



## National Aboriginal Community Controlled Health Organisation

### Submission regarding the *Exposure Draft: Health Practitioner Regulation National Law 2009* (National Registration & Accreditation Scheme for the Health Professions) – July 2009.

#### Overview

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The National Aboriginal Community Controlled Health Organisation (NACCHO) is the national peak Aboriginal health body representing over 140 Aboriginal Community Controlled Health Services throughout Australia. NACCHO's guiding principles are based on the National Aboriginal Health Strategy 1989 and were further strengthened in the Ways Forward Report (SWR 1995). They are:

- National Aboriginal Health Strategy definition of health;
- Concepts of health as holistic;
- The right to self determination;
- The impact of history in trauma and loss;
- The need for cultural understanding;
- The recognition of human rights;
- The impact of racism and stigma;
- Recognition of the centrality of kinship;
- Recognition of different communities and needs;
- Aboriginal strengths;
- Universal access to basic health care;
- High quality health care services; and
- Equitable funding for health care.

An Aboriginal Community Controlled Health Service (ACCHS) or an Aboriginal Medical Service (AMS) is a primary health care service initiated and operated by the local Aboriginal community to deliver holistic, comprehensive, and culturally appropriate health care to the community which controls it (through a locally elected Board of Management). Often these primary health care services are delivered to Aboriginal Community members by Aboriginal people, namely Aboriginal Health Workers (AHWs).

The role of AHWs has evolved exponentially over the last 30 years, with the most recent development being nationally accredited training for the profession ranging from Certificate II to Advanced Diploma.

As a peak organisation representing the professionals working within ACCHSs and the organisations that employ them, NACCHO strongly believes that AHWs should be nationally regulated as a health profession. NACCHO puts forward the following submission in respect of the *Health Practitioner Regulation National Law Exposure Draft 2009*, as part of the National Registration and Accreditation Scheme for Health Professionals.

NACCHO has sought support from all jurisdictions for relevant legislation to support the requirement for registration and welcomes inclusion of AHWs in the single national registration and accreditation scheme for health professionals.

NACCHO supports that all AHWs be registered as a pre-requisite for practice anywhere in Australia and that registration should identify mandatory minimum requirements and conditions for registration. AHWs should be required to meet minimum competency based educational qualifications to be eligible for registration. Registered AHWs should be issued with an appropriate certificate of registration for a one year period, as consistent with other health professions.

Currently AHWs have a national training framework but not accreditation arrangements. However, NACCHO is working towards nationally endorsed standards of delivery and an application process for Registered Training Organisations. It is envisaged that an accrediting body will be established by the introduction of Bill B.

It should be noted that a National Aboriginal and Torres Strait Islander Health Worker Association is currently being established. The National Association will be ideally placed to source input and feedback from Aboriginal Health Workers from across Australia.

The legislation will define the vocational educational levels that are given formal accreditation, and the arrangements under which AHWs will practice incorporating industry standards of practice and the factors that may result in removal of the right to practice. Regulatory standards, stringent educational achievement, competence and fitness to practice must be met and demonstrated by all applicants.

Self regulation is currently the only evident regulation of AHWs in Australia with the exception of the Northern Territory. NACCHO believes that individual regulation is essential but requires this to be coupled with statutory regulation. This approach would strengthen the recognition of AHW as health professionals and mitigate risk to the public who access services from AHWs.

Also, the statutory view of protecting the public from harm implies clinical invasive treatment. NACCHO would argue further that in many instances health professionals, when dealing with Aboriginal clients, may inadvertently inflict harm

to Indigenous social and emotional wellbeing through an absence of cultural competence. NACCHO seeks for relevant accountabilities and preventative strategies to be explored and articulated further with respect to the matters raised; and also for consideration of existing models in New Zealand and Canada.

The matters and concerns raised when considering inclusion of AHWs in a National Registration Scheme are complex and require greater exploration than available through this process. The National Health Workforce Taskforce (NHWT) has stated that: *'The NHWT work has a focus on collaboration and consultation. Our agenda of reform will only be effective if the key stakeholders of the Australian health workforce are encouraged to debate, consider and engage with the issues.'* (Executive Director, National Health Workforce Taskforce, Mr Peter Carver, NHWT website, accessed 9 July 2009, <http://www.nhwt.gov.au/nhwt.asp>).

NACCHO looks forward to continuing to work closely with the NHWT to enable this to occur.

