

ACT MEDICAL BOARD SUBMISSION

CONSULTATION PAPER

Proposed arrangements for information sharing and privacy

1.1 The functions of the agency and boards

It is proposed that the national scheme legislation confer functions on the agency and boards to authorise the collection, use and disclosure of information required to do the essential tasks assigned to each under the national scheme. Whilst the first Bill to be introduced (known as Bill A) will establish structures for the operation of the scheme, the second Bill (referred to as Bill B) will set out the functions of these structures, including the information sharing and privacy arrangements under which the agency and the boards will operate.

Board Submission

The board would seek further definition of “essential tasks” for the scheme. Will the definition for example, include collection of workforce data as essential or indeed information to be shared with other agencies? Further clarification of this is sought.

As a general point discussed later in this paper, the board firmly believes that information collected is in support of regulatory activities undertaken by the boards and as such the boards and not the national agency is responsible for the collection, storage, maintenance and release of the information. Whilst the agency has an important role in generally supporting these activities, the board or its delegates should remain the body responsible for decisions taken around collection and release. Dual responsibilities can only cloud the matter and create an environment conducive to errors being made.

2 Information to be collected

Proposal 3.1.1: It is proposed that all requests for information will indicate the purposes for which it is being collected.

Board Submission

What requests for information are being referred to? Is it requests by the national agency in the collection of registration information or is it requests from members of the public or other agencies? Further clarification of this is sought.

Proposal 3.1.2: It is proposed that the national scheme legislation provide for the following key categories of information for the registration of individuals.

Board Submission

With respect to **contact details**, will this include practice (professional) addresses as distinct from contact addresses? The board would argue that whilst the contact address is important for regulatory purposes, the professional or practice address is of great interest to the public. The ability of the agency to be able to provide that address enhances information available to the public.

In relation to **qualification**, the board suggests that provision of the original qualification or a certified copy of the original should be viewed as meeting this requirement. In relation to medical qualifications in particular, verification is undertaken through the Australian Medical

Council agreement with the United States Educational Commission of Foreign Medical Graduates using the International Credentialing Service. The Board would argue that this is a tried and true as well as trusted service that should be adopted by the national agency for verification of medical qualifications.

The board suggests that in relation to **certificates of good standing** (however titled) that they be required from all the regulatory authorities where the applicant has been registered during the preceding ten years. Experience has shown that without such the veracity of claims by the applicant need to be tested at least over this period of time. The legislation should reflect such a requirement.

2.1 Employer details

Proposal 3.2.1: It is proposed that the national scheme legislation provide the boards with the power to collect employer details and other similar details in order to enable notification by the relevant board to employers when a practitioner's registration status changes or conditions are placed on practice.

There are two options to give effect to this arrangement:

Option 1: Require name and address of employer, public health organisations, private hospitals, day procedure centres or nursing homes at which the practitioner is accredited to be recorded on registration and updated on renewal.

Option 2: Provide the boards with a power to require the practitioner to provide these details to the board, as necessary.

Board Submission

The board supports option 1 on the understanding that it may be difficult to retain accuracy of such information. In cases where conditions have been applied by a board on a practitioner's registration be it in support of registration or as a result of conduct inquiries, it is necessary in most cases for employers to be advised of the outcome or to put in place supervisory and other arrangements. As such boards will need access to accurate address data. This is arguably an important facet of the protection of the public role of the boards.

2.2 The unique identifier

Proposal 3.3.1: It is proposed that the legislation require that each registered health practitioner be allocated a unique identifier in the new registration system.

Board Submission

The board strongly agrees with this proposal. The board suggest that the unique identifier should be designed to enable it to be constructed from agreed data set information. This would enable offices of the national agency (in cases where a practitioner does not remember the allocated number) to be able to construct the number using the agreed data set which in turn will help to reduce the possible number of duplicates suffered under other systems.

Proposal 3.3.2: It is proposed that the national scheme legislation authorise NEHTA and Medicare Australia, to adopt, use and disclose the unique identifier allocated to practitioners in order to enable e-health developments and other information sharing in the public interest. It is further proposed that the legislation governing the operation of NEHTA and Medicare Australia provide appropriate protection for the information provided to these agencies by the national scheme.

Board Submission

Whilst the board understands and cautiously supports this proposal, it has concerns about the security and privacy risks this might create. The board is also concerned that such provisions might detract from the regulatory nature of the national scheme and potentially sidetrack staff of the national agency from their regulated functions. Any such provisions would need rigorous protective elements being included in the legislation.

