REPORT OF THE REVIEW COMMITTEE (FOR DISCIPLINARY PROCESSES) 2013

Submitted to the
Singapore Medical Council on
1 November 2013

CHAIRMAN'S FOREWORD

I am pleased to report on the recommendations of the Review Committee (for Disciplinary Processes) (the "Committee"). The Committee was appointed by the Singapore Medical Council ("SMC") to look into the existing disciplinary process and to make recommendations to strengthen and streamline the disciplinary system for the just and expeditious management of complaints.

In its work, the Committee has reviewed the old and current Medical Registration Act ("MRA") and Medical Registration Regulations ("MRR") and also went through the issues in the disciplinary processes of the SMC. In its deliberations, the Committee has been mindful of the primary objective of the MRA to protect the health and safety of the public.

It was noted that the amendments made in December 2010 to the MRA and MRR provide for a more efficient and robust system of management but sufficient time has not elapsed for the full benefit to be shown. The Committee agreed in principle with the separation of members of the Council from its Complaints Committees and Disciplinary Tribunals. The Committee considered all the feedback it received from various parties and stakeholders including doctors, medical professional bodies, legal assessors and legal practitioners involved with SMC's disciplinary inquiries as well as the Ministry of Health and the Ministry of Law.

The Committee's review led to a better appreciation of the work and initiatives undertaken by Council and its appointed committees and tribunals for the complaints and disciplinary processes and provides a framework to understand the interactions between Council, complainants, doctors and lawyers.

The Committee laid out the current processes and key feedback received during the consultation exercise and deliberated on them to make its recommendations on processes, policies and proposed amendments to the current MRA/MRR. The Committee, having extensively discussed the issues raised and feedback received, agreed that Council should retain key areas that enable the professional self-regulatory functions to continue.

We sincerely hope that this report will advise and enable the SMC to streamline all its complaints and disciplinary processes for a clear, efficient and just way to manage the statutory complaints received against doctors.

I wish to extend my appreciation to all members and advisors to this Review Committee, for their valuable contributions as well as the very diligent Secretariat who has provided the painstaking and timely administrative support to make this review possible.

PROF RAJ NAMBIAR
CHAIRMAN
SMC REVIEW COMMITTEE (FOR DISCIPLINARY PROCESSES)
1 JAN TO 30 SEP 2013

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Executive Summary

The Review Committee (for Disciplinary Processes) was appointed by Council in December 2012 and the Committee's term of office was for a period of 6 months from January to June 2013 before it was extended for another 3 months from July to September 2013. The Committee comprised members of the Judiciary and former Judiciary, senior Counsel and lawyers, senior doctors and senior civil servants from the Ministry of Law, Ministry of Health and the Ministry of Home Affairs.

The Committee was appointed by Council to: (a) review the old and current MRA/MRR, to look into the administrative framework and to study how to optimise the disciplinary processes for the just and expeditious conclusion for each case; (b) make recommendations to both CCs and DTs to enable them to optimise and utilise the options available to them in more efficient and cost-effective ways as well as; (c) make recommendations to other areas which may require further amendments to strengthen and streamline SMC's disciplinary processes. This report summarises the Committee's review and recommendations on the complaints and disciplinary processes under the current MRA and MRR.

Perception of Multiple Roles

The perception of SMC taking on multiple roles, of being the complainant, prosecutor and judge in the complaints and disciplinary processes and raising a conflict of interest was reviewed. The Committee notes that these roles are allowed under the current MRA but any conflict of interest must be carefully screened. For example, the SMC can make a complaint under Section 39(3) MRA and once a CC is constituted, it will be chaired by a Council member who is on the Complaints Panel. The Council has decided that, in view of this, it will check for conflict of interest on the part of the CC Chairman and members. Any member who was involved in the decision to make the complaint to the Chairman of the Complaints Panel will not be appointed to the CC. This is in addition to the requirement which SMC already has in place for all CC members to declare any conflict of interest regarding the case before they are appointed. The MRA provides that it is not necessary for a Council member to chair the DT and SMC need not appoint Council members to chair the DTs.

The Committee recommends that, in order to separate the disciplinary functions of the Council under the MRA, the MRA may have to be amended so that no Council member will, in future, be appointed to the Complaints Panel or Complaints Committees. Provisions should be made in this respect for the Minister to appoint: (a) the Chairman and Deputy Chairman of the Complaints Panel; and (b) the panel of senior doctors *to chair* CCs. The Complaints Panel comprising senior doctors and laypersons as members should continue to be appointed by the Council. SMC should employ, on a part-time basis, the Chairman of the Complaints Panel so that he/she may manage and assist the Secretariat in improving the internal processes for complaints proceedings.

Although the Committee has recommended the separation of the adjudication function from the Council, the Committee stresses that this does not in any way allege that the Council has been unprofessional in its work nor does it wish to diminish the Council's integrity. The Committee points out that Council members have been noted to be fair and impartial in their work with regard to chairing CCs (or participating as a chairman or member for the DCs under the previous MRA). Self-regulation by the profession should continue to be preserved and the system of judgment by professional peers is sound based on the ethical standards and conduct imposed on the profession.

The Committee clarified its position regarding any public misconception on the role of the investigators. SMC investigators (who have at least 10 years of experience) are a fact

finding unit for the CCs and only investigate complaints according to the CC's specific instructions and do not stray away from the directions which they are issued. Each CC assesses the information collated by the investigator in the investigator's report as instructed by it. The CC has 2 doctors and a layperson and reviews all the reports and documents submitted by the investigators. The investigators are not involved in the decision making process after the investigation.

Appeals to Minister

The Committee was of the opinion that the appeals to the Minister by the complainant following the outcome of the CC's decision may result in a cumbersome legal process and cause unease regarding the basis of the decision. With regard to appeals of the CCs' decision, the Committee proposed that an Appeals Committee should be formed drawn from an Appeals Panel comprising senior doctors and lawyers, to review appeals instead of the Minister in the subsequent amendments to the MRA. The Committee suggested that this Appeals Committee could be appointed by the Minister.

The Committee was of the view that the SMC Review Committee (which should represent Council's views only) should not be associated with the Minister and that the Minister need not appoint it. This SMC Review Committee which will audit the outcome of every inquiry before a DT will consist of 3 Council members. Where necessary, it will direct the SMC to appeal to the High Court against the DT's decisions. It would therefore only be the SMC and the convicted doctor who could appeal directly to the High Court. The complainant could also write in and submit their reasons to SMC to consider an appeal.

Training

The Committee noted that it may be difficult for doctors (who are not trained like lawyers in legal and disciplinary procedures) to chair DTs, especially for complex cases. The Committee notes that the Council will not appoint a senior doctor to chair if he/she has not sat in at least 3 previous disciplinary hearings. The current MRA also allows a senior lawyer to chair DT inquiries and the Council will appoint a senior lawyer to chair in appropriate cases. The Committee also recommends that each DT should have a lawyer, although not necessarily as the Chairman.

The Committee also recommends that SMC organises more structured training courses for the members on the Complaints Panel and the panel of DT chairmen to manage complaints and disciplinary inquiries more effectively. The topics covered will include the procedures to be followed during hearings and the relevant legal principles regarding evidence and burden of proof.

Complaints Cases and Disciplinary Inquiries taking too long to complete

While the MRA provisions enable the CCs to resolve complaints more efficiently and the CCs are effective in sifting out complaints which are less serious in nature, the Committee notes that CCs should conclude their investigations more promptly. While delays may arise due to a variety of reasons, the Committee agrees with Council's proposal to implement online meetings on a rotational basis (for the Committee's first meeting) to begin the CC's preliminary inquiries quickly. Fairness will not be compromised by adopting such an approach if it is ensured that any member of the CC who desires to discuss any case in a face to face meeting will have this arranged by the Secretariat.

With regard to delays at disciplinary inquiries, the Committee evaluated and concluded that many of the issues pertaining to delays, including preliminary issues and objections, submission and exchange of inquiry bundles and the decision making process on the number of experts and witnesses to be called could be resolved at pre-inquiry conferences (PICs). The Committee was thus pleased to note that the notices of inquiry (NOIs) for DTs are now served with a date for the PIC instead of dates for the inquiry and was of the view that such a practice, when properly executed, will enable the inquiry to be run more smoothly and quickly.

Transparency

The Committee notes that the Council is already making considerable efforts to increase the transparency and efficiency of the SMC's complaints and disciplinary processes in the following areas: (a) CCs have been providing substantive reasons to both doctor and complainant for their decisions; (b) the names of the CC Chairman and members are revealed in the outcome letters; and (c) anonymised grounds of decisions for conviction cases have been published on SMC's website since mid 2011.

The Committee also agreed that SMC inform parties of the identities of the DT chairman and member before each PIC is convened. The Committee further recommends that: (a) SMC should publish the total annual costs spent on disciplinary proceedings (but that it would not be appropriate to publish the breakdown of each individual case as some inquiries are still on-going; (b) DCs/DTs should order for the anonymised grounds of decisions to be published (but not immediately) for cases in which the doctor is acquitted (it was noted that currently, the Council leaves it to the respective DC/DT to decide if such grounds of decision should be published); and (c) SMC to publish a database of redacted grounds of decision (of conviction cases) concluded within the last 5 years.

Others

The Committee notes that the current adversarial process leads to increased legal costs for all parties and SMC may wish to consider investigating a change to adopt an inquisitorial rather than an adversarial approach which would enable the DTs to manage the proceedings better given the increasing technical and legal complexities arising in some of the cases using the current approach.

Conclusion

As the public's expectations and demand for greater transparency increase, the nature of the CC's preliminary review and the DT's inquiry has also become more legalistic. In order to improve the processes, the Committee recommends that SMC conducts regular periodic audits and hopes that this report will enable all parties (including the complainants, doctors, lawyers from both prosecution and defence counsel) to have a better appreciation of the SMC's complaints and disciplinary processes.

Chapter 1: The Appointment of the Review Committee (for Disciplinary Processes) by the Singapore Medical Council

Functions of the Singapore Medical Council

1. The Singapore Medical Council ("SMC"), a statutory board under the Ministry of Health ("MOH"), maintains the Register of Medical Practitioners, administers the compulsory continuing medical education programme and governs and regulates the professional conduct and ethics of registered medical practitioners in Singapore.

Background - Complaints Committees and Disciplinary Committees

2. Under the old Medical Registration Act ("MRA"), complaints against registered medical practitioners are reviewed and investigated by Complaints Committees ("CCs") consisting of 4 members who are drawn from a Complaints Panel. The Complaints Panel of Council members, doctors and laypersons are appointed by SMC and the lay persons are nominated by the Minister. The more serious complaints are referred for a hearing before a Disciplinary Committee ("DC"). Over the last few years, prior to this review, only about 10% to 15% of all complaints handled by the CCs were referred to the DCs.

3. Since late 2008 / early 2009, the Council had recognised that some provisions in the old MRA needed to be revised and had proposed for: (a) a more efficient and robust system for managing complaints; (b) the renamed Disciplinary Tribunal ("DT") to be made up entirely of non-Council members; and (c) the disciplinary hearings to be chaired by a senior lawyer or a retired judge.

Amendments to the old Medical Registration Act and the appeal by Dr Gobinathan Devathasan to the High Court

4. Between 14 January 2009 and 25 February 2009, MOH conducted a public consultation to seek feedback on the proposed amendments to the MRA. The proposed changes included streamlining the registration and disciplinary proceedings.

5. On 11 January 2010, the proposed amendments of the Medical Registration (Amendment) Bill were debated in Parliament. On 10 February 2010, the High Court gave its judgment for the appeal by Dr G Devathasan against the DC's decision which was heard under the old MRA and Medical Registration Regulations ("MRR"). The SMC considered the guidance given by the High Court in its judgment and the amended MRA (referred as the "current MRA" henceforth) came into force on 1 December 2010.

Dr Low Chai Ling and Dr Georgia Lee's Appeals to the High Court

6. The current MRA applies to complaints arising on and after 1 December 2010. While the SMC was implementing the new complaints processes as prescribed under the current MRA, DCs which had been appointed under the old MRA concluded their inquiries into the hearing of complaints against Dr Georgia Lee ("Dr G Lee") on 7 December 2011 and Dr Low Chai Ling ("Dr Low CL") on 12 December 2011. Dr G Lee and Dr Low CL submitted appeals and the cases were heard in the High Court on 22 May 2012.

7. The High Court first released its judgment for Dr Low CL's case on 17 September 2012 whereby it set aside the DC's decision (the DC's decision was to convict Dr Low CL of

5 charges and it ordered her to pay a fine of $10,000 and to give a written undertaking that she would not engage in the conduct complained of or any similar conduct and that she pay 80% of the costs and expenses of and incidental to the proceedings).

SMC's Press Release on 16 October 2012

8. Media reports published at the time were critical of the inquiry and verdict of the DC against Dr Low CL. Moreover, a report published in the Straits Times on 4 October 2012 alleged that SMC was told by the High Court to "relook a case before the court, in light of a judgment given last month in a similar case". On 8 October 2012, Ms Kuah Boon Theng (Counsel for Dr G Lee) clarified in a Forum letter to the Straits Times that the article by the latter dated 4 October 2012 was "incorrect" in that "counsel for the SMC had readily informed the court that the SMC was already studying the judgment, and had assured the court that they would be discussing the matter with their client". On 16 October 2012, the SMC issued a press release to explain its disciplinary procedures.

9. In its press release dated 16 October 2012, the SMC emphasised that the MRA seeks to protect the health and safety of the public by creating mechanisms to ensure that medical practitioners are competent and fit to practise medicine and that the SMC seeks to uphold the standards of medical practice in Singapore and public confidence in the medical profession. The press release clarified that the old MRA (under which Dr Low CL and Dr G Lee's disciplinary inquiries were heard) was, in fact, amended to strengthen and streamline its disciplinary processes and to enhance its disciplinary powers. These changes were introduced in response to the changing demands and expectations of patients and the public towards doctors.

10. In the same press release, the SMC announced that it will appoint a Review Committee (for Disciplinary Processes) (referred to as the "Committee" henceforth), to be chaired by a senior doctor, to optimise the disciplinary processes and to look into the administrative processes and to develop more efficient and better ways to manage the disciplinary process and to mitigate the increase in time and expense expended in disciplinary proceedings. SMC acknowledged that the High Court's judgment for Dr Low CL's matter provided valuable guidance and that it had applied to the High Court to set aside the DC's orders against Dr G Lee. The appointment of the Committee demonstrates the Council's commitment to both the public and doctors to review its complaints and disciplinary processes, as prescribed by the current MRA and MRR, in view of the changing demands and expectations placed on the profession.

Chapter 2: Committee's Constitution and Terms of Reference

1. Following SMC's press release on 16 October 2012, the SMC invited members to participate in the Committee for the review of the complaints and disciplinary processes. The Council approved the appointment of the Review Committee (for Disciplinary Processes) after receiving the acceptances of the nominees. The official letters of appointment were sent on 18 December 2012[1] and the Committee was appointed for a 6-month term from January to June 2013. The Committee's term of office was extended for 3 months from 1 July to 30 September 2013 as the Committee's original proposed final meeting was cancelled at short notice due to unforeseen circumstances, including a number of members being involved in other matters/meetings and urgent work due to the haze situation.

2. The Committee comprised persons who are not from the Council and two ex-officio members from the Council.

Appointed non-Council members

S/n	Name	Status	Designation and/or Institution
1	Prof Raj Nambiar	Chairman (Doctor)	Visiting Consultant Tan Tock Seng Hospital, Khoo Teck Puat Hospital and Singapore General Hospital Emeritus Consultant Changi General Hospital
2	Dr Tan Yew Oo	Member (Doctor)	Medical Oncology Centre Gleneagles Cancer Centre
3	Dr Yeo Khee Quan	Member (Doctor)	Yeo Orthopaedic Centre Pte Ltd Mt Elizabeth Medical Centre
4	Dr Woo Keng Thye	Member (Doctor)	Senior Consultant Dept of Renal Medicine Singapore General Hospital
5	Mr Desmond Lee	Member (Lawyer)	Until 31 August 2013 Associate Director Temasek International Pte Ltd
6	Mr George Lim SC	Member (Lawyer)	Partner Wee, Tay & Lim LLP
7	Ms Valerie Thean	Member (Ministry Representative)	Deputy Secretary Ministry of Law
8	Mr Roy Quek	Member (Ministry Representative)	1 Jan to 31 March 2013 Deputy Secretary Ministry of Health Wef 1 April 2013 Deputy Secretary (Operations) Ministry of Home Affairs

[1] Deputy Secretary ("DS") Mr Anthony Tan (Policy) of the MOH, was appointed DS (Policy) in MOH from 1 April 2013 and was appointed to the Review Committee by Council in April 2013. This was in view of DS Roy Quek's posting to the the Ministry of Home Affairs. The Council agreed to appoint DS Mr Anthony Tan to represent MOH and to retain DS Roy Quek in the Committee. Mr Desmond Lee was appointed Minister of State, Ministry of National Development wef 1 September 2013 and stepped down as a member of this Review Committee wef 1 September 2013 while the rest of the Committee members continued with their work.

S/n	Name	Status	Designation and/or Institution
9	Mr Anthony Tan	Member (Ministry Representative)	Wef 1 April 2013 Deputy Secretary (Policy) Ministry of Health

3. The Council was represented by ex-officio members, namely the President and Registrar of the SMC. The Registrar of the SMC is also the Director of Medical Services ("DMS") in the MOH.

Ex-officio members

S/n	Name	Designation
1	Prof Tan Ser Kiat	President Singapore Medical Council
2	Prof K Satku	Registrar Singapore Medical Council Director of Medical Services Ministry of Health

4. In addition, three **Advisors** from the Legal Profession were appointed to assist the Committee.

Legal Advisors

S/n	Name	Designation
1	Justice Judith Prakash	Justice Supreme Court
2	Mr Thean Lip Ping	Consultant RHTLaw TaylorWessing
3	Mr Alvin Yeo SC	Senior Partner WongPartnership LLP

5. The Terms of Reference for the Committee were as follows:-

(a) To review the old and current MRA and MRR, look into the administrative framework and study how to optimise the disciplinary processes, for the just and expeditious conclusion for each case;

(b) To make recommendations to both the Complaints Committees and Disciplinary Tribunals, as and when appropriate, so as to enable them to optimise and utilise the options available to them under the MRA and manage the disciplinary proceedings in more efficient and cost-effective ways; and

(c) To make recommendations as to what other areas which may require further amendments to the MRA and MRR in order to strengthen and streamline SMC's disciplinary processes.

Chapter 3: Summary of Review Committee's Work

1. This chapter highlights an account of the Committee's work from January to September 2013 and lists the issues which the Committee considered and discussed at their meetings.

2. At the first 2 meetings, the Committee was briefed on the complaints and disciplinary processes under both the old and the current MRA/MRR. The Committee was presented with an overview of the ways in which other medical councils in developed countries manage their disciplinary functions. The Committee also reviewed the notices of inquiry ("NOIs"), DC's grounds of decisions ("GDs") and the High Court Judgments for the inquiries involving Dr G Devathasan, Dr Low CL and Dr G Lee (note: there was no official published judgment for Dr G Lee's case).

3. Once the Committee had a better understanding of how the complaints and disciplinary processes were managed at SMC, the Committee invited all registered medical practitioners, SMC Council members, re-appointed members of the Complaints Panel, the Medical Protection Society ("MPS") (which is the main indemnity provider to the medical profession), SMC's legal firms and legal assessors ("LAs") and the medical professional bodies to provide written feedback detailing their views on the complaints and disciplinary processes as prescribed by the current MRA/MRR.

4. On 18 March 2013, letters were sent to the professional bodies (i.e. Academy of Medicine Singapore, College of Family Physicians Singapore and the Singapore Medical Association), solicitors and LAs on SMC's panel, the SMC Council members, the MPS, re-appointed members of the Complaints Panel and all registered medical practitioners requesting their feedback. By April 2013, the Committee had received a total of 55 written responses.

5. The Committee convened its third meeting on 7 May 2013. The Committee was presented with a summary of the relevant chapters of the Shipman Inquiry Report which had reviewed the General Medical Council ("GMC")'s disciplinary processes to ascertain whether any of the recommendations which were made could serve to improve the SMC's disciplinary processes. The Committee also considered how SMC's processes compared to those of other medical councils overseas. Finally, the Committee considered the feedback which it had received and thereafter discussed its recommendations.

6. The Committee convened its final meeting on 28 August 2013 (postponed from 20 June 2013) to review, discuss and confirm its recommendations for the final report. The summary of the Committee's work is as follows:

Date(s)	Meeting	Main Purpose	Details / Topics Discussed
30 January 2013	1st/2013 Committee meeting	To have an understanding and overview of the complaints and disciplinary processes for discussion	• Background and the Committee's Terms of Reference • Processes under the old and current MRA and MRR, how Overseas Medical Councils run their disciplinary processes and how the Council's functions and disciplinary processes are protected from conflicts • Complaints Processes: Statistics of complaints concluded by the Complaints Committees under the current MRA & Outcome of Decisions

Date(s)	Meeting	Main Purpose	Details / Topics Discussed
			by the Complaints Committees • Matters to be tabled at subsequent meetings
4 March 2013	2nd/2013 Committee meeting	Understanding and discussion of the complaints and disciplinary processes	• Complaints - Statistics, Processes, Timelines, Issues leading to delays and Recommendations • Investigator's involvement in Complaints Committee's process • Disciplinary processes - Statistics, Processes, Timelines, Issues leading to delays and Recommendations • Disciplinary Committees' Decisions overturned by High Court – NOIs, GDs and Judgments by High Court
18 March to 8 April 2013	(NA)	Invitation to relevant parties for feedback on the disciplinary processes under the MRA/MRR	Recipients:- • Professional Bodies (AMS, CFPS and SMA); • Legal Counsel on SMC's Panel • LA on SMC's Panel • SMC Council members • MPS • Re-appointed doctors and laypersons on the Complaints Panel • All Registered Medical Practitioners
7 May 2013	3rd/2013 Committee meeting	Consideration of relevant chapters & recommendations of the Shipman Inquiry Report. Comparison of SMC's investigation and prosecution of complaints as compared with other medical councils overseas. Review of all feedback received & recommendations for improvements to SMC's disciplinary processes	• The Investigation and Prosecution of Complaints against Medical Practitioners in Other Jurisdictions • Summary of the relevant Recommendations of the Shipman Inquiry Report (General Medical Council) • Feedback from relevant parties on SMC's complaints and disciplinary processes and the Committee's Recommendations
20 June 2013 [Postponed]	4th/2013 Committee meeting [Postponed]	Discuss and confirm recommendations in draft Final Report (based on recommendations made at earlier meetings)	• Review and discuss additional feedback received • Finalise the Committee's recommendations and approval of preliminary draft report
28 August 2013	4th/2013 Committee meeting	Discuss and confirm recommendations in draft Final Report (based on recommendations made at earlier meetings)	• Review and discuss additional feedback received • Finalise the Committee's recommendations and approval of preliminary draft report

Chapter 4: Review of Processes under Medical Registration Act / Medical Registration Regulations

1. This chapter is sub-divided into 19 sub-chapters where various elements of the investigation and prosecution of complaints and the current disciplinary processes as prescribed by the current MRA and MRR have been reviewed in detail by the Committee.

2. In summary, each sub-chapter is set out as follows:
- Extracts of the relevant sections/regulations of the current MRA/MRR;
- The SMC's current processes;
- Key feedback received during the consultation exercise;
- Deliberation by the Committee on the feedback received; and
- Recommendations of the Committee on:
  (a) Current processes;
  (b) Changes to Process Issues;
  (c) Changes to Policy Issues; and
  (d) Amendments to the current MRA/MRR.

3. The Committee wished to emphasise that it has considered all of the feedback received but, in these sub-chapters, only extracts of the key feedback have been highlighted for the report. The Committee also noted that, whilst the references to the extracted feedback were not exhaustive, they do summarise the main issues and concerns which were raised.

Chapter 4: Review of Processes under Current Medical Registration Act / Medical Registration Regulations

4.1 APPOINTMENT OF COMPLAINTS PANEL

4.1.1 Relevant Sections of the MRA

4.1.1.1 Appointment of Complaints Panel

Section 38(1) - For the purpose of enabling Complaints Committees and Disciplinary Tribunals to be constituted in accordance with this Part, the Medical Council shall appoint a panel (referred to in this Act as the Complaints Panel) consisting of —

(a) not less than 10 members of the Medical Council;

(b) not less than 10 and not more than 100 registered medical practitioners of at least 10 years' standing who are not members of the Medical Council; and

(c) not less than 6 and not more than 50 lay persons nominated by the Minister.

(2) The term of office of a member of the Complaints Panel referred to in subsection (1)(a) shall expire at the end of his term of office as member of the Medical Council, and a member of the Complaints Panel referred to in subsection (1)(b) or (c) shall be appointed for a term of 2 years; and any member of the Complaints Panel shall be eligible for reappointment.

(3) The Medical Council may at any time remove from office any member of the Complaints Panel or fill any vacancy in its membership.

(4) The Medical Council shall appoint, from among the members of the Complaints Panel who are members of the Medical Council, the chairman and the deputy chairman of the Complaints Panel.

(5) Any member of the Medical Council who is employed in the Ministry of Health shall not be disqualified from being a member of any Complaints Committee, Disciplinary Tribunal, Health Committee or Interim Orders Committee by reason only that he is so employed.

4.1.2 Current Processes

4.1.2.1 Section 38 of the MRA provides for the formation of a Complaints Panel from which members of the Complaints Committees and Disciplinary Tribunals are drawn. The Complaints Panel is headed by a chairman (who is a Council member, also appointed to the Complaints Panel), members from the SMC, 100 doctors and 50 lay persons nominated by the Minister. The doctors in the Complaints Panel are drawn from a list of nominees submitted by medical professional bodies and public and private hospitals based on their professional standing in the medical community. Lay persons are drawn from professional bodies (e.g. Accounting and Corporate Regulatory Authority, Board of Architects, Professional Engineers Board, Singapore Association of Social Workers, the Singapore Pharmacy Council, the Singapore Nursing Board the Law Society of Singapore) and from academics nominated by our universities etc.

4.1.2.2 The members of the Complaints Panel attend bi-annual briefing sessions on the complaints and disciplinary processes which are conducted by SMC's panel of legal assessors who are senior lawyers. The Chairman of the Complaints Panel currently oversees the running of all CCs and grants extensions of time for the CC to complete its investigation where necessary.

4.1.2.3 SMC pays an honorarium to some Complaints Panel members for their time and contributions. Members who are from the Public Institutions and/or Full-Time University staff will not be given an honorarium. Council members who are from the private sector will be paid an honorarium for attending CC meetings during office hours only.

4.1.3 Feedback Received

4.1.3.1 In summary, the Review Committee noted the following feedback which it received during the consultation exercise:

(a) Consideration be given to employing an additional Registrar to oversee the Complaints Committees ("CCs") and Disciplinary Tribunals ("DTs") and vesting in him/her the requisite powers to manage and improve their respective processes. The Registrar can be empowered to fix meetings for all CCs to sit in a stipulated timeframe, monitor investigation timelines, be involved in pre-inquiry conferences ("PICs") by sitting with the DT Chairman and Legal Assessor ("LA") and assist the respective CC and DT Chairman with a differentiated case management system for managing complaints and inquiries[(3)].

(b) SMC to take a proactive role in the education of doctors with regard to the definition and concept of good professional practices, including what constitutes professional misconduct[(3)].

(c) All members of the CC and DT must receive adequate, in-depth and formal training to be competent and familiar with the legal processes and duties[(1)(8)]. The training shall include the following: basic concepts of legal procedures in disciplinary inquiries, ethical analysis and justification on professional misconduct, understanding laws of natural justice and the rule of law, the understanding of and usage of precedents and writing GDs[(1)], opportunities for experienced members of the Complaints Panel and lawyers to share their experience with the new members, especially on common pitfalls and difficulties encountered with these processes[(8)]. These regular and comprehensive training sessions could be designed and conducted by the Attorney-General Chambers (AGC) or the Institute of Legal Education[(57)].

(d) Complaints Panel members can be provided access to an experienced "mentor" or a mentor group of senior and experienced practitioners who can provide some guidance and access to a lawyer to address specific or general queries which may have a legal bearing. This can be useful for the CC and DT chairmen who are assuming the mantle for the first time and need to turn to someone familiar with the proceedings. This is distinct from the legal assessor who may be appointed formally in the course of a CC or DT proceeding who provides formal advice[(8).]

(e) A guidebook on the "do"s and "don't"s can be prepared and provided. This can be useful to the serving members for general guidance[(8)].

(f) The Complaints Panel should consist of a permanent pool of senior doctors (of at least 20 years standing) as complaints and disciplinary processes have become very complex and these members should be paid and fairly remunerated[(38)(43)].

(g) The lawyers have the conflict provisions from the International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration and it may be beneficial to implement a similar code/provisions for the medical profession as well[56].

4.1.4 Deliberation by the Review Committee

4.1.4.1 The Committee noted the increase in number of members on the Complaints Panel for medical practitioners from 40 to 100 and for lay persons from 40 to 50 and that SMC conducts training courses once every 2 years for both new and re-appointed members.

4.1.4.2 The Committee noted that the CC members are already given an honorarium for their time and contribution and agreed that, while it may seem expedient to appoint semi-retired or fully retired doctors to the Complaints Panel, these doctors may not be fully in-touch with the more recent advances in medicine or in the law relating to medical and ethical issues thus compromising their contribution in the CCs.

4.1.4.3 The Committee agreed with SMC's internal proposal to employ a part-time Chairman of the Complaints Panel to assist in the management of the processes and also to support the Secretariat in improving the internal processes for disciplinary proceedings. In the meantime, until the MRA is next amended, the Secretariat, together with the current Chairman of the Complaints Panel can continue to urge the CCs to complete their cases expediently and to report regularly to the Chairman of the Complaints Panel on the progress and status of each ongoing CC.

4.1.4.4 The Committee also discussed the issue of whether the Complaints Panel should be appointed by the Council so as to separate disciplinary functions from the Council. Since SMC invites professional bodies and medical institutions to submit nominations for proposed members to be on the Complaints Panel, the Committee felt that this current process of selection was reasonable and fair as the appointment of the Complaints Panel (for doctors and lay persons) is based on nominations by the professional boards and/or institutions.

4.1.4.5 As the current MRA provides that a Council member must chair each CC, the Committee felt that the MRA should be amended to remove this requirement for a Council member to chair the CC. This will thus remove the perceived conflict when the SMC, on its own motion, submits a complaint/information to the Chairman of the Complaints Panel (see Section 39(3) MRA). In addition, provisions should be made for Minister to appoint (a) the Chairman and Deputy Chairman of the Complaints Panel; and (b) the panel of senior doctors to chair CCs. The Complaints Panel comprising senior doctors and laypersons would be appointed by Council.

4.1.4.6 The Committee agreed with SMC's recommendation to organise regular and comprehensive training sessions (in addition to the bi-annual briefing sessions) to put into effect the new options that the CC can direct under the current MRA. The intent of regular and comprehensive training sessions is to equip the Chairmen and members with the knowledge and competency to use the wider range of options which are available under the current MRA, particularly for the rehabilitation and remediation of doctors where this is

appropriate. SMC will work with the AGC and/or the Institute of Legal Education to develop such short courses.

4.1.5 Recommendations by the Review Committee

4.1.5.1 In summary, the Committee makes the following recommendations:

(a) **Current Processes**:

No change - SMC can continue to appoint members to the Complaints Panel (no conflict of interest in disciplinary processes) as nominations are received from professional bodies and the medical / other institutions.

No change - With regard to whether the members are remunerated, being part of the Complaints Panel is an honour and contribution to the medical fraternity and an honorarium is acceptable.

No change - The Secretariat can continue to report regularly to the Chairman of the Complaints Panel on the progress and status of each ongoing CC.

(b) **Changes to Process Issues**:

SMC to organise regular and comprehensive training sessions and work with the AGC and/or the Institute of Legal Education to develop short courses where the principles of medico-legal law and management of disciplinary complaints are addressed.

(c) **Changes to Policy Issues**:

SMC has the prerogative to reappoint medical doctors and laypersons to the Complaints Panel as the Complaints Panel should consist of experienced doctors and laypersons. It may not be necessary to appoint new members every 2 years.

The Secretariat will investigate / research for more guidance from the legal and other professions on whether it would be beneficial for the medical profession to have a code of conflict for doctors who are engaged in the investigation and hearing of complaints.

(d) **Amendments to MRA / MRR**:

To consider amendments to the MRA so that, in future, no Council member will be appointed to the Complaints Panel and by implication, will not be a member of the CCs. In addition, provisions should be made for Minister to appoint (a) the Chairman and Deputy Chairman of the Complaints Panel; and (b) the panel of senior doctors to chair CCs. The Complaints Panel comprising senior doctors and laypersons would be appointed by Council.

SMC will employ, on a part-time basis, the Chairman of the Complaints Panel so that he/she can manage the processes and assist the Secretariat in improving the internal processes for disciplinary proceedings.

Chapter 4: Review of Processes under Current Medical Registration Act / Medical Registration Regulations

4.2 COMPLAINTS RECEIVED AGAINST REGISTERED MEDICAL PRACTITIONERS

4.2.1 Relevant Sections of the MRA

4.2.1.1 Complaints against registered medical practitioners, etc.
Section 39(1) - Any
(a) complaint touching on the conduct of a registered medical practitioner in his professional capacity or on his improper act or conduct which brings disrepute to his profession;
(b) information on the conviction of a registered medical practitioner of any offence implying a defect in character which makes him unfit to practise as a medical practitioner;
(c) complaint that the professional services provided by a registered medical practitioner are not of the quality which is reasonable to expect of him; or
(d) information touching on the physical or mental fitness to practise of a registered medical practitioner,
shall be made or referred to the Medical Council in writing and supported by such statutory declaration as the Medical Council may require, except that no statutory declaration shall be required if the complaint or information is made or referred by any public officer or by the Medical Council.
(2) The Medical Council shall refer every complaint or information, other than a complaint or information touching on the matters referred to in section 32, to the chairman of the Complaints Panel.
(3) The Medical Council may, on its own motion —
(a) make a complaint or refer any information on a registered medical practitioner to the chairman of the Complaints Panel if it believes that there is evidence of any matter referred to in subsection (1); or
(b) notify the registered medical practitioner and proceed under section 37A(1)(i) to (v) if it believes that there is evidence of any matter referred to in subsection (1)(c) or (d) and the registered medical practitioner agrees to such course of action in writing.
(4) Notwithstanding subsections (2) and (3), where a registered medical practitioner has been convicted in Singapore or elsewhere of an offence implying a defect in character which makes him unfit to practise medicine, the Medical Council may immediately refer the matter to a Disciplinary Tribunal under section 50.

4.2.2 Current Processes

4.2.2.1 If a complainant believes that a doctor has acted in an unprofessional manner and wants the SMC to look into the matter, he/she must submit an official complaint stating the doctor's full name, the full facts of the case and the allegations. The complainant is required to make a Statutory Declaration ("SD") before a Commissioner for Oaths which can be done at SMC's office free of charge. SMC also receives official complaints from public officers (where an SD is not required). The SMC does not impose an administrative fee on any official complaints made.

4.2.2.2 The current MRA provides powers for the SMC, on its own motion, to make a complaint or refer any information to the Chairman of the Complaints Panel

under Section 39(3) MRA if it believes that there is evidence of professional misconduct or disreputable behaviour. Such information or complaints received by the SMC (some of which are anonymous) are not supported with an SD. The reason for this new provision was because SMC was constrained under the old MRA with regard to information that it could not previously act upon but which may have been detrimental to patient welfare or safety. SMC does not conduct any investigation (as the current MRA does not prescribe SMC with investigative powers) but merely forwards the information to the Chairman of the Complaints Panel if it decides that the case warrants an official review by a CC. Council members who are members of the SMC's internal Committee to which Council has delegated its powers to review and refer such information pursuant to Section 39(3) MRA cannot then be appointed to the CCs which may subsequently review these same cases. SMC has set in place an internal "China-wall" to ensure that there is no conflict of interest.

4.2.2.3 All official complaints received by SMC will be referred to the Chairman of the Complaints Panel before they are referred to the CCs and/or the Health Committee (HC) / Interim Orders Committee (IOC).

4.2.2.4 CCs are required to complete their inquiry not later than 3 months after the date the complaint is laid before the CC. If the inquiry cannot be completed within 3 months, the CC applies to the Chairman of the Complaints Panel for an extension of time to complete its inquiry.

4.2.3 Feedback Received

4.2.3.1 In summary, the Review Committee noted the following feedback which it received during the consultation exercise:

Complaints by MOH

(a) The Registrar and Executive Secretary should not hold other regulatory functions in the MOH, especially when MOH is a major complainant to the SMC. Neutrality of administrative staff of the SMC is important in maintaining public and professional confidence in SMC's disciplinary system[(1)(3).]

(b) MOH should not make complaints to the SMC based on feedback or "intelligence" from anonymous or unidentified persons. It is unfair to the doctor and contrary to the rules of natural justice as the practitioner is denied the opportunity of confronting the accuser[(12)]. MOH should be restricted to cases which are clearly abuse/ addiction related (eg. cough mixture, subutex, dormicum) whereby the outcome impacts the greater good of society. Complaints from individuals should be made by the individuals themselves[(14)].

Anonymous Complaints and Whistle Blowers

(c) SMC should not accept anonymous complaints. Although CCs serve to filter out frivolous complaints against doctors and more serious complaints are referred to the DT, the current framework allows anonymous complaints to be made against doctors. This may result in frivolous complaints and needless increased expenses to both the SMC in

conducting investigations and the defendant doctor in conducting his/her defence. Complainants should be accountable for their actions and be prepared to stand by their alleged grievance. This system also bogs down the resources of the SMC especially when now SMC is tasked with investigation as well. The previous framework which required a proper sworn complaint by all parties should be re-adopted and will serve to weed out frivolous complaints where the complainants would not stand by their complaints on oath[1][8].

(d) The "Whistle Blower' to the SMC may be subject to litigation under civil law, by the alleged doctor, if the latter is found innocent. This discourages 'Whistle Blowers' from making genuine complaints against errant doctors[27]. It is necessary to set up a process that allows "Whistle blowers" access to report unprofessional or unethical practices[52].

Appointment of a Review Committee to sift out Frivolous Complaints

(e) It is necessary to find a balance in giving the public freedom to complain against doctors, against the need to deter frivolous, false and malicious complaints. Currently, even if it is demonstrated that complaints contained hugely inaccurate or even false information, or maliciously trumped up charges, no complainant is ever taken to task. This is despite requiring statutory declarations that deter perjury[13].

(f) It is relatively easy to lodge a complaint against doctors. The doctor, on the other hand, has to find time, effort and the anxiety to defend himself/herself. Making a complaint to SMC can become a way to threaten the doctor. There should be a mechanism to prevent frivolous complaints, as well as penalties for such complaints[37].

