
National Registration & Accreditation Scheme for the Health Professions

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

HCSCC SA submission November 2008

Introduction

HCSCC is the independent statutory health complaints office in South Australia (SA). HCSCC operates under the *Health and Community Services Complaints Act 2004* (H&CSC Act). Information about HCSCC is available at www.hcsc.sa.gov.au

Until HCSCC's establishment in October 2005, there was no independent statutory health complaints office with jurisdiction for complaints involving private health service providers, including individual registered practitioners, in SA.

In March 2007 HCSCC provided a submission to the COAG Health Working Group about the proposed national registration and accreditation scheme - Attachment 1. No response was received.

I draw your attention to the highlighted sections.

The following outlines the history of HCSCC work with the 10 SA health registration authorities (the SA boards) and recent SA activities to strengthen health professional regulation in the public interest.

HCSCC's response to the Consultation paper: Proposed arrangements for handling complaints and dealing with performance, health and conduct matters focuses in general terms on the proposals that would diminish the current statutory and working relationships between HCSCC and the SA boards.

HCSCC - the SA boards and recent SA work to strengthen regulation in the public interest

The majority of Part 7 matters HCSCC deals with involve the Medical Board (MBSA), less often the Nurses Board (NBSA). HCSCC infrequently receives complaints about individual registered practitioners linked to the other eight SA boards.

In March 2008 HCSCC and the SA boards endorsed a simplified section 57(5) Protocol - Attachment 2.

Part 7 of the H&CSC Act and the revised section 57(5) Protocol provide a co regulatory framework that

- is clear
- ensures local responsiveness - process and outcomes
- ensures that the appropriate body handles a complaint
- enables systemic issues to be dealt with in parallel with individual practitioner issues
- potentially enables recurrent low level complaints that each on its own would be unlikely to meet the threshold for a board investigation to be dealt with

-
- is joined up - minimises duplication through appropriate information sharing between HCSCC, a board, a registered practitioner and, where relevant, their employer
 - vests discretion with HCSCC to deal with a complaint about a registered practitioner
 - provides scope for HCSCC to appear before a board, at the board's request.

Part 7 of the H&CSC Act and the revised section 57(5) Protocol clearly set out the statutory obligations of HCSCC and the SA boards to ensure consultation, referral, information sharing, and reporting of progress, findings and outcomes.

In addition section 77 of the H&CSC Act provides scope for HCSCC to publish SA board reports about complaints and action taken by SA boards in response to complaints.

These are strong public interest provisions. They arose in large part due to concerns that board complaints management

- was 'closed shop' resulting in delayed and inadequate action to protect the public
- was not transparent or timely
- gave insufficient weight to consumer or other complainant perspectives
- had no or insufficient regard for recurrent low level complaints about the same practitioner
- did not result in relevant information being shared in the public interest.

HCSCC has encouraged the SA boards to improve their complaints management by

1. adopting ASO ISO 10002-2006 Customer Satisfaction - Guidelines for complaints handling in organisations and also by considering AS 4608-2004 Dispute Management Systems;
2. considering the report: Bringing in the consumer perspective - consumer experiences of complaints processes in Victorian Health Practitioner Boards 2004;
3. considering HCSCC service evaluation tools as basis for seeking systematic feedback from complainants about their experience of board complaints management.

HCSCC is not aware of the response of SA boards to these suggestions.

During 2005-2007 the MBSA and the NBSA were subject to scrutiny by the SA Parliament Statutory Authorities Review Committee (SARC). The SARC reports, including recommendations, are available at <http://www.parliament.sa.gov.au/Committees/Standing/LC/StatutoryAuthoritiesReviewCommittee/StatutoryAuthoritiesReviewCommittee.htm>

Many of the SARC recommendations about the MBSA and the NBSA are relevant to issues included in the consultation paper: Proposed arrangements for handling complaints and dealing with performance, health and conduct matters.

Coinciding with the period of SARC scrutiny, state legislation governing most of the 10 SA boards, including the MBSA and the NBSA, was extensively rewritten.

Among various improvements to modernise health professional regulation, these law reforms strengthened public interest protections and expanded board membership to include legal and community representation.

In 2008 reports and recommendations by

- former Judge O'Connor about the NSW Medical Practice Amendment Bill 2008 at http://www.health.nsw.gov.au/news/2008/20080529_00.html; and
- the Victorian Ombudsman after a public interest disclosure about the conduct of Dr Kossmann http://www.ombudsman.vic.gov.au/resources/documents/Bayside_Health_Report.pdf

further highlighted deficiencies in the current health professional regulation system and the need to ensure reforms to strengthen protection in the public interest.

Proposals that impact the current statutory and working relationships between HCSCC and the SA boards

1.5.1 Principles

HCSCC supports national consistency and improved information sharing in dealing with complaints involving registered health practitioners.

HCSCC therefore supports the principles as outlined. However, several of the proposed arrangements pose unacceptable risks to Principles 1.5 a. b. and c.

