

Health Practitioner Regulation National Law

Dear Member,

The Health Council of the Council of Australian Governments has invited the Health Services Union to make a submission on the second stage of potential reforms to the national law regulating Australia's health professionals, and we'd like to get your views on the proposals.

The aspects of the legislation under review include:

- Governance of the national scheme;
- Registration functions;
- Health, performance and conduct [the provisions of this section of the national law do not apply in NSW];
- Offences and penalties; and
- Information and privacy.

The Council has provided sixty questions as guidance for framing responses, and a copy of them is attached to this newsletter. Questions twenty-two through to forty related to Section 5: health, performance and conduct, and are relevant only to members in the ACT and Queensland.

You can find the full discussion paper online at the COAG Health Council website: [Regulation of Australia's health professions: keeping the National Law up to date and fit for purpose](#).

Please address any comments to the union's research officer Donna Austin (donna.austin@hsu.asn.au) by Friday 21 September.

In unity,



Gerard Hayes
Secretary, HSU NSW/ACT/QLD

8 Consolidated list of questions

Section 3.1: Objectives and guiding principles – inclusion of reference to cultural safety for Aboriginal and Torres Strait Islander Peoples

1. Should the guiding principles of the National Law be amended to require the consideration of cultural safety for Aboriginal and Torres Strait Islander Peoples in the regulatory work of National Boards, AHPRA, Accreditation Authorities and all entities operating under the National Law? What are your reasons?
2. Should the objectives of the National Law be amended to require that an objective of the National Scheme is to address health disparities between Indigenous and non-Indigenous Australians? What are your reasons?
3. Do you have other suggestions for how the National Scheme could assist in improving cultural safety and addressing health disparities for Aboriginal and Torres Strait Islander Peoples?

Section 3.2: Chairing of National Boards

4. Which would be your preferred option regarding the appointment of chairpersons to National Boards? What are your reasons?
5. If your view is that the role of chairperson should be reserved for practitioner members only, then how should circumstances be managed where there is no practitioner member willing or able to carry out the role, or where there is a need to appoint a non-practitioner for the good governance of the board?
6. If your view is that the role of chairperson should be open to both community and practitioner members, then how should the need for clinical leadership be managed when a chairperson is required to speak authoritatively on behalf of the National Board?

Section 3.3: System linkages

7. Are the current powers of National Boards and AHPRA to share and receive information with other agencies adequate to protect the public and enable timely action?
8. Are the current linkages between National Boards, AHPRA and other regulators working effectively?
9. Should there be a statutory basis to support the conduct of joint investigations with other regulators, such as drugs and poisons regulators and public health consumer protection regulators, and if so, what changes would be required to the National Law?

Section 3.4: Name of the Agency Management Committee

10. Should AHPRA's Agency Management Committee be renamed as the Australian Health Practitioner Regulation Agency (AHPRA) Board or the AHPRA Management Board? What are your reasons?

Section 4.1: Registration improperly obtained – falsified or misleading registration documents

11. Should the National Law be amended to enable a National Board to withdraw a practitioner's registration where it has been improperly obtained, without having to commence disciplinary proceedings against them under Part 8?

Section 4.2: Endorsement of registration for midwife practitioners

12. Should the provision in the National Law that empowers the Nursing and Midwifery Board to grant an endorsement to a registered midwife to practise as a midwife practitioner be repealed?

Section 4.3: Undertakings on registration

13. Should ss. 83 and 112 of the National Law be amended to empower a National Board to accept an undertaking from a practitioner at first registration or at renewal of registration?
14. Should the National Law be amended to empower a National Board to refuse to renew the registration of a practitioner on the grounds that the practitioner has failed to comply with an undertaking given to the board?

Section 4.4: Reporting of professional negligence settlements and judgements

15. Should the National Law be amended to require reporting of professional negligence settlements and judgements to the National Boards?
16. What do you see as the advantages and disadvantages of the various options?
17. Which would be your preferred option?

Section 4.5: Reporting of charges and convictions for scheduled medicines offences

18. Should the National Law be amended to require a practitioner to notify their National Board if they have been charged with or convicted of an offence under drugs and poisons legislation in any jurisdiction?

