



Australian Health Workforce Ministerial Council

GUIDE TO THE EXPOSURE DRAFT OF THE *HEALTH PRACTITIONER REGULATION NATIONAL LAW 2009*

This guide follows the Communiqué issued by the Australian Health Workforce Ministerial Council on 8 May 2009, and includes a number of additional elements that were discussed in the consultation process for the new National Registration and Accreditation Scheme for the Health Professions.

Independent accreditation functions

The accreditation function will be independent of governments. Accreditation standards will be developed by the independent accrediting body or the accreditation committee of the board where an external body has not been assigned the function (refer clause 64).

The accrediting body or committee will recommend to the board, in a transparent manner, the courses and training programs it has accredited and that it considers have met the requirements for registration. The final decision on whether the accreditation standards, courses and training programs are approved for the purposes of registration is the responsibility of the national board. The accrediting body will have the ability to make its recommendations publicly available in the circumstance that agreement between the accrediting body and the national board cannot be achieved (refer clauses 65-67).

The Ministerial Council will have powers to act, for instance, where it believes that changes to an accreditation standard, including changes to clinical placement hours or workplace and work practice, would have a significantly negative effect (refer clause 10).

National accreditation standards which exist prior to the commencement of the new scheme are to continue until they are replaced by new standards (refer clause 290).

Existing external accrediting bodies such as the Australian Medical Council and the Australian Pharmacy Council are expected to continue. The specific governance arrangements for these bodies will be a matter for them, although they will be expected to meet modern governance standards (refer clauses 60, 61 and 290).

A national board will be required to consult with other national boards before recommending to the Ministerial Council on any matter in which another board may have an interest (refer clause 51).

Changes to registers

There will be both general and specialist registers available for the professions, including medicine and dentistry. Practitioners can be on one or both of these registers, depending on whether their specialist qualification has been recognised under the national scheme. Specialist registers will not cover practitioners registered to practise in an area of need (refer clauses 12, 132 to 134 and 270).

There will be separate registers for nurses and for midwives (refer clause 269).

Support for continuing professional development

There will be a requirement that, for annual renewal of registration, a registrant must demonstrate that they have participated in a continuing professional development program as approved by their national board (refer clauses 101, 124 and 125).

Each profession's requirements will be set by the relevant board. A board may use its accrediting body to set standards for programs and approve providers of such programs (including, in the case of medicine, specialist medical colleges) where that is the best arrangement for that profession (refer clause 101).

Extension of scheme to other professions

From 1 July 2012, Aboriginal and Torres Strait Islander health practitioners, Chinese medicine practitioners and medical radiation practitioners will be regulated under the scheme. These are in addition to the ten professions already agreed for inclusion in the national scheme from 1 July 2010 (chiropractors; dental (including dentists, dental hygienists, dental prosthetists and dental therapists); medical practitioners; nurses and midwives; optometrists; osteopaths; pharmacists; physiotherapists; podiatrists and psychologists) (refer clauses 44, 129, 269 and 336 to 342).

Other improvements to quality and safety of health services

Mandatory reporting of registrants

There will be a requirement that practitioners and employers (such as hospitals) report a registrant who is placing the public at risk of harm (refer clauses 156 and 157).

Reportable conduct will include conduct that places the public at substantial risk of harm either through a physical or mental impairment affecting practice or a departure from accepted professional standards. Practitioners who are practising while under the influence of drugs or alcohol, or have engaged in sexual misconduct during practice must also be reported (refer clause 6, definition of 'reportable conduct').

Criminal history and identity checks

Mandatory criminal history and identity checks will apply to all health professionals registering for the first time in Australia. All other registrants will be required to make an annual declaration on criminal history matters when they renew their registration and these declarations will be audited on a random basis by an independent source (refer clauses 94 to 96 and 124).

National boards will have the power to conduct ad hoc criminal history and identity checks on registrants (refer clauses 146 and 147).

Practitioners will be required to have suitable professional indemnity insurance during the period of their registration. The legislation provides that registrants who are covered by their employer's insurance policy will meet the compulsory professional indemnity requirements of the scheme (refer clauses 69, 73, 75, 80, 83, 101, and 125).

Simplified complaints arrangements for the public

Assistance will be provided to members of the public who need help to make a complaint. This new service will not affect the services provided by health complaints commissions across the country (refer clauses 153, 154 and 166).

The new scheme will provide a single point of contact through the national agency (including a dedicated telephone line) for members of the public wishing to make a complaint. Complaints will be passed to the relevant national board (refer clauses 155 and 159).

A new position of Public Interest Assessor will be created. The role of the Public Interest Assessor will be to make an independent assessment of complaints received by the national boards and where there is not agreement with a national board to determine the process to be followed where the Public Interest Assessor considers the matter should be regarded more seriously than the board. Ministers will have the option of appointing for their jurisdiction an independent assessor of their own choosing (refer clauses 35 to 38, 151, 165 and 241).

Student registration

National boards will be required to register students in the health professions, with this requirement coming into effect at the beginning of 2011. Boards will decide at what point during their programs of study students will be registered, depending on the level of risk to the public (refer clauses 104 and 315).

The national scheme will enable national boards to act on student impairment matters or where there is a conviction of a serious nature which may impact on public safety (refer clause 155).

Students will be registered by a deeming process based on lists of students supplied to boards by education providers. Students already registered under State or Territory legislation before the commencement of the scheme, will be deemed to be registered from 1 July 2010 to ensure continuity of registration (refer clauses 105 to 107 and 314).