(g) Neither SMC nor the Chairman of the Complaint Panel has the power to deal with and dispose of the complaint, if such complaint is frivolous or without any substance. Only the CC has the power under section 42(4) MRA to dismiss the complaint, if the CC is of the unanimous opinion that it is "frivolous, vexatious, misconceived or lacking in substance". Before the complaint reaches the CC, there is no committee or body that is given the power to review the complaint summarily and to dismiss it, if it is frivolous, vexatious, misconceived or lacking in substance (i.e. no sifting process before the complaint goes before the CC). In contrast, in the accountancy profession, under the Accountants Act, upon receipt of a complaint concerning any alleged improper or dishonourable conduct of a public accountant, the Registrar of Public Accountants is mandated to review the complaint at that initial stage and is empowered to dismiss the complaint, if it is frivolous. The Accountants Act prescribes two processes for dealing with complaints: (i) inquiry by a CC, and (ii) investigation by a disciplinary committee. Similarly, in the legal profession, under the Legal Profession Act, there is also a sifting process before the complaint goes before the Inquiry Committee (which is the equivalent of the CC under the MRA). Any complaint that comes before the Law Society must be referred first to a review committee for review, and upon completion of the review, the review committee, if it is of the opinion that the complaint is "frivolous, vexatious, misconceived or lacking in substance", has the power to direct the Council of the Law Society to dismiss the complaint. The MRA should be amended to mandate that SMC appoint a review committee to review any complaint upon receipt, and to empower the review committee, upon

such review, to dismiss the complaint, if it is frivolous or lacking in substance, and if not, to refer the complaint to the CC. This process would sift out frivolous complaints and refer only complaints with substance to go before the CC. The review committee should not be large and may consist of 3 members of the SMC since the larger the committee, the longer it would take for the committee to arrive at a decision[11].

(h) Besides SMC Council members, the appointment of senior doctors and a lawyer to screen and review the complaint prior to inviting the doctor for a feedback may be considered for such a committee[35].

Institute a fee (refundable) or deposit

(i) Institute a refundable fee or deposit for every complaint lodged. The fee will be forfeited if the complaint is dismissed. The forfeited fee can be channelled to a charitable cause to assure the public that neither the SMC nor the doctor benefits from such a measure. Otherwise, the fee will be refunded to the patient if the complaint is found to be substantiated after investigations are complete[35][39].

Introduce a limitation provision

(j) To introduce a limitation provision into the MRA barring SMC from proceeding further with a complaint if the complaint is not made by the complainant, or the CC fails to make a decision, within defined timeframes. Leave has to be obtained from the High Court to proceed should the limitation provision be breached[57].

4.2.4 Deliberation by the Review Committee

Levying of Administrative fee

4.2.4.1 The Committee considered the feedback for implementing a refundable fee or deposit as well as proposals that complainants should pay an administrative fee for the submission and processing of the complaint (to prevent submission of frivolous or malicious complaints). However, the Committee agreed that SMC should protect the patient's interests and decided that an administrative fee would not be imposed.

Initial Assessment

4.2.4.2 From the information available from overseas medical jurisdictions, it was highlighted to the Committee that the initial assessment is done internally (i.e. the sifting process) for most of the overseas medical jurisdictions before the complaints reach the equivalent of SMC's Investigation Unit ("IU") or the CC stage. For the New South Wales' Health Care Complaints Commission (HCCC), about 4-5% of all complaints received will go from the initial assessment stage to the investigation stage. For the Health and Disability Commission (HDC) of New Zealand, only 10% will go from the first stage to the investigation stage (i.e. 90% of cases are not formally investigated but may be resolved through other channels such as direct resolution between the parties, mediation, referral to a different entity for resolution or no further action being taken). Once the initial sifting has been done, there is a review process by the Board, Commissioner or Registrar to make a decision on the

recommendations as to whether to refer the complaints for further investigation. The Committee notes that the legal and accountancy professions in Singapore have a sifting process as well and that the SMC does not have this preliminary sifting stage.

4.2.4.3 Concerns were expressed that, while the Law Society's review committee is made up solely of lawyers, some of the initial assessment in overseas jurisdictions is conducted by non-medical staff / secretariat and is therefore inconsistent with the concept of self-regulation whereby a professional should be judged by peers.

4.2.4.4 The Committee noted that, if only 10% of SMC's cases were cleared by the CC at the preliminary stage pursuant to Section 42(4) MRA and the remaining 90% of cases are referred for investigation, it may not be worthwhile for SMC to introduce an additional layer of sifting if only a small number of cases are disposed of at this first stage.

4.2.4.5 The Committee also considered whether the MRA should be amended to allow the Chairman of the Complaints Panel to request an explanation from the doctor so that the CC, at its preliminary review, can have the benefit of looking at both letters from the complainant and doctor without directing the SMC investigator to get an explanation from the doctor. In this way, the Chairman of the Complaints Panel would not just be a 'postman' referring cases to the CC (and/or IOC/HC etc) and could perform some preparatory work for the CCs. However, it was pointed out that this responsibility would be too onerous for the Chairman of the Complaints Panel if he is the only person involved in sifting out frivolous and vexatious complaints. Section 44(2) MRA states that only the investigators, directed by the CC under Section 42(4)(c) MRA, can request a doctor to submit his explanation to respond to any allegation made against him. The Committee was informed that the Law Society will always request an explanation from the lawyer who is the subject of the complaint. It was noted by the Committee that, in some serious cases, the moment a doctor receives a letter requesting his explanation, he/she may destroy the evidence which the CC may eventually ask the investigators to retrieve.

<u>Section 39(3) MRA</u>

4.2.4.6 The Committee noted that SMC has no powers to investigate any complaint placed before it pursuant to Section 39(3) MRA and merely assists in the assessment of the information / complaint laid before the SMC. "Information" refers to things which are published or written and given / passed onto SMC. SMC is not obliged to refer all matters to the Chairman of the Complaints Panel; it has an option to decide. This internal committee does not conduct any investigation but forwards the same information (if it decides that the information and/or complaint warrant a review by the CC) to the Chairman of the Complaints Panel. The Committee agreed that SMC is empowered to appoint an internal committee and delegate to this committee, any powers or functions which may be exercised or performed by the SMC.

4.2.4.7 The Committee acknowledged Council's assurance that it has an internal standard operating procedure and follows prescribed guiding principles in the initial assessment of any information it receives, including anonymous complaints (eg: nature of conduct, source of information, credibility of complainant) before it makes a decision for referral to the Chairman of the

Complaints Panel. It also accepted Council's assurance and was pleased to note that Council members, who are members of the SMC's internal Committee which reviews and refers such information pursuant to Section 39(3) MRA, will not subsequently be appointed to the CCs which review the same cases.

Complaints Received

4.2.4.8 The Committee noted the clarification that MOH has submitted complaints to SMC in the past as it has powers to conduct investigations. Since the current MRA came into force, MOH has been passing the information it receives to SMC and SMC will become the complainant according to Section 39(3) MRA. However, for serious and obvious cases (eg: fraudulent medisave claims etc), MOH can still submit complaints to SMC. The Committee agreed that it was not necessary to bar MOH from submitting complaints as MOH, like other ministries, has the right as a government body to lodge complaints. In addition, the DMS does not internally approve every MOH complaint before it is sent to SMC.

Proposed Limitation Provision

4.2.4.8 The Committee felt that it was not necessary to involve the High Court. Requests for extensions of time should still be sought from and approved by the Chairman of the Complaints Panel. CCs which are tardy in their work should be flagged to the Chairman of the Complaints Panel so that such members will not be re-appointed to the Complaints Panel. The Committee also noted that the respondent doctors themselves are the cause for delay in some cases.

4.2.5 Recommendations by the Review Committee

4.2.5.1 In summary, the Committee makes the following recommendations:

(a) **Current Processes**:

The Committee agreed that no changes are necessary for the following:

- MOH, as with all other Ministries, can initiate complaints to the SMC, although MOH now sends most of it as "information" to SMC.
- It is not necessary to amend the MRA for the SMC to appoint an initial review committee to form an additional layer in the sifting process as CCs only dismiss 10% of cases at their first meeting pursuant to Section 42(4) MRA.
- SMC will continue to review its algorithm and internal processes in referring information/complaints it receives to the Chairman of the Complaints Panel.
- It is not necessary to impose an administrative fee for every complaint lodged or a refundable fee or deposit to the complainant if the complaint is found to be substantiated after investigations are complete.
- It is not necessary to introduce a limitation provision. Requests for extensions of time for the CC to complete its work should still be sought from the Chairman of the Complaints Panel.

(b) **Changes to Process Issues**:

(NA)

(c) **Changes to Policy Issues**:

(NA)

(d) **Amendments to MRA / MRR**:

(NA)

Chapter 4: Review of Processes under Current Medical Registration Act / Medical Registration Regulations

4.3 APPOINTMENT OF COMPLAINTS COMMITTEE

4.3.1 Relevant Sections of the MRA

4.3.1.1 Appointment of Complaints Committees

Section 40(1) - The chairman of the Complaints Panel may from time to time appoint one or more committees (to be known for the purposes of this Act as Complaints Committees), each comprising —

(a) a chairman, being a member of the Complaints Panel who is a member of the Medical Council;

(b) a registered medical practitioner who is a member of the Complaints Panel; and

(c) a lay person who is a member of the Complaints Panel,

to inquire into any complaint or information mentioned in section 39(1).

(2) A Complaints Committee shall be appointed in connection with one or more matters or for such fixed period of time as the chairman of the Complaints Panel may think fit.

(3) The chairman of the Complaints Panel may at any time revoke the appointment of any Complaints Committee or may remove any member of a Complaints Committee or fill any vacancy in a Complaints Committee.

(4) No act done by or under the authority of a Complaints Committee shall be invalid in consequence of any defect that is subsequently discovered in the appointment or qualification of the members or any of them.

(5) All the members of a Complaints Committee shall be present to constitute a quorum for a meeting of the Complaints Committee and any resolution or decision in writing signed by all the members of a Complaints Committee shall be as valid and effectual as if it had been made or reached at a meeting of the Complaints Committee where all its members were present.

(6) A Complaints Committee may meet for the purposes of its inquiry, adjourn and otherwise regulate the conduct of its inquiry as its members may think fit.

(7) The chairman of a Complaints Committee may at any time summon a meeting of the Complaints Committee.

(8) All members of a Complaints Committee present at any meeting thereof shall vote on any question arising at the meeting and such question shall be determined by a majority of votes and, in the case of an equality of votes, the chairman shall have a casting vote.

(9) A member of a Complaints Committee shall, notwithstanding that he has ceased to be a member of the Complaints Panel on the expiry of his term of office, be deemed to be a member of the Complaints Panel until such time as the Complaints Committee has completed its work.

4.3.1.2 Referral to Complaints Committee

Section 41(1) - Where any complaint or information mentioned in section 39(1)(a), (b) or (c) is made or referred by the Medical Council to the chairman of the Complaints Panel, the chairman of the Complaints Panel shall lay the complaint or information before a Complaints Committee.

(2) Where any information mentioned in section 39(1)(d) is referred by the Medical Council to the chairman of the Complaints Panel, the chairman of the Complaints Panel shall —

(a) if he is satisfied, based on any evidence given in support of the information, that a formal inquiry is necessary to determine the physical or

mental fitness of the registered medical practitioner to practise, refer the information to a Health Committee; or
(b) in any other case, lay the information before a Complaints Committee.

4.3.2 Current Processes

4.3.2.1 The complaints received are grouped together to allocate an average of 5 complaints per CC. The CC Chairman and Members are appointed by the Chairman of the Complaints Panel, rotating the appointments for apportioning the work. The Secretariat's standard operating procedure (SOP) for convening of a CC's first meeting is as follows:-

Time taken	Description
Between 1-2 months or more	Group 5 or more complaints received during the period before forming a CC.
	Roster Chairman/Members and reserves to accommodate for declining of appointments due to conflict of interest and other reasons.
Within 2 weeks	Fix meeting date and officially appoint CC.
	CC convenes first meeting within 2 weeks of its appointment.

4.3.2.2 The time taken at which a first CC meeting is convened depends on the following:
(a) the frequency of complaints received in the period before the next CC can be appointed;
(b) whether the proposed members decline their appointments for any reason after receiving the complaints (for example: conflict of interest); and
(c) members' availability for a suitable meeting date / time.

4.3.3 Feedback Received

4.3.3.1 In summary, the Review Committee noted the following feedback which it received during the consultation exercise:

(a) If the complaint against a medical practitioner emanates from the SMC under Section 39(3) MRA, an SMC member should not be appointed a member of the CC. However Section 40(I) MRA provides that the chairman of the CC shall be a member of the Complaints Panel who is a member of the SMC. This section should be amended by removing the requirement for the chairman to be a member of the SMC. Furthermore, one of the members of the CC (the third member) is required to be a layperson and it was queried whether any useful purpose is served by having a layperson appointed to the CC. It was proposed that the third member should be a medical practitioner and not a layperson[(11)].

(b) CCs could include a member who is a legal practitioner, who could assist the CC in determining the issues to be addressed by the practitioner and whether or not to dismiss the complaint at the CC stage. One suggestion is that the SMC extends the requirement for complainants to make a Statutory Declaration to include those complaints made by public servants on behalf of their employing organisation, which would encourage proper consideration of the issues in question[(12)].

4.3.4 Deliberation by the Review Committee

Email discussions for CCs for decisions made under Section 42(4) MRA

4.3.4.1 The Committee noted the Secretariat's submissions on the constraints due to the following at the initial stage, i.e.:

(a) The Secretariat has to wait for 5 complaints to be received before appointing a CC; and

(b) Appointment of CC chairman and members is based on a fairly rotational system with the secretariat checking that they are not from the same institution as the doctors being investigated; and approaching the proposed chairman and members (of the appropriate expertise) to check for any conflict of interest.

4.3.3.2 The Committee noted that the Secretariat was looking into various ways to increase the speed at which CCs are appointed and the complaints are laid before the CC. Some of the suggestions include:

(a) A lesser number of cases to be assigned to each CC but frequent regular meetings of CCs. The Committee was, however, concerned if it was workable to convene CC meetings regularly on a weekly basis given that the different doctors and laypersons that compose each CC are working on a voluntary basis, and

(b) CCs to discuss cases via email (instead of having to meet physically) to decide on either one of the 4 possible outcomes pursuant to Section 42(4) MRA.

4.3.4.3 One of the proposed recommendations with which the Committee agreed was for the CCs to have the initial discussion via email to screen through the cases and to make the initial decisions on what to do for each case pursuant to Section 42(4) MRA. The minutes can be documented from the emails and formalised with their signatures. Simple standard procedures, e.g.: agreeing to request for an explanation from the medical practitioners through the investigators, can be achieved through such email discussions. For more complex cases and in situations where the CC does not unanimously agree, the CC Chairman and members will call for a physical meeting to discuss the cases in person.

4.3.4.4 In addition, even with weekly scheduled meetings, the Chairman of the Complaints Panel could place a particular complaint before the next CC if he is of the view that the next CC has the appropriate expertise to review a certain case. This process of scheduling CCs allows for efficiency while it is also necessary for the Chairman of the Complaints Panel to be provided with the flexibility to allocate cases to particular CCs with the relevant expertise.

Council members in the CC

4.3.4.5 The Committee was informed that the reason why the previous drafts for the Old and Current MRA included the mandatory requirement for Council members to chair CCs was because these Council members are experienced regulators who are familiar with and are aware of the procedures, rules and guidelines required to make correct and fair decisions based on the allegations raised in the complaint laid before the CC.

4.3.4.6 The Committee also noted that Council members in the Law Society do not participate in CC or DTs and agreed that, in cases where SMC is the

complainant for complaints referred under Sections 39(3) MRA, the CCs in reviewing such complaints should not be chaired by Council members. It would therefore be necessary to amend the MRA (to remove the requirement for Council members to be appointed to chair the CCs) since the MRA mandates that each CC must be chaired by a Council member who is also appointed to the Complaints Panel.

Should legal practitioners replace laypersons on CCs

4.3.4.7 There were mixed views from the Committee on whether legal practitioners should replace laypersons on the CCs. One view was that it was important to retain the layperson within the CC to reassure the public that there is a public and non-medical representative in the CC. Another view was to have the flexibility to appoint lawyers as the layperson to the CC, besides other types of laypersons. Other views were that it may not be necessary for a lawyer to participate as a layperson in the CC as the CC can appoint an LA where necessary.

4.3.5 Recommendations by the Review Committee

4.3.5.1 In summary, the Committee makes the following recommendations:

(a) **Current Process**:

No change - The Committee agreed with SMC that, until the MRA is amended, SMC will ensure that the members reviewing the information/complaint under Section 39(3) MRA will not be part of the CC.

(b) **Changes to Process Issues**:

Secretariat could group a minimum of 3 complaints to each CC and roster appointed CCs to meet each week.

The Chairman of the Complaints Panel could place a particular complaint before the next CC if he finds that the next CC has the appropriate expertise to review certain cases. The scheduling of CCs allows for efficiency while it is also necessary for the Chairman of the Complaints Panel to be provided with the flexibility to allocate cases to particular CCs with the relevant expertise.

CCs can convene online meetings and discuss cases via email on matters related to Section 42(4) MRA (eg: dismiss, issue letter of advice, refer for mediation, or appoint investigators). The minutes from such discussions will be documented and endorsed by members' signatures. Should any member of the CC wish to discuss a case in a physical meeting, such a meeting will be organised.

(c) **Changes to Policy Issues**:

(NA)

(d) **Amendments to MRA / MRR**:

The review and investigation of official complaints should be separated from the Council members. SMC to consider amendments to ensure that, in future, no Council member will be appointed to the Complaints Panel

and therefore as a member or chairman of the CCs. This is because Section 39(3) MRA provides for SMC to refer cases to the Chairman of the Complaints Panel. As mentioned earlier in Chapter 4.1, a provision should be introduced for Minister to appoint a panel of senior doctors to chair CCs instead.

Chapter 4: Review of Processes under Current Medical Registration Act / Medical Registration Regulations

4.4 COMMENCEMENT OF INQUIRY BY COMPLAINTS COMMITTEE

4.4.1 Relevant Sections of the MRA

4.4.1.1 Commencement of inquiry by Complaints Committee

Section 42(1) - A Complaints Committee shall, within 2 weeks after its appointment, commence its inquiry into any complaint or information, or any information or evidence referred to in section 44(5), and complete its inquiry not later than 3 months after the date the complaint or information is laid before the Complaints Committee.

(2) Where a Complaints Committee is of the opinion that it will not be able to complete its inquiry within the period specified in subsection (1) due to the complexity of the matter or serious difficulties encountered by the Complaints Committee in conducting its inquiry, the Complaints Committee may apply in writing to the chairman of the Complaints Panel for an extension of time to complete its inquiry and the chairman may grant such extension of time to the Complaints Committee as he thinks fit.

(3) For the purposes of any inquiry, a Complaints Committee may appoint one or more investigators in accordance with section 60A to investigate the complaint or information, and the investigator may exercise any one or more of the powers under that section in carrying out his functions and duties under this Part.

(4) A Complaints Committee shall —

(a) if it is unanimously of the opinion that the complaint or information is frivolous, vexatious, misconceived or lacking in substance, dismiss the matter and give the reasons for the dismissal;

(b) if it is unanimously of the opinion that no investigation is necessary —

(i) issue a letter of advice to the registered medical practitioner; or

(ii) refer the matter for mediation between the registered medical practitioner and the complainant; or

(c) in any other case, direct one or more investigators to carry out an investigation and make a report to it under section 48

4.4.2 Current Processes

4.4.2.1 One of the changes in the Current MRA provides the CC, at the first instance, with the power to dismiss an unmeritorious complaint, issue a letter of advice in a less serious case, in an appropriate case refer the matter for mediation between the doctor and the patient, or to appoint an investigator to carry out an investigation and to report back to the CC.

4.4.2.2 Although some CCs have tried to sift out complaints which are frivolous, vexatious, misconceived or lacking in substance at the first meeting by unanimously dismissing the complaint or issuing letters of advice (where doctors were not required to provide even an explanation), most CCs direct investigators to carry out a proper investigation into the alleged issues. About 90% of all complaints received so far have been referred to the investigators.

4.4.2.3 If a complaint has been dismissed or the doctor has been issued a letter of advice, the doctor will be informed of the CC's decision via an outcome letter

with a copy of the complaint letter attached. If the matter has been referred for mediation, the complainant will be informed and the doctor will receive the referral letter for mediation with a copy of the complaint attached. If the case is referred for investigation, the doctor will be informed of the complaint only when he/she receives a letter from the investigators requesting an explanation and/or other documents. He/she will not be informed in advance if the investigators are required by the CC to visit his clinic to obtain the medical records.

4.4.2.4 Currently, there is no avenue for the doctor and complainant to appeal if the CC unanimously dismisses the complaint or issues a letter of advice to the doctor at its first meeting (Section 42(4) MRA).

4.4.3 Feedback Received

4.4.3.1 In summary, the Review Committee noted the following feedback which it received during the consultation exercise:

(a) There should not be much delay with respect to completing the inquiry before the CC, and the CC should be able (in most cases) to complete the inquiry within the period of two months as laid down by Section 42(I) MRA. To expedite the progress of the proceedings before the CC, the Secretariat may have to take a more active secretarial and administrative role in securing the early appointments of the members of the CC and thereafter arranging for an investigator to be appointed to investigate matters required by the CC. The members of the CC need not necessarily hold a series of physical meetings to deal with the complaint. At the initial stage, they may communicate with each other by email and dispose of matters or points that are not material or matters on which they can agree, and then hold a meeting to discuss and confirm what the members have decided by email[(11)].

(b) A Society was pleased to note that CCs have been taking a more active approach to case management, in particular with regard to the interactions of the investigators with the respondent practitioner. There is still scope for frivolous complaints to be dealt with better. CCs can be more *proactive* in their discussions with complainants on their concerns and the allegations set out in their complaints[(12)].

(c) A reading of Sections 39-42 MRA appears to allow that any complaint made will automatically reach the CC and the practitioner will be asked to submit a written explanation. Resources are wasted in considering matters which may not fall under those prescribed by the MRA. MRA should set out in detail how complaints should be handled, and in particular, whether the Medical Council or the CC has discretion to advise complainants of the requirements under Section 39(1) MRA and whether it may recommend exploration of other avenues for their concerns, without prejudice to the practitioner concerned[(12)].

(d) The main cause of delay in CC processes is the inability to find common dates to meet. This is compounded by the new MRA which requires at least two meetings. If the Committee agrees that they can screen cases initially by email, one meeting can be saved. If there was even the slightest disagreement, or any member requested it for any one case, the

CC would have to meet physically to decide on that case. Emails will cut down the time period between receipt of the CC file and a preliminary decision on the cases[13].

4.4.4 Deliberation by the Review Committee

4.4.4.1 The Committee noted from the Secretariat's feedback that the time taken to conclude cases at the CCs' first meetings was an average of 5.8 months (median of 4.9 months).

4.4.4.2 Since 90% of all complaints received were referred for investigations, the Committee observed that this seemed to suggest that the majority of the complaints received were not considered frivolous, vexatious, misconceived or lacking in substance. The Committee also acknowledged the internal feedback that most CCs want to be fair to both complainants and the medical practitioner and the CC will therefore at least request an explanation from the doctor (and this would require the complaint to be referred to the IU for investigation).

4.4.4.3 The Committee acknowledged that, while the MRA was silent on whether the CC should convene physical meetings, they also felt that it was not necessary for the MRA to specify such processes and agreed that the CCs could discuss cases via email and then formalise its decisions when all members sign on the official documented minutes and the decisions will be deemed valid. This is supported by Section 40(5) MRA which states:
"All the members of a Complaints Committee shall be present to constitute a quorum for a meeting of the Complaints Committee and any resolution or decision in writing signed by all the members of a Complaints Committee shall be as valid and effectual as if it had been made or reached at a meeting of the Complaints Committee where all its members were present."

4.4.4.4 The Committee felt that, when CCs unanimously dismiss the complaint or issue letters of advice, it means that the complaint does not warrant investigation and therefore, does not necessitate a right of appeal.

4.4.4.5 The Committee also noted Council's efforts and commitment to conduct regular audits on the progress on each case.

4.4.5 Recommendations by the Review Committee

4.4.5.1 In summary, the Committee makes the following recommendations:

(a) **Current Processes**:

(NA)

(b) **Changes to Process Issues**:

To resolve the difficulty of finding a common date for the CCs to meet, CCs can convene online meetings and discuss cases via email on matters related to Section 42(4) MRA (eg: dismiss, issue letter of advice, refer for mediation, or appoint investigators). The Secretariat can group a minimum of 3 complaints for each CC and to roster appointed CCs each week at least 2-3 months in advance. If the CC is conflicted with a certain case, the complaint will be reviewed in the following week by the next CC.

Minutes from such email discussions are collated, documented and formalised with members' signatures. A physical first meeting should be convened if there is no unanimity of decision for any case or if the Chairman requests for a physical meeting to discuss complex cases.

(c) **Changes to Policy Issues**:

The Committee agreed with SMC's efforts to conduct regular audits on the progress of each case.

(d) **Amendments to MRA / MRR**:

(NA)

Chapter 4: Review of Processes under Current Medical Registration Act / Medical Registration Regulations

4.5 MEDIATION

4.5.1 Relevant Sections of the MRA

4.5.1.1 Commencement of inquiry by Complaints Committee

Section 42(4) - A Complaints Committee shall —

(a) if it is unanimously of the opinion that the complaint or information is frivolous, vexatious, misconceived or lacking in substance, dismiss the matter and give the reasons for the dismissal;

(b) if it is unanimously of the opinion that no investigation is necessary —

(i) issue a letter of advice to the registered medical practitioner; or

(ii) *refer the matter for mediation between the registered medical practitioner and the complainant*; or

(c) in any other case, direct one or more investigators to carry out an investigation and make a report to it under section 48

4.5.1.2 Mediation

Section 43(1) - In referring the matter for mediation under section 42(4)(b)(ii), the Complaints Committee may order the personal attendance of the complainant and the registered medical practitioner before a mediator specified by the Complaints Committee.

(2) The mediator referred to in subsection (1) shall submit a report to the Complaints Committee on the outcome of the mediation.

(3) If the complainant refuses or fails, without reasonable cause, to comply with the order under subsection (1), the Complaints Committee may dismiss the matter.

(4) If the registered medical practitioner refuses or fails, without reasonable cause, to comply with the order under subsection (1), the Complaints Committee may proceed to make a direction under section 42(4)(b)(i) or (c).

(5) If for any reason the mediation does not take place or the matter is not amicably resolved through mediation, the Complaints Committee or another Complaints Committee appointed in its place may make any direction under section 42(4)(b)(i) or (c) as it thinks fit.

4.5.2 Current Processes

4.5.2.1 SMC has an agreement and memorandum of understanding (MOU) with the Singapore Mediation Centre for the referral of cases for mediation. The administrative cost for mediation for both parties is borne by the Medical Council. In addition, for cases involving communication issues, the SMC Secretariat will inform complainants of the various other options available to them such as obtaining a second medical opinion or requesting the hospital's assistance in settling the alleged dispute.

4.5.2.2 Once a CC refers a case for mediation, the Secretariat will inform both parties of the referral and will send the relevant documents under seal to the Singapore Mediation Centre. The Singapore Mediation Centre will allocate a mediator to the case and a final report will be sent to SMC with details on whether the mediation did/did not take place and whether or not it was successful or unsuccessful.

4.5.2.3 If the complainant refuses or fails, without reasonable cause, to comply with mediation, the CC may dismiss the matter. If the doctor refuses or fails, without reasonable cause, to comply with the CC's mediation order, the CC can either refer the case for an official investigation or issue a letter of advice to the doctor. If, for any reason the mediation does not take place or the matter is not amicably resolved through mediation, the CC or another CC appointed in its place may also refer the case for an official investigation or issue a letter of advice to the doctor.

4.5.3 Feedback Received

4.5.3.1 In summary, the Review Committee noted the following feedback received during the consultation exercise:

(a) The AMS together with the other medical professional/indemnity organisations (e.g. MPS) hopes to develop expertise in medical mediation and to provide a list of mediators and avenue for mediation[(1)].

(b) CCs should bring parties for mediation only when the complainant is a private individual. When the complainant is a government officer or a statutory body, CC should not make an order for mediation[(3)].

(c) SMC officers to highlight mediation as an alternative, effective way of resolving disputes to complainants *at the time of statutory declaration of the complaint*, especially in cases of miscommunication and where complainants and their families are still grieving after an adverse medical event. The CC should also be empowered to offer early recommendation of mediation as an option prior to, or during, the preliminary inquiry, especially in complaints that are likely due to miscommunication. It was recommended that SMC have a list of qualified persons able to provide such mediation services[(3)].

(d) The doctor being complained against may find mediation a welcome alternative since it affords him an opportunity to resolve the matter without the risk of being referred to a DT. It would also save the SMC substantial legal costs to avoid a full inquiry. Members of CCs should be educated on the avenue of mediation as opposed to the referral of a complaint to full-inquiry where the complaint warrants such an approach[(8)].

(e) If a complaint meets the threshold and criteria for an SMC investigation, SMC has a duty to investigate and the complaint cannot be delegated or diverted into another forum such as mediation. On the other hand, if the complaint does not meet the threshold for an SMC investigation, the SMC could recommend mediation through trained mediators as a suitable alternative option, wholly independent of the disciplinary process. There should be no obligation on either the doctor or the complainant to agree to mediation, and no adverse inference or otherwise drawn from an unwillingness to participate in mediation or indeed an unsuccessful mediation. Furthermore, there should be no provision for the complaint to be directed back into the SMC's disciplinary process if the doctor either refuses to participate, or indeed, if mediation is unsuccessful or the complainant otherwise remains dissatisfied. The MRA must be amended due to an inherent contradiction in the current draft at section 42(4),

where, if the CC is of the unanimous view that no investigation is necessary, the matter can be referred for mediation (instead of issuing a letter of advice). There is then no logical justification under section 43(4) and 43(5) for the matter to be investigated if the mediation does not take place (since the CC had already determined that no investigation is necessary)[12].

(f) The option of settling complaints by mediation should be mandated for all but serious "criminal" issues. Mediation should be much better utilised as it is a conciliatory as opposed to adversarial process which enhances the healthcare community – society relationship. It is also usually far less costly[32].

4.5.4 Deliberation by the Review Committee

4.5.4.1 While complaints received from Ministries are usually not related to communication issues, the Committee queried if any 'artificial constraints' should be placed on the independent decision making process of the CCs in deciding whether or not to refer a case for mediation based on its assessment of the facts and circumstances of the case.

4.5.4.2 The Committee agreed that it would not be advisable to proceed with mediation especially if the matter relates to professional misconduct as mediation should be mainly directed for communication-related issues. The Committee noted that negligence issues (not gross negligence) should also be referred for mediation between parties, saving the doctor the trouble of having to face a civil suit.

4.5.4.3 The Committee was informed by the Secretariat that, although there is now an option available for the CC to refer both doctor and complainant for mediation, only a few CCs have utilised the option of the referral for mediation. The Committee felt that, either the members on the Complaints Panel might not be fully equipped to identify cases for mediation or that the types of complaints SMC receives are mostly non communication issues.

4.5.4.4 Members noted that, if the CC refers the matter for mediation at its first meeting (i.e. pursuant to Section 42(4) MRA), the Singapore Mediation Centre would not have received the doctor's explanation as the CC would not have directed the investigators to ask the doctor for his explanation. However, the Committee noted that it would still be possible for the Mediation Centre to conduct a mediation as it could invite the doctor (in fact, both parties) to provide their explanation prior to the mediation session and both complainant and doctor's accounts would be presented to the mediator.

4.5.4.4 The Committee agreed with the Council's recommendation to conduct additional training courses and workshops for the Complaints Panel members (in addition to the bi-annual briefing sessions) to put into effect the new options that the CC can direct under the current MRA, in particular, a dedicated training session by a senior lawyer from the Singapore Mediation Centre on the types of cases which could be referred for mediation. The Committee noted that the Singapore Mediation Centre had recently conducted 2 briefing sessions (held on separate dates in August and September 2013) for the doctors and laypersons on the Complaints Panel.

4.5.5 Recommendations by the Review Committee

4.5.5.1 In summary, the Committee makes the following recommendations:

(a) **Current Processes**:

No change - SMC staff to continue highlighting mediation as an alternative way of resolving disputes (for appropriate cases involving communication issues) before an official complaint is made.

No change – Briefing sessions are held to train Complaints Panel members on the identification of types of cases which could be referred for mediation.

(b) **Changes to Process Issues**:

(NA)

(c) **Changes to Policy Issues**:

(NA)

(d) **Amendments to MRA / MRR**:

(NA)

Chapter 4: Review of Processes under Current Medical Registration Act / Medical Registration Regulations

4.6 INVESTIGATORS, CONDUCT OF INVESTIGATION AND IU'S REPORT TO THE COMPLAINTS COMMITTEE

4.6.1 Relevant Sections of the MRA

4.6.1.1 Conduct of investigation

Section 44(1) - An investigator directed under section 42(4)(c) to investigate any complaint or information shall, if he is of the opinion that a registered medical practitioner should be called upon to answer any allegation made against him, give notice in writing of the complaint or information to him.

(2) A notice under subsection (1) shall —

(a) include copies of any complaint or information and of any statutory declaration or affidavit that have been made in support of the complaint or information; and

(b) invite the registered medical practitioner, within such period (not being less than 21 days after the date of the notice) as may be specified in the notice, to give to the Complaints Committee any written explanation he may wish to offer.

(3) In the course of investigations, the Complaints Committee may authorise the investigator in writing to —

(a) in the case of a complaint mentioned in section 39(1)(c), obtain the consent of the registered medical practitioner to undergo a performance assessment in accordance with the provisions of Division 3; and

(b) in the case of any information mentioned in section 39(1)(d), obtain the consent of the registered medical practitioner to submit to a fitness assessment in accordance with the provisions of Division 3,

and the registered medical practitioner shall respond within such reasonable time as the investigator may, in the notice, specify.

(4) If the registered medical practitioner —

(a) declines to undergo a performance or fitness assessment requested under subsection (3);

(b) having agreed to undergo such an assessment, subsequently fails to participate in the assessment or refuses to cooperate with the assessors; or

(c) does not respond to the notice within the time specified in subsection (3),

the investigator shall make a report to the Complaints Committee under section 48 and the Complaints Committee may proceed with the inquiry and make such order as it deems fit under section 49(1) or (2).

(5) Where, in the course of an investigation, an investigator receives any information touching on, or obtains any evidence of, the conduct, physical or mental fitness, or professional performance of a registered medical practitioner other than the registered medical practitioner concerned which may give rise to proceedings under this Part, the investigator shall make a report to the Complaints Committee under section 48.

(6) On receiving a report under subsection (5), the Complaints Committee may —

(a) if it is unanimously of the opinion that the complaint or information is frivolous, vexatious, misconceived or lacking in substance, dismiss the matter and give the reasons for the dismissal; or

(b) if it believes there is evidence of any matter referred to in section 39(1) in respect of a registered medical practitioner other than the registered medical practitioner concerned —

(i) direct one or more investigators to carry out an investigation and make a report to it under section 48; or
(ii) refer the matter to the chairman of the Complaints Panel and the chairman shall act in accordance with section 41 by referring the complaint or information to a Health Committee or laying it before a different Complaints Committee, as the case may be.

4.6.1.2 Investigation report and deliberation by Complaints Committee

Section 48(1) - Upon completing an investigation into any complaint or information, the investigator shall submit a report on the findings of the investigation to the Complaints Committee for its deliberation.
(2) The report referred to in subsection (1) shall include —
(a) any written explanation given by the registered medical practitioner after receiving a notice under section 44(2);
(b) any assessment report made under Division 3, if a performance or fitness assessment was undertaken; and
(c) any recommendation on the necessity or otherwise of a formal inquiry by a Disciplinary Tribunal or Health Committee.
(3) No person shall disclose the contents of the investigation report or any information contained in any document which was obtained in the course of any investigation or inquiry commenced under this Part to any other person, including the registered medical practitioner, except where —
(a) the Complaints Committee in its absolute discretion thinks otherwise; or
(b) such disclosure is required for the purpose of administering and enforcing this Act or the Infectious Diseases Act (Cap. 137).
(4) The Complaints Committee may, in the course of its deliberations and before it reaches a decision, seek such legal advice as it thinks necessary.
(5) The registered medical practitioner concerned shall not have the right to be heard by the Complaints Committee, whether in person or by counsel, unless the Complaints Committee in its absolute discretion otherwise allows.

4.6.1.3 Investigators

Section 60A(1) - The Medical Council may, in writing, appoint a member or an employee of the Medical Council, a public officer or any other person as an investigator, subject to such conditions and limitations as the Medical Council may specify —
(a) to investigate the commission of an offence under this Act; or
(b) to carry out an investigation under Part VII.
(2) An investigator may, for the purposes of subsection (1) —
(a) by order in writing require any person —
(i) to furnish any information within his knowledge; or
(ii) to produce any book, document, paper or other record, or any article or thing which may be in his custody or possession and which may be related to or be connected with the subject-matter of the investigation for inspection by the investigator and for making copies thereof, or to provide copies of such book, document, paper or other record,
and may, if necessary, further require such person to attend at a specified time and place for the purpose of complying with sub-paragraph (i) or (ii);
(b) by order in writing require the attendance before him of any person who, from any information given or otherwise, appears to be acquainted with the facts and circumstances of the matter under investigation;
(c) examine orally any person apparently acquainted with the facts and circumstances of the matter under investigation, and to reduce into writing the answer given or statement made by that person who shall be bound to state truly the facts and circumstances with which he is acquainted, and the

statement made by that person shall be read over to him and shall, after correction, be signed by him; and
(d) without warrant enter, inspect and search during regular business hours any premises which are used or proposed to be used, or in respect of which there is reasonable cause to believe are being used by the registered medical practitioner who is under investigation to carry out the practice of medicine and may —
(i) inspect and make copies of and take extracts from, or require the registered medical practitioner or the person having the management or control of the premises to provide copies of or extracts from, any book, document, record or electronic material relating to the affairs of the premises or the facilities or services provided or the practices or procedures being carried out thereat;
(ii) inspect any apparatus, appliance, equipment or instrument used or found on the premises;
(iii) inspect, test, examine, take and remove any chemical, pharmaceutical or any other substance found on the premises;
(iv) inspect, test, examine, take and remove any container, article or other thing that the investigator reasonably believes to contain or to have contained any chemical, pharmaceutical or any other substance found on the premises;
(v) inspect any test or procedure performed or carried out on the premises;
(vi) take such photographs or video recording as he thinks necessary to record the premises or part thereof, including any apparatus, appliance, equipment, instrument, article, book, document or record found on the premises; and
(vii) seize and remove from the premises any book, record, document, apparatus, equipment, instrument, material, chemical, pharmaceutical or any other substance which the investigator reasonably believes to be the subject-matter of, or to be connected with, an investigation under subsection (1)(a) or (b).
(3) Any person who —
(a) intentionally offers any resistance to or wilfully delays an investigator in the exercise of any power under subsection (2); or
(b) fails to comply with any requisition or order of an investigator under subsection (2),
shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 6 months or to both.
(4) In this section, “record” includes the medical record of any person

4.6.2 Current Processes

4.6.2.1 The Current MRA provides powers for the CC to appoint and empower officers to investigate complaints against doctors and investigators have the power to require the production of document and records, including medical records, or require any person to furnish any information within his knowledge as well as powers to record statements and to enter and search the doctor’s premises and secure and seize evidence. Minister had informed Parliament in January 2010 that all of SMC’s investigators would have at least 10 years of experience. The investigators whom SMC has recruited to date were formally gazetted and a separate investigation unit in SMC was formed to allow these investigators to conduct their investigations separately and independently of other divisions within SMC.