The main risks arise from

- i. the additional layers and processes that will increase delay, complexity, costs and potentially deter complainants;
- ii. the reduction in the powers of the health complaints commissioner to co regulate with the boards in the public interest; and
- iii. the reduction in the powers of the health complaints commissioner to independently investigate complaints involving registered practitioners in the public interest.

3.2 Key features of proposed system - Consultation with HCCs

5.3.1 Liaison with HCCs

5.4 Who conducts preliminary assessment

In the second paragraph on page 11 it is proposed that boards have the power to restrict notifications to the HCC to matters that a board determines “falls within the ambit of the HCC”. In the third paragraph on page 11 it is proposed that the boards have exclusive jurisdiction to deal with conduct and impairment matters.

These filters are contrary to the public interest. They diminish the current powers of the HCSCC and the SA boards to co regulate.

Attachment 3 is incomplete. It should be revised to comprehensively reflect the full scope of HCC - board statutory provisions in each jurisdiction. Verification should be sought directly from each HCC to ensure it is comprehensive.

Any proposals that touch HCCs should be further considered with all HCCs, including with the participation of staff accustomed to dealing with a co regulatory framework.

HCSCC recommendation

If further reform of health professional regulation occurs, the Queensland co regulation model, under

- the *Health Quality and Complaints Commission Act 2006* section 86 and Chapter 12 Registration boards, including section 190; and
- the *Health Practitioners (Professional Standards) Act 1999* Part 3 Complaints

represents the minimum arrangements to ensure that the work of the health complaints commissioners and the boards meet the Principles.



Leena Sudano

Health and Community Services Complaints Commissioner SA
20 November 2008

Attachment 1

HCSCC submission in response to COAG Health Working Group - proposed national registration and accreditation arrangements for health practitioners and health practitioner education and training - 14 March 2007

1. Introduction

The HCSCC opened to the public on 4 October 2005 after the *Health & Community Services Complaints Act 2004* (H&CSC Act) was substantially proclaimed on 3 October 2005.

An information sheet about the HCSCC is enclosed.

Further information about HCSCC, including the HCSCC 2005-2006 inaugural annual report and the H&CSC Act, is available at www.hcsc.sa.gov.au

2. Statutory relationship - HCSCC and the 10 SA registration authorities

The H&CSC Act creates statutory obligations between HCSCC and the 10 SA registration authorities as follows:

- i. Part 7 - sections 57 - 66, sets out the obligations of HCSCC and the 10 SA registration authorities to consult, share information, refer complaints, take action on complaints, make recommendations about complaints, appear in proceedings and provide reports on complaints about individual registered service providers.
- ii. Schedule 1 - Registration Acts lists the 10 SA Registration Acts effective as at 3 October 2005, the date of H&CSC Act proclamation. Since October 2005 these 10 Acts have either undergone, or are nearing completion of substantial revision, arising from previous Productivity Commission and COAG reform decisions.
- iii. Section 77 - Returns by registration authorities sets out the reporting obligations of the 10 SA registration authorities to the HCSCC.
- iv. Section 87 - Regulations - subsection (2)(b) - (c) provides for a financial levy to be payable by registration authorities to the SA Minister for Health to contribute towards funding the HCSCC. Enabling regulations to give effect to this provision have not been drafted and are not contemplated within the first 2 years of the operation of the H&CSC Act.

An overview of the main features of this statutory relationship is enclosed.

Excerpts from SA Parliament Hansard, during the second reading speech for the H&CSC Bill, records that Part 7 “allows for a relationship between the Commissioner and registration authorities and it provides a level of scrutiny in terms of how they [registration authorities] deal with particular issues”. In addition, Hansard records that section 77 has a “significant role in ensuring that the Commissioner can monitor and advise on systemic problems in health and community service areas” and “keep the public informed of the nature of complaints and what action has been taken”.

3. COAG Health Working party proposal - rationale

There is no background rationale provided to support the COAG proposal.

The Stakeholder Consultation documents state that the proposed scheme will

- facilitate workforce mobility
- improve, strengthen and maintain safety and quality and
- reduce red tape

however no information is provided to support these claims.

4. Comments

4.1 Complaints and investigations

The proposal does not mention, or appear to have considered the roles and the statutory relationships that exist in most state and territory jurisdictions between an independent statutory health complaints authority and the health professional registration authorities.

The SA arrangements are set out at 2. above.

4.2 Accreditation, registration and regulation

These terms are not defined or clearly differentiated from one another in the proposal.

The public policy objectives of each, while related, differ. The lack of clarity in the proposal about what is encompassed by these terms and their proposed relationship or links with each other is confusing.

4.3 Additional layer - additional risks ?

The lack of clarity about the proposal inhibits consideration about whether what is proposed will, in practice, become an additional layer of bureaucracy impairing efficiency, accountability and increasing costs, rather than delivering the implied benefits or advantages.

5. Challenges

The current separate state and territory arrangements governing the registration of individual registered health professionals impair the management of complaints about the conduct of individual registered health professionals.

The following issues that have arisen in the 17 months since HCSCC SA commenced operation illustrate some of the challenges:

5.1 Information sharing and tracking among different jurisdictions - complaints, investigations, suspensions/restrictions/conditions on practice or registration, and the outcome of investigations about individual registered health professionals.

