



Putting healthcare rights to work: The Health Practitioner Regulation National Law, a step closer to best practice in healthcare complaints

17 July 2009

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1. Introduction

1.1 The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from the NSW Government Department of Water and Energy for its work on utilities, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

1.2 PIAC's work on Health Consumer Rights and Patient Safety

PIAC has undertaken a considerable amount of work on patient or health care rights over its 26 years of operation, in particular around patient safety, complaints and investigations processes and the development of an Australian Health Consumers' Charter. PIAC welcomed the endorsement of the Australian Charter of Healthcare Rights by the Australian Health Ministers in July 2008. PIAC participated in the consultation process that led to the Commission's draft charter, including providing a written submission in response to the Consultation Paper on the draft charter.

PIAC was central to the consultation process leading to the enactment of the *Health Care Complaints Act 1993* (NSW). PIAC also provided legal representation in the New South Wales Royal Commission into Deep Sleep Therapy (the Chelmsford Royal Commission) and was involved in related processes dealing with the specific issues at the Chelmsford Hospital, but also more broadly, about the handling of serious complaints about medical practice in NSW.

PIAC is and has been supportive of the principle of a national registration scheme for health professionals and has been active in the consultations and public debate about the scheme. PIAC made a submission to the Consultation Paper, *Proposed arrangements for handling complaints and dealing with performance, health and conduct matters*, in November 2008, PIAC also made a submission to the Senate Community Affairs

Committee Inquiry into the National Registration Scheme in May 2009 and gave oral evidence to that Inquiry on 14 July 2009.

2. Overview of Submission

PIAC welcomes the opportunity to comment on the exposure draft of the Health Practitioner Regulation National Law 2009 (the draft Bill).

PIAC made a submission to the Consultation Paper, *Proposed arrangements for handling complaints and dealing with performance, health and conduct matters (2008)*, in which it highlighted its considerable concern about the content of the Consultation Paper.¹

PIAC notes that its concerns, and those of other individuals and organisations in NSW, were listened to, and that NSW will now be able to maintain its system of complaints about health practitioners where assessment, investigation and prosecution of complaints is in the hands of the independent Health Care Complaints Commission (HCCC). The HCCC will now be a co-regulator with the national registration boards.

In that earlier submission, PIAC set out the public interest principles that PIAC believes should underscore any healthcare complaints system. PIAC believes that these principles should apply in all states and territories, and is concerned that it remains unclear, even with the draft Bill available, whether in states and territories other than NSW and the ACT, there will be independent assessment, investigation and prosecution of health complaints about health professionals.

The role of the Public Interest Assessor is crucial to answer this question. Clear information on how this body or person will be funded, the resources available to carry out their functions, and how their independence will be maintained appears not to be available at this time.

PIAC has previously called for extensive public consultation, in all states and territories, including consultation outside the capital cities, on all aspects of the scheme for national registration of health professionals. Sadly PIAC has seen no evidence that this is planned, and fears that legislation will be passed without adequate public debate, in order to meet the timetable to have the changes in place by 2010.

In this submission PIAC comments on what it sees as the both the positive and negatives aspects of the draft Bill from the perspective of health consumers. However, some of the comments in this submission touch on broader public interest principles. The comments are made on the basis of the information PIAC has been able to access from what is currently on the public record.

3. Positives of the draft Bill

Although PIAC has a range of concerns and suggestions for improvement for the draft Bill, overall PIAC believes that the draft Bill is a good starting point for Australia to achieve international best practice in healthcare complaints.

3.1 Verbal Complaints

PIAC welcomes the fact that consumers will be able to make verbal complaints (clause 153(1)(a)). The ability to make verbal complaints has particular utility in two significant areas. It enables the body receiving complaints

¹ Peter Dodd, *Maintaining consumer focus in health complaints: the key to national best practice* (2008) at <http://www.piac.asn.au/publications/pubs/sub2008112_20081124.html>.

to better deal with emergency situations where dispensing with the need for a written complaint should enable a quicker response.

