



Psychotherapy & Counselling
Federation of Australia

ARCAP CONSTITUTION 13/8/08- Questions and Answers Background Briefing

The Board has received a copy of the Working Party Report and requested the CEO to answer a number of questions that arise from its consideration to assist in its consideration at the AGM. The ARCAP Constitution has been proposed to provide the framework for a self-regulated single national credentialing system for counsellors and psychotherapists in Australia to meet the requirements of these professions in accordance with the requirements of the Private Health Insurance (Accreditation) Rules 2008. It has four Divisions that respect the autonomy and diversity of the Member Associations of the ACA and PACFA while establishing the foundation for a complementary relationship between the peak associations representing the individuals and associations that accept the standards for the ARCAP. The Board and some Member Associations have raised a number of questions that may help discussion of this proposed Constitution at the AGM

- 1) The reasons for a for-profit Company vs. the other alternatives**
- 2) The risks (and benefits) associated with a for-profit Company with shares held equally by 2 groups whose aims may not be in accord (of course, they may be in accord)**
- 3) Item 15.1: What is the rationale for setting the capital of the Company at One Hundred Million Dollars? It seems that the initial capital structure involves an "on paper" figure and does not need to reflect "real" capital. Is that correct?**
- 4) How does the proposed structure serve to "retain control by PACFA"? I can see that it doesn't cede control to ACA, but nor does it seem to give control to PACFA. Are you referring to the possibility of needing to continue without ACA?**
- 5) Re: lobbying Government. In terms of the Pty Ltd Company, my understanding is that the need for this now depends on the proportion of focus that is directed towards lobbying Government. Under the Howard Government, it was absolutely necessary to form a Company to do any lobbying, but this has changed under the Labor Government (not-for-profit and charitable organisations can now lobby Government and make legitimate representation, as long it is not the major focus of the organisation).**
- 6) Item 8.1 Conflicts of Interest. This is either a very permissive clause (which may be intentional), or should this read "...a Director may NOT..."**
- 7) Item 23: What is the requirement for a Call on Shares?**
- 8) Why the rush given that the Private Health Insurance provisions for non-regulated associations have been delayed until 1st July 2009?**

9) The Constitution appears to regard PACFA and ACA as equals. Does this not mean that the standards of the profession are, as it were, held to ransom by either body? Is this acceptable for recognition of a profession

ANSWERS (provided to the Board by the CEO)

1) The reasons for a for-profit Company vs. the other alternatives

The Constitution is built upon the original PACFA choice of the Pty Ltd Company as the fastest and easiest path to protecting the titles of Psychotherapists and Counsellors. Both ACA and PACFA have accepted that modifying the existing Company that was established by PACFA for a single national credentialing system would be the preferred path to a speedy creation of such a system to meet the requirements of the Private Health Insurance (Accreditation) Rules 2008 that came into effect on 1st July 2008. . This assumes that having PACFA and the ACA use the existing company structure and having ten shares for each association provides a joint venture company that will retain control by PACFA until such time as each of the following goals have been assured. The goals that we have been seeking to address are.

(i) NO DILUTION OF PACFA STANDARDS OR CONTROL OVER THOSE STANDARDS

(ii) PROTECTION OF TITLE FOR COUNSELLORS AND PSYCHOTHERAPISTS WHO MEET THOSE STANDARDS

(iii) ACCEPTANCE OF THE SUB-SET OF MENTAL HEALTH PRACTITIONERS WHO MEET THE STANDARDS OF DOHA and COAG MEMBERS

(iv) ACCEPTANCE OF THOSE STANDARDS BY PRIVATE HEALTH INSURANCE AGENCIES and not least

(v) A BASIS FOR A PUBLIC EDUCATION PROGRAM THAT REINFORCES THOSE STANDARDS AND PROVIDES PROTECTION OF TITLE TO PACFA MEMBERS that enables people seeking clinical and professional help to go to a registered Psychotherapist or Counsellor who meets the 2009 Standards of PACFA.

