NEW SOUTH WALES MEDICAL BOARD

Response to NRAIP Consultation Paper – Proposed arrangements for Information Sharing and Privacy

15 December 2008

In keeping with the protective nature of the regulatory jurisdiction, the New South Wales Medical Board considers that the provisions of the National Registration and Accreditation Scheme in relation to Information Sharing and Privacy should maximise the ability to share appropriate information for regulatory purposes, while at the same time protecting the privacy interests of registrants.

The public should have access to relevant information regarding a registrant's registration status, including conditions on registration (other than those relating to impairment), and Boards should have the ability to share information regarding complaints, disciplinary and other processes with other bodies involved in regulation of health practitioners both within Australia and overseas.

Given the significant benefits and rights conferred by registration, applications for initial registration should include a sufficient range of information to enable the registering board to be satisfied that the applicant meets the necessary requirements regarding both professional standards and character.

The New South Wales Medical Board commentary on the Consultation Paper on Information Sharing and Privacy follows, with the Board's comments in red:

NSWMB Commentary on NRAIP Consultation Paper – Proposed arrangements for information sharing and privacy

NATIONAL REGISTRATION AND ACCREDITATION SCHEME FOR THE HEALTH PROFESSIONS

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

NSWMB Commentary on NRAIP Consultation Paper – Proposed arrangements for information sharing and privacy

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1 Background

1.1 Scope of paper

This paper is one in a series of consultation papers on matters that require decision in order to prepare the second stage of legislation to establish the National Registration and Accreditation Scheme for the Health Professions.

It addresses policy with respect to the following activities of the national scheme:

- information required to operate the scheme
- information collected for various purposes
- sharing of information with other agencies, and
- privacy protection.

The paper is designed to outline and seek guidance on the range of regulatory tools that should be available in a national registration scheme to deal with information sharing and privacy.

It is recognised that at present, different jurisdictions have differing systems. This paper seeks to consolidate and take the best of these approaches for the national system. In doing so, the matters outlined by Ministers as key factors in the further development of the national scheme have also been addressed, that is the system needs to:

- ensure that public protection is paramount
- maintain a high degree of transparency
- adhere to specific related legislation, and
- be appropriately accountable.

In this paper, references to the agency and the boards relate to the entity which has the legal authority in a matter and not the entity which may, in the case of the agency, be acting under powers delegated by the boards. In addition, references to the Ministerial Council relate to the Australian Health Workforce Ministerial Council, being a statutory body with powers in relation to the national scheme.

1.2 Overview of the implementation of the national scheme

The national scheme as agreed by the Council of Australian Governments (COAG) at its meeting on 26 March 2008. On this date COAG signed the Intergovernmental Agreement (IGA) for a National Registration and Accreditation Scheme for the Health Professions. The IGA can be downloaded from the following website: www.nhwt.gov.au/natreg.asp.

To implement the new scheme, national legislation will be introduced in the Queensland Parliament in two stages. The first piece of legislation was introduced in the Queensland Parliament on 29 October 2008 and covers those aspects of the COAG Agreement that address the structural elements of the national scheme.

The second piece of legislation is expected to be introduced in the Queensland Parliament in August 2009 and will cover matters where further work and discussion is required beyond the terms of the COAG Agreement. These include:

- registration arrangements
- accreditation arrangements
- complaints, conduct, health and performance arrangements

- privacy and information sharing arrangements, and
- other matters.

Health Ministers have announced a process to ensure that professions, consumers, registration boards and education providers, as well as members of the general public, have the opportunity to contribute to the implementation of the national scheme.

When developing the national scheme legislation, Ministers will use as their guiding principles that:

- the safety of the public is paramount
- high quality health care must be protected and advanced, and
- governments should be accountable and processes transparent.

Ministers have given a commitment that consultation papers on key issues will be made available, with the opportunity for anyone to provide a submission if they wish. All submissions will be due before the end of 2008 with different dates for different topics. In the case of two main topics, complaints and disciplinary arrangements, and privacy and information sharing arrangements, two national public consultation meetings will be held, one has already been held in October and one in November 2008.

When the feedback and submissions have been analysed, Ministers will develop a final set of proposals for the overall policy directions for the second piece of legislation. These proposals will also be made available in the form of an exposure draft of the second piece of legislation for comment. A national forum and State and Territory forums will be held in mid-2009 to discuss the proposals. Further submissions will be accepted at this time, prior to finalisation of the details of the national scheme and preparation of the final legislation.

