



Medical Board of Queensland

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Our ref:

Your ref:

21 November 2008

Ms Bronwyn Nardi
Chair
Practitioner Regulation Subcommittee
of the Health Workforce Principal Committee

Proposed Arrangements for Handling Complaints and Dealing with Performance, Health and Conduct Matters

Attention: Practitioner Regulation Subcommittee

Dear Ms Nardi

The Medical Board of Queensland is pleased to have the opportunity to make a submission on the National Registration and Accreditation Scheme for the Health Professions consultation paper on Proposed Arrangements for Handling Complaints and Dealing with Performance, Health and Conduct Matters.

After consideration of the Proposed Arrangements for Handling Complaints and Dealing with Performance, Health and Conduct Matters the Board tenders the attached submission.

Should you require clarification of any of the attached comments, please do not hesitate to contact me on (07) 3405 4009.

Yours sincerely

Duncan Hill
Manager, Policy Coordination and Review Services

Medical Board of Queensland Submission

National Registration and Accreditation Scheme for the Health Professions

Proposed Arrangements for Handling Complaints and Dealing with Performance, Health and Conduct Matters

Introduction

The Medical Board welcomes the opportunity to provide feedback on many of the proposals and options outlined within this consultation paper. The structure of the system is generally sound.

The key issues being addressed in this submission include:

- (a) Size, relevant expertise and composition of panels
- (b) Definitional issues (Terminology)
- (c) Clarity of the HCC relationship for consumers
- (d) Delegations
- (e) Doctor's Health Programs – how are they established and assessed
- (f) Achieving separation of functions

Delegations

This consultation paper does not refer to or mention what powers could be delegated to staff. The power to delegate certain decisions to appropriate staff or other persons (Committee Chairpersons) is therefore suggested. Such delegations in Queensland have improved efficiency and timeliness.

To assist in the development of delegation powers the Board attaches the Office of the Medical Board Delegations Manual for the *Health Practitioners (Professional Standards) Act 1999*.

2. Proposed Terminology

To include the following terminology – Conditions & Undertakings

Issue 1

The consultation paper refers in a number of places to “requiring the practitioner to give an enforceable undertaking to the board, which might include, for example, the placement of conditions on registration.”

Generally, an **undertaking** is mutually agreed between a board and a registrant and is entered into willingly by the registrant.

A **condition** is usually a restriction on a practitioner's registration that the board decides is necessary to ensure safe practice and does not involve negotiation with the practitioner.

This Board's interpretation of conditions and undertakings is that in substance they achieve the same purpose and are equally enforceable. Breaching either a condition or undertaking is (and should be) a ground for disciplinary action.

Recommendation:

That the national legislation only make provision for “conditions” to be placed on registration, as there is no tangible difference between undertakings and conditions. However this should not prohibit a board and a practitioner agreeing on the appropriate conditions. This will also clarify the difference, or lack of, between conditions and undertaking to the public and the profession.

Issue 2

It is unclear from the consultation paper whether the existence and details of conditions/undertakings are to be made public. In certain cases conditions/undertakings are in place, but the details of the conditions/undertakings are not publicly available. In general this allows the public to make informed choices about a practitioner before proceeding with treatment and allows employers to be aware of any restrictions on an employee's registration. However, it is acknowledged that in certain cases, eg. health impairment matters, it is not appropriate to have full details of a doctor's conditions/undertakings available to the public.

Recommendation:

That a Board should have the discretion to decide whether it is in the public interest for full details of the conditions to be placed on the public register.

2.1.1 Notification – *This term is proposed to be used in legislation instead of 'complaint' to describe a matter referred to a board about a registered practitioner, because it encompasses matters referred from a range of sources, not just from clients or patients of the registrant. It also covers self referrals and referrals from colleagues, employers, Medicare, the Professional Services Review scheme, Department of Immigration and Citizenship (DIAC), etc. The terms 'notification' and 'notifier' also reflect the fact that matters may not always come to the board in the form of a complaint from a consumer.*

If the term 'notification' is adopted, then a definition will be required in the legislation to make clear that it encompasses consumer complaints. Using the term 'notification' for the purposes of legislation does not preclude the Agency and the boards from using every day language in their dealings with consumers, for example, having information on the website for consumers on 'how to make a complaint'.

Alternative options: *Alternative legislative terms for consideration are 'complaint' and 'complainant', or 'report' and 'reporter'*

Recommendations:

Use of the term "notification" is supported as it covers the wide range of information that will be received by boards.

The alternate options of "complaint" or "report" are not supported as they suggest an adversarial type system, when in fact health and performance matters are not managed in that manner.

2.1.2 Preliminary Assessment - *This term is proposed to be used to describe the action taken by a board (or a committee of the board) when a matter comes to its attention, in order to determine how it can be best dealt with, whether via a performance, health or disciplinary process. Note: It is proposed there be flexibility to move between the performance, health and disciplinary streams as the circumstances dictate.*

Alternative options: *Alternative terms for consideration (used in some Acts) are 'investigation' or 'preliminary investigation'.*

Recommendation:

"Preliminary assessment" or "assessment" is supported as it accurately describes the first stage of the process. The use of the term "investigation" at this stage of the process is not supported, as the assessment process will then direct the notification to the appropriate channel. – performance, health or discipline.

2.1.8 Health management committee – *This term is proposed to be used to describe a committee that may be appointed by a responsible board to oversee the management of practitioners whose performance may be unsatisfactory.*

Recommendation:

A Health Management Committee should be a committee appointed by a responsible board to oversee the management of practitioners (**omit** - whose performance may be unsatisfactory) **insert** - who suffer from a physical or mental condition or use of alcohol or other drugs that may impair their ability to practice safely.

2.1.15 Not of good character – *This term is proposed to be used to describe a registrant who is not considered suitable to practise because of a defect in their character.*

Alternative option: *Alternative terminology for consideration (used in some Acts) is ‘not a fit and proper person’.*

Recommendation:

“Not of Good Character” is not supported as it does not best describe the scope of assessment undertaken. The terms “Fitness to Practice” or “fit and proper” are preferable as they provide a more comprehensive and modern label for the considerations that are required to determine whether an applicant is suitable to practice.

2.1.17 ‘Unsatisfactory professional performance’ *means professional performance that demonstrates that the knowledge, skill or judgement possessed, or care exercised by the practitioner is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience.*

Issue

The definition for “unsatisfactory professional performance” sets the threshold too high, in that the knowledge, skill or judgement possessed, or care exercised by the practitioner that is **significantly** below the standard reasonably expected. It would be contrary to the interests of protecting the safety of the public if a practitioner could argue that a board was not empowered to examine or deal with their performance because it was below the standard reasonably expected but not “significantly” below the standard reasonably expected.

Recommendation:

It is therefore proposed that the definition of “unsatisfactory professional performance” should be professional performance that demonstrates that the knowledge, skill or judgement possessed, or care exercised by the practitioner is below the standard reasonably expected of a practitioner of an equivalent level of training or experience.