The alternatives initially considered were those in the report to DHS, supported by PACFA which could require us to wait until there is only one organisation standing or the governments change their mind about refusal to introduce statutory regulation. This was indicated in their refusal to grant such regulation even to the Social Workers. Another alternative was for a company established by the President of ACA as the sole shareholder and controlling agent, which would not meet any of the goals set out below.

This was not regarded as a process that would lead individual members of both professions to be in a position to establish an alternative structure as a Producers Co-operative if we could demonstrate that the co-op would make sufficient trading profit to cover costs and make dividends or a Company Limited by Guarantee that would not have the support of both types of peak association of counsellors and psychotherapists and require individuals to become members of the corporation rather than establish a working relationship between the peak organisations leaving the Government with the claim that the professions are hopelessly divided and that nothing can be done towards recognition until after 2012.

The other alternative was to seek to convert PACFA into a charitable body or a not-for-profit organisation that does not seek to represent or lobby on behalf of the Member Associations and reaches an agreement with the ACA to take over the legitimate

representation of individual counsellors and psychotherapists as the only nationally recognised register for these professions.

Each of these alternatives violates some of the above listed goals.

Other alternatives considered and rejected were a series of independently established limited liability companies for each modality or section of the registers of ACA and PACFA as this option further violated the single national credentialing system required by the Commonwealth Government and COAG

2) The risks (and benefits) associated with a for-profit Company with shares held equally by 2 groups whose aims may not be in accord (of course, they may be in accord)

Originally we drafted a clause to have an independent chair appointed by both organisations to break potential deadlocks given the concerns and histories of both organisations. This was unacceptable to the ACA who feared its use, given the goals set out above, for an imposition of different standards and intrusion into the autonomy of both organisations. Instead, after discussion with the Chair of the Working Party, ex Senator Peter Baume, that we might use the provisions of the Senate and have it mandatory that any motion that cannot get an absolute majority will be determined in the negative- thus protecting the status quo ante. This has been included in the draft Constitution that was then unanimously adopted by the Working Party for consideration by both organisations. It will be necessary to take out directors insurance and indemnity provisions whether it's a private company structure or a community association, but the biggest risk that we are trying to consider is to the goals outlined above and the potential costs and restraints of protecting titles via the commercial structures. Without legislative backing via Statutory Regulation, it is only via litigation that one can hope to protect title, standards and intellectual property.

3) Item 15.1: What is the rationale for setting the capital of the Company at One Hundred Million Dollars? It seems that the initial capital structure involves an "on paper" figure and does not need to reflect "real" capital. Is that correct?

The provision of a large initial capital structure enables it to operate on a commercial basis to protect the titles and seek necessary funds if we have to take action to litigate or advertise to generate public awareness of our logo, trade marks and standards. This is a formal operation that does not require either PACFA to the ACA to put funds into ARCAP at this time, and enables flexibility without having to make later changes to the constitution that often create problems if they are not included at inception. As the Company develops it may wish to distribute value to the initiating organisations from the sale of intellectual property such as licenses and take up equity in international intellectual property for the maintenance of quality assurance and for the use of the model for other self-regulating professions. Again we will seek further legal advice before confirming this position but do not see the level of the ambit assessment of its value as a vital issue in itself and this may be able to be changed after we take some commercial advice on tax implications of subsequent increases in capital value (i.e. fees and capital gains tax implications). We may also wish to tighten up the control over transfer of shares if the organisation suddenly became a takeover target.

4) How does the proposed structure serve to "retain control by PACFA"? I can see that it doesn't cede control to ACA, but nor does it seem to give control to PACFA. Are you referring to the possibility of needing to continue without ACA?

Until there is agreement on the proposed joint venture, the Pty Company is held entirely by the current shareholders and directors. They will only transfer their shares and ownership upon the recommendation of the PACFA Board. In the longer term it is possible that Member Associations of the ACA may find value in become members of PACFA and that PACFA may seek to gain government acceptance of a tiered level of benefits based upon triage principles and the public interest. Yes- this means that PACFA can, if necessary, proceed with the creation of ARCAP as a single national credentialing system while ACA arranges to become a similar membership controlled associations and wait with the inclusion of other shareholders until there is certainty as to the next steps in the relationship.