The project website www.nhwt.gov.au/natreg.asp will post all consultation papers as they are issued on the national scheme and the implementation process.

1.3 How to have your say

As described above, this paper is one in a series of consultation papers on matters that will require decisions from governments, to develop the second stage of legislation governing the national scheme.

The paper presents a number of proposals, some with alternative options, regarding the arrangements for information sharing and privacy under the new scheme. Governments are seeking comments and submissions from interested parties, particularly on those proposals highlighted in boxes within the text, prior to finalising their decisions on national laws to regulate the scheme.

If you wish to provide comments on this paper, please lodge a written submission in electronic form, marked "Information Sharing and Privacy Submission", Attention: Practitioner Regulation Subcommittee", at nraip@dhs.vic.gov.au by close of business on Monday, 15 December 2008. Please note that your submission will be placed on the website after the closing date for all submissions unless you indicate otherwise.

1.4 The Intergovernmental Agreement

There are a number of clauses in the IGA that refer to information and the public register as follows:

1.17 The role of the national agency will be to:

(a) maintain up-to-date and publicly accessible national lists of accredited courses and registered practitioners with entries relating to individuals to include any conditions or restrictions on professional practice…

1.18 The national office will have the following functions:

(a) maintain the national registers of health practitioners and lists of accredited courses…

1.31 The recognition of specialist qualifications (for example, medical and dental specialties) will be achieved by:

(a) the relevant board being empowered to 'endorse' or 'notate' the registration of a suitably qualified practitioner, with this information entered on an integrated register against that practitioner's name;

(b) public identification and communication of recognised specialties, specialist titles and approved qualifications, identified through the public registers and via guidelines issued by the relevant board (rather than via an extensive list of specialties and associated specialist qualifications listed in regulation under the legislation);

(c) general statutory offences that prevent unregistered or unauthorised persons from using any title that could induce a belief that the person is endorsed as a specialist, or from holding themselves out as a specialist in one of the established specialties (rather than offences for use of the separate specialist titles); and

(d) recognition of new specialties or specialty areas of practice on professional registers to be subject to the approval of the Ministerial Council.

The IGA has not given detailed consideration to information sharing and privacy.

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.

Noted.

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.

Noted.

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.

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.

This complies with Privacy requirements, but clarification is needed as to the extent to which such a provision would be taken. Presumably when the Board collects information about an applicant, it is implicit in this process that the information will be used not just for the purpose of that application, but also for all subsequent associated purposes which may arise in carrying out the requirements of the regulatory scheme.

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.
d) Overseas registration details	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. Additional requirements may include a work statement, evidence of competence to practice and of English language proficiency.
e) Details of recency of practice and other requirements	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.

f) Criminal record	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 *Consultation Paper on Proposed Registration Arrangements* 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.
g) Professional indemnity insurance	Options for professional indemnity insurance arrangements under the national scheme are discussed in the *Consultation Paper on Proposed Registration Arrangements* 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.
h) Registration details	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.

Many of the specific details are covered in the Consultation Paper on Registration.

The Paper envisages applicants providing phone, email, fax and mail contact details. The Board's experience is that email addresses change frequently and are an unreliable form of communication in relation to formal contact, such as annual remewal. A mandatory mailing address is preferred with the onus being placed on the practitioner to keep it up to date. Other communication addresses may be provided for ad hoc or less formal communication.

Mandatory collection of home addresses could raise significant concerns regarding privacy and safety, even if these addresses are not to be publicly released. Incidents of stalking and assault on medical practitioners are known, and the Board's view is that the onus should be to provide one reliable contact address (eg home, practice, PO Box etc), which can be at the election of the practitioner.

The Paper has not addressed the question of whether there will be certain fields of the Register which can be updated online by the registrant, eg. addresses.

It is also noted that provision of the range of information suggested will make on-line registration difficult.

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).

The NSWMB has a general power to obtain information from a doctor.

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.

Option 2 is strongly supported over Option 1. Practitioners may have many employers and change employers frequently, and mandating notification of every detail would impose an unnecessary burden on the practitioner and the Board.

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.

The proposal to issue a unique identifier which will be applicable regardless of profession is noted. This proposal may add another layer of complexity to the data matching and cleansing exercise that will be required to consolidate all of the Board Registers.

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.

Noted.

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.

Option 1 requiring identity check on initial registration post 1 July 2010 but not applying retrospective checking, is supported. It should be noted that this requirement eliminates the possibility of online registration

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.

