

**NATIONAL REGISTRATION AND ACCREDITATION SCHEME
FOR THE HEALTH PROFESSIONS**

**Submission on behalf of the Australian Osteopaths
Registration Boards**

**Chiropractic & Osteopathy Board of South Australia
Osteopaths Registration Board of NSW
Osteopaths Registration Board of Victoria
Chiropractors & Osteopaths Registration Board of Tasmania
Chiropractors & Osteopaths Board of the ACT
Osteopaths Registration Board of Western Australia
Osteopaths Board of Queensland
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CONSULTATION PAPER

Proposed arrangements for information sharing and privacy

Issued by the Practitioner Regulation Subcommittee
Health Workforce Principal Committee
Australian Health Ministers' Advisory Council
3 November 2008

1.5 Principles

It is proposed that the policy framework relating to the information sharing and privacy be framed in a way that:

- (a) provides for a robust system to protect public safety
- (b) builds on the best aspects of existing schemes
- (c) balances the rights and interests of consumers with those of health practitioners
- (d) clarifies the governance of information held as part of the scheme
- (e) reflects the intent of the Intergovernmental Agreement, and
- (f) provides for information sharing necessary to meet the reasonable information requirements of a range of parties for information on the registration status, standing and authorities to practice of registered practitioners.

Position	Comment
Supported	

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2 Overview of information required to operate the scheme

The new national boards and the agency will collect and process a range of information, including personal and sensitive health information about registrants, in order to successfully undertake the registration and accreditation functions. The information functions of the boards and the agency will include the following:

- the boards and agency will collect and use personal information provided by registrants when they apply for and renew registration
- the agency will develop and assign a unique identifier to each registered practitioner
- the agency will establish and maintain a public register which will include personal information about each registered practitioner
- the boards will collect and use personal and sensitive health information from complainants/ notifiers and will need to be able to disclose that information to other relevant parties and regulators
- the boards will establish information sharing protocols with a number of other Commonwealth, and State and Territory governments, the National E-Health Transition Authority (NEHTA), as well as overseas registration authorities, and
- arrangements will be made to provide de-identified health workforce data to government, and as a public resource.

The regulatory framework will need to fulfil two key functions where this relates to information sharing and privacy. First, it must facilitate the flow, on a national basis, of the personal and sensitive health information that the agency and boards need to undertake their roles. Second, it must protect against the misuse of that information.

In designing such a framework, an appropriate balance will need to be reached between enabling the flow of information for the functions of the agency and boards, and protecting the privacy of that information. Various privacy regimes operate within States and Territories and nationally. The national scheme legislation will therefore need to be clear about what information sharing and privacy regime will apply to the scheme.

2.1 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.

Position	Comment
Supported	

3 Information to be collected

3.1 Information to be collected for initial registration purposes

One of the key functions of the boards under the national scheme is to assess applicants for registration. A range of information is required for this purpose for inclusion on the public register if registration is granted or to administer the scheme.

Information will be collected in the categories described below, but only a limited set of information will be placed on the public register. Section 4.1 lists the public register data items.

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

Position	Comment
Supported with qualification	It is important to indicate up front all the future contemplated uses of information collected, so that, even information collected for a primary purpose, is also clearly indicated as being collected for various secondary related purposes, eg research, sharing between other national/international bodies. In this way, there will be the clear consent by the individual to such future uses of their information. In this respect it is important also to include all possible bodies to whom the information will be disclosed.

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.

a) Name and contact details	Full name and all previous names (including date of name change) will need to be provided. Applicants will also need to provide sufficient contact details to enable contact by phone, email, fax or mail. Registrants may opt to receive notification of renewals by email. In order to properly identify the individual, home address as well as nominated contact address will be collected. The contact address may be a workplace or another address. There will be requirements to keep contact details up to date.
b) Date of birth	In order to properly identify an applicant, date of birth will need to be collected.

c) Qualifications	<p>In order to be registered, applicants will need to provide a transcript of qualifications obtained which entitle them to registration, the year obtained and the institution that awarded the qualification. Verification of qualifications may be required from the institution issuing the award.</p> <p>In addition, proof of satisfactory completion of a requisite examination or period of supervised practice (including date of completion) will be required, where relevant.</p>
d) Overseas registration details	<p>If applicants have overseas qualifications and have previously been registered overseas, they will be expected to arrange for the relevant regulatory authority to issue a Certificate of Good Standing directly to the board or relevant assessment body. A decision will be required as to whether this is required from the initial and most recent country of registration, or from all countries in which the applicant was registered, or for a specific time period.</p> <p>Additional requirements may include a work statement, evidence of competence to practice and of English language proficiency.</p>
e) Details of recency of practice and other requirements	<p>Some boards may require evidence of recency of practice for initial registration for practitioners returning to work or commencing work in Australia. Boards will also have powers to require other information for registration, including evidence of continuing professional development and qualifications for endorsement of registration.</p>
f) Criminal record	<p>Some State and Territory legislation empowers, but does not require, criminal history checking of applicants. Options for criminal history checking in the national scheme are discussed in the <i>Consultation Paper on Proposed Registration Arrangements</i> issued 19 September 2008. If a decision supporting criminal record checking as a condition of registration is reached, this information will need to be collected and recorded.</p>
g) Professional indemnity insurance	<p>Options for professional indemnity insurance arrangements under the national scheme are discussed in the <i>Consultation Paper on Proposed Registration Arrangements</i> issued on 19 September 2008. Again, if a decision supporting professional indemnity insurance as a condition of registration is reached, this information will need to be collected and recorded.</p>
h) Registration details	<p>Once registration is granted, then registration details will be recorded including registration identifier, date of first registration, renewal date, class of registration, division, conditions on registration, specialities and other endorsements.</p>

