



15 October 2010

The Registrar  
South Australian Health Practitioners Tribunal  
Riverside Centre  
North Terrace  
ADELAIDE SA 5000

Attention: John Correll

Dear Sir

***Health Practitioner Regulation National Law (South Australia) Act 2010 – Tribunal Rules***

We refer to your letter dated 15 September 2010 and thank you for the opportunity for the Society to comment on the draft Rules.

We note that the Tribunal is established pursuant to Section 8 of the Act. Its jurisdiction is conferred pursuant to Section 16 of the Act.

It appears that the primary function of the Tribunal will be of a “*disciplinary nature*”. The Tribunal is a “*responsible Tribunal*” as defined in Section 5 of the Health Practitioner Regulation National Law. As such it is charged with considering the matters that are referred to it pursuant to Section 193 of the National Law. When one considers the powers available to the Tribunal in those circumstances (as found in Sections 196 and 197) it is apparent that decisions made by the Tribunal have the potential to have a substantial impact on a practitioner’s ability to practice.

In those circumstances the adoption of “*civil rules*” does not appear to be appropriate. In particular we note the proposed adoption of the “*practice of the Supreme Court in its civil jurisdiction*” in proposed Rule 3(4). This would appear to have the potential to import rules in the nature of pleadings which are highly inappropriate in disciplinary matters where the respondent to the complaint is ordinarily entitled to “*maintain silence*” if so advised. A similar comment can be made in respect of the obligation to make discovery.

We do note that the Administrative and Disciplinary Division of the District Court does contain Rule 6R 279B which deals with the matters in proposed Rules 7 and 10.

In terms of the actual draft Rules we make the following observations.

- The subparagraphs in Rule 3 appear to be incorrectly numbered. It may be that Rule 3(2)(c) is in fact meant to be Rule 3(3).

- In respect of Rule 3(2)(c) the phrase "*strike out any proceedings or step in proceedings*" appears to embody the concepts of civil procedure. Given the nature of the Tribunal (as per our comments above) it would appear that the appropriate power for the Tribunal is to make orders in relation to proceedings and their progress and on such terms as it thinks just and expedient.
- In respect of paragraph 3(4) the phrase "*general principles of the practice of the Supreme Court of South Australia in civil jurisdiction*" is very broad. Is it intended that the Supreme Court Civil Rules apply if so this should be stated explicitly. However for the reasons stated above we believe that the adoption of the Civil Rules is inappropriate.
- In Rule 4(3) there is in fact no statement as to the hours when the Registry will be open.
- In respect of Rule 8 (2) it would appear that subparagraphs (a) to (d) could be incorporated as sub paragraphs in Rule 8(1).
- In respect of Rule 9(1) it is not clear what the phrase "*may alter that assignment*" is intended to mean. One interpretation is that the President may be able to direct another member of the Tribunal as to how they should conduct proceedings that have been assigned to them. This would appear to be inappropriate.
- In Rule 10(1) there is a reference to "*applications*". It is unlikely that proceedings will be commenced by way of an "*application*". Section 193 of the National law contemplates the referral to the Tribunal of a matter and this will generally be by way of a notification or complaint. The appropriate generic term would appear to be "*proceedings*". The reference in Rule 10(1)(b) to the "*Act*" should be a reference to the National law.
- Rule 11(3) contemplates the publication of parties' names. It is not uncommon in proceedings of this nature for a reference to the parties to be only by way of their initials. The Rule as currently drafted would appear to be mandatory in its nature.
- In Rule 12(3)(b) it may be more appropriate for the reference to "*5 days*" to be a reference to "*5 working days*".
- In Rule 14(1) the second paragraph relating to "*the importance of the proceedings*" has the ability to incorporate subjective elements. All complaints relating to professional conduct are obviously important to the respondent to the complaint. The issue of the quantum of a party's costs should be left to the taxing master to be determined in terms of the "*reasonably prudent litigant*".
- In Rule 14(3) there is a reference to "*the claimant*". Once again this appears to be an adoption of civil terminology. There will be no "*claimants*" instituting proceedings before the Tribunal. We suggest that the reference be "*to the parties*".

The comments that we have made above serve to highlight what we consider to be the general inappropriateness of the adoption of civil rules for a jurisdiction of this nature. It is not clear whether or not the draftsman has sought to cross reference these rules to the Tribunals in other States or to other administrative and disciplinary tribunals. It would appear to us that further work needs to be undertaken and further consultation to occur.

The Society is happy to assist in this regard. If you have any queries please do not hesitate to contact us.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Ralph Bönig', written in a cursive style.

Ralph Bönig  
**PRESIDENT-ELECT**