



24 July 2009

The Secretary
Senate Community Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Email: community.affairs.sen@aph.gov.au

Dear Committee Secretary,

Submission: exposure draft of *Health Practitioner Regulation National Law 2009 (Bill B)*

I am writing to provide you with the Consumers Health Forum of Australia (CHF) submission to the Senate Community Affairs Committee Inquiry into National Registration and Accreditation Scheme for Doctors and Other Health Workers. Please find the submission attached.

This submission builds on the previous CHF Submission to the Senate Inquiry into the Scheme in April 2009.

Thank you for the opportunity to make a submission on this important healthcare reform.

Yours sincerely

(signed)

Carol Bennett
EXECUTIVE DIRECTOR

Submission to the Senate Inquiry into National Registration and Accreditation Scheme for Doctors and Other Health Workers

July 2009

Executive Summary

The Consumers Health Forum of Australia (CHF) welcomes the establishment of a National Registration and Accreditation Scheme for the health professions as it will take safety and quality to a new level in Australia.

CHF supports a national approach to registration, accreditation and health complaints as it will address the current inconsistencies across States and Territories.

CHF welcomes the Scheme's proposal for independent accreditation standards, ensuring that registration of health professions is coordinated and consistent across Australia and applauds the commitment to simplified complaints arrangements for consumers, including the role of the Public Interest Assessor.

CHF is very keen to meet with the Senate Committee to expand on consumer views and recommendations outlined in this submission.

Recommendations

Recommendation 1

That the legislation include mechanisms that enable further professions to be included in the Scheme once it has been implemented.

Recommendation 2

Community organisations that provide health services be regulated by the national Scheme.

Recommendation 3

Community members on National Boards require support to effectively fulfil their role.

Recommendation 4

Practical ways for community members on National Boards to interact with each other are included in the legislation. This could include regular community representative meetings and a community member website that allows members to access information, discuss ideas and request support.

Recommendation 5

Functions of the Public Interest Assessor (PIA) should also be to investigate and publicly report on complaints.

Recommendation 6

That the following strategies are made available to, and required of, the PIA to determine what the public interest is:

- Independent funding to ensure that the funding does not create a conflict of interest
- Ongoing funding to enable the PIA to consult with the community about what the public interest is
- Funding to allow the PIA to investigate complaints, such as consulting and investigating with a local community where a complaint has been made, and
- The establishment of a Consumer Advisory Group that the PIA can, and should, seek advice from.

Recommendation 7

Consumers must be involved in developing, assessing and approving accreditation functions.

Recommendation 8

Consumers are involved in every level of accreditation standard development and decision making.

Recommendation 9

Consumers be provided with support to contribute to the development of accreditation standards, such as training and up-skilling.

Recommendation 10

To ensure that consumer consultation is successful, the accreditation body or committee must be:

- Funded to undertake regular consumer consultation
- Collaborate with the community to promote a collaborative development of accreditation standards
- Required to report, publicly, on outcomes of the consultation in a timely, meaningful and accessible manner, and
- Involve consumers in the initial assessment of accreditation standards as well as regular review of standards once they are approved.

Recommendation 11

The community in the area of need is involved in decisions about the public interest and limited registration in their area.

Recommendation 12

The highest registration standard apply nationally.

Recommendation 13

Clause 69 and 73 are amended to say that to be registered, a health practitioner must have public indemnity insurance *if it is available to them*.

Recommendation 14

That the simplified complaints process also provides consumers with a flow chart that clearly outlines all options and pathways. This flow chart should be available on the National Agency website.

Recommendation 15

There is mandatory reporting of a health practitioner or health organisation reporting by an employee.

Recommendation 16

The legislation must specify clear timeframes for providing receipt, and progress of, complaints to the person making the complaint.

Recommendation 17

Timeframes for complaints are strengthened and the term *as soon as practicable* be replaced with clear timeframes, such as 10 working days.

Recommendation 18

CHF recommends that the legislation include an appeals/review process for consumers and those acting on their behalf. Specifically, consumers should be recognised in Clause 247, with a presumption against ordering costs against them included in Clause 248.

Recommendation 19

The complaints process includes support for consumers such as witness support and counselling.

Recommendation 20

The National Agency progress the complaint on behalf of the consumer, should the consumer die before the complaint has been finalised.

Recommendation 21

If the States and Territories choose to retain their own complaints system, the National Agency must be the single point of entry for consumers when making a complaint.