2.1.18 Unsatisfactory professional conduct – *This term is proposed to be used to describe conduct that is less serious and unlikely to result in suspension or cancellation of a practitioner’s registration, and therefore does not require referral to an external tribunal for hearing. (Attachment 1 sets out proposed definition.)*

Alternative Option: *An alternative term for consideration (used in some Acts) is ‘unprofessional conduct’.*

2.1.19 Professional misconduct – *This term is proposed to be used to describe conduct that is so serious that if the allegations are proven, might warrant suspension or cancellation of the practitioner’s registration, and therefore requires the board to refer the matter for hearing by the responsible tribunal. See Attachment 1 for proposed definition.*

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.

Issue

It appears that the distinction intended is that “unsatisfactory professional conduct” is to be dealt with by a board, committee or panel and that “professional misconduct” is to be dealt with by the responsible tribunal.

There should be just one definition by which practitioners’ conduct is judged, “unsatisfactory professional conduct”, and the board/committee/panel should be required to consider the seriousness of the matter in deciding how to deal with it. That is, a board should be required to refer a matter to the responsible tribunal if, in the circumstances of the particular case, the unsatisfactory professional conduct is so serious that if proven, it might warrant suspension or cancellation of the practitioner’s registration. Less serious matters should be referred to a board, committee or panel.

Recommendation:

The Board supports use of the term “unsatisfactory professional conduct” but considers the additional definition of “professional misconduct” is confusing and superfluous.

Recommendation:

It is recommended that the definition of “professional misconduct” is removed.

3.1 Overview of proposed system - *The notifications management system also has a number of secondary but important objectives. These include maintenance of public confidence in the health system as a whole, ensuring that competent and ethical practitioners can operate within the health care system and resolving patient grievances in a manner that is satisfactory to those patients. (Page 10 of the consultation paper third paragraph refers).*

Issue

It is not, nor should it be, the board’s role to resolve patient grievances. The national board’s role should be to maintain standards of the profession, with the relevant HCC or Court to resolve patient grievances.

Recommendation:

It is recommended that any reference to resolution of patient grievances as part of the national registration and accreditation be removed.

4.3.1 What sort of matter may be the subject of a notification - 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.

Recommendation:

The scope of the grounds for which a notification can be made are appropriate. However the following suggestions are made to the descriptions:

- the registrant's capacity to practise is affected because of:
 - physical or mental impairment, or
 - **use** of alcohol or other drugs.

This change is suggested because any use of alcohol or drugs in certain circumstances risks patient safety. The threshold of habitual misuse as grounds of a complaint is very high and difficult to prove.

- the registrant lacks the competence to practice because of insufficient knowledge **or** skill, including communication skills (such as competency in the English language),

A person should be able to make a complaint if a registrant lacks competence in knowledge or (not and) skill. Without removing the "and" it may prevent a valid notification about practitioner who, for example, had excellent knowledge about how to undertake the surgery but had poor skills in actually performing it.

- The registrant is not of good character

Please refer to response to proposal 2.1.15 about the use of "not of good character".

4.4 Mandatory Reporting - 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.

Recommendations:

The Board does not oppose the inclusion of provisions relating to mandatory reporting; however it does have reservations that such provisions will contribute significantly to achieving the principal policy objectives of the Act.

Furthermore mandatory reporting could have unintended consequences which reduce the effectiveness of the legislative scheme, for example impaired registrants may not seek help/advice from their treating practitioner for fear of being reported to the board.

For mandatory reporting to be effective it needs to have a simple definition with clear thresholds. A reporting framework such as the following is suggested:

- If, in the practice of the profession, a registrant (the first registrant) becomes aware, or reasonably suspects, that another registrant (the second registrant) has engaged in reportable misconduct, the first registrant must make a notification to the board.
 - **Reportable misconduct** means conduct, including sexual misconduct, by a registrant in the practise of the profession causing, or that is likely to cause, harm to a person receiving professional services from the registrant.
 - **Harm**, to a person, means any detrimental effect of a significant nature on the person's physical, psychological or emotional wellbeing.

Mandatory Reporting is also unlikely to be effective unless employers are also required to report. It should be noted that if an employer is a health practitioner then they would be required to report under the above requirements. It is therefore proposed that the legislation require an employer, who is not a health practitioner, to report to the board when a practitioner in their employment has their employment terminated or clinical privileges cancelled or suspended and on what grounds such action was taken.

An added benefit of such a provision is that it will allow the board to take appropriate action in the circumstances of a health practitioner whose employment is terminated at one location for disciplinary matters but continues to work at an unrelated second location, potentially at risk to the public.

Student registrants and mandatory reporting

Placing a mandatory reporting obligation on the universities is supported in lieu of registering medical students. By having a mandatory reporting obligation and the associated protections given to the universities the boards would have more information at the time of considering the registration applications of graduates, including concerns about their health or conduct which might otherwise not have been identified. However it is impracticable and unnecessary to impose a mandatory reporting regime on medical students for clinical performance issues. Students do not have any clinical responsibility for the patient and variances in levels of clinical performance are to be expected during their period of learning.

4.5.1 Protection for notifiers and registrants - *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.*

Recommendation:

Protection for notifiers and registrants is critical for an effective complaints and investigation scheme. In the Board's experience, complainants and notifiers are reassured by the existence of section 387 of the Health Practitioners Professional Standards Act 1999 which provides a broad protection against civil, criminal or administrative liability.

"387 Protection for person making complaint or otherwise giving information"

- (1) *This section applies to a person who, honestly and on reasonable grounds, gives information to a relevant entity:*
 - (a) *for the purpose of making a complaint relating to a registrant; or*
 - (b) *in the course of an investigation; or*
 - (c) *for another purpose under this Act.*
- (2) *The person is not liable, civilly, criminally or under an administrative process, for giving the information.*
- (3) *Without limiting subsection (2):*
 - (a) *in a proceeding for defamation the person has a defence of absolute privilege for publishing the information; and*
 - (b) *if the person would otherwise be required to maintain confidentiality about the given information under an Act, oath, rule of law or practice, the person:*
 - (i) *does not contravene the Act, oath, rule of law or practice by giving the information; and*
 - (ii) *is not liable to disciplinary action for giving the information.*
- (4) *In this section **relevant entity** means 1 of the following:*
 - (a) *a board;*
 - (b) *a panel;*
 - (c) *the tribunal;*
 - (d) *an investigator;*
 - (e) *an investigation committee;*
 - (f) *a disciplinary committee;*
 - (g) *a health assessment committee;*
 - (h) *an inspector.*

4.7.1 Immediate suspension powers - *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.*

Recommendations:

The power to impose or suspend or impose conditions in circumstances where the board believes a registrant poses a risk to the community is necessary for the board to achieve its functions. Therefore this proposal is supported.

However, this proposal only seeks to empower a board to suspend a registrant. A board should also have the ability to impose conditions on a registration if such conditions are the least onerous means of protecting the public. For example, if a surgeon who has had significant and ongoing complications from a particular surgical procedure could have conditions imposed which prohibits that surgeon from undertaking that procedure rather than wholly suspending his or her registration.

