

## FREQUENTLY ASKED QUESTIONS - ON THE EXPOSURE DRAFT OF THE *HEALTH PRACTITIONER REGULATION NATIONAL LAW 2009*

The following series of questions and answers have been collated based upon feedback from consumers, health practitioners and other stakeholders in the development of the National Registration and Accreditation Scheme. This document is intended to accompany the Exposure Draft and the Guide to the Exposure Draft.

To assist the reader these questions and answers are presented in three sections:

- 1 – General information
- 2 – Information for the community
- 3 – Information for health practitioners

Date: 12 June 2009

Contact: [NRAIP@dhs.vic.gov.au](mailto:NRAIP@dhs.vic.gov.au)

For further information visit [www.nhwt.gov.au/natreg.asp](http://www.nhwt.gov.au/natreg.asp)

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### Section 1 - General information

#### How is the national registration and accreditation scheme being implemented?

A staged approach is being taken to establishing a legislative basis for the national scheme.

The exposure draft National Law is the second stage and builds on both the 2008 Council of Australian Governments (COAG) agreement and the first stage of legislation, the *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008*.

The purpose of the proposed National Law is to protect the public by establishing a national scheme for the regulation of health practitioners and students undertaking programs of study leading to registration as a health practitioner.

Accordingly, this draft National Law proposes to continue administrative arrangements established under the first law, but covers the more substantial elements of the national scheme, including registration arrangements, accreditation arrangements, complaints, conduct, health and performance arrangements, and privacy and information-sharing arrangements.

Following this period of consultation, the proposed National Law will be finalised for agreement by Ministers, enabling Queensland to take a Bill through Parliament. The other States and Territories intend to introduce adopting or corresponding legislation (known as Bills C) into their Parliaments to fully implement the national scheme. The Commonwealth will also make consequential amendments to Commonwealth laws to support the implementation of the national scheme.

The scheme is to commence full operation on 1 July 2010.

#### Which health professions will be regulated under the new scheme?

From 1 July 2010 (listed in alphabetical order):

- Chiropractic
- Dental (including Dentists, Dental Therapists, Dental Hygienists, Dental Prosthetists and Oral Health Therapists)
- Medicine
- Nursing and Midwifery
- Optometry
- Osteopathy
- Pharmacy
- Physiotherapy
- Podiatry
- Psychology

From 1 July 2012:

- Aboriginal and Torres Strait Islander Health Practice
- Chinese Medicine
- Medical Radiation Practice

#### Will the National Law be a Commonwealth law?

No. The national scheme is being established via State and Territory laws, using an 'applied law' model. This model is used for matters that are generally within the States' legislative powers, and not the Commonwealth's legislative powers. This model will result in a finalised National Law being enacted by one State or Territory (in this case, Queensland) with other States and Territories entering the scheme as 'participating jurisdictions', by enacting legislation to adopt and apply the National Law as a law of their jurisdiction.

While the Commonwealth will need to make some consequential amendments to Commonwealth laws, to ensure effective interfaces between various Commonwealth agencies and the national scheme, the Commonwealth will not need to apply the National Law.

#### What are the bodies in the new scheme?

- Ministerial Council
- Advisory Council
- National boards
- State/Territory boards (committees of national boards)
- Accreditation authorities
- Australian Health Practitioner Regulation Agency (AHPRA)

#### Will the Ministerial Council be required to publish advice it receives from the Advisory Council?

Yes. Under the draft National Law, it is proposed that the Ministerial Council make arrangements to publish advice given to it by the Advisory Council as soon as practicable after the Ministerial Council has had the opportunity to consider the advice. However, the Advisory Council can recommend to the Ministerial Council that its advice or part of an advice not be published if this is in the interests of protecting the privacy of any person (a person here means an individual or an organisation). It is also proposed that the Ministerial Council cannot issue a policy direction on, nor seek advice from the Advisory Council on, a particular person, or a particular qualification, or a particular application, complaint or proceeding.

**How can one national organisation deal with health practitioner regulation, registration and complaints from across the country and be responsive to the needs in each State and Territory?**

The AHPRA will be required to establish and maintain an office in each State and Territory. Registrations and complaints will be handled within the relevant State and Territory office. The State and Territory offices will also provide a simple point of contact for practitioners, students and the public.

National boards will be able to establish boards at the State and Territory level that can provide assistance or advice to the national boards in order to ensure an effective and timely local response to health practitioners and others within the jurisdiction.

**How will an individual health practitioner know who to contact?**

Their first contact will be with the office in their State or Territory and contact details will be published on the website.

