



Submission in response to the Exposure Draft of the Health Practitioner Regulation National Law (Bill B)

THIS SUBMISSION IS MADE BY THE COUNCIL OF PSYCHOLOGISTS REGISTRATION BOARDS OF AUSTRALASIA INC IN RELATION TO THE EXPOSURE DRAFT OF THE HEALTH PRACTITIONER REGULATION NATIONAL LAW ("BILL B"). IT RESULTS FROM CONSULTATIONS AMONGST THE BOARDS AND PRESENTS THEIR UNITED VIEW.

If you have any queries on these responses please contact the Executive Officer:
Ms Jayne Wilson, 03 62249331 or jayne@regboardstas.com.au

The Council of Psychologists Registration Boards [Australasia] Inc (CPRB) is generally supportive of the National Registration and Accreditation Scheme for Health Professionals. However CPRB has identified a number of significant concerns in its review of the Exposure Draft of the Health Practitioner Regulation National Law (Bill B).

Generally CPRB is concerned that the draft of Bill B appears to contain many drafting errors and is unclear in many of its intentions. For example there are many instances where the word "or" should include "and /or" (e.g. s69, s179) but in other instances "or" would appear to only mean "or" (e.g. s178). As existing regulators, the current Boards are very aware of the problems which can be faced by inconsistent and ambiguous legislation and the legal challenges that this may attract. However, as most of these matters are being identified in submissions made by individual Boards, CPRB will only address the following significant policy concerns in this submission:

1. Practice Protection for Psychological Tests

Clause 4 (2) (c) of the exposure Draft of Bill B states that:

"restrictions on the practice of a health profession are to be imposed under the scheme only if it is necessary to ensure health services are provided safely and are of an appropriate quality"

Subdivision 2 of Division 11 of Part 7 contains specific restrictions on dental, optical, and spinal manipulation practices.

In the interests of public safety CPRB submits that there should be a similar inclusion in the legislation on the use of certain psychological tests.

The development and application of tests of intelligence, personality, psychopathology, attitudes, and behaviour is an area of professional practice unique to psychology.

Psychological assessment using these tests is applied in the areas of health, education, forensics, the military and industry. They are used for decision making that can have long-term consequences for individuals (e.g. determination of disability or impairment, compensation, custody) and organisations.

One of the original drivers for the registration of psychologists was the protection of the public from the misuse of these tests by ensuring that only persons who are appropriately qualified and trained are able to have access to these tests and administer and interpret them.

Most test publishers have restricted the sale of psychological tests to registered psychologists but recent complaints by parents of inappropriate testing in Queensland by unqualified Guidance Officers in the Education Department indicates that there is a need for legislation to prevent potential risk to the public.

The potential risks to the public from not limiting these tests to trained psychologists result both from their misuse and from freedom of access to these tests. As well as the consequences of misdiagnosis from misuse, there is a real risk of the invalidation of these diagnostic tools by public familiarity with the content of the tests.

CPRB submits that a new section be included in Part 7 to restrict access to and use of psychological tests to registered psychologists. The tests that should be restricted are generally referred to as level 3 tests (level 1 = open to the public; level 2 = cross-professional tests requiring limited expertise and wide applicability; level 3 = protected tests for registered psychologists and are restricted from sale except to those with appropriate qualifications and registration status). The Psychology Board should be required to publish the criteria and list of protected tests.

2. Accreditation

CPRB supports independence of accreditation functions. However CPRB is concerned that the draft Bill provides what has been termed “a reserve power” for the Ministerial Council to direct a National Board about the policies to be applied when exercising its functions in relation to a particular accreditation standard (under s.65).

The draft Bill permits Ministerial intervention on the basis of “the substantive and negative impact of an accreditation standard on the recruitment or supply of health practitioners to the workforce.”

CPRB considers that workforce issues should not be allowed to take precedence over public safety. Accreditation standards are developed by the independent accrediting body and approved by the National Board to ensure that registered practitioners are appropriately trained to provide safe health services to the public. The independence of accreditation must not be compromised.