Disposing of the need for written complaints also assists consumers who do not have English as their first language, consumers with little or no literacy skills, consumers who are diagnosed with a mental illness or have an intellectual disability and consumers who come from a disadvantaged background. There is also anecdotal evidence from advocates in the health arena that otherwise articulate and literate members of the public often have difficulty putting pen to paper about their own traumatic experiences in the health system or about their concerns about the care and treatment of deceased friends or loved ones, when they are going through a grieving process.

PIAC also welcomes the provision in the draft Bill—clause 154—that mandates assistance to consumers in making complaints.

3.2 Written Reasons for decisions

PIAC welcomes that under clause 167 of the draft Bill complainants will be sent written reasons for an assessment decision that rejects a complaint.

This is a very positive move because it not only leads to a more open and transparent process, it also inevitably leads to better evidence-based decision-making processes.

In its submission on the Consultation Paper on national health complaints handling, PIAC set out the basic principles that should underline any system of regulation of health care complaints. In that submission PIAC said:

PIAC believes that in all decisions affecting the rights of practitioners and the healthcare rights of consumers, the body making the decision should be required to provide written reasons for the decision. There is no provision mandating written reasons for decisions in the Consultation Paper, except that practitioners are to be given reasons if they are to be referred to a Tribunal.²

PIAC again submits that complainants, as well as the relevant health practitioner, should be provided with reasons in writing for all the decisions made in consequence of their complaint, not just in situations where their complaint is rejected, and this should be reflected in the final Bill presented to the Queensland Parliament.

3.3 Changing the language of the legislation to refer to ‘complaints’ rather than ‘notifications’

PIAC welcomes the decision that the draft Bill use the familiar language of referring to consumer ‘complaints’ rather than using words like ‘notify’ to refer to instigating action. There are simply too many inherent barriers to consumers making complaints (for example, grief, fear of retribution or cessation of service and lack of information about complaints processes) to add to their confusion by using ambiguous terms. Health consumers are becoming increasingly aware of the meaning of terms such as ‘complaints Commissions’, ‘complaints officers’ and simply the act of ‘making a complaint’. Adding a new term would only have added to the inevitable uncertainty created by a new national complaints scheme.

On the other hand, others who might notify inappropriate conduct by a health professional, such as other health professionals and health providers, are unlikely to be deterred by the language describing the act of complaining itself, especially when such reporting under the proposed legislation is likely to be mandatory for them.

² Ibid, 11.

4. The objectives clause

PIAC notes that the objectives and guiding principles—clause 4—does not mention the complaints process at all, even though the complaints process is one of the major subject matters of the draft Bill.

PIAC has no objection to any of the current objectives and guiding principles found in clause 4 but seeks to enhance these principles through additions.

PIAC submits that, in addition, the objects clause should:

- emphasise the enhancement of patient safety through the positive role of the complaints process;
- emphasise the principle of continuous quality improvement;
- state as one of the objects of the draft Bill the goal of achieving best practice in the management of healthcare complaints.

PIAC submits that the guiding principles (clause 4(2)) should:

- refer to the Australian Complaints Handling Standard;
- Refer to the Australian Charter of Healthcare Rights, which should also be included as a schedule to the legislation (see below).

5. Lack of reviews by consumers

PIAC notes that clause 243 of the draft Bill provides for internal reviews of decisions available to health professionals. However, there is no equivalent opportunity for consumers/ complainants to seek a review of a decision.

PIAC in its submission to the Consultation Paper on national health complaints handling released in 2008 stated, '[a]ll parties including the complainant/ notifier should have a right to request a review of a decision, which is conducted at arms length from the decision-maker'³

PIAC maintains that this principle should be reflected in any system of healthcare complaint but is unfortunately not reflected in the draft Bill. PIAC accepts that there has to be every opportunity given to health professionals to challenge decisions made that affect their professional standing and therefore their livelihood. PIAC recognises and totally supports the principle that the rules of procedural fairness should be applied in all complaints against health professionals.

Consumers also should have a right to question decisions made about their complaints. As stated above PIAC welcomes the provision in clause 167 of the draft Bill that enables consumers as well as health practitioners to be provided with reasons in writing for decisions. However, the value of providing reasons is diminished if consumers do not have the opportunity to question or challenge the decision.

