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20 November 2008

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Dear Ms Nardi

**Australian and New Zealand College of Anaesthetists Submission  
National Registration and Accreditation Scheme for Health Professionals**

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

The Australian and New Zealand College of Anaesthetists (ANZCA) is pleased to provide a further submission in relation to the consultation paper on the proposed arrangements for handling complaints and dealing with performance, health and conduct matters for the National Registration and Accreditation Scheme for Health Professionals ("the Scheme"). This paper follows two previous submissions by ANZCA dated 5 September 2008, and 29 October 2008 in relation to the proposed First Bill, and the proposed Registration Arrangements, respectively.

As highlighted in previous submissions, ANZCA welcomes the introduction of a national registration scheme for the health professions and the benefits it will bring to the Australian public. We have, however, major concerns regarding proposed accreditation processes which need to be independent of government to ensure patient safety and equity of access.

We are committed to working with Government to ensure the new Scheme maintains the high standards of clinical practice in this country and protects patient safety.

***Summary***

The consultation paper on the proposed arrangements for handling complaints and dealing with performance, health and conduct matters is very comprehensive and offers a good draft policy platform for discussion. ANZCA welcomes constructive dialogue on this important issue and makes the following points:

- Protecting the public must be balanced with ensuring that the principles of natural justice are followed in dealing with health professionals.
- Consumers are an essential component of the system, and their participation leads to better decisions. This is a key reason for their involvement as well as satisfying the rights and interests of consumers.
- Disciplinary processes should be used as a last resort – only after all reasonable attempts have been made at mediation and conciliation of complaints.
- There should be separation of the functions of investigation, prosecution and assessment of serious matters; so that extraneous matters are not brought in to the decisions arrived at. We note that the IGA allows limited separation, thus any methods, such as a "director of proceedings" would be supported.

### **Specific comments**

The following comments are offered in relation to the proposals:

#### **Section 2 – Proposed terminology**

Proposal 2.1.1/3 - We agree with the recommended term of "notification", with no implied judgement, and the naming of the relevant "Notifications assessment committee". In relation to Proposal 2.1.15, ANZCA agrees with the term "Not of good character".

#### **Section 4 – Notifications**

Proposal 4.4 – Regarding mandatory reporting, options 1a and 2a (limited obligations) are preferred with support for extended notification (where protection is given for those acting in good faith), but not mandated. Mandatory reporting would need to be matched with good support for those health professionals who were the subjects of notification, such as health or impairment committees. "Employers" do not cover all work situations and consideration needs to be given to including members of credentialing/privileges committees. This still leaves out those practitioners who are self-employed. Students should be treated in the same way as full registrants for reporting, and reported by registered practitioners and/or educational institutions.

ANZCA agrees with Proposal 4.7.1 which stipulates immediate suspension of a health practitioner for up to three months if considered that the registrant continues to pose a significant public health and safety risk. This duration of suspension should be adequate to allow natural justice principles to be met.

#### **Section 5 – Preliminary assessment of notifications**

Liaison with Health Complaints Commissioners (HCC) is a good idea along the lines recommended in Proposal 5.3.1.

In relation to Proposal 5.6, we agree with option 2 that allows a right of review by notifiers of preliminary assessment decisions, in order to balance the rights of registrants and those of consumers.

## **Section 6 – Performance matters**

ANZCA agrees with proposal 6.1.1 in following a cooperative and educative process for dealing with unsatisfactory performance, as per the NSW model. However, there does need to be recognition of practitioners who are proven not to benefit from this process. The separation of incompetence from professional misconduct can be more difficult than it first appears.

## **Section 7 – Health or impairment matters**

Practitioners who have a health condition should be treated as part of a separate stream and be dealt with flexibly by boards, as identified in proposal 7.1.1. Health programs can be funded by the respective board through a component of all registrants' fees (Option 1: proposal 7.1.2). It would be unfair to charge registrants receiving health programs and it could act as a disincentive to undertake treatment.

## **Section 8 – Conduct matters**

ANZCA agrees with proposal 8.3.2 which empowers a responsible board to initiate an investigation and refer to the appropriate committee/tribunal without notification; the prime purpose of the board is to protect the public.

ANZCA **opposes** Proposal 8.3.4 which empowers a board or investigator to decide not to give notice to the practitioner under certain conditions. This is against all principles of natural justice. The practitioner in question must always know of any such investigation. Proposal 8.3.5 in relation to timeliness of investigation and progress is reasonable.

However, proposal 8.4.1 seems rather draconian in its wide powers. The investigators should **not** have powers that exceed those of the police. Therefore a warrant should be required for all searches and seizures.

## **Section 9 – Ensuring accountability, transparency and procedural fairness**

Option 2 is favoured by ANZCA in relation to procedural fairness and public interest mechanisms outlined in proposal 9.1.1. There should be an independent assessment along the lines of the "director of proceedings" as per the NSW and NZ models to ensure public accountability and consistency. Explicit grounds for that assessment are needed as in proposal 9.1.2.

Proposal 9.2.1 which allows boards to deal jointly with matters that relate to two or more practitioners registered with different boards is logistically challenging but could be effective. It would be important to ensure that the appropriate expert opinion is obtained (by peers when adherence to profession based standards is being assessed).

In relation to proposal 9.3 ANZCA supports the preferred option 4b, in recommending an appropriate support person, not a legal advocate.

Proposals 9.4.1 and 9.5.1 are both supported.

Given this is a national Scheme ANZCA supports option 1 (clause 9.8) that recommends application of the Commonwealth Ombudsman Act 1976.

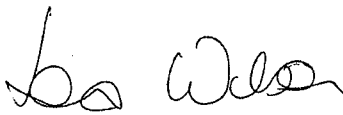
## **Section 10 – Tribunal hearings**

Regarding proposal 10.6.1 on the composition of a tribunal hearing, ANZCA recommends a legal Chairperson to ensure appropriate procedures are followed (e.g. admission of evidence), a consumer representative, and three peers (to have an odd number in total). This would enable peers bringing different aspects of clinical expertise to take part, e.g. both clinical and administrative aspects of patient care. Proposal 10.8.1 is supported; the notifier will usually be required to assist with the case as a witness, otherwise proof may be difficult in most cases.

Proposal 10.10.1 is supported.

Thank you, once again, for the opportunity to provide comments on the consultation paper on the proposed arrangements for handling complaints and dealing with performance, health and conduct matters. We welcome further ongoing consultation and would be happy to discuss any of the issues outlined in this submission.

Yours sincerely



Dr Leona Wilson  
President