

Complaints Arrangements Submission

ATTN

Practitioner Regulation Subcommittee

Victorian Community Members COAC
Reference Group

C/- Psychologists Registration Board of
Victoria Box 358, Collins Street West,
Melbourne, 8007

Re: Proposed arrangements for handling complaints and dealing with performance, health and conduct matters

In May 2008, Community Members of the various Victorian Health Professions Registration Boards (HPRB) established a *Community Members Forum* to discuss issues of common interest.

Recognising the significance of the *COAG* Intergovernmental Agreement on a National Registration and Accreditation Scheme for the Health Professions (IGA), the Community Members Forum established a *Community Members COAG Reference Group* to provide independent comment on key aspects of health reform and of the legislative program being developed to implement the IGA.

The Community Members COAG Reference Group now wishes to submit its response to the proposed arrangements as outlined in the Consultation Paper on Complaints and Performance, Health and Conduct Matters

In providing comment, the Reference Group is guided by 2 fundamental principles which we argue should be applied consistently at all levels and in all circumstances to the proposed arrangements.

The principles are:

1. These arrangements are intended to ensure that the protection of the public is paramount.
2. The arrangements are intended to ensure that the public have absolute confidence in their integrity, credibility and fairness.

The basic premise of the arrangements is that they are seen to be credible and open, with this being ensured by genuine community participation at all levels of dealing with complaints or performance (including VCAT or its equivalents in other states); and, that their accountability and credibility is enhanced by a requirement to publish reasons for decisions (with appropriate protection of anonymity where necessary)

The Reference Group holds the strong view that to ensure public acceptance and confidence is achieved, participation of genuine community non-practitioner (non- lawyer) members at all levels of the process is required.

This means having a community member on each and every panel, committee and tribunal hearing matters relating to performance, health and conduct.

It also requires a clear distinction between a community member who ensures community participation in the process and a legal member whose role is to provide legal expertise to the process. Legal and community members are not interchangeable

The Reference group submits specific comment on the following issues

Mandatory Reporting 4.4

Community members support the principle of mandatory reporting obligations in order to protect the public. We submit that these obligations may need to be tempered by what is realistic and fair to the person who has the obligation to report these matters. We recognise there is a potential for conflict here between the overriding principle re “the protection of the public” – as against “protecting” the “reporter.”

We are also cognisant of the need to avoid disincentives for health practitioners to seek assistance if mandatory reporting was introduced.

Composition of Panels dealing with Performance, Health and Conduct matters 6.4, 7.4 and 8.5

The Reference Group suggests changing the wording in relation to the definition of a non practitioner member from “never been a registrant in a regulated health profession” to never having been a registrant in **that** regulated health profession”. This is because it is often advantageous to have non practitioners who have knowledge and understanding of the context in which health practitioners operate. The proposed legislation would exclude this cohort.

Health Panel Composition – second dot-point. The Reference Group suggests replacing registered “medical” practitioner with registered “**health**” practitioner as not all health related issues are medical in nature.

Legal Representation 9.3

Reference Group members agree with the reasoning laid out in terms of trying to keep panels low-key and informal and therefore support option 4b.

Tribunals Hearings 10

Prior to the introduction of the Health Professions Registration Act 2005, complaints of a serious nature were heard at formal hearings at which community members of boards were panel members. Those complaints are now heard at VCAT, where the community member voice has been excluded in favour of panels comprising a legal member as chair and two members of the relevant health profession. There has recently been community disquiet over a VCAT decision regarding return to practice of a health professional. It is likely that as it becomes more widely known by the public that there is now no longer a community member involved in these deliberations, this community disquiet will grow stronger.

The introduction of national registration is an opportunity to remedy the lack of a community voice in deliberations about the most serious complaints about health professionals. Not only does majority composition of tribunals by members of the relevant health profession run the risk of compromising public confidence in the process and outcomes, it can also leave practitioner members of VCAT panels, as well as the health professions themselves open to the unfair public perception of bias, or apprehended bias, in favour of the health professional under investigation.

The Reference Group agrees that tribunals dealing with complaints of a serious nature, such as VCAT, should be chaired by a legal member. However legal members are rightly chosen for their legal knowledge and skills, and their experience in the law and it is this background they bring to the tribunal's deliberations. To suggest that legal members would thus be representative of members of the broader community is an unsustainable argument.

The Reference Group submits that a tribunal panel should be constituted with a minimum of three members one of whom is a legal practitioner, one of whom is a community member and one of whom is from the same profession as the practitioner who is a party to the proceedings. Where it is felt that the expertise of more than one relevant health practitioner is required, a four member panel should be constituted. To have no community members at the tribunal level undermines the concept of openness and accountability to the community that is reflected at all other levels of the complaints process.

Constitution and Appointment of Tribunal Hearing Panels 10.6 (second dot-point)

The Reference Group strongly disagrees with the stated assumption that because a “tribunal is separate from the boards, and probably chaired by a legal member, community standards are likely to be reflected in the determinations.” Accordingly, it is submitted that tribunal panels should be constituted as set out in the preceding paragraph.

Further, to ensure the public’s confidence in the tribunal process, it needs to be as transparent as possible. The Reference Group therefore strongly endorses the proposal in **10.11** that the reasons for the findings and determination orders are published, as well as the outcome itself. This enables the public to be well informed, not only of the outcome of the hearing into a complaint but also of the tribunal’s reasoning.

Reasons for and Notice of Decisions 10.11 and 10.12 including proposal 10.12.1

Both proposals are supported, but it should be emphasised that “reasons for decision should be made public”

The Community Members COAG Reference Group would be happy to provide further information on any of the above matters should it be required.

Yours sincerely



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On behalf of

Victorian HPRB Community Members COAG Reference Group