**With only one national board for each profession, how will the particular issues and needs of specific States and Territories be understood?**

The proposed National Law requires that there must be at least one health practitioner member on the national board from each of the large participating jurisdictions – New South Wales, Queensland, South Australia, Victoria and Western Australia and at least one from either the Australian Capital Territory, the Northern Territory or Tasmania.

**How will one national board for each profession be able to handle the workload of a large number of registrants?**

It is not envisaged that operational registration and complaints work will be done by the national board itself. It is anticipated that these matters will be handled at State and Territory level, under the oversight of the national board. The national board will be able to delegate its functions to committees, AHPRA staff or contractors, including the accreditation body.

For very small professions there may not need to be a committee in each State and Territory. Each national board will decide how their committees will be structured.

If the national board chooses to establish a State or Territory committee to undertake some of its functions, then the committee will be called the "[Name of participating jurisdiction for which it is established] Board" of the National Board and its members will be appointed by the Health Minister in that jurisdiction.

**What involvement will the State and Territory Health Ministers have in the appointment process for State and Territory boards?**

Each Health Minister will appoint the State and Territory board where these are in place in their jurisdiction. Vacancies will be advertised, and AHPRA may provide assistance to Health Ministers with this process.

**What is the national board's role in developing standards?**

The scheme contains two types of standards: registration standards and accreditation standards. The national board is responsible for developing registration standards (these cover the requirements for initial

registration and the requirements for renewal of registration for each profession) and submitting them to the Ministerial Council for approval.

Accreditation standards are developed by the accreditation authority for the profession (either an external body or an internal committee) and submitted to the national board for approval.

**Are there any requirements for consultation in the development of these national standards?**

Yes. National boards must ensure there is wide ranging consultation about the content in the development of registration standards. Similarly the accreditation authorities must undertake wide-ranging consultation about the content of the standards they develop. Additionally if a national board proposes to recommend a matter to the Ministerial Council that another national board may reasonably be expected to have an interest in then consultation must occur between the boards. Any contrary views expressed must also be provided with the recommendation to Ministers.

**What obligations are there to report to the national board a registered colleague or employee who is unwell or practising incompetently or unethically?**

The proposed National Law imposes on all registered health practitioners and employers a legal obligation to report to the relevant national board any registered health practitioner who has:

- (a) practised the profession while intoxicated by drugs or alcohol, or
- (b) engaged in sexual misconduct in connection with their practice of the profession, or
- (c) placed the public at risk of substantial harm in their practice because they have an impairment, or
- (d) placed the public at risk of substantial harm because of a departure from accepted professional standards.

If a practitioner has formed a reasonable belief that a professional colleague's conduct is reportable conduct and fails to report to the board in these circumstances, they may be liable for disciplinary action by their board.

**What is the health complaints entity?**

There will be an ongoing and important role under the national scheme for the current, and variously titled, Health Services Commissioner or Health Care Complaints Commissioner in each State and Territory.

**How will the flexible complaints arrangements work in NSW?**

The proposed National Law has been drafted to work in concert with State or Territory law to provide for flexibility in handling of complaints whether as to conduct, performance or health. The arrangements for NSW will be made clear in the NSW legislation which adopts the National Law. However the National Law already includes provisions to ensure that there is a proper flow of information between NSW and the national system (for example where a practitioner resident in NSW may be subject to a complaint relating to an event in another State or Territory). The National Law also provides that the outcomes of complaints processes anywhere in Australia are reflected in the national public register of practitioners where conditions are imposed or there are other changes to registration status (for example, deregistration). NSW will make legislative provisions in its Bill C to ensure that these

arrangements and interaction with the national scheme are efficient and effective.

**What privacy arrangements are proposed under the National Law to ensure information is protected under the national scheme?**

Ministers have agreed to use the Commonwealth's privacy laws as a template for the privacy arrangements under the national scheme.

To achieve this, it is proposed that the draft National Law utilise the provisions of the Commonwealth's Privacy Act and apply the text of those provisions for the purposes of the national scheme. In doing so, the National Privacy Principles and other relevant parts of the Privacy Act will be applied as a law of each State and Territory that participates in the scheme. These privacy arrangements will not be Commonwealth law. This will provide a consistent national privacy regime for the new scheme.

The proposed National Law provides for a National Health Practitioners Privacy Commissioner to administer the national scheme's privacy regime. Further work is being done on how this arrangement will work administratively.

