

**NATIONAL REGISTRATION AND ACCREDITATION SCHEME FOR THE HEALTH  
PROFESSIONS**

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

**SUBMISSION**

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## EXECUTIVE SUMMARY

- The Physical Disability Council of NSW (PDCN) is the Peak body for approximately 700,000 people with physical disability in NSW.
- The concept of national registration for health practitioners is not a subject of concern for PDCN
- The particular areas of the Consultation Paper that PDCN has focused on are those of the complaint/ notification process and the investigation of complaints, as these are the areas of most immediate impact upon people with physical disability
- PDCN is concerned that the Principles identified in the Consultation Paper are not reflected in the model proposed in the Paper
- PDCN is concerned about the responsibility of the process of complaint assessment (excluding the complaint assessment consultation) resting with the relevant state registration authorities
  - Raises concern as to the interests of consumers
  - Raises concern as to the independence of the process
  - Raises issues of public confidence
- PDCN is concerned about the responsibility of the process of complaint Investigation (excluding the complaint assessment consultation) resting with the relevant state registration authorities
  - Raises concern as to the independence of the process
  - Issues of public confidence
- Recommendations
  - No 1: That state and territory HCCs conduct the initial assessment of complaints, and that the process used for this initial assessment be based on the process used by the NSW Health Care Complaints Commission
  - No 2: That complainants be afforded the opportunity to have review rights for decisions made, at the stage of preliminary assessment.
  - No 3: That the investigation of complaints be conducted by an agency separate to the registration authority
  - No 4: That both recommendations (1 and 2) be implemented within a co- regulatory framework

## The Physical Disability Council of NSW (PDCN)

PDCN is the peak body representing people with physical disabilities across New South Wales, representing approximately 700,000 residents<sup>1</sup> and believes that an inclusive society is achieved when people with physical disabilities are involved in every aspect of life.

PDCN is able to represent the needs and interests of people with physical disabilities. Membership of PDCN includes people with a range of physical disabilities, from young children and their carers, to aged people, living across NSW in either Greater Sydney Metropolitan area or rural NSW all from a wide range of socio-economic circumstances. PDCN has the background, knowledge and skills to advocate to all levels of Government regarding the needs of people with physical disabilities.

### Interests of Consumers.

The preliminary assessment of complaints is the most important process element in the management of complainants about health practitioners. During the preliminary assessment the 'tone is set' for any process that follows it including investigation, conciliation, and prosecution. This includes an opportunity to provide a safe environment.

A safe environment is essential for those who have experiences of care where, for a variety of reasons, they have felt unsafe. For some, placing a complaint with a registration authority that is made up of other members of that same profession may be confronting to complainants. There may also be concern by some complainants that bias may impact on the management of their complaint. This may result in some serious complaints that should be lodged ... not being lodged. For instance, a complaint of sexual assault by a health practitioner

It appears from the Consultation Paper that there is a strong commitment to the interests of consumers. In the Principles identified within the Consultation Paper focus is given to balance "...the rights and interests of consumers with those of health professionals"<sup>2</sup> which appears as principle 'c'. PDCN is of the opinion that for people with physical disability this principle cannot be met by placing the preliminary assessment of complaints, or the investigation of complaints, with the registration authorities.

PDCN believes that the interest of consumers may be positively reflected in both the preliminary assessment of a complaint, and the investigation of a complainant, when

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<sup>1</sup> ABS (2003-04). *Regional Population Growth, Australia and New Zealand. 2003-04.*  
Australian Institute of Health and Welfare (2008). *The Health of Australians – an overview.* Canberra p.36

<sup>2</sup> *Consultation Paper: Proposed arrangements for handling complaints, and dealing with performance, health and conduct matters* (October 2008) Australian Health Ministers' Advisory Council p.7

that role and responsibility is located with an organisation that is separate from the registration authority. This concept of the importance of the consumer was recognised in The Second Reading of the Health Care Complaints Bill<sup>3</sup> in the Parliament of NSW, when it was identified that the introduction of the legislation would provide a focus on "....*the patient as a consumer of health services*".