Certainly to ensure complaints are finalised in a timely manner, there should be a time limit on when reviews of decision-making are sought.

PIAC submits that there should be an opportunity for consumers to seek an internal review of the original assessment decision as well as any decision is made after formal investigation of a complaint. This reflects the current situation under the *Health Care Complaints Act 1993* (NSW) (see sections 28 and 41).

³ Ibid, 6.

PIAC sees this as a minimum position and that consideration ought to be given to provide opportunities for consumers to seek internal, and where appropriate, external reviews of all significant decisions made by national health boards, panels of those boards and the Public Interest Assessor.

6. Lack of openness of panels

In its submission regarding the Consultation Paper on national health complaints handling, PIAC set out the basic principles that should underline any system of regulation of health care complaints.

PIAC said in that submission:

PIAC submits that if the panels are to deal with serious allegations about competence and unsatisfactory conduct, then the panels should be open unless there are compelling reasons not to do so. Any exceptions to a panel being open should be set out in the enabling statute. The reasons for a panel's decision should also be made public. A recording of the proceedings of the panel should be made, and a transcript be made available to the parties.

Openness of the conduct panels would not only increase the confidence the public has in the complaints process; it would also provide those participating in the process with the information they need to make further decisions. Complainants / notifiers would have a full picture as to how the issues that they raised were dealt with. It provides other health practitioners with clearer guidance with regard to standards and ethical issues.

Recent amendments to the *Medical Practice Act 1992* (NSW) have made Professional Standards Committees (PSCs) under that Act prima facie open bodies.

Former Justice Deirdre O'Connor, in reviewing the amendments to this legislation, made the following comments, contrasting the openness of the Medical Tribunal dealing with serious matters with closed PSCs:

However, as the PSC decision in the Reeves case demonstrates, PSCs also deal with serious matters. Indeed, it could be argued that any allegation that a registered medical practitioner has engaged in unsatisfactory professional conduct is a matter of public interest, and that there should be public access to such proceedings, in just the same way there is in respect of court and tribunal proceedings generally. It is in the public interest, and it likely to further the paramount consideration of public protection, for there to be greater transparency and accountability in respect of the conduct of PSCs under the Medical Practice Act.⁴

PIAC adheres to these comments, including those of Ms O'Connor.

PSCs in NSW play a similar role to Professional Standards Panels set up under the draft Bill.

PIAC notes that under clause 187 of the draft Bill, a hearing before a Professional Standards Panel is not open to the public. Under clause 191 of the draft Bill, a panel is obliged to give reasons to both the relevant board and the subject health practitioner for the outcome of its decision making under clause 190 of the draft Bill, but there is no obligation or any mechanism within the legislation to allow the decision and reasons for the decision to be available either to the complainant or the general public.

PIAC also notes that clause 184 of the draft Bill allows a health practitioner to be accompanied by a lawyer but not be represented by that lawyer before a Panel.

PIAC submits that the draft Bill be amended to provide for:

⁴ Ibid, 12.

- Open panel hearings, with a limited power to conduct part or whole of the proceeding in camera in designated exceptional circumstances, and with a clear power of the panel to make appropriate suppression orders.
- Public written reasons for all decisions by a panel with timely written notification to all relevant parties, including the complainant.
- A right of legal representation for all parties with a direct interest in panel proceedings.

7. Lack of sanctions against intimidation of complainants

PIAC is concerned that the draft Bill does not afford protection to complainants from intimidation by the subjects of the complaint or other parties.