However, aspects of the Commonwealth's Privacy Act are either not relevant to the national scheme, or will need to be tailored to ensure that the privacy protections work efficiently and effectively for the national scheme. Because of this, the draft National Law proposes setting out modifications in the national regulations to ensure that the application of the provisions of the Commonwealth Privacy Act is effective and flexible.

This approach is intended to meet expectations expressed by both health practitioners and consumers that information collected and retained by the national boards and the AHPRA is subject to consistent, nation-wide protections of a high standard.

**Will Freedom of Information (FOI) laws or Ombudsman legislation apply to the national scheme?**

Yes. Similar to the approach being taken for privacy, it is proposed that the text of the Commonwealth Freedom of Information Act and the Commonwealth Ombudsman Act be applied under the National Law for the purposes of the national scheme.

Also consistent with the approach being taken for privacy, the draft National Law will tailor the FOI arrangements and ombudsman arrangements for the purposes of the national scheme to ensure lodging and processing FOI applications or complaints to the scheme's Ombudsman are clear and workable. The National Law regulations will set out these modifications.

In addition to consultation on this exposure draft, there will be ongoing collaboration with the Commonwealth on how to best achieve these modifications and ensure efficient and effective arrangements for the national scheme.

## Section 2 – For the community

### **How will the new scheme improve protections for the Australian community?**

An important objective of the new scheme is protection of public safety. There are many measures in the proposed National Law to do this.

The background of each applicant for registration in a regulated health profession will be carefully checked by the board. This will include criminal history and identity checking. Australian trained applicants will need to have completed an approved program of study plus any other registration requirements of the board. International applicants will have their qualifications assessed for equivalence with Australian qualifications and will also need to be able to speak and understand English and have recent practice. The board will be able to refuse registration if it considers that the applicant is not fit or suitable to practise ethically or competently.

Provisions for mandatory reporting by practitioners and employers will also improve public safety, as will the new national public register of practitioners. The new Public Interest Assessor is an important new element in the protections for the public.

### **How will I find out if a health practitioner is registered?**

There will be a number of ways to check a health practitioner's registration status. The new national registers for each profession will be available on the national website and may be searched electronically. You will be able to enter the name of a practitioner and information will be displayed on the practitioner, the type of registration they hold, their qualifications, and other relevant details on their registration status. You will be able to search a single register for a health profession, or search all the registers together. You may also ring or visit your State or Territory office for assistance if unable to access the national register electronically.

### **How will I identify specialist practitioners?**

When you search the national register and enter the name of a health practitioner you will be able to tell whether the health practitioner is registered as a specialist in a specialty that is recognised under the national scheme. You will be able to check the qualifications of any health practitioner who is registered as a specialist under the scheme.

### **How will I be able to make a complaint about a health practitioner under the national scheme?**

It will be easy for you to make a complaint under the national scheme. There will be a national contact number to call, with experienced officers taking the calls. Complaints may also be made in writing, by email, or in person through the office in each State and Territory capital city. If you need help to make your complaint staff will be available to assist you. The Australian Health Practitioner Regulation Agency (AHPRA) will be required to refer all complaints to the relevant national board.

### **How will I know that my complaint will be dealt with fairly?**

The proposed national scheme will provide a number of 'checks and balances' to ensure all complaints are dealt with rigorously and fairly. For instance, the AHPRA will

have expert staff in each State and Territory trained to receive and investigate complaints. Additionally, each national board will have at least one third of its members who are community members rather than practitioners. When decisions are made about how to deal with a complaint, there will be an independent statutory officer, called a 'Public Interest Assessor', who will work with the board to ensure the right path is taken, according to the seriousness of the practitioner's conduct.

### **What is the Public Interest Assessor?**

The Public Interest Assessor is a person appointed by the Ministerial Council to assess complaints and, in conjunction with the relevant national board, decide the action to be taken. The Assessor is there to ensure that the interest of the public is upheld. If the Public Interest Assessor thinks a complaint is more serious than the board considers it to be, the Assessor's view on handling the complaint will prevail. If the board thinks it is more serious, the board's view will prevail. The Assessor will be independent but based in the AHPRA. The proposed National Law also provides for the responsible Minister in a participating State or Territory to nominate an alternative independent assessor, such as the local health complaints authority, for that jurisdiction.

### **What is the standard against which my complaint about a practitioner's conduct will be judged?**

The proposed National Law includes a number of standards which are applied in making decisions about the conduct or performance of a practitioner. These are 'unsatisfactory professional performance', 'impairment', 'unprofessional conduct' and 'professional misconduct'. Complaints that a practitioner's performance is unsatisfactory or that the practitioner may have an impairment, are likely to be dealt with directly by the board and may or may not proceed to a board hearing. More serious complaints of possible 'professional misconduct' will be referred by the national board for hearing by a Tribunal that is external to the board. A range of orders may be made by the board or its hearing panel, or the Tribunal, depending on the seriousness of the conduct.