Instructions from the CCs to the IU

4.6.2.2 At the CC's first review of the complaints pursuant to Section 42(4) MRA, the CC may direct the investigators to carry out an investigation if it decides that an official investigation is necessary. The investigators' role is to assist the CC in collating the required information and assessing the practice of a doctor with reference to the alleged issues based on the CC's instructions. The investigators are only a fact finding unit for the CCs and will only act according to the CC's orders. They can conduct interviews with both doctors and complainants, request that the doctor provide an explanation, retrieve medical records and other documents, or go to the clinic itself to retrieve records or to undertake raids in the more serious cases.

4.6.2.3 In most cases which are referred for investigation, the doctors against whom a complaint has been made are invited to submit their explanation. Most doctors will immediately inform the MPS or their insurance once a complaint is lodged with the SMC. Other common instructions from the CCs include obtaining medical records (either via written requests or in person) and medical reports of the patients involved and seeking expert opinions as specified by the CCs. From information collated from 1 December 2010 to 31 December 2012, the CCs instructed the investigators to conduct interviews and retrieve medical records personally from clinics in 8% (i.e. 17) and 3% (i.e. 7) respectively in complaints received.

Conduct of Investigations by SMC's Investigators

4.6.2.4 The investigators conduct their investigations in accordance with the CCs' specific instructions. Any recommended, additional or modified investigative procedures are carried out only upon approval or concurrence by the CCs. At the end of the investigation, the investigator will submit an investigation report, comprising the investigator's summary of the investigation and all documents/information gathered in the course of investigation to the relevant CC for its deliberation and decision on the outcome of the case. Each CC has 2 medical doctors to review the information collated and if they need more assistance, they can request the investigators to obtain an expert opinion. The investigators do not provide advice or process any information which requires medical expertise. The IU is a fact-finding unit which obtains information for the CCs' deliberations and decisions; it does not itself make any conclusions or deliberate on the findings of the information obtained.

4.6.2.5 From the date the Current MRA came into force in December 2010 and as at 31 December 2012, the IU completed 84% of the investigations directed to it by the CCs. This is 189 (comprising complaints against 221 doctors) of 226 complaints referred by the CCs. The median time taken by the IU to complete its investigation for a complaint is 56 days.

4.6.2.6 In addition, SMC does not use these investigators to investigate matters related to Section 39(3) MRA.

4.6.3 Feedback Received

4.6.3.1 In summary, the Review Committee noted the following feedback which it received during the consultation exercise:

(a) The introduction of investigators into the SMC complaints process is perceived by some to be a duplication of the existing investigation arm within MOH, which should be sufficiently comprehensive and adequate. Nevertheless, the role of SMC's investigators needs to be clarified and made known. The powers of these investigators are in a sense even greater than that of the police in that they do not need a search warrant to seize anything from a clinic or hospital. However, before investigators are allowed to do so, we propose that the affected doctors be informed of the nature of the complaint that has resulted in the investigation. It was noted that patient confidentiality may not be preserved in the process, and that the time and method in which raids are conducted unnecessarily disrupts clinic work and patients' needs. Investigators should also have formal training and suitable qualification, so as to ensure their adequacy in fulfilling their role. Protocols and practices, such as identification upon arrival on site, liaison with the doctor involved in the investigation, and request for only the necessary documents, could be indicated in a Code of Conduct for investigators. This is to professionalise their role and educate doctors on what they can expect during an investigation(3).

(b) CCs should bear in mind the following points in relation to the appointment and use of investigators:
- Persons appointed as investigators should have the appropriate experience and expertise depending on the nature of the complaint;
- Investigators' powers should not go unchecked and in particular, their reports to the Complaints Committee should detail their methods of investigations and should be open to scrutiny to ascertain the legality of these methods; and
- Investigators should also have access to and/or be provided with legal advice and support to ensure that their fact-finding is relevant and pertinent to the subject matter of the complaint.

CCs should give respondent doctors the opportunity to appear before them to present their exculpatory statements and answer any questions the CC may have in respect of the matter complained of as the exculpatory statements which are submitted to the CC are often poorly written, do not adequately address the complaint and are prepared without the benefit of legal counsel. If the investigation process by the CC gave more opportunities for respondent doctors to appear in person to provide their explanation in respect of the matter complained of, the findings by the CC may differ, possibly avoiding a referral to DT. In addition, under Section 48 MRA, investigators appointed by the CC are required to submit their reports on their findings upon completing their investigations and that the contents of the reports shall not be disclosed to any person save in limited circumstances, such as where the CC in its absolute discretion decides to disclose the reports. Investigators' reports (or a summary of the findings therein) should be made available upon request by complainants(6).

(c) At present, it is not uncommon for the CC to meet more than once to deliberate on the findings and for the medical investigator to communicate to the CC his/her findings. The CC may give directions to the investigator to focus his/her investigations on specific matters. This practice is useful and should therefore be codified to ensure that the extent of CC's right to direct the investigator's investigative efforts is not susceptible to legal challenge. The present version of the MRA does not expressly give the CC the power to inquire into "new" matters relating to the medical practitioner's conduct if

evidence of further breaches of the MRA is uncovered in the course of the CC's inquiry. Under the old MRA, there is an express provision (i.e. section 40(9) of the 2004 MRA) which allows the CC to do so[4].

(d) SMC investigators often request an extension of time to complete their investigations. This is often due to factors outside their control such as delays in obtaining doctors' exculpatory statements and expert opinions. One of the ways to make the process more efficient is to reduce the need for extension of investigation time. Respondent doctors are usually given maximum leeway so that they have "sufficient" time to construct their exculpatory statements, but perhaps this can be controlled better by acceding to a request for extension only once and for a defined period[13].

(e) A doctor in the complaints panel felt that the current complaints processes and investigational methods are acceptable and that the role of investigators is contributory and important to the proceedings of the enquiry[52].

4.6.4 Deliberation by the Review Committee

Clarification

4.6.4.1 Some of the feedback provided above suggests that the current MRA does not expressly give the CC the power to inquire into "new" matters relating to the medical practitioner's conduct if evidence of further breaches of the MRA is uncovered in the course of the CC's inquiry. The Committee noted that the current MRA does provide the provision for the CC to refer the new evidence on the conduct of the medical practitioner to the SMC in Section 49(7) MRA: *"Where, in the course of an inquiry, a Complaints Committee receives any information touching on, or any evidence of, the conduct of the registered medical practitioner concerned which discloses an offence under any written law, the Complaints Committee shall record the information and report it to the Medical Council."*

4.6.4.2 It was clarified that MOH conducts its own investigations and assesses the medical records and documents retrieved using similarly qualified and experienced investigators. Such information, however, cannot be given to the SMC and the CC would have to rely on the explanation from the doctor if it was under the Old MRA. The Current MRA allows SMC to employ its own investigators (acting on the CC's behalf) to uncover evidence and to send such information to the CC for assessment.

4.6.4.3 The Committee was informed that SMC's investigators are all qualified, having at least 10 years experience and that, while the majority of the investigators are ex-police officers, it was not necessary that all investigators must all be ex-police officers – (see extract from the Hansard – Medical Registration (Amendment) Bill):

"Minister for Health – Third, Prof. Paulin Straughan noted that investigators appointed by the SMC are potentially powerful agents, as she put it, with fairly extensive authority. Ms Sylvia Lim also noted that the investigator holds an important and pivotal role in the disciplinary process. Both wanted to know the qualifications these investigators are expected to hold. Our plan is to recruit officers with at least 10 years of experience in the Police or related

enforcement agencies. They will be very much like the officers in my Ministry's Enforcement Branch. We would like to assure this House that investigators will be provided with all the necessary training to equip them with the appropriate skills to carry out the duties of an SMC investigator."

Delays

4.6.4.4 The Committee noted the Secretariat's report that delays at the investigation stage could be attributed to:

(a) The time required to acquire the necessary and relevant information and evidence, mainly the doctors' explanations and the expert's report (note: doctors are given 21 days to furnish their explanations. This process can be lengthened for another 2 to 3 weeks if doctors request for extensions of time to submit their explanations and other documents);

(b) Any delay in receiving the doctors' explanations which will result in a delay in obtaining the expert's report. Before the investigators approach any expert, the relevant documents (such as the original complaint, the doctors' explanations, patients' medical records or hospital case notes) have to be obtained and presented before the expert; and

(c) Some CCs are unclear, for example, those who do not indicate or specify the experts required. Difficulties are also encountered in finding experts who are willing to provide their opinion and who do not have a conflict of interest.

Investigators not medically trained

4.6.4.5 Some members in the Committee noted that the investigators are not medically trained and expressed concerns on whether they were able to understand the medical treatments and reasons for a doctor's assessment of a patient. This is because the review of complaints requires professional inputs and the investigators are not doctors or clinicians.

4.6.4.6 The Committee considered that each CC would have to give specific and direct instructions for the investigators to look into certain areas and the CC then assesses the information collated by the investigators as instructed by the CC in the investigator's report. The Committee also suggested that the CC could request for all inpatient and outpatient medical records and then review the medical records to provide their professional opinion.

Role of investigators

4.6.4.7 Some members in the Committee queried that the Old MRA did not provide for investigators and yet the CCs were able to conduct its work and investigate into the complaints. Under the Old MRA, the CC could review the complaint and request for all the explanations and additional documents (including medical reports, expert reports etc) to be submitted *before* it convenes its first meeting. Some Committee members felt that explanations should have already been obtained from doctors before the investigators step in to undertake further investigation as this would help shave time from the whole complaints process.

4.6.4.8 Members provided the following views with regard to the role of investigations:-

(a) The investigators' role in obtaining explanations and other documentary evidence was not exactly an investigative process and that the role of the investigators would only be significant after the explanations were obtained and further specific directions given. The current main roles of the

investigators are to obtain an explanation and collate all the information before putting a summary report (of their investigation without any medical inputs) before the CC.

(b) Obtaining doctors' explanations was no different as before as it was part of the Secretariat's administrative functions (i.e. investigators could also be seen as part of the Secretariat). Requirement to obtain such explanations from doctors would mean that even frivolous complaints would have to be addressed and this would be counter-productive.

(c) Having investigators shows that due process is maintained and this bestows integrity on the entire complaints process. Investigators are needed should the CCs direct them to seize medical records for complicated cases (eg: doctors working in cahoots with third parties) or in cases where doctors are prescribing large amounts of sedatives. This is to prevent doctors from being alerted so that they cannot amend patients' medical records.

4.6.4.9 The Committee considered the issue of whether an explanation should be requested from the doctor first (by the Chairman of the Complaints Panel or requested as routine) before the CC reviews the cases so that investigators may come in later to perform more specific tasks (see Chapter 4.2 as this is related to requesting an explanation from the doctor). However, the Committee eventually decided that the current process and role of the investigators are satisfactory.

4.6.4.10 The Committee noted a possible typographical error and proposed that Section 44(1) MRA be amended to:
*"An investigator directed under Section 42(4)(c) to investigate any complaint or information shall, if the **Complaints Committee** (instead of "**he**") is of the opinion that a registered medical practitioner should be called upon to answer any allegation made against him, give notice in writing of the complaint or information to him."*

4.6.5 Recommendations by the Review Committee

4.6.5.1 In summary, the Committee makes the following recommendations:

(a) **Current Processes**

No change - CCs to continue to give specific and direct instructions for the investigators to look into certain areas and the CC then assesses the information collated by the investigators (as instructed by the CCs) in the investigators' report.

(b) **Changes to Process Issues**

(NA)

(c) **Changes to Policy Issues**

(NA)

(d) **Amendments to MRA / MRR**:

Section 44(1) MRA be amended to: "An investigator directed under Section 42(4)(c) to investigate any complaint or information shall, if the ***Complaints Committee*** (instead of "***he***") is of the opinion that a registered medical

practitioner should be called upon to answer any allegation made against him, give notice in writing of the complaint or information to him."

Chapter 4: Review of Processes under Current Medical Registration Act / Medical Registration Regulations

4.7 FINDINGS OF COMPLAINTS COMMITTEE

4.7.1 Relevant Sections of the MRA

4.7.1.1 Findings of Complaints Committee

Section 49(1) - After deliberation of the investigation report and any recommendation of an investigator made under section 48, and upon due inquiry into the complaint or information (including any information or evidence referred to in section 44(5)), a Complaints Committee shall, if it is of the view that no formal inquiry by a Disciplinary Tribunal or Health Committee is necessary —

(a) issue a letter of advice to the registered medical practitioner;

(b) issue a letter of warning to the registered medical practitioner;

(c) order that the registered medical practitioner seek and undergo medical or psychiatric treatment or counselling;

(d) order that the registered medical practitioner undertake and complete specified further education or training within a specified period;

(e) order that the registered medical practitioner report on the status of the fitness of his physical or mental condition or on the status of his medical practice at such times, in such manner and to such persons as may be specified by the Complaints Committee;

(f) order that the registered medical practitioner seek and take advice, in relation to the management of his medical practice, from such persons as may be specified by the Complaints Committee;

(g) by agreement with the registered medical practitioner —

(i) remove the name of the registered medical practitioner from the appropriate register;

(ii) suspend the registration of the registered medical practitioner from the appropriate register for a period of not more than 3 years;

(iii) where the registered medical practitioner is a fully registered medical practitioner in Part I of the Register of Medical Practitioners, remove his name from Part I of that Register and register him instead as a medical practitioner with conditional registration in Part II of that Register, and section 21(4) to (9) shall apply accordingly;

(iv) where the registered medical practitioner is registered in any register other than Part I of the Register of Medical Practitioners, impose appropriate conditions or restrictions on his registration; or

(v) suspend or cancel his practising certificate;

(h) refer the matter for mediation between the registered medical practitioner and the complainant;

(i) dismiss the complaint or matter; or

(j) make such other order as it thinks fit.

(2) Where a Complaints Committee determines that a formal inquiry is necessary, it shall order —

(a) that an inquiry be held by a Health Committee if the complaint, information or evidence touches on the physical or mental fitness of the registered medical practitioner to practise; or

(b) that an inquiry be held by a Disciplinary Tribunal.

(3) Where a Complaints Committee has made an order under subsection (2) or (6) for a formal inquiry to be held by a Disciplinary Tribunal or Health Committee, the Medical Council shall appoint a Disciplinary Tribunal or Health

Committee, as the case may be, which shall hear and investigate the complaint or matter.
(4) Where a Complaints Committee has decided to issue a letter of advice to the registered medical practitioner, the chairman of the Complaints Committee shall issue the letter of advice in such terms as it thinks fit.
(5) Where a Complaints Committee has referred the matter for mediation, section 43 shall apply with the necessary modifications, and references in section 43(4) and (5) to section 42(4)(b)(i) or (c) shall be read as references to section 49(1) or (2), respectively.
(6) Where a registered medical practitioner in respect of whom an order is made under subsection (1)(c), (d), (e) or (f) is found by a Complaints Committee (whether it is the Complaints Committee that made the order or another Complaints Committee appointed in its place) to have failed to comply with any of the requirements imposed on him, the Complaints Committee may, if it thinks fit, order that a formal inquiry be held by a Disciplinary Tribunal or Health Committee, as the case may be, in respect of the complaint, information or evidence.
(7) Where, in the course of an inquiry, a Complaints Committee receives any information touching on, or any evidence of, the conduct of the registered medical practitioner concerned which discloses an offence under any written law, the Complaints Committee shall record the information and report it to the Medical Council.
(8) Where the complainant withdraws his complaint before —
(a) the complaint is referred to a Complaints Committee or Health Committee under this section; or
(b) the conclusion of the inquiry into the complaint by a Complaints Committee, Disciplinary Tribunal or Health Committee,
the Medical Council may, notwithstanding such withdrawal, refer the complaint to or direct a Complaints Committee to continue the inquiry, as the case may be, and the chairman of the Complaints Panel, or the Complaints Committee, Disciplinary Tribunal or Health Committee, as the case may be, shall comply with such direction as if the complaint had been made by the Medical Council.
(9) A Complaints Committee shall notify the registered medical practitioner concerned and the person who made the complaint or referred the information under section 39(1) of its decision under subsection (1) or (2) and, if it makes an order under subsection (1), the reason for making the order.

4.7.2 Current Processes

4.7.2.1 The current MRA expanded the range of orders available to the CC so as to grant them more powers to deal more effectively and appropriately with certain complaints, for example, order that the complaint be referred for external mediation or that the doctor undergo medical, psychiatric treatment or further training, seek and take advice in relation to the management of his practice, or by agreement with the doctor, remove the name of the doctor from the register, suspend his practice for not more than 3 years or impose restrictions and conditions on his practice.

4.7.2.2 After the investigator completes the investigation, the report will be submitted and the Secretariat checks with the CC on a suitable date to convene a 2nd meeting for the CC to deliberate and review all the information collated by the investigators. Where necessary, a 3rd meeting will be held if the CC could not finalise its determination at the 2nd meeting.

4.7.2.3 The time taken to conclude complaints at the 2nd and 3rd meetings (from the time the complaints are received) is as follows:

Time CCs take to conclude their investigations

	Avg (Mth)	Median (Mth)	Remarks
2nd meeting	12.7	12.1	For all cases referred to investigators
3rd meeting	17.9	17.1	CCs will require a 3rd meeting for more complicated cases where further investigation and clarification are necessary.

4.7.2.4 Although the Current MRA now provides more options for the CC to deal with complaints more effectively and appropriately, no CC has yet made any of the following orders under the new MRA, namely that :

- the doctor seeks and undergoes medical or psychiatric treatment or counselling;
- the doctor undertakes and completes specified further education or training within a specified period;
- the doctor reports on the status of the fitness of his physical or mental condition or on the status of his medical practice;
- the doctor seeks and takes advice, in relation to the management of his medical practice; and
- any of the options available to the CCs where the CCs reach an agreement with the doctor.

4.7.2.5 Currently, previous complaint(s)/conviction(s) on the doctor is/are not made known to the CC and the investigators.

4.7.2.6 The CCs are periodically reminded by the Secretariat to provide substantive reasons to both the doctor and complainant for their decisions and to provide regular updates to the complainants on the progress of the CC's investigations.

4.7.3 Feedback Received

4.7.3.1 In summary, the Review Committee noted the following feedback which it received during the consultation exercise:

(a) The complainant should be provided with an appropriate GD by the CC. The CC chairman may need to meet the complainant personally to explain and address unresolved concerns. There is a long duration taken from the time of receiving the complaints to the final resolution. This increases the legal cost and emotional stress to the doctor complained against. It was suggested that the processes be reviewed to develop an actively managed process(1).

(b) Delays in dealing with complaints (and the resulting backlog) remain a concern for the Council. This issue becomes especially pertinent in a climate of greater expectations from patients in respect of the quality of treatment provided by doctors. For complainants, this long period of waiting is a source of frustration. As such, the Council should try to find ways to reduce the time it takes for the CC to investigate complaints(6).

(c) The Council can assist to reduce individual complainants' anxiety in the interim by making the process more open so as to create a greater level of

public confidence and trust in the system. One way of doing so would be to provide individual complainants with regular updates on the progress of the investigation and the opportunity to speak further to the Case Manager assigned to each complaint should they have further queries. Another way would be to allow complainants the opportunity to appear in person before the CC to provide information in relation to their complaints[6].

(d) While it is helpful to have the investigation report from the investigator, there would be cases, where it is obvious that the CC should order an inquiry to be held by a DT (without appointing an investigator to carry out an investigation and report). Hence, the MRA should be amended to give power to the CC to refer the complaint for investigation by the DT without appointing an investigator to investigate and make a report to the CC. Such an amendment would accelerate the progress of the process before the CC[11].

(e) The option of sanctions at the CC stage, for example, a small fine or a warning, could be a way to avoid or reduce the need for referral to DTs. The use of appropriate remediation, such as attendance at a communications skill course, or workshop on consent or keeping good records could be a more constructive approach in some cases. This will benefit the practitioner as well as the complainant who have concerns that others may encounter similar problems[12].

(f) There may be manpower issues that prevent the CC's decisions from being implemented quickly. Internal processes need to be tightened to reduce such delays[13].

(g) A member on the Complaints Panel commented on the following:
- Was involved in the investigations of 3 complaints during the last 2 years. There were no problems in conducting the enquiry and the delay in progress could be attributed to finding a suitable time for all committee members to meet.
- Legal advice should be made available to the CC especially during the final deliberation of the complaints committee.
- Outcome replies need to be worded with empathy with satisfactory explanation to the findings of the CC.
- Perhaps the doctors, hospitals and heads of department need to be alerted so that they can play the role of mediators helping the claimant to understand the issues, if the CC feels it is appropriate to do so. This process may allow satisfactory answers to be provided to the complainant[52].

(h) A layperson on the Complaints Panel commented that there were neither undue delays nor any suspicion of bias in the CCs in which he participated[54].

4.7.4 Deliberation by the Review Committee

Filtering cases

4.7.4.1 The Committee noted the Secretariat's report that, since the current MRA came into effect, from 1 December 2010 till 28 February 2013, 87 cases were dismissed, 59 cases were issued letters of advice and 19 letters of warning

were issued at the CCs' second meeting. 12 cases were referred to a DT. The Committee highlighted that, technically, the CCs appeared effective in filtering cases which need to be referred to the DT. The issues which SMC needs to consider is how to streamline the processes further.

Delays

4.7.4.2 The Committee was informed by the Secretariat that delays at this stage could be due to:

(a) Coordinating a date for the CC's first meeting;
(b) Postponement of CC meetings due to various reasons such as unforeseen unavailability or other exigencies;
(c) Further investigations required in the more complicated complaints which result in more meetings being necessary to deliberate and make decisions. Considerable time may pass whilst awaiting further clarification, or for all of the IU reports to be submitted before the CC convenes its second meeting and whilst obtaining additional information (for example, the expert's report) before the CC reconvenes;
(d) Drafting the minutes of the CC's meeting, reports to the SMC and replies to both doctor and complainant for review and approval by the CC Chairman and members; and
(e) Ensuring that due process is followed, for example, that the CC addresses all of the allegations and provides adequate and accurate details of the reasons for their decisions in the outcome letters to the complainants.

4.7.4.3 The Committee accepted the Secretariat's feedback that scheduling and the drafting of CC's minutes, reports and replies are the cause of the main bottleneck. Firstly,it is difficult to find a common date for a meeting. Moreover, the minutes, reports and replies to complainants and doctors have to be accurate and precise as they reflect the basis of the CC's decisions.

4.7.4.4 The Committee discussed and agreed with the Secretariat's submissions on the following:-

(a) Have a pool of regular and reliable CC Secretaries to support the CCs for the large volume of CC meetings;
(b) CC Chairman to propose a time estimate to the investigators for completion of their investigation and to direct the schedule of subsequent meetings so that all the CC members can book their dates in advance;
(c) Increase the number of staff to deal with the workload and to assist the CCs administratively and operationally; and
(d) To continue with its practice of periodically reminding the CCs to provide substantive reasons for their decisions and to provide regular updates on the progress of the CC's investigation.

Newer outcome options available

4.7.4.5 The Committee noted that no CC has yet made orders for the newer options available to them and opined that perhaps the complaints received were either unsuitable for those options to be used or that the CCs lack the awareness and confidence to use these options.

4.7.4.6 The Committee was informed by a member that the Current MRA is modelled after the regulatory systems in Australia and New Zealand, yet these overseas jurisdictions appear to be able to handle the various options. It was noted that every complaint can be detrimental to the doctor to a certain extent and may

result in legalistic and costly proceedings between the doctor and SMC. The introduction of new measures, such as the Voluntary Insight Framework (under Section 37A MRA) and the various additional options available to the CCs allow complaints to be dealt with in a more expedient yet professional manner. This could reduce the number of cases being referred to the DT if handled at the level of the CC.

Whether previous complaints should be made known to the Chairman of the Complaints Panel and Complaints Committee

4.7.4.7 The Committee discussed the issue of whether previous complaints on the same doctor should be made known to the Chairman of the Complaints Panel, CC and investigators reviewing the present complaint. The Committee considered the case of Dr Harold Shipman whereby the doctor was allowed to continue his practice without any restriction or limitation despite the GMC having received information about his criminal conviction for self-prescription of drugs.

4.7.4.8 Although the Interim Orders Committee (IOC) is rarely appointed, the MRA provides powers for an IOC to order a doctor to stop practising whilst investigations are being carried out if there are issues of public interest or patient safety at stake.

4.7.4.9 The following issues were raised during the Committee's discussions with regard to whether past complaints should be made known:-

(a) Background information on past complaints would be relevant to the Chairman of the Complaints Panel, CCs and investigators (as the information can guide them in their investigations).
(b) If a doctor is in the habit of committing certain offences (which were not referred for formal inquiries), the CC might have to review the case differently.
(c) Only at the sentencing stage of a disciplinary inquiry should the doctor's previous conviction(s) (but not complaints) be flagged to the DT by the Counsel for SMC. The DT should only consider the charges laid before them for the present case.
(d) One member doctor opined that it would be strange not to lay any information before the DT if the CC's referral to DT was based on knowledge of similar or unrelated complaints in relation to the present complaint. It was clarified that, at the DT, the inquiry before the DT should only be specific to the present complaint so that the DT does not prejudge the issue(s). Even if previous complaints were very similar or relevant, these previous complaints were not referred to a DT for a formal inquiry. The DT is not supposed to judge guilt on the doctor's tendencies.
(e) Even for previous complaints, only certain information would be useful to the CC, for example, where doctors were issued letters of advice or warning. For cases which are dismissed, it would not be fair to the doctors as some complaints are frivolous and have no merit and the CC should not take these complaints into consideration.

4.7.4.10 The Committee recommended that the Chairman of the Complaints Panel, CCs and investigators should be informed of the doctor's past history from the outset.

Should the MRA be amended to give powers to CCs to refer the complaint for investigation by the DT without appointing an investigator and making a report to the CCs?

4.7.4.11 With regard to a proposal to amend the MRA to allow CCs to refer the complaint directly to a DT without a prior investigation, the Committee was not in favour of the direct referral of cases to a DT without a proper investigation and process of evidence gathering being undertaken as the DT cannot conduct an investigation itself.

Referral of Conviction Cases to CC

4.7.4.12 The Committee also considered whether the MRA should be amended to allow Council to refer conviction cases to the CC (instead of the DT pursuant to the current Section 39(4) MRA) for the CC to get the doctor to agree to a proposed sanction under Section 49(1)(g) MRA without having the doctor go through a formal inquiry. In such instances, the CCs could be given the background to the convictions so that they could expedite the internal process of trying to get the doctor to agree to a 'consent order' under Section 49(1)(g) MRA since the doctor was already convicted in court. The CC could appoint a legal assessor to assist on legal matters while the Secretariat provides the administrative support in terms of precedents on sentencing for related offences. The main purpose is to expedite the whole process without having to go through a formal disciplinary inquiry. If the doctor does not agree, it could then be referred to a DT for a formal inquiry.

4.7.4.13 However, the Committee appreciated that the roles and functions of a CC are different from those of a DT. The CC is the first stage of the disciplinary process and is intended to be a 'sifting' process and investigates the complaint. A DT has to conduct a hearing to inquire formally into the matter referred to it by the CC or SMC, as the case may be. Where a case is one falling within Section 39(4) MRA, the Committee agreed that it should be dealt with by a DT and not a CC.

By agreement with the doctor – Section 49(1)(g) MRA

4.7.4.14 The Committee noted the Secretariat's recommendation that Section 49(1)(g) MRA would have to be redrafted as the CC may currently only initiate this order if it has determined that no formal inquiry by a DT/HC is necessary. However, if the doctor disagrees or subsequently refuses to comply with the order, there is no recourse for the CC to refer the matter to a DT/HC. The original intention for this section was likely to be '***in lieu***' of a formal inquiry.

4.7.5 Recommendations by the Review Committee

4.7.5.1 In summary, the Committee makes the following recommendations:

(a) **Current Processes**:

No change - The Secretariat will continue to remind the CCs to provide substantive reasons for their decisions and the Secretariat will provide regular updates to the complainants on the progress of the CC's investigation.

No change – The Secretariat to continue its efforts in having a pool of regular and reliable CC Secretaries to support the CCs for the large volume of CC meetings.

No change – The CC Chairman to continue to propose a time-estimate for the investigators to complete their investigation and to direct the schedule of subsequent meetings so that all the CC members can book their dates in advance.

(b) **Changes to Process Issues**:

Similar to recommendations at Chapter 4.1, SMC will conduct regular and structured training sessions for the Complaints Panel on how to use the new options and powers available to the CC under the current MRA.

(c) **Changes to Policy Issues**:

SMC to review its internal manpower issues and to employ more staff to handle the complaints / disciplinary inquiry cases.

Past complaints (where the doctor is issued a "letter of advice", a "letter of warning" and any previous convictions) should be made known to the Chairman of the Complaints Panel, CCs and to the investigators. However, information on previous complaints/convictions would not be made available to the DT (i.e. the DT should only rely on the specific charge(s) laid before it for the present case). Only at the sentencing stage of a disciplinary inquiry would the doctor's previous conviction(s) only (but not complaints) be flagged to the DT by the Counsel for SMC. This will ensure that the Chairman of the Complaints Panel, CCs and investigators are informed from the outset as they need to know if the doctor has ignored letters of advice or warnings issued by previous CCs or if they had similar convictions to determine whether there was a pattern of committing certain offences.

(d) **Amendments to MRA/ MRR:**

Section 49(1)(g) MRA will have to be redrafted as the CC currently can only initiate this order if it has determined that no formal inquiry by a DT/HC is necessary. However, if the doctor disagrees or subsequently refuses to comply with the order, there is currently no recourse for the CC to refer the matter to a DT/HC. The original intention for this section was likely to be 'in lieu' of a formal inquiry.

Chapter 4: Review of Processes under Current Medical Registration Act / Medical Registration Regulations

4.8 APPEALS AGAINST ORDER BY COMPLAINTS COMMITTEES

4.8.1 Relevant Sections of the MRA

4.8.1.1 Appeals against order by Complaints Committees

Section 49(9) - A Complaints Committee shall notify the registered medical practitioner concerned and the person who made the complaint or referred the information under section 39(1) of its decision under subsection (1) or (2) and, if it makes an order under subsection (1), the reason for making the order.

(10) - A registered medical practitioner who is aggrieved by any order of a Complaints Committee under subsection (1) may, within 30 days after being notified of the determination of the Complaints Committee, appeal to the Minister whose decision shall be final.

(11) - If the person who has made the complaint or referred any information to the Medical Council is dissatisfied with any order of a Complaints Committee under subsection (1), he may, within 30 days after being notified of the determination of the Complaints Committee, appeal to the Minister whose decision shall be final.

(12) - If the Medical Council is dissatisfied with any order of a Complaints Committee under subsection (1) in a case where a complaint is made or any matter or information is referred to the chairman of the Complaints Panel under section 37A(4), 39(3)(a) or 44(6)(b)(ii), the Medical Council may, within 30 days after being notified of the determination of the Complaints Committee, appeal to the Minister whose decision shall be final.

(13) - The Minister may, after considering the appeal, make —

(a) an order affirming the determination of a Complaints Committee;

(b) an order directing a Complaints Committee to immediately appoint one or more investigators for the purposes of carrying out an investigation under section 42(4)(c);

(c) an order directing the Medical Council to —

(i) immediately appoint a Disciplinary Tribunal to hear and investigate the complaint or matter; or

(ii) order that an inquiry into such matter be held by a Health Committee; or

(d) such other order as he thinks fit.

(14) Every Complaints Committee shall immediately report to the Medical Council its findings and the order or orders made.

4.8.2 Current Processes

4.8.2.1 After the CC notifies the complainant and doctor on the outcome of its consideration of the complaint, both parties can submit appeals to the Minister (within 30 days after being notified of the CC's determination), if they are aggrieved with the CC's decision.

4.8.2.2 When MOH receives the appeals, the documents which the CC considered will be obtained from SMC and Minister will be advised by staff from MOH including its Legal Office. MOH will seek an expert's view on the anonymised casenotes and a second expert's opinion may be sought if necessary. The Minister can affirm the CC's order, refer the case to a Health Committee or DT or direct the CC to appoint investigators to conduct an investigation or make any other

orders etc. MOH will inform the complainant and SMC of the outcome of the appeal and the SMC will inform: (a) the CC only if Minister overturns the CC's decision or directs the CC to conduct an investigation; and (b) the doctor that Minister has referred the case (upon appeal by the complainant) for a formal disciplinary inquiry.

4.8.2.3 SMC has received an increase in the number of appeals with regard to the CCs' decisions in recent years.

4.8.3 Feedback Received

4.8.3.1 In summary, the Review Committee noted the following feedback which it received during the consultation exercise:

(a) There have been several cases whereby complainants have appealed to the Minister for Health for cases to be reopened when the CC or DT has ruled in the doctor's favour. This process is currently opaque. A query was raised on how Minister considers appeals and makes a subsequent decision. In addition, the number of successful appeals to the Minister has significantly increased in recent years. If this is true, then this actually (unintentionally) undermines the role of the CC[(3)].

(b) Written grounds of decision must be provided so as to assist both the CC and the DT to perform their functions effectively. This will also benefit prosecution and defence counsel when the case is referred to a DC/DT by Minister upon appeal[(1)].

(c) There is some uncertainty on the role of the CC and/or the SMC when an appeal (against the CC's decision *not* to appoint a DT) is made to the Minister and the Minister determines that a DT *should be* appointed. At present, the MRA allows the Minister to make an order directing the "Medical Council" (and not the CC) to appoint a DT. A question then arises as to who should determine the form/contents of the charge(s) against the medical practitioner when an Inquiry is ordered by the Minister, as it is not entirely clear whether the CC or the SMC should still formulate the charges as the CC is *functus officio*. Further, the CC or the SMC may be placed in a position of having to formulate charges for an inquiry which they did not think was necessary in the first place. It would therefore be helpful if the relevant statutory provisions can be amended so that it is made clear who should determine the contents of charges against the medical practitioner where the Disciplinary Inquiry is ordered by the Minister[(4)].

(d) It appears that Minister is not required under the MRA to provide reasons for his decision to allow the appeal, or to state the basis on which he is of the view that the CC had erred[(5)]. In contrast to the provisions of the MRA for appeal, the process prescribed by the General Medical Council in the United Kingdom provides for much greater transparency and fairness[(36)].

(e) If no substantial reasons are provided for allowing the appeal, the SMC may face considerable difficulty in drafting the charges against the doctor as the CC was in the first place not convinced that the complaint was sufficiently serious as to warrant a formal inquiry. It may also put the SMC in an invidious position for the same reason. If the Minister provides written grounds of his decision to allow an appeal, or at least some reasons for

allowing the appeal, this would facilitate the SMC's framing of the charge. Further, if the Minister has received documents or written submissions from the party appealing, or if the Minister has exercised his powers to call for documents and/or patient records for the purpose of the appeal before him, these should be provided to the SMC to aid the DT in its preparation of the charge and to ensure that all relevant material is before it[5].

(f) From the perspective of the medical practitioner under investigation, it is also important that the Minister gives reasons for his decision to allow the appeal and to escalate the complaint to a hearing before a DT. This is especially since the CC reviewing the complaint in the first instant had already decided that the complaint was not serious enough as to warrant a formal inquiry by a DT. As a matter of fairness, the doctor under investigation should be entitled to know the reasons for Minister's overruling of the CC's decision and the revival of the complaint against him[5].

(g) The provision in the MRA for appeals to the Minister must be re-looked at and preferably, removed. In comparison to the MRA and its regulations that expressly govern every aspect of the workings of the CC and the DT, the handling of appeals to the Minister is opaque and lacks accountability[12].

(h) When appeals against CC decisions go up to Minister, there is an internal review of the decisions taken, but the CC is not asked to clarify its thinking or justify its decisions. It was suggested whether the CC Chairmen could be given the opportunity to explain their decisions or answer specific questions that Minister (or his staff) may raise to help Minister come to better decisions[13].

(i) The complainant (patient, patient's family or MOH) should not be allowed to bypass this process through complaints to the Minister of Health or the MP. The Minister and MP should respect SMC processes and refer complaints to them back to the Complaints Committee rather than directly refer the cases to the DT. Every case undergoing review by the DT is time consuming, emotionally stressful and financially expensive to both the doctors involved and the SMC. If the majority of the members of the public knows that directly writing to the Minister or their MP will send their cases directly to DC, there will be more and more such cases[30].

4.8.4 Deliberation by the Review Committee

4.8.4.1 The Committee was informed that MOH has never appealed against the various CCs' decisions where the complaint originates from MOH. All appeals received to date have been either from the doctors or complainants. In addition, the complaints which were previously submitted by MOH were made by the Health Regulatory Division, usually following their review of a clinical practice.

4.8.4.2 The Committee debated whether it would be more appropriate for Minister to review the basis of the CC's own decision rather than to appoint another expert and whether the Minister should give his reasons if his decision either: (a) differs from the CC's original outcome; and (b) where a case was referred to a DT. However, the Committee felt that it is inappropriate to legislate what Minister should provide in terms of the reasons for his decision in appeals received against the CCs' decisions. The Committee was informed that MOH does provide substantial reasons to inform the complainant, SMC and the

doctor of the basis for the Minister's decision and that Counsel for SMC works on the proposed charges. However, the Committee still felt that it is not transparent if MOH does not reveal the name of the expert(s) from whom they sought an opinion. It was later clarified that the appeal case is anonymised when MOH approaches the expert(s) for an opinion and the expert is also informed that his opinion is only for MOH's use. MOH cannot reveal the name of the expert as the expert does not know the identity of the doctor, patient or complainant.

4.8.4.3 Although the Committee noted that some restrictions should be imposed to encourage complainants to consider carefully the issues before submitting an official appeal (for example, to pay a fee), the Committee was also hesitant in proposing that complainants and doctors should appeal to the Court directly as this would impose cost implications on the complainant.

4.8.4.4 The Committee noted that the current MRA does not provide the CC Chairmen or any member of the CC with direct access to the Minister once an appeal is lodged by either the doctor or complainant.

4.8.4.5 With regard to who should approve the draft NOI for appeal of CC cases referred to the DT by Minister, it was clarified that the draft NOI for such case referrals should be reviewed and approved by the SMC and not by the CC as it is the Minister who directs the SMC to appoint a DC/DT. The MRR will need to be amended accordingly to make this clear.

4.8.4.6 The Committee noted that Section 49(13)(b) MRA [i.e. which empowers the Minister after considering the appeal, to make "an order directing a CC to immediately appoint one or more investigators for the purposes of carrying out an investigation under Section 42(4)(c) MRA"] appears to be inconsistent with the opening wording of Section 49(1) MRA which states "After deliberation of the investigation report and any recommendation of the investigator… and upon due inquiry into the complaint…". The Committee was of the view that, if such an order is made, the order should be directed to the same CC against whose decision the appeal is made to the Minister.

4.8.4.7 Lastly, the Committee received feedback from one of its own advisors that the current process concerning appeals by: (a) doctors and complainants (including SMC) against the decisions of the CCs; and (b) complainants against the decisions of the DTs should be changed as it is not desirable to have appeals directed to the Minister as he then has to set up an ad-hoc advisory group to advise him on what to do with the appeal. The Committee discussed and proposed that an independent Appeals Committee (drawn from an appeals panel consisting of doctors and lawyers) considers each appeal. The MRA could therefore be amended such that appeals against the CC's decision are referred to this independent Appeals Committee rather than to the Minister. The Appeals Panel and the Appeals Committee (to review each appeal) could be appointed by Minister.

