



ROYAL COLLEGE OF NURSING, AUSTRALIA

Submission to Consultation Paper "Proposed arrangements for handling complaints, and dealing with performance, health and conduct matters" for the National Registration and Accreditation Scheme

1. Introduction

Royal College of Nursing, Australia (RCNA) welcomes the opportunity to provide comment to the Practitioner Regulation Subcommittee on the draft Consultation Paper *Proposed arrangements for handling complaints, and dealing with performance, health and conduct matters*. This is a matter of importance and ongoing interest to RCNA as this is the second in a series of consultation papers on matters that require decision in order to prepare the second stage of legislation to establish the National Registration and Accreditation Scheme for the health professions, to be introduced in the Queensland Parliament in October 2008.

2. RCNA - Background

RCNA is the peak national professional organisation for Australian nurses, playing a pivotal role in shaping Australian nursing through the provision of continuing professional development, and policy analysis and development. The College represents nursing across all areas of practice throughout Australia and has members in every State and Territory, and internationally. With representation on government committees and health advisory bodies, RCNA is recognised as a key centre of influence in the health policy arena in Australia. When health policy decisions are made, RCNA presents a professional nursing perspective, independent of political allegiance.

The commitment of nursing and midwifery to national regulation is based on ensuring the protection of the public and on maintaining the highest standards of nursing and midwifery care to the Australian community through designing a system which supports health professionals. This includes a commitment to taking the time necessary to ensure that the scheme developed is best practice in terms of protection of the public and is implemented carefully, thoughtfully and transparently.

3. Proposed Arrangements for handling Complaints and dealing with Performance, health and Conduct Matters

RCNA provides specific comment against the issues raised in the Consultation Paper *Proposed arrangements for handling complaints, and dealing with performance, health and conduct matters*. It must be noted that the numbering used in this submission reflects that of the consultation paper. Comments are provided to selected issues from the draft consultation paper.

2. Terminology

Proposal 2.1:

2.1.1 Notification

RCNA supports the use of the term 'notification' instead of 'complaint' due to the fact that this term reflects the broader coverage of issues brought to the Board.

2.1.3 Notification assessment committee

RCNA supports this terminology.

2.1.9 Health assessment

RCNA supports this terminology.

2.1.10 Health panel

RCNA supports this terminology.

2.1.15 Not of good character

RCNA has concerns with the use of the term 'not of good character' to describe a registrant who is not considered suitable to practise because of a defect in their character. This concern stems from the fact that this is not something that can be easily assessed and would be extremely subjective. Any use of this term must be accompanied by clarification as to its meaning. The alternative 'not a fit and proper person' is no better. This too is not defined in any way that would enable registrants to know what it is they should avoid doing.

2.1.18 Unsatisfactory professional conduct

RCNA supports this terminology.

However, while 'Unsatisfactory professional conduct' seems to have been well defined, 'misconduct' is not. The measure of good repute is other professionals, but there should also be the issues of community expectations.

3. Overview of proposed system

3.2 Key features of proposed system

Board hearings

RCNA has a concern with the use of a two level system of hearings – with the more serious level only hearing the more serious cases. Unfortunately this means that the second level cannot be properly disinterested and unbiased as they would always be aware that the lower/referring body considered the matter "serious" and this would be likely to affect their perception of the matter. A

second concern is that having two levels has the potential of making the hearing of matters very lengthy.

5. Preliminary assessment of notifications

Proposal 5.2.1:

The proposal for a Board to determine that no action need be taken as the person is no longer registered is of concern to RCNA. If the registrant later makes application to restore their name to the register, and the matter has not been properly dealt with in the first instance, will create difficulties. Doing an investigation/hearing at a time remote from the initial conduct would be difficult and likely to be unfair to the applicant.

Proposal 5.4.1:

RCNA considers that there should always be an external review process for any committee/panel established under this legislation – it is not sufficient to allow such bodies to “regulate their own proceedings”.

Proposal 5.5.1:

RCNA considers that it is difficult to conceive of a matter that could be referred to a responsible tribunal without an investigation being conducted in the first instance, yet, this seems to be implied by the proposal to do so after only a “preliminary assessment”.

It seems unbalanced to enable a Board to suspend someone’s registration after a preliminary assessment, but not to give them authority also/alternatively to place conditions/limits on the registration.

Proposal 5.5.3:

RCNA suggests that if matters are referred to a tribunal on the basis of a judgement by the Board that they are serious enough to warrant action such as suspension if proven, then there should be a right of review about such a decision.

6.4 Notifiers’ rights of review of preliminary assessment decisions

Fourth paragraph

There is mention of a review panel (constituted of people internal to the Board plus a nominee of HCC) having the power to investigate further if it has concerns with the initial assessment/investigation – the resourcing of such a power is not clear. And the independence is questionable as well, if the majority of members are from within the Board.

Rights of notifiers

RCNA prefers Option 2, but flags concerns noted previously in relation to resourcing and independence of this review process.

6. Performance matters

6.5 Decisions available to performance panel following a hearing

Proposal 6.5.1

RCNA has a concern that the panel has the power to take actions that should only be the power of the Board – that is, panels should only be able to make recommendations to the Board (this same concern applies to the health and conduct panels).

7. Health or impairment matters

7.1 Overview of management of health related matters

Proposal 7.1.2:

It is RCNAs view that health programs should be part of the mainstream health system and therefore funded through the usual funding mechanisms such as Medicare.

8. Conduct matters

8.3 Investigations

Proposal 8.3.3:

RCNA considers that 28 days is too long a time between a decision to investigate and notification of the person whose conduct is being investigated. Seven days is more reasonable.

Proposal 8.3.4:

RCNA supports the exemption to notice of an investigation .

9. Ensuring accountability, transparency and procedural fairness

9.1 Achieving separation of functions

Proposal 9.1.1:

RCNA does not support Option 1. Options 2 or 3 are preferred.

9.3 Legal representation for registrants at panel hearings

RCNA supports Option 4(b)

9.4 Confidentiality of panel hearings

Proposal 9.4.1:

RCNA supports the proposal.

9.5 Status of notifiers at panel hearings

Proposal 9.5.1:

RCNA considers that there should be a right for any person aggrieved by a decision to seek a review of that decision – and the notifier – if a consumer, must have the right of representation/support person.

9.8 Role of Commonwealth, State and Territory ombudsman

RCNA prefers Option 2. Having the Commonwealth ombudsman deal with all national registration issues could lead to overload of that office.

10 Tribunal hearings

10.4 Review jurisdiction of tribunal

Proposal 10.4.1:

RCNA prefers alternative option, allowing certain bodies the right to appear before tribunal and make submissions.

Proposal 10.4.2:

The refusal to register within a specified period is supported except for overseas applications unless it is made clear that the decision to refer to an assessment/education process and that the time taken to complete that education/assessment is not part of the “decision time”.

10.6 Constitution and appointment of tribunal hearing panels

Proposal 10.6.1:

RCNA considers that the presence of a lawyer on the tribunal is not sufficient for consumer/community voice. The tribunal panel must include at least two members of the same profession as the practitioner, and also two members of the community as well as the chair.

4. Conclusion

RCNA has welcomed the opportunity to review the draft Consultation Paper *Proposed arrangements for handling complaints, and dealing with performance, health and conduct matters*. The foregoing comments are offered to assist the Practitioner Regulation Subcommittee to the Health Workforce Principal Committee in its deliberations on drafting legislation which will serve to protect the public.

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