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Registration Arrangements Submission

In response to:

CONSULTATION PAPER

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

Issued 7th October 2008

For the

Practitioner Regulation Subcommittee
Health Workforce Principal Committee
Australian Health Ministers Advisory Council

Prepared by Ramsay Health Care Australia
November 2008

EXECUTIVE SUMMARY

Ramsay Health Care is grateful for being given the opportunity to once again respond to the proposed Registration Arrangements put forward in the Consultation Paper presented by the Practitioner Regulation Subcommittee on 7th October 2008.

Ramsay Health Care is a successful global company and was established in Australia more than four decades ago. Ramsay Health Care is now the largest operator of private hospitals in the country. With over 100 hospitals and day surgery units, Ramsay Health Care Australia admits over 750,000 patients and conducts over 450,000 procedures per annum.

Ramsay Health Care supports national registration arrangements and encourages consistent standards for health professions across Australia. We support the schemes¹ primary objectives to develop legislation that will:

- Provide for the protection of the public by ensuring that only practitioners who are suitably trained and qualified to practice in a competent and ethical manner are registered
- Facilitate workforce mobility across Australia and reduce red tape for practitioners
- Facilitate the provision of high quality education and training and rigorous and responsive assessment of overseas-trained practitioners
- Have regard to the public interest in promoting access to health services; and
- Have regard to the need to enable the continuous development of a flexible, responsive and sustainable Australian health workforce and enable innovation in education and service delivery.

Ramsay Health Care welcomes the process of creating a national registration and accreditation system that by July 2010 will enable health professionals to possess a registration that is nationally portable (thus significantly reducing “red tape”). It will also provide greater safeguards for the public and promote a more flexible health workforce. The proposed scheme will also carry inherent benefits in relation to future workforce analysis with consistent national data sets becoming available.

This submission will largely make comment and recommendations relating to the implications for the **nursing and midwifery workforce**. National registration and accreditation for nursing and midwifery is a critical component of national health care reform and Ramsay Health Care is eager to work in partnership with other stakeholders to ensure the timely and appropriate delivery of the scheme. This agenda will enable opportunity and investment for a more streamlined, collaborative, coordinated and safer approach to health care management in both the public and private health care sectors. Overall, we believe positive benefits for the nursing and midwifery profession will ensue.

RAMSAY'S RESPONSE TO THE CONSULTATION PAPER:

The following discussion sets out the joint position of Ramsay Health Care in response to a review of the CONSULTATION PAPER “Proposed arrangements for handling complaints, and dealing with performance, health and conduct matters” Issued 7th October 2008 by the Practitioner Regulation Subcommittee.

¹ The National Registration and Accreditation Scheme for the Health Professions (as agreed by COAG March 2008)

Document Reference:

1.4 The Intergovernmental agreement

External complaints and review processes under the national scheme: 2.1 (page 6).

Comments:

Ramsay Health Care notes the mention on page 6 of:

"the hearing of serious disciplinary matters (those which may result in suspension or cancellation of registration) will be undertaken by an entity external to the agency, which will also be responsible for the hearing of appeals against less serious disciplinary matters where internal review has not resolved this matter"

Ramsay Health Care seeks to clarify:

1. Will the proposed entity "external" to the agency will be available in each state?
2. What will be the process for selection, appointment and membership of any such entity?

Ramsay Health Care recommends that the terms under which this "entity" is established and decided upon be done in consultation with industry. This is especially the case with respect to the person/s elected to the entity for any such purpose.

Document Reference:

2.0 Proposed Terminology (pages 7-9)

Comments:

Ramsay Health supports the proposed terminology proposed for use to describe certain functions and processes of the boards.

Preferred terminology is: (in the instance whereby alternative options were highlighted):

- 2.1.1 Notification
- 2.1.2 Preliminary Assessment (as opposed to investigation)
- 2.1.3 Notifications Assessment Committee
- 2.1.9 Health Assessment (as opposed to impairment assessment)
- 2.1.10 Health Assessment Panel or Personal Assessment Panel
- 2.1.15 Not of Good Character

**2.1.17 Unsatisfactory Professional Performance:
(As per attachment 1)**

Ramsay Health Care agrees with the proposed definition, however would like to recommend that use of the term **competence** also be included in the proposed definition. Many instances of knowledge, skill and judgement “gaps” result in a perceived lack of competence.