4.8.5 Recommendations by the Review Committee

4.8.5.1 In summary, the Committee makes the following recommendations:

(a) **Current Processes**:

No change - The Minister provides substantial reasons to the complainant, SMC and the doctor of the basis for his decision so that Counsel for SMC can work on the proposed charges in the draft NOI. Appeals for CC's decisions will still be reviewed by the Minister for Health and a fee for submitting an appeal will not be imposed on both the doctor and complainant. It is neither appropriate nor necessary to legislate what Minister needs to provide in support of his decisions as long Minister provides substantial reasons to all parties

No change – Cost implications will not be imposed on either the doctor or the complainant for lodging an appeal against the CC's decision.

To note only – The Committee agreed that, if Minister directs for Section 49(13)(b) MRA after considering an appeal, the order would be directed to the same CC against whose decision the appeal is made to the Minister.

(b) **Changes to Process Issues**:

(NA)

(c) **Changes to Policy Issues**:

(NA)

(d) **Amendments to MRA / MRR**:

Amendments to the MRR to make it clear that the Council will approve the charges for the NOI for: (i) appeal cases referred to the DT by Minister or the Appeals Committee (subject to approval of proposal to exclude Minister from the appeals process); and (ii) when the complaints originate from SMC pursuant to Section 39(4) MRA.

The MRA could be amended such that appeals against the CC's decision are referred to an independent Appeals Committee rather than to the Minister. The Appeals Panel (comprising senior doctors and lawyers) and the Appeals Committee (to review each appeal) could be appointed by Minister.

Chapter 4: Review of Processes under Current Medical Registration Act / Medical Registration Regulations

4.9 DRAFTING OF THE NOTICE OF INQUIRY (NOI) AND FRAMING OF CHARGES

4.9.1 Relevant Regulations of the MRR

4.9.1.1 Notice of Inquiry

Regulations 27(1) - Where a Disciplinary Tribunal has been appointed under section 50(1) of the Act, the Council's solicitor shall send a notice as set out in Form C in the Third Schedule to the practitioner.

(2) The notice referred to in paragraph (1) shall —

(a) specify, in the form of a charge or charges determined by the Complaints Committee or (where the matter is referred to the Disciplinary Tribunal under section 49(2)(b) of the Act) the Medical Council, the matters which the Disciplinary Tribunal will inquire into;

(b) state the date, time and place at which the inquiry will be held;

(c) be sent —

(i) by delivering it to the practitioner, an adult member of his family, or an employee of his family or of his medical practice, at the practitioner's last known address; or

(ii) by registered post addressed to the practitioner at his last known address; and

(d) be accompanied by a copy of the report of any expert witness whom the Council's solicitor intends to call at the inquiry.

(3) An inquiry shall not be held earlier than 28 days after the date of the notice of inquiry except with the agreement of the practitioner.

4.9.1.2 Disciplinary Tribunal may alter charge or frame new charge

Regulations 35(1) - A Disciplinary Tribunal may alter a charge or frame a new charge, whether in substitution for or in addition to an existing charge, at any time before it makes a finding under section 53 of the Act.

(2) An altered charge or a new charge must be read and explained to the practitioner.

(3) If a charge is altered or a new charge is framed under paragraph (1), the Disciplinary Tribunal must immediately call on the practitioner to enter his plea and to state whether he is ready for the inquiry to proceed on the altered or new charge.

(4) If the practitioner declares that he is not ready for the inquiry to proceed on the altered or new charge, the Disciplinary Tribunal must duly consider any reason he gives.

(5) Notwithstanding paragraph (4), if the Disciplinary Tribunal thinks that proceeding immediately with the inquiry is unlikely to prejudice the practitioner's defence or the conduct of the case by the Council's solicitor, then the Disciplinary Tribunal may proceed with the inquiry.

(6) If, after considering any reason given by the practitioner under paragraph (4), the Disciplinary Tribunal thinks that proceeding immediately with the inquiry is likely to prejudice the practitioner's defence or the conduct of the case by the Council's solicitor, then the Disciplinary Tribunal may direct a new inquiry or adjourn the inquiry for as long as it thinks necessary.

(7) If a charge is altered or a new charge is framed by the Disciplinary Tribunal after the start of an inquiry, the Council's solicitor and the practitioner must, on application to the Disciplinary Tribunal by either party, be allowed to recall or re-summon and examine any witness who may have been examined, with

respect to the altered or new charge only, unless the Disciplinary Tribunal thinks that the application is frivolous or vexatious, or is otherwise an abuse of process

4.9.2 Current Processes

4.9.2.1 Counsel for SMC will work with the CC on the draft NOI (taking into consideration the expert's report as well). In the past, Counsel for SMC usually serves the NOI to the respondent doctor at least 4-6 months prior to the hearing dates to allow the Respondent and his legal counsel (most doctors are represented by MPS lawyers although a few do not have legal representation) to prepare for the inquiry. The SMC is now serving each NOI with a date for a PIC hearing instead of the dates for the inquiry.

4.9.2.2 The time taken for SMC's solicitors to serve the NOI on the Respondent doctor may take a few months and this is attributed to:

(a) Difficulties in finding an expert or additional expert (as the medical community in Singapore is small and many doctors decline to act as experts citing conflict of interest); and
(b) Difficulties in finding common hearing dates between the Council's solicitors, the DC Chairman, members and legal assessor since the dates of inquiry have to be stated in the NOI.

4.9.2.3 The current MRR also allows the DC/DT to amend or frame new charge(s) where necessary and that the altered charge(s) or new charge(s) must be read and explained to the doctor at any time before the tribunal makes a finding.

4.9.3 Feedback Received

4.9.3.1 In summary, the Review Committee noted the following feedback which it received during the consultation exercise:

(a) There is a need for legal officers trained in criminal law to work with the CC in drawing up the charges in professional misconduct. Drawing up the charges is a legal exercise to suit the quasi-legal nature of SMC DT hearings. Litigation lawyers are not necessarily best experienced for this nature of work. In addition, SMC should be determining, with their legal officers, whether the ethical standards to be abided by are sufficiently clear for the charges of professional misconduct to be levelled against any practitioner[(1)].

(b) There is some uncertainty on the role of the CC and/or the SMC when an appeal (against the CC's decision not to appoint a DT) is made to the Minister and the Minister determines that a DT should be appointed. At present, the MRA allows the Minister to make an order directing the "Medical Council" (and not the CC) to appoint a DT. A question then arises as to who should determine the form/contents of the charge(s) against the medical practitioner. In the case of a formal inquiry ordered by the CC, reg. 27(2) of the MRR (2010 Ed) provides that the CC / SMC should specify the charges. However, when an Inquiry is ordered by the Minister, it is not entirely clear whether the CC or the SMC should still formulate the charges as the CC is functus officio. Further, the CC or the SMC may be placed in a position of having to formulate charges for an inquiry which they did not think was necessary in the first place. It would therefore be helpful if the

relevant statutory provisions can be amended so that it is made clear who should determine the contents of charges against the doctor when an inquiry is ordered by the Minister[4].

(c) In the event that an appeal is allowed by the Minister and no substantial reasons are provided for allowing the appeal, the SMC may face considerable difficulty in drafting the charges against the registered medical practitioner as the CC was in the first place not convinced that the complaint was sufficiently serious as to warrant a formal inquiry. It may also put the SMC in an invidious position for the same reason[5].

(d) In the scenario where the CC dismisses the complaint and the Minister on appeal orders a formal inquiry by the DC, the CC continues to be the approving body for the draft charges. The only exception where the draft charges are approved by the SMC is when the complaint is referred by the SMC directly to the DC under section 39(1)(3) of the old MRA, or to the DT under section 39(4) of the new MRA[7].

(e) CC has an obligation to ensure that charges framed against the Respondent are properly framed. This will entail the CC understanding that its decision to refer matters to full inquiry will result in a lengthy proceeding, and hence, charges must be carefully crafted since they will be the foundation of that proceeding. The CC must also ensure that all evidence relevant to the charges framed had been gathered by the IU before they reach a finding to refer the matter to the DC/DT and the charges are framed[8].

(f) Counsel for the SMC should not hesitate to apply to the DC/DT to amend the charges after having sight of the Respondent's documents or expert reports. If a charge can no longer stand in the light of new evidence or the Respondent's expert evidence, then it is incumbent on the counsel for the SMC to either apply to withdraw the charge or to amend the charge (if necessary to a lesser one) than to insist on pressing on and lengthening the proceedings. This is so that the proceedings need not continue on a charge which, if not amended, would eventually fail. However, the above approach can only work if the counsel for the SMC is given the opportunity to assess the quality of the Respondent's intended evidence by way of advance receipt of the expert's report or summary of the factual witnesses' evidence. This hinges on the importance of the provision of directions at the PIC for such documents to be made available[8].

(g) There should be standardisation of the phrasing of charges and statements of facts in cases of a similar nature. Charges should be clearly worded and specific to the breach alleged. This allows the DT to better establish the boundaries of its inquiry and confine the issues accordingly. A proper understanding of the charge will allow more effective disposal of matters[12]. Ambiguous, broad and catch-all wording such as "and/or" type of particulars which are ambiguous as to whether the prosecution is required to prove the particulars on a cumulative or alternative basis should be avoided[8][12].

(h) The formulation of the charges has been at issue in some cases that have been overturned by the Court of Appeal. Currently, the charges are formulated by SMC's appointed law firm. As laymen, CC members do not know any better and as long as the charges seem consistent with the CC's view of what the issue was, they would simply agree. Given the highly

technical legal challenges seen now, it would be good to have the NOI written by a law firm to be vetted by another, independent law firm or legal advisor or assessor, so that they are as legally tight as possible(13).

(i) It is not reasonable to amend charges because all the evidence would have already been procured by the investigator from the complainant, doctor and third parties (if necessary) and that the CC would have taken much time to deliberate and would have already obtained an expert's opinion(56).

4.9.4 Deliberation by the Review Committee

4.9.4.1 The Committee is encouraged to note that SMC has started the practice of requiring the Counsel for SMC to meet up with the CC Chairman/members (or clarify through email via the Secretariat) to understand the main issues in the complaint so as to frame the charges appropriately and accurately. This will bridge the medical / legal knowledge gap between the CC and SMC's solicitors. Once Counsel for SMC has met up with the CC, the Secretariat will also do its due diligence in sending regular reminders to the lawyers for updates on any additional expert evidence to be obtained (where applicable) and finalisation of the draft NOI to be served on the Respondent doctor.

4.9.4.2 The Committee agreed that only the appointed Counsel for SMC should frame the charges and it is unnecessary for the draft NOI to be vetted by another legal assessor or law firm as it would be subject to various interpretations and the different parties may also not reach any common understanding. In addition, the Committee noted SMC's update that SMC is working with the Legal Service Commission in seconding a Legal Service Officer (LSO) to SMC to help with in-house matters. Once processes are formalised, the LSO can work with the appointed Counsel for SMC and CC to frame the charges.

4.9.4.3 The Committee noted the misreporting by some reporters of the term 'legally embarrassing' with regard to the appeal by Dr Low Chai Ling.

4.9.4.4 Whilst the Committee agree that the charges must be clear and precise (and for standardisation in the phrasing of charges) and to avoid charges where particulars are framed conjunctively (i.e. and/or), the Committee recognised that, in many instances, the framing of precise charges is difficult to achieve.

4.9.4.5 With regard to who should approve the draft NOI for appeal of CC cases referred to the DT by Minister, the Committee noted that the draft NOI for such case referrals would be reviewed and approved by the SMC and not by the CC as it is the Minister who directs the SMC to appoint a DC/DT. However, the MRR will need to be amended to reflect this clearly.

4.9.4.6 Regulation 35 MRR gives wide discretion to the DC/DT to amend/frame new charge(s) before making a finding under Section 53 MRA. The Committee noted and agreed that it is not uncommon for the prosecution, defence or even the DC/DT before, or in the midst of, the hearing to amend or allow an amendment to the charge(s). The overriding consideration which the DC/DT has to bear in mind in considering an amendment is whether the amendment is likely to prejudice the doctor's defence or the conduct of the case by SMC's counsel. Hence, Regulation 35 prescribes various steps which the DT must observe and comply with in amending or allowing amendment to the charge(s). The Committee agreed that whether an amendment should or should not be

allowed also depends on the extent of the amendment, the time the amendment is proposed and the circumstances of the case.

4.9.5 Recommendations by the Review Committee

4.9.5.1 In summary, the Committee makes the following recommendations:

(a) **Current Processes**:

No change - SMC to continue its practice of requiring its solicitors to meet up with the CC Chairman/members to understand the main issues in the complaint so as to frame the charges appropriately and accurately.

No change – Regulation 35 MRR gives wide discretion to the DC/DT to amend/frame new charge(s).

(b) **Changes to Process Issues**:

Possible secondment of an LSO to help SMC with in-house matters, including the framing of charges in the NOI for DC/DT cases.

(c) **Changes to Policy Issues**:

(NA)

(d) **Amendments to MRA / MRR**:

To amend the MRR to allow the SMC to approve the draft NOI for: (i) cases referred to DT by the Minister and in future, the Appeals Committee (subject to approval of the proposal to exclude Minister from the appeals process); and (ii) when the complaints originate from SMC pursuant to Section 39(4) MRA.

Chapter 4: Review of Processes under Current Medical Registration Act / Medical Registration Regulations

4.10 DISCIPLINARY TRIBUNAL (DT) AND CONSTITUTION OF EACH DT

4.10.1 Relevant Sections of the MRR

4.10.1.1 Disciplinary Tribunal

Section 50(1) - The Medical Council may from time to time appoint one or more Disciplinary Tribunals, each comprising —

(a) a chairman, from a panel appointed by the Minister, who shall be —

(i) a registered medical practitioner of not less than 20 years' standing;

(ii) a person who has at any time held office as a Judge or Judicial Commissioner of the Supreme Court;

(iii) an advocate and solicitor of not less than 15 years' standing as an advocate and solicitor; or

(iv) an officer in the Singapore Legal Service who has in the aggregate not less than 15 years of full-time employment in the Singapore Legal Service;

(b) subject to paragraph (c)(ii), not less than 2 registered medical practitioners of not less than 10 years' standing from among members of the Complaints Panel; and

(c) where the chairman is a registered medical practitioner —

(i) one observer from among members of the Complaints Panel who is a lay person; or

(ii) a member who is a person referred to in paragraph (a)(ii), (iii) or (iv), in lieu of one of the registered medical practitioners referred to in paragraph (b),

to inquire into any matter in respect of which a Complaints Committee has under section 49(2)(b) ordered that a formal inquiry be held or into any matter referred to the Disciplinary Tribunal under section 39(4).

(2) A member of a Complaints Committee inquiring into any matter concerning a registered medical practitioner shall not be a member of a Disciplinary Tribunal inquiring into the same matter.

(3) The observer appointed under subsection (1)(c)(i) shall not vote on any question or matter to be decided by the Disciplinary Tribunal and need not be present at every meeting of the Disciplinary Tribunal.

(4) A Disciplinary Tribunal may be appointed in connection with one or more matters or for a fixed period of time as the Medical Council may think fit.

(5) The Medical Council may at any time revoke the appointment of any Disciplinary Tribunal or may remove any member of a Disciplinary Tribunal or fill any vacancy in a Disciplinary Tribunal.

(6) Without prejudice to the generality of subsection (5), where, after a Disciplinary Tribunal has commenced the hearing and investigation of any matter, any member of the Disciplinary Tribunal is unable through death, illness or any other cause to continue with the hearing and investigation of the matter, the Medical Council may fill the vacancy or appoint another Disciplinary Tribunal to continue the hearing and investigation of the matter.

(7) The Disciplinary Tribunal so reconstituted or appointed under subsection (6) may, with the consent of the Medical Council and the registered medical practitioner to whom the complaint relates, and having regard to the evidence given, the arguments adduced and any order made during the proceedings before the previous Disciplinary Tribunal, hear and investigate the matter afresh.

(8) The production of any written instrument purporting to be signed by the Medical Council and making an appointment, revocation or removal referred to

in this section shall be evidence that such appointment or revocation has been duly made.
(9) Every member of a Disciplinary Tribunal appointed under subsection (1) shall be paid such remuneration as the Medical Council may determine.
(10) No act done by or under the authority of a Disciplinary Tribunal shall be invalid in consequence of any defect that is subsequently discovered in the appointment or qualification of the members or any of them.
(11) Subject to subsection (3), all members of a Disciplinary Tribunal shall be personally present at any meeting thereof to constitute a quorum for the transaction of any business.
(12) Subject to subsection (3), all members of a Disciplinary Tribunal present at any meeting thereof shall vote on any question arising at the meeting and such question shall be determined by a majority of votes and, in the case of an equality of votes —
(a) where the chairman is a registered medical practitioner, the chairman shall have a casting vote; or
(b) where the chairman is not a registered medical practitioner, the question shall be determined by a majority of votes of the members of the Disciplinary Tribunal who are registered medical practitioners, and if there is no such majority of votes, the question shall be resolved in favour of the registered medical practitioner under inquiry.

4.10.2 Current Processes

4.10.2.1 The DC (for inquiry under the old MRA) consists of 2 Council members (where 1 will be appointed as the Chairman), 1 medical practitioner and a layperson. An LA will be appointed to the DC to assist on legal matters. For each DC/DT constitution, the Secretariat will first eliminate those who are conflicted (on the Complaints Panel) because of various reasons (such as working in same institutions etc) and assign the chairman and members on a rotational basis. The Secretariat will also approach the proposed Chairman and members to check for conflicts of interest. The proposed list of chairmen and members (including reserves) for the DC/DT will be circulated to the Council for its approval.

4.10.2.2 The Current MRA now provides for a retired judge or senior lawyer to be a member (or Chairman) of the DT. This is for complex cases and is expected to improve the quality and pace of the proceedings for such DT cases, particularly in managing legal technicalities and issues, while preserving the fundamental principle of self-regulation.

4.10.2.3 DTs will still be constituted with a majority of doctors so that questions of fact relating to medical issues are fully and justly considered. The legal person appointed to the chair will not have a casting vote in the event of a tie and the views of the majority of doctors on the DT will prevail. To a large extent, the Chairman's role (if he/she is a senior lawyer) will then be to manage the conduct of the hearing.

4.10.2.4 The Secretariat liaises with the legal firms and DC/DT Chairman and members to co-ordinate the pre-inquiry conference ("PIC") and disciplinary inquiry dates. DT members are given a fixed honorarium per day in appreciation for their time and contribution.

4.10.2.5 The current MRA allows for non-Council members to chair/sit in a DT and the different types of DT constitution are as follows (with regards to the appointment of LSOs on the panel of DT Chairmen, the ex-Chief Justice later directed that the LSOs will not chair DTs):

Composition of the DT

Chairman	Options	Members in the DT	
Doctor as Chairman	**A**	**4-Member Tribunal** Doctor as Chairman (from Panel of DT Chairmen appointed by Minister) + 2 Doctors (from Complaints Panel) + 1 Lay person (from Complaints Panel) Legal Assessor (LA) is required.	
	B	**3-Member Tribunal** Doctor as Chairman (from Panel of DT Chairmen appointed by Minister) + 1 Doctor (from Complaints Panel) + 1 Legal Service Officer (LSO) (from Panel of Legal Officers appointed by Minister) Not necessary to appoint an LA.	
Lawyer as Chairman	**C**	**C1**	**C2**
		3-Member Tribunal Lawyer as Chairman (From Panel of DT Chairmen appointed by Minister) + 2 Doctors (from Complaints Panel) Not necessary to appoint an LA.	**4-Member Tribunal** Lawyer as Chairman (From Panel of DT Chairmen appointed by Minister) + 3 Doctors (from Complaints Panel) Not necessary to appoint an LA.

4.10.2.6 SMC noted that the public, media and some members of the medical profession have expressed concerns that SMC is seen as both the 'prosecutor and judge' in its disciplinary processes. Since the beginning of 2013, SMC has decided that it will not appoint Council members as Chair or as a member of the DT to prevent any allegations of conflict of interest.

4.10.3 Feedback Received

4.10.3.1 In summary, the Review Committee noted the following feedback which it received during the consultation exercise:

(a) There must be proper training for doctors sitting in the SMC, the CCs, HCs, IOCs or the DTs. This training should minimally include:
- basic concepts of legal procedure and reasoning;
- understanding the lawyers of natural justice and rule of law;
- Ethical analysis and justification;
- Usage of past decisions to ensure consistency; and
- Writing Grounds of Decision.

This training will ensure that these members are able to exercise their own judgment instead of relying on the legally trained DT chairperson (if any) or on the LA, bearing in mind that the rationale is to enable a doctor to be judged by his peers. The rationale for having legally trained persons on DTs should be made clear. In a letter dated 13 July 2009 from the Director of Medical Services to the medical profession, it was stated that requiring a legally trained chairperson to chair a DT is to address high profile cases and avoid potential conflicts in the medical community. If there is a trained lawyer or retired judge sitting on the DT, there would not be any need for a legal assessor[(3)].

(b) Council needs to balance independence and impartiality with other considerations. Laypersons will not be in a position to understand, analyse and assess scientific and medical issues so readily. Council still needs to rely on doctors to form the tribunal. Self-regulation of medical professionals should be supported. Doctors should have the autonomy of adjudicating disciplinary cases involving their own professionals and self-regulation is intended primarily for the benefit of the public. Where necessary, self-regulation should be tweaked to ensure fair outcomes for the public. Disciplinary cases are increasingly presenting complex legal issues and doctors sitting on the DT might not have the skill to address such legal issues. The key then is in identifying the potential legal issues at a very early stage in the proceedings so that the appropriate tribunal panel members can be appointed[(6)].

(c) Members of the DC often encounter difficulties in relation to technical legal arguments/submissions made by Counsel for the Respondent doctor and generally require more time before a decision is finally made. In this regard, there is no obvious reason/basis for a need to draw a distinction between a Legally Trained Person and a doctor for the position of Chairman of a DT. The MRA should be amended such that it is mandatory for the Chairman of a DT to be a Legally Trained Person. Such an amendment is unlikely to affect the "judgment by peers" nature of a disciplinary inquiry given that the number of doctors sitting on a DT still exceeds that of the Legally Trained Person. The position of Chairman is one of great importance, and is a role best suited for a Legally Trained Person as his/her role often relates to matters of a legal (as opposed to medical) nature[(4)].

(d) The present system of judgment by peers has been in place for a long time. This has been the basis for disciplinary proceedings for all professional bodies in Singapore, and the same should apply for the medical profession. Fundamentally, this is the premise of self-regulation for professional bodies. Although the new MRA now provides the option of having a former Judge or an advocate and solicitor to be the chairman of the DT, the concept of judgment by peers is not eroded because the majority of the members of the DT are still doctors (see Section 50(12) MRA). Although the new MRA allows the option of having a legally-trained person or a doctor to be the chairman of the DT, having a legally trained person as chairman of the DT should be the norm rather than the exception. This will be beneficial in serving to expedite disciplinary proceedings which are often bogged down by legal arguments and a legally-trained chairman will therefore help to better control the proceedings and minimise challenges on appeal on account of errors of law. This legally-trained chairman will be able to better appreciate procedural and evidential rules, and accordingly, apply them robustly to ensure that the proceedings move along expeditiously[(7)].

(e) DC members are less willing to interrupt proceedings (e.g. to question counsel on the relevance of a question) than a judge in Court as most are doctors in an unfamiliar legal setting who are likely to be more disinclined to disrupt the proceedings, perhaps out of the concern that they may be intervening unnecessarily. The LA can only provide advice and hence technically, has no power to regulate the proceedings. It seems that there is a lacuna here. While the lacuna can be filled by a legally-trained Chairman, the ultimate question of the standards to be applied must be one set by the doctors on the tribunal, together with the input of the lay observer representing the public interest. The substance of the inquiry very often hinges on medical science and the practices of the medical profession. It will be good if during a break or recess during the hearing, members of the DC/DT seek legal advice on the conduct of the inquiry by counsel if they are of the view that the conduct is irrelevant or prejudicial[8].

(f) When the complaint goes before the DT, it would be objectionable to have a SMC member sitting in the DT. Before the DT, charges are framed against the doctor and the "prosecution" is conducted in the name of SMC. Mainly for this reason, a member of the SMC should not be appointed a member of the DT. SMC should consider appointing a lawyer to chair or to sit as a member of the DT, and see if such a composition would improve the progress of the proceedings before the DT. In particular, where it appears that a complaint would be seriously contested involving the participation of counsel, and in particular senior counsel, it is advisable to appoint an experienced lawyer to chair or be a member of the DT[11].

(g) Having a retired judge or senior lawyer to be a member (or Chairman) of the DT alongside senior doctors, as provided in the current MRA, should significantly improve the quality and pace of proceedings before the DTs, whilst preserving the fundamental principle of self-regulation. DT Chairpersons and members should receive structured training in evidence analysis and the rendering of grounds of decisions. Core competencies to be assessed include:
- Competence on issues of medical ethics, ethical reasoning and analysis;
- What constitutes professional conduct;
- Understanding the charge and the factual and legal issues in dispute;
- Objectively assessing the evidence and arguments, and
- Clarity in expressing findings and orders[12].

(h) It has been proposed that Section 50(1) MRA be amended to make it mandatory that at least one of the members of the DT is an experienced legal practitioner of the standing set out in Section 50(1)(a)(ii)-(iv) of the MRA. The legally trained member of the DT should be empowered to take an active role in intervening in the Inquiry process, in much the same way as in a court of law. This would enable better management of lawyers and avoid situations in which irrelevant lines of questioning are pursued, allowing for more efficient and expeditious proceedings. This should also render the proceedings more likely to withstand the scrutiny of the court in the event of an appeal[12].

(i) Peer judgement of doctors remains the bedrock of SMC's disciplinary processes. However, in recent times, professional judgments have been

overturned on technical legal issues. What is needed is for peers to construct their judgments to be consistent with the law and legal principles of what is deemed quasi-judicial processes. Doctors are very clear where colleagues have erred, but have been tripped up by legal issues. How this risk can be reduced must be one of the fundamental considerations on how to improve our disciplinary processes. Greater involvement by legally trained persons in the DTs is required(13).

(j) The chairman of the DT should always be a doctor. The Tribunal should certainly include a member of the legal fraternity and their advice from the legal point of view is certainly invaluable. However, the legal representative should not be holding the position of the chair. The chairman is responsible for guiding the inquiry on the practice of a medical practitioner and it takes a trained doctor to be able to see the nuances in medical practice and guide the tribunal appropriately. A chairman who is not a doctor may not be able to grasp the fine points in medical practice(16).

4.10.4 Deliberation by the Review Committee

4.10.4.1 The Committee noted that the legal profession has abolished the need for the layperson for disciplinary processes. The Committee is divided as they received feedback (from a legal assessor on the Committee) that the layperson does not have a vote in the inquiry and does not provide valuable input for the DC's considerations. A doctor on the Committee was of the view that the medical issues may be difficult for the layperson to understand. The doctors on the Committee also felt that, generally, the senior doctors in the DCs do not know how to stop both legal counsel from making unnecessary arguments/submissions or how to be strict in directing them and in most inquiries, the DCs had felt the absence of a lawyer as chair. The Committee agreed that having a lawyer in each DT will help to increase the speed and efficiency at the way the proceedings are currently run as doctors might not know how to control or ask lawyers to stop making irrelevant submissions. The Committee acknowledged that, under the current MRA, the DT does not require a layperson if there is a legal professional sitting on the DT.

4.10.4.2 The Committee agreed with Council's proposal that, in referring a case to the DT, the CC could also make recommendations to Council at the preliminary stage whether the case needs a lawyer to chair (i.e. whether there might be potential complex legal issues involved or when the case is rather contentious) but it would still be Council's decision on the constitution and appointment of each DT.

4.10.4.3 The Committee was encouraged to note that Council has decided not to appoint its own members to chair or participate as a member in DT inquiries. This will clearly help to separate the adjudication functions from SMC and will ensure that disciplinary matters are judged solely by an independent DT. It will also shield the Council from criticism about their judgments and the DT will have to take the responsibility for its decisions. The Committee also noted that senior doctors currently presiding over DCs/DTs will not be appointed to chair inquiries if they do not have the minimum level of experience of having heard 3 inquiries as an ordinary member.

4.10.4.4 The Committee considered all the feedback received and felt that it would be helpful for each DT to have a lawyer but not necessarily as a chair. It would be

useful for a lawyer to chair complex matters which involve complex points of law but it is not necessary to pre-determine the constitution of the DT as it should be based on the nature of each case.

4.10.4.5 Similar to the discussion at Chapter 4.1, the SMC will work with the AGC and/or the Institute of Legal Education to develop short and dedicated courses for the senior doctors (who are on the panel of DT chairmen appointed by Minister) on the rules and laws concerning disciplinary proceedings.

4.10.5 Recommendations by the Review Committee

4.10.5.1 In summary, the Committee makes the following recommendations:

(a) **Current Processes**:

No change - As the SMC has already decided not to appoint its Council members either to chair or participate as members of the DT, this practice should be continued so as to separate the adjudication functions from the Council itself.

No change - The Committee also agreed that it is not necessary to appoint an LA if a lawyer is appointed to the DT (i.e. in situations where the lawyer chairs or when an LSO is appointed to the DT).

(b) **Changes to Process Issues**:

SMC is to provide appropriate regular training sessions to the senior doctors (who are on the panel of DT chairmen appointed by Minister) with in-depth sessions on the inquiry procedures of disciplinary proceedings.

(c) **Changes to Policy Issues**:

It is not necessary for all DTs to be chaired by lawyers, although lawyers could be appointed to DTs either as the chairman or as a member, depending on the legal issues and complexity of the case.

(d) **Amendments to MRA / MRR**:

The MRA should be amended to state that a lawyer should be appointed to all DTs but not necessarily as a chair.

Chapter 4: Review of Processes under Current Medical Registration Act / Medical Registration Regulations

4.11 PRE-INQUIRY CONFERENCES (PICS)

4.11.1 Relevant Regulations of the MRR

4.11.1.1 Power to make orders and give directions for the just, expeditious and economical disposal of inquiries

Regulation 29(1) - A Disciplinary Tribunal may, at any time after it is appointed, of its own motion or on the application of any party, direct any party or the parties to attend a pre-inquiry conference before the chairman of the Disciplinary Tribunal, in order that the chairman may make such orders or give such directions of an administrative nature as he thinks fit for the just, expeditious and economical disposal of the inquiry.

(2) Where the chairman of the Disciplinary Tribunal is a registered medical practitioner, he may be assisted at the pre-inquiry conference by —

(a) a legal assessor; or

(b) any member of the Disciplinary Tribunal who is a person referred to in section 50(1)(a)(ii), (iii) or (iv) of the Act.

(3) The chairman of the Disciplinary Tribunal may adjourn a pre-inquiry conference from time to time, either generally or to a particular date, as may be appropriate.

(4) The chairman may, in exercising his powers under this regulation, make such recommendation as to costs, as he thinks fit, to the Disciplinary Tribunal, including costs occasioned by any non-compliance with a direction given or an order made by the chairman under this regulation.

4.11.2 Current Processes

4.11.2.1 Once the Respondent doctor appoints his own Defence Counsel, some DCs will direct for a pre-inquiry conference ("PIC") to be held with both parties (i.e. Counsel for SMC and Counsel for the Respondent) to settle the administrative issues (eg: submission of inquiry bundles and the exchange of inquiry bundles between parties, including experts' reports, agreed bundle of documents, number of experts) and schedule additional inquiry dates (eg: if parties need more hearing days due to the number of experts and time for examination-in-chief and cross-examination).

4.11.2.2 Although timelines are set by the DC Chairmen at PICs, on some occasions, it is noted that Defence Counsel does not commit to the agreed timelines regarding confirmation of inquiry dates and the timescales for service of their witness and expert evidence and the exchange of inquiry bundles.

4.11.2.3 Recently, SMC has decided that PICs should be put in place for all DCs/DTs as they have served to oblige the parties to comply with agreed timescales (as directed by the Chairman) as well as reduce and limit costs to both parties. To resolve difficulties in scheduling inquiry dates, Counsel for SMC will serve the NOI on the Respondent doctor with a PIC date (giving at least 30 days' notice) in lieu of the dates for the inquiry.

4.11.3 Feedback Received

4.11.3.1 In summary, the Review Committee noted the following feedback which it received during the consultation exercise:

(a) PICs have served to reduce or limit costs to the Council. At PICs, parties are given the opportunity to address the tribunal on any preliminary issues which may have arisen during the course of the proceedings. Directions given by the tribunal are made to avoid adjournments of the substantive hearing. This, in turn enables the Council to better manage the cases and fix dates for the substantive hearing bearing in mind the timelines as directed by the tribunal at PICs. The PIC process has to an extent served to save time and costs for Parties in the proceedings[6].

(b) There are many instances where PICs were unnecessarily protracted due to irrelevant and/or erroneous legal arguments/submissions made to the Chairmen of DCs (who are medical practitioners). This results in long periods of deliberation by the Chairmen who are not legally trained and often require advice from an LA (or a Legally Trained Person). Much time and costs will be saved if the Chairman is himself a Legally Trained Person and is able to quickly decide the relevance of counsel's submissions, thereby shortening the duration of a PIC. Moreover, having a Chairman who is a Legally Trained Person obviates the need for the Secretariat of the SMC to arrange a hearing date where both the Chairman and the legal assessor are available as the latter will no longer be required[4].

(c) To convene a PIC for every Inquiry and that this should take place no later than one (1) month from the date of the NOI. A PIC should always be fixed first instead of the actual hearing of the Inquiry. This PIC date should then be stated in the NOI. It was noted by one of the law firms on the Council's Panel that Counsel for the defendant medical practitioner often asks for a postponement of the Inquiry hearing date originally stated in the NOI as the defendant usually requires more time to prepare for his/her defence – this invariably results in an unnecessary wastage of resources in organising an Inquiry hearing only to have the same postponed. The date of the actual hearing of the Inquiry should only be fixed after the defendant medical practitioner has confirmed that he is fully prepared/ready for the Inquiry[4].

(d) In almost every contentious inquiry, the Defence raises objections to the charges either in the course of the inquiry or in closing submissions. This is not in line with Regulation 34(4) MRR 2010, which requires any objections to the charges on a point of law, to be raised upfront. Even if the preliminary objections are dealt with at the outset of the inquiry, this can still cause some delay in the proceedings as the number of days of inquiry is usually fixed, quite strictly taking into account the estimated length of time for evidence-taking only. It is thus recommended that all preliminary objections to charges be identified and addressed at a PIC instead of the inquiry itself. Under the MRR, preliminary objections have to be heard before the entire DC/DT. As practically all preliminary issues relate to legal issues, provision may be made for these issues to be argued before a smaller quorum comprising a chairman who is legally trained and a medical practitioner before the commencement of the DC/DT hearing. In the event that the chairman is not legally trained, the LA can be called in to assist[7].

(e) Section 30(3) MRR provides that parties should endeavour to submit an agreed statement of facts to the DC. Similarly, proceedings are frequently prolonged due to the prolixity of evidence-in-chiefs and cross-examinations. The DC is usually disinclined to intervene in the process as the relevance of the evidence may only become clearer as the inquiry progresses. One way to expedite proceedings is for the DC/DT to mandate at PICs that written statements be submitted for all witnesses prior to the start of the inquiry. Currently, the practice is that written statements is at the option of parties[7].

(f) It is difficult to find available dates for the inquiry which suit the DC and all parties. One way is to split the inquiry into tranches so that each tranche comprises of fewer days. This will avoid wastage of inquiry days if the inquiry is adjourned or the practitioner takes a certain course, which will only require one day of hearing[7].

(g) The identities of the members of the tribunal should be disclosed to the parties so that at the stage of the PIC, counsel can raise any issue of conflict of interests as preliminary points. This would ensure that special hearings (of shorter duration) can be fixed if necessary for the preliminary points and a longer tranche of hearing dates need not be vacated after the first or second day of hearing. A copy of the NOI should be made available to the Chairman and the LA as that would usually give an idea of the issues involved[8].

(h) The number of days taken for the hearing should be sufficient for the number of witnesses. In turn, this can be managed by (i) the judicious use of the PIC to ensure that the full inquiry will kick off for the gathering of evidence and not be derailed by preliminary objections or poor preparation; (ii) ensuring that there are no surprises in the number of witnesses, and the nature of their evidence; and (iii) counsel providing an accurate (as opposed to an optimistic but too short) estimate of the length of time needed for examination of witnesses[8].

(i) Directions can be provided by the DC/DT at the PICs on:
- the discovery of documents,
- preparation of bundles,
- exchange of lists of witnesses, and where possible a summary of the area of evidence that they will provide,
- exchange of expert reports,
- use of witness statements,
- advance notice of preliminary objection to the charges, and
- the provision of estimates of length of evidence.

It will be invaluable to erode the amount of hiding and sliding between the counsel for the SMC and the Respondent which would only serve to lengthen the proceedings[8].

(j) The PIC should be convened as soon as possible after the appointment of the DT. Where only administrative matters are involved, the DT Chairman alone may preside at the PIC as he is empowered to make and issue the directions. Where the chairman is a lawyer, he should be able to settle the directions required for the conduct of the hearing of the DT. Where, however, the chairman is a doctor it would be helpful if he is assisted by the member who is a lawyer[11].

(k) The MRR should provide for a mandatory PIC in all cases to be held within a specified time after an NOI setting of the charge(s) is served on the respondent doctor. The purpose of the conference would be to establish the readiness of the case for the Inquiry, set down timetables, and deal with matters of discovery and/ or exchange of evidence[12].

4.11.4 Deliberation by the Review Committee

4.11.4.1 The Committee agreed with SMC's approach to make PICs mandatory as directions given by the DC/DTs at these PICs help to avoid adjournment / postponements of hearings. This will help both parties (including the Council) manage their time / costs better [for example, whether parties could start inquiries at 10am (and end later at 9pm, where applicable) so that the proceedings may be concluded sooner]. This will enable SMC to manage other cases more efficiently and to fix dates for other hearings. The agreed schedule for submission of all inquiry bundles should be a cooperative venture to reduce costs and not to escalate costs or delay the proceedings further.

4.11.4.2 The Committee also agreed with SMC that the NOI should be served with a PIC date instead of the dates of the inquiry. The DC/DT Chairman and LA (where applicable) will then work with the doctor (and his Defence Counsel) and Counsel for SMC on the number of hearing days required, taking into consideration the number of experts and witnesses each side will be calling. It would be much more expedient to work out the inquiry dates in this manner as all parties would have presented their issues and made their requests before the DC/DT. SMC will be coming up with a standard template checklist for all PICs. The identities of the DC/DT members will also be disclosed to parties immediately after the service of the NOI and before the PIC.

4.11.5 Recommendations by the Review Committee

4.11.5.1 In summary, the Committee makes the following recommendations:

(a) **Current Processes**:

No change - SMC to continue to serve the NOI for DC/DT cases with a date for the PIC instead of dates for the inquiry. The DC/DT chairman needs to be stricter with both parties at such PICs to set up the inquiry schedule and timelines for submission of all inquiry documents / information for the whole proceeding. SMC can come up with a standard template / checklist for all PICs.

(b) **Changes to Process Issues**:

Identities of DC/DT chairman and members will be disclosed to parties immediately after the service of the NOI before each PIC.

(c) **Changes to Policy Issues**:

(NA)

(d) **Amendments to MRA / MRR**:

Form C of MRR to be amended such that all NOIs should be served with PIC dates (currently, it is optional, i.e. either DT or PIC dates).

Chapter 4: Review of Processes under Current Medical Registration Act / Medical Registration Regulations

4.12 PROCEEDINGS OF DISCIPLINARY TRIBUNALS

4.12.1 Relevant Sections/Regulations of the MRA / MRR

4.12.1.1 Proceedings of Disciplinary Tribunal

Section 51(1) - A Disciplinary Tribunal shall meet from time to time to inquire into any matter referred to it by the Medical Council and may regulate its own procedure.