### **How will I find out if a health practitioner's registration is suspended or cancelled?**

You will be able to see practitioners who have been deregistered on a separate list for each profession on the national website.

### **How will I know if a health practitioner has limits or restrictions on the services that they can provide?**

When searching for a health practitioner on the national register you will be able to tell whether a particular practitioner has conditions or limitations placed on their registration.

### **What happens to the regulation of professions that are currently registered in some States and Territories but are not included in the new national scheme?**

The decision not to include these professions in the national scheme does not directly affect their registration status in individual States and Territories and continued registration of these professions will be a matter for the relevant Health Minister in each State and Territory to decide.

**Will the scheme ensure that health practitioners have professional indemnity insurance?**

All health practitioners will be required to have professional indemnity insurance arrangements in place as a condition of their continued practice. In the case of employed practitioners this may include appropriate indemnification by their employer.

**Is my health practitioner likely to need to increase his/her fees to meet increased costs of the new scheme?**

Currently there is significant variation in the fees paid by health practitioners between States and Territories and professions. The overall cost of administering the scheme is not expected to increase as there is great opportunity for efficiencies under a consistent national scheme. Under the national scheme, all health practitioners of the same profession across Australia will pay the same fee. This means the fees for some practitioners will increase while some may reduce. However, it is unlikely that these changes will be of a size that will impact on the level of fees charged to patients by their practitioners.

**Can I be assured that the health professionals providing care in Australia will continue to have a world class education?**

Yes. All programs preparing graduates for registration in a health profession under the national scheme will need to be accredited against nationally agreed accreditation standards and it is intended that these will reflect international standards.

**Will the information collected about me and my complaint be kept confidential?**

You will have control of how the information you supply is used. When you make a complaint, you will be advised of the likely actions the board will take to deal with the complaint. The health practitioner will be informed of the details of the allegations and will be given an opportunity to respond. If your complaint proceeds to a hearing, the proposed National Law provides for information about you to be kept confidential and for your identity to be suppressed. Panel hearings conducted by the boards will not be open to the public. Tribunal hearings are expected to be open to the public, but may be closed and the identity of witnesses suppressed, to protect complainants.

**How will I know if a health practitioner is qualified to provide a particular type of service?**

In most cases, if a health practitioner is registered then they will be qualified to provide all services typically provided by health practitioners in that profession, unless their registration is restricted in some way. You will be able to check this by entering their name and searching the public register electronically. You will also find out by ringing or visiting the State or Territory office. If a health practitioner has approved specialist qualifications in a specialty recognised under the national scheme, then this information will also be set out on the national register against their name. In some cases, health practitioners will be endorsed as qualified to practise in an approved area of practice, such as acupuncture. These details will also be set out on the public national registers.

## Section 3 – For health practitioners

### 3.1 Registration

#### **If I am currently registered, will I need to re-register under the new arrangements before 1 July 2010?**

No. All health practitioners registered in a State or Territory immediately prior to commencement of the scheme on 1 July 2010 will be considered registered under the new legislation. Your registration will continue in place until it is due to be renewed. When it is due for renewal, you will renew it under the new arrangements. You will be advised when registration renewals are due.

#### **If my registration is due to expire under State or Territory legislation on 1 July 2010 (commencement date of the new scheme), will I be registered under the proposed National Law?**

Yes. In addition, under the proposed National Law, there will be provision for an up to three month grace period to apply to late renewal of registration. However you will be required to pay a late fee in addition to the renewal fee.

#### **If I am currently registered in more than one jurisdiction, will I have to renew registration in each of those jurisdictions following the commencement of the new scheme?**

No. Following commencement of the scheme on 1 July 2010, health practitioners will be registered to practise throughout Australia. National registration will only be renewed once a year, renewal will not be required in each State and Territory.

#### **If I have lodged a registration application prior to commencement of the new scheme but it has not been considered, will I have to re-apply?**

No. The application will be considered, automatically, to be an application under the proposed National Law. You may be asked to provide additional information required under the proposed legislation, but will not need to re-apply.