2.3 Identity checking on initial registration

Proposal 3.4.1: It is proposed that the national scheme legislation provide a power for boards to require identity checking, through photo identification and a "100 point check" system.

There are three options to give effect to this arrangement:

Option 1: All boards to require identity checking on initial registration post 1 July 2010, but not for existing registrants.

Option 2: Boards to decide whether identity checking along the lines of Option 1 will be required in their profession.

Option 3: Boards to decide whether identity checking along the lines of Option 1 will be required for only some applicants for registration.

Board Submission

The board supports option 1.

The board suggests that any identity checking scheme include personal presentation in an office of the agency and not be simply reliant on provision of certified documents. The board's experience has been that the requirement for personal presentation provides a greater level of accuracy/certainty of identity. Such a regime could be well supported by the issuing of registration certificates which include a photograph of the registrant on the certificate similar to state drivers' licences and the AMC certificate. The requirement of personal attendance prior to commencing work and the issue of photographic practice certificate would help reduce the possibility of identity fraud.

Proposal 3.8.1: It is proposed that the national scheme legislation provide for the Ministerial Council to specify from time to time, certain data items that must be collected as part of registration and renewal of registration processes where these data items are needed for workforce planning purposes as long as there is a clear need for the data and it is not too burdensome. Note that provision will also be made for additional data to be collected on a voluntary basis.

Proposal 3.8.2: It is further proposed that the current voluntary paper-based labour force surveys conducted by current boards on behalf of jurisdictions be discontinued.

Proposal 3.8.3: It is further proposed that information collected purely for workforce planning purposes will not be made available for board/agency purposes.

Board Submission

As expressed earlier, the agency acts on behalf of the boards. It is suggested that the Ministerial Council should seek information from boards and the boards as the bodies responsible for the information on the register should direct the agency to collect.

The board expressed concern in its submission on registration about the need for applicants to provide workforce data at time of application for registration as it is not a recognised regulatory activity. It reiterates its concern in this submission.

The board would argue that collection of workforce data in addition to the collection of registration data in support of an application is not the core business of a regulatory authority and could be a distraction from core business. Such data should only be collected as an adjunct to the registration data the non-collection of which should not be used to defer or delay the approval by the delegate of an application for registration or annual renewal of registration. The board believes that the information sought may be better obtained embedded in existing requirements or obtained using other recognised data such as that maintained by Medicare.

Will there be any penalty such as refusal to register or renew registration to registered practitioners for failure to comply with the request for provision of data?

Whilst the board acknowledges that under the scheme the Ministerial Council can require collection of data, it is concerned that the board and through it the profession may be called upon to fund the collection of the data. This would be inappropriate in a self funded regulatory framework.

The board is also puzzled by the non availability of the collected data to the boards whose national agency will be tasked to collect and collate the data at a financial cost to the board. The board believes that such a situation would potentially heighten concerns in the health professions as to the purpose not only of the collection of the data but the national scheme in

general.

Proposal 3.8.4: It is proposed that the national scheme legislation provide for the Ministerial Council to require that specified, de-identified information is provided to the Council and any of its committees for workforce planning analysis.

Board Submission

Will there be any penalty such as refusal to register or renew registration to registered practitioners for failure to comply with the request for provision of data especially the listed work characteristics data?

What is the purpose for the collection of citizenship characteristics data given that this not a registration requirement and would be presumably available from employers?

Proposal 3.8.5: It is proposed that the national scheme legislation requires that de-identified information relevant to workforce planning is made publicly available in a timely manner and by suitable means.

Board Submission

Presumably this proposal does not refer to data collected at the request of the Ministerial Council (see proposal 3.8.1).

Proposal 4.1.1: It is proposed that the national scheme legislation specify that the following categories of information in relation to each registrant are available on the public register:

- (a) Current name
- (b) Sex
- (c) Postcode of contact address and name of postcode area
- (d) Registration identifier
- (e) Date of first registration
- (f) Renewal date
- (g) Class of registration (where relevant)
- (h) Division (where relevant)
- (i) Conditions on practice (where relevant)
- (j) Date of suspension and date suspension is to end (where relevant)
- (k) Endorsed specialities (where relevant), and
- (l) Other endorsements (where relevant).

Board Submission

The board suggest that instead of postcode of contact address which is of little relevance to the public, that consideration be given to including last known or current professional address.

It is proposed that the national scheme legislation only specify the categories of information in the form described above and the specific items be determined from time to time by the agency on the combined recommendation of the boards.