Position	Comment
No consensus position.	<p>Comments from NSW Board: There are serious logistical problems with maintaining an up-to-date “working” address, and the purpose of keeping this information in a registration context (other than as an “alternative contact”) is unclear. It would be inappropriate for registration boards to facilitate the location of health practitioners by the public.</p> <p>Comments from Qld Board: Do not support a publically accessible address.</p> <p>Comments from Tas Board: Support a contact address on the public register.</p> <p>Comments from WA Board: It is essential for practitioner privacy that their personal/residential address not be available to the public. There must be provision for the Board to have that information but not disclose it. By having a “work” address listed, identification of practitioners will still be possible without disclosure of personal information.</p>

	Comments from NT Board: Professional address should be made available, with some recognition that the information was accurate at the time it was provided. Mandatory professional address would be a nightmare for those who work locums. Professional address would not work for students.

3.2 Employer details

The ability to notify employers of changes in registration status or conditions on practice would help to provide significant protection for the public. However, it is not currently common practice for the name and address of employers to be collected as part of the registration process (although some practitioners may nominate a work address as their contact address).

Under current arrangements, the New South Wales Medical Board has the power to require registrants under investigation to provide to the board, employer contact information (including health care settings at which the registrant is accredited to practice).

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.

Position	Comment
Support option 2	Option 1 is practically unworkable and would require a considerable administrative overhead for a purpose that only relates to a minimum number of registrants. If the Board deems it appropriate in a particular circumstance, it should have the power to require this information from a registrant.

3.3 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.

The identifier number will be unique to the individual practitioner and may be linked to registration in multiple professions within the national scheme. For example, if the registrant is registered as a nurse and subsequently qualified for registration as a doctor, the same unique identifier would apply to the registrant. Should the practitioner’s registration cease, for example, because of absence from the workforce for a period, the same unique identifier would be allocated following any re-registration process.

The format for the unique identifier will be developed in consultation with other health information bodies concerned with health practitioner identification and authentication, such as NEHTA and Medicare Australia.

The unique identifier has the capability to enable clear identification of health providers for the first time in Australia. As a result, it can deliver significant additional public benefit. Some of these benefits are discussed in the section of this paper dealing with information sharing. However, the power to adopt, use and disclose information in specific situations would need to be addressed in the national scheme legislation and in the legislation governing the bodies with whom this information is shared.

Position	Comment
Supported with qualification	It is a simple matter of practicality that in the national registrant database a unique identifier would be utilised for each health practitioner linking registrations in multiple professions for an individual. Presumably there would be a separate “registration ID” for each profession that a practitioner holds registration. It is further presumed that these numbers would only be ever issued once to any individual, being “re-used” upon re-registration after a practitioners registration lapses. It is essential that there also be the capacity to store the registration IDs currently utilised in whatever Australian jurisdiction and profession that a practitioner holds or held registration to enable easy reference to the enormous stock of records currently held by registration boards. Although the benefits of consolidating a registrants information to be accessible nationwide via a single unique identifier are clear, the privacy of registrants should not be compromised simply because the capacity to access the information is more convenient.

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.

Position	Comment
Supported with qualification	The utilisation of the unique identifier by these organisations is not as important as the information they can access. These organisations should only be able to access the subset of information that is relevant to them. The quote in the proposal “e-health developments and other information sharing in the public interest” is extremely vague and if translated to legislation could imply permission to access the entire registrant database.

3.4 Identity checking on initial registration

Most jurisdictions do not currently have a legislated requirement for identity checking of applicants. However, while many do perform checks of this kind, practices can differ.

Under current registration arrangements, the number of detected cases of identity fraud is low compared to the number of registrants, due in part to the relatively small number of professionals against whom checks are made. However, with the move to a national scheme, there is an opportunity for improved identity fraud detection arrangements.