Introduction

The Consumers Health Forum of Australia (CHF) welcomes the opportunity to provide a Submission to the Senate Community Affairs Committee Inquiry into National Registration and Accreditation Scheme for Doctors and Other Health Workers. This submission builds on the previous CHF Submission to the Senate Inquiry into the Scheme in April 2009¹.

CHF supports the national Scheme's commitment to improving patient care and safety through national registration, accreditation, health care complaints and providing health care consumers with information through a public register.

CHF has based this submission on discussions with consumers about registration, accreditation and health complaints mechanisms over a number of years, including recent input from CHF members and consumer representatives about the draft legislation².

The key recommendations and strategies in this paper are based on the principle that health care works better when consumers are partners in decision-making.

This submission focuses on the areas of the draft legislation that are most relevant to health consumers. This includes the Public Interest Assessor, accreditation, registration and complaints.

¹ CHF Submission to the Senate Inquiry into the National Registration and Accreditation Scheme for the Health Professions available on the CHF website at <http://www.chf.org.au/Docs/Downloads/sub-523-senate-inquiry-nras.pdf>

² This includes consultation with CHF members through a CHF information and consultation paper on Bill B (<http://www.chf.org.au/Docs/Downloads/info-532-bill-b.pdf>) and two teleconference with key consumer representatives and CHF members including representatives of: Health Issues Centre, Health Care Consumers of the ACT, Health Consumers QLD Ministerial Advisory Committee, Health Consumers Council WA and the Health Consumers Alliance SA.

Key Issues

The National Scheme

An objective of the National Scheme is to provide for the protection of the public by ensuring that only health practitioners who are suitably trained and qualified to practice in a competent and ethical manner are registered. The guiding principles include the principle that the Scheme is to operate in a transparent, accountable, efficient, effective and fair way.

CHF applauds this objective and guiding principle, as safety and quality of health care and public accountability are essential.

CHF is guided by the view that everyone has the right to safe, good quality health care and believes that if the Scheme is implemented with strong links between registration, accreditation and complaints, it will help to improve patient safety and quality.

The professions covered by the legislation

The draft legislation states that the following thirteen health professions are covered by the Scheme:

1. Chiropractic
2. Dental
3. Medical
4. Nursing and Midwifery
5. Optometry
6. Osteopathy
7. Pharmacy
8. Physiotherapy
9. Podiatry
10. Psychology
11. Medical Radiation Practice
12. Aboriginal and Torres Strait Islander Health Practice
13. Chinese Medicine

CHF welcomes the inclusion of these professions and recommends that the legislation include mechanisms that enable a broader range of professions to be included in the Scheme once it has been implemented. The more professions that are covered by the Scheme should result in the Scheme further meeting its objective of protecting the public.

CHF also recommends that community organisations that provide health services be regulated by the national Scheme. This includes support groups and community organisations that assist and empower consumers to self manage their chronic conditions.

Recommendations

That the legislation include mechanisms that enable a broader range of professions to be included in the Scheme once it has been implemented.

Community organisations that provide health services be regulated by the national Scheme.

National agency

The draft legislation (Clause 23) outlines the establishment of the Australian Health Practitioner Regulation Agency – known as the National Agency.

CHF welcomes the establishment of the National Agency and is pleased that the functions of the National Agency include receiving and dealing with complaints – by establishing a national process for receiving complaints.

National Boards

CHF welcomes the inclusion of at least two community members on the national board for each profession. This is an important step in building community confidence in the Australian health workforce.

Support for community members on national boards

If community membership on professional boards is to be an effective process for building community confidence in the health profession and the Scheme, the community members on the professional boards must be able to reflect the viewpoints and concerns of consumers and be persons in whom the community has confidence. Community members on national boards and committees will require initial and ongoing support in order to fulfil their role. Support includes training on the role and expectations of community representatives, the role of the board and the national Scheme.

Community members will benefit from opportunities to meet with each other and share best practice, and continue to learn from the experiences of implementing the Scheme. CHF recommends that practical ways for community members to interact with each other are included in the legislation. This could include regular community representative meetings and a community member website that allows members to access information, discuss ideas and request support.

Recommendation

Community members on National Boards require support to effectively fulfil their role.

Practical ways for community members on National Boards to interact with each other are included in the legislation. This could include regular community representative meetings and a community member website that allows members to access information, discuss ideas and request support.

