

Medical Services Committee

Established under the Health Administration Act 1982

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National Registration -- Registration

Consultation Paper

Proposed Arrangements for handling complaints,
and dealing with performance, health and conduct matters..

The Medical Services Committee has considered the consultation paper and provides the following advice.

- 2.1.1. The Committee does not have a strong view on the use of the term "notification" rather than the term complaint.
In common usage notification could include a change of address, change of role because of a specialist qualification, or withdrawal from practice. The terms complaint and complainants are preferred and it is noted that the complainant may include a statutory body as well as a consumer.
- 2.1.5 and 2.1.8. It is noted that the descriptions of the functions of the performance management committee and that of the health management committee are identical. The role of the health management committee requires to be better identified as the roles of the two committees are not similar.
- 3.2. If the HCCC, in relation to registered health practitioners, is to be restricted to the conciliation of complaints, the investigation required prior to commencing conciliation will have to be duplicated if the HCCC considers that the matter should be referred to a board.
- 3.3.1 The suggested definition of "**Unsatisfactory professional conduct**" as provided in Attachment 1 does not adequately address some of the issues in relation to medical practice

It is considered that there should either be a separate definition for medical practitioners along the lines of that in the New South Wales Medical Practice Act 1992, as amended, or the additional matters that could give rise to a finding of unsatisfactory professional conduct could be listed as applying to medical practitioners, some of those additional items may also apply to dentists.

The definition of **Professional Misconduct** is considered to be unsatisfactory. A definition along the following lines would be preferred: --

Professional misconduct means unsatisfactory professional conduct or unsatisfactory professional performance of a sufficiently serious nature to justify the suspension of the practitioner from practice or the removal of the practitioner's name from the register.

4.4 The Committee has serious concerns in relation to mandatory reporting. It is considered that the most effective method would be for each of the professions to have a code of conduct which required the registrant to report deviations by health-care professionals that placed or potentially placed individuals at serious risk.

4.6.1. The proposal for a board to have the power to initiate an investigation into a matter on its own motion, without a notification is considered to provide an essential function of the board.

4.71 If it considers that such action is necessary, for the purpose of protecting the life or physical or mental health of any person, a board, or State committee, must :

by order suspend a registered health practitioner from practising or impose on a registered health practitioner a condition on registration applying to the registered practitioners practice as a health practitioner.

The power must reside with the board or State committee and not with a notification assessments committee.

A suspension should be immediately notified to the chairman of the appropriate tribunal. An extension of suspension or a provision must be subject to the approval in writing of the chairman of the relevant Tribunal.

The suspension, or extension of a suspension, imposed upon a registered health practitioner without notification of the chairman of the appropriate tribunal and subsequent approval of the chairperson for extension is neither appropriate nor acceptable.

5.3 The Committee is fully aware that there is some criticism, particularly in other jurisdictions, of the powers and activities of the Health Care Complaints Commission in New South Wales. This Commission has been developed from a Health Complaints Branch of the Health Department to provide for the impartial, independent assessment, investigation and management of complaints, relating to the provision of health services by health care providers.

The Commission's functions include the obligation to take proceedings against a health practitioner, including unregistered health practitioners, as may be appropriate. It is considered essential that there be no degradation of the function of the HCCC in New South Wales and that any diminution of the functions of the HCCC would be a serious retrograde step.

It is considered that close cooperation between the Commission and the boards is essential for the public and for registered health practitioners to have confidence in regard to the proper, timely and compassionate handling of complaints, including conciliation.

- 5.5.1. The power of a notification assessments committee to immediately suspend a practitioner's registration as indicated above is not acceptable as it is not in keeping with the principles of natural justice. Suspension of registration and removal of the practitioner's name from the register must be a function of a board or State Committee, and there must be an immediate notification of the chairman of the relevant Tribunal.

What recourse is to be provided to registered health practitioners to recover damages for losses sustained because they have been arbitrarily suspended or had conditions placed upon practice by notification assessment committees and where the suspension or condition withdrawn, dismissed or modified by a tribunal, possibly after a period of many months?

- 6.4.1 The number of members and composition of a performance panel should be much more precisely defined. In many situations a person of the same profession may have completely inadequate knowledge and understanding of the activities and responsibilities of a person from the same profession but from an entirely different discipline.
- 6.5.1. Panels should report and make recommendations to the board. The board (or State committee) must be responsible for the actions to be taken by panels. For two persons employed by a board, as a panel, to refer matters directly to a tribunal without consideration by the board or committee is considered contrary to the principles of natural justice.

Due to short timeframe allowed for comment, the Committee has been restricted in its ability to consult with relevant medical organisations and therefore further advice may be provided later.

It is essential that under the present circumstances any draft legislation relating to national registration and accreditation be circulated for consideration prior to presentation to Parliament and there must be an adequate timeframe for consultation and the provision of informed advice.

Peter Holman
Chairman