5.2 Codes, standards and guidelines - the lack of consistent or common Codes of Practice, and other Board standards and guidelines is inefficient. Separate jurisdictions, each with their own Code, standards and guidelines is a wasteful duplication of effort and resources.

5.3 Procedural fairness - the lack of consistent or common policies and procedures to ensure that procedural fairness is afforded to complainants, and to individual registered health professionals, including variable statutory and other timelines for the investigation of complaints, and the notification of outcomes.

5.4 Transparency and accountability - the lack of consistent or common policies and procedures governing transparency and accountability for complaint investigation, outcomes of investigations and action to minimise recurrence impairs public confidence in registration authorities.

It is not clear from the current proposal how the proposed scheme would meet these challenges.

6. International Best Practice - health professional accreditation, registration & regulation

Any subsequent proposal would be strengthened by information about contemporary best practices approaches to health professional accreditation, registration and regulation in comparable countries.

The challenges of

- i. improving safety and quality of health services provided by individual registered health professionals
- ii. improving the consistency and quality of the investigation of complaints about individual registered health professionals
- iii. improving transparency and accountability for complaint investigation and follow up action concerning individual registered health professionals; and
- iv. ensuring action to minimise the recurrence of avoidable harm due to impairment, unfitness to practice or unprofessional conduct of individual registered health professionals

are not unique to Australia.

Australian proposals to better meet these challenges should be informed by best practice developments in other countries.



Leena Sudano
Health & Community Services Complaints Commissioner SA
14 March 2007

Attachment 2

Health & Community Services Complaints Act 2004 –
Part 7 section 57(5)
Protocol with _____ Registration Board of SA

The aim of this protocol is to provide guidance to HCSCC and registration authorities to meet the requirements of Part 7 of the Health & Community Services Complaint Act 2004 (H&CSC Act). The protocol does not address all of the provisions of Part 7 of the H&CSC Act.

1. Complaints to HCSCC about an individual registered service provider

- a. HCSCC will assess and deal with the complaint according to the H&CSC Act.
- b. HCSCC will consult with the Board on receipt of a complaint, or during preliminary inquiries, if the complaint appears to reveal a significant issue of public safety, interest or importance and/or a significant question as to the practice of an individual registered service provider such as:
 - o incapacity - physical/mental/drug affected
 - o competence - serious adverse outcome(s), serious clinical error/judgement; multiple complaints of a similar nature
 - o conduct - serious physical/verbal/sexual violations, fraud
 - o ethics - bias, dishonesty, financial gain, discrimination, referral practices.
- c. HCSCC will have regard to the applicable Code of Professional Conduct, or equivalent and other Board policies and guidelines applicable to a complaint when considering if the complaint requires consultation with the Board.
- d. If HCSCC and the Board agree that the complaint should be referred to the Board:
 - i. HCSCC will provide all relevant documents to the Board within 3 working days of the decision
 - ii. HCSCC will notify the complainant and the individual registered service provider in writing within 14 working days of the decision to refer the complaint to the Board
 - iii. HCSCC may split the complaint under section 32 of the H&CSC Act to address other aspects of the complaint.
- e. When a complaint has been referred to the Board, the Board must provide HCSCC with details of its findings and any action taken or proposed. The Board will provide these details to the HCSCC in a monthly report.

2. If the Board receives a complaint that is covered by sections 24 and 25 (1) of the H&CSC Act:

- a. The Board will investigate complaints it receives about an individual provider that are of a serious nature and do not reveal systemic issues. The Board will notify HCSCC of these matters in a monthly report.
- b. When the Board investigates a complaint about an individual registered provider, HCSCC may split the complaint under section 32 of the H&CSC Act to address other aspects of the complaint.
- c. When the Board receives a less serious complaint or one that involves systemic issues, the Board will consult with HCSCC within 10 working days to decide who will deal with the complaint.

When requested, the Board will provide HCSCC with all relevant details of the complaint, including all related documentation to assist with consultation and/or when HCSCC accepts the complaint.

- d. If HCSCC agrees to accept a referral from the Board:
 - i. The Board will provide all relevant documents to the HCSCC within 3 working days of the decision
 - ii. The Board will notify the complainant and the individual registered service provider in writing within 14 working days of the decision to refer the complaint to HCSCC
 - iii. HCSCC will consult with the Board if the inquiry process reveals a significant issue of public safety, interest or importance and/or a significant question as to the practice of an individual registered service provider such as:
 - o incapacity - physical/mental/drug affected
 - o competence - serious adverse outcome(s), serious clinical error/judgement; multiple complaints of a similar nature
 - o conduct - serious physical/verbal/sexual violations, fraud
 - o ethics - bias, dishonesty, financial gain, discrimination, referral practices.
3. HCSCC must comply with the Board's request for a report on the progress or result of an investigation that involves an individual registered service provider.
 4. If HCSCC or the Board disagree on any aspect of consultation, referral or handling of a complaint refer to s 57 (3) and s 60 (4) of the H&CSC Act.