PIAC notes that section 98 of the *Health Care Complaints Act 1993* (NSW) provides:

- (1) A person who, by threat, intimidation or inducement, persuades or attempts to persuade another person
 - (a) not to make a complaint to the Commission or a registration authority or not to continue with a complaint made to the Commission or a registration authority, or
 - (b) not to have discussions with, or take part in proceedings before, the Commission or a registration authority concerning a complaint or a matter that could become the subject of a complaint,
 is guilty of an offence.
- (2) A person who refuses to employ or dismisses another person, subjects another person to any detriment, or harasses another person, because the other person:
 - (a) intends to make a complaint, has made a complaint, or has had a complaint made on his or her behalf or otherwise concerning him or her, to the Commission or a registration authority, or
 - (b) intends to take part, is taking part, or has taken part in any discussions with, or proceedings before, the Commission or a registration authority concerning a complaint or a matter which could become the subject of a complaint,
 is guilty of an offence.

As far as PIAC is aware there has never been a prosecution under this section, but it remains important for there to be a deterrent to intimidation and other detrimental activity against complainants. Consumers often, especially where treatment is ongoing, are reluctant to lodge a complaint against health care providers because of fear of adverse treatment or retribution by health providers. Consumers will be even more reluctant to complain if there is no sanction against such retribution and/or intimidation.

PIAC would recommend that a similar section to s98 of the *Health Care Complaints Act 1993* (NSW) be added to the draft Bill.

8. Advertising of medical services

PIAC remains concerned, that with greatly increased commercialised provision of medical services in Australia, especially in the area of general practitioner services and medical centres, the appropriate regulation of the advertising of health services is crucial.

PIAC also notes the increased proliferation of 'alternative' or 'complementary' medicines and health services. This has also increased the need for protection of consumers against false and extravagant claims of the benefits of such medication and medical services.

There has been particular concern expressed about the marketing of all medicines in Australia, ie, prescription, 'over the counter' and 'complementary'. The sometimes intense and aggressive marketing of particular medicines to health professionals has attracted particular concerns.

It cannot be stated often enough that people who are acutely or chronically ill or who are caring for someone is acutely or chronically ill, are particularly vulnerable to claims of 'miracle' medications or cures made by both those who are now in the regulated health professions, as well as providers of alternative and/or complementary medicine.

There are particular areas of medical care, where some consumers are more inclined seek treatment from providers other than their usual health provider such as their general practitioner. Men seeking treatment of impotence is a leading example. Consumers in this category are particularly susceptible to claims of quick and easy cures for complex conditions.

The regulation of medical advertising, like any other form of advertising, is partially achieved in Australia by the consumer protection sections of the *Trade Practices Act 1974* (Cth) as well as the complementary state and territory fair trading legislation. For the reasons stated above, regulation of health advertising has increasingly been seen as an also necessary part of the regulation of the health professions, particularly the medical profession. National competition policy in the 1990s effectively ended previous bans on health professionals advertising their services, and regulation of advertising had to replace these bans, lest this area would have become totally deregulated apart from the general consumer protections as above.

PIAC submits that the particular circumstances surrounding the advertising of medicines and medical services require special legislative provision for this form of advertising. PIAC submits that there is now a need for a comprehensive national response to inappropriate and misleading advertising of medicines and health services. The current fractured response brought about by both through the state/territory-federal divide and the division between consumer and health regulation regimes effectively impedes a national response.

The recent publicity about the effective failure to protect consumers of private impotence clinics illustrates the need for a national response. The national regulation of health professionals provides a timely opportunity to provide a national response to this issue.

In the interim, making clause 145 reflect national best practice in the regulation of health advertising through the regulation of health professional practice would be an important first step towards a more comprehensive national approach.

PIAC notes that clause 145 of the draft Bill is very similar to section 94 of the *Professional Health Registration Act 2005* (Vic).

Clause 145 of the draft Bill should be enhanced by:

- Replicating clause 11(2)(c) of the *Medical Practice Regulation 2008* (NSW) that prohibits advertising of medical services that 'promotes the unnecessary and inappropriate use of medical services' and extend this to all health services.
- By enacting provisions similar to sections 115 and 116 of the *Medical Practice Act 1992* (NSW) by requiring a person responsible, who must be a health practitioner, to be nominated by a corporation that advertises health services and to make that person personally liable and subject to disciplinary proceedings for breaches of the advertising regulations in the draft Bill.
- By enacting a provision similar to section 96 of the *Health Professionals Registration Act 2005* (Vic) to allow a Court or Tribunal the power to order corrective advertising.

