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From: Eva O'Driscoll <eva@amasa.org.au>
Sent: Thursday, 11 September 2014 12:04
To: Health:Minister for Health
Subject: South Australian Civil and Administrative Tribunal Act 2013 and boards and tribunals relevant to the medical profession and health
Attachments: 2328 PM Snelling SACAT 04-09.pdf; 2328_pm_swan_08-28.pdf

Dear Minister

Attached is a letter from Dr Patricia Montanaro, President, AMA(SA), regarding South Australian Civil and Administrative Tribunal Act 2013 and boards and tribunals relevant to the medical profession and health in SA. A hard copy is also being sent via post. The second letter attached is an enclosure to the first letter.

Yours sincerely

Eva O'Driscoll

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AUSTRALIAN MEDICAL ASSOCIATION
(SOUTH AUSTRALIA) INC.
ABN 91 028 693 268

9 September 2014

Hon Jack Snelling MP
Minister for Health and Ageing and Substance Abuse
GPO Box 2555
Rundle Mall
ADELAIDE SA 5000

Dear Minister

South Australian Civil and Administrative Tribunal Act 2013 and boards and tribunals relevant to the medical profession and health in South Australia

Last year we provided comment towards a review of the South Australian Health Practitioners Tribunal (enc).

Since then the South Australian Civil and Administrative Tribunal Act 2013 has been passed. Last year, we were not sure whether the South Australian Health Practitioners Tribunal would be affected by the above Act.

We now understand this tribunal to be proposed, among others, as one for which SACAT could potentially assume the work – we understand this to mean that the above Tribunal could be effectively replaced by SACAT.

This is a matter of interest to the AMA(SA) and we seek to know by when we would need to provide feedback if we come to the view that the South Australian Health Practitioners Tribunal, which is established under the Health Practitioner Regulation National Law (South Australia) 2010, should be exempted from the changes – that is, it should continue as a separate entity not be subsumed into SACAT.

We also wish to place on the record our strong view that should any change occur, there should be no dilution of medical input on Tribunal matters concerning medical practitioners, under any new arrangements.

As we stated in our submission of 28 August sent to the Department of Health and Ageing, in relation to the review of the Tribunal in 2013, the AMA(SA) is absolutely committed to profession-led regulation, which incorporates not just registration but overall maintenance of professional standards via a notification mechanism.

We strongly seek and urge consultation with the AMA(SA) as the broad representative group for the medical profession in South Australia in any changes contemplated regarding the Tribunal or the South Australian Board of the Medical Board of Australia.

We seek that there be no lessening of medical professional input on any existing boards or tribunals, in addition to the South Australian Health Practitioners Tribunal.

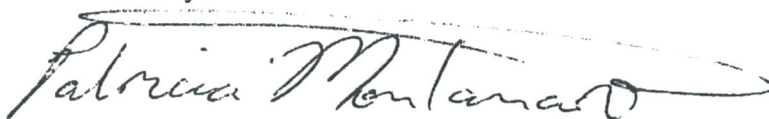
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Further, we seek advice and consultation on any other changes contemplated under the SACAT plan of relevance to the medical profession.

This would include changes to other boards and entities of relevance, for example the Guardianship Board (and we note the concerns of the RANZCP in this regard), the Firearms Review Committee, and the Education and Early Childhood Services Registration and Standards Board may have some interest, potentially also the Adoption Board.

We strongly emphasise the importance of meaningful consultation on any changes proposed, with our interest being in those of relevance for the medical profession.

Yours sincerely

A handwritten signature in black ink, reading "Patricia Montanaro". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Dr Patricia Montanaro
AMA(SA) President

Enc Review of the South Australian Health Practitioners Tribunal

Cc Hon Stephen Wade MLC, Shadow Minister for Health
Mr David Swan, CE, Department of Health

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AUSTRALIAN MEDICAL ASSOCIATION
(SOUTH AUSTRALIA) INC.

ABN 91 028 693 268

28 August 2013

Ms Kathy Ahwan
Policy and Legislation Unit
Department of Health and Ageing
PO Box 287
Rundle Mall SA 5000

Dear Ms Ahwan

Review of the South Australian Health Practitioners Tribunal

We thank the Department of Health and Ageing for the invitation to comment regarding the South Australian Health Practitioners Tribunal, as contained in the letter we received from the Chief Executive Mr David Swan, dated 17 July 2013.

As detailed in the letter, we understand this review of the Tribunal to be in response to Section 83 of the Health Practitioner Regulation National Law (South Australia) Act 2010, which requires a review of the legislation establishing the Tribunal as soon as practicable after the third anniversary of its commencement.

