

Submission to Health Workforce Principal Committee

Practitioner Regulation Subcommittee

National Registration and Accreditation
Scheme for the Health Professions

Privacy and information sharing

15 December 2008



Introduction

The Australian Physiotherapy Council and the Australian Physiotherapy Association (APA) are pleased to submit comments that reflect the consensus position for physiotherapy on the “Proposed arrangements for information sharing and privacy” Consultation Paper dated 3 November 2008. The Physiotherapy Registration Boards, the Australian Physiotherapy Association and the Council of Physiotherapy Deans, Australia and New Zealand thank the Committee for the opportunity to comment on the proposed arrangements for information sharing and privacy.

Physiotherapy commends the Health Workforce Principal Committee on the development of this consultation paper. Many of the proposals are sound, however it is important that the proposed integration of workforce planning data collection into the national registration and accreditation scheme is further investigated. Whilst, on the surface, mandating the collection of data from registered health practitioners as part of the registration process appears to be a practical method of collecting data, the reality is that the purposes of the two areas of data are so different that it is an impractical solution. Physiotherapy suggests that further work is done to ensure accurate workforce planning data collection can be facilitated by providing registrants with the opportunity to participate in surveys and other data collection methods.

This submission responds to the proposals explicitly included in the consultation paper. The profession has considered the content of the consultation paper and herewith submits its position on the issues. For ease of translation by the Project Implementation Team, the responses are set out using the same numbering system as the Consultation Paper and relevant text from the Consultation Paper is included in the original blue highlighted boxes. The physiotherapy responses are boxed. Physiotherapy would be pleased to provide further background and justification for the comments and recommendations within this response.

Please contact the Australian Physiotherapy Council Chief Executive Officer, Margaret Grant, [margaret.grant\[at\]physiocouncil.com.au](mailto:margaret.grant@physiocouncil.com.au) for further information or clarification of any aspect of this submission.

3.1 Information to be collected for initial registration purposes

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

Comment

Physiotherapy supports this proposal. It is important that the information collected is then only used for the identified purposes and that these are sufficiently specific to ensure there is no misinterpretation.

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.

Comment

Physiotherapy recommends that there is further refinement of the listed categories. Physiotherapy recognises that In circumstances where a practitioner has no other contact address it will be necessary for the registrant to provide a home address. It has been suggested that although collection of a home address may assist in identifying individuals it will potentially create workload issues for secretariat staff to maintain this data, particularly with respect to change of address issues. Physiotherapy suggests that the benefits of requiring a home address need to be clearly established and risk management strategies must be in place to protect the privacy of this data.

Physiotherapy recommends Board discretionary powers for:

- Overseas registration details
- Details of recency of practice
- Criminal record checks

If professional indemnity is required as a condition of registration, boards should not be required to determine the level of cover.

Responsibility for ensuring registration details are current must lie with the registrant.

Physiotherapy recommends that consideration is given to the information to be entered regarding outcomes of criminal record checks and the duration of such entries.

Physiotherapy suggests that consideration is given to providing that the Board has the power to collect such other information as required by the scheme.

<p>a) Name and contact details</p>	<p>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.</p> <p>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.</p>
<p>b) Date of birth</p>	<p>In order to properly identify an applicant, date of birth will need to be collected.</p>
<p>c) Qualifications</p>	<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>

<p>d) Overseas registration details</p>	<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>
<p>e) Details of recency of practice and other requirements</p>	<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>
<p>f) Criminal record</p>	<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>
<p>g) Professional indemnity insurance</p>	<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>
<p>h) Registration details</p>	<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>

3.2 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.

Comment

Option 1 is not supported by physiotherapy

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

Comment

Physiotherapy supports Option 2 because it is a practical means of collecting this information in a reliable and user-friendly manner. The collection of this information will have significant workload and privacy implications for agency staff. The purpose and benefits of collecting this information need to be clearly established before requiring the practitioner to provide these details.

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.

Comment

Physiotherapy supports this proposal. The identifier should be consistent with international formats for identifiers of this nature

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.

Comment

Physiotherapy supports this proposal. Measures must be put in place to ensure any information that is provided is consistent with the principles of the national registration and accreditation scheme.