Board Submission

The board suggests that rather than boards “recommending” they should “decide”. To do otherwise could create unnecessary tensions in the collection and presentation of the information.

2.4 De-registered practitioners

Proposal 4.2.1: It is proposed that the national scheme legislation provide that Option 4 be adopted and that the names of practitioners de-registered for conduct reasons appear on the public register with an indication that they have been de-registered for conduct reasons.

Board Submission

The board supports option 1. There is no reason why the name of a practitioner could not remain on the register after they have ceased registration for whatever reason, as long as the reason for cessation of registration is included. This could be achieved by including categories of registration against the person’s entry on the register. Removal for failure to renew registration could be shown as being distinct from removal for conduct reasons.

Proposal 4.3.1: If conditions on practice relate to practitioner health or impairment issues, it is proposed that the national scheme legislation provide that the public register record that a health condition applies, with no further details appearing on the register. However, if specific restrictions on professional practice apply, they would appear on the register.

The agency could release information about health conditions in particular circumstances if it was judged to be in the public interest but the test would be a high one.

Board Submission

The board strongly suggests that the decision to release should remain the responsibility of the boards or their delegates and not the agency (see submissions below).

Proposal 4.5.1: It is proposed that there be a general power in the national scheme legislation to allow any person to obtain a copy of, or an extract from, the register on payment of the fee determined by the agency. It is proposed that the agency would have a power to refuse to provide a copy of the register to any person unless satisfied that it is in the public interest to do so.

Board Submission

The board agrees that the agency should not be permitted to make a profit from the register. Any monies collected in a self funded scheme should not go to the agency but rightly to the board that collected the information. The agency should not collect any monies that are not in turn allocated to the appropriate board.

The board disagrees with the proposal as it suggests that the agency will have the power to refuse to provide registration information unless satisfied that it is in the public information. The register and the information held in it belongs to the board and not the agency and therefore it is the board that has responsibility for its release or otherwise. The board strongly believes that the power to refuse release should rest with the board or its delegate and not reside with the agency.

Proposal 4.6.1: It is proposed that the national scheme legislation provide for the publication of tribunal decisions relating to registrants where it is in the public interest to do so.

Board Submission

Whilst generally supportive of this proposal, the board understands that tribunals publish decisions on their own web site. It may be easier for links to be put in to those sites against the names of the practitioner concerned.

The board had difficulty in identifying (with the exception of where suppression orders are in place), when it would not be in the public interest to publish Tribunal decisions. Even where suppression orders are in place, there appears to be no reason why decisions partly de-identified could not be published.

Proposal 4.6.2: There is a public interest in making board or committee decisions in relation to conduct matters public. It is proposed that decisions be published on the register of decisions on the agency's website.

There are two options to give effect to this arrangement:

Option 1: All conduct decisions of boards or committees are published (with patient details de-identified).

Option 2: Boards may order that certain decisions are confidential and order that the decision register contain a confidential information notice.

Board Submission

The board agrees with this proposal and would suggest that option 1 is the more appropriate way forward.

When the boards and their committees or panels make performance management and health management decisions it is proposed that these not be published. These streams involve working co-operatively with the registrant to improve performance. This could be jeopardised by the publication of decisions. However, if there could be some educational benefit to the profession

from the publication of de-identified case studies relating to performance management or health management, the board should be able to exercise discretion to do so.

It is further proposed that there be a power to remove decisions from the register of decisions at the discretion of the relevant board. This will allow old decisions to be removed when no longer relevant.

Board Submission

The board agrees with this proposal and would suggest that consideration be given to including health decisions into this proposal as there is a greater imperative that those who are unwell are handled compassionately with confidentiality otherwise there may be a drying up of reports from the practitioners themselves or reporting by colleagues.

3 The privacy regime

Board Submission

The board objects to the suggestion that the agency in its own right has any role in the collection of information. The boards should collect the information and use the agency, within board developed policy to govern the agency role in the collection, maintenance and release of information. The agency is not a regulator but is an important tool used by the regulators (the boards) in achieving policy objectives of the scheme. Statements such as this one only helps to confuse proper roles which in turn have the potential to lead to a “fragmented and inconsistent regulatory approach.

Proposal 5.1.1: It is proposed that the national scheme legislation use the private sector provisions of the *Privacy Act 1988* as the basis for the privacy arrangements in the national scheme.

Board Submission

Option 1 (a) appears to be the most appropriate.