Public Interest Assessor

CHF welcomes the role of the Public Interest Assessor (PIA), in particular the role of assessing and making decisions about complaints. The draft legislation (Clause 35 and 36) states that the Ministerial Council is to appoint a Public Interest Assessor whose function is to:

- Assess complaints made to the National Agency, and
- Make decisions, in conjunction with the National Boards, about action taken for complaints.

CHF recommends that the functions of the PIA should also be to investigate and publicly report on complaints.

Public interest

CHF notes that the draft legislation does not specify how the PIA will assess or decide on what the public interest is. For the PIA to act in the public interest, they must be provided with ways to determine what the public interest is which will enable them to act in the public interest.

Accordingly, CHF recommends that the following strategies are made available to, and required of, the PIA to determine what the public interest is:

- Independent funding to ensure that the funding does not create a conflict of interest
- Ongoing funding to enable the PIA to consult with the community about what the public interest is
- Funding to allow the PIA to investigate complaints, such as consulting and investigating with a local community where a complaint has been made, and
- The establishment of a Consumer Advisory Group that the PIA can, and should, seek advice from.

CHF strongly believes that including these strategies in the National Law will strengthen the Scheme and the PIA's ability to act in the public interest.

CHF is pleased that the National Board must try and reach agreement with the Independent Assessor about how the complaint is dealt with and, that if they cannot reach agreement, the most serious action proposed will apply (Clause 165).

Reporting

CHF notes that the draft legislation does not specify who the PIA reports to. If the PIA is to act in the public interest, they must be accountable and report to the public in a timely, meaningful and accessible way.

Recommendations

Functions of the PIA should also be to investigate and publicly report on complaints.

That the following strategies are made available to, and required of, the PIA to determine what the public interest is:

- Independent funding to ensure that the funding does not create a conflict of interest
- Ongoing funding to enable the PIA to consult with the community about what the public interest is
- Funding to allow the PIA to investigate complaints, such as consulting and investigating with a local community where a complaint has been made, and
- The establishment of a Consumer Advisory Group that the PIA can, and should, seek advice from.

Accreditation

Independent accreditation functions

A major benefit for consumers of the national Scheme is the opportunity for consumers to contribute to accreditation of health professional education and training and CHF notes that consumers must be involved in developing, assessing and approving accreditation functions.

The Australian Health Workforce Ministerial Council announced that the accreditation function would be independent of governments. Accordingly, the draft legislation states that accreditation functions will be performed by an external accreditation body established by the Ministerial Council (Clause 60). If the Ministerial Council does not appoint an accreditation body, each National Board may establish an accreditation committee (Clause 62).

CHF supports accreditation functions being independent of governments on the requirement that consumers are involved in every level of accreditation standard development and decision-making. This includes legislated consumer involvement in accreditation committees and bodies. CHF also recommends that consumers be provided with support to contribute to the development of accreditation standards, such as training and up-skilling.

Consultation around the development of accreditation standards

The draft legislation states that when developing an accreditation standard, the accreditation body or committee must undertake wide-ranging consultation about the content of the standard. CHF is concerned that the draft legislation does not specify the form of process for this consultation (Clause 64[2]) and who will be consulted.

CHF would like clarification about how the consultation process will be conducted and who will be consulted with. Consumers must be consulted with at every stage of the development of accreditation standards. Furthermore, for consumer consultation to be successful, the accreditation body or committee must be:

- Funded to undertake regular consumer consultation
- Collaborate with the community to promote a collaborative development of accreditation standards
- Required to report publicly, on outcomes of the consultation in a timely, meaningful and accessible manner, and
- Involve consumers in the initial assessment of accreditation standards as well as regular review of standards once they are approved.

CHF also emphasises the importance of entry standards and mechanisms for health professional courses that ensure under-represented communities such as people from culturally and linguistically diverse and Indigenous backgrounds are not prevented or discouraged from training as health professionals. Consultations with these communities in designing health education courses, as well as their involvement in accreditation of the courses, will be critical in improving health outcomes in Australia, especially for vulnerable groups.

CHF is pleased that the draft legislation states that once accreditation standards are approved, they will be published on the National Agency website (Clause 65[6]) as this will assist to provide transparency and awareness of, and accountability to, the accreditation standards.

Recommendations

Consumers must be involved in developing, assessing and approving accreditation functions.

Consumers are involved in every level of accreditation standard development and decision making.

Consumers be provided with support to contribute to the development of accreditation standards, such as training and up-skilling.