5) Re: lobbying Government. In terms of the Pty Ltd Company, my understanding is that the need for this now depends on the proportion of focus that is directed towards lobbying Government. Under the Howard Government, it was absolutely necessary to form a Company to do any lobbying, but this has changed under the Labor Government (not-for-profit and charitable organisations can now lobby Government and make legitimate representation, as long it is not the major focus of the organisation).

That is correct, but as we are seeking a major change to government policy to include psychotherapists and counsellors, it is important to separate our objects as PACFA from that Of ARCAP. PACFA is principally a scientific body that seeks to promote the science of the art and practice of counselling and psychotherapy.

The CEO is a registered lobbyist at Marshall Place Associates with PACFA represented as a client rather than as a lobbyist in its own right. ARCAP has as its principle objective the maintenance and preservation of the single national credentialing system and not as a lobby organisation. PACFA is currently pursuing taxation benefits on the basis that it is not principally functioning in the same manner as the peak body that represents individual counsellors and psychotherapists.

6) Item 8.1 Conflicts of Interest. This is either a very permissive clause (which may be intentional), or should this read "...a Director may NOT...?"

It is explicitly a set of permissions subject to 8.2 to enable the directors to run the joint venture company, given that they are nominees of PACFA and the ACA and there could otherwise be nobody who could vote on matters required to run the Company. While the Company would have mandatory relationships between the Presidents and Coe's, the ARCAP would be an independent company for the specific purpose of establishing a single national credentialing system that did not interfere with the autonomy of the two peak organisations that are coming together to establish the joint venture. The explicit provisions are designed to permit this.

7) Item 23: What is the requirement for a Call on Shares?

This provision enables the Company to seek funds from both sets of share holders at some future date on the basis of meeting the costs associated with the operation of the single national credentialing system, The shares will only be held by PACFA and the ACA as the principal parties establishing the company with the intent of meeting the requirements of a viable and sustainable national system that meets the requirements of the Private Health Insurance (Accreditation) Rules 2008.. In earlier considerations for

the Company it had been proposed to issue one non voting share to each Registrant to symbolise ownership of the profession by the Registered Psychotherapists and Counsellors but this raised the complication of not being able to withdraw that share if the practitioner became deregistered or unqualified to remain on the Register for any reason and on limitation on the sale of shares to third parties who were not involved in the profession.

8) Why the rush given that the Private Health Insurance provisions for non-regulated associations have been delayed until 1st July 2009?

For the past decade there has been the intention of having a unified professional registration system. Notice of listing on the PACFA Register of all those who are eligible was taken in 2006. The Private Health Insurance bodies have decided that they will not recognise any professional claims from allied health professionals after 1st July 2008 unless they can show that they are on a national register that meets the requirements of the Private Health Insurance (Accreditation) Rules 2008. Member Associations have been pressing for urgent action to establish such a Register. We can only begin negotiations with the Private Health Insurance Companies and the Department of Health and Ageing when we have met the requirements of these rules for our members which will come into force on July 1st 2009. Establishing the structures and operations of the new Company is therefore a completion of a process that has had a long gestation.

9) The Constitution appears to regard PACFA and ACA as equals. Does this not mean that the standards of the profession are, as it were, held to ransom by either body? Is this acceptable for recognition of a profession

The two principal organisations have operated in parallel for more than a decade with one representing individual Counsellors and the other representing Member Associations of Counsellors and Psychotherapists. The ARCAP Constitution recognises that the Federal and State Governments have explicitly required that this division be resolved so that there is a single national credentialing system that brings their independent sources of credentialing onto a similar basis across the nation. The standards of each professional body are respected and neither is permitted to attempt to impose them on the other organisation but rather to enable those people who wish to confirm the credentials of practitioners to be able to go to the single common register to check on claims to be credentialed by a national professional organisation. This leaves individual Member Associations free to join either or both of these peak organisations but only a single national register of credentialed Counsellors and Psychotherapists who are licensed to use the common trade marks of the profession.

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