



Health Chief Executives Forum

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Hon. Senator Rachel Siewert
Chair
Senate Community Affairs References Committee
Department of the Senate
PO Box 6100
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CANBERRA ACT 2600

Via email to: community.affairs.sen@aph.gov.au

Dear Ms Siewert

Senate Inquiry into the administration of registration and notifications by the Australian Health Practitioner Regulation Agency and related entities under the Health Practitioner Regulation National Law

I am writing on behalf of the Health Chief Executives Forum (HCEF) to make a submission to the Senate Inquiry into the administration of registration and notifications by the Australian Health Practitioner Regulation Agency and related entities under the Health Practitioner Regulation National Law (the National Law).

The HCEF is made up of the Chief Executives of the State, Territory and Commonwealth health departments (previously known as the Australian Health Ministers' Advisory Council or AHMAC). HCEF is making this submission in its capacity as the primary source of advice to the Ministerial Council in their oversight role for the National Registration and Accreditation Scheme for health professions (the National Scheme).

HCEF wishes to bring three matters to the Committee's attention in regard to this Inquiry. First, HCEF wishes to stress that the main purpose of the National Scheme is to provide for the protection of the public by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered. Australia's Health Ministers have agreed that the principle of public protection and confidence in the safety of health services is paramount over all other considerations. HCEF urges the Committee to use this paramount guiding principle in its deliberations.

Second, HCEF brings to the Committee's attention that there have already been a number of reviews into the National Scheme commissioned by Health Ministers which have examined areas covered by the Terms of Reference for this Inquiry. Many of the recommendations of

these reviews have been the subject of broad consultation and have been accepted by Health Ministers. Accordingly, the HCEF wishes to raise the risk of the Inquiry re-considering matters that have already been extensively prosecuted in the public domain and decided upon at the Ministerial Council level.

Third, HCEF brings to the Committee's attention the current mechanisms utilised by Health Ministers and jurisdictional health departments to oversee the National Scheme and which are used to resolve any issues regarding the operation of the scheme. This is to assist the Committee in understanding the extent of jurisdictional oversight that already occurs in relation to the activities of the Australian Health Practitioner Regulation Agency and related entities.

In summary, HCEF has confidence in the effectiveness of the oversight mechanisms for the National Scheme, and that the current reforms to the Scheme will provide for its continued effective operation.

Background: Structure of the National Registration and Accreditation Scheme (the National Scheme)

As you are aware, the National Scheme was the result of extensive consultation and co-operation between all State and Territory governments and the Commonwealth. An *Intergovernmental Agreement for a National Registration and Accreditation Scheme for health professions* signed by COAG in 2008 set out the arrangements for the National Scheme. The scheme replaced the previous state and territory-based registration systems and was enacted through the passage of primary legislation in Queensland Parliament, which is the host jurisdiction for the Health Practitioner Regulation National Law (National law). All states and territories enacted legislation applying the Queensland legislation as a law of those jurisdictions, except for WA, which enacted corresponding legislation passed by the WA Parliament and South Australia where amendments are made by regulation. The Commonwealth does not have the same legislative role however it is a member of the Ministerial Council established under the National Law. All Australian health departments continue to support national regulation in this area.

Under the National Law, the Ministerial Council, made up of all State, Territory and the Commonwealth health ministers, oversees the performance and operation of the scheme and exercises key functions relating to policy setting, scheme appointments and approvals (for example, the approval of registration standards and recognised specialties). Under section 11 of the National Law, ministers may give a direction to Ahpra and the National Boards about the policies to be applied in exercising their functions.

The HCEF advises the Ministerial Council in relation to the exercise of its functions under the National Law. In addition, there are other interjurisdictional committees that play a part in the oversight of the scheme and where jurisdictions are able to have input into the scheme's operation. These include the Ahpra Jurisdictional Advisory Committee (made up of jurisdictional members at the Deputy Secretary/Deputy Director-General level of Australia's health departments) and the Workforce Regulation Project Reference Group (made up of jurisdictional members at the executive level with responsibility for health workforce regulation).

In all but two State and Territory jurisdictions, the National Boards and Ahpra are responsible for managing notifications regarding the health, conduct and performance of registered practitioners. Different arrangements exist in NSW and QLD. In NSW, complaints are managed by the Health Care Complaints Commission (HCCC) in partnership with 15 health professional councils, which are supported by the Health Professional Councils Authority (HPCA).

In Queensland, complaints about practitioners are made to the Queensland Office of the Health Ombudsman for assessment, with less serious matters referred to Ahpra and the National Boards for management.