In circumstances that the board believes warrants the use of these powers, no time limit should be stated other than the time until the investigation and relevant disciplinary actions have been undertaken. This would also be balanced by a registrant's ability to appeal such a suspension/condition to a relevant tribunal (the condition or suspension would continue while the matter is heard at the tribunal).

Placing a requirement on the board to revisit its decision every 6 or 12 months is unnecessarily bureaucratic as the suspension or conditions could not be lifted until the board is satisfied they no longer pose a risk. This would be achieved via a thorough investigation which might take more or less time depending on the circumstances. If this provision is solely to allow the board to lift the suspension or conditions after 6 or 12 months if they are no longer required, a simpler method would be to allow the board to do so when it is satisfied the registrant no longer poses a risk to the public.

5. Preliminary assessment of notifications - *For a Notification Assessment Committee to undertake its functions appropriately, the legislation will need to allow the board to seek relevant information before making a decision to accept or refuse the notification. For example, if a notification is received from a person or entity that was not a patient, information may be needed from the patient before making a decision.*

Recommendation:

It is not suggested that these powers to seek information be the same as those during investigation (for example, warrant powers are not proposed) but simply allow for flexibility to seek some information if deemed necessary.

5.2.1 Grounds for a board to refuse to deal with a notification - *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.

Recommendation:

Further consideration needs to be considered as to the grounds for which a board may refuse to deal with a notification.

It has been the Board's experience that other entities also investigate matters involving health practitioners and that the board may also receive numerous notifications about the one incident. It is therefore suggested that in circumstances where the subject matter of the complaint has already been dealt with adequately by the board or another appropriate entity the board have the ability to refuse to investigate the notification.

5.4.1 Who conducts the preliminary assessment of a notification - *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.*

Recommendation:

Without further information being provided about eligibility criteria and term length, the composition of the Notification Assessment Committees from a list of persons who have been approved by the Ministerial Council raises significant concern of the profession. The concerns are that committee members may not have sufficient professional expertise to appropriately consider the notifications. If this is the case notifications may not be progressed in appropriate instances which may result in the public not being adequately protected. Alternatively, the committees might decide to investigate frivolous or minor matters which would impose a greater strain on investigation resources, thus resulting in longer investigation times and delayed responses to the notifier.

In the experience of members of the equivalent committee of the Medical Board of Queensland a significant amount of time is spent reading the notification material. It is therefore suggested that allowances be made for committee members to be paid for this preparation time.

5.5.1 Powers following preliminary assessment of a notification - It is proposed that, following preliminary assessment of a notification, the board or a notifications assessment committee would be empowered, to take one or a number of the following actions:

- decide that the matter is a performance management matter and, where appropriate, refer the matter to a performance management committee or directly seek a performance assessment (performance matters)
- decide that the matter is a health management matter and, where appropriate, refer the matter to a health management committee or directly seek a health assessment (impairment matters)
- decide that the matter is a conduct management matter and, where appropriate, refer the matter to a conduct management committee or directly authorise investigation (disciplinary matters)
- refer the matter to the responsible State or Territory tribunal for hearing (professional misconduct matters)
- refer the matter for investigation or prosecution by another body (such as for example, the police or Medicare Australia)
- require the practitioner to give an enforceable undertaking to the board, which might include, for example, the placement of conditions on registration
- immediately suspend the practitioner's registration pending investigation and hearing
- refer the matter, or part of the matter to the responsible HCC for conciliation, and
- take no further action.

Recommendation:

The nine actions that can be taken after preliminary assessment by the Notification Assessment Committee are appropriate, with an amendment to the terminology concerning conditions/undertakings as previously proposed in this paper.

5.5.2 Powers following preliminary assessment of a notification - It is proposed that the legislation require a board (or committee of the board) to refer a matter to the responsible tribunal for hearing if the board or committee forms the view that:

- the practitioner is not of good character, or
- the practitioner may have engaged in professional misconduct, or
- the practitioner's capacity to practise is affected to such an extent that cancellation of registration may be warranted (health matters).

Recommendation:

As discussed, previously the Board's preferred approach is to have only one definition of "unsatisfactory professional conduct" and that a board or Notification Assessment Committee would be able to refer matters to the responsible tribunal in circumstances where a practitioner has engaged in "unsatisfactory professional conduct" and the board or committee believes that the matter may warrant suspension or cancellation of the practitioner's registration.

5.6 Notifiers' rights of review of preliminary assessment decisions - 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.

Recommendation:

Option 2 is appropriate for both conduct and performance matters but not health matters. The notifier of a health matter should not be given the right to review this decision because a board must be able to keep information about a registrant's health assessment confidential and a review process would compromise this.

6.2.1 Performance management - It is proposed that the role of the board or a performance management committee be to oversee the assessment and management of registrants whose performance may be unsatisfactory. A board or a performance management committee would have the power to appoint an assessor or assessors to undertake a performance assessment of the practitioner. Following completion of the performance assessment and receipt and consideration of the report of the assessor, the board or the committee would decide whether a formal performance panel hearing is required, or what other action is necessary to address the performance issues identified (if any).

Recommendations:

Assessors appointed for the purpose of undertaking performance assessments (or in health/conduct matters) need to have legislative protection from liability. In Queensland section 386A of the Health Practitioners (Professional Standards) Act 1999 is effective and comprehensive.

“386A Protection of officials from liability”

- (1) An official is not civilly liable for an act done or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to:
 - (a) for an official who is a member of a board, the board of which the official is a member; or
 - (b) for an official who is a member of a health assessment committee or who is asked to prepare an assessment report or expert's report, the board that appointed the official or asked the official to prepare a report; or
 - (c) for an official who is an investigator or inspector, the board that appointed the official; or
 - (d) for an official who is a person acting under the direction or authority of an investigator, the board that appointed the investigator; or
 - (e) for an official who is the executive officer, the board on whose behalf the official is acting.
- (3) In this section **official** means:
 - (a) a member of a board, other than when the member is performing the member's duties in carrying out disciplinary proceedings; or
 - (b) a member of a health assessment committee; or
 - (c) a person who is asked by a board to prepare an assessment report or an expert's report; or
 - (d) an investigator; or
 - (e) an inspector; or
 - (f) a person acting under the direction or authority of an investigator; or
 - (g) the executive officer.

6.2.2 Performance management - *It is proposed that a board or a performance management committee have powers, following receipt of a performance assessment report to:*

- *request the practitioner to undertake further education and/or supervised practice*
- *counsel the practitioner*
- *request the practitioner give an undertaking to the board, which might include, for example, the placement of conditions on registration*
- *refer the matter for hearing by a performance panel (performance matters)*
- *refer the matter to be handled as a health management matter (impairment matters)*
- *refer the matter to be handled as a conduct management matter for investigation (disciplinary matters)*
- *refer the matter, or part of the matter to the responsible HCC for conciliation, and*
- *take no further action.*

Recommendations:

The Board refers again to its previous comments regarding the terminology around conditions/undertakings.