To ensure that consumer consultation is successful, the accreditation body or committee must be:

- Funded to undertake regular consumer consultation
- Collaborate with the community to promote a collaborative development of accreditation standards

- Required to report publicly, on outcomes of the consultation in a timely, meaningful and accessible manner, and
- Involve consumers in the initial assessment of accreditation standards as well as regular review of standards once they are approved.

Registration

The draft legislation outlines 6 areas of registration:

- General registration
- Specialist registration
- Provisional registration – including a period of supervision required to become a registered general or specialist practitioner
- Limited registration – includes postgraduate training and supervised practice
- Non-practicing registration, and
- Student registration.

Specialist titles

CHF is pleased that the draft legislation (Clause 129) restricts the use of titles, such as ‘specialist health practitioner’ to only those who are registered as a specialist in that particular area. This will help to ensure that consumers are only seeing appropriately trained, qualified and registered health practitioners.

Area of need

CHF supports area of need, however, CHF is concerned that Clause 85 – Limited registration for area of need, and Clause 86 – Limited registration in the public interest, could lead to lowered standards of health care being provided in areas of need. CHF would like clarification on what ‘limited registration’ and ‘limited scope of practice’ means. Furthermore, CHF recommends that the community in the area of need is involved in decisions about the public interest and limited registration in their area.

Student registration

CHF is concerned that the national law will lower current standards of student registration. Consumers have raised concerns with CHF that the standards for student registration outlined in the draft legislation are lower than the standards in South Australia. CHF emphasises the importance that the national law raises, not lowers the standards. As a result, CHF recommends that the highest registration standard apply nationally.

Maternity services

CHF is very concerned about the impact that the national law will have on maternity and home birthing services. The draft legislation states that to be a registered practitioner, the practitioner must have public indemnity insurance (Clause 69 and 73) however privately

practicing midwives are unable to access public indemnity insurance. As a result, under the National Law they will be unregistered.

This has a significant impact on the safety and quality of health care as it means that consumers who would like to have a home birth will only have access to unregistered and unregulated midwives. CHF recommends Clause 69 and 73 are amended to say that to be registered, a health practitioner must have public indemnity insurance *if it is available to them*.

Recommendations

The community in the area of need is involved in decisions about the public interest and limited registration in their area.

The highest registration standard apply nationally.

Clause 69 and 73 are amended to say that to be registered, a health practitioner must have public indemnity insurance *if it is available to them*.

Complaints, performance and health conduct

Making a complaint

CHF applauds the simplified complaints arrangements for health consumers outlined in the draft legislation including that:

- complaints may be made to the National Agency via telephone or in writing, including by email or other electronic means (Clause 153), and
- if requested by the individual, the national Agency must provide assistance to make a complaint (Clause 154).

CHF recommends that the simplified complaints process also provide consumers with a flow chart that clearly outlines all options and pathways available to consumers on the National Agency website and in hard copy for those without the internet.

CHF welcomes the draft legislation stating mandatory reporting by a health practitioner and employers if they believe another registered practitioner's performance is reportable conduct (Clause 156). CHF also recommends that the legislation state that there is mandatory reporting of a health practitioner or health organisation reporting by an employee.

Timeframes

CHF notes that the National Board must notify the registered health practitioner of the complaint within 28 days with progress reports at 3 month intervals (Clause 212), however, the draft legislation does not specify that the person making the complaint receives an acknowledgment or receipt of the complaint or progress reports on their complaint.

For the national scheme to truly simplify complaints processes for consumers, the draft legislation must specify clear timeframes for providing receipt, and progress of, complaints to the person making the complaint. This is particularly important to ensure that consumers do not feel disempowered during the complaints process.

CHF is also concerned that the draft legislation contains vague timeframes that could produce unnecessary delays in dealing with complaints. For example, Clause 159 states that the National Agency must refer the complaint to the National Board *as soon as practicable*. CHF recommends that the term *as soon as practicable* be replaced with clear timeframes, such as 10 working days.

Appeals

The draft legislation states that there is an appeals process available to health care professionals (Clause 246) however there does not seem to be an appeal or review process available to consumers or community organisations. CHF recommends that the legislation include an appeals/review process available to consumers and those acting on their behalf.

Clause 247 should be amended to allow a consumer, or several consumers, who suffer damage or harm that is relevant to an appellable decision, to be automatically joined as parties to the proceedings being heard by a responsible tribunal. This should include the ability for a consumer to request that an advocate, including a community group or consumer representative organisation, to appear on her or his behalf.