Also, other bodies that rely on registration processes as a compliance check may assume that a registrant’s identity has been checked as part of this process and therefore not undertake their own identity checking. Identity checking at the point of registration would minimise the burden on health practitioners as they would not need to prove their identity to other health services subsequently.

It is noted that the risk profile of applicants for registration is likely to vary not only by profession but also by sub-categories of applicants. It is assumed that any additional costs of identity checking would be charged to applicants through increased registration fees.

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.

Position	Comment
Support option 1	The Board should have the power to require an identity check where the identity of an existing registrant is called into question.

3.5 Document checking on initial registration

It is important to the integrity of the national scheme that the documents provided to the relevant board by applicants are checked for authenticity, that the documents submitted provide full evidence of the required qualifications, and that they are formally verified, if required, from the source.

3.6 Information to be collected on renewal

At the time of renewal of registration, it would be expected that registrants will confirm current details and notify the national board of any changes to details such as name, contact details, employer details, professional indemnity insurance and criminal record, where relevant.

There may also be a requirement for registrants to notify the relevant national board of changes to contact details within a specified time, apart from at renewal. Notification of registrant contact details in the national scheme are discussed in the *Consultation Paper on Proposed Registration Arrangements* issued 19 September 2008. A decision on this matter as a condition of registration will need to be reflected in the renewal information to be collected and recorded.

3.7 Information to be collected when investigating complaints/notifications and dealing with performance, health and conduct matters

When the board is investigating matters related to performance, health or conduct it will need powers to collect information, documents and evidence. This may include personal information about practitioners, employers, complainants/notifiers and patients.

This information will be protected by the confidentiality provisions in the national scheme legislation and by the privacy regime also reflected in the legislation. These issues are canvassed later in this paper.

3.8 Information to be collected for workforce planning purposes

Note: A discussion on information to be placed on the public register follows at section 4.

A sound evidence base is required to inform policy decisions and public debate on workforce supply and demand, distribution, utilisation and design in order to meet projected health workforce requirements. This evidence base is needed as a public resource and not just for governments including the professions and other interested parties.

The current evidence base for workforce planning purposes consists of profession-specific, voluntary and paper-based labour force surveys, which are undertaken annually at the State and Territory level. Health practitioners are asked to complete their respective labour force survey concurrently with their application for renewal of registration, however, it does not form part of this renewal process. Survey results are then provided to the Australian Institute of Health and Welfare (AIHW), which collates all the information for the purposes of national, State/Territory and regional workforce planning. The AIHW also produces labour force reports with the data.

The current process of acquiring labour force data from health practitioners is unsatisfactory for a number of reasons. First, the voluntary nature of the request has seen a decline in response rates in recent years. Furthermore, as each jurisdiction is responsible for its own data items, differences in surveys have reduced data comparability across Australia. There are also problems around duplicate items in some surveys, which increases respondent burden, while multi-State registrations are poorly tracked which may lead to double counting.

It is proposed that Ministers would have the power to request workforce data from the agency and may specify mandatory and voluntary items to be provided as part of the registration

process. The data collected solely for workforce planning would be managed by AIHW, rather than the agency and boards.

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.

Position	Comment
Not Supported	It is questionable that data collection on behalf of third parties is the role of the registration boards. The registration process is related to public safety, not information gathering. Approval of registration should not be dependant on answers to surveys not related to the primary purpose of registration. Any third party surveys should be voluntary.

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.

Position	Comment
Supported	

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.

Position	Comment
Not Supported	Why would it be specified that any information not be made available for board/agency purposes? If the content of the information collected is so far removed from the registration process that it serves no purpose to the Board, it should not be collected utilising Board resources.

The Australian Health Ministers' Advisory Council (AHMAC) has established a National Minimum Data Set Project to consolidate and streamline information requirements for registrants, whilst providing a more robust data set that will enable more effective workforce planning. At this stage, the following data items are likely to be recommended to the Ministerial Council as mandatory for workforce planning purposes. A number of these items are already routinely collected for registration purposes and these are marked with an asterisk below. Note that some of this information will not be subject to change and will be collected only once on registration or first renewal (these are marked with an 'O' below). Categories and individual data items may change from time to time. To summarise, out of 18 proposed mandatory workforce data items, six are required for registration purposes and eight (including four of the six registration items) will only be required once. This leaves eight items additional to registration requirements to be provided mandatorily at each renewal of registration.

Demographics

Country or State/Territory of birth (O)

Date of birth* (O)

Sex * (O)

Indigenous status (O)

Residential postcode

Work characteristics

Labour force status (working/not working)
Field of profession and Specialty/clinical area*
Principal role (eg clinician, educator, etc)
Work sector and setting
Work postcode
Hours worked

Registration characteristics

Registration category, status and type*
Year of first registration* (O)

Qualification characteristics

Country or State/Territory of first qualification (O)
First qualification title (O)
Year of first qualification* (O)

Citizenship characteristics

Permanent resident status
Visa status

O indicates items that will be collected only once at the point of initial registration or first renewal after commencement of the scheme

* indicates items required as part of the registration process

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.