Competence, whilst some may argue is a transient thing, is largely measurable (often via nationally agreed standards). In the instance of perceived poor performance the term encapsulates skill, knowledge, judgement etc, and is widely accepted as a term of measure throughout industry.

(Page 44)

*“Unsatisfactory professional performance means professional performance that demonstrates that the knowledge, skill, (**competence**) or judgement possessed or exercised by the practitioner is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience.*

**2.1.18 Unsatisfactory Professional Conduct:
(As per attachment 1)**

**2.1.19 Professional Misconduct
(As per attachment 1)**

Ramsay Health Care supports the proposed definition and terminology in relation to 2.1.18 and 2.1.19 as specified in page 44.

Document Reference:

3.1 Overview of proposed system – Background (page 9-10)

Ramsay Health Care notes the proposal to include 3 streams for management of issues relating to performance, health, or conduct via the “notifications management system”.

Ramsay Health Care expects that many matters may “crossover” more than one stream. For example, a performance related notification may reveal a health or conduct episode/s also. This is particularly the case in relation to performance and health status of the practitioner, as such widespread intersect between the 2 often exists.

Therefore Ramsay Health Care would suggest that all 3 streams of the notification management system **not** be made mutually exclusive of one another in any way for the purpose of review, assessment and management.

Document Reference:

3.2 Key features of proposed system: Receipt of notification- includes a complaint (page 10)

The proposal states that "each national board (or one or more notifications assessment of the board) would be responsible for receiving notifications about registered practitioners..."

Ramsay Health Care would like to clarify:

- Will all notifications be processed at national level in the first instance or will there be a state option to do so?
- Will reasonable response time frames be specified for notifications? If all notifications are lodged via the relevant national board there may be potential for a delay in response time during any peak periods/high volumes of notifications
- In the best interests of patient, community and organisational safety, it would be ideal to obtain an assurance of some kind that reasonable response times will be specified and honoured by the relevant board
- In relation to consultation with HCC or equivalent state and territory bodies: Will notification technology allow seamless communication and a single point of entry to ensure consistent data between all groups (state and national)? This process will require a clear and concise communication strategy for industry and boards alike

Ramsay Health Care recommends that all areas relating to the notification process and supporting technology be meticulously reviewed and extensively planned.

Document Reference:

4.3 What sort of matter may be the subject of a notification: (page 14)

In the proposal it is suggested that legislation will set out the grounds on which a notification may be made about a registered health practitioner, and the allegations are specified on page 14 under item 4.3.1.

Item 4.3.1 led Ramsay Health Care to ask the question:

- Is the list of allegations limited only to these categories?

We recommend considering the following criterion to also be included under such a list:

1. Allegations may also include notification of a person practicing outside the scope of practice determined by registration, division and qualification.

Document Reference:

4.4 Mandatory reporting obligations: (page 14)

Ramsay Health Care supports the option listed as "option 1B" under the section "Options for mandatory reporting obligations".

Given the current considerable variation across jurisdictions as to the mandatory reporting obligations that are contained in registration legislation it would appear appropriate to elect option 1B as the means by which mandatory reporting is prescribed.

This option would benefit both the profession and health consumers in the following ways:

1. Enables transparency

2. Gives permission for practitioners to uphold their duty of care to patients and clients across all professions and disciplines.

It is to be noted that Ramsay Health Care would recommend that employers also have the option to be included in the extended mandatory reporting obligations.

Document Reference:

4.4 Student registrants and mandatory reporting (page 15)

If student registration is to apply under the new scheme it would seem reasonable to extend the mandatory reporting obligations to these cohorts also, so long as the registration process for students includes extensive education on the relevant legislation.

Ramsay Health Care recommends that educational providers also be included in reporting obligations for this matter, in particular with respect to students who are participating in clinical practicum.