This requirement needs to be considered in the context of the desirability of on-line application.

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.

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.

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

As indicated, Medical Boards have collected Workforce Planning Survey data on behalf of the AIHW for many years. The continuation of this process is a policy matter for the AIHW and NRAS. It is not clear whether this proposal is supposed to reflect the statement in the preceding section that "data collected solely for workforce planning be managed by AIHW rather than the Agency and 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.

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.

The proposed dataset relating to workforce planning is also a policy matter.

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.

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.

Supported.

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).

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.

The Board has already commented on the possibility of confusion between specialisation and endorsement, in relation to medical practitioners and considers this needs clarification.

The Board also notes that Attachment 1 to the Consultation Paper lists the specific provisions of the NSW Medical Practice Act, 1992, in relation to the Medical Register. Whilst the Act is not very specific about the contents of the Register, Board policy and practice lists most of the fields covered in the attachment. The attachment has been annotated to this effect.

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.

It is suggested that the term "deregistered" carries with it connotations of disciplinary action, and that consideration should be given to finding alternative terms such as 'not registered' for practitioners whose names are removed from the Register for other reasons, such as retirement, non-payment of the registration fee, death, etc.

It is suggested that the Register could encompass this by having a field with a title such as "Status" which would record whether the practitioner was registered, not registered (ie. has at some time been, but is no longer registered for reasons such as voluntary removal of name, non-payment of the fee, or death), suspended or deregistered. These status options could apply to any category of registration.

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.

This may be a matter for the data integration and cleansing project, but ideally the Register should show historical data where possible. Certainly all information regarding doctors suspended or deregistered in the manner suggested above should be included.

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.

Conditions may relate to a practitioner's personal health and/or to their practice and arise from both disciplinary and non-disciplinary (e.g impairment) proceedings. Conditions relating to the practitioner's personal health , e.g. a requirement to undertake urine drug testing, should be acknowledged, but not detailed on the public register. Conditions relating to the practitioner's practice, e.g. restriction on their prescribing authority, should the available in full on the public register.

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.

Noted.

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.

The recommendation refers to only releasing extracts from the Register in the public interest, and the text refers to not releasing information for commercial purposes. Clearly guidelines will have to be established in relation to this area.

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.

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

Noted.

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.

When the boards and their committees or panels make performance management and health management decisions it is proposed that these not be published. These streams involve working co-operatively with the registrant to improve performance. This could be jeopardised by the publication of decisions. However, if there could be some educational benefit to the profession from the publication of de-identified case studies relating to performance management or health management, the board should be able to exercise discretion to do so.

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

Publication of Board or Committee decisions should be the default position, with the power to order suppression in exceptional circumstances.

The practice of publishing deidentified cases of interest or educational value is 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.

The NSWMB does not have a strong view on this question, but in the interests of national uniformity, would consider that adopting the Commonwealth model would be most appropriate.

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.

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.

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.

Noted.

7 Information sharing

The general scheme regarding information sharing is noted. Boards already share information with bodies such as Professional Services Review, Medicare Australia, Pharmaceutical Services bodies and other State and Territory Health bodies and authorities. The ability of the Board to engage in appropriate sharing of information should be maximised in the interests of ensuring that the charter of public protection is met. The Board should be able to have access to information held by other bodies that is relevant to its regulatory function, and it ought to be able to make information arising out of the regulatory function available to those other bodies where it is appropriate to the other body's function.

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.

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.

Noted.

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.

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

See comments above regarding the importance of information sharing in a regulatory framework.

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.

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.

See comments above regarding the importance of information sharing in a regulatory framework.

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*.

See comments above regarding the importance of information sharing in a regulatory framework.

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.

This recommendation refers to sharing information in relation to practitioners who “pose a public health risk”. This suggests limitation to practitioners who have an infectious disease or similar. The provision should not be limited in this way, but should cover release in the public interest, or in the interests of protecting the public. For example, a practitioner with a substance abuse problem might not pose a public health risk, but this would be a matter of which the State pharmaceutical agency should be aware.

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.

The comments in relation to 7.7.1 also apply. Limiting notification to specific circumstances is undesirable and will mean that the appropriate flow of information to protect the public will potentially be hindered by legal challenges based on strict reading of the legislation.

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.

While the general comments regarding information sharing apply, it is not clear in which circumstances a police service would be investigating and charging a person in relation to a breach of the national scheme legislation. The question of Boards sharing information with law enforcement agencies who are investigating any matter arising from State or Territory law would require further clarification.

