



MEDICAL BOARD OF WESTERN AUSTRALIA

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Title:	Information Sharing & Privacy Submission
Attn:	Practitioner Regulation Subcommittee
Email:	nraip@dhs.vic.gov.au
From:	Pamela Malcolm CEO/Registrar
Date:	16 December 2008
Re:	National Registration and Accreditation Scheme for the Health Professions - Consultation Paper - Proposed Arrangements for Information Sharing and Privacy

The Board submits the following views for consideration, in direct response to the Consultation Paper proposals:

3 Information to be collected

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.

The Board agrees with this approach.

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	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. 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>	<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>

The Board agrees with this approach. Only the practice address of each practitioner should be made known to any external party. For the safety of the practitioners, the home addresses must not be released or made accessible to complainants.

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.

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

The Board agrees with Option 2. Option 1 would be onerous and unnecessary. Registered practitioners change employment regularly and it would be too onerous a

task for the Boards to have to obtain that information and provide the employers with updates. Any conditions on practise would be placed on the Database, accessible by employers; and actual employers are notified when conditions are placed on practise.

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 Board agrees with this approach.

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.

The proposal to use one unique identifier and to provide this to NEHTA and Medicare Australia to use and disclose may result in breaches of privacy of the medical practitioners' personal and sensitive information. This is a potential risk and it would be difficult to ensure privacy of the medical practitioners. Balancing this issue with the public interest is necessary, however it would be prudent to ensure privacy of sensitive information of all parties.

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.

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.

The Board agrees with Option 1.

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.

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

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

These three proposals are, in effect, all one proposal. The Board disagrees that the information collected purely for workforce planning not be made available to the State Offices/Agency (or Board). From the Privacy Forum, it is understood that the State Offices will pay for the collection processes. It is only reasonable that the State Offices and Boards be provided with the data and any suggestion to the contrary would be inappropriate.

Further, the cost and the labour requirement for collecting such data, requires serious consideration. To impose the cost (and requirement for extra labour) without assessment of cost would also be inappropriate.

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.

On the basis that the information is de-identified, the Board agrees.

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.

On the basis that the information is de-identified, the Board does not oppose this proposal.

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).

The Board agrees with this approach.

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.

The Board agrees with Option 4 and is of the view that the Register will need to go back to and incorporate those currently listed by existing Boards as “deregistered for conduct reasons” in to the new Register.

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.

It is agreed that where there are specific restrictions on professional practise in relation to conduct, these should appear on the Register.

The issue of placing health or impairment issues on the Register is far more difficult. To note on the Register that there are health issues, may be reasonable when it bears on practise. However, it would be fraught with risk to provide health information in particular circumstances to any other parties, without the explicit written consent of the medical practitioner in respect of the occasion in which the information is proposed to be released.

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.

The Board agrees with this approach.

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.

The current process in Western Australia is more stringent and appropriate than that proposed above in respect of Tribunal decisions. It is the Board's view that the Tribunal decisions continue to be made available on the Tribunal website and this should be sufficient for "publication" purposes. All decisions, unless there is a suppression order in place, are available on the Tribunal website to the public at large.

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.

This proposal is confused as no Board decisions will be made available to the public. The scheme, as the Board understands it, proposes that any conduct matters will be considered at Panel level (not by the Board, as this would offend separation of function/powers and would be entirely inappropriate).

Accordingly, the Board agrees that Committee decisions in relation to conduct matters may be appropriately made public, if there is a public interest issue to do so and the decisions could be published on the Register of Decisions on the Agencies' website, however, no Board decisions or Committee decisions should be made available in a published sense or available to the public. It is noted that as far as performance and health decisions are concerns, when Panels hear these matters, they not be published. The Board is in agreement with this, as it may be detrimental to the health of practitioners and will be (without explicit consent) in breach of privacy. However, it is agreed that there may be some educational benefit in respect of the de-identified cases relating to performance management and discretion would be appropriate in all circumstances.

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.

Option 1(a) is clearly the most appropriate approach, given that it is intended to be a national scheme. It would be most suitable in respect of consistency.

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.

The Board agrees with this approach.

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.

The Board agrees with this approach.

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.

The Board agrees with this approach.

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.

Whilst the Board recognizes that some matters should be referred to the PSR and vice versa, not all matters which are prosecuted before the PSR amount to unprofessional conduct or misconduct in respect of the Board's processes and obligations. A constant flow of information between the two bodies is unnecessary.

Only in specific circumstances should a practitioner be referred to the Board (or to the PSR) and these need to be clearly defined. To set up a "fishing expedition" to penalize the practitioner on every occasion, in every jurisdiction, would be an inappropriate way forward.

Further, this would create onerous tasks to set up information sharing protocols which are not necessary. This proposal needs to be carefully considered, bearing in mind that each jurisdiction covers a different area. Jurisdictions are not always interested in each other's information, as far as proceeding to discipline in the jurisdiction.

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.

The Board does not disagree with this proposal and agrees that specific purposes for which the information is to be released, needs to be clarified. There is a great deal of interaction between Medicare Australia and the Boards currently. It would be inappropriate to share information at the "pre-findings stage" from the Boards to Medicare when there was a public risk issue. It must be borne in mind that different jurisdictions deal with different issues. A finding of unprofessional conduct or misconduct in the Medical Board may not have a similar impact at Medicare. To combine "attacks" on medical practitioners into one basket, is incorrect and exhibits a lack of understanding of the function of the Boards.

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*.

The Board agrees with this approach.

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.

The terminology in the second paragraph is unclear “...legislative provisions to be put in place to require health complaint bodies to advise the agency...” It is unclear who the agency is; and it is unclear how the health complaint body is applying the Medical Act as the process in Western Australia currently stands. To find that there is conduct which constitutes unprofessional conduct outside the Medical Act, is confusing and unclear.

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.

The Board agrees with this approach.

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.

This appears to be talking about a competency issue, whereby the Board will be given power to bring the matter to the attention of the relevant Health Department. This needs to be proceeded with caution and would only be relevant at the end of a competency investigation, unless there was a clear public risk, in which circumstances conditions should be placed on the practitioner; the employer should be notified; and the matter should be placed on the Medical Board Register.

It is unclear what 7.8.1 proposes and if it is actually proposing that without investigation, the Board should notify the State or Territory Health Department where it is possible that a patient not directly involved in a case under investigation, may have been adversely affected by a practitioner, then this may well be open to abuse. It may also result in spurious information being passed which has not been investigated sufficiently to ensure the facts are correct. This proposal is problematic.

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.

The Board agrees with this approach.

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.

The Board agrees with this approach.

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.

The Board does not agree with this approach. In order to manage possession of patient records and identification, location and distribution of patient records would be too onerous and may require many more staff than is anticipated in the State offices. This is already a problem and inability to locate practitioners (after practises have closed) and it would be more prudent to arrange for the State and Territory Health Departments to manage. The Boards have a limited staff number and limited funds.

The Boards will need to obtain consent from practitioners and complainants alike for the collection, use and disclosure of personal, sensitive, confidential information and this will need to be incorporated into the documentation used for initial registration and renewal, particularly if the matter proceeds under the current Privacy Legislation.