In addition, Clause 248 should contain a presumption against awarding costs against a consumer or advocate. Otherwise, it is likely that a disincentive will be created for consumers to enter into the complaints process, and as such, it will be detrimental to the broader public's confidence in the Scheme.

Support

The draft legislation outlines that there will be support made available to health care professionals during the complaints process, however, there is no mention of support for consumers. CHF recommends that the complaints process include support for consumers such as witness support and counselling.

Progressing the complaint

CHF would like clarification about what happens if a person who makes a complaint dies during the complaint process. CHF recommends that the National Agency progress the complaint on behalf of the consumer, should the consumer die before the complaint has been finalised.

National and State/Territory law for handling complaints

It is CHF's understanding that the national law will be established through State and Territory laws, with each State and Territory having the option to retain their own law relating to complaints. CHF's preference, and support, is for a national approach to registration, accreditation and complaints.

CHF is concerned that providing each State and Territory with the option to retain their own individual complaints system will compromise the Scheme's ability to deliver a nationally consistent complaints system that consumers want and accept. It will provide for a system that is complex and confusing for consumers.

As a result, CHF strongly recommends that if the States and Territories choose to retain their own complaints system the National Agency must be the single point of entry for consumers when making a complaint.

CHF urges the National Health Workforce Taskforce to deliver a National Scheme that is coordinated and consistent across Australia.

Recommendations

That the simplified complaints process also provides consumers with a flow chart that clearly outlines all options and pathways. This flow chart should be available on the National Agency website.

There is mandatory reporting of a health practitioner or health organisation reporting by an employee.

The legislation must specify clear timeframes for providing receipt, and progress of, complaints to the person making the complaint.

Timeframes for complaints are strengthened and the term *as soon as practicable* be replaced with clear timeframes, such as 10 working days.

CHF recommends that the legislation include an appeals/review process for consumers and those acting on their behalf. Specifically, consumers should be recognised in Clause 247, with a presumption against ordering costs against them included in Clause 248.

The complaints process includes support for consumers such as witness support and counselling.

The National Agency progress the complaint on behalf of the consumer, should the consumer die before the complaint has been finalised.

If the States and Territories choose to retain their own complaints system, the National Agency must be the single point of entry for consumers when making a complaint.

Summary

Australia currently has an important and exciting opportunity to take safety and quality to a new level. Consumers want the Scheme to close the gaps and inconsistencies between the states and territories and the health professions and provide them with information about their health professionals to help them to make informed decisions about their health care.

CHF welcomes the commitment to improving safety and quality through national registration of health professions and independent accreditation arrangements. CHF applauds the simplified complaints arrangements that are outlined in the draft legislation.

CHF notes that there are a few areas in the Scheme that require clarification and strengthened consumer involvement, however, CHF strongly believes that the draft legislation proposes for a Scheme that will meet its objective of protecting the public.

CHF emphasises the importance of the Australian Government investing in, and including consumers, with their unique and valuable perspectives, as partners in the implementation of this important Scheme.



Background information

The Consumers Health Forum of Australia Inc (CHF) is the national voice for health consumers. As an independent non-government organisation, CHF helps shape Australia's health system by representing and involving consumers in health policy and program development.

Health consumers have a unique and important perspective on health as the users and beneficiaries of health care and, ultimately, those who pay for it. CHF takes consumers' views to government and policy makers, providing an important balance to the views of health care professionals, service providers and industry to achieve a health system that reflects the needs of all stakeholders.

CHF member organisations reach millions of Australian health consumers across a wide range of health interests and health system experiences. Health policy is developed through wide consultation with members, ensuring a broad, representative, health consumer perspective.

Current priorities include safety and quality in health care, safe and appropriate use of medicines and health care for people with chronic conditions. CHF also facilitates the appointment of consumer representatives on over 200 national health-related committees.

CHF believes all consumers should receive affordable, safe, good quality health care at the time they need it. The best outcomes are achieved when consumers are involved in decisions about and management of their own health care. Consumers should receive health care information when they need it in a form they can understand, particularly about using medicines.

Established in 1987, CHF receives funding from the Australian Government Department of Health and Ageing and membership fees. It seeks external funding for priority projects.

With its ability to access a variety of health consumer networks and extensive knowledge of consumer issues, CHF is a respected and influential contributor to the Australian health debate.

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