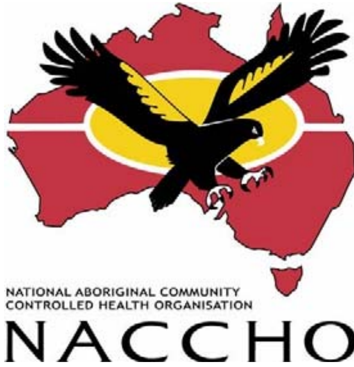

National Aboriginal Community Controlled Health Organisation

Submission Regarding Proposed Arrangements for handling complaints, and dealing with performance, health and conduct matters (*National Registration & Accreditation Scheme for the Health Professions*) – November 2008.

Overview

The National Aboriginal Community Controlled Health Organisation (NACCHO) is the national peak Aboriginal health body representing over 140 Aboriginal Community Controlled Health Services throughout Australia. NACCHO's guiding principles are based on the National Aboriginal Health Strategy 1989 and were further strengthened in the Ways Forward Report (SWR 1995).They are:

- National Aboriginal Health Strategy definition of health;
- Concepts of health as holistic;
- The right to self determination;
- The impact of history in trauma and loss;
- The need for cultural understanding;
- The recognition of human rights;
- The impact of racism and stigma;
- Recognition of the centrality of kinship;
- Recognition of different communities and needs;
- Aboriginal strengths;
- Universal access to basic health care;
- High quality health care services; and
- Equitable funding for health care.

An Aboriginal Community Controlled Health Service (ACCHS) or an Aboriginal Medical Service (AMS) is a primary health care service initiated and operated by the local Aboriginal community to deliver holistic, comprehensive, and culturally appropriate health care to the community which controls it (through a locally elected Board of Management). Often these primary health care services are delivered to Aboriginal Community members by Aboriginal people, namely Aboriginal Health Workers (AHWs).

The role of AHWs has evolved exponentially over the last 30 years, with the most recent development being nationally accredited training for the profession ranging from Certificate II to Advanced Diploma.

As a peak organisation representing the professionals working within ACCHSs and the organisations that employ them, NACCHO strongly believes that AHWs should be nationally regulated as a health profession. NACCHO puts forward the following submission in respect of the proposed arrangements for handling complaints, and dealing with performance, health and conduct matters, as part of the National Registration and Accreditation Scheme for Health Professionals.

NACCHO supports that all AHWs be registered as a pre-requisite for practice anywhere in Australia and that registration should identify mandatory minimum requirements and conditions for registration. AHWs should be required to meet minimum competency based educational qualifications to be eligible for registration. Registered AHWs should be issued with an appropriate certificate of registration for a one year period, as consistent with other health professions.

At present the only jurisdiction with Aboriginal and Torres Strait Islander Health Worker legislation is the Northern Territory which requires registration in order to practice. NACCHO has sought support from all jurisdictions for relevant legislation to support the requirement for registration and for inclusion, as soon after July 2010 as possible, of AHWs in the single national registration and accreditation scheme for health professionals agreed to by COAG.

Currently AHWs have a national training framework but not accreditation arrangements. However, NACCHO is working towards nationally endorsed standards of delivery and an application process for Registered Training Organisations. It is envisaged that an accrediting body will be established by the introduction of Bill B.

The legislation will define the vocational educational levels that are given formal accreditation, and the arrangements under which AHWs will practice incorporating industry standards of practice and the factors that may result in removal of the right to practice. Regulatory standards, stringent educational achievement, competence and fitness to practice must be met and demonstrated by all applicants.

It should also be noted that a national Aboriginal and Torres Strait Islander Health Worker Association will shortly be established; and that in addition to this submission, NACCHO has provided submissions in response to consultation on the *Provisions of the Inter-Governmental Agreement*; *Partially-Regulated Professions*; and *Proposed Registration Arrangements*. It is respectfully requested that the issues highlighted in each of these submissions are also taken into account in consideration of this submission.

Self regulation is currently the only evident regulation of AHWs in Australia with the exception of the Northern Territory. NACCHO believes that individual regulation is essential but requires this to be coupled with statutory regulation. This approach would strengthen the recognition of AHW as health professionals and mitigate risk to the public who access services from AHWs.

Also, the statutory view of protecting the public from harm implies clinical invasive treatment. NACCHO would argue further that in many instances health professionals, when dealing with Aboriginal clients, may inadvertently inflict harm to Indigenous social and emotional wellbeing through an absence of cultural competence and can be perpetuated by racism. NACCHO seeks for relevant accountabilities and preventative strategies to be explored and articulated further with respect to the matters raised; and also for consideration of existing models in New Zealand and Canada.