Position	Comment
Supported with considerable qualification	As with the response to the previous proposals, the relation to the core functions of the Board is unclear and mandating the utilisation of Board resources for this purpose may not be appropriate.

Feedback received so far from stakeholders suggests that any requirement to provide workforce data as a mandatory part of registration and renewal is accompanied by a requirement that the national scheme makes this publicly available.

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.

Position	Comment
Supported with considerable qualification	As with the response to the previous proposals, the relation to the core functions of the Board is unclear and mandating the utilisation of Board resources for this purpose may not be appropriate.

The preferred option for achieving this is via an external body such as the AIHW. Under this arrangement the external body would be the authoritative source of this workforce data.

4 Publicly available information

Under the national scheme legislation, the agency will be responsible for maintaining the public registers. The key issues for resolution are what information should be available to the public, in what form and how should it be able to be searched.

4.1 Information on the public register

Although a range of information is collected to administer the national scheme, only essential information to protect public safety needs to be provided as part of the public register.

There are currently a number of public registers provided by existing boards. Details of what is publicly available on these registers are provided at Attachment 1. The following proposal draws on what might be regarded as best practice in these registers.

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).

Position	Comment
Variety of opinions.	Comments from a number of Board are as below:
QLD	Impairments should not be revealed on the public register.
NSW	Question the need to provide the sex of the practitioner and agree with the NT view that impairments should only be recorded as a description of any limitations upon usual scope of practice.
TAS	Support contact details for registrants available publically. All conditions should be available on the public register. As for health/impairment, conditions should be constructed so as not to reveal the underlying condition
NT	Health conditions should not be identified on the public register, however the practice conditions should be. If there is a service that the practitioner can not provide but is usually expected of the profession, then this should be publically available. Registrants need to know what information will be available to the public and how. The public needs to have a clear picture of what information it has a right to.
WA	It is inappropriate to make the personal/private address of a practitioner available to the public. It is not the role of the Board to provide specific contact details but only to enable the public to ensure a particular practitioner is registered or not. It is in the public interest that any conditions on registration be easily accessible by members of the public so should therefore be placed on the register. What would the benefit of enabling the public to access the identifier be? Is there anything they would need that for? It would seem that that is not relevant to the public interest, only to the Boards so therefore shouldn't need to be included on the register.

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.

Position	Comment
Supported	

4.2 De-registered practitioners

Practitioners may cease to be registered for a variety of reasons including non-renewal, family responsibilities, change of career, travel overseas, death, or retirement. Practitioners may also be de-registered as a result of a tribunal decision.

If a practitioner has chosen, voluntarily, to let their registration lapse, then it can be argued there is no public policy reason to continue to show the practitioner on the public register. On the other hand, if the de-registration is a result of a tribunal decision, then it may provide important information to the public to continue to list the practitioner on the public register, but show them as de-registered for conduct reasons. However, there may be a degree of unfairness if some practitioners who are being investigated for conduct matters opt to cease registration in an effort to avoid further scrutiny and public identification.

There are four options for recording de-registered practitioners.

Option 1: De-registered practitioners could appear on the register with a status of de-registered.

Option 2: De-registered practitioners could be removed from the public register.

Option 3: Practitioners de-registered for conduct reasons could appear on a separate register of de-registered practitioners.

Option 4: Practitioners de-registered for conduct reasons could continue to be shown on the public register with the status of de-registered for conduct reasons.

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.

Position	Comment
Supported	

If this proposal is adopted, there is an issue about how far back should the register go in showing de-registered practitioners. Options include from 1 July 2010, or from some earlier point in time. Indeed, all practitioners currently listed by existing boards as deregistered for conduct reasons could be incorporated into the new register as de-registered for conduct reasons.

Position	Comment
Support listing all deregistered practitioners	Where de-registered for conduct reasons.

4.3 Recording of conditions on practice

It is important to the protection of public safety that conditions on practice are displayed on the public register. These conditions could arise for a number of reasons including:

- the outcome of a performance assessment process
- the outcome of conduct issues
- the outcome of health assessment process, and/or
- restrictions on registration imposed at first registration or on renewal or as part of area of need registration.

More information on these situations is available from the *Consultation Paper on proposed arrangements for handling complaints, and dealing with performance, health and conduct matters*.

Conditions may limit practice of the profession (eg restrict the prescribing of drugs of addiction), or may require that the practitioner undertake particular activities (eg attend a program of drug counselling). It is important that employers can access information about restrictions on professional practice from the register.

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.

Position	Comment
Supported	Conditions should be recorded, but nothing should be recorded on the public register that would discourage self-reporting of health impairments.