9. Regulation of non-registered health professionals

Because the draft Bill is only concerned with the regulation of registered health professionals, it does not deal with misconduct by or competence of non-registered health professionals.

Yet the regulation of conduct and performance of individuals who are not registered with any board and yet provide a health service (for example social workers, occupational therapists in most states, counsellors who are not registered psychologists, practitioners of alternative medicine) is clearly in the public interest.

The states and territories will continue to have a major role in relation to the regulation of these health workers. The *Health Care Complaints Act 1993* (NSW) has recently been amended to strengthen the regulation of such workers.

It is, however, a negative aspect of the national regulation of health professionals that the regulation of ancillary health workers will be split from the regulation of the recognised health professionals, even if they are being supervised by those health professionals. Yet it is also clearly in the public interest to have appropriate regulated delegation by health professionals, as one way of increasing the availability of health services, particularly when there is a shortage in the supply of health professionals.

The Productivity Commission in 2005 recommended that there be only one national board for all health professionals. PIAC has supported this proposition in an earlier submission.

One national board for all health professions would also allow for more effective regulation of all health workers. Such a board could decide what sort of regulation would be appropriate for different categories of health professionals and health workers.

The Productivity Commission⁵ also gave some support by the suggestion by Dr Stephen Duckett⁶ that formal powers of delegation be introduced within legislation that regulates registered health professionals.

He proposed that there be regulation of the delegation of tasks to appropriately trained staff:

... by extending the reach of a health professional registration board to cover the work of any person to whom a professional registered with that board has delegated tasks ... (this) would establish a regulatory framework for health professionals delegating to other professionals or assistants, and would allow professionals to delegate tasks, knowing they were doing so within an accepted regulatory framework.⁷

PIAC suggests that serious consideration be given to extending the powers of the national boards in this way.

10. Charter of Healthcare Rights

PIAC has consistently supported the need for a national health rights charter and welcomed the decision of Australian Health Ministers to adopt the Australian Charter of Healthcare Rights. PIAC believes the next step is to give some power of enforcement to the Charter.

One of the ways of doing this is to make adherence to the Charter of Healthcare Rights one of the benchmarks against which the conduct of health professionals is measured. This could be reinforced by making the Charter a schedule to the draft Bill.

⁵ Productivity Commission *Australia's Health Workforce* (2005) 148.

⁶ S J Duckett, 'Interventions to facilitate health workforce restructure' (2005) 2 *Australia and New Zealand Health Policy* 14.

⁷ Productivity Commission, above n5.

This sort of proposition is not without precedent in Australian jurisdictions.

Section 12 of the *Human Rights Commissioner Act 2005* (ACT) provides that:

- (1) A person may complain to the commission about a health service if—
 - (a) the service is not being provided appropriately; or
 - (b) the person believes that the provider of the service has acted inconsistently with any of the following
 - (i) the health code;
 - (ii) if there is no health code—the health provision principles
 - (iii) a generally accepted standard of health service delivery expected of providers of the same kind as the provider;
 - (iv) any standard of practice applying to the provider under the Health Professionals Act 2004 ;
 - (v) the National Standards for Mental Health Services endorsed by the Australian Health Ministers Advisory Council's National Mental Health Working Group, as amended from time to time;
 - (vi) any other standard prescribed by regulation; or
 - (c) the service is not being provided.

The ACT legislation provides a model as to how the conduct and competence of health practitioners can be tested against both the traditional 'peer review' centred standards and objectively set standards such as the Charter of Healthcare Rights.

Another relevant example is the *Health and Disability Commissioner Act 1994* (NZ).

The purpose of that legislation, set out in section 6, is to '[p]romote and protect the rights of health consumers and disability services consumers, and, to facilitate the fair, simple, speedy and efficient resolution of complaints relating to infringement of those rights'.

The relevant rights of consumers are set out in the *Code of Health and Disability Services Consumers' Rights*. Complaints are either considered with the Code as a benchmark or if they are against health professionals, can be channelled into a disciplinary stream, as in Australian jurisdictions. Matters can be referred to the New Zealand Human Rights Review Tribunal that can make a declaration that an individual's actions are in breach of the Code and has powers to issue restraining orders if necessary.