Also a board or performance management committee should have the ability to take multiple actions. This is not expressed in the proposal and should be stated to remove doubt. Such ability would enable a board or committee to counsel a registrant about their performance and to impose conditions to rectify the area of concern and protect the public.

6.4.1 Performance panel hearings - *It is proposed that following referral of a matter for consideration as a performance matter, the legislation provide:*

- *for the committee (or the board) to appoint, if it considers necessary, a performance panel, to hear a matter relating to the professional performance of a registrant with that panel to contain no members of the board or committee referring the matter to the panel*
- *that a panel must:*
 - *have at least one registrant member from the same profession as the practitioner*
 - *have at least one member who is not and has never been a registrant in a regulated health profession, and*
 - *have no more than half of the members being registrants from the profession concerned*
- *for notice of the hearing to be issued to the registrant*
- *for a panel to set its own procedure, be required to observe the principles of natural justice, but not to be bound by the rules of evidence*
- *for a panel to be empowered to consider, amongst other things the report/s of performance assessment, and*
- *for a panel to be required to refer the matter to the responsible tribunal for hearing if the practitioner requests, or if, at any time, the panel identifies a pattern of poor performance sufficiently serious to warrant suspension or cancellation of the practitioner's registration.*

Recommendations:

It is essential that Panels convened for the purposes of performance matters have sufficient members of appropriate expertise, e.g. specialist surgeons for surgical matters. Therefore, the Board considers it would be more appropriate that no more than two-thirds (rather than half) of the members should be registrants from the professional concern.

Also the requirement that the one member of the panel, who is not and has never been a registrant in a regulated health profession, should be modified to require it be a legal member. This would not prohibit the inclusion of other non-members of the profession on the panel, but would ensure that a panel contains the relevant expertise to assist with evidentiary requirements and the drafting of decisions.

A Panel conducting a hearing should be empowered to consider any and all previous information available concerning the practitioner, including any previous performance, health or conduct matters. This will ensure that a practitioner's full circumstances and history are appropriately integrated and any patterns of practice can be identified.

6.5.1 Decisions available to performance panel following a hearing - *It is proposed that, following a hearing, a performance panel be empowered to take the following actions:*

- *require the practitioner to undertake further education and/or supervised practice*
- *counsel the practitioner*
- *require the practitioner to give an undertaking to the board*
- *place conditions on the practitioner's registration*
- *refer the matter to the board or health management committee for health assessment (impairment matters)*
- *refer the matter to the board or conduct management committee for investigation (disciplinary matters)*
- *refer the matter, or part of the matter to the responsible HCC for conciliation*
- *refer the matter an external body (for example, the police, Medicare, State or Territory drugs and poisons units) for investigation, and*
- *take no further action.*

Recommendation:

The Board refers again to its previous comments regarding the terminology around conditions/undertakings.

6.5.2 Decisions available to performance panel following a hearing - *It is proposed that the legislation provide for a panel to consider reports from any previous performance assessments and where the panel considers the evidence demonstrates a pattern of poor performance sufficiently serious to warrant suspension or cancellation of registration, require the panel to refer the matter for hearing by the responsible State or Territory tribunal.*

Recommendation:

As discussed above, a panel should be able to take into consideration all matters previously notified, investigated or where disciplinary or action has been taken, regardless of whether they are performance health or conduct matters.

The history of a registrant is critical in a panel's consideration as to the appropriate action to be taken, including whether a registrant's actions warrant suspension or cancellation and therefore referral to a responsible tribunal.

6.5.3 Decisions available to performance panel following a hearing - *It is proposed that the legislation make provision for a panel to be required to give reasons for its decision to the practitioner and the notifier, within 28 days.*

Recommendation:

The requirement of providing the practitioner and notifier of the reasons for the panel's decision after 28 days is a reasonable timeframe. However what is not specified in the proposal is when the decision to impose conditions, for example, takes effect. Such a requirement should be as soon as possible.

7.1.1 Overview of management of health related matters - *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.*

Recommendations:

As previously mentioned in the response to proposal 4.3.1, the Board suggests a change to the definition for those practitioners with health matters.

The definition should be practitioners who have a health condition, or whose use of alcohol or other drugs, is compromising or may compromise their capacity to practise.

7.2.2 Health management - *It is proposed that a board or a health management committee have powers, following receipt of a health assessment report, to:*

- *request the practitioner to undertake further education and/or supervised practice*
- *counsel the practitioner*
- *request the practitioner to give an undertaking to the board, which might include, for example, the placement of conditions on registration*
- *refer the matter for hearing by a health panel for hearing (health matters)*
- *refer the matter to be handled as a performance management matter for performance assessment (performance matters)*
- *refer the matter to be handled as a conduct management matter for investigation (disciplinary matters)*
- *refer the matter, or part of the matter to the responsible HCC for conciliation*
- *refer the matter to an external body (for example, the police, Medicare, State or Territory drugs and poisons units) for investigation, or*
- *take no further action.*

Recommendation:

Please refer to the response to proposal 6.2.2.

7.3.3 Health assessments - *It is proposed that the legislation would provide for circumstances where a report of a health assessment contains information of a medical or psychiatric nature which the committee considers, if disclosed to the practitioner, might be prejudicial to their physical or mental health or wellbeing. In such cases, the board or committee would be empowered to decide not to give the report directly to the practitioner, but rather, to give it to a registered practitioner nominated by the health practitioner.*

Recommendation:

The ability to provide the health assessment results to an independent health practitioner is appropriate to the effective management of impaired practitioners. However it is likely to be inappropriate for an impaired registrant to nominate a relative or friend, rather than a treating practitioner, to receive the report and it suggested that the nominated registered health practitioner be agreed to by the impaired registrant and the board.

7.4.1 Health panel hearings - *It is proposed that following a decision to handle a matter as a health management matter, the legislation provide:*

- *for the board or committee to appoint, if it considers necessary, a panel and refer to it for hearing a matter relating to the capacity of the registrant to practise with that panel to contain no members of the board or committee referring the matter to the panel*
- *that a panel must have:*
 - *at least one registrant member from the same profession as the practitioner*
 - *a member who is a registered medical practitioner with relevant expertise*
 - *at least one member who is not and has never been a registrant in a regulated health profession, and*
 - *have no more than half of the members being registrants from the profession concerned (excluding the registered medical practitioner with relevant expertise in the case of a medical registrant)*
- *for notice of the hearing to be issued to the registrant*
- *for a panel to set its own procedure, be required to observe the principles of natural justice, but not to be bound by the rules of evidence*
- *for a panel to be empowered to consider a report of the board or health management committee including the results of health assessments, and*
- *for a panel to be required to refer the matter, at any time, to the responsible tribunal for hearing if the practitioner requests, or if the panel forms the view that the practitioner's capacity to practise is affected to such an extent by physical or mental impairment or habitual use of alcohol or other drugs, that suspension or cancellation of the practitioner's registration may be warranted.*

Recommendation:

Please refer to the response to proposal 6.4.1 as the comments made about the composition of the Performance Panel are also relevant for a Health Panel.