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.

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.

It is noted that medical practitioners are excluded from the Trans Tasman Mutual Recognition arrangements.

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.

The Australian Boards should be able to release all relevant information to comparable overseas regulatory authorities. The movement of health practitioners between jurisdictions is increasing, and generally speaking is encouraged. However, if it is to be done properly there needs to be maximum freedom of exchange of information, and Australia should be providing overseas jurisdictions with the same amount of information that it would hope to receive in relation to a practitioner coming to Australia from an overseas jurisdiction.

The International Association of Medical Regulatory Authorities, at its recent General Meeting in Capetown, considered a resolution to this effect.

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.

The proposal to make the Boards the repository of last resort with power to take possession of health records when a practitioner has defaulted on their obligations is strongly opposed. While it is understood that legislation in some jurisdictions has allowed for this, the logistical implications cannot be overstated. The Board is then placed in a position of having to respond to members of the public seeking access to their records, generally in a situation where the records are poorly organised at best. The Board has to be responsible for storing them, providing staff to answer queries, etc, make decisions about what is and isn't accessible, etc.

The introduction of a national scheme provides an opportunity for the development of a properly thought out national scheme which should include provision for the secure destruction of records after an appropriate notice period, rather than creating an open-ended obligation on Boards.

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.

ATTACHMENT 1

The Board also notes that Attachment 1 lists the specific provisions of the NSW Medical Practice Act, 1992, in relation to the Medical Register. Whilst the Act is not very specific about the contents of the Register, Board policy and practice lists most of the fields covered in the attachment. The attachment has been annotated to this effect. It has also been amended to note where information is publicly available by virtue of policy.

PUBLICLY AVAILABLE CONTENT OF CURRENT REGISTERS - MEDICAL

State / Territory	ACT	NT	VIC	NSW	QLD	SA	TAS	WA
LEGISLATION	**Health Professionals Act (ACT) 2004** ss152 Contents of register **& Health Professionals Regulations (ACT) 2004** reg 112	**Health Practitioners Act (NT)**	**Health Professions Registration Act 2005 (Vic)**	**Medical Practice Act 1992 (NSW)**	**Medical Practitioners Registration Act 2001 (Qld)**	**Medical Practice Act 2004 (SA)**	**Medical Practitioners Registration Act 1996 (Tas)**	**Medical Practice Act 2008 (WA)**
MEDICAL REGISTER								
PERSONAL								
Name	Yes, current and past	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Address – personal	Yes	Yes	Yes	Policy – any registered address	Yes – for notifications	Yes – for contact	Contact address	See below
Address – business	Yes	Yes	Yes		Not mentioned	Not mentioned	Yes or contact	Business or 'other'
Date of birth	Yes	Not mentioned	Not mentioned	Not mentioned	Not mentioned	Not mentioned	Not mentioned	Not mentioned
Other	Photo, 100 points ID	NA	NA	NA	NA	NA	NA	NA
REGISTRATION								

NSWMB Commentary on NRAIP Consultation Paper – Proposed arrangements for information sharing and privacy

State / Territory	ACT	NT	VIC	NSW	QLD	SA	TAS	WA
Registration number	Yes	Not specified	Yes	Not specified Incorrect Policy	Not specified	Not mentioned	Not mentioned	Yes
Date of registration	Yes	Yes	Date of first registration	Not mentioned Incorrect Policy	Not mentioned	Not mentioned	Yes	First registration
Class of registration	Provision under which registered	Yes, conditional, special purpose, etc	Description of registration granted	Not mentioned Incorrect Policy	Yes, general, conditional, provisional, special purpose, etc	Yes, general, conditional, provisional, special purpose, etc	Yes, type of registration	Yes, general, conditional, area of need, etc
Registers, Divisions	Register for each profession regulated	S43 Registers; Register for each profession regulated except Roll of Nurses (s44)	Registers for each profession regulated as practitioner or student, Divisions	Not mentioned Not applicable	Yes, general, specialty, etc	Student, general and specialist	Medical only	Medical only
Conditions on registration	Any conditions	Any under this Act	Any current condition unless voluntary	Any conditions imposed on registration or any other order (may exclude health conditions– s.135A)	Any conditions on any class of registration and duration – details of health conditions not public	Any condition of registration or limitation to the right to provide treatment	Yes and any modification to them	Any conditions applying, any change of conditions
Date and period, renewal	Date and latest renewal	Date of registration and renewals	Date of original registration	Not mentioned Incorrect Policy	Not mentioned	Not mentioned	Yes	Not mentioned
Suspensions	Yes, dates commencing and finishing	Yes, see below	Separate list of suspended practitioners to be maintained	Not mentioned Incorrect Policy	Not mentioned	Yes, reason, date and duration of suspensions	Yes, including removal from register and restoration	Details of any exercise of power

