

**INQUIRY INTO OPPORTUNITIES TO CONSOLIDATE
TRIBUNALS IN NSW**

Organisation: NSW Pharmacy Tribunal
Name: Mr Peter Dwyer
Position: Chairperson
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9 December 2011

The Director,
Standing Committee on Law and Justice,
Parliament House,
Macquarie Street,
Sydney NSW 2000.

Dear Madam / Sir,

**SUBMISSIONS—INQUIRY INTO OPPORTUNITIES TO CONSOLIDATE
TRIBUNALS IN NSW.**

I thank the Committee for inviting me to make a submission to the Inquiry.

I am currently appointed as Chairperson of the NSW *Pharmacy Tribunal* and as a Deputy Chairperson of the NSW *Dental Tribunal*.

To assist the Committee, I provide with this submission, a short form of C.V. relevantly describing my association with health professions in a variety of ways over many years, including my involvement as Counsel in proceedings conducted by health professional disciplinary Boards or Tribunals.

My Tribunal appointments and functions are governed by the *Health Practitioner Regulation National Law (NSW) No. 86a* (to which I will refer as “the National Law”), Section 165B.

Submissions

1. Currently, there are 10 separate health professional disciplinary tribunals established pursuant to Division 10, Section 165 of the National Law all of which but for the Medical Tribunal (which is located within the NSW District Court) are situated at the same premises; where also, separately, the *Health Professional Councils Authority* (HPCA) is located. Apart from having common premises the nine tribunals also share administrative staff and facilities.
2. Each Tribunal reflects the health profession of each of the current 10 health professional councils. Four more councils are to be established under the relevant national scheme, in 2012.

3. The tribunals exercise their functions and powers independently of the HPCA; and conduct inquiries into complaints of a more serious nature referred to them by the Councils or the NSW Health Care Complaints Commission (HCCC). Such complaints are those which if proven may result in the suspension or cancellation of a practitioner's registration. Complaints involving the *impairment* of a practitioner may also come before a Tribunal for determination.
4. The Tribunals also exercise appellate functions pursuant to Division 6 of the National Law, including appeals from actions of a Committee or of a Council including on points of law and from decisions of a Performance Review Panel.
5. A Chairperson or Deputy Chairperson, two registered pharmacists and a layperson, constitute the Pharmacy Tribunal in the exercise of its statutory functions. Each other tribunal also includes two members of the relevant health profession. The words of the NSW Court of Appeal (per *Street* CJ, *Moffitt* P. and *Glass* JA) in *Kalil v Bray & Another* [1977] 1 NSWLR 256 in respect of disciplinary tribunals are apposite to all tribunals constituted under the National Law—that they are “...in every sense, both in...constitution and executive power...expert professional tribunal[s].” It is essential that such health professional membership of tribunals be maintained in the public interest; and for the essential assistance health professional representatives provide to tribunals, given the frequently technical and expert nature of issues that can and do frequently, arise during an inquiry.
6. The jurisdiction of the tribunals established under the National Law, is *protective* not *punitive*: C/F High Court of Australia in *Wentworth v New South Wales Bar Association* [1992] HCA 24; (1992) 176 CLR 239-251. Their proceedings are intended for the protection of the community, to maintain proper and ethical professional standards and to protect the good standing and reputation of the various health professions. *Deterrence* is another important element in the exercise of their jurisdiction both as to the relevant individual practitioner whose conduct is before a tribunal and with respect to the profession generally. In considering any possible change to the present tribunals system, it is submitted that their effectiveness and efficiency commensurate with their legislative purpose, should not in any way, be jeopardised.
7. By Clause 2, Schedule 5D of the National Law, in proceedings before it, a Tribunal is not bound to observe the rules of law governing the admission of evidence and may inform itself of any matter in the way it thinks fit. Accordingly a Tribunal can by adopting an appropriate procedure, assist an unrepresented practitioner or student and ensure procedural fairness in the conduct of its inquiry. By Clause 7 of Schedule 5D it is the duty of tribunals to hear inquiries and appeals expeditiously; but it can postpone or adjourn proceedings as it thinks fit. This is a well proven, essential benefit of the current system, which should not be put at risk by any transfer of jurisdiction to any other larger and consolidated tribunals system.

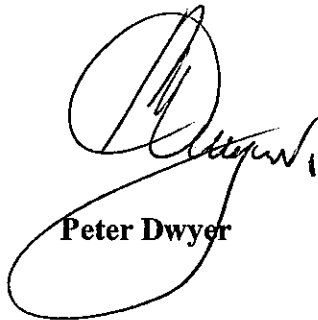
8. By sharing the same premises, staff and resources, Tribunal Chairpersons and Deputy Chairpersons have accumulated considerable expertise relevant to a variety of health professions, which involves diversity and significant differences from other non-health professional practices. Such experience is relevant to the quality of tribunal decisions. Other significant benefits of shared HPCA staff include demonstrated capacity to ensure that Tribunal Inquiries are prepared and finalised effectively and in a timely manner. What must not be forgotten with respect, in the Committee's consideration, is the need for the protection of the community's health and safety by the Tribunals' proven capacity to achieve outcomes without any unnecessary delay—this is even more critical when a tribunal is called upon to take urgent steps if needed to restrict a health practitioner's practice or to impose conditions on it, again in the public interest.
9. The various tribunals operate effectively, efficiently and benefit from appropriate interaction between Chairpersons and Deputy Chairpersons, some appointed to more than one tribunal, with additional benefit. This provides a type of '*collegiate*' type environment by having the opportunity for discussion of any common problems encountered in the conduct of inquiries or appeals and of other issues including those relevant to the Law, practice or procedure or the efficacy of Orders made by the tribunals. Further benefits from the tribunals' present structure and locality, are the quality and consistency of their decision-making.
10. Another important benefit of the current system—which has the tribunals in close but independent, proximity to Councils / HPCA—is the availability to the extent necessary for information to be obtained from a Council in any given case, concerning the availability and practicality, of Orders a Tribunal might make. It is essential for orders of tribunals to be formulated so as to be effective once formally made, as ultimately, it is the Councils who are responsible for monitoring a practitioner's compliance with a tribunal's orders—again to protect the community.
11. Staff assisting the Tribunals, shared by them, have a significant level of expertise and experience in dealing with the procedural operations of the various tribunals, with relevant health professionals and with legal representatives of health practitioners in the preparation of matters for a Tribunal inquiry and in assisting the conduct of an inquiry. Tribunal staff is dedicated, readily available and willing to assist tribunal members and importantly also, any health practitioners without legal representation in any matter.
12. The various inter-relationships referred to above, whilst not in any way affecting the independence of the Tribunals nor their Chairpersons, Deputy Chairpersons and Members, could perhaps be usefully described in terms of achieving operative efficacy and efficiency, as *symbiotic*.
13. Given Tribunals' statutory, specialist nature, purpose, functions and responsibilities under the National Law—as with prior NSW legislation—it is critical that their history of achievement to the benefit of the NSW community

not be jeopardised by their transfer to any larger, multi-purpose tribunal system, notwithstanding any *prima facie*, perceived benefits of any such transfer.

Please let me know if the Committee requires any further information.

Again, I thank the Committee for extending its invitation to me.

Yours faithfully,



Peter Dwyer