1. Paramourcy of the protection of the public

The first objective of the National Scheme under section 3 of the National Law is to protect the public by ensuring that only health practitioners who are suitably trained and qualified to practice in a competent and ethical manner are registered.

In October 2019, Australia's Health Ministers agreed to amend the National Law to establish that the main guiding principle of the National Scheme is protection of the public and public confidence in the safety of services provided by registered health practitioners and students. At the same meeting, health ministers agreed to issue a [Policy Direction](#) to Ahpra and the National Boards to make clear that when administering the National Scheme public protection is paramount.

The inclusion of a new paramount guiding principle in the National Law will require scheme entities to take public protection and confidence into account first and foremost. This will assure the public and health consumers that the National Scheme is operating for their safety and protection. This principle will also guide the making of decisions where there may be two or more conflicting interests. In such cases, the paramountcy of public safety should override other considerations.

The independence of the entities conducting investigations and making decisions regarding the registration, health, conduct and performance of individual health practitioners is also noted. For this reason, the Ministerial Council is prevented by section 11 from making directions in respect of individual cases. It is imperative that the scheme operates independently in the public interest. In exercising its functions, scheme entities do not represent the registered health professions or individual health practitioners.

2. Matters already considered in previous reviews

Since the National Scheme's inception in 2010, Health Ministers have committed to review and improve the scheme to ensure it continues to be efficient and effective.

Health ministers (via the former COAG Health Council) have initiated the following reviews of the National Scheme:

- the *Independent Review of the National Registration and Accreditation Scheme for health professions* conducted by Mr Kim Snowball, a former Director-General of Health in Western Australia (the Snowball Review). The review commenced three

years after the commencement of the Scheme and issued its Final Report in 2014. Health ministers [responded](#) to the report in 2015.

- the *Review of Governance of the National Registration and Accreditation Scheme* (Governance Review) initiated as part of health ministers' response to the Independent Review and conducted by jurisdictions (Final Report 2017). Health ministers [accepted](#) all 14 recommendations to improve Scheme governance.
- the *Independent Review of Accreditation Systems within the National Registration and Accreditation Scheme for health professions* conducted by Professor Michael Woods (Final Report 2017 – the Woods Review). Health ministers provided their [response](#) in February 2020, which included agreement to the creation of a new independently-chaired accreditation committee to advise on accreditation reform and expanding the role of the National Scheme's Ombudsman. A [Policy Direction](#) was issued by the Ministerial Council to support the committee's establishment.

In response to these reviews and health ministers' priorities, the Ministerial Council is amending the National Law, which is taking place in [tranches](#).

The HCEF is currently overseeing tranche 2 amendments to the National Law based on reform proposals agreed by the Ministerial Council in 2019. The proposed amendments represent the most substantial set of reforms to be made thus far to ensure that the National Scheme remains up to date and fit for purpose.

Health Ministers consider these reforms to be a high priority, particularly those aimed at improving public and consumer safety. The reforms build on earlier amendments to the National Law and are designed to:

- update the guiding principles and objectives of the National Scheme including to provide that public protection and public confidence in the safety of health services are paramount
- improve the governance and operation of the National Scheme
- improve the registration process
- increase the regulatory responses that are available to regulators to respond to risks to the public.

I attach for the Committee's information, the Summary of agreed Stage 2 reform proposals to the National Law for inclusion in the Tranche 2 reform package. The table is published on the [Health Council's website](#) alongside other information related to progressing these reforms.

Both the Snowball Review and the Woods Review involved extensive public consultation. The Snowball Review received 238 written public submissions and the Woods Review received 114 written public submissions in response to a discussion paper and 118 responses provided to a draft report. The recommendations arising from these reviews were also the subject of extensive consultation, as has been the draft Tranche 2 legislation. The HCEF would urge the inquiry to carefully examine the matters that were raised in each of these reviews and in the draft legislation, to the extent they overlap with the inquiry's Terms of Reference, and to recognise that these matters have already been agreed through extensive public and stakeholder involvement.

3. Ministerial and jurisdictional oversight of scheme performance

The power of Ministers to issue directions to Ahpra and the National Boards under section 11 of the National Law has been summarised above.

Ahpra's annual report is tabled in the Parliaments of each state, territory and the Commonwealth. Ahpra and the National Boards also submit a quarterly report on the performance of the National Scheme and related matters to the HCEF and Health Ministers. This has included updates on their implementation of policy directions issued by Health Ministers to strengthen public protection under the National Law and to establish a new independently chaired accreditation committee; updates on their work in response to previous Senate Inquiries and other reviews; performance reporting, and actions taken to protect the public, including vulnerable communities, as a result of notifications.