3. Jurisdictional representation

Bill B defines the membership of the National Boards as being at least one practitioner member from each large jurisdiction and at least one member from a small jurisdiction. CPRB is very concerned that there is differing treatment for differing jurisdictions which may result in the psychology profession in the smaller

jurisdictions being completely marginalised. Regulatory issues differ significantly between small and large jurisdictions, and also between the smaller jurisdictions themselves. The environment in NT is very different from that in the ACT and Tasmania, and yet as proposed, one Board member will be required to be familiar with and represent all three.

There is also no guarantee that there will be State boards for psychology in the smaller jurisdictions, nor that there will be any representation on any regional committees (conduct/impairment/competence) that may be established. Local input and knowledge is important, particularly where there are provisionally registered psychologists undertaking supervised practice.

CPRB supports the explicit specifications in Bill B that will ensure that there is a member from each participating jurisdiction on the Psychology Board of Australia and a State Board for the psychology profession in all jurisdictions.

4. Powers of Ministerial Council

Sections 10 and 11 appear to give power to the Ministerial Council to override registration standards or procedures set by the National Board. Again public safety must not be placed at risk as a result of political expediency. The National Board is to be appointed by the Ministers and consist of at least six members of the profession and three community representatives. The Ministerial Council should have confidence in its appointees to set appropriate standards to ensure public safety and the provision of quality health services.

5. Conditional Registration

Section 101 requires that all registered practitioners are given conditional registration subject to conditions relating to professional indemnity insurance and continuing professional development. In compliance with other sections of the Bill, these conditions would be required to appear on the register and on all registration certificates. Registrants would also be able to apply to the Board for review of these conditions. CPRB assumes that these consequences were not the intention of the Bill. PI and CPD should be requirements for registration and renewal rather than expressed as conditions.

6. Professional Indemnity Insurance

The requirement for PI Insurance not to expire before registration expiry is not practical – different wording is required to ensure ongoing PI insurance cover.

7. Recency of practice

The Bill is silent on the relationship between recency of practice and renewal of registration. Continuing professional development (CPD) does not necessarily relate to recency of practice. The only reference to recency of practice seems to be in the power to enquire in section 97. While this can be addressed in registration standards developed by the National Board it would be more appropriate for there to be an explicit power in the legislation for recency of practice to be a formal requirement for registration (as is the case for qualifications for example).

8. Restoration to the register after a period of non-practising registration

Except in the general application of section 101(2), sections 126 and 127 do not require the applicant to provide evidence of current competence. This should be explicit in the legislation.

9. Student registration

CPRB considers that a student registered under the legislation should have a direct relationship with the Board. Timely and accurate provision of information by universities will be problematic. The proposed process will not keep track of students who change courses either across universities or across professions. There should be an obligation on students to complete an application form, supply basic information, keep that information current and reregister on an annual basis as is the case for all other categories of registration, and as will remain the case for the remainder of their professional life.

10. Area of Need

CPRB considers that there should not be an option for limited registration to meet demand in an area of need which has been identified by a jurisdictional Minister.

CPRB submits that the legislative objective of protecting the public under section 4(1)(a) is not adequately served by exposing the public to practitioners who fail to meet the registration standards required of all other practitioners.

Limited registration for area of need should not apply to psychology.

11. Advertising

CPRB supports the inclusion of advertising restrictions as outlined in section 145. However CPRB would like to see the section strengthened by the inclusion of restrictions on comparative advertising i.e. advertising that suggests that the professional services of one practitioner are superior to those of another practitioner. This is not appropriate professional practice.

12. Directing or inciting unprofessional conduct or professional misconduct

CPRB is very concerned that an exemption exists in Section 148 for persons who are owners or operators of a public health facility (undefined in relation to this section), or a health facility that is licensed under a Commonwealth or State/Territory law. It is difficult to understand how it can be considered appropriate for these persons to be protected such that they can direct or incite practitioners to act in a manner which may constitute professional misconduct with its potential consequences on public health and safety. This exemption should be removed.

13. Mandatory reporting

CPRB is concerned that registered professionals will find it difficult to interpret what is required by the definition of reportable conduct in section 6 – “placed the public at risk of substantial harm”. It is suggested that terminology consistent with that used in the complaints process would be more appropriate i.e. “may give rise to a complaint of unprofessional conduct or professional misconduct”. These terms are more clearly defined.