PIAC submits that these models show that the traditional peer review/standards test can operate side by side with benchmarks that are more focused on consumer rights and obligations. Australia has adopted a Charter of Healthcare Rights. We should now put that Charter to work!

11. Limited registration

PIAC is concerned with the possible implications of clause 85 and 86 of the draft Bill. PIAC is particularly concerned that clause 86 gives broad powers to national boards to grant limited registration to health professionals on the grounds of 'public interest' only. PIAC notes that what are public interest reasons for limited registration are not defined or described in the draft Bill.

PIAC accepts that in certain circumstances that some form of limited registration, limited by time and/or conditions on the practice, could be necessary to provide access to health services where there is a very restricted or non-existent supply of health professionals in a particular geographic area. This would most likely occur in remote geographical locations.

The decision to grant such registration of necessity means that someone who has not been deemed fit to practice, is allowed to practice, albeit under restricted circumstances. This must potentially risk a diminution in standards of care provided to consumers.

PIAC believes that this should take place only in the strictest conditions where:

- it is established that there are no other viable alternatives, and in situations where if limited registration is not provided to certain health practitioners, then there would be no practical access by consumers to the relevant registered health professionals;
- there is prior informed consultation with consumers in the geographical region concerned, followed by a decision reflecting the views of consumers who participated in the consultation;
- that the limited registration of the health professionals concerned should only be operative as long as no alternative health care from registered health professionals is available and that any conditions on the practice of the health professionals with limited registration allow them only to practice in areas where there is no registered health professional available to provide appropriate health care.

PIAC does not object in principle to decisions about limited registration being made by government(s) as set out in clause 85 of the draft Bill. What needs to occur, however, is that such decisions are made with the maximum consultation practicable, taking into account the views of stakeholders such as the health professionals' representative organisations, consumer organisations, the relevant board and the particular geographic community effected by the decision.

PIAC believes that clause 86 of the draft Bill is unnecessary and, given the above, gives broad and unspecified powers to the national boards without any obligation to consult and with no accountability mechanisms. PIAC believes that if clause 85 operates in the parameters set out above, clause 86 is not necessary.

PIAC also questions the necessity for clause 87 (limited registration for teaching and research). It is submitted that registration as a health professional is not necessary to carry out a purely teaching or research position. If there is a clinical component in a position, then the same accreditation and competency standards should apply as for any other position with clinical duties involved.

PIAC is concerned that one of the underlying problems could be that Australia is too restrictive in recognition of the credentials of some overseas trained health professionals. Whilst it recognises the importance of health professionals practicing in Australia having English speaking skills at an appropriate standard, PIAC notes that Australia only automatically recognises the qualifications of people from several English-speaking countries. PIAC submits that professional competency skills and language skills are two very separate sets of skills. It would be possible for the new National Registration regime to broaden the number of countries to which Australia grants automatic recognition of professional qualifications and yet still insist on the possession of demonstrated high-level English speaking, reading and writing skills before registration is granted.

What concerns PIAC is that clause 85 and clause 86 of the draft Bill either concedes that there is a pool of available health professionals that possess a capacity to practice to an acceptable standard, that are currently not granted professional registration or concedes that it is acceptable to lower standards in emergency situations, where these health professionals will be more than likely servicing disadvantaged groups and communities. PIAC remains uncomfortable with either of these scenarios.

PIAC suggests that enhanced regulation of delegations by health professionals, as suggested above, may be a better way of dealing with shortages in the supply of health professionals in rural and remote labour markets.

12. Criminal history

The draft Bill defines, in clause 4, 'criminal history' as

- (a) every conviction of the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law,
- (b) every plea of guilty or finding of guilt by a court of the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law and whether or not a conviction is recorded for the offence,
- (c) every charge made against the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law.