We further note that a bill proposing a 'super tribunal' has been introduced into the SA Parliament's House of Assembly, with its first reading being on 24 July 2013 (the South Australian Civil and Administrative Tribunal Bill). We have not examined the detail of this Bill, although we understand it not to specify which existing Tribunals could potentially be incorporated under it. Should the possible incorporation of the South Australian Health Practitioners Tribunal be envisaged, this is a matter on which the AMA(SA) would have interest and concern. In particular the AMA(SA) would not wish to see any dilution of medical input on Tribunal matters concerning medical practitioners.

The AMA(SA) is absolutely committed to profession-led regulation, which incorporates not just registration but overall maintenance of professional standards via a complaint mechanism.

Background

To provide some background regarding previous AMA(SA) comments regarding the Tribunal, in relation to the Consultation Draft for the Health Practitioner Regulation National Law (South Australia) Bill 2010, the AMA(SA) made some comments on the proposed Tribunal Arrangements, as outlined in a submission to then Chief Executive of the Department of Health Dr Tony Sherbon (dated 9 March 2010).

The AMA's clear preference regarding tribunal arrangements was for the proposal for Option 3 involving the creation of a distinct Medical Practitioners Tribunal, rather than the model adopted of a single Tribunal to cover the health professions as captured under the National Law generally. The AMA(SA) indicated at the time that it was mystified by the perceived need

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to tamper with the legislative underpinnings of the present Medical Professional Conduct Tribunal, which in our experience had operated effectively.

In particular, we were concerned by the obvious intention to dilute the medical profession's input in Tribunal matters through the proposed amendments, highlighting the removal of the AMA(SA)'s previously existing role as representative of the medical profession in nominating practitioners to be considered for appointment, noting further to this that the Bill (and subsequent Act) preserved nominating roles for the Pharmacy Guild of Australia (SA Branch), the Pharmaceutical Society of Australia SA Branch and the Australian Friendly Societies Pharmacy Association to a state-based Pharmacy Regulation Authority (Section 28).

The AMA(SA) called for this double-standard to be addressed by the re-inclusion of the AMA(SA) as a nominating body for Tribunal members. Subsequent to the AMA(SA)'s advocacy the Association understood that the Chief Executive would recommend that the Minister seek advice from medical bodies for Tribunal appointments. Subsequently the AMA(SA) was engaged via expressions of interest and made suggestions of appointees to the Tribunal which were adopted.

The AMA(SA) also expressed concern about the potential for the overriding of medical expertise in determinations. We note that the Tribunal is constituted by a president or deputy, with the president to be a legal practitioner or magistrate, two members who are members of the same health profession and one person (under section 10(2)) who is not a member of a health profession to represent the interests of consumers of health services.

While the AMA(SA) did not take issue with the presiding member determining questions of law or procedure, the Association strongly objected to a scenario where on all other substantive issues, in a split decision the opinions of the medical practitioner members on the panel could be overridden (the presiding member having a casting vote).

While flagging these previously stated concerns and this possibility, we note that we have received some feedback from medical practitioners engaged on the Tribunal indicating that this has not to date, in their experience, been an issue. There may, however, be other circumstances which could arise in future, or of which we are not currently aware. We have received some positive feedback regarding the level of input afforded medical practitioners on the Tribunal, with particular reference to matters of practice.

The AMA(SA) was also invited by the Registrar of the SA Health Practitioners Tribunal, Mr John Correll, in a letter dated 15 September 2010, to comment on the draft rules for the Tribunal.

Subsequent to an initial preliminary response, the AMA(SA) provided further comments in a letter of 12 October 2010 highlighting a number of concerns, in particular a potential for some significant changes in relation to the rights of medical practitioners. We noted the submission of the Law Society at that time and the expressed concern that the adoption of 'the practice of the Supreme Court in its civil jurisdiction' in proposed rule 3 (4) (Rule 3 (3) in the final version) would appear inappropriate to a disciplinary forum. We shared the concerns expressed by the Law Society in relation to the right for a complainant (doctor) to 'maintain silence' if advised being removed. We also noted that the Law Society similarly raising the effect regarding the obligation for making discovery.

Subsequent to this, we received from the Registrar a copy of a 3 February 2011 letter to the Law Society which provided the reassurance that by the incorporation of the Supreme Civil Court Rules it was never the intention to utilize them other than by underpinning SAHPT rules in areas not covered, and that the Rules do not require filing of an answer, and that the

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Tribunal's view is that the rules do not effect any change to the right to remain silent, referencing provisions covered in the repealed Medical Practice Act 2004 regarding the provision of information documents.