(2) A member of a Disciplinary Tribunal shall, notwithstanding that he has ceased to be a member of the Complaints Panel or panel referred to in section 50(1)(a) on the expiry of his term of office, continue to be a member of the Disciplinary Tribunal until such time as the Disciplinary Tribunal has completed its work.

(3) The registered medical practitioner concerned may appear in person or be represented by counsel.

(4) A Disciplinary Tribunal shall not be bound to act in a formal manner and shall not be bound by the provisions of the Evidence Act (Cap. 97) or by any other law relating to evidence but may inform itself on any matter in such manner as it thinks fit.

(5) A Disciplinary Tribunal may, for the purposes of any proceedings before it, administer oaths and any party to the proceedings may take out a subpoena to testify or a subpoena to produce documents.

(6) The subpoenas referred to in subsection (5) shall be served and may be enforced as if they were subpoenas issued in connection with a civil action in the High Court.

(7) Any person giving evidence before a Disciplinary Tribunal shall be legally bound to tell the truth.

(8) Witnesses shall have the same privileges and immunities in relation to hearings before a Disciplinary Tribunal as if such hearings were proceedings in a court of law.

(9) A Disciplinary Tribunal shall carry out its work expeditiously and may apply to the Medical Council for an extension of time and for directions to be given to the Disciplinary Tribunal if the Disciplinary Tribunal fails to make its finding and order within 6 months from the date of its appointment.

(10) When an application for extension of time has been made under subsection (9), the Medical Council may grant an extension of time for such period as it thinks fit.

(11) In sections 172, 173, 174, 175, 177, 179, 182 and 228 of the Penal Code (Cap. 224), “public servant” shall be deemed to include a member of a Disciplinary Tribunal taking part in any investigation under this section, and in sections 193 and 228 of the Penal Code, “judicial proceeding” shall be deemed to include any such investigation.

4.12.1.2 Postponement or adjournment

Regulation 28(1) - Subject to section 51(9) and (10) of the Act, a Disciplinary Tribunal may, of its own motion or upon the application of any party, postpone the commencement of any inquiry or adjourn any proceedings at any time.

(2) An application for the postponement of the commencement of an inquiry shall be made in writing to the chairman of the Disciplinary Tribunal at least 21 days before the date fixed for the commencement of the inquiry, unless the Disciplinary Tribunal allows the application to be made in a shorter period

before the commencement of the inquiry, and shall be supported by good reasons.

4.12.1.3 Supply of documents

Regulation 30(1) - If the practitioner wishes to raise any defence at the inquiry, he or his counsel shall, at least 10 days before the date fixed for the commencement of the inquiry, send to the Council's solicitor the report of any expert witness whom the practitioner or his counsel intends to call at the inquiry.

(2) The Council's solicitor shall, as soon as practicable, send to the executive secretary of the Medical Council —

(a) a copy each of the notice referred to in regulation 27(1) and any report referred to in regulation 27(2)(d); and

(b) a copy of any report received from the practitioner or his counsel under paragraph (1).

(3) The Council's solicitor and the practitioner or his counsel shall, as far as possible, co-operate to prepare an agreed statement of facts, an agreed bundle of documents or exhibits to be used at the inquiry and their lists of witnesses to be called at the inquiry.

(4) The Council's solicitor shall, at least 5 days before the commencement of the inquiry or within such time as may be directed by the chairman of the Disciplinary Tribunal at a pre-inquiry conference, send the following, if available, to the executive secretary of the Medical Council and the practitioner or his counsel:

(a) the opening statements of the parties;

(b) the agreed statement of facts;

(c) the agreed bundle of documents or exhibits to be used at the inquiry;

(d) lists of witnesses whom the parties intend to call at the inquiry; and

(e) copies of any other documents which are to be used at the inquiry.

(5) The Council's solicitor may —

(a) request to receive from the practitioner or his counsel copies of any documents in the possession of the practitioner or his counsel which are relevant to the matter before the Disciplinary Tribunal; or

(b) give notice to the practitioner or his counsel to produce before the Disciplinary Tribunal any such documents.

4.12.1.4 Medical Council may consent to amendment, etc., of charges

Regulation 33(1) - The Medical Council shall consider any representations received from a practitioner or his counsel in respect of any charge framed against him and may, if the Medical Council considers it fair and expedient to do so, consent to —

(a) the subsequent amendment, withdrawal, substitution or amalgamation by the Disciplinary Tribunal of one or more charges against the practitioner; or

(b) the taking into consideration of one or more charges by the Disciplinary Tribunal for the purposes of exercising the powers of the Disciplinary Tribunal under section 53(2) of the Act.

(2) The Medical Council may appoint a committee to exercise the powers and functions of the Medical Council under paragraph (1).

(3) The number and terms of office of the members of a committee appointed under paragraph (2), and the number of those members necessary to form a quorum, shall be fixed by the Medical Council at the time of the appointment of the committee

4.12.1.5 Conduct of inquiry

Regulation 34(1) - At the inquiry, the case against the practitioner may be presented by the Council's solicitor.
(2) The practitioner may appear in person or be represented by counsel.
(3) Where neither the practitioner nor his counsel is present, the Disciplinary Tribunal may proceed with the inquiry if it is satisfied that regulation 27 has been complied with.
(4) The Disciplinary Tribunal shall adopt the following procedure for holding its inquiry, but may make such variations or modifications as it thinks fit in any particular case:
(a) the charge or charges shall first be read out to the practitioner;
(b) the practitioner or his counsel may object to any charge on a point of law, and if any such objection is upheld, no further proceedings shall be taken on the charge to which the objection relates;
(c) the Council's solicitor shall present the facts on which the complaint is based, and adduce evidence of the facts alleged in the charge or charges;
(d) the practitioner or his counsel may adduce evidence to substantiate his defence;
(e) both the Council's solicitor and the practitioner or his counsel may cross-examine witnesses of the other party after the evidence-in-chief has been completed, and each party may re-examine their witnesses after the cross-examination;
(f) at the close of his case, the practitioner or his counsel may address the Disciplinary Tribunal; and
(g) the Council's solicitor will make his closing address.
(5) Where at any point in the proceedings the Disciplinary Tribunal determines that the evidence brought forward is insufficient or there is no evidence to substantiate any charge or all of the charges, the Disciplinary Tribunal shall discontinue further proceedings on the charge or charges.
(6) If the Disciplinary Tribunal is satisfied that the practitioner or his counsel is hampering or attempting to hamper the progress of the inquiry, the chairman of the Disciplinary Tribunal shall administer a warning to the practitioner and, where appropriate, his counsel.
(7) If after such warning the Disciplinary Tribunal is satisfied that the warning is being disregarded, the Disciplinary Tribunal shall make a written note of this and shall proceed with and complete the inquiry in any manner which it thinks fit.
(8) The inquiry by the Disciplinary Tribunal shall be held in private.

4.12.1.6 Disciplinary Tribunal may alter charge or frame new charge

Regulation 35(1) - A Disciplinary Tribunal may alter a charge or frame a new charge, whether in substitution for or in addition to an existing charge, at any time before it makes a finding under section 53 of the Act.
(2) An altered charge or a new charge must be read and explained to the practitioner.
(3) If a charge is altered or a new charge is framed under paragraph (1), the Disciplinary Tribunal must immediately call on the practitioner to enter his plea and to state whether he is ready for the inquiry to proceed on the altered or new charge.
(4) If the practitioner declares that he is not ready for the inquiry to proceed on the altered or new charge, the Disciplinary Tribunal must duly consider any reason he gives.
(5) Notwithstanding paragraph (4), if the Disciplinary Tribunal thinks that proceeding immediately with the inquiry is unlikely to prejudice the practitioner's

defence or the conduct of the case by the Council's solicitor, then the Disciplinary Tribunal may proceed with the inquiry.
(6) If, after considering any reason given by the practitioner under paragraph (4), the Disciplinary Tribunal thinks that proceeding immediately with the inquiry is likely to prejudice the practitioner's defence or the conduct of the case by the Council's solicitor, then the Disciplinary Tribunal may direct a new inquiry or adjourn the inquiry for as long as it thinks necessary.
(7) If a charge is altered or a new charge is framed by the Disciplinary Tribunal after the start of an inquiry, the Council's solicitor and the practitioner must, on application to the Disciplinary Tribunal by either party, be allowed to recall or re-summon and examine any witness who may have been examined, with respect to the altered or new charge only, unless the Disciplinary Tribunal thinks that the application is frivolous or vexatious, or is otherwise an abuse of process.

4.12.1.7 Joining of similar disciplinary offences and inquiry for more than one disciplinary offence

Regulation 36(1) - When a practitioner is alleged to have committed 2 or more disciplinary offences, a single inquiry into any number of those disciplinary offences may be held if the disciplinary offences form or are a part of a series of disciplinary offences of the same or a similar character.
(2) If, in one series of acts or omissions so connected as to form the same transaction, 2 or more disciplinary offences are committed by the same practitioner, then a single inquiry into every such disciplinary offence may be held.

4.12.1.8 Inquiries against 2 or more practitioners

Regulation 37 - A joint inquiry or separate inquiries may be held against —
(a) 2 or more practitioners alleged to have committed the same disciplinary offence in the same transaction;
(b) 2 or more practitioners alleged to have committed different disciplinary offences in the same transaction;
(c) 2 or more practitioners alleged to have committed 2 or more disciplinary offences which form or are a part of a series of disciplinary offences of the same or a similar character;
(d) 2 or more practitioners alleged to have committed 2 or more disciplinary offences, if all of those offences arise from the same series of acts or omissions, whether or not they form the same transaction; or
(e) one or more practitioners alleged to have committed a disciplinary offence and one or more practitioners alleged to have abetted or attempted to commit that disciplinary offence.

4.12.2 Current Processes

4.12.2.1 Inquiries are usually held from 10am to 6pm/8pm (whole day) or from 2pm to 8pm (half day). More tranches may be scheduled if the proceedings cannot be completed within the agreed schedule of hearing dates. At the end of each inquiry, the DC/DT will exercise one or more of its powers under the above-mentioned provisions depending on whether or not the doctor is found guilty of professional misconduct.

4.12.2.2 The full effects of the changes to the MRA for the disciplinary processes will only be felt after some of the inquiries for the current cases have been

concluded by the DTs. At the time of the Committee's review, no case has yet been concluded by a DT.

4.12.2.3 The average time taken to conclude inquiries under the old MRA (2008 to 2012) are as follows:-

Description	Average Number of Months	
(A) Counsel appointed to NOI Served	**12**	
	Takes a certain course of action	Contests the charges
(B) NOI Served to 1st Inquiry	**5** (Inquiry concludes)	**8**
(C) 1st tranche until conclusion of Inquiry	(NA)	**10** (Inquiry concludes)
Total	**17 (1 yr 5 mths)**	**30 (2.5 yrs)**

For more complex cases, the hearing of the inquiry may last more than 2-3 tranches. For such cases, the difficulty in finding common dates causes further delays. In some instances, the gap between tranches may be more than 6 months.

4.12.2.4 Almost half of the delays in the conclusion of disciplinary inquiries could be attributed to requests for adjournments made by the Respondent doctor or his Counsel for the following reasons, for example: cannot find an expert, not enough time to prepare for the inquiry, Respondent doctor is sick, Respondent doctor does not want to upset his family as his children are having examinations etc.

4.12.2.5 Most DCs/DTs tend to allow the Respondent an "unlimited" number of experts or witnesses, dragging and prolonging the whole inquiry into a few tranches. Some experts may take up a full day of the hearing with time spent on examination-in-chief and cross examination from both parties.

4.12.3 Feedback Received

4.12.3.1 In summary, the Review Committee noted the following feedback which it received during the consultation exercise:

Commencement of Inquiry

(a) The interval between determination by the CC and commencement of the DT is too long. Proposed a 3-month period between the date of the CC's order to the submission of charges to the DT, and another maximum of 6 months to the start of the first hearing(3).

Precedents & Inquiry Documents

(b) Precedents and hearing documents should be made available for defence lawyers to be able to appropriately advise doctors who are facing charges(3).

(c) The MRR does not provide for the filing/submitting of any intermediate documents in the nature of legal pleadings (used in civil proceedings in the

Singapore Courts) between the service of the NOI and the actual hearing of the Inquiry. At present, the MRR only provides for the following optional documents for the purpose of an inquiry: (i) Agreed Bundle of Documents; (ii) Agreed Statement of Facts; (iii) Opening Statements; (iv) list of documents; and (v) other documents used at the hearing. The above practice is inefficient. Legal pleadings will greatly assist Counsel for SMC, Counsel for the defendant and the Tribunal in understanding the nature of the case and what the critical issues are for the Inquiry. This will certainly result in substantial savings in time and costs. By way of comparison, the Legal Profession (Disciplinary Tribunal) Rules (R2, Cap. 161) expressly provides for the filing of a Defence setting out a defendant lawyer's case. A similar procedure is found in the disciplinary processes for inter alia the following professionals:-

- Traditional Chinese Medicine Practitioners – see reg. 8 of the Traditional Chinese Medicine Practitioners (Investigation of Complaints) Regulations;
- Registered Dentists – see reg. 19(1)(a) of the Dental Registration Regulations(4).

(d) Voluminous documents can lead to a lengthy inquiry. Time is often spent by the parties and the tribunal looking for a specific page being referred to in the course of examination of witnesses. It will be useful for counsel to make use of the projectors in the hearing room to flash PDF versions of the bundles when making reference to documents. This has the advantage of focusing the attention of the members of the tribunal and the witness to the exact document and increasing the speed of the proceedings. This will require the documents to be scanned to PDF format and for parties to arrange for it to be projected during the hearing(8).

(e) SMC to draw guidance from the Rules of Court in meeting the objectives of due process and fairness, allowing for earlier exchange of documents and adequate time for case preparation. SMC should consider disclosure of all evidence and documents to the defence team, including those deemed favourable to the defence, in accordance with established discovery principles and in fairness to the respondent doctor. MRR should provide for a mandatory PIC in all cases to be held within a specified time after a NOI setting of the charge(s) is served on the respondent doctor(12).

(f) Discovery of documents in SMC's possession, including documents deemed favourable to the Defence, as doctors need these documents to have a level playing field when preparing their defence(56).

(g) Apart from the Prosecution's expert report which has to be annexed to the NOI, Prosecution does not need to disclose any other documents which it may have until the Inquiry Bundle containing parties' documents is prepared closer to the inquiry date. Under the current MRR, the doctor may only get to see the relevant documents 5 days before the inquiry and may have insufficient time to prepare his case in light of these documents. The doctor may be further prejudiced if he has submitted his expert report and the Prosecution subsequently introduces fresh documents. Presently, the doctor has to submit his expert report at least 10 days before the inquiry. Fresh documents in the inquiry bundle can be submitted by the Prosecution to the DC/DT (and the Defence) as late as 5 days before the inquiry, which the doctor's expert may not have seen and which could affect the doctor's expert's opinion(56).

Inquiry by DC/DT

(h) In the interest of justice to the two parties, legal counsels and witnesses, the DT should commence at 08.00hrs when everyone including the members of the DT are alert and attentive and end at 18.00 hrs with reasonable breaks in-between. The members of the DT should have the courtesy of laying aside their routine daily commitments because the career and reputation of the Defendant doctor is at stake. It seems unfair to the Defendant doctor that the DT is not bound by the Rules of Evidence, and is permitted to accept hearsay evidence or reject the findings of other Enquiry Committee examining the same issues in the case[51].

(i) The DT should be empowered to raise questions to enable greater understanding of the case, which SMC's lawyers have to prove beyond reasonable doubt. A practitioner prosecuted in DT proceedings is only required to respond to the charge[3].

(j) At the outset of the inquiry, parties should be asked to frame their issues if they are unclear from the Opening Statements. Under the current practice, the defence has the option of not filing an opening statement. During the course of the inquiry, if it appears that one party is going outside the scope of these issues, the LA on behalf of the DC, should seek clarifications as to the relevance of the particular point to the issues already identified. This helps to expedite the proceedings and ensures that parties do not waste time on irrelevant matters. It also protects the DC if it is later alleged that the DC went beyond the issues/charges. Following from this, at the completion of the adduction of evidence, the LA should, on behalf of the DC, highlight any additional issues or concerns for parties to address in closing submissions, so that no confusion is caused to persons who are not legally trained. The consequence of not addressing all the crucial issues at the inquiry is that new grounds will inevitably be raised at the appeal stage. Whilst we accept that the Court of Three Judges are not precluded from inquiring into other relevant issues at the appellate stage, this may result in the Court of Three Judges making findings on issues which were never part of the inquiry, and accordingly, never considered by the DC. For example, in the case of Dr Low Chai Ling, the Court of Appeal was critical of the manner in which the charges were drafted even though no such objections to the charges were raised at the inquiry or appeal[7].

(k) A much better approach would be for an "open cards" system where the SMC's case is laid out (whether by way of charges or a statement of its case for the inquiry), and similarly the Respondent must set out his position and case from the onset. The openness will enable both sides and their counsel to gauge the merits and weaknesses of their cases early, which may well lead to decisions to plead guilty, to withdraw/amend charges or portions thereof, and to only have the inquiry proceed on real issues in dispute. This can only be achieved by a substantial amendment of the existing legislation to compel the Respondent to respond formally to the NOI. For fairness, the Respondent ought to be allowed the right to apply to the DC/DT for amendment of its response to the NOI. The need for the Respondent to put his response early in the game would also mean that the documents and evidence would have to be prepared early, which would facilitate a more expedient hearing. This in turn will address any criticism by a Respondent or complainant of the present delay in conducting inquiries, which can take a few years[8].

(l) The fact that the SMC disciplinary proceedings are akin to criminal proceedings means that:-

- Counsel would very often rely on judicial decisions on criminal procedure. This is not ideal since even for lawyers and the Courts, the law is not entirely settled and there are numerous issues on criminal cases that ended up on appeal and in reported judicial decisions. Medical practitioners in an inquiry into the conduct of one of their peers ought not to be held to this same standard adopted in the criminal courts.
- Counsel for the Respondent often rely on the criminal nature of the proceedings to adopt a "closed cards" system of defence, where the Respondent's case gradually unfold during the cross-examination of the SMC's witnesses and is fully expanded upon during the Respondent's evidence. This not ideal because it is not expedient and the members of the tribunal are in part left guessing as to the position of the Respondent.
- Respondents frequently refuse to volunteer witness statements because they want to keep their cases fluid and flexible, or perhaps to invoke their right of silence.

The way to move away from the above would entail a revamp of the present procedure set out in the Regulations, and provide for procedural directions for:

- the setting out of cases by both the SMC and the Respondent early in the proceedings,
- the disclosure of documents and expert reports at an early stage. Preparation of the expert reports early would compel both parties to be diligent in the procuring of evidence and witnesses, and not stall the proceedings,
- the provision of witness statements to shorten the hearing (examination of witnesses), and
- more realistic (and longer) deadlines for other documents like Opening Statements and Agreed Statement of Facts where such documents could be made available to the tribunal for the members to digest[8].

<u>Delays</u>

(m) Delays were due to procedural issues such as whether to have a consolidated or joint inquiry where a complaint involves 2 or more respondent doctors forming a group practice. In some cases, difficulties in finding suitable experts who were willing to accept and did not have any conflict of interest in accepting the engagement resulted in delays. In other cases, delays were caused by requests made with a short notice by respondent doctors for adjournments of the hearing. When combined with the lack of availability of hearing facility and the tribunal panel members, this served to further prolong the conclusion of the hearing[6].

(n) In cases where the respondent doctors decide to claim trial to contest the charges, one possible procedure which may reduce the amount of time spent n hearing would be to hold Expert Witness Conferencing as an alternative to the usual method of cross-examining expert witnesses. This procedure, which has been adopted in the civil courts in other jurisdictions, entails both the expert witnesses of the Prosecution and Defence coming

together in a PIC to discuss and answer a set of common questions / issues which both sides have narrowed down or which the tribunal has specified[6].

(o) Some of the main difficulties encountered were in fixing the hearing dates for the inquiry as well as when SMC was required to consider whether it was permitted to bring an additional charge against the medical practitioner after the DC was appointed and new evidence/matters (arising out of the original complaint) were brought to the SMC's attention. The difficulty faced was in part, due to the lack of clear statutory provisions governing the prosecutorial discretion available to Counsel for the SMC and whether the DC has the jurisdiction to entertain applications by the SMC for such matters. In this regard, this lacuna in the law could be addressed by amending the current Regulation 35(1) of the MRA to expressly provide that the DT has the jurisdiction to hear applications by the SMC for the alteration and/or addition of charges against the defendant medical practitioner provided that the defendant is given an opportunity to respond to the altered and/or additional charge[4].

(p) Delays to the proceedings are also caused by the manner in which the Defence conducts its case, for example:
- Failure by Defence to comply with timelines, including a failure to submit bundles of documents and expert reports by deadlines given at PICs.
- Defence producing wrong documents. As a result, another tranche of hearing had to be fixed in order for the doctor to present what he considered to be the correct document to the DC, and to re-call a factual witness to give evidence in relation to the same.
- Interlocutory applications taken out in court and as a result, there was delay as inquiry dates had already been vacated and re-fixed to several months later. Interlocutory applications may sometimes be employed as a strategic move by the Defence to delay and prolong the inquiry, because of time, memories of witnesses will fade, and documents and witnesses become much more difficult to locate. As such, the MRA should have provisions to deal with and prevent any possibility of abuse[7].

(q) The main causes for the delay are (i) the DC was very indulgent to the counsel and too much liberty was allowed to counsel for the respondent to question the witnesses at great length unnecessarily, and (ii) difficulty in fixing or re-fixing dates for the hearing or continuation for the hearing suitable to all the parties. In one case, the dates for the hearing before the DC were fixed with the agreement of counsel, and some 2 months before the hearing, both counsel for the SMC and counsel for the respondent wrote to the DT and sought an adjournment. Once a date for the hearing before the DT has been fixed, the DT should warn both counsel involved that it would not allow any adjournment of the hearing, save in exceptional circumstances[11].

<u>Use of Witness Statements or Affidavits of Evidence</u>

(r) Witness statements or Affidavits of Evidence ("AEICs") could be used in cases where the respondent doctors decide to claim trial to contest the charges. The use of AEICs will allow witnesses to present documentary evidence. This can serve to reduce the number of hearing days needed for witnesses to present their evidence on the witness stand[6].

(s) The use of witness statements can be a powerful aspect in an inquiry. It makes sure that both sides are aware of the evidence that they are faced with, and hence will be better prepared for the hearing. The permission of the DC/DT can be sought to supplement the witness statements with corrections or additional information if necessary. The downside is that certain witnesses may not want to furnish a witness statement. For such witnesses dispensation may have to be sought from the DC/DT with good grounds furnished[8].

(t) The MRR should be amended to allow evidence in chief of witnesses to be given by way of affidavits. This is the position with reference to proceedings in Courts and proceedings in arbitrations, and is also the position with regard to proceedings before the DT under the Legal Profession Act. This would shorten the process of the hearing before the DT[11].

Rules of evidence and standard of proof

(u) Section 51(4) MRA provides that a DT shall not be bound to act in a formal manner and shall not be bound by the provisions of the Evidence Act (Cap. 97) or by any other law relating to evidence but may inform itself on any matter in such manner as it thinks fit. The Legal Profession Act (in contrast) provides for the application of the Evidence Act to disciplinary proceedings involving lawyers. An amendment for the application of the Evidence Act to DT proceedings should be considered. In Low Chai Ling's case, the High Court observed that as the DC is quasi-criminal in nature, the DT should adopt procedures and practices which ordinarily prevail in civil trials. Consideration should be given for the rules of evidence which apply to criminal proceedings (intended to protect criminals from wrongful conviction) to govern DT proceedings[12].

Identification of DT Chairman and Members

(v) Early identification of the membership of the DT is useful in determining upfront whether any DT member is potentially in conflict of interest. Presently, DT composition is known only shortly before the DT Inquiry, and a challenge is mounted on the first day of the hearing by which time, time and resources have already been committed on the basis that the hearing will proceed. Any successful challenge or voluntary recusal could delay the proceedings and waste the time and costs involved in the lead up to the proceedings[12].

4.12.4 Deliberation by the Review Committee

Delays

4.12.4.1 The Committee agreed with the Secretariat's following recommendations:

- Both parties (i.e. Counsel for SMC and the Respondent) should work closely and improve their communications. Where a doctor decides to take a certain course of action and plea bargains on the number of charges, this should be submitted to SMC's Counsel earlier so that representations may be decided quickly and any hearing dates (originally reserved) released from all the calendars of the DC/DT members, experts and witnesses' schedules.

- To provide the Respondent or his Counsel adequate time in considering the course of action, the NOI, as highlighted by SMC, will be served on the doctor (or his Counsel) with a PIC date for parties to meet the DC/DT to fix the full inquiry hearing dates.

Use of Witness Statements or Affidavits of Evidence-in-Chief ("AEICs")

4.12.4.2 Where the Respondent doctors decide to contest the charges, the Committee agreed that the use of AEICs will allow witnesses to present evidence by way of written statements backed by supporting documentary evidence. Timelines can be given by the DC/DTs at PICs for the filing, service and exchange of these AEICs and replies to AEICs, where applicable, prior to the hearing. This will help to reduce the number of hearing days needed for witnesses to present their evidence on the witness stand.

Whether disciplinary inquiries should be held in camera

4.12.4.3 Currently, SMC's disciplinary inquiries are held in camera. The inquiries held by GMC and some overseas medical jurisdictions are open to the public. The Committee debated on this issue with the following comments:

- If the doctor is not convicted by the DC/DT at the end of the inquiry, it would be unfair to put the doctor up for public scrutiny (if inquiries become open hearings).
- Inquiries should continue to be held in camera (as they are hearings of a doctor's professional misconduct, being professional in nature) and the CC and DC/DT procedures should continue to remain confidential.
- The media do tend to sensationalise news should the public be privy to the proceedings. However, certain interested parties could be allowed to attend the DC/DT inquiry, for example, the complainant or the complainant's family, at the discretion of each DC/DT. The Committee also noted the complainants do know and are informed by SMC's counsel when the inquiry will be held, whether they have to give evidence and will also be updated of the DC/DT's decision at the end of the inquiry.
- Hearings of the appeal against the DC/DT's decision before the High Court are held in public.

General

4.12.4.4 Having read the feedback on the disciplinary processes leading up to and including the inquiry itself, the Committee felt that SMC, Counsel for SMC and MPS panel of lawyers should have more consultations and work closely together to improve on the speed, processes and efficiency of disciplinary inquiries.

4.12.4.5 The Committee agreed that notes/documents containing the CC's internal discussions, minutes and report to SMC should not be revealed and the documents to be disclosed should be restricted to information which would be used at the quasi-inquiry proceedings. However, documents deemed favourable to the defence should be disclosed, i.e. expert reports, witness evidence etc.

4.12.4.6 The Committee noted that the feedback regarding the Prosecution's submission of other inquiry bundles (see 4.12.3.1) was slightly incorrect as, in practice, before that time, there would have been discovery of documents

sought by the defence. At the PIC, the chairman would also have enquired with both parties, amongst other things, as to the following: (a) the number of witnesses each side would be calling; and (b) what documents are to be disclosed, following which, an order would have been made directing the prosecution to give discovery of all the documents which are relevant or upon which it intends to reply at the inquiry. The Committee felt that the provisions of Regulation 30 MRR are not unreasonable and that timelines could be set by the respective chairman at each PIC.

4.12.5 Recommendations by the Review Committee

4.12.5.1 In summary, the Committee makes the following recommendations:

(a) **Current Processes**:

No change - DC/DT inquiries should still be held in camera. Requests from the doctor and the complainant for their family member(s) to attend the inquiry should be left to the DC/DT's discretion and decision.

No change – Notes/documents containing CC's internal discussions, minutes and report to Council should not be included in the inquiry bundles. Documents deemed favourable to the defence will be disclosed (i.e. expert reports, witness evidence etc).

No change – Issues with regard to the submission and exchange of inquiry bundles are set out under Regulation 35 MRR. At the PIC, the Chairman will regulate the submission of such documents, including the number of witnesses and experts each party intends to call.

(b) **Changes to Process Issues**:

Having read the feedback on the disciplinary proceedings, SMC, Counsel for SMC, MPS panel of lawyers should have more consultations and work closely together to improve on the speed and efficiency on the disciplinary inquiries.

(c) **Changes to Policy Issues**:

With regard to inquiry processes, SMC will draw up an internal policy to guide the DC/DT at each PIC.

(d) **Amendments to MRA / MRR**:

(NA)

Chapter 4: Review of Processes under Current Medical Registration Act / Medical Registration Regulations

4.13 FINDINGS OF DISCIPLINARY TRIBUNALS

4.13.1 Relevant Sections of the MRA

4.13.1.1 Findings of Disciplinary Tribunal

Section 53(1) - Where a registered medical practitioner is found by a Disciplinary Tribunal

(a) to have been convicted in Singapore or elsewhere of any offence involving fraud or dishonesty;

(b) to have been convicted in Singapore or elsewhere of any offence implying a defect in character which makes him unfit for his profession;

(c) to have been guilty of such improper act or conduct which, in the opinion of the Disciplinary Tribunal, brings disrepute to his profession;

(d) to have been guilty of professional misconduct; or

(e) to have failed to provide professional services of the quality which is reasonable to expect of him,

the Disciplinary Tribunal may exercise one or more of the powers referred to in subsection (2).

(2) For the purposes of subsection (1), the Disciplinary Tribunal may —

(a) by order remove the name of the registered medical practitioner from the appropriate register;

(b) by order suspend the registration of the registered medical practitioner in the appropriate register for a period of not less than 3 months and not more than 3 years;

(c) where the registered medical practitioner is a fully registered medical practitioner in Part I of the Register of Medical Practitioners, by order remove his name from Part I of that Register and register him instead as a medical practitioner with conditional registration in Part II of that Register, and section 21(4) to (9) shall apply accordingly;

(d) where the registered medical practitioner is registered in any register other than Part I of the Register of Medical Practitioners, by order impose appropriate conditions or restrictions on his registration;

(e) by order impose on the registered medical practitioner a penalty not exceeding $100,000;

(f) by writing censure the registered medical practitioner;

(g) by order require the registered medical practitioner to give such undertaking as the Disciplinary Tribunal thinks fit to abstain in future from the conduct complained of; or

(h) make such other order as the Disciplinary Tribunal thinks fit, including any order that a Complaints Committee may make under section 49(1).

(3) In any proceedings instituted under this Part against a registered medical practitioner consequent upon his conviction for a criminal offence, a Disciplinary Tribunal and the High Court on appeal from any order of the Disciplinary Tribunal shall accept his conviction as final and conclusive.

(4) Where a registered medical practitioner is not found by a Disciplinary Tribunal to have been convicted or guilty of any matter referred to in subsection (1), the Disciplinary Tribunal shall dismiss the complaint or matter.

(5) A Disciplinary Tribunal may under subsection (2) order the registered medical practitioner concerned to pay to the Medical Council such sums as it thinks fit in respect of costs and expenses of and incidental to any proceedings

before the Disciplinary Tribunal and, where applicable, an Interim Orders Committee.
(6) The High Court shall have jurisdiction to tax such costs referred to in subsection (5) and any such order for costs made shall be enforceable as if it were ordered in connection with a civil action in the High Court.
(7) The Disciplinary Tribunal in ordering that costs be paid by the registered medical practitioner under this section may certify that costs for more than one solicitor be paid if it is satisfied that the issues involved in the proceedings are of sufficient complexity, and the certification by the Disciplinary Tribunal shall have the same effect as if it were a certification by a Judge in a civil action in the High Court.
(8) The costs and expenses referred to in subsection (5) shall include —
(a) the costs and expenses of any assessor and advocate and solicitor appointed by the Medical Council for proceedings before the Disciplinary Tribunal and the Interim Orders Committee;
(b) such reasonable expenses as the Medical Council may pay to witnesses; and
(c) such reasonable expenses as are necessary for the conduct of proceedings before the Disciplinary Tribunal and the Interim Orders Committee

4.13.1.2 Findings of Disciplinary Tribunal
Regulation 40(1) - After the closing address by the Council's solicitor, the Disciplinary Tribunal shall inform the parties of its findings in relation to the facts of the case either immediately or on a subsequent date of which reasonable notice shall be given to the parties.
(2) If the Disciplinary Tribunal is satisfied that the charge or any of the charges made against the practitioner have been proved, the Disciplinary Tribunal shall invite the practitioner or his counsel to address the Disciplinary Tribunal by way of mitigation and, after hearing such address, if any, proceed to exercise the powers referred to in section 53(2) of the Act.

4.13.1.3 Publication of outcome of inquiry
Regulation 42 - The Disciplinary Tribunal may, in its discretion, publish an account of the inquiry and its findings and may cause the dean, the secretary or any other proper officer of any university from which the practitioner had received his degree or qualification to be informed of the removal of his name from any register.

4.13.1.4 Transcript of notes of inquiry
Regulation 43 - Upon the application of any interested party and payment of the prescribed fee, the Medical Council may furnish that party with a transcript of the inquiry or a copy of any document tendered at the inquiry.

4.13.2 Current Processes

4.13.2.1 Since mid 2011, the SMC has published the anonymised / redacted GDs of doctors found guilty of professional misconduct (or for other conduct as specified under the MRA) by the DCs (after the appeal period has lapsed). The convicted doctor's name is not anonymised. As for acquittal cases, Council leaves it to the DC's discretion on whether the GD should be published. Where the DCs have ordered for the doctors to be suspended, the doctor's registration status will be taken off SMC's online Register of Medical Practitioner on the start date of the suspension and the doctor will have to return his/her practising certificate.

4.13.2.2 In the event of an unsuccessful prosecution of a Respondent doctor, the Respondent doctor would not be liable to pay the legal costs incurred by Council in the proceedings and Parties shall bear their own costs. The DC may order the Respondent doctor to pay costs (including the costs of the legal assessor to the DC) if the Respondent doctor is found guilty on some or all of the charges.

4.13.3 Feedback Received

4.13.3.1 In summary, the Review Committee noted the following feedback which it received during the consultation exercise:

Sentence

(a) As mentioned in the High Court judgment of Eu Kong Weng v Singapore Medical Council [2011] SGHC 68, there are situations whereby a 3-month suspension is excessive. DTs should be given leeway to give shorter suspensions without the provision of the minimal suspension period(3).

(b) The sanctions against errant medical practitioners were outdated (e.g. maximum $10,000 fine) and reviewed in 2010. Hopefully sanctions imposed under the current MRA will be of sufficient severity to deter misconduct. DTs must have the courage to impose severe and deterrent sentences. It is noteworthy that sentences for misconduct of lawyers appeared to be much harsher. For example, conflict of interests' misconduct can attract suspension of 18-months, gross-overcharging misconduct can attract suspension of 6-months and as for the misconduct of touting for conveyancing work, from 9 to 15 months' suspension(8).

(c) The minimum suspension term in the MRA should be removed to broaden sentencing discretion to DTs. Increased flexibility will avoid the DTs facing a choice of either meting out too lenient a sentence (a fine) where the minimum suspension term is deemed inappropriate, thus sending the wrong message to medical practitioners and the public, or too harsh a sentence, unnecessarily depriving the public of the services of a good doctor. It would also bring sentencing into line with the existing arrangements for voluntary suspension(12).

(d) The punishment meted out by the DT should be made more severe. The fines should be higher and the terms of suspension longer for severe offences and repeat offenders(25).

Publishing of grounds of decision

(e) All GDs (including cases in which the doctor was found not guilty) should be published. Sensitive information can be anonymised if necessary. This provides educational value for doctors by highlighting what would be (and what would not be) considered professional misconduct. This transparency will also improve public confidence in SMC's disciplinary system(3).

(f) Publication of GDs regardless of the case outcome should be made compulsory. This will ensure accountability and transparency in decision-making. It would simplify the Appeals process, be useful in setting valuable

precedents and be a valuable educational resource. It will also avoid the anomalous perception that the SMC always succeed in prosecution. If there are concerns about stigmatising acquitted doctors, the GDs could be anonymised[12].

(g) It is important and only just and fair that there should be no publicity of any complaint against a doctor. All cases should be handled quickly. There must be no mention of the case in the Media. Though a doctor may in the end be proved quite innocent of any misdemeanour, that his name has been made public is sufficiently damaging to his reputation[20].

(h) Request to stop the process of name and shame. If the aim is for education and prevention of recurrence, the publication of the details should be sufficient. In many instances, there were elements of errors of judgment not amounting to wilful intentions to harm or commit crime. Do give considerations to preservation of dignity of doctors[26].

Pay costs

(i) We note several court cases that highlight instances in which the doctor facing a complaint was wrongfully asked to pay full legal costs when he/she was not found guilty of all charges. This indicates an insufficient understanding of specific principles during the complaints and disciplinary process[3].

(j) The high cost of defending doctors is of concern as this would likely lead to increase in cost of healthcare and promote the practice of defensive medicine based on the exaggerated fear of prosecution. This does not augur well in promoting professionalism as the good practice of medicine is based on a cooperative and collaborative relationship between patients, their families and the medical profession[1].

(k) There should be clear guidelines or scale on the costs payable for LAs and SMC's lawyers, possibly with an imposed ceiling on panel fees in much the same way as the High Court places a cap on dock briefs. Such transparency would ensure consistency of costs charged by different LAs and different firms of lawyers advising the SMC. In the alternative, or in addition, it would be prudent for the SMC to have available a wider range of panel lawyers which would encourage competition and drive down legal costs. Costs should be limited to one solicitor per case, and charges for two solicitors should only be allowed in exceptional circumstances. Perhaps a leaf could be taken out of the Estate Agents Act in Singapore, where in disciplinary proceedings against Estate Agents, the prosecution's legal costs are fixed at S$1,000. The award of costs is not an additional punishment to the doctor. Alternatively, if the SMC insists on costs being paid to them in the event of a successful conviction, then similarly, costs should be paid by them in the event of an acquittal[12].

(l) Complainants should be made to bear their fair share of proceedings costs. In the event that the doctor is found not guilty, the complainant should bear the full cost of proceedings. In previous cases, doctors who won their fight faced such a huge bill, that innocent doctors felt it more worth their while to just admit guilt and be fined as the cost was significantly lower (even considering the suspension)[14].

(m) Alternatively, the SMC would have to absorb the legal and administrative cost if the doctor is to be acquitted. Some of the internal MOH/SMC complaints cases did not involve patient complications or medical errors. Many of such cases were due to retrospective clinical audit on documentation. The punishment was harsh in circumstances. This process should be made less biased for the defending doctors[17].

(n) SMC to absorb the legal and administrative costs of the inquiry if the doctor was acquitted. DTs should be empowered to award costs to the respondent doctor in appropriate cases where charges are dismissed and to withhold costs from SMC for charges which it fails to make out, i.e. bear costs for vexatious and frivolous prosecution of cases referred by the CC[56].

Remediation and Rehabilitation

(o) A doctor found guilty of professional misconduct may lack, or have a deficiency, in knowledge, skills and personal attributes. In such situations, the interest in public and patient safety necessitates giving these doctors an opportunity to remedy their professional deficiencies before they return to practice. Similarly, in a prolonged disciplinary process, even when the professional is vindicated, the physical and emotional stress incurred is serious and needs proper closure. It is clear that when a doctor's reputation is publicly challenged, even his/her family members undergo emotional trauma. After such a negative event, it is not uncommon for doctors to experience mal-adaptation, suffer burnout and become disillusioned. It is important for future patients, the public and fellow professionals that such doctors be supported and given avenues for proper closure, in order to resume their professional role[3].