PIAC is very much of the view that the intention of judges or magistrates who, after having considered the material before them in open Court, decide not to record a conviction against a person, then that position should prevail throughout the legal system. PIAC therefore recommends that (a) above only should apply. No person should be prejudiced merely because they are or have been charged with an offence or when a court has decided not to record a conviction against their name.

The draft Bill provides sufficient powers to the national boards to suspend the registration of a health professional in emergency situations so there is no need for a board to rely on the fact that someone has been charged with an offence but not convicted in order to deal with them appropriately. If the charge is relevant to the practice of a health profession, then the emergency powers can be used. If the charges do not relate to the practice of a health profession, then PIAC submits there are no public interest grounds to effect the registration of a health professional unless and until they are convicted by a court.

PIAC therefore submits that the definition of a criminal history should be limited to (a) above.

13. Summary of Recommendations

Recommendation 1

That all complainants, as well as the relevant health practitioner, should be provided with reasons in writing for all the significant decisions made in consequence of their complaint, not just in situations where their complaint is rejected

Recommendation 2

That, in addition to the existing objects, the objects (clause 4(1)) should:

- *emphasise the enhancement of patient safety through the positive role of the complaints process;*
- *emphasise the principle of continuous quality improvement;*
- *state as one of the objects of the draft Bill as the goal of achieving best practice in the management of healthcare complaints.*

Recommendation 3

That the guiding principles (clause 4(2)) should

- *Refer to the Australian Complaints Handling Standard;*
- *Refer to the Australian Charter of Healthcare Rights, which should also be included as a schedule to the legislation.*

Recommendation 4

That there should be an opportunity for consumers to seek an internal review of the original assessment decision as well as any decision made after formal investigation of a complaint.

Recommendation 5

That the draft Bill be amended to provide for:

- *Open panel hearings, with a limited power to conduct part or whole of the proceeding in camera in designated exceptional circumstances, and with a clear power of the panel to make appropriate suppression orders.*
- *Public written reasons for all decisions by a panel with timely written notification to all relevant parties, including the complainant.*
- *A right of legal representation for all parties with a direct interest in panel proceedings.*

Recommendation 6

That a similar section to section 98 of the Health Care Complaints Act 1993 (NSW) (offence to intimidate or threaten complainants) be added to the draft Bill.

Recommendation 7

That clause 145 of the draft Bill should be enhanced by:

- *Replicating clause 11(2)(c) of the Medical Practice Regulation 2008 (NSW) that prohibits advertising of medical services that 'promotes the unnecessary and inappropriate use of medical services' and extend this to all health services.*
- *By enacting provisions similar to sections 115 and 116 of the Medical Practice Act 1992 (NSW) by requiring a person responsible, who must be a health practitioner, be nominated by a corporation that*

advertises health services and to make that person personally liable and subject to disciplinary proceedings for breaches of the advertising regulations in the draft Bill.

- *By enacting a provision similar to section 96 of the Health Professionals Registration Act 2005 (Vic) to allow a court or tribunal the power to order corrective advertising.*

Recommendation 8

That formal powers to regulate delegation by health professionals (to other professionals or assistants) be given to the national registration boards.

Recommendation 9

That the draft Bill be amended so that adherence to the Charter of Healthcare Rights is one of the benchmarks on which the conduct of health professionals is measured and that the Charter be added as a Schedule to the Bill.

Recommendation 10

PIAC believes that limited registration under clause 85 of the Bill should take place only in the strictest conditions where:

- *It is established that there are no other viable alternatives, and in situations where if limited registration is not provided to certain health practitioners then there would be no practical access by consumers to the relevant registered health professionals;*
- *There is prior informed consultation with consumers in the geographical region concerned, followed by a decision reflecting the views of consumers who participated in the consultation;*
- *That the limited registration of the health professionals concerned should only be operative as long as no alternative health care from registered health professionals is available and that any conditions on the practice of the health professionals with limited registration allow them only to practice in areas where there is no registered health professional available to provide appropriate health care.*

Recommendation 11

That clauses 86 and 87 be deleted from the draft Bill.

Recommendation 12

That the words 'every conviction of the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law' be the only definition of 'criminal history' in the draft Bill.