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“Complaints Arrangements Submission, Attention: Practitioner Regulating Subcommittee”

The Nurses and Midwives Board of New South Wales provides the following comments on the consultation paper “Proposed arrangements for handling complaints, and dealing with performance, health and conduct matters”.

The Nurses and Midwives Board of NSW has not commented on all sections or proposals in the paper as the Australian Nursing and Midwifery Council (ANMC) is submitting a detailed submission on behalf of Australian Nursing and Midwifery regulatory authorities, which encompasses each section.

The following comments from the Nurses and Midwives Board of NSW are therefore made in addition to comments submitted by the Australian Nursing and Midwifery Council (ANMC) and reflect a differing view to the ANMC on some aspects as identified.

Proposal 8.5.1

The composition of the panel (second dot point) should:

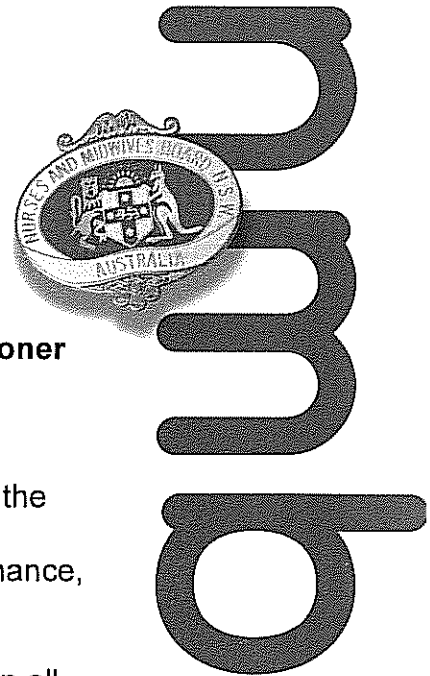
- Have at least three (3) members, with a recommendation that panels be comprised of an uneven number of members to avoid “hung” decisions; and
- Allow no more than 2/3rds of members to be registrants from the profession concerned, not only 1/2 as suggested.

Section 9.1: Achieving separation of functions

It is imperative to ensure that transparency and procedural fairness is achieved; this is best served by separating the investigation and prosecution functions from the other functions of the registration board.

NSW has a system in place (the Health Care Complaints Commission), which allows the board to remain at ‘arms length’ from investigation and prosecution procedures. The NSW system allows for separation of functions, thus removing potential conflicts of interest, and this system is robust and of sufficiently high calibre as to provide transparency and procedural fairness.

It is the view of the Nurses and Midwives Board of NSW that boards would be seen as primarily punitive instruments rather than professional bodies if a separation of functions were not permitted.



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Proposal 10.5.1, fifth dot point – not supported.

It is the view of the Nurses and Midwives Board of NSW that a fine is a punishment and is therefore not supported. The second paragraph on page 31 of the consultation paper supports this view and states, "It is recognized that the analogy of the criminal law is not directly appropriate, given the criminal law is a punitive model while professional regulation is focused on public protection".

- The Nurses and Midwives Board of NSW does not support the imposition of a fine on the practitioner as proposed, recoverable by the board (with the maximum fine available to be set by legislation, for example \$50,000). The imposition of a fine is not considered to be necessary for the public interest. Further, fines may be viewed as a way of determining the 'case closed' rather than seeking to improve the practice of health professionals.
- If the purpose of a fine is to act as a deterrent, the Nurses and Midwives Board of NSW considers the presentation before a tribunal hearing, the possible loss of employment and the imposition of conditions on licence to practice as sufficient deterrent.

Yours faithfully



Ms Maureen Giddins Blues
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