

Submission

No 39

INQUIRY INTO THE OPERATION OF THE HEALTH CARE COMPLAINTS ACT 1993

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PARLIAMENTARY COMMITTEE DISCUSSION PAPER ON THE INQUIRY INTO THE OPERATION OF HEALTH CARE COMPLAINTS ACT 1993

The NSW Physiotherapists Registration Board, having received the Discussion Paper (Report No. 5/54 of September 2009) provided by the Committee on the Health Care Complaints Commission, is pleased to be offered the opportunity to comment on the issues highlighted in the document. As the Committee would be aware, the Health Care Complaints Commission (HCCC) and the Board work closely together in dealing with complaints against physiotherapists or persons providing physiotherapy services. It is therefore of considerable importance to the Board that the HCCC, and the legislation it operates within, is effective in fulfilling the role of protecting health consumers by investigating complaints and initiating action to deal with risks to public safety and sub-standard practice.

As indicated in the Board's previous submission to the Committee, the provisions of the Physiotherapists Act 2001 set out the Board's responsibilities with regard to complaints and disciplinary proceedings. The Act specifies that the Board will notify the HCCC of any complaint made under the Act as soon as practicable after the complaint is made. It goes on to stipulate that the HCCC and the Board must consult in order to see if agreement can be reached regarding the appropriate course of action to be taken, prior to the Board dealing with a complaint. On a practical level, the arrangements where regular consultation meetings are convened have been effective from the Board's perspective. However, the current volume of complaints against physiotherapists is relatively low and therefore generally does not negatively impact on the timely handling of complaints.

National Registration and Accreditation Scheme

Like the Committee, the Board also had concerns regarding the national registration proposal to abandon the NSW Health Care Complaints Act in favour of an alternative complaints handling scheme. It had been of considerable importance to this Board for NSW to maintain the ground it had gained in health consumer protection and access to a well resourced independent investigative body. With the announcement of the revised arrangements for NSW that retain the HCCC as part of a co-regulatory scheme, the Board has now directed its attention to the issue of ensuring consistency of interpretation and application within the national health care complaints handling system.

Board Comments

In keeping with the numbering sequence of the Report, the Board offers the following comments:

- As noted in paragraph 1.5, the COAG agreed to the reform package in order to better prepare the health workforce for the changing health care needs of the Australian community. While it is acknowledged that the removal of impediments to the 'mobility' of the profession will benefit the community, the highest priority for the new scheme should be the protection of the public and the establishment and maintenance of optimal standards of practice. Any erosion of the standards already enshrined in the NSW legislation, which make consumer safety the primary focus of the registration and accreditation bodies, would be seen as a significant failing. With the retention of

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the HCCC as part of the NSW co-regulatory scheme, it seems likely that it will be required to pursue its role as an independent body and public resource for the investigation, resolution and prosecution of health care complaints with greater vigour.

- With regard to paragraphs 2.19 and 2.21, it is agreed that a consistent approach to complaints handling processes and accountabilities across the various health disciplines would assist health consumers. How this could be achieved under the national registration scheme remains to be seen. At the very least, it would be highly desirable for the definitions and legal interpretation of the definitions of 'professional misconduct' and 'unsatisfactory professional conduct' to be standardised. A further challenge will be the implementation of a consistent approach in the degree of 'disapproval' and the applicable penalties across all the states and territories.
- **Issues 7 and 8** will be addressed with the introduction of the national registration and accreditation scheme to be implemented in June 2010.
- Similarly the need for a Parliamentary body to review the operations of smaller registration boards referred to in **Issues 9 and 10** will also be dealt with in the operational and administrative arrangements planned for national registration.
- The Board is aware that the experience of other registration boards suggests that the amendments to the HCCC's powers outlined in paragraphs 3.1 to 3.4 will enable the Commission to be more effective in responding to issues affecting standards of health care. **Issue 11**, in conjunction with the requirement for consultation with the relevant registration authority, is supported.
- The Board supports **Issue 12** and confirms that it has developed information brochures on the Board's complaints handling processes to assist complainants' and registrants' understanding of the roles and powers of the Board, the Physiotherapists Tribunal and the HCCC.
- **Issue 13** is also supported. It would be valuable for both the HCCC and the registration authorities to have criteria that identify mischievous, 'vexatious' or 'malicious' complaints.
- In addition to the information package detailing the role, powers and HCCC processes and the rights of the author of a report, it is suggested that **Issue 14** includes the provision of advice regarding the obligations and standards of a peer reviewer and an expert witness, as appropriate. This will assist Health Professionals Tribunals convened to consider more serious complaints and hear expert evidence on standards of practice or matters of fact.
- While the merits of **Issue 17** cannot be argued, it seems unlikely that the inclusion of this provision will result in a change in timeframes. There are many factors that impact on the timeliness of the investigation and assessment of complaints, including external factors, such as the need for additional information from peer reviewers or the availability of witnesses to provide information. Notwithstanding this, the Board wishes to emphasise its concern for timely action in relation to matters being handled by the HCCC. Also, due to the practical constraints associated with boards meeting on a monthly basis to determine action on complaints, it can become a lengthy process where full details are not available at the time of the meeting.

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- **Issue 24** is supported. The Board agrees with the comments provided at paragraph 3.27, relating to the extension of the co-regulation and consultation beyond the initial phase of investigation.
- With regard to **Issue 29**, this should also apply to registration authorities. Following the introduction of the national registration scheme, this should allow access to data held in other states and territories in relation complaints or practice-based concerns about a practitioner.