7.5.1 Decisions available to a health panel following a hearing - *It is proposed that, following a hearing, a health panel have the power, to take the following actions:*

- *require the practitioner to undertake treatment and/or supervised practice*
- *counsel the practitioner*
- *require the practitioner to give an undertaking to the board*
- *place conditions on the practitioner's registration*
- *refer the matter to be handled as a performance management matter (performance matters)*
- *refer the matter to be handled as a conduct management matter for investigation (disciplinary matters)*
- *refer the matter, or part of the matter to the responsible HCC for conciliation*
- *refer the matter for investigation by an external body, or*
- *take no further action.*

Recommendation:

Please refer to the response to proposal 6.5.1 as the comments made about actions available to a Performance Panel are also relevant for the Health Panel.

7.5.2 Decisions available to a health panel following a hearing - *It is proposed that the legislation provide for a panel to consider reports from any previous performance assessments and where the panel considers the evidence demonstrates a pattern of poor performance sufficiently serious to warrant suspension or cancellation of registration, require the panel to refer the matter for hearing by the responsible State or Territory tribunal.*

Recommendation:

Please refer to the response to proposal 6.5.2 as the comments made about the information available to a Performance Panel are also relevant for the Health Panel.

8.3.5 Timelines for the conduct of investigations - 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.

Recommendation:

A requirement to provide progress reports to a notifier and the registrant is not supported as a legislative requirement but would be more appropriately managed by policies and procedures implemented by the board. Flexibility in considering the appropriate level of disclosure for each investigation on a case-by-case basis is essential to protect the integrity of investigations and ensure that evidence and witnesses are not compromised.

A fast, fair and thorough investigation is the goal for all investigations but adding a requirement to keep the notifier and registrant informed could compromise the investigation. The issues such progress reports will present are:

- What information is to be provided?
- Do the notifier and registrant receive the same update?
- How will these updates affect a Judicial Review or other appeal process?

8.4.2 Powers of investigators – search, entry, seizure - 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.

Recommendation:

This proposal should be consistent with proposal 8.4.1 and allow investigators to enter **and search** premises.

8.5.1 Conduct panel hearings - *It is proposed that following referral of a matter to a conduct management committee, the legislation provide:*

- for the board or committee to appoint, if it considers necessary, a panel and refer to it for hearing a matter relating to the professional conduct of the registrant with that panel to contain no members of the board or committee referring the matter to the panel
- that a panel must:
 - have at least one registrant member from the same profession as the practitioner
 - have at least one member who is not and has never been a registrant in a regulated health profession, and
 - have no more than half of the members being registrants from the profession concerned
- for notice of the hearing to be issued to the registrant
- for a panel to set its own procedure, be required to observe the principles of natural justice, but not to be bound by the rules of evidence
- for a panel to be empowered to consider the report of the conduct management committee including the results of any investigations, and
- for a panel to be required to refer the matter to the responsible tribunal for hearing if the practitioner requests, or if the panel forms the view that the practitioner's capacity to practise is affected to such an extent by physical or mental impairment or habitual use of alcohol or other drugs, that suspension or cancellation of the practitioner's registration may be warranted.

Recommendation:

Please refer to the response to proposal 6.4.1.

8.6.1 Decisions available to a conduct panel following a hearing - *It is proposed that, following a hearing, a panel have the power to take the following actions:*

- require the practitioner to undertake further education, supervised practice or alter the way they practise
- caution the practitioner
- reprimand the practitioner
- counsel the practitioner
- require the practitioner to give an undertaking to the board
- place conditions on the practitioner's registration
- refer the matter to be handled as a performance management matter (performance matters)
- refer the matter to be handled as a health management matter (health matters)
- refer the matter, or part of the matter to the responsible HCC for conciliation
- refer the matter for investigation by an external body (for example, the police, Medicare, or a State or Territory drugs and poisons unit), or
- take no further action.

Recommendation:

Please refer to the response to proposal 6.5.1 as the comments made about actions available to a Performance Panel are also relevant for the Conduct Panel.

8.6.2 Decisions available to a conduct panel following a hearing - *It is proposed that the legislation provide for a panel to consider, amongst other things, reports from any previous performance assessments and where the panel considers the evidence demonstrates a pattern of poor performance sufficiently serious to warrant suspension or cancellation of registration, require the panel to refer the matter for hearing by the responsible State or Territory tribunal.*

Recommendation:

Please refer to the response to proposal 6.5.2 as the comments made about the information available to a Performance Panel are also relevant for the Conduct Panel.

8.6.3 Decisions available to a conduct panel following a hearing - It is proposed that the legislation make provision for a panel to be required to give reasons for its decision to the practitioner and the notifier, within 28 days.

Recommendation:

Please refer to the response to proposal 6.5.3 as the issue regarding when a decision becomes effective applies equally to Conduct Panel decisions as they do to Performance Panels.

9.1.1 Achieving separation of functions - 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.*

Recommendations:

Creating another entity to assess disciplinary decisions or creating an automatic review process for matters the board seeks to refer to a tribunal is unnecessary and may impose a significant restriction on the board's ability to protect the public.

Reasons why options 2 and 3 are not supported are:

- The board would be prevented from protecting the public or the standards of the profession as it considered appropriate if it sought to refer a matter to the tribunal but the director of proceedings declines to proceed.
- An additional layer of review, whether by a director of proceedings or by an alternative review mechanism, could significantly increase the length of time for an outcome of the investigation
- Increased costs associated with funding such entities or review processes and potential additional legal fees to be incurred by the board during such reviews.

Option 1 supported by appropriate policies and procedures will ensure accountability, transparency and fairness. Those objectives will be further strengthened by the creation of public interest criteria as suggested in Proposal 9.1.2.

9.1.2 Achieving separation of functions - *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.*

Recommendation:

The Board agrees that the public interest is an important consideration in a board's decision to refer a matter to a tribunal. While this proposal states that the criteria should be enshrined in legislation such criteria could be equally, and perhaps over time more effectively, applied through policy approved by the Ministerial Council. This would allow additional flexibility in defining public interest criteria over time without the need to amend legislation.

9.2.1 Matters involving registrants from different professions - *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.*

Recommendations:

While there are certain merits to this proposal in terms of cost, there are likely to be practical limitations, eg. each profession will be investigating a certain aspect of their practitioner's performance and therefore will have different objectives.

This proposal would be better served in clarifying a board's ability to provide material obtained in an investigation about one health practitioner to another board's investigation about a health practitioner in a different profession.

9.3 Legal representation for registrants at panel hearings - *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.*

Option 4b *is preferred.*

Recommendations:

Option 4b is preferred. This option is the most balanced as it provides a registrant and a panel the opportunity to have legal assistance but not representation.

Option 4b also enables the board and the health practitioner to minimise the cost of such proceedings.

9.4.1 Confidentiality of panel hearings - *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.*

Recommendation:

The Board supports this proposal as it should encourage practitioners to have the matter dealt with by the Panel rather than a Tribunal. If panel hearings were to be open to the public, a practitioner is more likely to opt for a tribunal hearing where they would be entitled to legal representation.