4.4 Online public register

There are a number of risks with online registers that need to be addressed, particularly relating to potential commercial use of the register.

It is planned to make the register available online, with certain restrictions on how the register could be searched. For example, it would not be possible to download the entire register to prevent duplication for inappropriate purposes, such as marketing. The register could, however, be searched by specific fields such as name, registration identifier or postcode. There will be no fee payable for search of the online public register.

4.5 Release of public register information

The agency should not be permitted to make a profit from the register.

Persons who require access to public register information may make application for its release. Fees may apply in order to recoup costs of provision of the information. It would be expected that applicants indicate the purpose for which they are seeking information. Information would not be released for commercial purposes.

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.

Position	Comment
Supported	Contact details of registrants should be excluded from public access unless the Board determines that there is a demonstrated public benefit (such as the release of a mailing list to an authorised mailing house for the distribution of important third party information to registrants).
	The Tas Board supports a publically accessible register, but noted the importance of security to prevent access to the full register for unintended purposes (eg creation of commercial mailing lists etc).

4.6 Public access to the findings of formal proceedings

Under the national scheme, a tribunal in each State and Territory will hear serious disciplinary matters and appeals. (For further information see the *Consultation Paper on complaints*.) It is proposed that tribunal decisions be published on the website by the agency, unless the tribunal has ordered otherwise, in which case a confidential information notice would be published.

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.

Position	Comment
Supported	

Similarly, when boards or committees consider conduct matters, decisions may be made public.

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.

Position	Comment
Support option 2	The Board should have discretion, based on circumstances, to keep certain decisions confidential.

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.

Position	Comment
Supported	

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.

Position	Comment
Supported	

5 The privacy regime

Australian information privacy law consists of a patchwork of Commonwealth, State/Territory, and private and public sector legislation as well as, in some States, administrative arrangements or guidelines that do not have a legislative basis. In some jurisdictions there are specific laws

that deal exclusively with sensitive health information but in others health information is covered by general information privacy laws.

Although all information privacy legislation can be seen as having a common intent – the regulation and control of the collection and handling of personal information – the result in practice is that each piece of legislation contains different obligations that are implemented in a variety of different ways. As the Australian Law Reform Commission (ALRC) has recently said in its report on Australian Privacy Law and Practice “Australian privacy laws are multi-layered, fragmented and inconsistent”. It also identified inconsistent regulation, particularly in the health sector, as causing complexity, significant compliance burdens and costs as well as impeding projects in the public interest such as health research.

A fragmented and inconsistent regulatory approach to the privacy of personal and health information collected and handled by the agency and the boards will significantly obstruct them in achieving the policy objectives set for the national scheme.

There are a number of ways in which a single privacy framework can be applied to the work of the national scheme but each has a common characteristic – the adoption and implementation of a single privacy law that covers all of its information collection and handling activities, including its administration of the practitioner register. Because of the various ways in which privacy principles are currently implemented nationally, it is unlikely that the adoption of a single set of privacy principles (rather than a single privacy law) would achieve this objective.

Consideration is currently being given to undertaking a Privacy Impact Assessment in 2009. This will ensure that all aspects of the scheme have been considered in relation to privacy impacts.

5.1 Legislative options

There are several options that are capable of achieving uniform privacy treatment for all of the national scheme’s information practices. Each of these involves either selecting an existing privacy law and applying it to the national scheme or designing a bespoke privacy law specifically for the national scheme.

Option 1: Using an existing privacy law

There are three main options – use the private sector provisions of the *Privacy Act 1988*, use the public sector provisions of the *Privacy Act 1988* or use an existing State or Territory law.

(a) Use the private sector provisions of the *Privacy Act 1988*

Adopting this option would satisfy the key policy requirement of ensuring that the national scheme operates within a single privacy law. The private sector provisions of the *Privacy Act 1988* apply a higher standard of protection for health privacy through its use of the National Privacy Principles (NPPs) (see [Attachment 2](#)), than the equivalent Commonwealth public sector regime, which incorporates the Information Privacy Principles (IPPs). Most State and Territory privacy laws are based on the NPPs and the private sector is governed by these NPPs.

(b) Use the public sector provisions of the *Privacy Act 1988*

Although this option is capable of producing a single privacy regime, it has several disadvantages. First, the Commonwealth’s public sector IPPs do not offer the same degree of privacy protection for personal health information as the NPPs. Secondly, under this option, the national scheme would operate using a different and lower standard of privacy protection than that which the private sector is required to comply with.

(c) Use an existing State or Territory law

There is no clear advantage of this option over option (a). Although most of the State and Territory privacy and information laws are based on the NPPs, there is no clear rationale for selecting one State/Territory law over another. Moreover, there is a greater degree of national familiarity in the health sector with the Commonwealth law than there is with the privacy laws of each of the States and Territories.