#### **Will my registration status change from 1 July 2010?**

There may be some changes in the terms used to describe the type of registration that you hold, but you should not notice any change that will affect your practice. It is intended that a practitioner's registration status will remain the same, even though the words used to describe the type of registration may change. It is intended that your existing registration, including any conditions and endorsements, will be rolled over into the new registration arrangements from 1 July 2010 without the need for you to do anything.

#### **How will I know about my registration under the new scheme?**

The national board for your profession will develop a registration transition plan, in conjunction with your current registration board, prior to the commencement of the scheme. The plan will identify how health practitioners registered under current arrangements will transition across to the new registers, divisions and types of registration. It is expected that you will have the opportunity to comment before any translation of registrations occurs. After finalisation of the plan, the vast majority of health practitioners will be automatically

switched across to the relevant national register from 1 July 2010.

It may be that a small number of existing registration types do not readily match the new national types of registration and individual allocation decisions will be required.

You will be individually notified of your registration status under the new arrangements before 1 July 2010 and if you are unhappy with the new registration type you are to be allocated, you will have the opportunity to seek a review.

#### **Will registrants be required to lodge applications for registration with the national office?**

It is expected that applications for registration and renewal or restoration of registration may be lodged at State and Territory offices where it is not suitable or practical to lodge electronically. Registration applications and registration renewals are likely to be handled at the State and Territory offices under delegation from the national boards.

#### **How will the national registers be organised under the new scheme?**

Registrants may be granted one or a number of different types of registration and their names will be entered on the relevant national register. Details of the type of registration each practitioner holds will be listed against their name, along with their qualifications and a range of other information. Some registers (for example, nursing, dental, Chinese medicine and medical radiation) will have divisions for the different sub-groups of health practitioner within the profession.

The types of registration that may be granted will be:

- general registration
- specialist registration (for medical and dental practitioners and any other profession approved by the Ministerial Council)
- provisional registration (for the purposes of completing a required period of supervised practice in order to qualify for general registration)
- limited registration (for the purposes of undertaking post-graduate training or supervised practice or sitting an examination or assessment, for limited practice in an area of need, for a limited time or limited scope in the public interest, or for teaching and research)
- non-practising registration.

It is also proposed that each national board keep a student register for each profession, but this will not be a public register.

#### **How will the proposed National Law apply to the three partially regulated health professions (Aboriginal and Torres Strait Islander health practitioners, Chinese medicine practitioners, and medical radiation practitioners) being brought in the national scheme?**

The national boards for these professions will be appointed up to 12 months in advance of July 2012, in order to undertake the task of establishing the registration standards and other requirements, and assessing applications for registration. However, the registration requirements will not come into force until July 2012. Prospective applicants for registration in

these professions will be encouraged to apply for registration prior to 1 July 2012. It is intended that those already registered (in those States and Territories that have registration schemes for these professions) will be transferred to the national scheme without the need to reapply.

**Can I be registered without holding professional indemnity insurance?**

No. You must be covered by professional indemnity insurance arrangements of the type and level of cover required by the national board for the profession, unless you are registered in the non-practising category of registration or as a student. In the case of employed practitioners, appropriate insurance may include appropriate indemnification by their employer.

**Will participation in continuing professional development be mandatory for registered health practitioners under the national scheme?**

Yes. Registered health practitioners (not students) will be required to demonstrate that they have participated in a continuing professional development (CPD) program as determined by their national board when they renew their registration annually. However, a health practitioner granted non-practising registration will not be subject to CPD requirements, as it is a standard condition that he/she not practise the profession. While each profession's CPD requirements will be set by the relevant national board, a board may use an accreditation body to set standards for CPD programs, and approve providers of such programs, including, in the case of medicine, specialist medical colleges, where that is the best arrangement for the profession. The requirement to participate in a CPD program is not a requirement for reassessment of competence or revalidation.

**Will there be requirements for professional revalidation under the new scheme?**

No. There are no legislated requirements for professional revalidation under the new scheme. However, it would be open to national boards to propose such requirements to Ministers as part of registration standards some time in the future if they wished to do so.

**Will students be registered?**

Each national board is to register people who are undertaking an approved program of study in a health profession regulated under the national scheme. However, students may not be required to be registered from the beginning of their program. Each national board will decide at what point in the program students need to be registered, having regard to the potential risk to public safety.

**When will registration of students come into effect and what will I, as a student, have to do?**

You will not have to do anything. All students who are currently registered will be transferred onto the appropriate student register, with any current conditions, on 1 July 2010. Registration for students who are not currently registered will commence from the beginning of the academic year in 2011.

**Will students need to pay registration fees?**

No, students will not be required to pay registration fees.

