such as at first registration, at renewal, by agreement, and
- other undertakings given or agreements entered into between the registrant and the board.

ACAP response

Strongly endorsed.

Glossary

The following terms are used in this submission.

ACAP	Australian College of Ambulance Professionals
ADF	Australian Defence Force
AHMAC	Australian Health Ministers' Advisory Council
CAP	Certified Ambulance Professional
COAG	Council of Australian Governments
EMS	Emergency Medical Services
NHHRC	National Health and Hospitals Reform Commission
Paramedic	A professional person whose education, training and skills enable them to provide a range of out of hospital emergency procedures and medical care