Matters for which students can be reported should not be dissimilar to those of registered practitioners (as listed in text box 4.3.1). However, careful consideration will need to be given to factors pertaining to years/level of experience and application of reporting outside of clinical practicum and the academic calendar.

Document Reference:

4.7. Immediate suspension powers (page 16)

Proposal 4.7.1

Ramsay Health Care supports the proposed legislation that registration may be suspended immediately for a period of up to 3 months and a second subsequent period may be imposed if required.

In this instance it is **essential** that the legislation make provision for a board (or committee of the board) to make a preliminary assessment of the notification with a view to determining

- Whether it is within the jurisdiction of the board to deal with the notification
 - If so, whether the notification is also within the jurisdiction of an HCC, and if so, whether it should be retained and dealt with by the board, or referred to the responsible HCC for conciliation, and
 - Whether notification should be dealt with, in the first instance, as a performance matter, a health matter or a conduct matter.
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Document Reference:

5.1. Powers following receipt of notification (page 16)

Proposal 5.1.1 (includes 5.2 & 5.3)

Grounds for a board to refuse to deal with notification:

Ramsay Health Care supports the recommendation that is outlined in 5.2.1 of which it is proposed that the legislation provide for boards to decide not to investigate a notification on the following points:

- 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
- The board determines the notification does not warrant investigation
- 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.

Proposal 5.3.1:

In response to the above-mentioned proposal 5.3.1, and in light of the IGA, Ramsay Health Care accepts the proposal that both national registration and accreditation legislation (and the State and Territory health complaints legislation) sets out the nature of the relationship between the national boards and the respective State and Territory HCCs. This also includes the obligations and powers of the respective bodies along the terms listed on page 17.

Proposals 5.4.1 through to 5.6

In response to:

- 5.4 Who conducts the preliminary assessment of a notification
- 5.5 Powers following preliminary assessment of a notification
- 5.5.2 Notifiers' rights of review of preliminary assessment decisions

Ramsay Health Care supports the view that it is important the legislation is transparent about these matters, and that those affected clearly know where they stand. It is **imperative** that the legislation balance the rights of both registrants and consumers. It is, as suggested, also important to address, at least in part, the perception that registration boards may at times act to protect the interests of registrants rather than those of notifiers- particularly when the board decides no further action is required, and the notifier disagrees.

In the options (1 & 2) outlined on page 20 with respect to review rights for notifiers arising from the board or committee decisions at the stage of preliminary assessment Ramsay Health Care would prefer to see option 2 (i.e. a right of review of preliminary assessment decisions for notifiers) enacted in the legislation.

(NB: Ramsay Health Care assumes within this proposal the definition of "notifiers" will include individuals and health care organisations?)

Document Reference:

6. Performance Matters (includes 6.1 and proposal 6.1.1 on page 21)

Ramsay Health Care supports the proposed legislation that enables boards to deal with practitioners whose performance is unsatisfactory through a cooperative and educative process, rather than a disciplinary process.

However, this method will require extensive consultation with affected individuals (and quite possibly supporting organisations) and needs to ensure goal setting incorporates competency based objectives as part of the "educative process". Timely review of progress and performance must also be a mandatory consideration throughout the educative process.

Document Reference:

Proposal 7.1.2 (page 24)

In response to the proposal for funding of health programs Ramsay Health Care supports the notion of the boards having the powers to conduct health assessments in flexible and cooperative manner (once again as opposed to a disciplinary matter).

Ideally, from the options provided, it would be an excellent measure of goodwill to see any such programs funded entirely by the board (via registrants fees- option 1) rather than rely on the affected professional to in part, or full, self fund health support. Naturally we would expect that any such access to resources will be subject to eligibility assessment)

There are obvious social and moral reasons for our position on this, as health matters relating to poor performance are, in many instances, related to psychological problems or substance abuse issues. We believe that providing access to “no fee” health programs may assist with greater compliance and therefore improve outcomes- as the element of financial burden is not then placed upon the recovering individual. For example, a graduate registered nurse in his/her first year of practice is likely to be unable to afford additional costs incurred as part of the review process.