**How will students apply for registration?**

Students will not have to apply individually for registration. Each education provider will be required to provide a list with details of enrolled students to the relevant national board, as well as provide amendments to the list from time to time as enrolments change. Students will be registered when their names have been entered by the board on the student register for the profession.

**How will students know that they are registered?**

The relevant national board will inform each education provider that their students have been registered, and of any changes to the student register and it will be the education provider's responsibility to inform the student of his/her registration and any changes to that registration.

**What powers will a national board have in relation to students?**

The powers of the national boards with respect to students extend only to assisting a student who may be impaired (for example, students suffering from mental illness), or where a student has been charged with or found guilty of an indictable offence. Where a student may be impaired, the board may require the student to undertake a health assessment, and may attach conditions to their registration, in order to protect the public. Where the student has been charged with an offence, the board's concern is to ensure that patients are protected, and again, conditions may be placed on the student's registration.

**If I hold non-practising registration, will I be able to undertake some limited practice, for example, make referrals, provide advice or renew prescriptions?**

No. A condition of non-practising registration is that you do not undertake any practice at all. If you wish to return to active practise, you will need to apply to the relevant national board to change the type of registration you hold and meet any additional requirements the board might apply to ensure you are safe to practise.

**Does the proposed National Law allow for criminal history checks to be undertaken on non-practising health practitioners?**

Yes, criminal history checking provisions do apply. Non-practising registration is still a form of registration that is subject to annual renewal and all other provisions that relate to registration (except for professional indemnity insurance, CPD or recency of practise requirements because persons in this category are not practising the profession).

**Will I be registered for life once I am registered?**

No. You must renew your registration annually. At this time, the board will require you to provide information on the annual renewal form, for example, about whether you are still fit to practise, whether you have participated in continuing professional development during the year, and whether you have maintained recency of practice.

**What happens if a health practitioner fails to apply for renewal of registration in time?**

The proposed National Law provides for a three month grace period. If you do not apply to renew registration before it expires, the registration is taken to continue in force until the end of the day 3 months after it would

have expired, but only if you renew within the three month grace period, and pay a late fee set by the board, on top of the renewal fee that was due.

**Will a health practitioner who is not registered be able to practise in a health profession regulated under the national scheme?**

No. Under the proposed National Law, it will be an offence for persons who are not registered to call themselves a 'registered health practitioner', to use any of a list of restricted professional titles which might indicate that they are registered or qualified to practise in a health profession, or claim to be registered or qualified to practise in a health profession that is regulated under the national scheme. In addition, there are certain activities or practices that will be restricted only to persons registered in specified professions (see below).

**What activities are restricted to specific registered health practitioners?**

Under the proposed National Law, there will be a number of activities or practices that only persons registered in specified professions will be authorised to carry out:

- a range of dental acts will be restricted to persons registered in the dental or medical professions, medical or dental students, if done as part of their programs of study, or dental technicians practising under the order of dentists or dental prosthetists.
- the prescription of optical appliances will be restricted to registered optometrists or medical practitioners, or students, if done as part of their programs of study for the optical profession. Orthoptists will also be permitted to prescribe spectacles in public health facilities or under the supervision of registered optometrists or medical practitioners.
- manipulation of the cervical spine will be restricted to those registered in the chiropractic, osteopathy, medicine or physiotherapy professions, or students if done as part of a program of study in one of these health professions.

**If a national board decides that an applicant for general, specialist or limited registration should undertake an examination or assessment, who will conduct this examination or assessment?**

Under the proposed National Law, an accreditation authority for the health profession must conduct this examination or assessment, unless a national board decides otherwise. In making this decision, the national board will take into account an accreditation body's capacity to conduct the examination or assessment, or its history of providing suitable examinations or assessments.

### **3.2 Fees and Funding**

**Are my registration fees likely to increase with national registration?**

The national scheme is to be funded primarily from registration fees paid by practitioners. Currently there is significant variation in registration fees between States and Territories and between professions. The legislation requires that boards move to a single national fee for each profession. This inevitably means that some fees will go up and some will go down, depending on where you live.

Some practitioners who practise across State and Territory boundaries currently have to pay multiple registration fees. For these practitioners, registration costs are likely to reduce because they now only have to pay one fee. The overall cost of administering the national scheme is not expected to lead to an overall increase in costs to registrants, since there is significant potential for administrative efficiencies with the maintenance of a single registration database and single office in each State and Territory.