14. Privacy provision exemptions

Part 10, Division 2 should make provision for an exemption of privacy regulations to allow for information sharing between the national scheme and independent accrediting bodies. It is not clear whether this is presently covered.

15. Verbal Complaints

CPRB does not support the acceptance of verbal complaints. It is recognised that a verbal contact should be able to initiate a complaint but it should always be followed with a written submission of the broad details of the complaint and the identification of the complainant. There is provision in Bill B for assistance to be provided to the complainant so there should be no impediment to the complaint being made in writing. It is important that vexatious complaints are discouraged and that the identity of complainants is confirmed. Experience indicates that complaints made by telephone often do not have a genuine basis and are not pursued when further detail is requested in writing (even when assistance is offered).

16. Public Interest Assessor

Members of CPRB have concerns about the operation, role and cost of the Public Interest Assessor. CPRB questions the necessity of the role of the Public Interest Assessor, given that there will be community representation on the National and State Boards, health and performance panels and tribunals. In addition, most State/Territory health complaints commissioners are currently required to be consulted in the early stages of consideration of complaints. The Public Interest Assessor is an employee of the Agency and therefore his/her independence is also questioned.

If there is to be one, CPRB submits that the costs associated with such a role should not be borne by registrants, since the role is in the 'public interest' and has the potential to increase the referrals to tribunal and appeals. NSW, the State with the largest number of registrants, has accepted that the costs associated with such independent arrangements are to be borne by the State rather than by individual registrants.

17. Criminal history issues

There are inconsistencies throughout the draft bill in the scope of criminal history which is of interest to the National Boards or must be reported to Boards. Of particular concern is the limitation in Section 155 that restricts complaints about students to those involving indictable offences only. CPRB submits that the scope of indictable offences varies between jurisdictions, and in some jurisdictions would mean that many drug offences (for example) would be excluded.

CPRB submits that charges should not be included as matters which are to be reported to the Board or may form grounds for complaint. It is submitted that requiring registrants to report charges, and/or taking action against a registrant on the basis of an unproven or even dismissed charge, is contrary to the principles of natural justice and presumption of innocence which underpin the Australian judicial system. Taking action in respect of a charge alone may further prejudice independent legal

proceedings. CPRB objects to the inclusion of charges as grounds for complaint or requiring report as a relevant event.

18. Publication of decisions

CPRB is concerned that Section 266 requires that the National Board must publish on its website, information about decisions made by professional standards panels and health panels. The public release of such information is counter to current practice and the principles of therapeutic jurisprudence. This section is inconsistent with sections 187 and 206 which state that health and professional standards panels are not open to the public. Further, it is inconsistent with the purpose of these panels that provide for matters of health and less serious offences to be dealt with in a constructive manner by way of either correcting conduct and competence or ensuring health matters are identified and managed. Publication of these decisions may have a significant impact on the ability of a practitioner to rehabilitate and is not necessary for the public interest. It is not appropriate that such decisions are made available for unscrupulous media to access.

19. Finance

CPRB is concerned that ultimate control of the finances available to each National Board remains with the National Agency. The Board recognises that sub-section 256(3) goes part way to remedying this concern. However, while a budget is to be agreed with each Board, it is not clear that the Board will have a clear mandate to commit expenditure and ensure payment within the overall budget constraints.

CPRB submits that expenditure of Board funds by the National Agency “as otherwise approved by the Board” is insufficient to vest ultimate control of Board funds with the appropriate National Board. CPRB submits that stronger terms are necessary to ensure control of funds remains with the appropriate entity, and suggests that the provision authorise payments “as directed by the Board.”

CPRB is similarly concerned by the power to be granted to the National Agency to invest Board funds subject to “consultation” with the National Board. It is submitted that the Agency’s ability to commit Board funds should be contingent on Board approval rather than mere consultation.

CPRB is concerned by the ultimate control that the Ministerial Council is proposed to have over the Agency Fund (sub-section 256(1)(b)). It is submitted that the profession should have the ultimate control of the registration fees collected from its registrants, and that such control should be free from Ministerial intervention. If further restrictions are to apply to how National Boards will be permitted to spend their funds, it is submitted that they should be expressly stated in Bill B and not hidden behind approval of the Ministerial Council.