The matters and concerns raised when considering inclusion of AHWs in a National Registration Scheme are complex and require greater exploration than available through this process. NACCHO is therefore willing to seek and provide additional verbal or written advice on these complex matters if an opportunity is made available.

While NACCHO and members of affiliates have expressed concern about the limited consultation period that has been scheduled for such major reform to assist with the formulation of a response from the sector, NACCHO conducted a national workshop in Brisbane on 29-30 October 2008, inviting representatives from Affiliates in all jurisdictions to review the proposals and options presented in the Consultation Papers: *Proposed Registration Arrangements* and *Proposed arrangements for handling complaints, and dealing with performance, health and conduct matters*. A longer timeframe would have enabled NACCHO to carry out extensive consultations.

Thank you for the opportunity to submit comments on the proposed arrangements for handling complaints, and dealing with performance, health and conduct matters. NACCHO would like to acknowledge the support that has been offered by the National Registration and Accreditation Implementation Project Team in Brisbane.

Additional information may be requested from Ms Janine Engelhardt on 02 6248 0644 or Janine@naccho.org.au

NACCHO
November 2008

Submission

1.5 Principles

Proposal 1.5.1: Generally agreed, however needs to include a qualification about the need to provide/ensure a culturally safe/sensitive operational environment.

2. Proposed Terminology

Proposal 2.1:

2.1.1 Notification Agree with the term "notification" to be used in legislation, rather than "complaint."

2.1.2 Preliminary assessment Agree with the term "preliminary assessment" to be used to describe the action to be taken by a board when a matter comes to its attention, rather than "investigation".

2.1.3 Notifications assessment committee Agree with the term, rather than alternative options.

2.1.4 – 2.1.14 Agreed.

2.1.15 Not of good character Although this is the preferred term rather "not a fit and proper person" there is some concern that the definition is left very open to subjective interpretation. Neither of the descriptions defines ay relevant attributes.

2.1.16 – 2.1.19 Generally agreed. 'Performance' and 'conduct' relate to technical competence and behavioural aspects respectively. This should be recognised in the definitions.

3. Overview of proposed system

3.1 Background – Clear overview. Paragraph 2 to include "protect the public from misconduct by practitioners." Paragraph 5 could use better words than "proactive" e.g. "developmental support to practitioners".

3.2. Key features of proposed system

As previously recommended the Aboriginal Health Worker Board/Committee will require a representative from each state/territory (endorsed at state/ territory level) At least:

- two members must be members of National Aboriginal Health Worker

Association
- two representatives must come from Community Controlled Sector
- one representative from State Health.

(It should also ensure that 2/3 are members of professions (i.e. AHWs)
Committee should appoint Chair (through vote).
- Community representatives must be member of local Aboriginal group (e.g. Elders Association or Land Council)

Al least one endorsed representative from the National Aboriginal Community Controlled Health Organisation (NACCHO) or Aboriginal Medical Service.

Receipt of notification (includes a complaint)

Clear overview and agreed.

Preliminary assessment of notification

Clear overview and agreed.

Consultation with HCC or equivalent State and Territory bodies

Clear overview and agreed.

Performance Management

Clear overview and agreed.

Health management

Clear overview and agreed.

Conduct management

Clear overview and agreed.

Board Hearings

Clear overview and agreed.

Referral for tribunal hearing

Clear overview and agreed.

Monitoring agreements and conditions

3.3. Proposed definitions for what constitutes a departure from professional standards

Proposal 3.3.1: Earlier comment under 2.1.16 - 2.1.19 refers.

4. Notifications

4.1 Who may make a notification?

Proposal 4.1.1: Agreed.

4.2 In what form may a notification be made

Proposal 4.2.1: Cannot agree that notifications must be made in writing. Written notification can diminish interest in registering a complaint for a range of reasons literacy/language issues - see comments under 4.3.1.A mechanism for notifications to be made orally needs to be included.

Requiring the identification of the 'notifier' is also not supported. There should be a mechanism to enable anonymous notifications. It would be useful for consideration of the 'lessons learned' from other whistleblowers schemes.

Proposal 4.2.2: Although supporting the proposal to provide assistance to a person who is not able on their own to make their complaint in writing, please refer to comments under 4.2.1 regarding written notification.

4.3 What sort of matter may be the subject of a notification?

Proposal 4.3.1: Firstly consideration to be given to using the term 'practitioner' throughout rather than introducing 'registrant'. This could simply refer to the three types of breaches. Legislation should not presume to know what may cause individual harm. Investigations can decide the severity based on set of reasonable and localized criteria. However, taking this approach, there needs to be protections for practitioners if the categories are left broad.