Others

(p) Database - Currently, we understand there is such a database but it is only accessible to SMC panel lawyers. Affording access to both parties will facilitate more informed legal advice to the respondent doctors and ensure a more balanced presentation of the relevant material to the DT, who would not then be wholly dependent on the SMC lawyers for this information[12].

(q) Costs of Transcripts - SMC has declined cheaper alternatives or professional live transcription services. Cost of S$15 to S$20 per page is high. The time taken for transcripts to be provided can be significantly shortened by harnessing available technology. Closing submissions are made with reference to parties' own notes and we have encountered vast and important variations between versions. The result is additional time spent in closing submissions or re-submissions dealing with the disparate accounts[12].

(r) If some or all cases are audited by a separate legal advisory team, they can identify any possible future points of contention which can be avoided in future cases. In this way, there is basis for stating that there is pre-emptive measures taken to ensure that rulings by SMC is clear, fair and justified, and would leave no room for further claims of not being fair[45].

4.13.4 Deliberation by the Review Committee

Publication of grounds of decision

4.13.4.1 The Committee agreed that anonymised GD (except for the name of the doctor) should be published for all convicted cases. The Committee also agreed that publishing anonymised GDs for acquittal cases would be helpful as they provide educational value to both doctors and the public on the threshold required for professional misconduct to be proved. Moreover, most overseas jurisdictions publish anonymised GDs for acquittal cases. The Committee proposed that anonymised GDs for acquittal cases be published at an appropriate time (not immediately) after the conclusion of the inquiry.

Precedents

4.13.4.2 Although precedents drawn for the inquiry (for sentencing purposes) should be specific to each case, the Committee felt that SMC could publish a database of its precedents (i.e. redacted and up to last 5 years first) on its website without compromising confidentiality.

Suspension period

4.13.4.3 The Committee was informed that the Courts are faced with having to mete out the minimum suspension periods in view of the governing legislation. Although the current MRA now allows the DTs to impose higher fines and for appropriate cases, DTs do have the discretion to impose higher fines in lieu of the minimum 3-month suspension, the Committee felt that the severity of the punishment meted out should be in accordance with the severity of the misconduct and that severe and deterrent sanctions ought to be imposed for cases of serious or gross misconduct. In addition, the severity of the sentence must be punitive enough to serve as a deterrent and the doctor (depending on the misconduct) should not be allowed to return to practice so quickly but should reflect upon and serve out the punishment.

4.13.4.4 The Committee also expressed concerns on the effect of suspension periods which are less than 3 months and that doctors and the public may misconstrue that the DTs are lenient and seen to be protecting doctors by meting out a 3 or 6-week suspension (which the public might consider as ‘light’ as lawyers are served heavier sentences). The Committee agreed that it was not necessary to remove the provision for a minimum 3-month suspension period and that DTs should have the discretion to weigh the appropriateness of the conviction and various permutations of imposing fines and/or ordering a suspension.

Pay costs

4.13.4.5 The Committee agreed that orders on costs should be left to the discretion of the DC/DTs after hearing parties’ submissions. Both Counsel could also flag precedents (on how costs were apportioned) from previous concluded cases which could be easily retrieved on SMC’s website.

4.13.4.6 The Committee notes that the MRR prescribes the cost of transcripts at $20 per page.

4.13.5 Recommendations by the Review Committee

4.13.5.1 In summary, the Committee makes the following recommendations:

(a) **Current Processes**:

No change - DC/DTs are to continue to give the orders for anonymised GDs to be published (except for the doctor's name) for all convicted cases.

No change - It is not necessary to make amendments to abolish the minimum suspension period as the severity of misconduct must match the sentence (and the DT has more permutations to consider now that the fine amount has been raised to $100,000).

No change – Unusual for CC to refer vexatious and frivolous cases for a formal disciplinary inquiry. Orders on costs should be left to the discretion of the DC/DTs after hearing parties' submissions. Both Counsel can provide the DC/DT with the precedents on how costs were apportioned for previous inquiries but SMC will not be made to bear the respondent's costs.

(b) **Changes to Process Issues**:

(NA)

(c) **Changes to Policy Issues**:

DC/DTs are to also give orders for the anonymised GDs to be published (at a later timing) for acquitted cases.

A database on SMC's precedents (i.e. redacted and up to last 5 years first) would be shared eventually in the public domain without comprising confidentiality.

(d) **Amendments to MRA / MRR**:

(NA)

Chapter 4: Review of Processes under Current Medical Registration Act / Medical Registration Regulations

4.14 APPEALS AGAINST ORDER(S) BY DISCIPLINARY TRIBUNALS

4.14.1 Relevant Sections of the MRA

4.14.1.1 Appeal against order by Disciplinary Tribunal

Section 55(1) - A registered medical practitioner or the Medical Council who is dissatisfied with a decision of the Disciplinary Tribunal referred to in section 53(2), (4) or (5) or 54 (referred to in this section as the decision of the Disciplinary Tribunal) may, within 30 days after the service on the registered medical practitioner of the notice of the order, appeal to the High Court against the order (referred to in this section as an appeal to the High Court).

(2) A complainant who is dissatisfied with the decision of the Disciplinary Tribunal may, within 30 days after the lapse of the period for appeal in subsection (1), provided he has not received notice of the Medical Council's decision to file an appeal to the High Court, apply to a Review Committee to direct the Medical Council to file an appeal to the High Court.

(3) For the purposes of hearing applications under subsection (2), the Minister may from time to time appoint one or more Review Committees, each comprising —

(a) one member from the panel referred to in section 50(1)(a); and

(b) 2 members who shall be registered medical practitioners of not less than 10 years' standing

(4) The chairman of a Review Committee shall be appointed by the Minister from among its 3 members.

(5) A Review Committee shall not be bound by the rules of evidence and shall regulate its own proceedings.

(6) Upon an application under subsection (2), the Review Committee may, if it is unanimously of the opinion that there are sufficient grounds for the decision of the Disciplinary Tribunal to be appealed against to the High Court, direct the Medical Council to file an appeal to the High Court.

(7) Before exercising its power under subsection (6), the Review Committee shall give to both the Medical Council and the registered medical practitioner concerned a reasonable opportunity to make representations in writing as to why the Review Committee should not make a direction under subsection (6).

(8) The Review Committee's decision under subsection (6) shall be final.

(9) If the Review Committee directs the Medical Council to file an appeal to the High Court, the Medical Council shall do so within 14 days of the receipt of the direction notwithstanding the expiry of 30 days referred to in subsection (1)

(10) An appeal under this section shall be heard by 3 Judges of the High Court and from the decision of that Court there shall be no appeal.

(11) In any appeal to the High Court against a decision referred to in section 53(2), (4) or (5) or 54, the High Court shall accept as final and conclusive any finding of the Disciplinary Tribunal relating to any issue of medical ethics or standards of professional conduct unless such finding is in the opinion of the High Court unsafe, unreasonable or contrary to the evidence.

(12) Notwithstanding anything in section 53 or 54, where a registered medical practitioner has appealed to the High Court against an order referred to in section 53(2) or 54, the order shall not take effect unless the order is confirmed

by the High Court or the appeal is for any reason dismissed by the High Court or is withdrawn.

4.14.2 Current Processes

4.14.2.1 Under the Old MRA, only the doctor can appeal against the DC's decision. The complainant has no recourse for decisions made by the DC.

4.14.2.2 Under the Current MRA, the law now provides that, if a complainant is dissatisfied with the DT's order, he/she can submit an appeal to a Review Committee which is appointed by Minister (provided that SMC does not appeal). If the Review Committee decides that there are sufficient grounds for appeal to the High Court, it will direct the Medical Council to file an appeal. SMC bears the costs for the appeals (including the costs for making a statutory complaint with the SMC) and this Review Committee would only be appointed once an appeal from a complainant is received. The Health Minister had explained this before Parliament and it was recorded in the Hansard.

Afternote (Extracts from the Hansard – Medical Registration (Amendment) Bill):

"However, SMC's capacity to cope with the rising number of complaints has remained the same during this period. The result is a growing delay by the SMC in processing the cases, especially if they are complex. Last year, as an example, a simple complaint took about three months to conclude, and one complex case actually took more than five years. As a result of long delay, there have been instances where the complainant who was dissatisfied with the outcome of the disciplinary process, was unable to initiate civil proceedings against the doctor. The complainant also has no recourse for appeal against the Disciplinary Committee's decision under the current Act. This is unsatisfactory."

"The new section 55 sets out the framework for the SMC or an aggrieved complainant to appeal to the High Court against the Disciplinary Tribunal's decisions. Currently, only the defendant doctor is allowed to appeal to the High Court on the decision of the Disciplinary Committee. This is not necessarily fair to the public or the complainant. This section allows the SMC to appeal when the Council is not in agreement with its independent Tribunal's orders. The framework also allows the complainant an avenue to initiate an appeal through a review committee appointed by the Minister."

"Dr Lam Pin Min also asked if the new provisions for SMC to lodge an appeal to the High Courts on behalf of a patient under section 55(2), constitutes a "double whammy" as this amounted to a doctor being prosecuted twice. This is not an issue unique to Singapore. In fact, there was a similar issue that was raised in the UK, where they have a Council for Healthcare Regulatory Excellence, which has the power to refer matters to the High Court that it considers to be "unduly lenient". Like the SMC, this UK Council can in effect, appeal on behalf of patients even where the doctor has been acquitted by the general medical council in UK. And when the issue was raised in the English Court of Appeal, the English Court accepted that this power creates an element of "double jeopardy", as they put it. But overall, they thought that such concerns were to take second place when this is necessary to protect the public. And in this instance, we have taken a similar approach in Singapore."

4.14.3 Feedback Received

4.14.3.1 In summary, the Review Committee noted the following feedback which it received during the consultation exercise:

Recent Appeal Cases

(a) There had been much criticism of the SMC processes in the media following the High Court's judgment for Dr Low Chai Ling's appeal. Having an interest in the decision, the LA (who was also the LA to the DC) followed the media reports and was disheartened to note that the reports appeared to be advocated by one or two individual reporters. The media reports contained errors which, left uncorrected, portrayed an inaccurate picture of the views of the Court. In The Straits Times report dated 4 October 2012 titled "Court tells SMC to relook case against aesthetic doctor" by Ms Salma Khalik, she reported that Justice Rajah "described the disciplinary hearing as "legally embarrassing" ". This is inaccurate in two respects: (a) in the actual judgment, the phrase "legal embarrassing" was used by the Court as a legal term of art in its criticism of the charges, i.e. that on the charges as framed, the defence was put in a position of difficulty to address the case it has to meet, and not the common usage of the term "embarrassing" as it would be understood by the ordinary readers of the newspaper; and (b) the term was directed by the Court at the charges, and not the actual hearing process which the article appear to portray. The LA felt that such inaccuracies in the media have to be corrected because it could have the serious effect of undermining public confidence in the SMC processes[(8)].

Appeals Process

(b) A query was received as to how the Review Committee decides if it should direct SMC to file an appeal to the High Court[(3)].

(c) A doctor commented that the Review Committee should include a senior lawyer so that the weight of the Review Committee's deliberations would at least be on par with that of the DT's[(38)].

(d) Another doctor felt that appeals to Minister should be abolished and the role of the Minister completely removed from the disciplinary process and that parties should only appeal to the High Court[(39)].

Sections 23 and 24 of the MRA (1985 edition)

(a) Sections 23 and 24 of the MRA (1985 edition) seemed to provide a much wider and unlimited power to the High Court:-

1. In respect of suspension from registration:-
"A person who has been suspended from registration pursuant to this section shall have the right of appeal to the High Court against the order of suspension and on any such appeal the Court may make such order as it thinks proper having regard to the merits of the case and the public welfare" (section 23(8) of the MRA (1985 edition))

'Any such appeal shall be in the nature of a rehearing and shall be made in accordance with the Rules of Court" (section 23(9) of the MRA (1985 edition))

2. In respect of striking off the register:-
   "Any person, whether provisionally registered or otherwise, aggrieved by the removal of his name from the register under section 23 may, within one month of the notice given under section 23(2), appeal to the High Court against the removal and on any such appeal the High Court may give such directions in the matter as it thinks proper, including any directions as to the costs of the appeal" (section 24(1) of the MRA (1985))

In summary, as at 1996, the position appears to be as follows:-
(a) in appeals against suspension, there is little inhibition of the Court's power as it is specifically required to have regard to the merits of the case and the public welfare (and the appeal is a rehearing made in accordance with the Rules of Court);
(b) in appeals against striking off from the register, it would be difficult (but not impossible) to overturn findings and orders of the DT unless there was clear error in application of law or procedure, or if it was reasonably certain that the evidence had been misread because the findings were sufficiently out of tune with the evidence.

With the 1997 amendments introducing then section 46(8) of the MRA, Parliament had circumscribed the Court's powers in dealing with appeals against DT decisions:-
(a) the specific power of the Court to have regard to the merits of the case and public welfare in respect of appeals from suspensions has been removed. A unitary test applies to all appeals when the High Court considers the findings of the DT;
(b) the unitary test obliges the High Court to accept the DT's findings on any issues of medical ethics or standards of professional conduct as final and conclusive unless they are unsafe, unreasonable or contrary to the evidence; and
(c) however, the Court will not give undue deference to the views of the disciplinary committee in a way which will effectively render nugatory the appellate powers granted by the then section 46(7) of the MRA (Low Cze Hong's case).

(b) Section 46(8) of the old MRA and Section 55(11) of the new MRA:-

Section 46(8) - "In any appeal to the High Court against an order referred to in subsection (6), the High Court shall accept as final and conclusive any finding of the Disciplinary Committee relating to any issue of medical ethics or standards of professional conduct unless such finding is in the opinion of the High Court unsafe, unreasonable or contrary to the evidence."

Section 55(11) - "In any appeal to the High Court against a decision referred to in section 53(2), (4) or (5) or 54, the High Court shall accept as final and conclusive any finding of the Disciplinary Tribunal relating to any issue of medical ethics or standards of professional conduct unless such finding is in the opinion of the High Court unsafe, unreasonable or contrary to the evidence"

(c) It may be more appropriate to remove section 55(11) of the MRA and revert to *Libman's* test.

Privy Council (UK) case of Libman v General Medical Council [1972] AC 217, which had found that:-

"although the jurisdiction granted to the High Court under [section 36(3) of the UK's Medical Act 1956] was unlimited , the circumstances in which it is exercised in accordance with the rules approved by Parliament are such as to make it difficult for an appellant to displace a finding or order of the committee unless it can be shown that something was clearly wrong either (i) in the conduct of the trial or (ii) in the legal principles applied or (iii) unless it can be shown that the findings of the committee were sufficiently out of tune with the evidence to indicate with reasonable certainty that the evidence had been misread"[56].

4.14.4 Deliberation by the Review Committee

Lessons learnt from 3 appeal cases

4.14.4.1 The Committee noted that, for the last 5 years (2008 to 2012), the various DCs handed down 83 verdicts, including 3 cases where the doctors were acquitted. In 11 of these cases, the doctors have appealed to the High Court. Out of these 11 appeals, 2 decisions were set aside (Dr G Devathasan and Dr Low CL), SMC did not contest the appeal for Dr G Lee (which was subsequently overturned), 1 doctor withdrew the appeal before the case could be heard in Court and 7 DC's decisions were upheld.

4.14.4.2 The Committee reviewed the NOIs, DC's decisions and judgments by the High Court of the 3 recent appeal cases (i.e. Dr G Devathasan, Dr Low CL and Dr G Lee [no official written judgment was given for Dr G Lee's case]) to learn and understand why the decisions have been overturned. The Committee noted that these 3 cases concerned either issues on clinical trials or whether the treatments were evidence-based. In general, for Dr Low CL and Dr G Lee's cases, the main issue was that the "Guidelines on Aesthetic Practices for Doctors" were only published after the complaints were received (and the CC based their referral and NOI on the "Ethical Code and Ethical Guidelines"). Whereas for Dr G Devathasan's case, a lawyer on the Committee commented that perhaps the outcome would have been better (and it would have been harder for the appeal to succeed) if the inquiry had been chaired or the grounds of decision written by a lawyer.

4.14.4.3 The Committee opined that the outcomes may not differ even if the recent 2 disciplinary inquiries (i.e. Dr Low CL and Dr G Lee) were chaired by lawyers as lawyers too have varying legal opinions. The Committee accepted that the DCs for these 2 cases proceeded with the hearings based on how: (a) the charges were framed and (b) the DCs were being advised and led by the lawyers. The Committee frankly acknowledged that the reason why the Review Committee was appointed was not only based on SMC's own initiative to improve its processes, but also in response to the apparent public misconception regarding the basis of the High Court's decisions in the recent 2 appeal cases.

4.14.4.4 The Committee acknowledged that the basis of hearings before a DC/DT and appeals before the High Court is to ensure that all parties are given a fair chance to be heard. No doubt that there might be instances where some DC/DTs' judgments are overturned, the lawyers in the Committee reiterated that many decisions in the Court (for civil cases etc) are similarly overturned by

appeals to the High Court as well. In addition, the Committee highlighted that the circumstances of the 2 recent overturned DCs' decisions were unusual. It is only when such appeals go to the High Court that the SMC and all parties may then learn from it (as the High Court's decisions also reflect to a certain extent, the judicial philosophy in changing times) and continue to improve on its current processes. The Committee was encouraged that SMC had already taken active steps to improve its processes.

Appeal Process

4.14.4.5 The Committee noted that SMC would have to do its due diligence and review DTs' decisions and decide internally if they should file an appeal to the High Court.

4.14.4.6 The Committee felt that the current procedures for a complainant's appeal are cumbersome and that the internal process (where the appointed Review Committee looks into the appeal) is not transparent enough to the complainant. When an appeal against a DT's decision is submitted, Minister will direct that the case be assessed by a Review Committee and even if the Review Committee comes up with a decision (especially if it is not to appeal), there is nothing the complainant can do after the decision has been made. In summary, the complainant would not know what was going on and does not give any input in the appeal process other than submitting a request for an appeal against the DT's decision.

4.14.4.7 The Committee noted that the Health Commission (or equivalent) represents the complainants in many overseas jurisdictions and if there was any action against the doctor, the Health Commission intervenes. For example, patients do not have the right of appeal in New South Wales, New Zealand or the UK. Only the complainant (i.e. the Healthcare Complaints Commission (NSW), the Health and Disability Commissioner (NZ), the Medical Council of NZ) which prosecutes the complaint before the tribunal) has the right to appeal in their respective jurisdictions. In NSW and NZ, the patient may make submissions to the complainant as to why a decision of the tribunal should be appealed but the ultimate decision rests with the regulatory body itself which is the complainant.

4.14.4.8 The Committee also considered whether complainants should bear the costs if he/she wants to appeal against the DT's decision and if the appeal should be made directly to the High Court. Making complainants bear their own costs would put off frivolous appeals. The complainants would then have to put in more thought, assess their own chances and be convinced before putting up an appeal against the DT's decision.

4.14.4.9 The Committee decided that the appeals process for DTs' decisions should be amended. SMC should retain the Review Committee which should represent Council's views only and take away Minister's current role in appointing a Review Committee for appeals by complainants. This SMC Review Committee will audit the outcome of every inquiry before a DT (i.e. "review" the DT's findings and not conduct a new inquiry or consider any new evidence but should only review the evidence which was presented to the DT). This Review Committee (to be appointed by Council and not by Minister and which consists of 3 Council members) should then direct the Council to appeal as it would be neither practicable nor efficient for the entire Council to review the inquiry documents and take a vote.

4.14.4.10 In relation to the above (i.e. 4.14.4.9), the Committee strongly felt that SMC and its council members should be given the regulatory powers to perform this important role in reviewing the outcomes of all inquiries by DTs. Therefore, only the SMC (through the decision of its Review Committee) and doctor would be able to appeal directly to the High Court. If the complainant is unhappy, he/she could write in to SMC and 'lobby' SMC to appeal. In any case, the Review Committee would be auditing all DTs' decisions.

Sections 23 and 24 of the MRA (1985 edition)

4.14.4.11 In relation to whether the MRA should remove Section 55(11) MRA and revert to Libman's test, the Committee felt that DTs make findings on professional matters and that the High Court should continue to accept as final and conclusive, any finding by the DT on issues relating to medical ethics or standards of professional conduct (unless such findings are unsafe, unreasonable or contrary to the evidence). The current position should be maintained so as to allow the profession to continue to self-regulate.

4.14.4.12 The Committee also noted that, in other areas, where something is clearly wrong in the conduct of the hearing before the DC/DT, such as breach of rules of natural justice, or in the application of legal principles, or where the finding of DC/DT is "sufficiently out of tune with the evidence", the Court does intervene and set aside the finding of the DC/DT, as shown in recent cases.

4.14.5 Recommendations by the Review Committee

4.14.5.1 In summary, the Committee makes the following recommendations:

(a) **Current Processes**:

No change - As prescribed by the current MRA, should complainants appeal, they would then have to, within 30 days after the lapse of the period for appeal (provided the SMC does not appeal) apply to a Review Committee (which appointed by the Minister) and the Review Committee will direct SMC to appeal, where applicable.

No change – The Committee agreed that the High Court should continue to accept as final and conclusive, any finding by the DT on issues relating to medical ethics or standards of professional conduct.

(b) **Changes to Process Issues**:

(NA)

(c) **Changes to Policy Issues**:

(NA)

(d) **Amendments to MRA / MRR**:

Appeals process for DTs' decisions should be amended. SMC should retain the Review Committee which should represent Council's views only and take away Minister's current role in appointing a Review Committee for appeals by complainants. This SMC Review Committee will audit the outcome of every inquiry before a DT and will consist of 3 Council members. Where applicable, it will direct the SMC to appeal to the High Court against the independent DTs' decisions. Therefore, only the SMC and

doctor will be able to appeal directly to the High Court but the complainant could write in and 'lobby' the SMC to appeal.

Chapter 4: Review of Processes under Current Medical Registration Act / Medical Registration Regulations

4.15 EXPERT WITNESSES / MEDICAL EXPERTS

4.15.1 Relevant Regulations of the MRR

4.15.1.1 Notice of inquiry

Regulation 27(1) - Where a Disciplinary Tribunal has been appointed under section 50(1) of the Act, the Council's solicitor shall send a notice as set out in Form C in the Third Schedule to the practitioner.

(2) The notice referred to in paragraph (1) shall —

(a) specify, in the form of a charge or charges determined by the Complaints Committee or (where the matter is referred to the Disciplinary Tribunal under section 49(2)(b) of the Act) the Medical Council, the matters which the Disciplinary Tribunal will inquire into;

(b) state the date, time and place at which the inquiry will be held;

(c) be sent —

(i) by delivering it to the practitioner, an adult member of his family, or an employee of his family or of his medical practice, at the practitioner's last known address; or

(ii) by registered post addressed to the practitioner at his last known address;

(d) be accompanied by a copy of the report of any expert witness whom the Council's solicitor intends to call at the inquiry.

(3) An inquiry shall not be held earlier than 28 days after the date of the notice of inquiry except with the agreement of the practitioner.

4.15.1.2 Supply of documents

Regulation 30(1) - If the practitioner wishes to raise any defence at the inquiry, he or his counsel shall, at least 10 days before the date fixed for the commencement of the inquiry, send to the Council's solicitor the report of any expert witness whom the practitioner or his counsel intends to call at the inquiry.

(2) The Council's solicitor shall, as soon as practicable, send to the executive secretary of the Medical Council —

(a) a copy each of the notice referred to in regulation 27(1) and any report referred to in regulation 27(2)(d); and

(b) a copy of any report received from the practitioner or his counsel under paragraph (1).

(3) The Council's solicitor and the practitioner or his counsel shall, as far as possible, co-operate to prepare an agreed statement of facts, an agreed bundle of documents or exhibits to be used at the inquiry and their lists of witnesses to be called at the inquiry.

(4) The Council's solicitor shall, at least 5 days before the commencement of the inquiry or within such time as may be directed by the chairman of the Disciplinary Tribunal at a pre-inquiry conference, send the following, if available, to the executive secretary of the Medical Council and the practitioner or his counsel:

(a) the opening statements of the parties;

(b) the agreed statement of facts;

(c) the agreed bundle of documents or exhibits to be used at the inquiry;

(d) lists of witnesses whom the parties intend to call at the inquiry; and

(e) copies of any other documents which are to be used at the inquiry.

(5) The Council's solicitor may —

(a) request to receive from the practitioner or his counsel copies of any documents in the possession of the practitioner or his counsel which are relevant to the matter before the Disciplinary Tribunal; or
(b) give notice to the practitioner or his counsel to produce before the Disciplinary Tribunal any such documents.

4.15.1.3 Documents before Disciplinary Tribunal
Regulation 44(1) - The Disciplinary Tribunal may, at any stage in the proceedings, refer to any written statement or medical reference material, notwithstanding that its author or, in the case of medical reference material, a medical expert may not be called, if —
(a) the practitioner consents; or
(b) after consultation with the legal assessor, the Disciplinary Tribunal is satisfied that the reception of the written statement or medical reference material is desirable to enable the Disciplinary Tribunal to perform its duty or discharge its functions.
(2) A copy of the written statement or medical reference material referred to in paragraph (1) shall be made available to the practitioner at the inquiry.
(3) Where, notwithstanding that any written statement or medical reference material has been referred to by the Disciplinary Tribunal under paragraph (1), the Disciplinary Tribunal is of the opinion that it should be supplemented by oral testimony —
(a) the Disciplinary Tribunal may request that the author or, in the case of medical reference material, a medical expert be called as a witness and adjourn the hearing for the purpose; and
(b) on subsequently resuming the hearing, unless the author or medical expert, as the case may be, gives oral evidence, the Disciplinary Tribunal shall be entitled to disregard the written statement or medical reference material.

4.15.2 Current Processes

Experts

4.15.2.1 In the course of its investigation, the CC may request an expert's opinion before deciding on the outcome of the case. If the complaint is related to a specific specialty, and if the CC does not have a doctor with the same expertise to understand the issues in the case, they will instruct the IU to get an opinion from an expert who is a specialist in that field. The CCs will propose the names of experts to approach.

4.15.2.2 Similarly, once a case is referred for a formal inquiry, Counsel for SMC will advise if it is necessary to seek an expert's opinion if the CC did not request for one at the preliminary stage (note: the CC may have doctors who are fully qualified to give a medical opinion on a specific specialty / treatment and hence, do not always seek an expert's opinion at the CC stage). Counsel for SMC will reduce the charge(s) (upon consultation with the CC) if the expert's report reveals that a less serious charge should be made against the doctor.

4.15.2.3 Experts whom MOH approached (for Minister's review of appeals against CC's decision) are usually senior doctors from the restructured hospitals or in the private sector, who are well-established specialists or general practitioners. If the complaint is surgically or medically related and the patient alleges that there was no proper care in the management, the expert reviews the anonymised records and provides his/her independent opinion.

Witnesses

4.15.2.4 Witnesses are called upon by both Counsel for SMC and the Respondent doctor to give evidence in an inquiry. Both Counsel do, as far as possible, co-operate in preparing and sending their list of proposed witnesses and experts to be called at the inquiry for the purposes of scheduling the correct number of days for the hearing.

4.15.3 Feedback Received

4.15.3.1 In summary, the Review Committee noted the following feedback which it received during the consultation exercise:

Experts

(a) Medical experts selected to present their expert opinion during CC and DT proceedings should be adequately trained and free from any conflicts of interest. The DT should not withhold questioning of medical experts when the expert's report and testimony are found wanting. Being the party most medically experienced in and knowledge of this process, this onus thus rests on the DT and not solely on the prosecution or defence lawyers. SMA, in partnership with MPS UK, has been conducting relevant training for medical expert witnesses (MPS-SMA Medical Experts Training Course) and recommends that current and future medical expert witnesses attend the training[(3)].

(b) The AMS, in partnership with other medical professional organisations would maintain and develop a list of medical experts who could provide services to the SMC disciplinary inquiry process[(1)].

(c) There should be a larger pool of good experts to agree to be included in the panel. Insofar as the inquiries concern charges preferred against the respondent doctors for inappropriate prescription and/or over prescription of drugs, the present panel of experts is limited in its numbers and in some instances, level of expertise. Further difficulties will invariably arise where these existing experts find themselves unable to accept the engagement because they stand in a position of conflict of interest or have already been approached and appointed by the Defence or where they are unable or unwilling for other reasons to accept the engagement. Council could take further steps to approach doctors who are experts in the relevant fields to agree to be included in the panel of experts for the Council and look into ways to incentivise these doctors to agree to be included on the panel[(6)].

(d) Usually, the main delay in the disciplinary process is brought about by a difficulty on the SMC's part to locate a suitable and willing medical expert witness. Many of the senior doctors in the field of medical practice relevant to the inquiries have declined to act as the SMC's expert[(4)].

(e) For the Prosecution, the delay in securing an expert results in delay in the issuance of the NOI, which must be accompanied by the expert report which Prosecution intends to rely on. The pool of doctors in Singapore who are appropriately qualified and willing to act as an expert is limited. Many are either conflicted from acting, or are unwilling to act against the respondent doctor. It is not uncommon for the SMC to have to approach

several experts before one can be appointed. It would be helpful for SMC to set up a panel of experts in various fields of specialty, who may be called upon to be the expert in a particular case. The agreement of these doctors to act as experts (subject to conflict issues) should be obtained beforehand. This will help to expedite the sourcing and appointing of experts which often take a long time. For the Defence, the difficulty in locating experts often results in requests for adjournment of the inquiry, and the production of the Defence expert reports late in the proceedings, sometimes only at the doorstep of the inquiry. This creates further delay as the Prosecution experts need time to review and comment on the Defence expert reports, and where applicable, to provide a supplemental report in rebuttal(7).

(f) Defence counsel often relies on Regulation 30(1) MRR to justify the provision of expert reports at a late stage. Ten days is definitely not enough time for the SMC's experts to be consulted on the report and for the SMC's counsel to prepare for the hearing. This invariably results in a last-minute adjournment of the hearing by the DC/DT, wasting the hearing room's facility which could be used for other hearings as well as wasting the time set by the members of the DC/DT for hearings(8).

(g) There is no provision for the giving of concurrent evidence by experts (see Regulation 44 MRR). The giving of concurrent evidence by 2 or more experts will be useful for the tribunal which can immediately appreciate the strengths and witnesses of the experts' views immediately, rather than having to weigh the evidence after the witness leaves the stand without the benefit of further questioning. It would be good if concurrent evidence is permissible in DC/DT hearings (see Order 40A Rule 6). It may be a good idea for the legislation to empower the DC/DT to direct for concurrent evidence without the consent of the parties. Another consideration is that the experts must give evidence after the factual witnesses have testified(8).

(h) In cases where there is conflict of interest (or even an appearance of conflict of interest) and personal involvement in medical fields, it is best to have visiting specialists give their expert opinion. This will prevent bias and personal conflicts from becoming a problem in judgement of controversial cases(43).

(i) To ensure a fairer process for all, it is crucial that the role of the expert be examined. While experts should not be partial towards the defendant, they certainly should not be overtly partial against him/her as well. Experts with a sound knowledge of the case at hand instead of biased ones will ensure a fairer trial for both sides(33).

4.15.4 Deliberation by the Review Committee

4.15.4.1 The Committee discussed if it would be more effective if the expert's report is only sought after the case has been referred to the DT and before the NOI is served. However, the Committee acknowledged that, since the current MRA provides the CC with more powers, it would be more efficient for CCs to instruct the investigators to get an expert's opinion and be sure of the issues before referring the complaint to the DT for a formal hearing. It would also save time and costs in the event that, if at the DT stage, the lawyers discover (while trying to draft the NOI) that the expert's report does not support the CC's referral.

4.15.4.2 The Committee noted that each CC has a different expertise (of the Chairman, member and layperson) and on reviewing the complaint, it can identify the areas which require an expert to provide an opinion based on the specialty or practice. The doctor could also submit his own expert report to the CC through the investigators and that the experts' reports which the CC acquires (including the report from the doctor) are useful in helping the CC in its deliberation of the complaint as well as the lawyers in framing the charges with respect to the NOI.

4.15.4.3 The Committee is aware that parties are allowed to call on an unlimited number of witnesses and experts for each inquiry. Although it may not be possible to prescribe the number of such witnesses and experts under the MRR, an experienced DC/DT Chairman can direct for a more structured inquiry at each PIC.

4.15.4.4 The Committee understands that the issue of publishing and having a list of experts was raised to facilitate the speed of acquiring an expert and also that parties would like SMC to be transparent in terms of the list of experts it engages as well as the costs involved in appointing these experts. However, the Committee was informed by its lawyer members that the Law Society does not have such a prescribed list of experts. The Committee felt that SMC cannot have a prescribed list of experts and exclude the rest of the profession. Hence, the CCs could continue to propose names to the investigators for the experts' reports and noted that the Secretariat is currently reviewing the feasibility of standardising costs for the reviewing of documents, providing an expert report and an expert's attendance at the inquiry.

4.15.4.5 The Committee agreed that the CCs could appoint visiting specialists from abroad for an expert opinion for complaints and disciplinary cases provided these specialists are also cleared of any conflict of interest.

4.15.5 Recommendations by the Review Committee

4.15.5.1 In summary, the Committee makes the following recommendations:

(a) **Current Processes**:

No change - The CCs can continue to provide / suggest names of experts (including overseas experts) to the investigators and ensure that the experts are of certain seniority.

No change – At the PICs, the Chairman, with the assistance of the legal assessor or lawyer (where applicable), can help to direct a more structured inquiry with regard to the number of experts and witnesses each party will be permitted to call.

(b) **Changes to Process Issues**:

(NA)

(c) **Changes to Policy Issues**:

(NA)

(d) **Amendments to MRA / MRR**:

(NA)

Chapter 4: Review of Processes under Current Medical Registration Act / Medical Registration Regulations

4.16 LEGAL COUNSEL

4.16.1 Relevant Section of the MRA

4.16.1.1 Appointment of Legal Counsel
Section 59I - For the purposes of an inquiry under this Part by any Disciplinary Tribunal, Health Committee or Interim Orders Committee, the Medical Council may appoint an advocate and solicitor and pay him, as part of the expenses of the Medical Council, such remuneration as the Medical Council may determine.

4.16.2 Current Processes

4.16.2.1 Once a case has been referred by a CC to DC/DT for a formal inquiry, the SMC will appoint the solicitors (Counsel for SMC) on a roster based system and according to the complexity of the case.

4.16.2.2 Once the solicitors are appointed by Council, SMC's Secretariat will send all the documents to the legal firms for them to review and consult with the CCs on whether an expert (or additional experts) is necessary as well as to work with the CCs on the draft charges for the NOI.

4.16.2.3 Once the draft NOI has been approved by the CC and the date of the PIC fixed, the solicitors will serve the NOI on the Respondent doctor or his/her Defence Counsel. After the conclusion of each inquiry, Counsel for the SMC will draft the press release (which will only be published if the doctor/complainant does not appeal within the 30-day period) and work with the Respondent and/or his Counsel to resolve any issues on costs as directed by the DC/DT.

4.16.2.4 Solicitors on SMC's panel are required to provide a detailed breakdown of the total hours billed per lawyer, including a description of the work which was undertaken.

4.16.3 Feedback Received

4.16.3.1 In summary, the Review Committee noted the following feedback which it received during the consultation exercise:

(a) The accounts of the SMC, in particular the costs of administration and costs of engaging counsel, should be made public annually. The legal costs incurred for disciplinary cases, including a breakdown of the average cost per case, should be published, including for cases in which the doctor was not found guilty. This should be made available to defence lawyers, medical indemnity organisations and others with legitimate interest[(3)].

(b) Clear guidelines and scale on legal costs and fees could be stipulated by SMC and made transparent to involved parties, so as to reduce unnecessary quibble over such matters before the High Court. This will also help cap costs at a consistent, reasonable and affordable level for all parties involved. In addition, the Medical Council of Hong Kong requires each party to bear its own costs regardless of the outcome of the inquiry[(3)].

(c) The chief role of the SMC's legal counsel should be akin to that of a Deputy Public Prosecutor, to uncover the truth[3]. SMC disciplinary process should be an inquiry process aiming at getting to the truth of the matter/dispute and resolving it in an amicable way rather than a litigating process where the winner takes all[1].

(d) The legal counsels should assist the DT to ensure that a fair process/hearing has been given to both parties. This can be achieved by appointing lawyers experienced in criminal law and drafting charges (eg: lawyers from AGC) rather than the current system of appointing litigation lawyers as legal counsel of SMC[1].

(e) SMC should engage the services of the Government LSOs on a secondment basis (preferably with at least 10 years of undertaking prosecution work) instead of legal counsel from private law firms. LSOs can be entrusted to scrutinise charges and statement of facts prepared by panel law firms undertaking prosecution for SMC, to ensure consistency and legal correctness in the drafting of charges. Alternatively, these LSOs can act as Counsel for SMC[3].

(f) It would be appropriate for all lawyers involved in SMC proceedings to be subjected to the "Code of Practice for the Conduct of Criminal Proceedings by the Prosecution and Defence" recently issued by the Attorney General's Chambers and Law Society. This code provides guidelines on how the lawyers should conduct themselves and aims to enhance the criminal justice system by encouraging best practices. Among the areas it touches on are plea bargaining, the exchanging of documents and the interviewing of witnesses. Its aim is to ensure a speedy and efficient trial process that ends in just decision. As SMC DT proceedings are quasi-criminal and follow the criminal procedures, this code is timely and appropriate[1].

(g) The Council and their appointed counsel should identify all potential procedural issues at the earliest opportunity or at the start of inquiry proceedings and resolve these issues early before further steps are taken in the proceedings. Some examples of potential procedural issues are the question of double jeopardy and whether to have a consolidated inquiry involving 2 or more complaints or respondent doctors or whether to have separate inquiries for each complaint or each respondent doctor[6].

(h) Engaging Counsel - There should also be clear guidelines as to the circumstances under which Senior Counsel may represent a party in a Disciplinary Inquiry or an appeal or judicial review to the High Court. The SMC should inform defence counsels at the NOI stage the level of prosecution/senior counsel the SMC is minded to instruct, in order to avoid defendants demanding unnecessary representation by Senior Counsel. In straightforward cases, given the experience of the prosecution firms in prosecuting like charges over the years, costs can be reduced by matching the seniority of Counsel to the charge. The same considerations should apply to the number of lawyers on the prosecuting team. This would ultimately result in cost savings to both parties[12].

4.16.4 Deliberation by the Review Committee

4.16.4.1 The Committee noted that the SMC's prosecution lawyers appointed to SMC's panel are paid by their hourly rates, as agreed, accepted and approved by SMC. The current amounts which SMC receives from income generated from new and renewal of practising certificates do not cover SMC's total costs and expenditure. In Registrar's letter which was sent to all doctors in January 2013, the Committee noted that SMC has clarified that it relies on considerable government financial assistance to ensure that the regulatory processes are not compromised, as SMC acts in the interest of the public.

4.16.4.2 The Committee noted requests for the publication of the costs of engaging counsel. Although most professional bodies publish their financial statements, for SMC's case (and as some inquiries are still ongoing), the Committee felt that SMC only needs to publish the total annual costs spent for disciplinary proceedings as it would not be appropriate to publish the breakdown of each case. SMC and the MPS's panel of lawyers can calculate the costs incurred for each disciplinary proceeding after the DC/DT has given its decision on costs at the conclusion of the case. If parties disagree on costs, the bill of costs could be taxed in Court.