9.8 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.*

Recommendation:

Option 1 is the preferred model for the sake of consistency and certainty. Option 2 would be too complex to work efficiently.

10.3.1 Original jurisdiction of tribunal - *It is proposed that with respect to the original jurisdiction of a responsible tribunal, the national legislation specify that the responsible board or the practitioner may make application to the responsible tribunal for a hearing under its original jurisdiction.*

Such provisions should cover circumstances where the board or panel, at any time during an investigation or panel hearing, is required to, or considers it necessary to refer a matter to the tribunal for hearing – where the board forms the view that the practitioner has engaged or may have engaged in professional misconduct, or where suspension or cancellation of registration may be required. It may also cover fraudulent registration and matters which call into question the practitioner’s character.

Alternative option: *The legislation which confers original jurisdiction on a responsible tribunal provide for certain bodies (in addition to the responsible board and the practitioner) to appear before the tribunal and to make submissions. Such bodies might include government and/or the relevant HCC.*

Recommendation:

The proposal is supported as the alternative option is complex, time consuming and likely to result in increased costs.

10.4.1 Review jurisdiction of tribunal - It is proposed that with respect to the tribunal's review jurisdiction, the national legislation specify that a practitioner who is subject to the decision or the responsible board (or a panel or committee of the board) be empowered to make application for a review of a decision.

Alternative option: The legislation which confers review jurisdiction on a responsible tribunal provide for certain bodies (in addition to the responsible board and the practitioner) to appear before the tribunal and to make submissions. Such bodies might include government and/or the relevant HCC.

Recommendation:

The proposal is supported as the alternative option is complex, time consuming and likely to result in increased costs.

10.5.2 Findings and determinations of a tribunal - It is proposed that the responsible board would be empowered to make one or more of the following determinations in such matters:

- require the practitioner undergo counselling
- caution the practitioner
- reprimand the practitioner
- require the practitioner to undertake and complete specified further education or training within a specified period
- impose a fine on the practitioner recoverable by the board (with the maximum fine available to be set by legislation, for example, \$50,000)
- suspend the registration of the practitioner for a specified period
- cancel the registration of the practitioner
- order the practitioner undertake a specified period of supervised practice
- order the practitioner do or refrain from doing something in connection with their practice
- order the practitioner manage their practice in a specified way or subject to specified condition
- order the practitioner to report on their practice to a specified person at specific intervals
- order the practitioner not to employ or engage or recommend a specified person or class of persons
- disqualify the practitioner from applying for registration under the Act for a specified period, if their registration has been cancelled by the tribunal or by an equivalent competent registration authority in another country
- make a prohibition order preventing a practitioner whose registration has been cancelled or suspended from continuing to practise or provide health services, or using specified professional titles or operating a business that provides health services, and/or
- publish the findings of and determinations or orders made with respect to matters heard within the limits of privacy considerations.

Recommendations:

All the actions are appropriate. It should be noted that the Tribunal, similar to the Panel, need the powers make multiple determinations.

It is noted that determinations 8 to 12, as listed, are all types of conditions and could therefore be replaced by "Impose or agree to conditions with the practitioner".

The Tribunal must also have the power to award costs including investigation costs. This would be consistent with the current powers of the Health Practitioners Tribunal in Queensland.

11.6.1 Regulation of advertising - There are a number of options for dealing with advertising offences under the national legislation:

Option 1: *Include no advertising offences in the national legislative scheme. If a registrant engages in questionable advertising, they can be dealt with under a board's general disciplinary powers, and by way of guidance, boards can issue guidelines about what might constitute unacceptable advertising. In addition, a State or Territory may legislate, as NSW has done, to provide additional protections, in public health or other legislation to regulate the advertising of health services generally, rather than simply targeting registered practitioners or the bodies corporate that employ them.*

Option 2: *Include narrowly framed advertising offences in the legislation, which just mirror trade practices/fair trading legislation (that is, false and misleading advertising) and a narrow application, only to registrants, and their employing bodies corporate.*

Option 3: *Include broadly framed advertising offences in legislation, that allow boards to deal with both registrants and bodies corporate who, for example, use testimonials, create an unreasonable expectation of beneficial treatment, or encourage the indiscriminate or unnecessary use of regulated health services.*

Recommendation:

Option 1 under this proposal is the most suitable. It provides a central standard and process for complaints about all professional conduct, including advertising, and allows an entity with experience in the investigation of such breaches to conduct the investigations. At the conclusion of their investigations and where a finding of guilt or fault is made against a health practitioner the board could then take disciplinary action on the registrant.

11.8.3 Other Offences - It is not proposed to include the following types of offences in the national legislation:

- *offences for breach of conditions on registration – instead, it is proposed that the legislation provide for a panel or tribunal to identify 'critical compliance conditions' which, if breached, will allow the responsible board to suspend the practitioner's registration. This is likely to be a much more immediate and effective sanction than prosecuting a registered practitioner through a magistrate's court, or*
- *offences for unregistered persons to issue medical certificates or treat patients with certain types of conditions such as HIV or cancer – instead, these matters can be dealt with in State and Territory public health legislation if a jurisdiction considers it necessary.*

Recommendations:

The breaching of **any** condition is serious, and should be grounds for disciplinary action. It should not be necessary to identify "critical compliance conditions" as any condition imposed on a registrant is critical for the protection of the public as the board would be empowered to suspend a practitioner's registration if their breaching of any condition poses a risk to the public.

11.10.1 Monitoring of registrants - *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.*

Recommendation:

Further clarification is sought in relation to what powers a board would have to monitor registrants' compliance. The Board submits that such powers be equal to that of the board's investigation powers. This would create consistency and enable effective monitoring and compliance of determinations and decisions by the board, panels or the responsible tribunal.



DELEGATIONS MANUAL

FOR THE

HEALTH PRACTITIONERS (PROFESSIONAL STANDARDS) ACT 1999

INTRODUCTION

Pursuant to s.12, *Health Practitioners (Professional Standards) Act 1999* ('the Act'), the Board may delegate (entrust a task or power to an agent) any of its powers under the Act, other than the power to:

- conduct disciplinary proceedings; or
- make a decision at the end of disciplinary proceedings to advise, caution or reprimand a registrant; or
- make a decision to cancel or suspend, or impose conditions on, a registrant's registration or enter into an undertaking with a registrant; or
- order a registrant to attend for a further health assessment; or
- make a decision to end a suspension or remove or change conditions; or
- make a decision to reinstate a registrant's registration.

The Board may delegate its powers to a member of the Board; or the Executive Officer; or with the agreement of the Executive Officer, an appropriately qualified member of the Office's staff.

This Manual has been developed to assist in the efficient and effective discharge of the Board's responsibilities under the Act. The Manual has been approved by the Board and all delegations to Office staff have been agreed to by the Executive Officer.