**Will the fees I pay for registration in my profession be used to pay the costs of regulating members of another profession?**

No. Under the new scheme, all health practitioners in a profession will pay the same fee wherever they practise in Australia. However, because some professions are more expensive to regulate than others, the fee schedules will differ across professions. Fees collected from one profession will not be used to cross-subsidise the regulation of another profession. The draft Bill requires the Australian Health Practitioner Regulation Agency (AHPRA) to keep separate account for each national board.

**How will the relationship between the AHPRA and the national boards operate?**

Under the draft Bill all the regulatory functions are conferred on the national boards not the AHPRA. The role of the AHPRA is to administer the scheme where functions are delegated to it by the boards. The boards and the AHPRA will negotiate an agreement ("Health Professions Agreement") which sets out the services to be provided to and the costs to be met by each national board. The agreement will also set out the fees for each board necessary to meet these costs.

**Will national boards control their own funds and employ staff?**

The draft Bill provides for there to be a budget for each national board. This budget must be agreed by the board in the health profession agreement just described. The AHPRA will receive all funds on behalf of the national boards and assign them to each board's budget. The AHPRA will employ the staff that each national board requires to carry out its statutory functions.

**What happens if the national board and AHPRA cannot agree?**

If the board and AHPRA cannot reach agreement then the matter is referred to the Ministerial Council which will direct how the matter is to be handled.

**How will transparency and accountability be assured in the financial management of the AHPRA and the national boards?**

The proposed National Law builds in safeguards to ensure sound financial management. It requires the annual financial reports to be prepared in accordance with Australian Accounting Standards and be audited. It imposes obligations on the AHPRA and the national boards to ensure their operations are carried out efficiently, effectively and economically, with internal control procedures in place governing accounting and any expenditure.

### 3.3 Accreditation

#### **I am currently a student in an accredited undergraduate program. Can I be confident that I will be able to register when I complete my program?**

Under the proposed National Law, existing programs that are currently accepted for the purposes of registration by a State or Territory registration board will automatically be approved under the new scheme from 1 July 2010 for registration under the national scheme. Further, the accreditation standards that are currently used by boards or their national accrediting bodies to assess programs of study for accreditation will also be rolled over into the new scheme.

#### **Can I be assured that the education of Australian health professionals will continue to be acceptable internationally?**

Yes. All programs preparing health practitioners for registration will need to be accredited against nationally agreed accreditation standards and it is intended that these will continue to reflect international standards.

#### **How will accreditation be independent?**

The proposed National Law provides for the independence of the process through which programs of study are assessed for accreditation in several ways:

- (1) the Ministerial Council may appoint an entity, external to a national board, to exercise accreditation functions on behalf of the board.
- (2) Accreditation standards developed by the accreditation authority will be submitted for approval to the relevant national board. The Ministerial Council will have the power to issue directions relating to accreditation standards only if it considers that the accreditation standard will have a substantive and negative impact on the recruitment or supply of health practitioners to the workforce.

The Ministerial Council acting under the current Act has already assigned the accreditation function to external accreditation entities in nine of the ten professions.

### 3.4 Complaints

#### **How do I know that any complaint about me will be dealt with fairly?**

The new scheme provides a number of consistent features nationally which cover the complaints process. If a complaint is received about your practice, you will be notified and given the opportunity to respond. Then the national board, in conjunction with an independent statutory officer, called a 'Public Interest Assessor', will jointly decide what path is to be taken, according to the seriousness of the matter. The board can dismiss complaints that it considers to be frivolous, vexatious, or lacking in substance. In dealing with any complaint, boards are bound by the rules of natural justice and must ensure all their processes accord with procedural fairness. You will have rights of review in relation to decisions taken within the scheme through Tribunals external to the scheme and independent of the boards. And you will have rights of review from the Tribunals as provided under State and Territory law.

#### **What is the standard against which my conduct will be judged?**

The proposed National Law includes a number of defined standards which are applied in making

decisions about professional conduct. These are 'unsatisfactory professional performance', 'impairment', 'unprofessional conduct' and 'professional misconduct'. Complaints that a practitioner's performance is unsatisfactory, or that the practitioner may have an impairment are likely to be dealt with directly by the board and may or may not proceed to a board panel hearing. More serious complaints of possible 'professional misconduct' will be referred by the national board for hearing by a Tribunal that is external to the board. A range of orders may be made by the board or its hearing panel, or the Tribunal, depending on the seriousness of the conduct.