4.16.4.3 With reference to the recommendations for LSOs to help out with the disciplinary proceedings, the Committee highlighted that the charges drafted or counter-checked by the LSOs may not necessarily be clear and precise. Issues on the drafting and wording of charges have always been debated in Court and SMC, as well as other stakeholders, should not be too reactive as the complaints on the drafting of charges (including those from AGC) are not new as there are bound to be various interpretations of the issues and facts laid before the DC/DT. The most important issue to note is that the DC/DT provides parties with a fair hearing in each case and both counsel (for SMC and the Respondent Doctor) should not prolong the inquiry proceedings unnecessarily by requesting for adjournments at late notice.

4.16.4.4 The Committee commented that, in general, statutory boards are not supposed to engage lawyers from AGC and instead, are required to appoint lawyers from the private sector. However, the Committee was informed that SMC was in the process of discussing with AGC as to whether an LSO could be seconded to SMC to advise and guide the SMC/Secretariat in the management of complaints and disciplinary cases, including the framing of charges in the NOI.

4.16.5 Recommendations by the Review Committee

4.16.5.1 In summary, the Committee makes the following recommendations:

(a) **Current Processes**:

No change - The Committee notes the good practice of Counsel for SMC in consulting with the CCs in the drafting of the NOIs and encourages this practice to continue for all cases. With the possible secondment of an LSO, the LSO may be able to work on the draft NOI together with the CC and prosecution counsel.

No change - With regard to legal costs, the Committee agreed with the current practice that it should be left to the DC/DT as well as the High Court

(for appeal cases) to decide how costs should be borne by parties, taking into consideration the facts and circumstances of each case.

(b) **Changes to Process Issues**:

(NA)

(c) **Changes to Policy Issues**:

SMC to publish the total annual costs spent at disciplinary proceedings but it would not be appropriate to publish the breakdown of each case.

(d) **Amendments to MRA / MRR**:

(NA)

Chapter 4: Review of Processes under Current Medical Registration Act / Medical Registration Regulations

4.17 LEGAL ASSESSORS

4.17.1 Relevant Sections / Regulations of the MRA / MRR

4.17.1.1 Assessor to Medical Council

Section 61(1) - For the purposes of advising the Medical Council or any Complaints Committee, Disciplinary Tribunal, Health Committee or Interim Orders Committee in proceedings before any of them under the provisions of this Act, the Medical Council may appoint an assessor to the Medical Council who shall be an advocate and solicitor of not less than 10 years' standing.

(2) Any assessor appointed under this section shall not participate or sit in any deliberations of the Medical Council or any Complaints Committee, Disciplinary Tribunal, Health Committee or Interim Orders Committee unless invited to do so, and his participation shall be limited only to questions of law arising from the proceedings.

(3) The Medical Council may pay to persons appointed to act as assessors such remuneration, to be paid as part of the expenses of the Medical Council, as the Medical Council may determine.

4.17.1.2 Duty of Legal Assessor

Regulation 67(1) - Where a legal assessor has been invited to be present at any proceedings before, or during any deliberations of, the Medical Council, a Complaints Committee, a Disciplinary Tribunal, a Health Committee or an Interim Orders Committee (collectively or individually referred to in this regulation as the Committee), he shall—

(a) attend those proceedings or deliberations as an observer;

(b) advise the Committee on any question of law arising in those proceedings or deliberations; and

(c) assist the Committee with the drafting, but not participate in or influence the making by the Committee, of any decision of the Committee.

(2) Without prejudice to the generality of paragraph (1), the legal assessor shall, in any proceedings before, or during any deliberations of, the Committee —

(a) advise the Committee on any question of law that is referred to him by the Committee;

(b) intervene to advise the Committee on an issue of law where it appears to him that, without his intervention, there is the possibility of a mistake of law being made; and

(c) intervene to advise the Committee of any irregularity in the conduct of the proceedings or in the deliberations which comes to his knowledge.

(3) Subject to paragraph (4), where a legal assessor tenders any advice to the Committee in any proceedings before the Committee, the advice shall be tendered in the presence of every party or representative of a party who is present at the proceedings.

(4) Paragraph (3) shall not apply if —

(a) the advice is tendered during any deliberations of the Committee; or

(b) the Committee considers that it would be prejudicial to the performance of its duty or the discharge of its functions for the advice to be tendered in the presence of the parties or their representatives.

4.17.2 Current Processes

4.17.2.1 LAs are appointed to assist every DC on questions of law (for inquiries under the Old MRA) and some also assist in writing the draft GD (although they have no voting rights, do not make decisions and merely take in the DC's deliberations during their internal meetings). The findings and verdict would be made by the DC and the LA would then write the reasons, considerations and decision into the draft GD. In instances where the LA drafts the GD, the draft is always circulated, scrutinised and deliberated upon by the whole DC. The doctor chairman, if he/she can write well, may also draft the GD.

4.17.2.2 For the inquiries held by DTs under the current MRA, it will not be necessary to appoint an LA if a lawyer is appointed to the DT (i.e. in situations where the lawyer chairs or when a senior LSO is appointed to the DT).

4.17.2.3 For inquiries under the Old MRR, the LAs would not be able to contribute unless invited to do so by the DC. If the LA tenders advice at the disciplinary inquiry, the advice will be tendered in the presence of every party (either orally at the inquiry itself) or in written form at the proceedings.

4.17.3 Feedback Received

4.17.3.1 In summary, the Review Committee noted the following feedback which it received during the consultation exercise:

(a) Section 61(2) MRA limits the LA to an advisory role and he/she is not permitted to be present at the DC/DT's deliberations unless specifically invited to do so (presumably to preserve the element of self-regulation in the medical profession). However, as disciplinary proceedings under the MRA are quasi-criminal in nature, it is important for the disciplinary process to be transparent and procedurally fair. The DC/DT must be able to accord the appropriate weight to the relevant evidence, while at the same time excluding the irrelevant evidence. Having a member of the DC/DT with the relevant legal training and/or ensuring that the LA is fully involved would go some way towards ensuring that the disciplinary proceedings are carried out in a fair, efficient and legally sound manner[(5)].

(b) LA to be given a more proactive role in the disciplinary proceedings and participate in the DT's deliberations. Potential legal and evidential issues which may have otherwise not surfaced could be highlighted at an early stage and dealt with at the disciplinary hearing[(5)].

(c) SMC should endeavour to appoint LAs who are senior practitioners. Although Section 61 MRA stipulates that all LAs must be of not less than 10 years' standing, the LA, unlike a judge who is clothed with the authority of his office, is in a rather different position from any other member of the DC. He may not be in a position to deal firmly with procedural and/or legal issues that may arise in the course of the proceedings. Increasingly, due to the severity of the matters complained of, lawyers assigned by the MPS to defend the medical practitioner would invariably be senior practitioners of the bar. Having an LA of sufficient seniority would ensure that the conduct of counsel and proceedings can be properly and robustly managed[(7)].

(d) A competent LA should be qualified to explain the legal issue and the relevant law to the members of the tribunal clearly. If necessary, the LA's advice (especially on a complicated issue) should be provided in a written form for the members to digest[8].

(e) The present scope of duties of the LA is restricted and is limited to advising on points of law but he plays no part in the decision making process. This is unsatisfactory in light of the quasi-criminal nature of the Tribunal. Parties before the Tribunal are represented by litigation lawyers schooled in highly specialised field of court-craft. While the Tribunal may have highly experienced doctors as members, they would not have adequate knowledge of legal issues and procedure (with some such issues being legally complex and procedurally challenging) – which can stray into the realms of the substantive merits of the complaint. The LA should play a bigger part and participate in the decision making process. Direct involvement in the decision making process can ensure that exacting legal standards are always met in the disciplinary process[10].

4.17.4 Deliberation by the Review Committee

4.17.4.1 The Committee noted the recommendations for senior lawyers of much more than 10 years' standing to be appointed to SMC's panel of legal assessors. The current LAs on SMC's panel are lawyers who are appointed based on recommendations from other senior lawyers.

4.17.4.2 With reference to proposals that the LA should be involved in the decision making process, the Committee noted that SMC is currently clearing the remaining inquiries under the Old MRA. As the new inquiries under the current MRA now provides that a lawyer can either chair or be a member of the DT, the issue as to whether they should be more involved is irrelevant since the MRA and MRR have clearly defined the roles of the legal assessor.

4.17.5 Recommendations by the Review Committee

4.17.5.1 In summary, the Committee makes the following recommendations:

(a) **Current Processes**:

No change - LAs to continue to help the DCs/DTs in questions of law and to write the grounds of decision (where applicable).

(b) **Changes to Process Issues**:

(NA)

(c) **Changes to Policy Issues**:

SMC to appoint senior lawyers of much more than 10 years of standing / experience into its panel of legal assessors so that they may be able to assist the CCs/DCs/DTs and even Health Committees, Interim Orders Committees etc in their work.

(d) **Amendments to MRA / MRR**:

(NA)

Chapter 4: Review of Processes under Current Medical Registration Act / Medical Registration Regulations

4.18 WHETHER INVESTIGATION AND ADJUDICATION FUNCTIONS SHOULD BE SEPARATE FROM SMC / PROFESSIONALISING THE WORK

4.18.1 Relevant Sections of the MRA

4.18.1.1 Appointment of Complaints Committees

Section 40(1) - The chairman of the Complaints Panel may from time to time appoint one or more committees (to be known for the purposes of this Act as Complaints Committees), each comprising —

(a) a chairman, being a member of the Complaints Panel who is a member of the Medical Council;

(b) a registered medical practitioner who is a member of the Complaints Panel; and

(c) a lay person who is a member of the Complaints Panel,

to inquire into any complaint or information mentioned in section 39(1).

4.18.1.2 Disciplinary Tribunal

Section 50(1) - The Medical Council may from time to time appoint one or more Disciplinary Tribunals, each comprising —

(a) a chairman, from a panel appointed by the Minister, who shall be —

(i) a registered medical practitioner of not less than 20 years' standing;

(ii) a person who has at any time held office as a Judge or Judicial Commissioner of the Supreme Court;

(iii) an advocate and solicitor of not less than 15 years' standing as an advocate and solicitor; or

(iv) an officer in the Singapore Legal Service who has in the aggregate not less than 15 years of full-time employment in the Singapore Legal Service;

(b) subject to paragraph (c)(ii), not less than 2 registered medical practitioners of not less than 10 years' standing from among members of the Complaints Panel; and

(c) where the chairman is a registered medical practitioner —

(i) one observer from among members of the Complaints Panel who is a lay person; or

(ii) a member who is a person referred to in paragraph (a)(ii), (iii) or (iv), in lieu of one of the registered medical practitioners referred to in paragraph (b),

to inquire into any matter in respect of which a Complaints Committee has under section 49(2)(b) ordered that a formal inquiry be held or into any matter referred to the Disciplinary Tribunal under section 39(4).

(2) A member of a Complaints Committee inquiring into any matter concerning a registered medical practitioner shall not be a member of a Disciplinary Tribunal inquiring into the same matter.

(3) The observer appointed under subsection (1)(c)(i) shall not vote on any question or matter to be decided by the Disciplinary Tribunal and need not be present at every meeting of the Disciplinary Tribunal.

4.18.2 Current Processes

How Overseas Medical Councils run their Disciplinary Processes and if their Council's functions are separated

4.18.2.1 The General Medical Council (GMC) has, since June 2012, separated its functions when it created the Medical Practitioners Tribunal Service (MPTS) where the adjudication function was taken away completely from the GMC. The MPTS is still funded by the GMC but is separately accountable to Parliament. One of the key recommendations implemented was that all decisions at the initial assessment and investigation stages may now be reviewed by the Registrar of the GMC, provided that the reviews are undertaken within 2 years. A case team will also monitor the conditions and undertakings which are handed down by the DT equivalent.

4.18.2.2 The Committee noted that GMC took over 8 years to separate their functions and in the end, one of the main reasons for the change was the increase in the number of complaints being made and the time taken to resolve them. Even now, the MPTS is looking into further reforms to get its disciplinary inquiries chaired by lawyers. In other overseas medical councils, the councils' main functions and disciplinary processes are separated and they also have non-medical people sitting on the tribunal panels.

4.18.2.3 For New Zealand, the Professional Conduct Committee reviews the preliminary issues while only serious cases are referred to the Health Practitioners Disciplinary Tribunal. Similarly, most overseas tribunals are completely separate from the Council and no Council member sits on these Tribunals. In addition, these panels for the tribunal are usually appointed by the Governor or Minister for Health.

How the MRA works

4.18.2.4 The current MRA requires that a Council member appointed to the Complaints Panel chairs the Complaints Panel (there is a Deputy Chair of the Complaints Panel as well, and this person is also a Council member) and Council members will chair each CC. SMC can also lodge complaints pursuant to Section 39(3) MRA. The investigators are staff employed by the SMC and they submit their independent investigation report to the CC for the CC's deliberation on an outcome. If the case is referred to a DT for a formal inquiry, a DT will then be appointed. The current MRA does not make it mandatory that a Council member has to be appointed to the DT and SMC has since the beginning of this year, decided that no Council member will be appointed as the chairman or a member of each DT.

4.18.3 Feedback Received

4.18.3.1 In summary, the Review Committee noted the following feedback which it received during the consultation exercise:

Registrar of the CC and DTs

(a) Consideration should be given for an additional Registrar of the Complaints Committee and Disciplinary Tribunal and vesting in him/her the requisite powers to manage and improve these processes. The Registrar can be empowered to fix meetings for all CCs to sit in a stipulated timeframe, monitor investigation timelines, be involved in pre-inquiry conference (PIC) by sitting with the DT Chairman and Legal Assessor and assist the respective CC and DT Chairman with a differentiated case management system for managing complaints and inquiries. In view of the backlog of

cases, we encourage SMC to devote more logistical and manpower resources to speed up the process. SMC could also consider to adequately and fully reimburse the time and effort spent by the CC and DT members in the preparation and carrying out of the proceedings[3].

(b) It was suggested that there be a full time Registrar of Disciplinary Tribunals to improve case monitoring and disciplined case disposition timelines to ensure more efficient case management. The holder of this position could be a former judicial officer with case management and scheduling experience who is empowered to give directions through pre-inquiry conferences, using the imposition of costs as a sanction for non-compliance with directions. This full time post will ensure more consistency in directions and relieve some of the burden from the Chair and LA. The Registrar will also be best placed to monitor compliance with the directions given at the pre-inquiry conferences[12].

Separating the functions

(c) One of the law firms which prosecutes complaints before the DT disagreed with the suggestion to transfer the adjudication function of the tribunal to an independent body as this may add and introduce more costs and complexities to the current processes. The British example was considered, in particular the setting up of the MPTS and it was opined that such a service is not required at this stage. The MPTS was set up primarily to ensure that the public could be confident that decisions about doctors' fitness to practice were completely independent and impartial[6].

(d) Consideration should be given to setting up an independent body to take over the disciplinary process for doctors. This would avoid any possible conflict of interest and also ensure a more transparent disciplinary process. In the UK, concerns that conflicts could arise due to the GMC's dual role as investigator and adjudicator led the body to set up a separate MPTS to provide better separation between the GMC's complaints and investigation functions and adjudication. The MPTS was established to take over responsibility for the day to day management of hearings, panellists and their decisions. As much as the MPTS is part of the GMC, it is operationally entirely separate and independent from the GMC's investigation process[10].

(e) Under the current system, when MOH makes a complaint against a doctor, the SMC (of which the Registrar and the committee members are largely MOH appointed doctors) then decide if the case merits an inquiry, and appoints the disciplinary tribunal and the prosecuting counsel. Such a system can naturally be questioned for its lack of transparency. If MOH and SMC are closely linked, this may not be in the best interests of the general population of doctors[10].

(f) SMC is ostensibly a self-regulating body set up under the MRA. However, MOH involvement in the appointment of officers and reporting line suggests that it is not truly independent. This could give rise to conflict in cases where the complaint is made by MOH. SMC is under the purview of the Manpower Standards and Development Division of the MOH and its Director, who then reports to the DMS of the MOH. Additionally, it is suggested that appointment of the President of the Medical Council should be by election, and the Panel of Chairmen for DTs should be appointed by the SMC and not by the Minister. There should be express provisions in the

Act that CCs and DTs shall act independently of the Medical Council. There should be a separation of functions of the Medical Council, similar to the recent reforms of the UK's GMC. Currently, the SMC acts as judge, jury and prosecutor in disciplinary matters[12].

(g) SMC should not function as judge, jury and prosecutor but should send the case to an independent body consisting of doctors, lawyers and prominent laymen for action[40].

Judgment by peers

(h) There is merit in retaining the current system as we note that the Singapore Courts exercise deference to the views/findings of a DT made up of medical practitioners. In the recent High Court decisions of *Gobinathan Devathasan v SMC [2010] 2 SLR 926* and *Low Chai Ling v SMC [2011] 1 SLR 83*, the Court of 3 Judges noted that DTs are "*specialist tribunal[s] with its own professional expertise and understanding of what the medical profession expects of its members*". The level of deference recognised by the Courts may be affected if DTs are no longer staffed by medical professionals. Changing the specialist nature of the DTs may also increase the incidence of frivolous appeals by defendants hoping for a different factual finding by the Courts. Further, should Tribunals be solely composed by lay-persons, there will likely be a need to call expert witnesses for most (if not all) disciplinary inquiries even if the issues involved are straightforward. In both situations, there may be higher costs and an unnecessary lengthening of the disciplinary process. By way of comparison, other professions also adopt similar systems of self-regulation. For example, disciplinary tribunals appointed under the Legal Profession Act (Cap. 161) consist of other senior lawyers who will determine whether a lawyer has complied with the correct ethical and/or professional standards. Other professions, such as accountants and Traditional Chinese Medicine practitioners are also judged by their peers in relation to professional conduct. There is thus no need to change the current system of having other medical practitioners being involved in determining whether a doctor has fallen below the professional standards required of him/her[4].

(i) The existing concepts underlying the present disciplinary processes and the system of judgment by peers in the SMC are sound. It is right that the standards of a professional body are set by the body itself. Only a professional body possesses the requisite intimate knowledge of its practices and procedures that will enable it to regulate the standards to be imposed on its own members. The Courts and legally trained persons also have a role in disciplinary proceedings of the medical profession, but the role is that of supporting the disciplinary process, and (for the Courts) providing an appellate avenue to address legal questions arising from the proceedings (e.g. flaws in the conduct of the proceedings or whether a determination on a legal point by the tribunal was correct), leaving the issue of the standards to be prescribed to the professional body itself. An exception is the regulation of the legal profession by the Court where the Court, being a body with members with legal training, is fully competent to set standards for the legal profession. On this aspect of the Court or a legally trained person setting standards for the medical profession, it is noteworthy that in the Court of Appeal's decision in Khoo James and another v Gunapathy d/o Muniandy and another appeal [2002] 1 SLR(R) 1024; [2002] SGCA 25, in the context of the application of the Bolam test

and the imposition of the views of the adjudicating judge, the then Chief Justice Yong stated: "We often enough tell doctors not to play god; it seems only fair that, similarly, judges and lawyers should not play at being doctors"[8].

(j) The system of judgment by peers should be preserved. The main aims and objectives of this approach are:-
- To enhance medical practitioners' autonomy and responsibilities, and to achieve the SMC's objective of a self-regulatory professional body;
- To strive for a more advanced and deeper understanding of the subject matter, skills and processes in question, and
- To involve medical practitioners in critical reflection of their practices.

To enhance this system, for situations where the complaint concerns the professional practice, conduct or quality of service provided by a medical practitioner specialising in a particular discipline, one of the registered medical practitioners of the DT should be an experienced medical practitioner specialising in the same discipline as the respondent practitioner[12].

Working together

(k) The SMC, providing the leadership, works in partnership with the medical professional bodies to develop and promote Professionalism as a life-long learning competency. The public and patients would be better served by proactive education activities to build Professionalism rather than to use reactive disciplinary process based on complaints. SMC should provide more elaborate guidance in good medical practice[1].

(l) We feel that focusing on developing more effective disciplinary processes may not be the best way to uphold professional standards. We feel that SMC should engage the professional bodies to foster a shared understanding of the problems confronting the profession. All professional bodies should work closely with one another to advocate for higher professional standards through education and peer-interaction. Doctors should be encouraged to participate more actively in professional bodies. Professional bodies should be supported and encouraged to focus on advocacy for higher standards of professionalism[2].

Others

(m) The decision of the High Court in Dr Low's case has indeed raised serious issues over the management and the conduct of the disciplinary proceedings against her, particularly with regard to the framing of the charges, the evidence presented and relied upon, and the conclusions drawn. However, the court had not attributed the deficiencies to the structure of the disciplinary process which was in place. The court made its findings and comments on the manner in which the proceedings were actually run; there were no criticism of the process itself. The process under the current MRA and MRR, which came into operation on 1 Dec 2010, was not an issue in the proceedings. Having looked at the relevant portions of the MRA and MRR, they appear to set the broad framework for the conduct and management of disciplinary proceedings, and allow room for discretion in the conduct of proceedings and there is no necessity for them to be

amended before improvements in the administrative and management processes can be implemented[9].

(n) There is also an anomaly, presumed to be a drafting error, in the transitional provision of the MRA (section 73, marginal notes state "Pending disciplinary proceedings") such that the present section 73 may lead to misinterpretation that the present Act applies to complaints lodged before 1 Dec 2010, resulting in retrospective application of the current Act, which is unconstitutional.

Pending disciplinary proceedings
73.—(1) This Act shall not apply to any inquiry, investigation or other proceedings of a disciplinary nature commenced before 3rd April 1998 and the repealed Act shall continue to apply to that inquiry, investigation or proceedings as if this Act had not been enacted.
(2) Where on 3rd April 1998 any matter is in the course of being investigated by the Preliminary Proceedings Committee, the Preliminary Proceedings Committee shall continue to exist to complete the investigation and may make such order, ruling or direction as it could have made under the powers conferred upon it by the repealed Act.
(3) Any order, ruling or direction made or given by the Medical Council pursuant to the repealed Act shall be treated as an order, a ruling or a direction under this Act and shall have the same force and effect as if it had been made or given by the Medical Council pursuant to the powers vested in the Medical Council under this Act.
(4) Nothing in this section shall be taken as prejudicing section 16 of the Interpretation Act (Cap. 1)[12].

(o) The definition of professional misconduct needs to be tightened - Some SMC decisions have led to the perception that the boundaries between a single act of omission or error of judgement and that of professional misconduct are blurred. Doctors have become increasingly anxious about this and many have expressed their concerns in light of recent cases. It is helpful that the Court had, in a 2008 case, stated that professional misconduct is more than mere negligence; for example, when there is an intentional and deliberate departure from standards observed or approved by members of the profession of good repute and competency, or when there has been such serious negligence that it objectively portrays an abuse of the privileges which accompany registration as a medical practitioner[12].

(p) SMC should hire a permanent lawyer or lawyers specialising in medicine, medical technology and medical ethics and should pay top-dollar for the lawyer(s). The lawyer(s) will be working full-time and giving advice and representing SMC. Legal cases will get more complex; ethical issues will also become more complex as our society matures and the public becomes more educated[43].

4.18.4 Deliberation by the Review Committee

Police, Investigator, Prosecutor and Judge

4.18.4.1 The Committee agreed that SMC's investigation and adjudication functions should be separated. The CC's role is to decide if the matter warrants a formal

investigation or referral for formal inquiry by the DT similar to the legal profession where the Inquiry Committee conducts preliminary investigation before formal inquiries are heard by the Court. The investigators only act upon the CC's instructions and report back to the CC. The additional powers of the CC, pursuant to Section 49(1) MRA, do provide the CCs with a wider scope in terms of meting out appropriate sanctions and this involves judgment too. SMC has also begun to separate its disciplinary functions in phases, e.g. bringing in a lawyer to chair DT inquiries and not requiring Council members to be part of the DT. The next stage would be the amendment of the MRA to abolish the requirement for Council members to chair CCs or be part of the CC process.

4.18.4.2 The Committee noted and commended SMC for concluding a fairly large number of complaints cases and disciplinary inquiries with due diligence. Although some recommendations would have to be made to fine-tune the processes in the current MRA/MRR, it would not necessarily be a major overhaul of the current disciplinary processes. The Committee agreed that self-regulation is a privilege which should not be relinquished lightly.

4.18.5 Recommendations by the Review Committee

4.18.5.1 In summary, the Committee makes the following recommendations:

(a) **Current Processes**:

No change - It is not necessary for SMC to separate its functions to handle complaints and disciplinary matters. The Committee agrees with SMC's current approach of not appointing its Council members to the DT either as a chairman or member.

No change – The Committee agreed that self-regulation should be preserved. The system of judgment by peers is sound and it is right that the standards of a professional body are set by the body itself.

(b) **Changes to Process Issues**:

(NA)

(c) **Changes to Policy Issues**:

(NA)

(d) **Amendments to MRA / MRR**:

Abolish the requirement for Council members to chair CCs and to include a panel of senior doctors (appointed by Minister) to chair the respective CCs (see Chapters 4.1 and 4.10 as well).

Chapter 4: Review of Processes under Current Medical Registration Act / Medical Registration Regulations

4.19 OTHERS

4.19.1 Current Processes

4.19.1.1 Current Adversarial Process

The current adversarial process which is engaged when a DT is set up to hear charges against a doctor results in a time consuming and expensive hearing process. This can also lead to hotly contested hearing before the High Court (for appeals).

4.19.1.2 Guidelines on Fees

The Guidelines on Fees for medical practitioners were previously set up by the Singapore Medical Association (SMA). However, the guidelines were removed by SMA since April 2007, following advice that such guidelines would contravene the Competition Act. The SMC currently does not issue any guidelines on the fees to be charged by doctors or medication.

4.19.2 Feedback Received

4.19.2.1 In summary, the Review Committee noted the following feedback which it received through its own members:

Current Adversarial Process

(a) This current adversarial process has a tendency to be legally complex and to become a fight between lawyers as much as it is a determination of fault or lack thereof. SMC might wish to consider investigating a complete change of approach to wit adopting an inquisitorial rather than an adversarial approach(57).

(b) The inquisitorial approach may result in less legalistic hearings and will give the DT more control over the proceedings because it will be directing how much evidence needs to be produced rather than just receiving the evidence parties chose to show it(57).

(c) However, the inquisitorial process is not much used in Singapore and quite a bit of research would have to be carried out into how it is administered in other countries before SMC could adopt it(57).

Guidelines on Fees

(d) The MRA needs a provision to override any competition commission concerns on setting of fees. Therefore, there should be a provision to allow the SMC to set costs or to delegate to a body to set costs(56).

Mediation to resolve issues

(e) Whether MOH could require doctors to opt for mediation to resolve issues (i.e. a mechanism to have a mediation clause in their dealings with patients).

4.19.3 Deliberation by the Review Committee

Current Adversarial Process

4.19.3.1 The Committee noted that the adversarial process leads to increased costs for both parties and was informed that the High Court Judges were also looking into different ways in handling the litigation process. The Courts have done some research for the Commonwealth and European counties and it would be useful for SMC to study their systems and processes.

4.19.3.2 For SMC's disciplinary inquiries, the Committee agreed that it might be better to have an inquisitorial inquiry process rather than an adversarial one and more beneficial to have someone investigating and determining what sort of evidence should be given and experts called upon, rather than leaving it to both parties to fight the case.

4.19.3.3 The Committee felt that, in the past, SMC's disciplinary inquiries were in fact more 'inquiry' based but with time, the processes started being more legalistic and complicated with lawyers fighting the case. Members also queried if having lawyers chair the DTs would also make the disciplinary hearings more adversarial.

4.19.3.4 Eventually, the Committee agreed that this is a project which the SMC should investigate and conduct the relevant research, although it might be easier for SMC to follow and take guidance from the Court / AGC / MinLaw (as they are also looking at revamping the adversarial way in which family law is practised) rather than conduct its own research into such a framework and attempt to implement its own processes, which would include laying out the processes clearly and training all members who are involved. It is hoped that the inquisitorial approach would ultimately save resources and money for both parties.

Guidelines on Fees

4.19.3.5 The Committee was informed that SMC has already internally started reviewing the guidelines / principles for determining ethical and reasonable medical fees and agreed in-principle (subject to SMC's final recommendation) that perhaps the MRA should be amended to include a provision to override any competition commission concerns on setting of fees.

Mediation to resolve issues

4.19.3.6 The Committee noted that in some cases, matters could have been resolved if parties come for mediation sooner (particularly for communication issues), otherwise, parties spend a lot of time and grief over the issues. The Committee discussed if MOH should encourage and make it mandatory for doctors to opt for mediation to resolve issues, providing a mechanism to have a mediation clause in their dealings with patients.

4.19.3.7 The Committee noted that MOH has already set up systems for a mediation process but the Committee queried if an alternative dispute resolution clause could be included (i.e. mediation). Eventually, the Committee also agreed that this proposal warrants further review and research.

4.19.4 Recommendations by the Review Committee

4.19.4.1 In summary, the Committee makes the following recommendations:

(a) **Current Processes**:

(NA)

(b) **Changes to Process Issues**:

With regard to the inquisitorial framework, the Committee agreed that this is a project which the SMC should investigate and conduct the relevant research, although it might be easier for SMC to follow and take guidance from the Court / AGC / MinLaw (as they are also looking at revamping the adversarial way in which family law is practised) rather than conduct its own research into such a framework and attempt to implement its own processes.

With regard to the issue on MOH providing mediation as an option for doctors to resolve issues with their patients, the Committee noted that this requires more in-depth research as well.

(c) **Changes to Policy Issues**:

(NA)

(d) **Amendments to MRA / MRR**:

Subject to Council's final proposal / submission on whether SMC will set costs/fees or to delegate to a body to set costs/fees, the MRA would be amended accordingly, where applicable.

Chapter 5: Summary of Review Committee's Recommendations

Chap	Topic	SMC's Current Policies / Processes	Key Suggestions / Feedback (from stakeholders)	Recommendations by the Review Committee		
				Process Issues	Policy Issues	Recommended Amendments to current MRA / MRR
4.1	Appointment of Complaints Panel	The Complaints Panel is appointed by the Medical Council where the doctors are drawn from a list of nominees submitted by medical professional bodies and public/private hospitals. The list of lay persons (nominated by Minister) are drawn from professional bodies and from academics nominated by our universities. SMC pays an honorarium to some Complaints Panel members for their time and contributions. Members who are from the Public Institutions and/or Full-Time university staff would not be given an honorarium. Council members who are from the private sector will be paid an honorarium for attending CC meetings during office hours only.	Consist of permanent pool of senior doctors and members and should be remunerated. The lawyers have code of conflict and whether a conflicts code could be drafted for the medical profession as well (to address situations where the arbitrator or members of a tribunal are conflicted from adjudicating or from being a witness etc).	No change (The current nomination process for members to the Complaints Panel is efficient and adequate. There is a good representation of doctors from all specialties. SMC to continue to appoint members to the Complaints Panel (no conflict of interest) as nominations are received from professional bodies and other institutions. The Committee felt that being part of the Complaints Panel is an honour and contribution to the medical fraternity and an honorarium is acceptable.)	No change (SMC has the prerogative to reappoint medical doctors and lay persons to the Complaints Panel and does not necessarily have to appoint new members every 2 years.) To research The Secretariat will investigate / research for more guidance from the legal and other professions with regard to whether it is helpful for the medical profession to have a code of conduct for conflict to guide the profession.	To consider amendments to ensure that in future, no Council member will be appointed to the Complaints Panel and by implication, will not be a member of the CCs. Therefore, provisions should be made for Minister to appoint: (a) the Chairman and Deputy Chairman of the Complaints Panel; and (b) the Panel of CC Chairmen to chair the CCs. Council will appoint the Complaints Panel comprising senior doctors and lawyers.
		Members on Complaints Panel attend bi-annual training sessions organised by SMC (presented by legal assessors) on the complaints and disciplinary processes.	All members of the CC/DT must receive adequate, in-depth and formal training.	SMC to organise regular and comprehensive training sessions and could ask the Attorney-General Chambers (AGC) or the Institute of Legal Education to design short courses. The topics to be covered could include the procedures to be followed during hearings and the legal principles regarding evidence and burden of proof.	No change	No change
		The complaints panel is chaired by a Council member, who is also appointed to the Complaints Panel.	Consideration of an additional Registrar of the CC/DT to manage and improve processes.	No change (In the meantime, the Secretariat can continue to monitor and report regularly to the Chairman Complaints Panel on the progress and status of each ongoing CC.)	No change	SMC will employ, on a part-time basis, the Chairman of the Complaints Panel so that he/she can manage the processes and also support the Secretariat in improving the internal processes for disciplinary proceedings.
4.2	Complaints received against registered medical practitioners	An official complaint (accompanied with a statutory declaration (SD)) will be submitted to the SMC. If the complaint is from public officers, no SD is required.	The Registrar and Executive Secretary should not hold other regulatory functions in the MOH, especially when MOH is a major complainant to the SMC. Neutrality of administrative staff. MOH should not make complaints to SMC based on 'feedback or intelligence' from anonymous or unidentified persons. Appointment of review committee to sift out frivolous complaints.	No change (MOH and other Ministries can continue to submit complaints to SMC, although MOH now sends most of it as information to SMC. It is not necessary to appoint a review committee to form an additional layer in the sifting processes as CCs only dismiss 10% of cases at its first meeting pursuant to Section 42(4) MRA.)	No change	No change

Chap	Topic	SMC's Current Policies / Processes	Key Suggestions / Feedback (from stakeholders)	Recommendations by the Review Committee		
				Process Issues	Policy Issues	Recommended Amendments to current MRA / MRR
		SMC can, on its own motion, make a complaint or refer any information to the Chairman, Complaints Panel – Section 39(3) MRA (note: SMC does not investigate into the complaint).	SMC should not accept anonymous complaints.	No change (SMC will continue to review its algorithm and internal processes in referring information / complaints it receives to the Chairman of the Complaints Panel.)	No change	No change
		No administrative fee imposed for every official complaint lodged with SMC (supported with an SD).	Institute a refundable fee or deposit for every complaint lodged. Fee will be forfeited if the complaint is dismissed, otherwise, the fee will be refunded to the patient if the complaint is found to be substantiated after investigations are complete.	No change (It is not necessary to impose an administrative fee for every complaint lodged or a refundable fee to the complainant if the complaint is found to be substantiated after investigations are complete.)	No change	No change
		CCs are required to complete their inquiry not later than 3 months after the date the complaint is laid before the CC. If the inquiry cannot be completed within 3 months, the CC applies to the Chairman of the Complaints Panel for an extension of time to complete its inquiry.	To introduce a limitation provision into the MRA barring SMC from proceeding further with a complaint if the complaint is not made by the complainant, or the CC fails to make a decision, within defined timeframes. Leave has to be obtained from the High Court to proceed should the limitation provision be breached.	No change (It is not necessary to involve the High Court. Requests for extensions of time should still be sought from and approved by the Chairman of the Complaints Panel. CCs which are tardy in their work should be flagged to the Chairman so that such members will not be re-appointed to the Complaints Panel. The Committee also noted that the respondent doctors themselves are the cause for delay in some cases.)	No change	No change
4.3	Appointment of Complaints Committee	SMC can, on its own motion, make a complaint or refer any information to the Chairman, Complaints Panel – Section 39(3) MRA (note: SMC does not investigate into the complaint). The Chairman Complaints Panel appoints each CC and each CC reviews an average of 5 cases.	If complaint comes from SMC under Section 39(3) MRA, an SMC member should not be appointed as the Chairman of the CC.	No change (SMC ensures that the members reviewing the information/complaint under Section 39(3) MRA will not be part of the CC or DT, where applicable). Secretariat could group a min of 3 complaints to each CC and roster appointed CCs to meet weekly. Chairman of the Complaints Panel could place a complaint before the next CC if he finds that the latter has the appropriate expertise to review certain cases. Such scheduling allows for efficiency and the Chairman of the Complaints Panel to be provided with the flexibility to allocate cases to particular CCs with the relevant expertise.	No change	To consider amendments to ensure that in future, no Council member will be appointed to the Complaints Panel and by implication, will not be a member of the CCs. Therefore, the Chairman of the Complaints Panel and its deputy (non-Council members) will be appointed by Minister. Council will appoint the Complaints Panel comprising senior doctors and laypersons. Amendments to MRA to also allow Minister to appoint a panel of senior doctors to chair CCs (similar to the panel of DT chairmen) – see 4.1 above.
4.4	Commencement of Inquiry by Complaints Committee	Complaints received are grouped together to make up an average of 5 complaints per CC.	There should not be much delay to completing the CC's preliminary inquiry. Main cause of delay is the inability to find common dates for the CCs to meet.	Online meetings are possible through email discussions. Minutes from such email discussions are collated, documented and formalised with members' signatures. Should any member of the CC want to discuss a case, such a meeting will be organised.	The Committee agrees with SMC's efforts to conduct regular audits on the progress of each case.	No change

Chap	Topic	SMC's Current Policies / Processes	Key Suggestions / Feedback (from stakeholders)	Recommendations by the Review Committee		
				Process Issues	**Policy Issues**	**Recommended Amendments to current MRA / MRR**
		Currently, there is no avenue for the doctor and complainant to appeal if the CC unanimously dismisses the complaint or issues a letter of advice to the doctor (Section 42(4) MRA).	Whether the MRA should be amended to provide complainants and doctors with an avenue to appeal if the CC dismisses the complaint or issues a letter of advice to the doctor at the CC's first meeting.	No change	No change	No change (The Committee felt that when CCs unanimously dismiss the complaint or issue letters of advice, it means that the complaint does not warrant investigation and therefore, does not necessitate a right of appeal.)
4.5	Mediation	Medical Council has an agreement and memorandum of understanding (MOU) with the Singapore Mediation Centre for the referral of parties for mediation. The administrative cost for mediation for both parties is borne by the Medical Council. The Singapore Mediation Centre will allocate its mediators to each case accordingly and a final report will be sent back to SMC on whether the mediation took place, did not take place and was unsuccessful or successful.	The AMS, together with other medical professional bodies / indemnity organisation (MPS) hopes to develop expertise in medical mediation and provide a list of mediators and avenue for mediation. When the complainant is a government officer or statutory body, the CC should not make an order for mediation. In some cases, it may be premature for CCs to refer cases for mediation when it has not received / considered the explanation from the doctor.	No change (SMC already has an MOU with the Singapore Mediation Centre and has made arrangements with the Mediation Centre to train the Complaints Panel on the identification of types of cases which could be referred for mediation. The Committee also noted that the ministries rarely submit complaints which are related to communication issues. The Mediation Centre can conduct the mediation and it can invite doctors to provide their explanation prior to the mediation session as well.)	No change	No change
		SMC Secretariat will inform complainants of the various options available to them, such as obtaining a second opinion or requesting the hospital's assistance in settling the alleged dispute, mediation).	SMC staff to highlight mediation as an alternative / effective way of resolving disputes to complainants before a complaint is made (in cases of mis-communication and where complainants and families are still grieving after an adverse medical event).	No change (SMC staff to continue highlighting mediation as an alternative way of resolving disputes – for appropriate cases.)	No change	No change
4.6	Investigators, Conduct of Investigation and IU's report to the CC	CC may direct the investigators to carry out an investigation if it decides that an official investigation is necessary. The investigator's role is to assist the CC in collating the required information and assessing the practice of a doctor with reference to the alleged issues according to the CC's instructions.	Duplication of existing investigation arm with MOH? Role of investigators needs to be clarified and made known. Queries on whether they have the appropriate experience.	No change (SMC's investigators are all qualified, having at least 10 years of experience. The investigators form a fact finding unit for the CCs and only act according to the CC's orders. CCs are to be reminded to give specific and direct instructions for the investigators to look into certain areas and the CC then assesses the information collated by the investigators (as instructed by the CCs) in the investigator's report.)	No change	Probably a typographical error and proposed that Section 44(1) MRA be amended to: *"An investigator directed under Section 42(4)(c) to investigate any complaint or information shall, if the* ***Complaints Committee*** *(instead of "****he****") is of the opinion that a registered medical practitioner should be called upon to answer any allegation made against him, give notice in writing of the complaint or information to him."*
4.7	Findings of Complaints Committee	CCs provide substantive reasons to both doctor and the complainant for their decisions and provide regular updates (via the Secretariat) to the complainants on the progress of the CC's investigation. The CCs may take longer than 6-9 months to conclude their investigations for complex cases.	Delays in dealing with complaints remain a concern. The complainant should be provided with an appropriate GD by the CC.	No change (CCs to be periodically reminded to provide substantive reasons to both doctor and complainant for their decisions and regular updates to complainants on the progress of the CC's investigation. SMC has a pool of regular and reliable CC Secretaries to support the CCs for the	To review the internal manpower issues and employ more staff to handle the complaints / disciplinary inquiry cases.	No change

Chap	Topic	SMC's Current Policies / Processes	Key Suggestions / Feedback (from stakeholders)	Recommendations by the Review Committee		
				Process Issues	**Policy Issues**	**Recommended Amendments to current MRA / MRR**
				large volume of CC meetings. Each CC Chairman to propose a time estimate for investigations to be completed and to direct the schedule of subsequent meetings so that all the CC members can book their dates in advance.)		
		No CC so far has made orders for those new options available to them, including those options pursuant to Section 49(1)(g) MRA.	The option of sanctions at the CC stage could be a way to avoid or reduce the need for referral to DTs. The use of appropriate remediation could be a more constructive approach in some cases.	Same as Chapter 4.1 above - SMC to organise more detailed and regular briefing sessions for the Complaints Panel on how to use the new options and powers available to the CC under the Current MRA.	No change	No change
		Currently, previous complaint(s) on the same doctor is/are not made known to the CC and investigators.	If past complaints (where the doctor was issued letters of advice/warning and previous convictions etc) should be made known to the Chairman Complaints Panel, CC and to the investigators and at which stage of the CC's preliminary review should they be informed.	No change.	Chairman of the Complaints Panel, CC and investigators should be informed from the beginning as they need to know if the doctor had ignored letters of advice or warning issued by previous CCs or if they had similar convictions to determine whether there was a pattern of committing certain offences. The DT, however, should not know about the doctor's previous complaints and should only rely on the specific charge(s) laid before them for the present case.	No change
		Only cases under Section 39(4) MRA are referred to the Disciplinary Tribunal directly. The CC cannot, at its first instance, refer a case to the DT without appointing the investigators to conduct an investigation (not provided for under Section 42(4) MRA).	MRA should be amended to give power to the CC to refer a complaint for investigation by DT without appointing an investigator and making a report to the CC. Such an amendment would accelerate the progress of the process before the CC.	No change	No change	No change (The Committee is not in favour of a direct referral of cases to a DT without a proper investigation and process of evidence gathering being undertaken as the DT cannot conduct an investigation.)
		Where a doctor has been convicted in Singapore or elsewhere of an offence implying a defect in character which makes him unfit to practise medicine, the Medical Council may immediately refer the matter to a Disciplinary Tribunal under Section 50 MRA.	Whether the MRA should be amended to allow conviction cases under Section 39(4) MRA to be referred to a CC (and not DT) and for the CC to get the doctor to agree to orders similar to the current Section 49(1)(g) MRA without having to go through a disciplinary inquiry.	No change	No change	Section 49(1)(g) MRA needs to be redrafted as the CC could only initiate this order if it had determined that no formal inquiry by a DT/HC is necessary. However, if the doctor disagrees or subsequently refuses to comply with the order, there is currently no recourse for the CC to refer the matter to a DT/HC. The original intention for this section was likely to be '*in lieu*' of a formal inquiry.

