



SUBMISSION OF THE HEALTH SERVICES COMMISSIONER, VICTORIA, TO THE NATIONAL REGISTRATION AND ACCREDITATION SCHEME FOR THE HEALTH PROFESSIONS CONSULTATION PAPER PROPOSED REGISTRATION ARRANGEMENTS

DATE: 31 OCTOBER 2008

Thank you for the opportunity of commenting on this important national initiative which the Health Services Commissioner (HSC) supports. National registration is an important initiative in promoting harmonisation throughout Australia and promoting a unified set of standards in the public interest. It is an opportunity for genuine cooperative federalism rather than Federal domination.

I understand this is the first in a series of consultation papers on matters requiring decisions from governments to prepare the second stage of national legislation establishing the National Registration and Accreditation Scheme for the Health Professions.

1.1 Overview of the Implementation of the National Scheme

This explains in clear terms the Council of Australian Governments (COAG) processes and the announcement by Health Ministers of the process to ensure that professions, consumers, registration boards and education providers, as well as members of the general public, have the opportunity to contribute to the implementation of the new Scheme. Broad consultation will assist ensuring that major stakeholders' views are considered and the right balance is achieved in ensuring public safety and fair arrangements for health professions. Terms such as "responsible board, registered health practitioner, regulated profession" will require definition in the legislation.

2. Principles and approach

Proposal 2.1

HSC supports this proposal.

3. Regulated professions

Podiatry will be included in the first round of implementation and HSC has responded separately to the paper concerning the registration of other professions. The single register encompassing all levels of nurses and midwives is a useful initiative.

4. Initial registration

4.1 Applications for registration

HSC supports this and national consistency including eventually an online application process for re-registration but not initial registration because of concerns about the need to verify documents.

4.2 Information required on initial application

4.2.1 d. states, "Information on any complaints made against the applicant to bodies such as health complaints commissioners, Commonwealth, State or Territory bodies." This needs a very serious rethink. The legislation that governs the health complaints commissioners and the work we do requires high levels of confidentiality. Conciliation proceedings are protected by not only confidentiality but also legal privilege. Information gained in conciliation cannot be revealed, even to courts of law. About ten years ago the Medical Practitioners Board of Victoria (MPBV) proposed that doctors should be required to notify the MPBV of any conciliation settlements against them. They wanted information about whether there had been a settlement and the amount of any compensation paid. I was asked to comment on that proposal at the time and I consulted with all relevant stakeholders including the plaintiff lawyers, the defence lawyers, medical indemnity funds and hospital representatives. I was told in no uncertain terms that the cooperative relationship between HSC and those bodies would not be possible if there was a requirement to reveal the results and amount of settlements. The MPBV accepted this and withdrew the proposal. I therefore strongly recommend that if there is to be a 4.2.1 (d) this would need to be very carefully prescribed to protect conciliation proceedings and settlements.

4.3 Criminal history checks

I have chosen Option 3 as this is the one that appears to provide the greatest degree of protection for members of the public.

5. Qualifications for registration

This is supported and recognition of internships or workplace integrated learning is also relevant in some of the professions e.g. pharmacy.

Proposal 5.2

HSC supports this and would also like to see substantially equivalent qualifications from other countries included.

6. Registration decisions

Proposal 6.1.1

This is supported in its current form.

Proposal 6.1.2

The term "health assessment" rather than "medical examination" is more appropriate for inclusion in legislation.

6.2 Who makes registration decisions?

Proposal 6.2.1

This is supported by HSC as is proposal 6.2.2. HSC notes the large number of Committees proposed will be over-burdensome for the smaller boards.

6.3 Professional indemnity insurance

This is supported as proposed. However some specialities may also require personal indemnity as well.

6.4 Powers to refuse to grant registration

6.4.1 proposal is supported but 6.4.1 (d) there would need to be some guidance on what makes "the applicant unfit in the public interest to practice in the regulated profession." Proposal 6.4.2 is supported by HSC.

6.5 Refusal process

This is supported by HSC as written.

6.6 Rights of review of registration decisions

This is supported by HSC as written.

7. Types of registration granted

HSC supports this as it is set out in proposal 7.1.

7.1 General registration

Supported, but include postgraduate qualifications.

7.2 Specific registration

Supported.

7.3 Non-practising registration

Proposal 7.3.1 is supported by HSC but not the "alternative option." 7.3.2 HSC supports the notion that a non-practising registration means the professional should not be practising in that profession at all. There may be further concerns where the non-practising registrant is the owner of a health service.

7.4 Student registration

HSC supports option 2 that the legislation include powers for all boards to register and regulate students, and student registration be mandatory, but only for those students who are undertaking clinical training, that is, those who are at the point in their course where they are in direct contact with patients. This should be sufficient to protect the public.

7.5 Corporate registration

It is not proposed that the legislation make provision for registration of corporations. HSC understands the reasons for this but points out there are many difficulties associated with non-doctors owning practices and placing pressure on doctors to behave in certain ways.

Whilst the registered professional is responsible for their own standards, this can be very complex. Some corporatised medical practices are refusing to comply with the *Health Records Act 2001* in Victoria and have not looked after patient records sufficiently well. Some difficulties with non-registered corporations involved in medical practices are set out in chapter 25 of *Dispute & Dilemmas in Health Law*.¹

8. Authorities conferred by registration

8.1 Title protection

Proposal 8.1.1 is supported by HSC.

8.2 Practice protection

Supported.

8.3 Dentistry practice restrictions

Proposal 8.3.1 is supported by HSC.

8.4 Optometry practice restrictions

The proposals in this section are all supported by HSC as written.

8.5 Restrictions on spinal manipulation

HSC lacks the expertise to comment on this.

9. Renewal of registration and continuing competence

9.1 Background

This sets out the situation well.

¹ Wilson, Beth, "Health systems, quality control and corporatisation: New challenges for accountability" in Freckelton, Ian and Petersen, Kerry (eds) *Dispute & Dilemmas in Health Law*, Federation Press, 2006, page 516-533.

9.2 Continuing competence requirements

Proposal 9.2.1 is supported by HSC as is proposal 9.2.2, 9.3.1 and 9.4.3. Sub-paragraph C should be "professional" not "medical" negligence.

10. Endorsement of registration

Supported.

10.1 Specialist endorsement

Supported.

Proposal 10.1.1 is supported by HSC. Proposal 10.1.3 is supported by HSC but "medical" should be changed to "professional."

10.3 Other endorsements on registration

All of the matters set out in 10.3 are supported by HSC.

11. Other matters

11.1 Duration of registration

Twelve month period of registration is supported.

11.2 Registration certificates

Proposal 11.2.1

Supported.

Proposal 11.2.2

Supported.

Proposal 11.2.3

Supported.

Proposal 11.2.4

Supported – not the alternative options.

Proposal 11.2.5

A single practice address for each jurisdiction must be provided but requiring every address would be too onerous for some professions e.g. VMO's in hospitals. Should not be a prosecutable offence.

11.3 Failure to renew

A "grace period" should only be allowed for very special circumstances.

11.4 Reinstatement to the register

Supported.

Proposal 11.4.1

Supported.

Proposal 11.4.5

Supported provided voluntary removal from the register is not used to avoid disciplinary proceedings.

12. Transition arrangements

Supported.