#### **What are my obligations to report to the national board if I believe a colleague is unwell or practising incompetently or unethically?**

The proposed National Law imposes on all registered health practitioners a legal obligation to report to the relevant national board any registered health practitioner who has:

- (a) practised the profession while intoxicated by drugs or alcohol, or
- (b) engaged in sexual misconduct in connection with their practice of the profession, or
- (c) placed the public at risk of substantial harm in their practice because they have an impairment, or
- (d) placed the public at risk of substantial harm because of a departure from accepted professional standards.

In relation to (d) there is an implicit principle in law of a 'reasonable person' person test. This would require that the practitioner making the report under (d) would be required to have the requisite capacity or knowledge to assess the other practitioner's departure from acceptable standards.

If a practitioner has formed a reasonable belief that a professional colleague's conduct is reportable conduct and fails to report to the board in these circumstances, they may be liable to disciplinary action by their board.

#### **What is the Public Interest Assessor?**

The Public Interest Assessor is a person appointed by the Ministerial Council to assess complaints and, in conjunction with the national board, decide the action to be taken. The Assessor will be independent but based in the AHPRA. The proposed National Law also provides for the responsible Minister in a participating State or Territory to nominate an alternative independent assessor, such as the local health complaints authority, for that jurisdiction.

#### **What Tribunal will hear complaints against health practitioners?**

Each State and Territory will nominate an appropriate Tribunal in their jurisdiction to hear complaints against health practitioners. There will be a common set of findings the Tribunals can make but the specific arrangements for the Tribunal, including its composition, will be specified in the legislation of each State and Territory.

**If a complaint has been lodged but not finalised prior to the new scheme coming into effect, will the process have to start again?**

No. If a complaint has been received but the board has not started dealing with that complaint prior to the legislation coming into effect, the complaint will be dealt with under the provisions of the proposed legislation. If a process has started for dealing with the complaint, that process will continue and the complaint will be dealt with by the national board or alternative State based system under the provisions of the earlier legislation.

**Can complaints be made about matters that pre-date the new scheme?**

Yes. Complaints made after commencement of the scheme on 1 July 2010 about matters that pre-date the proposed legislation will be actioned if the complaint could have been actioned under the State or Territory legislation in place at the time the matter occurred.

**3.5 Privacy and information sharing**

**How will my personal information and privacy be protected under the new arrangements?**

It is intended that the application of the Commonwealth's Privacy laws as a template for the purposes of the national scheme provide a legal framework for the collection, holding, use and disclosure of personal information under the national scheme.

A duty of confidentiality with financial penalty for breaches is proposed to apply to all persons who administer the proposed National Law. Only those staff and officers who have specific responsibilities for the administration and operation of the national scheme will have access to registration records and only to the extent necessary to carry out their statutory responsibilities. In addition, controls for specific authorised access will be put in place for confidential or sensitive personal information that may be collected in the case of a complaint or investigation about professional performance, health or conduct.

**Under what circumstances will the board be able to share my personal information?**

The national boards and the AHPRA will be required under the proposed National Law to keep your personal information confidential unless another law authorises its disclosure for a specific purpose, or it is required for a Tribunal hearing, or your consent is obtained for that release. However, this confidentiality requirement does not apply if the information is already available to the public through for example, the proposed national register.

**Will my personal information be able to be shared with anyone else outside the board/AHPRA without my consent?**

The proposed National Law provides controls over the sharing of personal information about registrants. Information can only be shared with outside agencies or persons to the extent set out in the legislation. The proposed National Law will provide for disclosure of identifying information to a number of agencies, such as Medicare Australia and the Department of Immigration and Citizenship, and international health regulatory authorities, but only for specific purposes and with protections in place. In the future, it is also expected

that there will be sharing of information with statutory bodies set up by the Commonwealth to administer the new healthcare provider identification arrangements needed to support electronic health records and communications.

**What will be published about me on the public register?**

The proposed National Law sets out the information that may be made public on the national registers. The information that is required by the public to identify you as a registered and qualified person to practise your profession, including, for some professions, specialties or endorsements, and any restrictions or conditions that are placed on your practice by a board or a Tribunal. A personal mailing address or details related to your personal health will not be provided or published on the public register.

**Will I be required to provide information related to workforce planning?**

No. Submitting workforce data will not be mandatory. Data that is required for workforce planning purposes will be sought from you at the time you register or renew your registration. However, it will not be mandatory for you to provide this information in order to renew your registration. The AHPRA will collect and de-identify any information to be used for workforce planning purposes, before forwarding the de-identified data to the Australian Institute of Health and Welfare for workforce planning. The release of this information to Commonwealth, State and research agencies, the boards and the public will be managed through protocols agreed by the Ministerial Council.