3.1 Enabling e-health developments

Once e-health arrangements are in place with an appropriate legislative framework, it is envisaged that the agency would provide to the healthcare provider identifier service established by NEHTA, information relating to registrants through initial registration and when registration is de-activated, suspended or withdrawn.

Board Submission

As argued at various places in this submission, the board is concerned about the suggestions that the agency and not the boards release information. The board suggests that the proper responsible roles of the boards be recognised and that the support (and not decision maker) role of the agency as the tool of the boards be accordingly developed.

Proposal 7.3.1: It is proposed that the national scheme legislation governing the release of information by the agency and the boards will set out the circumstances when material will be forwarded to the PSR.

Board Submission

Whilst acknowledging the practical reasons for this proposal, the board is concerned that registered practitioners are not subject to “double jeopardy” conduct proceedings. Practitioners should not be subject to an additional conduct under the PSR scheme after they have been dealt with by a board. Caution is warranted in defining what material can be shared and what use it can be put to.

In addition, the power to release information should not rest with the agency but should remain the responsibility of the board or its delegate (see board submission on proposal 4.5.1). In addition, the PSR should provide information to the boards and not the agency.

3.2 Medicare Australia

Proposal 7.4.1: It is proposed that the national scheme legislation governing the release of information by the agency and the boards enables the release of information to Medicare Australia and specifies the purposes for which the information is to be released.

Board Submission

The board agrees to this proposal as it currently shares registration information with Medicare Australia. It believes, however, that similar to the previous proposal, practical rules should be imposed on the subsequent use of the material to avoid “double jeopardy” hearings.

The board would recommend that similar provisions be included in legislation governing the operation of Medical Australia to permit sharing of information with the boards. At present it is difficult to obtain appropriate information from Medicare and it would be worthwhile for this opportunity to be taken in an attempt to improve such communication flow.

In addition, the power to release information should not rest with the agency but should remain the responsibility of the board or its delegate (see board submission on proposal 4.5.1 and proposal 7.3.1).

3.3 Overseas trained practitioners

Proposal 7.5.1: It is proposed that the privacy framework to apply to the agency authorise the disclosure of relevant information to the DIAC for purposes under the *Migration Act 1958*.

Board Submission

The board supports this proposal on the understanding that DIAC also readily release information to the boards and the agency.

The board, however, firmly believes that the power to release information should not rest with the agency but should remain the responsibility of the board or its delegate (see board submission on proposal 4.5.1, proposal 7.3.1 and proposal 7.4.1).

3.4 Health complaint bodies and tribunals

The national scheme will incorporate a role for health complaint bodies and tribunals which is identified in the consultation paper on complaints, conduct, health and performance arrangements. The role specified in the national scheme legislation will authorise the sharing of information with those bodies.

In addition, there may be the need for complementary legislative provisions to be put in place to require health complaint bodies to advise the agency whenever matters are identified in the course of complaint conciliation or mediation, where these constitute unprofessional conduct by a

registered practitioner, deceptive or misleading conduct by an unregistered practitioner purporting to be a registered practitioner, or ill health or incapacity that might be affecting practice.

Board Submission

The board believes that it is imperative that complementary legislation be put in place to require health complaints bodies to advise the boards (not the agency) of the listed conduct matters. The information flow currently in the ACT between the complaints body and the boards is suffering from restrictions on release which has the potential to limit or indeed reduce the protection of the public role of the board.

3.5 State and Territory government health bodies

Proposal 7.7.1: It is proposed that the national scheme legislation enable the sharing of de-identified information with State and Territory government bodies for specified purposes and the notification of identified practitioners who pose a public health risk.

Board Submission

The board supports this proposal on the understanding that State and Territory government bodies agree to also readily release information to the boards and the agency on practitioners who they have identified pose a health risk.

3.6 Notification to Commonwealth, State and Territory health departments

Proposal 7.8.1: It is proposed that the national scheme legislation provide that whenever a board identifies that the health of a patient who is not directly involved in a case under investigation may have been adversely affected by a practitioner, the board must notify the relevant State or Territory health department so that remedial action can be taken.

Board Submission

Similar to previous comments, the board supports this proposal on the understanding that State and Territory government bodies agree to also readily release information to the boards.

Proposal 7.12.1: It is proposed that the national scheme legislation make appropriate provisions to cover the sharing of information with New Zealand registration authorities consistent with the TTMRA.

Board Submission

No comment to offer as the medical profession is currently excluded from the TTMRA.