3.4 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.

Comment

Physiotherapy supports this proposal. It is essential that this standard, which reflects best practice, is adopted to protect health consumers and the profession.

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.

Comment

Physiotherapy supports this option. Where boards may have concerns regarding the validity of documentation or the registrant’s identity, Boards must have the additional ability to require a check as and when required.

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

Comment

Physiotherapy does not support this option.

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

Comment

Physiotherapy does not support this option.

3.5 Document checking on initial registration

3.6 Information to be collected on renewal

It is suggested that the list in paragraph 1 also include ‘medical capacity’. It is suggested that this information be obtained via statutory declaration.

It is recommended that it is a requirement that registrants notify change in contact details within 28 days as well as at the time of renewal.

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

3.8 Information to be collected for workforce planning purposes

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.

Comment

Physiotherapy does not support collection of data items for workforce planning purposes as a mandatory requirement. Workforce planning purposes may not always be consistent with the principles of the national scheme. The mandatory collection of data items for workforce planning purposes is only supported where the data collected and the proposed use is consistent with the boards' role in protecting the public interest through registration, regulation of the profession, accreditation and maintenance of standards.

Boards should have input to the data collection items to ensure workforce planning data is "clean" – for example, a definition of 'practising' for workforce planning purposes can be different to the definition of 'practising' in relation to registration purposes.

Physiotherapy recognises the importance of data collection and supports the collection of workforce planning data on a voluntary basis with incentives for completion.

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.

Comment

Physiotherapy does not support this proposal in its current format. The current system ensures de-identified data is collected and this should be replaced by electronic data collection rather than discontinued. The electronic data collection would need to ensure de-identification of the surveys was retained because the data is not being collected for regulatory purposes.

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.

Comment

Physiotherapy does not support this proposal in its current format. The board should be permitted to use the information that is collected by the board and "ownership" of data must be clarified. The reasons for this proposal require further explanation and clarification. There is potential for workforce planning issues to have implications for the public interest and therefore this information should be available to boards. It is unclear why the workforce planning data would not be available to boards.

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.

Comment

Physiotherapy does not support this proposal in its current format. Policy related to workforce planning must not be embedded within regulation of the professions. The collection of information for workforce planning analysis will require additional resources and these should not be funded by registrants' fees. There is a risk that the regulatory functions of the scheme may be compromised by workforce planning issues.

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.

Comment

Physiotherapy supports this proposal if the information collected is consistent with the objectives and principles of the national scheme.

4 Publicly available information

4.1 Information on the public register

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).

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.

Physiotherapy does not support all items in this proposal and so each will be dealt with separately. Item (a) is supported. Item (b) is supported but should be termed gender. There is a public policy argument for the public to have access to the gender of the registrant. Item (c) is not supported because for a number of registrants this will identify a home postcode and there is potential for members of the public to use this to identify a home address. Item (d) requires further clarification – is it the unique identifier? Item (e) is supported. Item (f) is not supported because if there is a common renewal date this is redundant. Items (g) and (h) are supported.

Item (i) is supported but the information that is published must ensure that the conditions on practice due to health condition or impairment must balance the need for confidentiality appropriate to the circumstances with the public interest. Item (j) is not supported as a person who is suspended should be moved to a separate register of suspended practitioners. Items (k) and (l) are supported.

4.2 De-registered practitioners

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.

Comment

Physiotherapy supports this proposal and suggests that the legislation should provide a specific period after which the Board has the power to move the practitioner's name to a separate register of de-registered persons

4.3 Recording of conditions on practice

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.

Comment

Physiotherapy supports the principle of this proposal and recommends that further debate and consultation be conducted to identify the correct balance between the public interest and the practitioner interest. There must be clear direction regarding the exact information that could be released by the agency as well as the public policy grounds to support a test of the public interest. This is because there is a risk that the potential release of information related to health or impairment issues will undermine the public interest because a practitioner is less likely to report a health condition or impairment if he or she does not have confidence that the confidentiality of the details of the information will be respected.

4.4 Online public register

4.5 Release of public register information

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.