Handling of complaints

The National Law and/or State or Territory law, depending on each jurisdiction's choice, will provide the legislative framework for investigations and prosecutions and the definitions of offences and contraventions. (If a jurisdiction chooses to handle complaints under State or Territory law, this arrangement will be set out in that jurisdiction's Bill C.)

Where the national legislative framework is adopted, it will also be up to each State and Territory to decide whether the prosecution and investigation functions remain with the national boards or be undertaken by an existing State or Territory health complaints arrangement. (If a jurisdiction chooses to handle prosecutions and investigations under State or Territory law, this arrangement will be set out in that jurisdiction's Bill C.)

Any decisions taken that affect the registration status of a practitioner will be reflected in the public register for the scheme wherever the decision was taken (refer clauses 251 and 252).

Consideration of serious matters relating to a practitioner will be undertaken by State and Territory tribunals which can make certain findings as set out in the legislation. Complaints will be referred to the Tribunal in the relevant jurisdiction in which the conduct occurred (refer clause 170).

Practitioners will have extensive rights of review under the new scheme, including internal merits-based reviews of decisions. Review of reviewable decisions made within the scheme will go to the responsible State or Territory tribunal. Review rights relating to tribunal decisions will be as set out in State or Territory law (refer clauses 243 to 246).

Appointments to national boards

Boards will be appointed by the Ministerial Council with vacancies to be advertised. At least half, but not more than two thirds, of the members must be practitioners and at least two must be persons appointed as community members (refer clauses 45 to 47).

In addition, national boards must contain at least one practitioner member from each of the larger jurisdictions (Queensland, New South Wales, Victoria, South Australia and Western Australia) and at least one other practitioner member drawn from the three smaller States and Territories (Tasmania, the Australian Capital Territory or the Northern Territory). Members of existing boards and State and Territory boards under the national scheme will be eligible for appointment to national boards. Members of the Agency Management Committee may not hold an appointment to a national board. Each national board will have at least one member from a rural or regional area (refer clause 45).

State and Territory boards (previously “State and Territory committees”)

The main committee of a national board in each State or Territory where a committee is appointed will be known as a State or Territory board, for example, the South Australian Board of the Pharmacy Board of Australia. Each national board will need to determine where State or Territory boards will be appointed, taking into account the need to provide efficient processes in each profession (refer clauses 53 and 54).

The role of these State and Territory boards will be to oversee registration and complaints processes in that State or Territory where these functions are delegated to them by the national board. State and Territory boards will perform these functions under the national legislation for the scheme. Appointments to State boards will be made by State Ministers following an open and transparent process (refer clauses 54 and 55).

From 1 July 2010 (and subject to the decision of a national board that there will be a State or Territory board of that national board located in a jurisdiction), members of the existing board in that jurisdiction will comprise that State or Territory board for the balance of the terms of their appointment (refer clause 335).

Rather than complex legislative provisions for numerous committees and their roles, national boards will have the power to delegate all board decisions except the power of delegation itself to State and Territory boards, committees of the board and also to staff, temporary employees or contractors of the national agency. All delegations must be explicit and in writing from the board (refer clause 55 and Schedule 4, clause 29).

New national regulation of cosmetic lenses

The prescribing of cosmetic lenses will be restricted to optometrists and medical practitioners. These restrictions also apply to other contact lenses under the new scheme (refer clause 136).

Area of need arrangements

National boards will be required to consider applications for registration from practitioners seeking to work in a location or position that has been declared by the relevant State or Territory Minister as an area of need. Boards will determine whether the practitioner is eligible for registration and, if registration is granted, what conditions will apply (refer clause 85).

Privacy protections for practitioners and consumers

The new scheme will have best practice privacy protections for registrants and members of the public. The scheme will adopt the Commonwealth National Privacy Principles and privacy regime, or its successor (refer clause 259).

To protect practitioners the only geographical identifications which must appear on the public register are the suburb and postcode of the practitioner's mailing address. Qualifications linked to registration will also appear on the public register. The public register will also record conditions placed on a practitioner's practice (refer clause 271).

Boards will be required to publish details of those practitioners whose registration has been suspended or cancelled for conduct reasons (refer clause 271).

The supply by registrants of data specifically required for workforce planning purposes will be voluntary not mandatory (refer clause 263).

Transitional arrangements

Health practitioners holding registration immediately before the national scheme commences on 1 July 2010, will generally be deemed to be registered with the same (if any) conditions of registration from 1 July 2010. If a practitioner holds more than one registration at the time of transition the expiry date which is the furthest from the date of transition will be deemed to be the expiry date for the purposes of the new scheme (refer clauses 309 to 313 and 316 to 319).

Programs of study approved as leading to a qualification for registration for a health profession immediately before the scheme commences on 1 July 2010 will be deemed to be approved programs of study under the new scheme (refer clause 322).

If you wish to provide comments on the exposure draft of the Bill, please lodge a written submission in electronic form, marked Exposure draft, at nraip@dhs.vic.gov.au by close of business on Friday, 17 July 2009. Please note that your submission will be placed on the website after the closing date for all submissions unless you indicate otherwise.

Note to readers: References in this guide are to substantive clauses of the Bill. Readers may find they also need to refer to the relevant definitions in clause 6 in order to fully understand each clause.