Thank you for the opportunity to submit comments on The Exposure Draft: *the Health Practitioner Regulation National Law 2009*. In addition to this submission, NACCHO has provided submissions in response to earlier consultations and it is respectfully requested that the issues highlighted in each of these submissions are also taken into account in consideration of this submission. NACCHO is also willing to seek and provide additional verbal or written advice on these complex matters if further opportunity is made available.

NACCHO would like to take this opportunity to acknowledge the support offered to date by the National Registration and Accreditation Implementation Project Team in Brisbane.

Additional information may be requested from Ms Janine Engelhardt, Senior Policy Officer on 02 6248 0644 or [janine@naccho.org.au](mailto:janine@naccho.org.au)

**Dea Delaney Thiele**  
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**July 2009**

## **Submission**

Within its submission NACCHO would like to highlight the following specific issues in respect to the *Health Practitioner Regulation National Law Exposure Draft 2009*:

### **Part 1 Preliminary – Clause 6: Definitions (health profession p.5) and Division 15, Part 12 (p.153):**

The Exposure Draft provides for the phasing in of the application of this Law to the **Aboriginal and Torres Strait Islander health practice this should read Aboriginal and/or Torres Strait Islander Health Work**. NACCHO proposes that the titles *Aboriginal Health Worker, Aboriginal and/or Torres Strait Islander Health Worker, Torres Strait Islander Health Worker, Aboriginal and/or Torres Strait Islander Health Care Practitioner and Aboriginal and/or Torres Strait Islander Community Care Practitioner* be restricted to apply to only Aboriginal and/or Torres Strait Islander people and who hold an appropriately recognised Aboriginal Health Worker qualification

### **Part 1 Preliminary – Clause 6. Definitions (health service p.5-6):**

It is noted that Aboriginal Medical Services and Aboriginal Community Controlled Health Services are currently not included in the list of **health services**. In the interests of the health services provided to Aboriginal people it is considered imperative that **Aboriginal Medical Services and Aboriginal Community Controlled Health Services** are included in the list of definitions relating to health services to which regulation will apply. Aboriginal Community Controlled Health Services are a unique collective industry and should be recognised as such within this draft.

### **Independent Accreditation functions (Clauses 59- 64):**

NACCHO welcomes that the Exposure Draft 2009 recognises the need for an independent (of government) accrediting body. Likewise, in acknowledging that accreditation arrangements are a separate issue to registration arrangements. NACCHO would like to acknowledge the need for significant lead in time to develop standards.

**(Clauses 65-68):** Generally supported.

NACCHO believes that within the context of the newly approved competency standards for the Aboriginal and/or Torres Strait Islander Health Worker Certificates II-IV, Diploma and Advanced Diploma it is imperative that all training organisations produce graduates of an agreed standard.

A Registered Training Organisation wishing to deliver Aboriginal and/or Torres Strait Islander Qualifications must apply for accreditation and each course must also receive accreditation.

NACCHO is supportive that accreditation standards will be developed by an accrediting body and believes that it would be beneficial for this accreditation organisation to be industry, profession and consumer driven in its composition.

The development of minimum Competency Standards of Practice and a Code of Conduct/Ethics that is consistent with endorsed National Aboriginal Health Worker and Torres Strait Islander Health Worker Qualifications is integral as part of the process to guarantee the safety of the public receiving services provided by AHWs.

**Changes to Registers:** Generally supported.

**Support for continuing professional development (Clauses 101,124, 125):**

NACCHO supports continuing professional development as a requirement for annual renewal of registration and that registrants demonstrate that they have participated in a continuing professional development program as approved by their national board.

Primarily such professional development and training would be provided through Aboriginal and/or Torres Strait Islander Community Registered Training Organisations and through the Aboriginal and Torres Strait Islander Health Registered Training Organisation National Network (ATSIHRTONN), a collective that is designed to build the capacity of its member RTOs to drive education and training delivery to the Aboriginal and Torres Strait Islander health workforce.

NACCHO is supportive that the AHW profession's requirements will be set by the relevant board and that a board may use its accrediting body to set standards for programs and approve providers of such programs where that is the best arrangement for the profession.

Although NACCHO supports on going professional development for AHWs cost implications of increased training and up-skilling will be an issue for the Aboriginal Community Controlled sector and individual AHWs in regards to the associated costs.