Section 4.6: Practitioners who practise while their registration has lapsed

19. Should the National Law be amended to provide National Boards with the discretion to deal with a practitioner who has inadvertently practised while unregistered for a short period (and in doing so has breached the title protection or practice restriction provisions) by applying the disciplinary powers under Part 8 s. 178 rather than prosecuting the practitioner for an offence under Part 7?

Section 4.7: Power to require a practitioner to renew their registration if their suspension spans a registration renewal date

20. Should the National Law be amended to require a practitioner whose registration was suspended at one or more registration renewal dates, to apply to renew their registration when returning to practice?
21. Noting the current timeframes for registered practitioner's applying to renew their registration (within one month of the registration period ending) and for providing written notice to a National Board of a 'notifiable event' (within seven days), what would be a reasonable timeframe for requiring a practitioner to apply to renew their registration after returning to practice following a suspension?

Section 5.1: Mandatory notifications by employers

22. Should the National Law be amended to clarify the mandatory reporting obligations of employers to notify AHPRA when a practitioner's right to practise is withdrawn or restricted due to patient safety concerns associated with their conduct, professional performance or health? What are your reasons?

Section 5.2.1: Access to clinical records during preliminary assessment

23. Should Part 8 Division 5 of the National Law (preliminary assessment) be amended to empower practitioners and employers to provide patient and practitioner records when requested to do so by a National Board?

Section 5.2.2: Referral to another entity at or following preliminary assessment

24. Should Part 8 Division 5 of the National Law be amended to clarify the powers of a National Board following preliminary assessment, including a specific power to enable the National Board to refer a matter to be dealt with by another entity?

Section 5.3.1: Production of documents and the privilege against self-incrimination

25. Should the provisions of the National Law about producing documents or answering questions be amended to require a person to produce self-incriminating material or give them the option to do so? If so:
- Should this only apply to the production of documents but not answering questions or providing information not already in existence?
 - What protections should apply to the subsequent use of that material?
 - Should the material be prevented from being used in criminal proceedings, civil penalty proceedings or civil proceedings?
 - Should this protection only extend to the material directly obtained or also to anything derived from the original material?
26. Should the provisions be retained in their current form? What are your reasons?

Section 5.4.1: Show cause process for practitioners and students

27. Should the National Law be amended to enable a National Board to take action under another division following a show cause process under s. 179?
28. Should the National Law be amended to provide a statutory requirement for a National Board to offer a show cause process under s. 179 in any circumstance where it proposes to take relevant action under s. 178?

Section 5.4.2: Discretion not to refer a matter to a tribunal

29. Should the National Law be amended to empower a National Board to decide not to refer a matter to the responsible tribunal for hearing when the board reasonably forms the view that there are no serious ongoing risks to the public? If not, why? If so, then why and what constraints should be placed on the exercise of such discretion?

Section 5.4.3: Settlement by agreement between the parties

30. Should the National Law be amended to provide flexibility for National Boards to settle a matter by agreement between the practitioner, the notifier and the board where any public risks identified in the notification are adequately addressed and the parties are agreeable? What are your reasons?

Section 5.4.4: Public statements and warnings

31. Should the National Law be amended to empower a National Board/AHPRA to issue a public statement or warning with respect to risks to the public identified in the course of exercising its regulatory powers under the National Law? What are your reasons?
32. If public statement and warning powers were to be introduced, should these powers be subject to a 'show cause' process before a public statement or warning is issued? What are your reasons?

Section 5.5.1: Power to disclose details of chaperone conditions

33. Should the National Law be amended to empower a National Board to require a practitioner to disclose to their patients/clients the reasons for a chaperone requirement imposed on their registration? What are your reasons?
34. Should the National Law be amended to provide powers for a National Board to brief chaperones as to the reasons for the chaperone? What are your reasons?

Section 5.5.2: Power to give notice to a practitioner's former employer

35. Should the National Law be amended to enable a National Board to obtain details of previous employers and to disclose to a practitioner's previous employer(s) changes to the practitioner's registration status where there is reasonable belief that the practitioner's practice may have

exposed people to risk of harm? If not, why? If yes, then why and what timeframe should apply for the exercise of these notice powers?