Chap	Topic	SMC's Current Policies / Processes	Key Suggestions / Feedback (from stakeholders)	Recommendations by the Review Committee		
				Process Issues	Policy Issues	Recommended Amendments to current MRA / MRR
4.8	Appeal against order by CC	Minister provides substantial reasons to the complainant, SMC and doctor of the basis for a change of decision so that Counsel for SMC can work on the proposed charges in the draft NOI.	Appeal process not transparent. Query was raised on how MOH considers appeals and makes a subsequent decision. Written grounds of decision must be provided so as to assist both the CC and DT to perform their functions effectively. This will also benefit the prosecution and defence counsel when the case is referred to DC/DT by Minister upon appeal.	No change (The Committee noted that it was not necessary to legislate what Minister needs to provide in his decisions as long as Minister provides substantial reasons to all parties. MOH has never appealed against the various CCs' decisions where the complaint originates from MOH. Once MOH receives the appeal, the documents which CC perused and deliberated on will be obtained from SMC and Minister will be advised by staff in MOH including its Legal Office. MOH will seek an expert's views using anonymised case notes and a second expert's opinion may be sought if necessary. Minister can agree with the CC's order, appoint investigators or make any other orders. The CCs will also be informed as well for cases where Minister overturns the CCs' decisions.)	To note only:- Section 49(13)(b) MRA [*i.e. which empowers the Minister after considering the appeal, to make "an order directing a CC to immediately appoint one or more investigators for the purposes of carrying out an investigation under Section 42(4)(c)"*] appears to be inconsistent with Section 49(1) MRA which states "*After deliberation of the investigation report and any recommendation of the investigator... and upon due inquiry into the complaint...*". If such an order is made, the order should be directed to the same CC against whose decision the appeal is made to the Minister.	The MRA should be amended such that appeals against the CC's decision should be placed before an independent Appeals Committee (drawn from a panel of doctors and lawyers) rather than to the Minister. The Appeals Panel (for CCs' decisions) and the Appeals Committee (reviewing each appeal) would be appointed by the Minister.
		No administrative fee imposed on doctors/complainants for lodging an appeal against the CC's decision.	(NA)	No change (The Committee deliberated on whether some restraints should be imposed to allow the complainants to consider the issues carefully before submitting an official complaint but decided that cost implications would not be imposed on either the doctor or the complainant).	No change	No change
		There are cases where appeals are lodged against the CCs' decisions and Minister determines that a DT should be appointed.	Some uncertainty on the role of the CC and/or SMC when an appeal (against the CC's decision) is made to the Minister and Minister determines that a DT should be appointed. A question arises as to who should determine the form/contents of the charges against the doctor when an inquiry is ordered by the Minister (note: the CC is considered functus officio).	No change	No change	Amendments to the MRR to make it clear that Council will approve the charges in the NOI for: (i) cases referred to the DT by the Minister (or the Appeals Committee - subject to approval of the proposal to exclude Minister from the appeals process) as well as (ii) when the complaints originate from SMC pursuant to Section 39(4) of the MRA.
4.9	Drafting of Notice of Inquiry (NOI) and Framing of Charges	SMC's solicitors meet up with the CC Chairman and members or get their clarification (via email) to understand the main issues in the complaint so as to frame the charges appropriately and accurately.	Recommendations for legal officers trained in criminal law to work with the CC in drawing up the charges in professional misconduct.	SMC is working with the Legal Service Commission in seconding a Legal Service Officer (LSO) to SMC to help with in-house matters. Once the processes are formalised, the LSO can work with the appointed Counsel for SMC to frame the charges. Whilst the Committee agreed that charges must be clear and precise, the Committee recognised that the precise framing of charges all the time can be difficult to achieve.	No change	Amendments to the MRR to make it clear that Council will approve the charges in the NOI for: (i) cases referred to the DT by the Minister (or the Appeals Committee - subject to approval of the proposal to exclude Minister from the appeals process) as well as (ii) when the complaints originate from SMC pursuant to Section 39(4) of the MRA.

Chap	Topic	SMC's Current Policies / Processes	Key Suggestions / Feedback (from stakeholders)	Recommendations by the Review Committee		
				Process Issues	**Policy Issues**	**Recommended Amendments to current MRA / MRR**
		Occasionally, the prosecution, defence or DC/DT seeks to amend the charges(s) at the pre-inquiry conference, in the midst of the actual hearing or at close to the end of the inquiry.	It is not reasonable to amend charges because all the evidence would have already been procured by the investigator from the complainant, doctor and third parties (if necessary) and that the CC would have taken much time to deliberate and would have already obtained an expert's opinion.	No change (Regulation 35 MRR gives wide discretion to the DC/DT to amend / frame new charge(s) before making a finding under Section 53 MRA. It is not uncommon for the prosecution or even the DC/DT before or in the midst of the hearing to amend or allow an amendment to the charge(s). The overriding consideration which the DC/DT has to bear in mind in considering an amendment is whether the amendment is likely to prejudice the doctor's defence or the conduct of the case by SMC's counsel. Regulation 35 prescribes various steps which the DT must observe and comply with in amending or allowing amendment to the charge(s). Whether an amendment should or should not be allowed also depends on the extent of the amendment, the time for the proposed amendment and the circumstances of the case.)	No change	No change
4.10	DT and Constitution of each DT	Since the beginning of 2013, SMC has decided not to appoint its Council members to either chair or participate as members of the DT so as to separate the adjudication functions from Council. DTs will still be constituted with a majority of doctors so that questions of fact can be decided. SMC has also decided that it is not necessary to appoint an LA if a lawyer is appointed to the DT (i.e. in situations where the lawyer chairs or when an LSO is appointed to the DT).	Varying proposals received for DTs to be chaired by (i) doctors (responsible for guiding the inquiry on medical aspects) and (ii) lawyers (improve the quality and pace of proceedings).	No change (The senior doctors currently presiding over DCs/DTs will not be appointed to chair inquiries if they do not have minimum experience of having heard 3 inquiries as an ordinary member. There will be no Council member on DTs.)	It is not necessary for all DTs to be chaired by lawyers although lawyers can be appointed to DTs either as the chairman or as a member, depending on the legal technicalities and complexity of the case (i.e. a lawyer should be a member of the DT, but not necessarily as chair).	Amendments to MRA to state that a lawyer should be appointed to all DTs but not necessarily as chair.
		A briefing session was conducted for the senior doctors newly appointed to the panel of DT chairmen by Minister (since the Current MRA came into force on 1 December 2010).	There must be proper training for doctors sitting on the DT.	SMC to organise regular and comprehensive training sessions and could ask AGC or the Institute of Legal Education to design short courses for the senior doctors (who are on the panel of DT chairmen appointed by Minister). The topics to be covered could include the procedures to be followed during hearings and the legal principles regarding evidence and burden of proof etc.	No change	No change
4.11	Pre-inquiry conferences (PICs)	While SMC used to serve NOIs with inquiry dates, SMC will now serve NOIs with dates for the PIC.	PICs have served to reduce or limit costs to the Council and parties are given the opportunity to address the tribunal on preliminary issues and directions are given by tribunals to avoid adjournments of hearing dates. PICs should take place no later than 1 month from the date of the NOI.	No change (NOIs for DC/DT cases are now served with a date for the PIC instead of actual inquiry dates. The DC/DT chairman needs to be stricter with both parties at such PICs to set up the inquiry schedule and timelines for submission of all inquiry documents. SMC can come up with a standard template checklist for all PICs.)	No change	Form C of MRR to be amended such that all NOIs should be served with PIC dates (currently it is optional, i.e. either DT or PIC dates).

Chap	Topic	SMC's Current Policies / Processes	Key Suggestions / Feedback (from stakeholders)	Recommendations by the Review Committee		
				Process Issues	Policy Issues	Recommended Amendments to current MRA / MRR
		Identification of the DC/DT members is made available to parties upon request before the PICs.	Identities of DC/DT members should be disclosed to parties so that, at the stage of the PIC, counsel can raise any issue of conflict of interests as well as preliminary points.	No change	Identities of DC/DT members will be disclosed to parties immediately after the service of the NOI and before the PIC.	No change
4.12	Proceedings of Disciplinary Tribunals	Currently, the complainant and respondent doctor's family members are not allowed into the inquiry. Requests to attend are made to the respective DC/DT on a case-by-case basis	(NA)	No change (DC/DT inquiries should still be held in camera. Requests from the doctor and the complainant for them as well as their family member(s) to attend the inquiry should be left to the DC/DT's discretion and decision.)	No change	No change
		The CC's referral of issues is spelt out clearly in the charges in the NOI. Copies of the CC's minutes and the CC's report to Council under Section 49(14) MRA are not included in the inquiry bundles.	Defence counsel have requested for discovery of documents in SMC's possession, including documents deemed favourable to the Defence, and that doctors need these documents to have a level playing field when preparing their Defences.	No change (Notes/documents containing CC's internal discussions/minutes and report to Council should not be revealed and documents should be restricted to information which would be used at the quasi-inquiry proceedings. Documents deemed favourable to the defence should be disclosed, i.e. expert reports, witness evidence etc.)	SMC to draw up an internal policy to guide the DC/DT.	
		Issues with regard to the submission and exchange of inquiry bundles are spelt out under Regulation 30 MRR. Some of such issues are also resolved at the PICs and some DC/DT chairmen may request parties to submit their bundles earlier (as agreed by parties at the PICs).	Apart from the Prosecution's expert report which has to be annexed to the NOI, Prosecution does not need to disclose any other documents which it may have until the Inquiry Bundle containing parties' documents is prepared closer to the inquiry date. Under the current MRR, the doctor may only get to see the relevant documents 5 days before the inquiry and may have insufficient time to prepare his case in light of these documents. The doctor may be further prejudiced if he has submitted his expert report and the Prosecution subsequently introduces fresh documents. Presently, the doctor has to submit his expert report at least 10 days before the inquiry. Fresh documents in the inquiry bundle can be submitted by the Prosecution to the DC/DT (and the Defence) as late as 5 days before the Inquiry, which the doctor's expert may not have seen and which could affect the doctor's expert's opinion.	No change (The Committee noted the advice from a legal assessor that the feedback was slightly incorrect as, in practice, before that time, there would have been discovery of documents sought by the defence. At the PIC, the chairman would also have enquired with both parties, among other things, the following: (i) the number of witnesses each side would be calling; and (ii) what documents are to be disclosed, following which, an order would have been made directing the prosecution to give discovery of all the documents which are relevant or upon which it intends to rely at the inquiry. The Committee does not feel that the provisions of Regulation 30 MRR are unreasonable and that the timelines will be set by the respective chairman at each PIC.)	No change	No change
		Inquiries usually held from 10am to 6pm/8pm (whole day) or from 2-8pm (half day). Video-conferencing has been implemented for inquiries where experts are overseas. Usually	Proposals included: • Filing/submitting of any intermediate documents in the nature of legal pleadings;	Having read the feedback on the disciplinary processes leading to and including the inquiry itself, the Committee proposed that SMC, Counsel for SMC	SMC to draw up an internal policy to guide the DC/DT at each PIC.	No change

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				Process Issues	Policy Issues	Recommended Amendments to current MRA / MRR
		DC/DT and both sets of counsel will discuss housekeeping and any preliminary issues at the first day of the inquiry.	• PDF bundles and use of projectors; • Earlier exchange of documents and adequate time for case preparation; • DT should be empowered to raise questions to enable greater understanding of the case; • Setting out of cases by both counsel early in the proceedings; • Disclosure of documents and expert reports at an early stage; • Use of witness statements or affidavits of evidence (AEICs).	and MPS's panel of lawyers have more consultations and work closely together to improve on the speed, processes and efficiency of disciplinary inquiries. As mentioned earlier, some of the issues would have been resolved at the respective PICs.		
4.13	Findings of Disciplinary Tribunals	Since mid 2011, SMC has published the grounds of decisions of doctors found guilty of professional misconduct by the DCs (after the DCs made the order for the grounds to be published and after the appeal period has lapsed). All names except that of the convicted doctor is anonymised. For acquittal cases, Council leaves it to the DC's discretion on whether the anonymised GD should be published.	All GDs (including cases in which the doctor was found not guilty) should be published. Sensitive information can be anonymised if necessary. Other feedback received: (a) Not to publicise the GD and not to mention the case in the media. (b) Defence Counsel to be given access to all precedents, including pre-2011 cases.	<u>No change</u> (DC/DTs are to continue to give the orders for anonymised (except for the doctor's name) grounds of decisions to be published for all convicted cases.)	DC/DTs will also give orders for the anonymised GDs to be published (at a later timing) for acquitted cases. A database on SMC's precedents (i.e. redacted and up to last 5 years first) would be shared eventually in the public domain without compromising confidentiality.	No change
		The fine has been increased to $100,000 (from $10,000) and the minimum suspension period as required by the MRA stands at 3 months.	DTs should be given the leeway to give shorter suspensions without the provision of the minimal suspension period, to broaden the sentencing discretion to DTs. Another view was that DTs must have the courage to impose severe and deterrent sentences.	<u>No change</u> (It is not necessary to make amendments to abolish the minimum suspension period as too short a suspension period becomes meaningless in terms of disciplinary action. The DT has more sentencing permutations to consider now that the fine amount has been raised to $100,000.)	No change	No change
		In the event of an unsuccessful prosecution of a Respondent doctor, the respondent doctor would not be liable to pay the legal costs incurred by the Council in the proceedings and parties shall bear their own costs. The DC may order the respondent doctor to pay costs (including the costs of the legal assessor to the DC) if the respondent doctor is found guilty on some or all of the charges.	(a) High cost in defending doctors. There should be clear guidelines or scale on the costs payable for LAs and SMC's solicitors. (b) Complainants should be made to bear their fair share of the costs of the inquiry proceedings and in the event the doctor is found not guilty, complainant should bear the full costs of the proceedings. (c) SMC to absorb the legal and administrative costs of the inquiry if the doctor was acquitted. DTs should be empowered to award costs to the respondent doctor in appropriate cases where charges are dismissed and to withhold costs from SMC for	<u>No change</u> (The Committee noted that it would be unusual for a CC to refer vexatious and frivolous cases for a formal disciplinary inquiry. Orders on costs should be left to the discretion of the DC/DTs after hearing parties' submissions. Both Counsel can provide the DC/DT with the precedents on how costs were apportioned for previous inquiries but SMC will not be made to bear the respondent's costs.)	No change	No change

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			charges which it fails to make out, i.e. bear costs for vexatious and frivolous prosecution of cases referred by the CC.			
4.14	Appeals against order(s) by DTs	As prescribed under the current MRA, should complainants appeal, they would then have to, within 30 days after the lapse of the period for appeal (provided the SMC does not appeal) apply to a Review Committee which is appointed by the Minister. SMC and doctor may also, if dissatisfied with the DT's decision, within 30 days after the service on the doctor of the notice of the order, appeal to the High Court against the order.	Various feedback received: (a) A query was received on how the Review Committee decides whether to direct SMC to file an appeal to the High Court. (b) Feedback was received from a doctor who felt that appeals to Minister should be abolished and the role of the Minister completely removed from the disciplinary process and that parties should only appeal to the High Court. (c) Feedback received from lawyers that there should be a review panel as an alternative to appeal. All parties (for DTs) could ask for a Review Panel and any party choosing this must choose whether to use this Panel or appeal to the High Court. Appeal is barred if review is chosen and vice versa. In addition, patients are to be given a right of appeal to the High Court, with leave of the High Court (to prevent abuse). (d) Feedback that the current process concerning appeals should be changed and it is not desirable to have appeals directed to the Minister. An ad-hoc advisory group should be set up (independent committee) and that there should be no appeals allowed by doctors and appeals should only be brought by complainants whose complaints have not been successful. If the outcome of the appeal is in favour of the complainant, the charges can be sent to another DT for re-hearing.	No change	No change	The appeals process for DTs' decisions should be amended. SMC should retain the Review Committee which will represent Council's views and take away Minister's current role in appointing a Review Committee for appeals by complainants. This SMC Review Committee will audit the outcome of every inquiry before a DT (i.e. "review" the DT's findings and not conduct a new inquiry or consider any new evidence but should only review the evidence which was presented to the DT). This Review Committee (to be appointed by the Council and not by the Minister and which consists of 3 Council members) should then direct the Council to appeal as it would be neither practicable nor efficient for the entire Council to review the inquiry documents and take a vote. Committee strongly felt that SMC and its Council members should be given the regulatory powers to perform this important role in reviewing the outcomes of all inquiries by DTs. Therefore, only the SMC (through the decision of its Review Committee) and doctor will be able to appeal directly to the High Court. If the complainant is unhappy, he/she can write in to SMC and 'lobby' SMC to appeal. In any case, the Review Committee will be reviewing all decisions made by DTs.
		Sections 23 and 24 MRA (1985 edition) seemed to provide a much wider and unlimited power to the High Court:- 1. <u>In respect of suspension from registration</u>:- "A person who has been suspended from registration pursuant to this section shall have the right of appeal to the High Court against the order of suspension and on any such appeal the	Section 46(8) old MRA and Section 55(11) new MRA:- <u>Section 46(8)</u> - "In any appeal to the High Court against an order referred to in subsection (6), the High Court shall accept as final and conclusive any finding of the Disciplinary Committee relating to any issue of medical ethics	<u>No change</u> (The DT makes findings on professional matters. The Committee agreed that the High Court should continue to accept as <u>final and conclusive</u>, any finding by the DT on issues relating to medical ethics or standards of professional conduct (unless such findings are unsafe, unreasonable or contrary to the evidence). The current	No change	No change

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		Court may make such order as it thinks proper having regard to the merits of the case and the public welfare" (section 23(8) MRA (1985 edition)) 'Any such appeal shall be in the nature of a rehearing and shall be made in accordance with the Rules of Court" (section 23(9) MRA (1985 edition)) 2. <u>In respect of striking off the register</u>:- "Any person, whether provisionally registered or otherwise, aggrieved by the removal of his name from the register under section 23 may, within one month of the notice given under section 23(2), appeal to the High Court against the removal and on any such appeal the High Court may give such directions in the matter as it thinks proper, including any directions as to the costs of the appeal" (section 24(1) MRA (1985)) In summary, as at 1996, the position appears to be as follows:- (a) in appeals against suspension, there is little inhibition of the Court's power as it is specifically required to have regard to the merits of the case and the public welfare (and the appeal is a rehearing made in accordance with the Rules of Court); (b) in appeals against striking off from the register, it would be difficult (but not impossible) to overturn findings and orders of the DT unless there was clear error in application of law or procedure, or if it was reasonably certain that the evidence had been misread because the findings were sufficiently out of tune with the evidence. With the 1997 amendments introducing then section 46(8) MRA, Parliament had circumscribed the Court's powers in dealing with appeals against DT decisions:- (a) the specific power of the Court to have regard to the merits of the case and public welfare in respect of appeals from suspensions has been removed. A unitary test applies to all appeals when the High Court considers the findings of the DT; (b) the unitary test obliges the High Court to accept the DT's findings on any issues of medical ethics or standards of professional conduct as final and conclusive unless they are unsafe, unreasonable or contrary to the evidence; and (c) however, the Court will not give undue deference to the views of the disciplinary committee in a way which will effectively render	or standards of professional conduct unless such finding is in the opinion of the High Court unsafe, unreasonable or contrary to the evidence." <u>Section 55(11)</u> - "In any appeal to the High Court against a decision referred to in section 53(2), (4) or (5) or 54, the High Court shall accept as final and conclusive any finding of the Disciplinary Tribunal relating to any issue of medical ethics or standards of professional conduct unless such finding is in the opinion of the High Court unsafe, unreasonable or contrary to the evidence" It may be more appropriate to remove section 55(11) MRA and revert to *Libman's* test. Privy Council (UK) case of Libman v General Medical Council [1972] AC 217, which had found that:- *"although the jurisdiction granted to the High Court under [section 36(3) of the UK's Medical Act 1956] was unlimited , the circumstances in which it is exercised in accordance with the rules approved by Parliament are such as to make it difficult for an appellant to displace a finding or order of the committee unless it can be shown that something was clearly wrong either (i) in the conduct of the trial or (ii) in the legal principles applied or (iii) unless it can be shown that the findings of the committee were sufficiently out of tune with the evidence to indicate with reasonable certainty that the evidence had been misread".*	position should be maintained so as to allow the profession to continue to self-regulate. The Committee also noted that where something is clearly wrong in the conduct of the hearing before the DC/DT, such as breach of rules of natural justice, or in the application of legal principles, or where the finding of DC/DT is 'sufficiently out of tune with the evidence", the Court does intervene and set aside the finding of the DC/DT, as shown in recent cases.)		

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		nugatory the appellate powers granted by the then section 46(7) MRA (Low Cze Hong's case).				
4.15	Medical Experts	In the course of its investigation, the CC may request for an expert's opinion before deciding on the outcome of the case. CCs do provide and suggest names of experts (including overseas experts) to the investigators at the CC stage. The doctor can also submit his own expert report to the CC through the investigators. Once a case is referred for a formal inquiry, Counsel for SMC would also advise if it is necessary to seek an expert's opinion if the CC did not request for one at the preliminary stage. Usually one of the main delays is brought about by difficulties experienced by both counsel to find a suitable and willing expert.	Experts should be trained and free from any conflicts of interest. To publish and have a list of experts to facilitate the speed of acquiring an expert and also for transparency.	<u>No change</u> (The Committee noted that parties are allowed to call on an unlimited number of witnesses and experts for each inquiry. At the PICs, the Chairman with the assistance of the legal assessor or lawyer (where applicable) can help to direct a more structured inquiry with regard to the number of experts and witnesses each party will be permitted to call. The Committee noted that the Law Society does not have such a prescribed list of experts.)	No change	No change
4.16	Legal Counsel	Once the solicitors are appointed by Council, SMC's Secretariat will send all the documents to SMC's appointed legal firm to review and consult with the CC on whether an expert (or additional experts) is/are necessary as well as to work with the CCs on the draft charges for the NOI.	Legal counsel should assist DTs to ensure that a fair process / hearing have been given to both parties. This can be achieved by appointed lawyers experienced in criminal law and drafting charges (eg: AGC lawyers). SMC should engage services of LSOs on a secondment basis instead of legal counsel from private law firms. LSOs can be entrusted to scrutinise charges and statement of facts prepared by panel firms. Alternatively, these LSOs can act as Counsel for SMC.	<u>No change</u> (Committee noted the good practice of Counsel for SMC in consulting with the CCs in the drafting of the NOIs and encourages this practice to continue for all cases.) The Committee noted that SMC was in the process of discussing with the Legal Service Commission as to whether it is possible to second an LSO to advise and guide the SMC/Secretariat in the management of complaints and disciplinary cases, including the framing of charges. Thus, the LSO may be able to work on the draft NOI together with the CC and prosecution counsel. It might not be appropriate for the LSO to prosecute cases for SMC.	No change	No change
		The solicitors for SMC are appointed by Council on a rotation basis and paid according to agreed hourly charges.	The accounts of SMC, in particular the costs of admin and costs of engaging counsel, should be made public annually. The legal costs incurred for disciplinary cases (breakdown of the average cost per case) should be published, including cases where the doctor was not found guilty. This should be made available to defence lawyers, medical indemnity organisations with legitimate interest.	<u>No change</u> (With regard to legal costs, the Committee agreed with the current practice that it should be left to the DC/DT as well as the High Court (for appeal cases) to decide how costs should be borne by parties, taking into consideration the facts and circumstances of each case.)	SMC to publish the total annual costs spent at disciplinary proceedings but it would not be appropriate to publish the breakdown of each case as some inquiries are still ongoing.	No change

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4.17	Legal Assessors	Legal assessors assist the DCs/DTs on questions of law and to help format and guide the writing of the grounds of decision (where applicable). For inquiries held by DTs under the current MRA, it will not be necessary to appoint an LA if a lawyer is appointed to the DT.	Whether the LA can play a more proactive role and participate in the DT's deliberations. SMC should appoint LAs who are senior practitioners of the bar. Although Section 61 MRA stipulates that all LAs must be of not less than 10 years' standing, the LAs should be of sufficient seniority.	No change (As the Current MRA now provides that a lawyer can either chair or be a member of the DT, the issue that LAs should be more involved is irrelevant since the MRA and MRR have clearly defined the roles of the legal assessor.)	SMC to appoint senior lawyers of more than 10 years of standing / experience to its panel of legal assessors so that they may be able to effectively assist the CCs/DCs/DTs and even health committees, interim orders committees etc in their work.	No change
4.18	Whether investigation and adjudication functions should be separate from SMC / Professionalising the Work	Council is currently involved in the complaints process in that its Council member chairs the CC and SMC also employs the investigators. As for DT inquiries, the MRA now provides for the tribunal to consist of non-council members.	Varying feedback received: (a) Disagree with suggestion to transfer the adjudication function of the tribunal to an independent body. The system of judgment by peers is sound, should be preserved and it is right that the standards of a professional body are set by the body itself. (b) Proposed setting up an independent body to take over the disciplinary processes for doctors (SMC a regulatory body under MOH, hence conflict of interest).	No change (It is not necessary for SMC to form another body at the moment to handle complaints and disciplinary matters. The Committee agrees with SMC's approach to stop appointing its Council members to the DT as a chairman or member. Self regulation is a privilege which should not be relinquished lightly Self regulation should be preserved. The system of judgment by peers is sound and it is right that the standards of a professional body are set by the body itself.)	No change	Abolish the requirement for Council members to chair CCs and to include a panel of senior doctors in the Complaints Panel (appointed by Minister) to chair the respective CCs. The Complaints Panel (comprising senior doctors and lawyers) will still be appointed by Council.
4.19	Others	The current adversarial process which is engaged when a DT is set up to hear charges against a doctor results in a time consuming and expensive hearing process. This can also lead to hotly contested hearing before the High Court (for appeals).	The process has a tendency to be legally complex and to become a fight between lawyers as much as it is a determination of fault or lack thereof. SMC might wish to consider investigating a complete change of approach to wit adopting an inquisitorial rather than an adversarial approach. It may result in less legalistic hearings and will give the DT more control over the proceedings because it will be directing how much evidence needs to be produced rather than just receiving the evidence parties chose to show it. However, the inquisitorial process is not much used in Singapore and quite a bit of research would have to be carried out into how it is administered in other countries before SMC could adopt it. There are also suggestions on whether MOH could require doctors to opt for mediation to resolve issues (i.e. a mechanism to have a mediation clause in their dealings with patients).	The Committee noted that the adversarial process leads to increased costs for both parties. The Committee agreed that this is a project which the SMC should investigate and conduct the relevant research on the inquisitorial framework and that it might be also easier for SMC to work with, follow and take guidance from the Court / AGC / MinLaw (as it is looking at revamping the adversarial way in which family law is practised) rather than conduct its own research into such a framework and attempt to implement its own processes. The Committee also agreed that the proposal on whether MOH could include a mediation clause in doctors' dealings with patients requires more in-depth research.	No change	No change

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		The Guideline on Fees for medical practitioners was previously set by the Singapore Medical Association (SMA). However, the guidelines were removed by SMA since April 2007, following advice that such guidelines would contravene the Competition Act. The SMC currently does not issue any guidelines on the fees to be charged by doctors or medication.	MRA needs a provision to override any competition commission concerns on setting of fees. Therefore, there should be a provision to allow the SMC to set costs or to delegate to a body to set costs.	No change	No change	The Committee noted that Council is already internally reviewing the guidelines / principles for determining ethical and reasonable medical fees and agreed in-principle (subject to Council's final proposal after research had been collated) that perhaps the MRA should be amended to include a provision to override any competition commission concerns on setting of fees and to allow SMC (or another body) to set fees.

Chapter 6: Materials Reviewed

The Review Committee perused and reviewed the following materials, including information from overseas medical jurisdictions in the course of its deliberation:-

Materials / Information	Meeting
Old Medical Registration Act / Medical Registration Regulations	1st/2013
Current Medical Registration Act / Medical Registration Regulations	1st/2013 to 4th/2013
How Overseas Medical Councils – Council's Functions and Disciplinary Processes **(A) United Kingdom** **General Medical Council (GMC)** **Medical Practitioners Tribunal Service (MPTS)** http://www.gmc-uk.org/concerns/index.asp http://www.mpts-uk.org/about/1595.asp http://www.mpts-uk.org/about/1603.asp http://www.mpts-uk.org/hearing/fitness_to_practise_panels.asp Role of the GMC / MPTS, Functions / Relationship between GMC / MPTS, Hearings / Fitness to Practice Panels / Reforms. **(B) NEW ZEALAND** **Medical Council of New Zealand (MCNZ)** **Health & Disability Commissioner (HDC)** **New Zealand Health Practitioners Disciplinary Tribunal (HPDT)** http://www.hdc.org.nz/ http://www.mcnz.org.nz/fitness-to-practise/conduct-concerns http://www.hpdt.org.nz/ http://www.hpdt.org.nz/portals/0/HPDT%20Guide%20to%20Disciplinary%20Proceedings%20October%202009.pdf Conduct Concerns, Professional Conduct Committees, Health Practitioners Disciplinary Tribunal, A Guide to Disciplinary Proceedings **(C) Australia** **Medical Board of Australia** **Australian Health Practitioner Regulation Agency (AHPRA)** http://www.medicalboard.gov.au/ http://www.ahpra.gov.au/ Medical Board of Australia, Australian Health Practitioner Regulatory Authority, Role of the Tribunals **New South Wales** **Health Care Complaints Commission (HCCC)** **Medical Council of New South Wales (MCNSW)** http://www.hccc.nsw.gov.au/Hearings---decisions/Professional-Standards-Committee-Hearings	1st/2013

Materials / Information	Meeting
http://www.hccc.nsw.gov.au/Hearings---decisions/Tribunal-Hearings http://www.mcnsw.org.au/ Prosecution of complaints, Professional Standards Committee Hearings, Tribunal Hearings **Victoria** http://www.medicalboard.gov.au/ http://www.ahpra.gov.au/ *[There is no separate regulatory body in Victoria as there is in NWS and all of the information is as detailed on the Australian national websites listed above]* **(D) United States of America** **New York State Department of Health** http://www.health.ny.gov/professionals/doctors/conduct/annual_reports/2010/docs/report.pdf Role of the Board/Professional Medical Conduct Process **The Medical Board of California** http://www.mbc.ca.gov/ http://www.mbc.ca.gov/publications/complaint_info_english-web.pdf http://www.mbc.ca.gov/enforcement_process.pdf How Complaints are Handled / Enforcement Process	
Notices of Inquiry, Unredacted Disciplinary Committees' Grounds of Decisions and High Court Judgments for Dr Gobinathan Devathasan, Dr Low Chai Ling & Dr Georgia Lee [note: there is no official High Court Judgment for Dr Georgia Lee's case]	2nd/2013
Shipman Inquiry Report (General Medical Council) Chapters 15, 16, 25, 27 and Recommendations of the Shipman Inquiry Report	3rd/2013
The Investigation and Prosecution of Complaints against Medical Practitioners in Other Jurisdictions As above for Item 3	3rd/2013
Feedback from the consultation exercise from 18 March to 8 April 2013	3rd/2013
Review of Additional Feedback received after the 3rd/2013 Committee meeting	4th/2013

Chapter 7: References

The list of respondents is provided as **Reference List** below:-

Reference List

S/n	Date Received	Name
	Professional Bodies	
1	8 April 2013	Academy of Medicine Singapore
2	8 April 2013	College of Family Physicians Singapore
3	5 April 2013	Singapore Medical Association
	Legal Firms from SMC's Panel	
4	8 April 2013	Braddell Brothers
5	8 April 2013	Drew & Napier LLC
6	5 April 2013	Harry Elias Partnership
7	10 April 2013	WongPartnership LLP
	Legal Assessors from SMC's Panel	
8	4 April 2013	Mr Andy Chiok
9	6 April 2013	Mr Kan Ting Chiu
10	8 April 2013	Mr Pradeep Pillai
11	8 April 2013	Mr Thean Lip Ping
	Medical Protection Society	
12	8 April 2013	Medical Protection Society
	Singapore Medical Council Members	
13	26 March 2013	Dr Tan Chi Chiu
	Registered Medical Practitioners	
14	19 Mar 2013	Dr Chen Da Zhi Peter
15	29 Mar 2013	Dr Chew Shing Chai
16	22 Mar 2013	Dr Chionh Chang Yin
17	19 Mar 2013	Dr Chong Eric
18	18 Mar 2013	Dr Chuah Chee Leng Gerard
19	19 Mar 2013	Dr Fung Daniel
20	18 Mar 2013	Dr George Yuille Caldwell
21	11 Apr 2013	Dr Girija Savithri Thekkinakam Velliyottillam
22	8 Apr 2013	Dr Howe Tet Sen
23	8 Apr 2013	Dr Jovic A. Fuentes
24	8 Apr 2013	Dr Kang Chung Meng
25	5 Apr 2013	Dr Khoo Kian Ming Andrew
26	27 Mar 2013	Dr Koh Gim Hwee
27	6 Apr 2013	Dr Ku Kwok Tai Gordon
28	28 Mar 2013	Dr Lim Ee Koon
29	8 Apr 2013	Dr Lim Jeong Hoon
30	8 Apr 2013	Dr Lim Yvonne

S/n	Date Received	Name
31	21 Mar 2013	Dr Lo Hong Yee
32	20 Mar 2013	Dr Loke Chi Wei Peter
33	1 Apr 2013	Dr Low Chai Ling
34	7 Apr 2013	Dr Minerva Ida Faith
35	22 Mar 2013	Dr Mohd Mashfiqul A Siddiqui
36	7 Apr 2013	Dr Oh Boon Ngee Vera
37	4 Apr 2013	A/Prof Ong Thiew Chai
38	8 Apr 2013	Dr Pan Beng Siong Andrew
39	20 Mar 2013	Dr Png Keng Siang
40	8 Apr 2013	Dr Pok Yang Hang
41	8 Apr 2013	Dr Raigam Arachchilage Chathuranga Iresh Rathnayake
42	19 Mar 2013	Dr Sin Gwen Li
43	21 Mar 2013	Dr Tan Tiong Hin Jerry
44	1 Apr 2013	Dr Thian Toh Meng Anthony
45	3 Apr 2013	Dr Victor Sebastian
46	7 Apr 2013	Dr Wong Mun Tat
47	19 Mar 2013	Dr Wong Shiun Woei
48	19 Mar 2013	Dr Wong Sook Yee
49	5 Apr 2013	Dr Yong Hoe Koon
50	7 Apr 2013	Dr Yong Tze Tein
	Reappointed Doctors in the Complaints Panel	
51	4 Apr 2013	Dr Joseph Henry Hinggiam Sheares
52	5 Apr 2013	Dr Sivathasan Cumaraswamy
53	14 Apr 2013	Dr Tay Eng Hseon
	Reappointed Laypersons in the Complaints Panel	
54	1 April 2013	Mr Kaka Singh
	Institution	
55	9 April 2013	Tan Tock Seng Hospital
	Others	
56	13 Aug 2013 and 4 Sep 2013	Ministry of Law
57	21 Aug 2013	Justice Judith Prakash

Acknowledgments

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- Members of the Committee;
- Ministry of Law;
- Professional Bodies;
- Medical Protection Society;
- Legal Firms and Legal Assessors;
- SMC's Executive Secretaries and Secretariat – Dr Lau Hong Choon, A/Prof Chew Suok Kai, Ms Serene Wong, Ms Harjit Talwar, Ms Angela Yeo & Ms Alicia Chia; and
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