**Extension of scheme to other professions (Clauses 44, 129, 269, & 336-342):**

NACCHO welcomes the extension of the scheme to include Aboriginal and Torres Strait Islander Health Workers as from 1 July 2012. As highlighted in previous submissions it is imperative that comprehensive consultation occurs

with NACCHO, State and Territory Affiliates, Aboriginal and Torres Strait Islander Health Workers and other staff of Aboriginal Community Controlled Health Services in the lead up to the introduction of the scheme for Aboriginal Health Workers. This is an initiative that should be funded.

Firstly what will be the required qualification level for the practice stream registration? The issue of which level qualification an Aboriginal Health Worker requires for Registration is a multifaceted and complex issue which requires ongoing extensive consultation and meaningful discussion across the sector prior to final determination.

For example: As highlighted in earlier NACCHO submissions on the Registration Scheme, Aboriginal Health Workers in the Northern Territory are currently registered at Certificate IV, yet in some other states AHS would be predominantly at the Certificate III level. If it is proposed that only AHW who are in the clinical/practice stream be required to be registered there maybe some concerns. If it is proposed at the level IV qualification this will cause inconsistency within the workforce as ACCHS, as many Generalist health workers provide some clinical services in their daily roles, for these workers to continue providing some clinical services they will either have to up-skill to Certificate IV practice to continue working or face the possibility of not being able to retain the title or be classified as an Aboriginal Health Worker (AHW). The capacity problems that this will pose for ACCHS will also be a problem with having to find extra funds for higher wages to cover workers at Cert IV level to be able to continue to provide some clinical services.

#### **Other improvements to quality and safety of health services:**

**Professional indemnity insurance arrangements (Clause 73):** Further consultation is required with sector in respect to this matter.

**Mandatory reporting of registrants (Clauses 156 & 157):** NACCHO believes that mandatory reporting is a multifaceted and complex issue which requires ongoing meaningful discussion and consultation. NACCHO calls for further discussion regarding mandatory reporting in the lead up to the finalisation of registration arrangements for Aboriginal Health Workers. NACCHO advocates for a system where AHWs and other health practitioners are supported and encouraged to seek professional expertise and help to address issues relating to their practice.

NACCHO wishes to highlight the importance of confidentiality (both for the person making the complaint and the person to whom it is against. The protocols around mandatory reporting need a process for within the organization as it could be a potential source of workplace conflict.)

### **Criminal history and identity checks (Clauses 95 &96):**

Taking into consideration the high prevalence of Indigenous incarceration, where does this leave Aboriginal and Torres Strait Islander Workers who are already practicing but have a criminal history? What measures or consideration will be given to the Aboriginal imprisonment situation and particular worker situations

While generally supported, NACCHO emphasizes that in requesting and reviewing Criminal history checks that there is a need to take account of the high and excessive level of incarceration of Aboriginal people, which leads to the compounding of social disadvantage and social injustice.

Aboriginal people continue to be incarcerated at alarming rates. Each year up to a quarter of all young Aboriginal men have direct involvement with correctional services, and Aboriginal prisoners currently represent 22% of the total Australian prisoner population. For most prisoners, imprisonment involves repeated short-term incarcerations. The high rates of repeated short-term incarceration experienced by Aboriginal people have a multitude of negative health affects for Aboriginal people.<sup>1</sup>

There is a need to acknowledge the impact of stigmatising and discriminatory practices that perpetuate the cycle of disadvantage and incarceration. In considering criminal history checks that there is a need to exercise a level of discretion when considering how old the AHW was when the offence occurred, the circumstances related to the offence, period of detention (if any), severity of crime, and the length of time since the offence occurred.

Clear information regarding the Criminal history checks needs to be included in the application for registration. Self disclosure is considered an important option. It would be useful to include a Criminal Record Check Consent Form. It would also be useful to include an instruction on the application for registration that if prior a Criminal Record Check, has been recently conducted that a copy of the results be attached at time of application for registration.

Other consideration include: Are there going to be guidelines to assist with decisions e.g. police record checks allows for evaluation of severity, history, period of time since offence and the ability to allow for extenuating circumstances – assessment should be made on a case by case basis?

It should be noted that currently the requirement of criminal record checks occurring at the commencement of employment (employment screening policies) with Aboriginal Medical Services currently varies across jurisdictions.