RESPONSIBILITIES OF THE DELEGATE

Within reporting arrangements, the Professional Standards delegate has the same duties and responsibilities as the Board and is accountable to the Board for:

- Making decisions and taking actions consistent with the delegation.
- Making decisions and taking actions consistent with the objects detailed in s.6 of the Act.
- Acting independently, impartially and in the public interest.
- Declaring any conflict of interest and referring the matter at hand to the Board.
- Exercise delegations consistent with other relevant delegations (e.g. financial delegations).

REQUESTING OR AMENDING A DELEGATION

To facilitate the process of requesting or amending a delegation under the Act, a 'Request for a Professional Standards Delegation (or Amendment)' form is to be completed and approved by the Board. A copy of this form can be obtained from the Office Intranet. Upon approval of a request for, or amendment to, a Professional Standards Delegation, the relevant paperwork is to be forwarded to the Executive Assistant to the Executive Officer who will arrange for the Manual to be updated and for officers to be notified.

<u>Section/Division of Act</u>	<u>Description of Delegation</u>	<u>Delegate</u>
General power re complaints	To assess complaints for recommendation to the Board. ¹	Senior Complaints Assessment Officer ²
	To seek legal advice to inform the assessment process.	Director, Professional Standards Unit ³
Section 50(2) and (3)	To accept a complaint without information outlined in section 50(1) i.e. complainant's name, address and other information relating to identity	Chairperson, Complaints Advisory Committee (or a Committee member in the absence of the Chairperson) Chairperson, Health Assessment and Monitoring Committee (or a Committee member in the absence of the Chairperson)
Section 51	To determine the position under subsection (2) for consultation with the Health Quality and Complaints Commission and to implement the decision reached through consultation.	Chairperson, Complaints Advisory Committee (or a Committee member in the absence of the Chairperson)
	To determine the position on those complaints which the Board is being consulted on pursuant to s.57, <i>Health Quality and Complaints Commission Act 2006</i> and to implement the decision reached through consultation.	
Section 52(4)	Give information, comments and recommendations relating to the complaint and the registrant to the Commission	Senior Complaints Assessment Officer
Section 53	To determine what action to take on a complaint under subsection (2).	Chairperson, Complaints Advisory Committee (or a Committee member in the absence of the Chairperson)
Section 56	To require further information from a complainant.	Senior Complaints Assessment Officer
Section 59	To determine to issue a 'Show Cause' Notice pursuant to this section.	Chairperson, Complaints Advisory Committee (or a Committee member in the absence of the Chairperson) Chairperson, Health Assessment and Monitoring Committee (or a Committee member in the absence of the Chairperson)
Section 60(2)	To record the decision to suspend or impose conditions in the register	Director, Professional Standards Unit Director, Health Assessment and Monitoring Unit ⁴

¹ The recommendation is to be reviewed by the Complaints Advisory Committee of the Board.

² All delegations to the Complaints Assessment Officer are also made to the Director, Professional Standards Unit.

³ All delegations to the Director, Professional Standards Unit are also made to the Executive Officer

⁴ All delegations to the Director, Health Assessment and Monitoring Unit are also made to the Executive Officer

<u>Section/Division of Act</u>	<u>Description of Delegation</u>	<u>Delegate</u>
Section 64(1)(b) and (2)	To direct an investigator to conduct the investigation and to ensure the investigator does not have a personal or professional connection with the registrant to whom the investigation relates that may prejudice the way in which the investigator conducts the investigation.	Director, Professional Standards Unit Principal Complaints Investigations Officer Director, Health Assessment and Monitoring
Section 66	To give notice to a registrant of an investigation	Appointed investigator
General power re investigation	To seek legal advice to inform the investigation process.	Director, Professional Standards Unit Director, Health Assessment and Monitoring Unit
Section 73(c) and (d)	To appoint an investigator.	Executive Officer
Section 75(1)	To give an identity card to an investigator.	Executive Officer
Section 107(1) and (2)	To initiate a health assessment during the course of an investigation.	Chairperson, Complaints Advisory Committee (or a Committee member in the absence of the Chairperson) Chairperson, Health Assessment and Monitoring Committee (or a Committee member in the absence of the Chairperson)
Section 108	Appointment of appropriately qualified person(s) to conduct a health assessment.	Chairperson, Complaints Advisory Committee (or a Committee member in the absence of the Chairperson) Chairperson, Health Assessment and Monitoring Committee (or a Committee member in the absence of the Chairperson)
Section 111	To obtain an expert's report during the course of an investigation.	Director, Professional Standards Unit
General power re disciplinary proceedings	To instruct solicitors in commencing disciplinary proceedings.	Executive Officer Director, Professional Standards Unit Co-ordinator (Disciplinary Proceedings) <u>Director, Health Assessment and Monitoring Unit</u>
	To settle referral notices for Board and Panel level disciplinary proceedings.	Executive Officer
	To settle amendments to referral notices for Tribunal level disciplinary proceedings.	Executive Officer

<u>Section/Division of Act</u>	<u>Description of Delegation</u>	<u>Delegate</u>
	To appoint barrister(s) for Tribunal level disciplinary proceedings.	Executive Officer Director, Professional Standards Unit Director, Health Assessment and Monitoring Unit
	To instruct solicitors and/or barristers in the conduct of Tribunal level disciplinary proceedings, appeals, the settling of sanction details, and in settling cost submissions.	Executive Officer Director, Professional Standards Unit Director, Health Assessment and Monitoring Unit
	To settle notices at completion of Board level disciplinary proceedings.	Executive Officer
	To instruct solicitors in regard to cost assessments and to settle cost payment negotiations where at least 75% of the full costs payable to the Board are to be recouped.	Executive Officer
Section 116 (2) and 116 (5)(b)	To give the Commission reasonable reports about a matter under investigation and to agree to an extended period for Commissioner's comments	Executive Officer Director, Professional Standards Unit
Section 121(2)	To record undertaking made under 118(1)(c)(iv) in register	Director, Professional Standards Unit Director, Health Assessment and Monitoring Unit
Section 129	To deal with another disciplinary matter arising during disciplinary proceedings in those same proceedings	Chairperson of Board/Disciplinary Committee conducting hearing.
Section 142	To appoint a lawyer or other person to assist Board or Committee at the hearing	Coordinator (Disciplinary Proceedings) ⁵ in conjunction with Chairperson of Board/Disciplinary Committee conducting hearing.
Section 143	Require a witness to attend a hearing	Coordinator (Disciplinary Proceedings) in conjunction with Chairperson of Board/Disciplinary Committee conducting hearing.
Section 153(2)(c)	To approve an extension to the period for receipt of a written submission	Coordinator (Disciplinary Proceedings)

⁵ All delegations to the Coordinator (Disciplinary Proceedings) are also made to the Director, Professional Standards Unit

