

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

Organisation: Health Professional Councils Authority

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The Director
Standing Committee on Law and Justice
Parliament House
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Submissions: inquiry into opportunities to consolidate tribunals in NSW

Background

The Health Professional Councils Authority (HPCA) is an administrative body of the Health Administration Corporation which came into existence from 1 July 2010 with the commencement of the National Registration and Accreditation Scheme. The HPCA's role is to provide administrative and secretarial support to each of the 10 New South Wales health profession councils in their primary role to protect the public.

Section 41B of the *Health Practitioner Regulation National Law (NSW) No 86a* (the NSW Law) establishes a Council for each profession that is presently included in the national scheme. The councils are:

- The Chiropractic Council of NSW;
- The Dental Council of NSW;
- The Medical Council of NSW;
- The Nursing and Midwifery Council of NSW;
- The Optometry Council of NSW;
- The Osteopathy Council of NSW;
- The Pharmacy Council of NSW;
- The Physiotherapy Council of NSW;
- The Podiatry Council of NSW; and
- The Psychology Council of NSW.

In July 2012 Aboriginal and Torres Strait Islander health practice, Chinese medicine, medical radiation practice and occupational therapy will also be included in the national scheme.

The NSW Councils are charged with functions and powers as provided in the NSW Law to manage and deal with complaints regarding a registered health practitioner's conduct, health and performance and a registered student's conduct and health.

These functions are undertaken in conjunction with the Health Care Complaints Commission (HCCC) which exercises functions under the Health Care Complaints Act 1993 (NSW).

The NSW Law establishes a Tribunal for each health profession. Each Tribunal is constituted in accordance with section 165A of the NSW Law and deals with matters referred to it by the Councils or prosecuted by the HCCC. Tribunals are also responsible for dealing with appeals and review applications made under the NSW Law.

The Health Professional Councils Authority (HPCA) makes these submissions on behalf of the following New South Wales health profession councils:

- the Chiropractic Council of NSW;
- the Dental Council of NSW;
- the Nursing and Midwifery Council;
- the Optometry Council of NSW;
- the Podiatry Council of NSW; and
- the Psychology Council of NSW.

Some NSW Councils may choose to provide separate submissions to the inquiry.

Submissions

The HPCA and NSW Councils request that the Parliamentary Committee consider the following in the course of its inquiry into opportunities to consolidate tribunals in NSW:-

1. Minimising the costs associated with establishment and transfer of matters to a consolidated tribunal

There are currently 10 separate Tribunals established to deal with relevant complaints about registered health practitioners and students. All Councils and their Tribunals are entirely funded from fees paid by professional registrants. There is no public funding provided to support either the Councils or Tribunals. Nine of the Tribunals share common facilities and administrative staff while the Medical Tribunal is separately housed within the NSW District Court. While each of the nine co-located Tribunals is separate and exercises its functions independently, they each enjoy the benefits of shared facilities and staff. This sharing of facilities and staff helps to ensure that matters before each Tribunal are dealt with effectively and without any undue delay. The current staff who support the Tribunals also have responsibility for managing matters that are referred to Professional Standards Committees established by the Nursing and Midwifery Council.

The Medical Tribunal operates outside the shared facility structure and is housed within the NSW District Court. Operational support for the Medical Tribunal is largely provided by the staff of the District Court, however staff employed by the HPCA provide assistance in referral of matters to the Tribunal and in the appointment of professional and lay members. The Chief Judge of the District Court is by reason of that office the Chair of the Tribunal.

The current model under which the Tribunals operate is considered to be cost effective. The fact that the nine out of ten of the Tribunals operate from the same premises, sharing the

same support staff, and with the appointment of a number of common Chairpersons and Deputy Chairpersons across a number of smaller Tribunals provides for significant efficiencies.

As five of the Councils operate on very small budgets (\$100,000 to \$450,000 per annum), it is important that careful consideration be given to ensuring that any transfer of the health professional Tribunals to a larger consolidated Tribunal does not result in inflated costs to the professions.

2. Maintaining high quality of decision-making

Currently Tribunal Chairpersons and Deputy Chairpersons are appointed across a number of Tribunals and have developed significant expertise in dealing with matters within the health care professions. This approach to cross-appointments has also promoted consistency in decision making across professions.