NACCHO cannot agree to current wording of 3rd criteria (i.e. *'the registrant lacks the competence to practice because of insufficient knowledge and skill, including communication skills* ***(such as competency in the English language'***). While NACCHO agrees that it is critical for registrants to have sufficient knowledge and skill to enable competency in practice it cannot agree to the current wording.

Cultural influences on communication are complex and extensive, and an understanding of how perceptions (both Western and Aboriginal) of health and sickness are culturally constructed is essential to ensure effective clinical and educational interactions. Aboriginal people are generally required to

accommodate the existing health service structures and practices, most of which are strongly grounded in a Western medical model with English as the dominant language.

It is important to acknowledge that although competency standards and associated training package development privileges English and enforces its efficacy in delivering health care and training, more often than not, the AHW is specifically employed and required to work using Aboriginal languages in such environments as health clinics, schools, local councils and community.

Geographic distances and isolation, inadequate basic infrastructure such as buildings, water, electricity (social determinants of health) as well as inadequate program resourcing, limited professional support for teachers working in remote and complex cross cultural contexts all impact around the interface of literacy. [1]

Aboriginal and Torres Strait Islander health work is an emerging area of work and occupational titles for those working in this area vary according to jurisdictional and workplace requirements. Workers may be trainee Aboriginal and/or Torres Strait Islander health workers, working as assistants in a rural or urban environment, or they may deliver limited health care services to clients living in communities that are isolated from mainstream health services.

The Certificate II qualification is a means for encouraging the early development of Aboriginal and/or Torres Strait Islander health workers as it provides an entry point for workers with limited English literacy and numeracy. At Certificate II level, English literacy/numeracy requirements may be minimal if there are in place workplace communication systems and/or tools that allow Aboriginal and/or Torres Strait Islander workers to communicate effectively with mainstream workers as well as with the communities they service.

To be assessed as competent at this level, workers may demonstrate their communication skills by effective use of workplace communication systems and tools. Assessment methods must reflect the actual skills and knowledge defined in each unit of competency. Assessment tasks involving literacy and numeracy must only be used in so far as the same level of literacy/ literacy/numeracy is required to perform the function being assessed.

Proposal 4.3.2: Agreed.

4.4 Mandatory reporting obligations

It is recommended that the language in respect of mandatory reporting is simplified. For example, "reporting by (define the groups) is mandatory where

[1] Lowell A and CRCATH (2001) , Communication and Cultural Knowledge in Aboriginal Health Care

impairment , professional performance or professional conduct is such as it may result in professional misconduct, or where professional misconduct is considered to have occurred."

Options for mandatory reporting – Option 1b and Option 2b are the preferred options.

Student registrants and mandatory reporting Refer comments made under sec 4.2.1

4.5 Protection for notifiers and registrants

Proposal 4.5.1: Agreed.

4.6 Own motion powers

Proposal 4.6.1 Agreed.

4.7 Immediate suspension powers

Proposal 4.7.1: Agree with proposal rather than the alternative options.

Proposal 4.7.2: Agreed.

Proposal 4.7.3: Agreed.

5. Preliminary assessment of notifications

5.1 Powers following receipt of a notification

Proposal 5.1.1: Agreed.

5.2 Grounds for a board to refuse to deal with a notification

Proposal 5.2.1: Agreed.

5.3 Liaison with HCCs

Proposal 5.3.1: Agreed however, this seems to get into implementation aspects suggesting that complaints would be directed through a Federal agency. Commonwealth legislation can be very broad, leaving the rest to State/Territory legislation.

5.4 Who conducts the preliminary assessment of a notification?

Proposal 5.4.1: Agreed.

5.5 Powers following preliminary assessment of a notification

It is not clear if this is all in reference to State/Territory legislation?

Proposal 5.5.1: Agreed.

Proposal 5.5.2: Agreed.

Proposal 5.5.3: Agreed.

5.6 Notifiers' rights of review of preliminary assessment decisions

Option 2 is preferred option.

6. Performance matters

6.1 Overview of management of performance related matters

Proposal 6.1.1: Agreed.

6.2 Performance Management

Proposal 6.2.1: Agreed.

Proposal 6.2.2: Agreed

6.3 Performance assessments

Proposal 6.3.1: Agreed, but any appointed assessors must have a sound understanding and/or experience of Aboriginal community controlled health.

Proposal 6.3.2: Agreed.

Proposal 6.3.3: Agreed.

6.4 Performance panel hearings

Proposal 6.4.1: Agreed.

6.5 Decisions available to performance panel following a hearing

Proposal 6.5.1: Agreed.