In addition to the above we also raised concerns in relation to Rule 11(3) which contemplates the publication of parties' names, stating: Unless otherwise ordered, where proceedings are closed, parties' names will still be published in the Tribunal's daily "case list" and be available for public litigation searches. On this matter, we supported the opinion expressed by the Law Society in relation to a preference for the possibility of parties to be named by way of their initials only. We shared the concerns that the rule as drafted would appear to be mandatory in its nature and therefore sought an amendment to this rule. We note a subsequent change to this rule was the addition of the provision that "An application for such order may be made by Application for Directions or orally during proceedings." The Registrar subsequently advised that the Tribunal was of the view that Rule 11 adequately addresses issues of publication and suppression of the names of parties on the basis of an application to the Tribunal which can be made prior to a hearing date.

We note that the case listings we have viewed on the public website indicate the names of persons before the Tribunal and that Tribunal findings are published on a public website with the inclusion of full names, but noted at least one instance in which an initial only was included, although other information which could have facilitated identification was also included.

Further comments

We have included the above information as of some continued interest to provide information on previous AMA(SA) comments and submissions regarding the Tribunal and its Rules. Further to the current review of the Tribunal, we have sought some feedback from medical practitioners who have been involved on the Tribunal. We have not sought feedback from medical practitioners who have appeared before the Tribunal.

While it is of significant value to receive feedback from members of the Tribunal we recognise and acknowledge that Tribunal members are likely to have been highly focused on the specifics of each case, more than a broader consideration of the Tribunal's overarching effectiveness. Medical practitioners who have faced the Tribunal are likely to similarly face challenges in having a broad view of the Tribunal's operation.

However, we received some positive feedback on the current structure and process for the Tribunal from medical practitioners engaged on it, with the process being described as fair and transparent. We received further feedback from a respondent that from their experience on the two occasions on which they sat the Tribunal broadly achieved its aims, which are the protection of the public and the maintenance of the standing of the profession.

We received some feedback that the legal members were excellent 'mentors' for the medical practitioners and allowed long debates and guidance of relevant issues. However, we would emphasise that it is very important that the legal members have the reverse process of input from practicing medical practitioners to ensure that the decisions of the Tribunal make sense for both the person complaining, the doctor involved and the community that doctor serves. The penalty for the community, or unintended consequences of negatively altering other practitioner behaviour, can be worse than the penalty on the doctor if all parties are not considered and discussed during the decision-making process. For example, practicing defensive medicine by ordering extra tests, with any consequent risks.

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We received feedback that the Tribunal process can be quite time consuming for all parties, both those before the Tribunal and those sitting on it. One problem raised for private practitioners engaged on the tribunal has been the cancellations causing loss of consulting days, which cannot always be filled at short notice without cancellation fees paid. The pay scale is low with no designated hours paid for reading time before or after the actual face-to-face hearing.

One practitioner's experience included a tribunal case allocated 4 days, with 2 cancellations of 4 days each, but which was reduced by negotiations from the lawyers on both sides to a half day hearing on the day before the tribunal was meant to sit, and then more negotiations wiping out the first day of sitting at very short notice (although a couple of hours were added to the half-day). This meant that the two medical practitioners engaged (general practitioners) lost a day's consulting at least for no recompense.

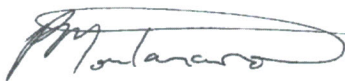
Such instances could lead to a significant financial cost (to lose 3-4 days consulting fees for a one-day payment of approximately \$600). It is noted that for some medical practitioners, consulting fees also go towards ongoing practice costs, and are not purely earnings. Although this situation often arises with other court subpoenas, it should be monitored to ensure that medical practitioners are adequately compensated for their involvement and minimally disrupted from their clinical obligations.

Setting these more practical considerations aside, we emphasise most strongly the benefits and importance of appropriate representation by and engagement with medical practitioners on the Tribunal.

We further have received feedback that the process of appearing before the Tribunal as a person of interest can be very daunting and stressful, and the importance of a person appearing before the Tribunal being well prepared. It is to be assumed that those before the Tribunal who have legal representation (which some may not) should be well briefed by their legal representative as to what to expect. However, it may be of benefit for the Tribunal to take steps to help ensure that people before the Tribunal are fully informed regarding the process, including what to expect on the day. In-depth information on the process and what occurs could be provided.

Greater familiarity with the process would support the person concerned being a more effective participant in the process.

Yours sincerely



Dr Patricia Montanaro
AMA(SA) President

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