Given that the health professions operate under the national scheme and are governed by the NSW Law, it is important that the quality of decision making, as well as consistency in decision making with other jurisdictions, is not adversely affected by transfer of the Tribunals to a larger consolidated Tribunal.

3. Ensuring timeliness of decision making

Given that the Councils and Tribunals operate in a protective jurisdiction with public health and safety as the paramount consideration, it is important that matters before the Tribunals are dealt with expeditiously and without any undue delay. Efficiency in decision making serves the public interest by protecting public health and safety and by preventing unnecessary delay in resolving matters that have a negative impact on the health practitioner's livelihood and professional reputation or the ability of a student to complete their education.

Part 8 Division 3 Subdivision 7 (sections 150 to 150J) of the NSW Law provides the Councils with powers to take very swift and effective action to restrict or even suspend a practitioner's practice if it is considered that "emergency interim" action is warranted. The practitioner or student has a right to appeal to the Tribunal against a decision of the Council to take action under s150 of the Law. Given that action of this nature has an immediate impact on the delivery of health services and the practitioner's livelihood, it is imperative that the Tribunal remains in a position to deal with such appeals in a timely manner.

Currently, as nine out of ten Tribunals are held at the same premises and supported by shared HPCA staff, there are consistent control measures in place to ensure matters are referred, allocated and finalised in a timely manner. It is important to consider whether consolidation of the Tribunals within a larger scheme would ensure an equivalently expeditious process and timely decision making mechanisms for the Tribunals.

4. Providing for professional representation on Tribunals

For the purposes of conducting an inquiry or hearing an appeal, section 165A of the NSW Law requires the Tribunal to consist of a Chairperson or a Deputy Chairperson, two health practitioners registered in the same health profession as the health practitioner or student the subject of the inquiry or appeal, and one lay person.

The composition of the Tribunal provides for a wide range of input and expertise to ensure a fair and considered decision is delivered, serving the best interests of the public and the health practitioner or student concerned. The professional members of the Tribunal play a significant role in ensuring that the Tribunal's fact finding and decision making is well informed and grounded in accepted professional standards and practice. The professional members of the Tribunal have the expertise and insight into the profession, such as professional requirements and clinical knowledge that the Chairperson and the lay member of the Tribunal may not possess.

Given the nature of matters that are referred to the Tribunal, it is imperative that professional members form part of the Tribunal's constitution. The Councils appoint the professional members of the Tribunal and appoint those members with due consideration for the nature of the complaint before the Tribunal and, most importantly, the type of practitioner (eg area of specialty and nature/context of practice).

Any move to consolidate the health profession Tribunals within a larger Tribunal structure must ensure that this level of expert professional involvement, and the councils' role in determining the appropriate professional members, is not diminished.

5. Minimising formality and legalism

Under the NSW Law health professional Tribunals may conduct proceedings on an inquiry or appeal as they see fit. Tribunals have generally proceeded in a reasonably informal manner with as little legalism as possible. This is to ensure that the health practitioner or student before the Tribunal has the benefit of being heard and participating in the Tribunal's processes irrespective of their capacity to obtain legal representation.

It is important that consolidation and co-location of the Tribunals does not add any unnecessary formality or legalism to Tribunal hearings and processes.

6. Ensuring responsiveness to increase in matters before the Tribunal

In recent years there has been a steady increase in the number of complaints before the NSW Councils. As a result there has also been a flow-on effect with the number of matters referred to Tribunals by way of inquiries, appeals and reviews. Given the imminent inclusion of four additional professions within the national scheme, and the upwards trend in the number of complaints before the Councils, it is important that any consolidation of Tribunals gives due consideration to the resources that are available to deal with those increasing workloads.

Under current arrangements the individual Councils and the HPCA are able to respond and ensure that increases in Tribunal workloads do not cause inappropriate delays by devoting

more resources to the Tribunals. In fact the HPCA has recently acquired additional premises that are to be devoted to Tribunal hearing rooms to accommodate recent workload increases as well as the increases that are anticipated with the inclusion of the four additional professions from July 2012.

Neither the public interest, nor the interests of individual health practitioners, is served by any increase in delays in having matters addressed within the Tribunals.

Thank you for providing the Councils with the opportunity to comment on this important matter.

Yours sincerely

Jeanette Evans
Director

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