Comment

Physiotherapy supports the principle of this proposal. It is recommended that guidelines regarding tests for "in the public interest" are required. In some instances, Boards are approached to assist researchers to contact registrants to participate in surveys. It is recommended that the national scheme legislation allow for mailing lists to be provided to mailing houses rather than providing a copy of, or extract from the register to the researcher. This approach prevents the register information being misused rather than imposing fines for an offence following misuse of the information.

4.6 Public access to the findings of formal proceedings

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.

Comment

Physiotherapy supports this proposal and recommends that the legislation should provide a specific period within which the decision will 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).

Comment

Physiotherapy does not support this option as there may be occasional circumstances where it is not in the public interest to publish the decision. Whilst this would be extraordinary, it may be preferable to set rules that ensure that unless it is not the public interest, board or committee decisions in relation to conduct matters are made public.

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

Comment

Physiotherapy supports this option. In some instances the practitioner interest will outweigh the public interest. It is recommended that in some instances, an appropriate balance may best be achieved if the confidential information notice indicated that a matter had been decided.

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.

Comment

Physiotherapy supports this proposal and recommends that old decisions be removed from the register of decisions when it is no longer in the public interest to include the information rather than a broad discretionary power.

5 The privacy regime

5.1 Legislative options

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.

Comment

Physiotherapy supports this proposal on condition that electronic collection, lodgement and access of personal information is permitted.

5.2 Reference or incorporation

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.

Comment

Physiotherapy notes that the wording in the consultation paper and the wording in the proposal is inconsistent. The consultation paper presents one option as “adoptingby incorporation” and the other as “adoptingby reference”. The proposal wording is “incorporated by reference”. Physiotherapy prefers the approach described in the first paragraph, rather than the alternative. Incorporation by reference of the Commonwealth private sector privacy regime and National Privacy Principles (NPP’s) into the national law will ensure a single parliamentary process in relation to the privacy laws for the national scheme. Physiotherapy does not support the incorporation of the core privacy provisions in the national scheme legislation and inclusion of the NPP’s in a schedule to this legislation because this would require amendment each time the privacy legislation or NPP’s changed. A link to the NPP’s should be placed on the agency website to ensure the privacy requirements are easily accessed.

6 Confidentiality

7 Information sharing

7.1 Enabling e-health developments

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.

Comment

Physiotherapy supports this proposal.

7.2 Research

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.

Comment

Physiotherapy supports this proposal subject to clarification of the scope of “other classes of person”. The legislation should provide that the outcomes of research & statistical analyses that use de-identified information from the registration system must be reported to Boards.

7.3 Professional Services Review Scheme (PSR Scheme)

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.

Comment

Physiotherapy supports the principle of this proposal but further details of the mechanisms for the operation of this proposal are required.

7.4 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.

Comment

Physiotherapy supports this proposal on condition that a practitioner's identity and reputation is protected unless it is in the public interest for that information to be released. Information sharing with Medicare Australia must be reciprocal where it is in the public interest for the Board to receive information from Medicare Australia.

7.5 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*.

Comment

Physiotherapy strongly supports this proposal. Information sharing with DIAC must be reciprocal where it is in the public interest for the Board to receive information from DIAC.

7.6 Health complaint bodies and tribunals

7.7 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.

Comment

Physiotherapy supports this proposal in principle. Further detail of the specified purposes is required. Information sharing must be reciprocal where it is in the public interest for the Board to receive information from State and Territory government bodies.

7.8 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.

Comment

Physiotherapy supports this proposal. Information sharing must be reciprocal where it is in the public interest for the Board to receive information from State and Territory government bodies.

7.9 Law enforcement agencies

7.10 Criminal record checking

7.11 Universities

7.12 Trans-Tasman Mutual Recognition

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.

Comment

Physiotherapy supports this proposal. Information sharing must be reciprocal where it is in the public interest for the Board to receive information from New Zealand registration authorities.

7.13 Overseas regulatory authorities

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

Comment

Physiotherapy supports this proposal. Information sharing with must be reciprocal where it is in the public interest for the Board to receive information from international registration bodies.

8 Health records

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.

Comment

Physiotherapy does not support this proposal because the boards are not an appropriate repository for such records and it is not consistent with the principles of the national registration scheme.