Document Reference:

8.3 Investigations (pages 28-31)

Proposal 8.3.5

It is proposed that the legislation will require that an investigation be conducted as quickly as practicable, whilst having regard to the nature of the matter. Ramsay Health care recommends that:

- A notice of the decision on the outcome of the investigation be provided to the notifier and registrant within 14 days of the decision
- Progress reports be provided to both the notifier and the registrant at least every 12 weeks, and
- That the responsible board be required to keep both the notifier and the registrant informed of progress, at a minimum of 3 monthly intervals on an ongoing basis.

Questions to consider:

- *Will such matters between parties require some form of a signed confidentiality “clause” during the process of investigation and/or resolution?*
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Document Reference:

8.4 Powers of investigators- search, entry, seizure (pages 29-30)

8.4.1

Ramsay Health Care recognises the importance of the need for the legislation to allow investigators to exercise the following powers in relation to searching premises and seizing documents etc. For example:

- By written notice the inspectors/investigators may require:
 - The registrant in "question" to provide information
 - The registrant in "question" attend the investigator to answer questions or produce documents
 - The investigators to enter the premises of a registrant's practice/workplace (unless it is their private residence) during ordinary business hours, with the consent of the occupier to inspect and search the premises and request the production of documents or other items
 - A warrant to enter and search premises and seize evidence

The legislation will then **need to include** clauses that address aspects such as:

- *How the evidence will be "handled" e.g. storage and receipt*
 - *Safeguards on the exercise of enforcement powers*
 - *Evidentiary requirements*
 - *Various offences for failure to comply, obstruction of an authorised inspector etc.*
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Document Reference:

10.6 Constitution and appointment of tribunal hearing panels (page 37)

Proposal 10.6.1 (page 43)

Ramsay Health Care supports the proposal that the legislation make provision for a tribunal hearing panel to be consulted with a minimum of three members; at least two must be from the same profession as the practitioner who is party to the proceedings.

Document Reference:

11.10 Monitoring of registrants:

Proposal 11.10.1: (page 43)

Proposal 11.10.1 outlines the expectation of implementing a risk based compliance program that would determine the risk profile of registrants and assess how regularly individual registrants need to be monitored.

Ramsay Health Care is interested in any use of technology that automates or calculates this information, and recommends that a compliance strategy be integrated to ensure compliance. It would be greatly beneficial to expand the scope of any such technology to

enable linkages between the boards and bodies such as Medicare (in particular with respect to the boards monitoring compliance with conditions on registration in some professions).

12.0 Transition Arrangements:

Proposal 12.1 (page 43)

Ramsay Health Care is pleased to note that this consultation paper mentions the processes for ensuring a smooth transition from State and Territory Boards to the new national arrangements.

It will indeed be necessary for the legislative scheme to make provisions for the new national boards to continue to deal with and finalise any investigations and disciplinary/performance/impairment matters that were in process prior to July 1st 2010. This should rightfully include any matters outstanding from previously repealed legislation within a jurisdiction.

Ramsay Health Care recommends that great care and consideration be taken when determining the provisions that will ensure continuity of staffing for the boards. This will be of great importance from the perspective of continuity and managing case loads during the transition to the new scheme. This may understandably take a numbers of years for all matters that arose under the previous enactments to be finalised, including appeals.

CONCLUSION:

Ramsay Health Care thanks the Australian Health Ministers Advisory Council for the opportunity to comment on the aforementioned consultation paper.

Our recommendations and discussions are in the interests of securing patient safety through maintaining the highest standards for the health professions. We also look forward to continued opportunity to comment on subsequent discussion papers, in particular those relevant to our clinical workforce.

This paper was authored in by Liz Spaul (Victorian Workforce Planning Coordinator) on behalf of our People and Culture (Group Human Resources) National Division in consultation with State Managers and Executives throughout the company. Any further enquiries are welcome via email at: hrenquiries@ramsayhealth.com.au or by phoning 07 3394 7281.