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<sup>1</sup> Krieg,A, Aboriginal incarceration: health and social impacts: eMJA 2006: 184 (10): 534-536

### **Simplified complaints arrangements for the public (Clause 153, 144 & 166):**

NACCHO supports that assistance is to be provided to members of the public who need help to make a complaint as outlined in the Draft Bill.

A single entry point (including a dedicated telephone line) for members of the public who wish to make a complaint through the national agency is welcomed.

### **Handling of complaints (clauses 150-173):**

There are concerns about the process of how complaints will be carried out. There needs to be mechanisms in place to understand and protect the workers position as well and especially for AHW. The complaints board may need to finesse processes and actually contact organisations to find out exactly what the situation is for a particular worker and get an understanding of what are the likely causes of the complaint against the worker. The complaints boards need to be mindful of AHW situations and work responsibilities. AHW don't need any extra burden or stress added to their already over worked and mostly under paid situations.

There are concerns about the complaints boards being mindful that complaints against AHW are not of the personal nature or in relation to various community factions and mechanisms need to be put in place to recognise artificial complaints.

There are concerns of what mechanisms will be in place to ensure complaint processes are timely and accessible and provided with adequate support throughout the process. The support needs to be provided throughout the entire process and in a full supportive and participation manner giving equal opportunity to AHW workers who maybe non- English speaking, semi illiterate or illiterate to respond within a written complaint system. It is proposed that when developing the complaints processes Aboriginal and Torres Strait Islander groups need to be consulted.

### **Investigation Powers**

There are concerns in relation to investigation powers and if workers being investigated don't turn up to organised meetings what penalties will be handed down. It is critical that AHW are notified in a number of ways to ensure that all meeting correspondence have been obtained by workers and processes clearly understood and that the workers are provided with adequate time to attend such organised meetings.

**Public Interest Assessor (Clause 35- 38):**

NACCHO is generally supportive of the inclusion of the new position of Public Interest Assessor being created and the role of making an independent assessment of complaints. It is recommended that in respect to the registration of AHWs that a provision be made in the Bill that this position be identified as an Aboriginal and/or Torres Strait Islander. This person will need to know what underpins the ACCHS sector and its delivery of comprehensive primary health care. (For example what services Aboriginal Medical Services deliver and how. Training levels for AHWs and how this training is nationally accredited.

**Student registration (Clauses 104 -107 & 315):** Generally supported. It should be noted that the language of the Bill assumes that the health workforce is tertiary trained, which is not the case. No mention is made of the VET sector. The language used in the VET sector is different, for example, the term student is substituted for trainee – traineeships.) Further consultation in respect to AHWs is needed in respect to this matter.

**National Boards, Part 5, Division 1, Clause 44 (p.24)**

The name of the board should be consistent with the name of not only the profession but the governing qualifications. The name of the board should therefore be the Aboriginal and/ or Torres Strait Islander Health Worker Board of Australia. The name of the National Register should therefore reflect this change.

**Appointments to national boards (Clauses 45-47)** – Generally supported and welcome the flexibility for national boards in smaller professions.

With the inclusion of Aboriginal and Torres Strait Islander Health professionals in the scheme from 2012, all the relevant Boards should be developing mechanisms to include Aboriginal and Torres Strait Islander representation and especially when assessing complaints

NACCHO does not support “*national Boards containing at least one practitioner member from each of the larger jurisdictions (Queensland, NSW, Victoria, SA and WA) and at least one other practitioner member drawn from the three smaller States and Territories (Tasmania, ACT and the NT)* and seeks that consideration be given to each jurisdiction containing at least one practitioner member. (Refer Clause 45, point 5 & 11).

While Tasmania and ACT are considered smaller jurisdictions, the same cannot be said of the Northern Territory in respect of Aboriginal population and their health needs. NACCHO respectfully requests consideration be given to an amendment to the draft Bill to reflect **that the National Board consist of at least one member from each participating jurisdiction in respect of the Aboriginal and Torres Strait Islander.** If this is not considered appropriate, we

strongly urge that the Northern Territory then be included as one on the large participating jurisdictions. Similar consideration may need to be given in respect of membership for a Torres Strait Islander representative.

**Functions of National Boards (Clause 49 – point d):** It should be noted that the assessment of overseas trained applicants for registration as Aboriginal and/or Torres Strait Islander Health Workers does not apply.

**Health Assessments- Appointment of Assessors (Clause 194)** It is recommended that in respect to the registration of AHWs that a provision be made in the Bill that this position be identified as an Aboriginal and/or Torres Strait Islander as far as practicable.

