

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

Organisation: Health Care Complaints Commission

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The Director
Standing Committee on Law and Justice
Legislative Council
Parliament House
Macquarie Street
Sydney NSW 2000

Via email: lawandjustice@parliament.nsw.gov.au

Dear Sir/Madam,

**Submission to the Standing Committee on Law and Justice
Inquiry into opportunities to consolidate Tribunals in NSW**

I refer to the the Committee's invitation to make a submission to the the Standing Committee on Law and Justice's inquiry into opportunities to consolidate Tribunals in NSW. Thank you for the opportunity to make a submission.

The Commission currently appears before the various health practitioner Tribunals to prosecute health practitioners for unsatisfactory professional conduct or professional misconduct. It also appears before Professional Standards Committees of the health professional councils to prosecute health practitioners for unsatisfactory professional conduct.

Generally the Commission supports a move to consolidate Tribunals in NSW on the basis that it would lead to uniformity in rules and procedures. This would reflect the uniform provisions now applying under the *Health Practitioner Regulation National Law (NSW)*.

However the Commission's support for any consolidation of Tribunals is predicated on maintaining the current specialist membership of the health professional Tribunals, as determined in section 165A (2)b of the *Health Practitioner Regulation National Law (NSW)*. The Act states that health professional Tribunals are to consist of "two health practitioners registered in the same health profession as the health practitioner or student the subject of the inquiry or appeal."

The Commission also proposes that any consolidation would not effect the provisions of the *Health Practitioner Regulation National Law (NSW)* regarding the appointment of the chairperson and deputy chairpersons to the Medical Tribunal. Section 165B of this Act requires that a qualified person be appointed to these positions, meaning —
"(a) for the Medical Tribunal of New South Wales, a Judge of the Supreme Court (or a Judge or other person having the same status as a Judge of the Supreme Court) or a Judge of the District Court; and

(b) for another Tribunal, an Australian lawyer of at least 7 years' standing."¹

Medical matters are often more complex than matters heard before other Tribunals and in the past have resulted in major changes to legislation and regulation of health practitioners. The Commission's experience has been that having a Judge of at least the level of a District Court as the chairperson or deputy chairperson assists in dealing with complex legal points.

Similarly, the Commission would like to see the current system regarding appeals from the Medical Tribunal maintained. The current system allows for appeals from the Medical Tribunal to go to the Court of Appeal to be heard by the full bench, whereas appeals from other health practitioner Tribunals are lodged with the Supreme Court and are heard before a single Judge. The maintenance of this system is crucial in order to ensure that judgments are consistent and have precedent value across all Tribunals.

Given the detailed nature of the subject matter before the Tribunals the Commission would anticipate that if the current Tribunals are consolidated, any members, especially legal members, would receive specific training in the variety of matters that could be presented to them.

The Commission notes that the inquiry does not address or suggest any change to the Professional Standards Committee of the health professional councils. The Commission would hope that the current system will be retained to ensure that these Committees do not become overly legalistic or formal.

Thank you again for the opportunity to provide a submission to the Committee's inquiry into opportunities to consolidate Tribunals in NSW.

Yours sincerely,

Kieran Pehm
Commissioner

25 NOV 2011

¹ section 165B (10) of the *Health Practitioner Regulation National Law (NSW)*