Option 2: A bespoke privacy law

The main disadvantage with this approach is that a purpose built privacy regime would potentially introduce more diversity and lack of consistency into the Australian patchwork of privacy provisions.

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.

Position	Comment
Supported	There may be some advantage in examining the aspects of state/territory privacy regimes where that may improve the privacy provisions in the national legislation.

5.2 Reference or incorporation

There are two ways in which these provisions could be applied to the national scheme. Adopting the Commonwealth privacy provisions by reference would mean that the privacy regime applying to the scheme would be subject to legislative decisions made by the Parliament of Australia. The advantage of this approach is that there would be a single parliamentary process in relation to the privacy laws for the national scheme.

Alternatively, adopting the Commonwealth privacy provisions by incorporation would mean the replication of the core privacy provisions in the national scheme legislation and the inclusion of the NPPs in a schedule to this legislation. The current NPPs are provided at [Attachment 2](#). The advantage of this approach is that the privacy requirements would be easily identified through the national scheme’s legislation.

Under either of these two options, any complaints relating to the management of personal information would be considered by the Commonwealth Privacy Commissioner.

Proposal 5.2.1: It is proposed that the existing Commonwealth private sector privacy regime and National Privacy Principles are incorporated by reference into the national scheme legislation.

Position	Comment
Supported	

It is noted that all governments are currently reviewing national privacy provisions which may in future be subject to change.

6 Confidentiality

Officers of the agency and members of boards, committees and panels will be expected to observe confidentiality in relation to information obtained in the course of their work, unless authorised to release information in specific circumstances.

The national scheme legislation will require officers and members to observe confidentiality except in specified circumstances, such as:

- the execution of functions under the Act
- creation and maintenance of the public register as specified in the Act
- court or tribunal proceedings
- an order of a court or tribunal
- the investigation or the enforcement of a law of any State or Territory or of the Commonwealth, and
- following the written authority of the person to whom the information relates.

7 Information sharing

7.1 Enabling e-health developments

As outlined in section 3.3, the use of the unique identifier allocated by the national scheme for other purposes to support e-health developments is proposed, as long as appropriate legal protections are in place for the receiving body.

Legislation is currently under development to provide an appropriate regulatory framework for e-health, including healthcare identifiers to be used in e-health. NEHTA is currently developing for governments, national standards and specifications to support the electronic collection and secure exchange of health information.

The use of identifiers is common, particularly in the health sector, because they provide an accurate means of identification for clinical purposes and increase administrative efficiency. There has been wide ranging debate regarding the privacy risks that identifiers pose given they enable the linkage and aggregation of disparate sources of information about individual practitioners. For this reason, many privacy laws restrict the adoption and use of identifiers that have been assigned by government agencies. For example, under NPP 7 of the *Privacy Act 1988*, a private sector organisation cannot adopt as its own identifier of an individual, an identifier assigned by a Commonwealth agency. The equivalent protection will need to be built into the national scheme legislation to ensure that the identifier assigned to each health practitioner by the agency cannot be widely adopted.

Proposal 7.1.1: It is proposed that the national scheme legislation prevents the adoption of the scheme's health practitioner identifier for other purposes by other bodies. The legislation would also need to exempt the adoption and use of the identifier for e-health purposes subject to legislation providing appropriate protections being in place to oversight such e-health activities.

Position	Comment
Supported	

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.

7.2 Research

De-identified information falls outside privacy law as it does not constitute personal information except where the identity of the person can "reasonably be ascertained". Release of de-identified information for research and statistical purposes could therefore occur.

Proposal 7.2.1: It is proposed that the national scheme legislation provide for de-identified information from the registration system to be available to government agencies and to appropriate classes of other persons for research and statistical purposes.

Position	Comment
Supported with qualification	Provision of this information should not divert resources from the core functions of the Board. Boards must either be resourced to handle these requests, or the IT system be flexible enough to easily and quickly provide required statistical information.
The issue of de-identified v anonymous information was also raised. The national legislation will need to be sensitive to situations such as where a name may be removed from data but the postcode is utilised, meaning practitioners in some regional settings could still be identified because they are the only registered practitioner of that profession within that postcode area.	

7.3 Professional Services Review Scheme (PSR Scheme)

Part VAA of the *Health Insurance Act 1973* (Cwlth) (HIA) establishes the PSR Scheme. Under the PSR Scheme the provision of services by a health practitioner can be reviewed and investigated to determine whether the health practitioner has engaged in 'inappropriate practice' in the rendering or initiating of Medicare services or in prescribing or dispensing under the Pharmaceutical Benefits Scheme (PBS).

Sanctions may be imposed on a health practitioner under the PSR Scheme if the health practitioner is found to have engaged in 'inappropriate practice'. The sanctions include: reprimand; counselling; repayment of Medicare benefits; complete or partial disqualification from the Medicare program or PBS for up to 3 years.