**Powers to obtain information and investigate the applicant (Clauses 98, 211-239)**

NACCHO once again stresses the importance of taking into account the high and excessive level of incarceration of Aboriginal people, which leads to the compounding of social disadvantage and social injustice. There is a need to acknowledge and issue caution re: previous impacts of Aboriginal people's with the criminal justice system as well as the impact of stigmatising and discriminatory practices that perpetuate the cycle of disadvantage and incarceration.

**Appointment of Investigators (Clause 214):** It is recommended that in respect to the registration of AHWs that a provision be made in the Bill that this position be identified as an Australian Aboriginal and/or Torres Strait Islander as far as practicable.

**Investigators: Powers after entering places (Clause 225)** It is imperative that respect for cultural protocols and customs within Aboriginal and Torres Strait Islander communities be exercised in entering their communities. It may be necessary to identify and contact community elders prior to entering a community. It may also be necessary to have an interpreter present during the search as in a number of Aboriginal communities may have limited English as English is not their first language. It is strongly and respectfully recommended that consideration be given to inclusion of such a statement with in the Bill.

**Area of need arrangements (Clause 85):** NACCHO is concerned that this may enable the registration of under-skilled practitioners, or even non-qualified practitioners, in areas of disadvantage and workforce shortage in urban, rural and remote areas of need. Under-skilled and under-qualified practitioners are not a solution that should be offered to the public as accreditation is designed to protect the public by maintaining high standards of practice.

## **Title protection/restriction of use of titles (Clause 129 p.62)**

The draft bill identifies the name of the Profession as: '*Aboriginal and Torres Strait Islander Health Practice*' and the titles: '*Aboriginal and Torres Strait Islander health practitioner*', '*Aboriginal health practitioner*', '*Torres Strait Islander health practitioner*'. NACCHO proposes that the titles *Aboriginal Health Worker*, *Aboriginal and/or Torres Islander Health Worker*, *Torres Strait Islander Health Worker*, *Aboriginal and/or Torres Strait Islander Health Care Practitioner* and *Aboriginal and/or Torres Strait Islander Community Care Practitioner*. (Please refer to comments under Clause 5 at the commencement of this submission.)

**Privacy protection for practitioners and consumers (Clause 259 & 271):** Generally supported.

**Supply of Workforce Data (Clause 263):** NACCHO supports that the supply by registrants of data specifically required for workforce planning purposes will be voluntary not mandatory.

**Transitional arrangements:** Further details for Aboriginal Health Workers will need to be clarified and negotiated as part of a further agreed/formal consultation process.

**Limited Registration Concerns:** Considering the difficulty in supplying and recruiting an adequate health workforce within a global health workforce shortage there is a need to ensure that limited registration/title protection doesn't cause barriers for ACCHS and organisations in rural and remote locations for securing adequate health workforce. This however needs to be done in a way that doesn't impact on the standards provided to the profession or the safety to the population.

**Websites:** There are some concerns about health information on websites which may incite professional indemnity issues and also indemnity concerns for organisations such as ACCHS.

**The preferred name for the Profession is:** Aboriginal and/or Torres Strait Islander Health Worker

**Preferred Title:** Aboriginal and/or Torres Strait Islander Health Worker (Practice) or Aboriginal and/or Torres Strait Islander Health Worker (Community Care)

**Preferred Name of Board:** Aboriginal and/or Torres Strait Islander Health Worker Board of Australia.

**Preferred Name of National Register:** Register of Aboriginal and/or Torres Strait Islander Health Workers

**Fees:**

Currently there is significant variation in the fees paid by health practitioners across jurisdictions and professions. Under the national scheme it is proposed that all health practitioners of the same professions will pay the same fee.

Given that Aboriginal and/or Torres Strait Islander Health Workers are a small profession, without adequate recognition reflected in lower remuneration and conditions, set fees and longer term self funding should apply. NACCHO would like clarification of the economy of scales used to set these fees (i.e. what is reasonable) and if there will be a minimum resource allocation to professions such as Aboriginal and/or Torres Strait Islander Health Workers.

Thank you for the opportunity to submit comments on the proposed registration arrangements. Should you require any additional information please do not hesitate to contact Ms Janine Engelhardt, Senior Policy Officer on 02 6248 0644 or [Janine@naccho.org.au](mailto:Janine@naccho.org.au) .

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