In respect of registration and accreditation standards, these are the subject of extensive consultation processes with which jurisdictions actively engage. Jurisdictions also examine important proposed registration standards at the Jurisdictional Advisory Committee.

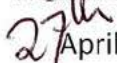
Finally, HCEF members and health ministers are able to raise any serious matters regarding the administration of the National Scheme at Ministerial Council meetings.

Further information

Thank you for the opportunity to provide input to this Senate Inquiry. If the committee requires any further information, please contact the HCEF Secretariat on 02 9461 7900 or email MOH-NSWIGR@health.nsw.gov.au

Yours sincerely

Ms Elizabeth Koff, Secretary of NSW Health
Chair
Health Chief Executives Forum

 27th April 2021

Encl.: Summary of proposals agreed by Ministers on 31 October 2019 for inclusion in the Tranche 2 reform package for amendments to the National Law

Summary of agreed National Registration and Accreditation Scheme (Tranche 2) reform proposals

This table summarises proposals agreed by Ministers on 31 October 2019 for inclusion in the Tranche 2 reform package, including two additional proposals to strengthen public protections under the Health Practitioner Regulation National Law (National Law)

Proposal number and description (in the 2018 consultation paper)	Proposals agreed for inclusion in Tranche 2 reform package
3.1: Objectives and guiding principles – referencing cultural safety for Aboriginal and Torres Strait Islander Peoples	New guiding principle and objective for the National Law on cultural safety of Aboriginal and Torres Strait Islander Peoples
3.4: Name of the Agency Management Committee	Change the name of the AHPRA Agency Management Committee to “AHPRA Board”
4.1: Registration improperly obtained – falsified or misleading registration documentation	Enable a National Board to withdraw a practitioner’s registration without having to refer the matter to a tribunal if the Board reasonably believes that false or fraudulent documents were provided by the practitioner during the registration process
4.2: Endorsement of registration for midwife practitioners	Remove from the National Law endorsement of registration allowing a registered midwife to practise as a “midwife practitioner”
4.3: Undertakings on registration	Empower a National Board to accept an undertaking at first registration or at renewal (currently a Board can apply a condition but not accept an undertaking) and enable a Board to refuse to renew the registration of a practitioner if the practitioner fails to comply with an undertaking
4.5: Reporting of charges and convictions for scheduled medicines offences	Amend the National Law to compel practitioners and students to notify a National Board if they have been charged with or convicted of an offence under drugs and poisons legislation in any jurisdiction (reportable offences in each jurisdiction will be specified by regulation or other appropriate instrument)

Summary of agreed National Registration and Accreditation Scheme (Tranche 2) reform proposals

4.6: Practitioners who practice while their registration has lapsed	Empower National Boards to use disciplinary powers of the National Law when dealing with practitioners who continue to practice after their registration has lapsed, in appropriate cases, rather than prosecuting the practitioner for an offence
4.7: Power to require a practitioner to renew their registration if their suspension spans a registration renewal date	Amend the National Law to: (1) require a practitioner whose registration was suspended at one or more registration renewal dates to apply to renew their registration when they return to practice; (2) require a practitioner returning from a period of suspension to apply to renew their registration within one month of the lifting of that suspension; and (3) give National Boards the power to place conditions on a practitioner's registration when seeking to renew their registration after a period of suspension
5.1: Mandatory notifications by employers	Amend the National Law to advise employers that withdrawal of a practitioner's right to practice may meet the mandatory reporting threshold, and that termination of a practitioner's practice may be grounds for a mandatory notification under another section of the law
5.2: Preliminary assessment of notifications	Amend the disciplinary powers of the National Law to: (a) require practitioners and employers to provide patient and practitioner records when requested to do so by a National Board; (b) provide that a National Board: (i) on preliminary assessment of a notification may refer the subject matter of the notification to another entity, and (ii) following referral to another entity, may subsequently ask that entity for information about how the matter was resolved <i>Note: implementation of these amendments to be preceded by consultation and education and a thorough implementation process</i> <i>Note: NSW is a co-regulatory jurisdiction. This amendment will not apply in NSW.</i>
5.4.1: Show cause process for practitioners and students	Amend the National Law to: (1) enable a National Board to broaden the scope of an investigation if that investigation results in the discovery of additional matters requiring investigation, after the practitioner is given the opportunity to demonstrate that the investigation should not be broadened; (2) require a National Board to provide a show cause process (by removing an exemption that currently applies) where it proposes to act for reasons related to the practitioners' health, conduct or performance <i>Note: any variation in a show cause process or decision during an investigation to act under a different part of the law must allow a practitioner to respond to specific new matters, as often and with as much notice and time to respond as is reasonable</i> <i>Note: NSW is a co-regulatory jurisdiction. This amendment will not apply in NSW.</i>
5.4.2: Regulatory actions available to National Boards: discretion not to refer a matter to a tribunal	Empower a National Board to resolve a matter in prescribed circumstances rather than referring it to a responsible tribunal <i>Note: power available only when a Board can satisfy a public interest test showing that limited public risk will result, and no public benefit will be foregone if exercised</i> <i>Note: NSW is a co-regulatory jurisdiction. This amendment will not apply in NSW.</i>

