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Complaints Arrangements Submission
Attention: Practitioner Regulation Subcommittee
nraip@dhs.vic.gov.au

Dear Sir or Madam

Consultation Paper: Proposed arrangements for handling complaints and dealing with performance, health and conduct matters

I refer to your request for submissions on the *Consultation Paper: Proposed arrangements for handling complaints and dealing with performance, health and conduct matters* (the consultation paper) dated 7 October 2008. I note that the consultation paper addresses the proposed arrangements for handling complaints and dealing with performance, health and conduct matters under the new National Registration and Accreditation Scheme (the Scheme).

The Australian Competition and Consumer Commission (ACCC) is the national authority responsible for the enforcement of the *Trade Practices Act 1974* (the Act). The aim of the Act is to ensure that Australians benefit from the promotion of competition, fair trading and consumer protection. The competition provisions of the Act apply to corporations and also individuals through their inclusion in the Competition Codes of each State and Territory.

In certain circumstances, removing the accreditation of a registrant under the Scheme has the potential to raise competition issues, as medical boards may include competitors of the registrant and so there is potential for competitors to use the Scheme to restrict practice for anti-competitive, rather than public health or safety reasons. If a group of competitors makes an agreement that has the effect of substantially lessening competition then this is considered to be an anti-competitive arrangement under section 45 of the Act. Under the Scheme, there is a risk that doctors on medical boards may enter into an arrangement that will prevent, hinder or deter other doctors (i.e. registrants) from practising (by removing their accreditation) for the purpose of lessening competition.

Similarly, if two or more competitors make an agreement for an anti-competitive purpose, such as limiting the supply of services from a particular person, then there is a risk of breaching the prohibitions in the Act against exclusionary provisions. Obviously, removing a doctor's accreditation will have the effect of limiting the supply of services, however, as long as the substantial purpose of the medical board's decision is for public health and safety reasons and not about limiting supply of services the risk of contravening the Act will be

minimised. The risk of breaching the Act, or creating a perception of a breach of the Act, can also be reduced by ensuring accountability, transparency and procedural fairness in the workings of the Board. The ACCC offers the following comments on section 9 of the consultation paper.

Ensuring accountability, transparency and procedural fairness

The ACCC is supportive of the following principles to reduce the risk of breaching the Act and encourages the Subcommittee to keep such principles in mind when developing the Scheme:

- Transparency and accountability
- Procedural fairness
- Stakeholder participation
- Timely decisions
- Merit
- Safety and health care
- Uniform application
- No discrimination
- Independent review

Below are some examples of the practical application of principles to the Scheme.

Transparent decision-making

Under the Act, the purpose for which the decision is made is relevant in determining whether anti-competitive conduct has occurred. It is important to ensure that decisions are transparent and based on public health and safety rather than anti-competitive purposes. Therefore, providing detailed reasons for decisions that are supported and substantiated by documented evidence is one way to reduce the risk of participants in the Scheme breaching the Act.

Complaints handling

The Scheme should consider a mechanism for resolving complaints about the accreditation process, particularly regarding vexatious notifiers or abuse of process by medical boards. The ACCC notes that Standards Australia has developed performance criteria to benchmark effective complaints handling (AS4269), which may assist in the development of a complaints handling mechanism for the Scheme. It is noted that while the ACCC supports self-handling of complaints, it is still possible for registrants to report potential anti-competitive behaviour directly to the ACCC.

Reporting

To increase transparency, a complaints handling scheme should maintain accurate and thorough records. It is also important to record the origin and causes of complaints about the accreditation process so that any systemic and recurring problems can be identified. To ensure accountability, the medical board should produce annual reports on the operation of

the accreditation process and allow for periodic assessment of its effectiveness, particularly regarding complaints handling.

Independence of medical boards

The ACCC recognises the benefits of having medical practitioners on medical boards. However, doctors on medical boards need to place public health and safety above any personal interest in restricting competition. The risks of conflict of interest and anti-competitive conduct can be reduced by using practitioners from different geographic or practice areas on medical boards. For this reason, the ACCC supports the structural separation for serious misconduct matters provided for by the Intergovernmental Agreement and additional measures to ensure independence of medical boards. The ACCC notes that inclusion of stakeholders may be encouraged by proposal 9.7.1 that gives the board discretion to provide notice of its decision to a range of persons or organisations, including overseas registration authority, government agencies and regulatory bodies.

Review rights

The availability of an independent review process will reduce the risk of raising concerns under the Act. An independent review body must be suitably qualified to hear and resolve matters and could be recruited from outside the industry. The ACCC supports proposal 9.6.1 in the consultation paper that gives registrants the right to seek a merits review of a hearing panel decision to the responsible State or Territory tribunal. Independent review rights enhance the transparency of the Scheme. For similar reasons, the ACCC is supportive of the ombudsman legislation applying to the Scheme (proposal 9.8).

Monitoring

The medical board should regularly monitor its procedures for compliance with the Scheme to ensure desired outcomes for all stakeholders and the community at large. Professional standards applied by medical boards should be regularly reviewed to respond to current community expectations and legislative changes.

Mandatory reporting obligations

The ACCC also wishes to briefly comment on section 4.4 of the consultation paper about mandatory reporting obligations. While the ACCC understands the importance of mandatory reporting obligations for the protection of public safety, they may raise concerns under the Act if the reporting mechanism is used for anti-competitive purposes.

The proposed immediate suspension powers of the Board mean that a vexatious notifier could potentially have the power to immediately suspend the registration of a practitioner for a period of up to three months. While Proposal 4.51 is headed 'protection for notifiers and registrants', the ACCC is concerned that its current drafting appears only to explain the protections afforded to notifiers. As such, the ACCC suggests a more explicit outline of the protections for registrants who are the subject of such notifications would increase the transparency of the process and assist in alleviating concerns about the potential abuse (for anti competitive purposes) of the mandatory reporting system.

Thank you for the opportunity to comment on the consultation paper. If you require any further information please contact Sarah Proudfoot on (03) 9290 6965.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nigel Ridgway', with a long horizontal flourish extending to the right.

Nigel Ridgway
General Manager
Compliance Strategies Branch