Section 5.6.1: Right of appeal of a caution

36. Should the National Law be amended to enable a right of appeal against a decision by a National Board to issue a caution?
37. Which would be your preferred option?

Section 5.6.2: The rights of review of notifiers

38. Should the National Law be amended to provide a right for a notifier (complainant) to seek a merits review of certain disciplinary decisions of a National Board? What are your reasons?
39. Which would be your preferred option?
40. If yes, which decisions should be reviewable and who should hear such appeals, for example, an internal panel convened by AHPRA or the National Health Practitioner Ombudsman and Privacy Commissioner, or some other entity?

Section 6.1: Title protection: surgeons and cosmetic surgeons

41. Should the National Law be amended to restrict the use of the title 'cosmetic surgeon'? If not, why? If so, why and which practitioners should be able to use this title?
42. Should the National Law be amended to restrict the use of the title 'surgeon'? if not, why? If so, why and which practitioners should be able to use such titles?

Section 6.2: Direct or incite offences

43. Are the current provisions of the National Law sufficient to equip regulators to deal with corporate directors or managers to direct or incite their registered health practitioner employees to practise in ways that would constitute unprofessional conduct or professional misconduct?
44. Are the penalties sufficient for this type of conduct? Should the penalties be increased to \$60,000 for an individual and \$120,000 for a body corporate, in line with the increased penalties for other offences?
45. Should there be provision in the National Law for a register of people convicted of a 'direct or incite' offence, which would include publishing the names of those convicted of such offences?
46. Should the National Law be amended to provide powers to prohibit a person who has been convicted of a 'direct or incite' offence from running a business that provides a specified health service or any health service?

Section 6.3.1: Prohibiting testimonials in advertising

47. Is the prohibition on testimonials still needed in the context of the internet and social media? Should it be modified in some way, and if so, in what way? If not, why?
48. Which would be your preferred option?

Section 6.3.2: Penalties for advertising offences

49. Is the monetary penalty for advertising offences set at an appropriate level given other offences under the National Law and community expectations about the seriousness of the offending behaviour?

Section 7.1: Information on the public register

50. Is the range of practitioner information and the presentation of this information sufficient for the various user groups?

51. Should the National Law be amended to expand the type of information recorded on the national registers and specialist registers?
52. What additional information do you think should be available on the public register? Why?
53. Do you think details, such as a practitioner's disciplinary history including disciplinary findings of other regulators, bail conditions and criminal charges and convictions, should be recorded on the public register? If not, why not? If so:
 - What details should be recorded?
 - What level of information should be accessible?
 - What should be the threshold for publishing disciplinary information and for removing information from a published disciplinary history?
54. Should s. 226 of the National Law be amended to:
 - broaden the grounds for an application to suppress information beyond serious risk to the health or safety of the registered practitioner?
 - require or empower a National Board to remove from the public register the employment details (principal place of practice) of a practitioner in cases of domestic and family violence?
 - enable National Boards not to record information on, or remove information from, the public register where a party other than the registered health practitioner may be adversely affected?

Section 7.2: Use of aliases by registered practitioners

55. Should the National Law be amended to provide AHPRA with the power to record on the public registers additional names or aliases under which a practitioner offers regulated health services to the public?
56. Should the public registers be searchable by alias names?
57. Should the National Law be amended to require a practitioner to advise AHPRA of any aliases that they use?
58. If aliases are to be recorded on the register, should there be provision for a practitioner to request the removal or suppression of an alias from the public register? If so, what reasons could the board consider for an alias to be removed from or suppressed on the public register?
59. Should there be a power to record an alias on the public register without a practitioner's consent if AHPRA becomes aware by any means that the practitioner is using another name and it is considered in the public interest for this information to be published?

Section 7.3: Power to disclose identifying information about unregistered practitioners to employers

60. Should the National Law be amended to enable a National Board/AHPRA to disclose information to an unregistered person's employer if, on investigation, a risk to public safety is identified? What are your reasons?