Summary of agreed National Registration and Accreditation Scheme (Tranche 2) reform proposals

5.4.4: Actions available to Boards: public statements and warnings	Amend the National Law to allow AHPRA and the Boards to issue public statements and warnings if they identify a serious risk to public health and safety <i>Note: NSW is a co-regulatory jurisdiction. Public statement and warnings and IPOs will not apply in NSW.</i>
5.5.2: Information sharing powers: power to give notice to a practitioner's former employer	Empower a National Board to: (1) obtain from a registered health practitioner details of previous employment arrangements, including contract, voluntary and honorary arrangements; (2) disclose to a practitioner's previous employer(s) and places of practice changes to the practitioner's registration status <i>Note: power to be restricted to situations where regulator holds a reasonable belief that the practitioner's health, conduct or performance may have created a risk of harm to previous patients</i>
6.1: Title protection	Restrict the use of the title "surgeon" to provide better information for the public about the qualifications of surgeons, including those who call themselves cosmetic surgeons, and undertake further consultation on which medical practitioners should be able to use the title "surgeon". <i>Note: As this proposal will be subject to further consultation it is likely to proceed separately to the Tranche 2 reform package.</i>
6.2: Direct or incite offences	Increase maximum penalties in the National Law for direct or incite offences to \$60,000 for an individual and \$120,000 for a body corporate
6.3.1: Advertising offences - prohibiting testimonials	Remove from the National Law references to prohibitions on testimonials and clarify that general prohibitions in advertising will apply to any testimonial, i.e. a testimonial will breach the advertising offence if it is: (1) false, misleading or deceptive or likely to be misleading or deceptive; or (2) offers a gift, discount or other inducement to attract a person to use the service or the business, unless the advertisement also states the terms and conditions of the offer; or (3) creates an unreasonable expectation of beneficial treatment; or (4) directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services
6.3.2: Increasing penalties for advertising offences	Increase maximum penalties for breach of advertising offences to \$60,000 per offence for an individual and \$120,000 for a body corporate
7.1: Information on the public register	Empower a National Board to decide not to record or to remove from the register personal information about a practitioner (including a principal place of practice) if the practitioner requests this action and the Board is persuaded that it is a reasonable step to be taken only to protect the safety of the practitioner or a practitioner's family member and/or colleague/s. AHPRA will also develop administrative improvements to the functionality of the register

Summary of agreed National Registration and Accreditation Scheme (Tranche 2) reform proposals

7.2: Use of aliases by registered practitioners	Allow a practitioner to nominate one and only one alternative name, in addition to their legal name, with both to be discoverable (and displayed simultaneously) on the public register
7.3: Power to disclose identifying information about unregistered practitioners to employers	Enable AHPRA or a National Board to provide information to the employer of an unregistered health worker or any other person who provides a health service, where the person is being investigated or prosecuted for an offence under the National Law, and poses a risk to public health and safety
Provide interim prohibition order (IPO) powers for AHPRA	Enable AHPRA to issue an IPO if it reasonably believes that an unregistered health practitioner has committed an offence against the National Law, and the practitioner's conduct poses a serious risk to public health and safety, or the health and safety of an individual or a class of individuals <i>Note: NSW is a co-regulatory jurisdiction. This amendment will not apply in NSW.</i>
Additional reform proposals – for further consultation	
New proposal	Amend the guiding principles to include a paramount guiding principle which makes explicit that the main principle for administering the Act is that public protection and confidence in the National Scheme is paramount. <i>Note: Agreed for inclusion in the Tranche 2 reform package, pending consultation</i>
New proposal	Require a National Board or AHPRA to notify an employer of a matter, during the notification or investigation process, if it reasonably believes that the conduct may pose a serious risk to public safety. <i>Note: Agreed for inclusion in the Tranche 2 reform package, pending consultation</i>