To reflect the stated principle within the Consultation Paper, of being consumer focused, PDCN believes it is essential for notifiers (complainants) "*.. to have review rights for decisions made at the stage of preliminary assessment.*" That is, PDCN supports *Option2*.<sup>4</sup>

### Independence of Process

The importance of this has already been identified and acted upon by the NSW state government, where the independence of registration authorities assessing and investigating complaints has already been identified as a flawed strategy. In New South Wales the NSW Health Care Complaints Commission was established by, and administers the Health Care Complaints Act 1993. The Commission was established by Parliament on 1 July 1994 to provide people with an effective means of lodging a complaint about health care practitioners and health care services, and have their complaints handled by an independent and accessible organisation.

The understanding of PDCN is that the NSW system has the clearest legislation and practice regarding an independent assessment of a complaint, before a decision is made regarding the best management of the complaint (eg investigation, conciliation, resolution or discontinuing the matter). This provides for a greater level of confidence for complainants than when registration authorities were responsible for the consideration of complaints, prior to assessment. PDCN also notes that in the Principles identified in the Consultation Paper, there is a proposal that the scheme "*builds on the best aspects of State and territory schemes*"<sup>5</sup>

A complaints vehicle that provides the elements of both co-regulation and independence from the registration authority is an achievable goal. In 2001 *Alison Reid, Medical Director of the NSW Medical Board not only described collaborative regulation as a success, but recommended it as a model to be followed by other medical regulatory agencies.*<sup>6</sup>

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<sup>3</sup> *Health Care Complaints Bill*. Hansard. Legislative Assembly. Parliament of NSW, 16 September 1992

<sup>4</sup> *Consultation Paper: Proposed arrangements for handling complaints, and dealing with performance, health and conduct matters* (October 2008) Australian Health Ministers' Advisory Council p.20

<sup>5</sup> *Consultation Paper: Proposed arrangements for handling complaints, and dealing with performance, health and conduct matters* (October 2008) Australian Health Ministers' Advisory Council p.7

<sup>6</sup> *Medicine Called to Account: Health Complaints Mechanisms in Australia*. Ed David Thomas, 2002, p28

## A Public Perception of Independence

PDCN believes that it is essential that for the credibility and effectiveness of a complaints vehicle for complaints about health practitioners, that public confidence is maintained. This is acknowledged in the Background section of the Consultation Paper where it is stated at there are “...*secondary but important objectives*” including “*maintenance of public confidence*”<sup>7</sup>

Perceptions of independence are not only a concern of people with physical disability in NSW. In Victoria, a research study in 2004 about consumer perspectives and health practitioner’s boards found “*concerns of some complainants about whether the boards were perceived to be sufficiently independent, impartial, and fair in their processes.*”<sup>8</sup> It is clear that a public perception of independence is only be achieved when the processes associated with the initial assessment of a complaint, and the process associated with the investigation of complaints is the responsibility of, and located with, an organisation separate from the registration authorities.

PDCN understands that some people with physical disability may also have life-long health consumer relationships with health practitioners. The reliance on the professional input of health practitioners places vulnerable people (including some people with physical disabilities who have particular health needs) in a difficult situation. They require a robust, independent and transparent vehicle for their complaints about practitioners. The model proposed in this Consultation Paper, where the responsibility of preliminary assessment and investigation of complaints rests with registration authorities, does not provide such a vehicle and therefore does not have the support of PDCN.

Thank you for the opportunity to provide this submission. If you require any further information or assistance, please contact Ruth Robinson, Executive Officer on 02 95521606 or [ruth.robinson@pdcnsw.org.au](mailto:ruth.robinson@pdcnsw.org.au)

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<sup>7</sup> *Consultation Paper: Proposed arrangements for handling complaints, and dealing with performance, health and conduct matters* (October 2008) Australian Health Ministers’ Advisory Council p.10

<sup>8</sup> *Bringing in the consumer perspective. Final Report: Consumer experiences of Complaint processes in Victorian Health Practitioners Boards* October 2004, p8