Committee of Presidents
of Medical Colleges

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Mr Elton Humphery
Committee Secretary
Senate Community Affairs Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Humphery

Inquiry into the National Registration and Accreditation Scheme for Doctors and other Health Workers

I refer to your letter of 18 June which provided an update on developments with the Community Affairs Legislation Committee's inquiry into the National Registration and Accreditation Scheme and invited further comments specifically in regard to whether the issues and concerns raised in the CPMC's earlier submission had been satisfied with the release of draft Bill B.

As you are aware, senior representatives of the CPMC presented to the Committee at its initial hearing on 7 May. The Australian Health Workforce Ministerial Council met on 8 May and issued a communiqué which indicated that it was intended to address most of the major issues raised by the CPMC in earlier submissions to NRAIP and in its presentation to the members of your Committee in the proposed draft Bill B.

To a large extent the draft Bill has dealt effectively with the CPMC's stated concerns but there is a small number of important matters in the draft which require further amendment to make clear the intent, to correct errors and inconsistencies in the draft and to remedy an omission in regard to 'protected persons'. The details of those matters and proposed corrective action are contained in the attached copy of the CPMC's most recent submission to NRAIP.

The amendments proposed in the attached submission are regarded as being essential to give accurate effect to the undertakings contained in the Ministerial Communiqué and to ensure the effective operation of the proposed arrangements. It would be appreciated very much if the members of the Committee could have regard to the issues canvassed when preparing the Committee's report and recommendations.

I would be pleased to provide clarification or further advice in regard to any of the issues raised, if that would assist the Committee.

Yours sincerely

Les Apolony
Chief Executive Officer

22 July 2009

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**SUBMISSION IN RESPECT OF THE EXPOSURE DRAFT
OF
THE HEALTH PRACTITIONER REGULATION NATIONAL LAW 2009**

The introduction to the Guide to the Exposure Draft advises that –

'This guide follows the Communiqué issued by the Australian Health Workforce Ministerial Council on 8 May 2009, and includes a number of additional elements that were discussed in the consultation process for the new National Registration and Accreditation Scheme for the Health Professions'.

The Committee of Presidents of Medical Colleges (CPMC) acknowledges that submissions it made in regard to a range of important issues since the consultation process first began in 2006 were considered seriously in the several months leading to the 8 May Communiqué and have been adopted in the exposure draft. These measures include -

- independence of accreditation functions;
- specialist registers;
- continuing professional development arrangements;
- protection of the 'specialist' title; and
- area of need arrangements.

The CPMC appreciates the efforts of those officers responsible for ensuring appropriate advice was furnished to Ministers in regard to these issues.

The following comments are provided in respect of the exposure draft. They relate to amendments considered necessary to make clear the intent of elements of the draft legislation, to correct errors and inconsistencies in the draft and to remedy an omission in regard to '*protected persons'*.

Section 10 (4)
This section gives the Ministerial Council the power to give a direction to a National Board in regard to '*a particular accreditation standard'* where, in the Council's opinion, *'...the accreditation standard will have a substantive and negative impact...'*. Both the 8 May Communiqué and the guide to the exposure draft are expressed in terms that the Ministerial Council may only intervene in regard to '*...**changes** to an accreditation standard...*'.

This apparent contradiction seems to arise from the use of the word 'standard' in the legislation to encompass collectively all of the standards of a profession, i.e. the AMC standards will

constitute the accreditation **standard** for the medical profession. It is understood that, under the legislation, the existing AMC standards will become the standard for the medical profession through the transitional arrangements and any subsequent proposed change to any element of that standard, including the proposed introduction of a new element into the standard, may attract the interest of the Ministerial Council, presumably during the consultation process.

Action Required
It would be helpful if the definition of 'standard' and related matters in the legislation could be amended to make clear this situation.

In addition, it would be preferable for the grounds on which Ministers may intervene to be broader than workforce issues alone. Registration and accreditation relate to standards of care and standards of education and training. To insert a clause in the legislation that allows Ministers to influence those standards, particularly if the reason is solely based on workforce issues rather than safety and quality, is of great concern to the medical profession. Further, this is contrary to the statement in the Communiqué that the accreditation function will be independent of government. If the accreditation body (e.g. the AMC) and the National Board agree on a standard it would be inappropriate for Ministers on the advice of bureaucrats or the Advisory Council to change that standard solely for workforce reasons.