Currently, the HIA establishes linkages between the PSR Scheme and the health practitioner registration bodies in specific circumstances. For example, if in the course of investigation under the PSR Scheme, the PSR Committee (or the determining authority) forms the opinion that a practitioner 'has caused, is causing, or likely to cause a significant threat to life or health of any other person', they must provide the Director of PSR with a statement of their concerns together with material or copies on which the opinion is based. The Director must forward these documents to an appropriate body, that is, the registration or licensing body of the practitioner (section 106XA of the HIA).

Another example is, if the Director of PSR forms an opinion that a practitioner is not complying with 'professional standards', a term not defined in the HIA, the Director is required to send a statement of his or her concerns together with material or copies on which the opinion is based to an appropriate body (section 106XB of the HIA). The 'appropriate body' is one prescribed in the regulations of the HIA. Currently no such bodies are prescribed in the regulations.

Under present arrangements, the finding of 'inappropriate practice' under the HIA may be a relevant consideration in some jurisdictions in relation to whether a practitioner has engaged in 'unsatisfactory professional conduct' for the purposes of the practitioner's registration.

However, apart from these prescribed circumstances, final determinations or material relevant to the making of determinations by the PSR are not generally forwarded to the relevant professional registration or regulatory body. Of note is that any such disclosure would need to comply with provisions under the *Privacy Act 1988* (the Privacy Act).

The establishment of the agency and the national register provides an opportunity to establish greater linkages between the PSR Scheme and the national registration body. Greater linkages between the two will streamline processes and ensure that relevant material in relation to a practitioner is considered when determining a practitioner's registration.

Amendments to the HIA and possibly the Privacy Act are necessary to set out the circumstances when information must be provided to the agency by the PSR.

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.

Position	Comment
Supported	

Further policy considerations, in consultation with the Director of PSR and the professions will be required to clearly identify the desirable information sharing protocols.

7.4 Medicare Australia

Medicare Australia administers the Medicare program on behalf of the Commonwealth. As a matter of administrative necessity, Medicare Australia issues practitioners that can render Medicare rebateable services with 'provider numbers'. If a medical practitioner is de-registered, they cannot provide Medicare rebateable services. Creating stronger information links including electronic links between the national scheme and Medicare Australia can ensure that Medicare Australia has the most up-to-date information about a practitioner's registration status including conditions placed on registration. This has the potential to improve compliance with board and tribunal decisions affecting practitioners and quickly alert Medicare and the relevant board to any continuing risk to public safety.

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.

Position	Comment
Supported	Any third party organisation with electronic access to the registrant database should only be granted access to the minimum dataset of information that facilitates the purpose of the access.

It may also be necessary to update the functions of Medicare Australia under the *Medicare Australia Act 1973*, to ensure that Medicare Australia has the proper authority to perform this function in relation to the use of data provided by the agency.

Further consideration is required of additional information exchanges that could occur between Medicare Australia and the boards, particularly in relation to matters under investigation where no finding has yet occurred. A case has been put that if the boards and Medicare Australia were to share information at the pre-finding stage, this might mean that a greater range of evidence is made available quickly in relation to a conduct matter.

7.5 Overseas trained practitioners

Overseas trained doctors and other health professionals make a valuable contribution within the Australian health system. A large proportion of overseas trained health professionals are in Australia on a temporary basis. Practitioners who are in Australia on temporary visas often have a number of conditions on their visa, including location of work. In addition, registration boards may, depending on the qualifications and skills of the practitioner, place conditions on the registration of a practitioner.

The sharing of information between the Department of Immigration and Citizenship (DIAC) and the agency would be of mutual benefit to the two agencies. The DIAC, with its regulatory role of

visa compliance checking, would benefit from being able to receive information from the agency. Similarly, the agency would be made aware of the withdrawal of a practitioner’s visa, which will affect a practitioner’s registration. Also, should fraudulent documents be identified by either party there would be substantial benefit in sharing this information so that appropriate checks can be made by both agencies.

Further discussion with the DIAC is necessary to discuss the type of information it would be seeking from the agency and to establish whether amendments to the *Migration Act 1953* are required in order for it to provide information to the agency.

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*.

Position	Comment
Supported	

7.6 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.

7.7 State and Territory government health bodies

Proposals in relation to information sharing with employers have been canvassed earlier and in the complaints arrangements consultation paper (available at www.nhwt.gov.au/natreg.asp). These are likely to be the most important information sharing arrangements for State and Territory governments.

The national scheme legislation will also need to enable de-identified information sharing with a number of State and Territory public health bodies. This is particularly important in relation to health service delivery and drugs and poisons matters. There will also need to be provisions that enable the boards to identify to the appropriate public health protection bodies, those practitioners who pose a notifiable public health risk.

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.