Proposal 6.5.2: Agreed.

Proposal 6.5.3: Agreed.

7. Health or impairment matters

There is no specification as to how long records are maintained. For "no further action" decisions in particular, practitioners should have a right to these records being destroyed.

7.1 Overview of management of health related matters

Proposal 7.1.1: Agreed.

Proposal 7.1.2: Prefer option1.

7.2 Health management

Proposal 7.2.1: Agreed, however Aboriginal representation required on health management committee.

Proposal 7.2.2: Agreed, however as above, Aboriginal representation required on health management committee.

7.3 Health assessments

Proposal 7.3.1: Agreed, however as far as practicable, Aboriginal representation required in the appointment of assessors.

Proposal 7.3.2: Agreed.

Proposal 7.3.3: Agreed.

Proposal 7.3.4: Agreed, but if matter is referred for hearing by a health panel or tribunal Aboriginal representation is required on panel/tribunal.

7.4 Health panel hearings

Proposal 7.4.1: Agreed.

7.5 Decisions available to a health panel following a hearing

Proposal 7.5.1: Agreed.

Proposal 7.5.2: Agreed.

Proposal 7.5.3: Agreed.

8. Conduct matters

8.1 Overview of management of conduct related matters

Proposal 8.1.1: Agreed.

8.2 Conduct management

Proposal 8.2.1: Agreed.

Proposal 8.2.2: Agreed.

8.3 Investigations

Appointment of investigators

Proposal 8.3.1: Agreed, however Aboriginal representation is required.

Proposal 8.3.2: Further clarification is needed in respect of this proposal e.g. details as to what type of cases may not require notification and investigation/ accountability of board. This proposal seems to counteract Proposal 8.3.3. However is perhaps spelt out a bit more in 8.3.4 – which seems reasonable. Perhaps it is directed at findings at annual performance review, but should state the circumstances that prompt an investigation, aside from where there is notification.

Notice of an investigation

Proposal 8.3.3: Agreed.

Proposal 8.3.4: There are concerns about this proposal as this goes against principles of natural justice.

Timelines for the conduct of investigations

Proposal 8.3.5: Agreed.

8.4 Powers of investigators –search, entry, seizure

Proposal 8.4.1: Entry to premises and other is subject to other laws and court approvals. The provisions here should simply allow those mechanisms to be initiated. If such powers are legislated it is considered critical that Aboriginal representation/liaison officers are required. NACCHO emphasises that in requesting any such interventions that there is a need to take account of the impact of stigmatising and discriminatory practices that perpetuate the cycle of

social disadvantage and social injustice often leading to the incarceration of Aboriginal people.

Proposal 8.4.2: As above.

8.5 Conduct panel hearings

Proposal 8.5.1: Agreed.

8.6 Decisions available to a conduct panel following a hearing

Proposal 8.6.1: Agreed.

Proposal 8.6.2: Agreed.

Proposal 8.6.3: Agreed.

9. Ensuring accountability, transparency and procedural fairness

9.1 Achieving separation of functions

Proposal 9.1.1: There is a need to ensure that this is not reinventing or adding unnecessary agency layers.

Proposal 9.1.2: Consideration also needs to b given to victim statement provisions.

9.2 Matters involving registrants from different professions

Proposal 9.2.1: If this means dealing jointly or sharing information – it may be problematic particularly the former.

9.3 Legal representation for registrants at panel hearings

Principles of natural justice are paramount in consideration of these options.

9.4 Confidentiality of panel hearings

Proposal 9.4.1: Agreed.

9.5 Status of notifiers at panel hearings

Proposal 9.5.1: Again, who is the 'notifier'. If this is a member of the public, mandatory appearance at tribunal needs to be avoided. Optional, yes.

N.B. Overall, in review of subsequent sections (9.6-12.1) which includes discussion of Ombudsmen Offices and tribunals there is concern that the legislation may be trying to specify too much when it could/should use existing structures. Therefore specific comments are not made in respect to each proposal.

10.8 Status of notifiers

Proposal 10.8.1: Agreed where 'notifier' is identified.

11.3 Holding out offences

Proposal 11.3.1: Agreed. NACCHO proposes that the titles *Aboriginal Health Worker, Aboriginal and/or Torres Islander Health Worker, Torres Strait Islander Health Worker, Aboriginal and/or Torres Strait Islander Health Care Practitioner and Aboriginal and/or Torres Strait Islander Community Care Practitioner* be restricted (and strategies for title protection be explored) to apply to only Aboriginal and/or Torres Strait Islander people and who hold an appropriately recognised Aboriginal Health Worker qualification.