Action Required
If this clause is to remain, words such as 'public interest' and / or 'safety and quality' would be preferable to 'workforce'.

Section 60
The Communiqué recorded that *'The Ministerial Council agreed today that the accreditation function will be independent of governments.*'

Section 60 provides for the Ministerial Council to appoint an entity, other than a committee established by a National Board, to exercise an accreditation function. Clause 62 empowers a National Board to establish an accreditation committee where an external accreditation entity has not been appointed. It is noted that the Ministerial Council has already appointed entities to undertake the accreditation function in respect of nine of the regulated professions.

The continuing role as proposed for the Ministerial Council in appointing external accreditation entities impinges directly upon the independence of the accreditation process and conflicts with the Communiqué declaration. The provision as proposed appears to sustain the perception held by some that there would be the potential for political interference in the accreditation process.

As part of the transition process, Section 290 requires the relevant National Board to undertake a review of the arrangements for the exercise of the accreditation function within three years of the commencement of the new legislation and to make recommendations to the Ministerial Council about the future accreditation arrangements.

Action Required
It would be appropriate and desirable for the body of the legislation to contain a similar provision requiring the relevant Ministerial Council to act on the recommendation of or in consultation with the relevant National Board in making any future appointment of an accreditation entity.

Section 90 – 91

These sections provide that the period of '*limited registration*', (which includes area of need practitioners) shall be not more than two years and that limited registration '*may not be renewed or restored*'. It was advised at the National Forum on 19 June that the holders of such registrations would be permitted to submit new applications for limited registration at the conclusion of their initial or subsequent periods of registration.

Action Required

It would avoid misunderstandings and misinterpretation of this provision if there was an explicit statement as to the right of such practitioners to submit further applications for registration.

The concept of the circumstances of area of need positions and their occupants being reviewed each two years is supported strongly. However, a two year period of registration would not be appropriate for all classes of limited registration and it may be necessary for the proposed fixed two-year term for all limited registrants to be reviewed.

Section 133

Under the heading *'Changes to registers'* in the Communiqué, the following explicit statement appears: '*Ministers agreed specialist registers will not cover practitioners registered to practice* (sic) *in an area of need.'*

Section 83(1)(a) provides that 'An individual is eligible for **limited registration** in a health profession if the individual **is not qualified** for general registration or specialist registration in the profession ...'. Section 132(1)(a) makes it an offence for a person who is not a 'specialist health practitioner' (i.e. 'a person registered under this Law in a recognised specialty') to take or use the title of '**specialist** health practitioner'.

However, section 133(1)(b)(ii) of the draft specifically permits a practitioner who holds limited registration (which includes area of need practitioners) to use the title '*medical **specialist**'*. The proposed purpose of this subsection is unclear. It certainly is not necessary to provide an area of need practitioner registered to provide a limited range of specialist services with access to specialist rebates under Medicare.

Action Required

This subsection must be removed. The title 'specialist' should be permitted to be used only by those practitioners who hold full specialist registration and are entitled to practise independently.

Sections 165 and 241

These sections deal with the role of *'the independent assessor'* in the handling of complaints against a health practitioner. This role is a new initiative insofar as most jurisdictions are concerned and has the potential to add significant staff and other resource costs to existing complaints handling arrangements. As this new role is essentially a public interest function, the profession is strongly of the view that all costs associated with the discharge of the independent assessor's office must be borne by government and not the profession.

Section 280
This section provides protection from personal liability for '*protected persons*' exercising functions under the legislation. The protection provided does not extend to specialist Medical Colleges or their members / staff engaged in the assessment of IMGs.

This is an important issue which has been raised consistently since the initial consultations which led to the development of the Intergovernmental Agreement began and in respect of which assurances have been received. The Health Workforce Principal Committee's Technical Committee undertook to ensure the indemnity issue would be dealt with effectively in the new national legislation and the issue and the assurances received have been raised in each of the CPMC submissions over time dealing with various aspects of the proposed legislation.

Indemnity for College Fellows undertaking performance assessments on behalf of Medical Boards is provided presently under the legislation of most jurisdictions and is assumed to be maintained by Section 280(3)(g).

Action Required
It is essential that these provisions be extended to encompass also specialist Medical Colleges and their members / staff engaged in the assessment of IMGs.

I would be pleased to provide any further information you may require in regard to the issues raised above, if that would be helpful.

Russell W Stitz

Professor Russell W Stitz AM RFD
Chairman

16 July 2009