<u>Section/Division of Act</u>	<u>Description of Delegation</u>	<u>Delegate</u>
Section 156	To require registrant or other person to give Board or Committee information for disciplinary proceedings by correspondence.	Coordinator (Disciplinary Proceedings) in conjunction with the Chairperson of Board/Disciplinary Committee conducting proceedings by correspondence.
Section 170	Record decision made under section 165/166 in the register	Director, Professional Standards Unit
Section 261(a) to (f)	To give notice to other entities of the outcomes of disciplinary proceedings and of disciplinary action.	Director, Professional Standards Unit
Section 262	To give notice to other registrants of the outcomes of disciplinary proceedings and of disciplinary action.	Executive Officer
Section 268	Decision to deal with a registrant under Part 7	Chairperson, Health Assessment and Monitoring Committee (or a Committee member in the absence of the Chairperson).
Section 271	Invitation to attend a health assessor	Chairperson, Health Assessment and Monitoring Committee (or a Committee member in the absence of the Chairperson).
Section 272(2)(a) and 276(4)	Referral to a Health Assessment Committee	Chairperson, Health Assessment and Monitoring Committee (or a Committee member in the absence of the Chairperson).
Section 275	Decision regarding impairment	Chairperson, Health Assessment and Monitoring Committee (or a Committee member in the absence of the Chairperson).
Section 276	Decision regarding action if impaired to negotiate undertakings or conduct an investigation	Chairperson, Health Assessment and Monitoring Committee (or a Committee member in the absence of the Chairperson).
Section 277	Decision regarding action if not impaired and there is another ground for disciplinary action to conduct an investigation	Chairperson, Complaints Advisory Committee (in consultation with the Committee).
Section 282(1)(b) and (c); (2) and (3)	Establishment of a Health Assessment Committee	Chairperson, Health Assessment and Monitoring Committee (or a Committee member in the absence of the Chairperson).
General power re impairment proceedings	Change in UDS frequency (reduction or increase)	Chairperson, Health Assessment and Monitoring Committee (or a Committee member in the absence of the Chairperson)

<u>Section/Division of Act</u>	<u>Description of Delegation</u>	<u>Delegate</u>
	<p>Accept explanation for discrepancy in UDS result</p> <p>A return to work after a period of absence where there is no undertaking not to practice</p> <p>Change in the nature or hours of work</p> <p>Frequency of obtaining workplace reports</p> <p>Appoint members of a Health Assessment Committee</p> <p>Approval of supervisor for alcohol-breath testing</p> <p>Reappointment of a Board nominated psychiatrist</p> <p>Decision to obtain a GC-MS</p> <p>Appointment of health assessor</p>	<p>Director, Health Assessment and Monitoring Unit</p>
<p>Section 355</p>	<p>To direct an inspector to conduct the investigation to enforce compliance with the Act. (Does not include the determinative power for initiation of an investigation as this inherent power resides with the Board.)</p>	<p>Director, Professional Standards Unit Principal Complaints Investigations Officer</p>
<p>Section 358(c) and (d)</p>	<p>To appoint an inspector.</p>	<p>Executive Officer</p>
<p>Section 360</p>	<p>To give an identity card to an inspector.</p>	<p>Executive Officer</p>
<p>Section 369(1)</p>	<p>To initiate proceedings by complaint and summons for the prosecution of indictable and summary offences against the Act.</p>	<p>Executive Officer Business Support Services Manager.</p>
<p>Section 384(a) to (f)</p>	<p>To give notice to other entities of immediate action taken pursuant to s.59 and certain outcomes of investigations, health assessments, foreign law actions, reviews and appeals.</p>	<p>Director, Professional Standards Unit Director, Health Assessment and Monitoring Unit</p>

SIGNATORIES FOR DOCUMENTS AND CORRESPONDENCE ISSUED PURSUANT TO THE ACT

Section/Division	Description	Authorised Signatory
Section 48	Rejection of complaint	Director, Professional Standards Unit
Section 51	To 'sign off' complaint consultation forms	Chairperson, Complaints Advisory Committee (or a Committee member in the absence of the Chairperson)
Section 53	To sign off complaint notification forms (for HQCC)	Chairperson, Complaints Advisory Committee (or a Committee member in the absence of the Chairperson)
Section 55	Rejection of complaint	Director, Professional Standards Unit
Section 56	To request further information from a complainant.	Complaints Assessment Officer
Section 59	Notice of 'show cause' and notice of imposition of suspension/conditions	Executive Officer
Section 64(1)(b) and (2)	To direct an investigator to conduct an investigation	Director, Professional Standards Unit Principal Complaints Investigations Officer Director, Health Assessment and Monitoring Unit
Section 66	To give registrant notice of investigation	Appointed investigator
Section 73	Appointment of an investigator	Executive Officer
Section 107(2)	Notice of requirement for health assessment	Appointed investigator
Section 108	Appointment of health assessor	Appointed investigator
Section 111	Obtaining expert assistance	Appointed investigator
Section 116(2)	Giving the Commissioner a report about an investigation being conducted	Executive Officer Director, Professional Standards Unit Director, Health Assessment and Monitoring Unit
Section 116(3)	Giving the Commissioner the Board's report about the investigation	Appointed investigator
Section 120	To advise parties on the decision about an investigation	Executive Officer Director, Professional Standards Unit Director, Health Assessment and Monitoring Unit

Section/Division	Description	Authorised Signatory
General power re disciplinary proceedings	Instructing solicitors in commencing disciplinary proceedings	Director, Professional Standards Unit Coordinator (Disciplinary Proceedings) Director, Health Assessment and Monitoring Unit
Section 126, 131, 153, 168	Notices of commencement of disciplinary proceedings and notification of decisions	Executive Officer
Section 143, 156, 168	Notices relating to disciplinary proceedings	Coordinator (Disciplinary Proceedings)
Section 261	Giving notice to the entities specified	Director, Professional Standards Unit
Section 262	Notifying other registrants of a decision relating to disciplinary proceedings	Executive Officer
Section 270	First contact letter to registrant Request for information to persons other than the registrant	Director, Health Assessment and Monitoring Unit
Section 271	Notice to registrant to attend health assessment	Director, Health Assessment and Monitoring Unit
Section 278	Notice of decision that registrant is impaired & the decision to:- (a) negotiate undertakings (b) enter into undertakings (c) take no further action (d) conduct an investigation (e) refer for hearing (panel or HPT)	Director, Health Assessment and Monitoring Unit
	Notice of decision that registrant is <i>not</i> impaired & (there is another ground for disciplinary action) decision to:- (a) conduct an investigation (b) refer for hearing (panel or HPT) (c) take disciplinary action	
Section 286	Notice of establishment of HAC	Director, Health Assessment and Monitoring Unit
Section 289	Show cause notice for failure to comply with HAC	Executive Officer

Section/Division	Description	Authorised Signatory
Section 301 & 302	Notice of Board's decision & action taken	Director, Health Assessment and Monitoring Unit
Section 304	Notice of decision to other entities	Director, Health Assessment and Monitoring Unit
Section 355	To direct an inspector to conduct an investigation	Director, Professional Standards Unit Principal Complaints Investigations Officer
Section 358(c) and (d)	To appoint an inspector	Executive Officer
Section 360	To give an identity card to an inspector	Executive Officer
Section 369(1)	To initiate proceedings by complaint and summons	Executive Officer or Business Support Services Manager