Position	Comment
Supported	

7.8 Notification to Commonwealth, State and Territory health departments

It is possible that during the course of investigation of a case, a board identifies that consistently poor practice has been followed, for example, in conducting diagnostic tests or undertaking

certain procedures. If that poor practice presents a potential risk to other patients, beyond the case or cases under investigation, then it is proposed that the board be given power to bring the matter to the attention of the relevant health department.

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.

Position	Comment
Supported	

7.9 Law enforcement agencies

The national scheme legislation will provide a general power to share information with law enforcement bodies. This may arise as a result of a police service investigating and charging a person in relation to a breach of the national scheme legislation. It may also arise when a law enforcement agency is investigating a matter arising from the enforcement of a law of any State or Territory or of the Commonwealth.

7.10 Criminal record checking

If mandatory criminal record checking is agreed, there may be a case for an electronic linkage to check criminal record.

Position	Comment
Supported with qualification	Will there be cost implications for obtaining this information electronically? (eg: current criminal record checks in NSW cost between \$40 to \$60).

7.11 Universities

The national scheme legislation will provide for information sharing with universities in relation to students of the health professions covered by the national scheme, initial registration of these graduates and confirmation of the awarding of their university qualification.

The consultation paper on complaints, conduct, health and performance arrangements (available at www.nhwt.gov.au/natreg.asp) raises the issue of mandatory notification by employers.

7.12 Trans-Tasman Mutual Recognition

The *Trans-Tasman Mutual Recognition Act 1997* (the TTMRA) provides that a person who is registered in New Zealand for an occupation is entitled to be registered for the equivalent occupation in Australia, and vice versa, after notifying the registration authority of an Australian jurisdiction.

The TTRMA provides for the sharing of information between New Zealand and Australian registration authorities. To be effective the agreement requires the exchange of information between the two countries. It may also be important for the sharing of information with New Zealand in relation to the accreditation functions of the national scheme.

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.

Position	Comment

Supported	
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7.13 Overseas regulatory authorities

There are a number of international contracts and agreements relating to cooperation with overseas health regulatory bodies. These agreements establish arrangements for information sharing and exchange. In order to honour the spirit of these agreements, boards could either:

- record all overseas jurisdictions with which the practitioner is registered and notify these jurisdictions when there is any change to registration status or conditions on practice, or
- write to any relevant professional registration authorities whenever registration status or relevant conditions on practice change.

Proposal 7.13.1: It is proposed that the national scheme legislation give boards powers to exchange information with international registration bodies.

Position	Comment
Supported with qualification	This sounds good in theory, but may be practically impossible to manage. Any information exchange should be at the board's discretion. Additionally, it is highly unlikely that this exchange of information will be reciprocated from a number of overseas jurisdictions.

8 Health records

Some States and Territories have provisions in their legislation to provide for registration boards to take possession of patient health records in certain circumstances. This allows for situations of negligent management of patient records to be addressed, whether these are caused by the death of the practitioner, impairment, or for some other reason.

It is proposed to make the boards the repository of last resort with the power to take possession of patient health records when a practitioner has defaulted on their obligations. The intent is that the primary obligation will still rest with the health practitioner to take responsibility for the safe and secure management of their clients' personal health records or to transfer or sell (where they are part of a business) if they retire or move or are de-registered temporarily or permanently.

Proposal 8.1: It is proposed that the national scheme legislation make the boards the repository of last resort with the power to take possession of patient health records when a practitioner has defaulted on their obligations.

Board	Position	Comment
Joint	Supported with qualification	
QLD		
NSW		
ACT		
VIC		
TAS		
NT		
SA		
WA	Supported with qualification	

	as above
Position	Comment
Supported with considerable qualification	This should not be a Board function, and there should be another body charged with the retention of health records. If it is deemed necessary, the legislation should specify “transitional” or “temporary” repository of last resort. The Board should not become a permanent repository for patient records under any circumstances and should only be in possession of these records until an appropriate location is found for their storage.

9 Transitional issues

9.1 Supply of Information from existing boards to the agency

In order to establish the national scheme, it will be necessary to establish the new national database of registered practitioners. Existing boards will need to release to the national boards and the agency both public register and other information under the national scheme legislation. However, until such time as legislation is passed in a State or Territory to adopt the national law, the existing boards will not be able to share their identified registration data with the new boards and agency. In the meantime, it is proposed to appoint contractors for data cleansing who will work with existing boards to clean and prepare data for transfer ahead of the passage of national scheme legislation in the relevant State or Territory.

Position	Comment
Supported	This is undoubtedly THE most important logistical task to be completed ahead of the proposed implementation of National Registration. Sufficient time (including a generous allowance for unforeseen problems) must be budgeted for this to occur. The National Committee should not underestimate the enormity of this task. National Registration cannot happen until the State/Territory registrant databases are merged and the subsequent national database is functional and accessible. It is concerning that this matter is still in the “proposal” phase.