NSWMB Commentary on NRAIP Consultation Paper – Proposed arrangements for information sharing and privacy

State / Territory	ACT	NT	VIC	NSW	QLD	SA	TAS	WA
Disciplinary history	Details of any refusal to register or cancellation	Yes, renewals, suspensions removal restoration, etc	No but register of cancelled or suspended registrants kept	Any conditions imposed on registration or any other order	Not mentioned	Yes, reasons for and dates of disqualification or suspension, etc		Yes, details of any exercise of power by board or State administrative tribunal
Qualifications for registration	Yes, including training	Yes	Yes, including institution and year	May correct entry in register relating to same under s26 incorrect	Yes	Yes	Yes	All qualifications held recognised by board
Additional qualifications	Not mentioned	Not mentioned	Yes	Not mentioned	Not mentioned	Not mentioned	Yes	All qualifications
Authorisations and endorsements	Not mentioned	Authorisations and changes	Endorsements	Not mentioned	Specialties only	Specialties only	Specialties only	Specialties only
Other (foreign) registrations	Provide certificate of standing	Information not recorded on registry	Information not recorded on registry	Not mentioned	Information not recorded on registry	Act defines unprofessional conduct to include that outside SA but information not on register	Information not recorded on registry	Yes
Other disciplinary processes	Details of any refusal to register or cancellation or impositions of conditions under 'foreign' laws recorded	S28 only makes it possible to refuse or cancel registration for addiction or conviction by boards or courts elsewhere	S6 only makes it possible to refuse or cancel registration for addiction or conviction by boards or courts elsewhere	Any conditions imposed on registration or any other order	S45 only makes it possible to refuse or cancel registration for addiction or conviction by boards or courts elsewhere	Mandatory reporting of unprofessional conduct means boards made aware of disciplinary processes outside SA	S29 only makes it possible to refuse or cancel registration for addiction or conviction by Council or courts elsewhere	Yes

State / Territory	ACT	NT	VIC	NSW	QLD	SA	TAS	WA
Criminal record	Not mentioned	See s28 above	See s6 above	Not mentioned	Disclosure may be required by board	Act defines unprofessional conduct to include offence punishable by one year or more	See s29 above	S42 – board may request consent to perform check but information not on register
Excluded information	Private address and other information not required under s152 protected	Private address and health related conditions protected	Voluntary conditions due to health unless disclosure in public interest, private address	Any conditions relating solely or principally to physical or mental capacity to practice	Details of conditions imposed for physical or mental capacity; private address	Conditions and disqualifications once spent should be removed from de-registered register	Private address protected	Not specified
De-registered register	No	No	Yes, cancelled or suspended	~~No~~ Yes – s.191C	No	Yes – information removed if reinstated	No	None
Profession-specific requirements	See Schedule 2	See Schedule 1 for boards and members	Schedule 1 for professions	None	None	None	Medical Council regulates medicine	None

PUBLICLY AVAILABLE CONTENT OF CURRENT REGISTERS – OTHER PROFESSIONS

State / Territory	ACT	NT	VIC	NSW	QLD	SA	TAS	WA
OTHER PROFESSIONS – GENERAL								
PERSONAL								
Name	Yes, current and past	Yes	Yes	Yes – 'such particulars' as necessary to keep register accurate	Yes	Yes	Yes	Yes

NSWMB Commentary on NRAIP Consultation Paper – Proposed arrangements for information sharing and privacy

State / Territory	ACT	NT	VIC	NSW	QLD	SA	TAS	WA
Address – personal	Yes	Yes	Yes	As above	Not mentioned	Yes – for contact	Yes	Yes 'or other'
Address – business	Yes	Yes	Yes	As above	Not mentioned	Not mentioned	Not mentioned	Business
Date of birth	Yes	Not mentioned	Not mentioned	As above	Not mentioned except for nurses	Not mentioned	Not mentioned	Not mentioned
Other	Photo, 100 points ID	NA	NA	NA	NA	NA	NA	Description for dentist
REGISTRATION								
Registration number	Yes	Not specified	Yes	Not specified	Not specified except for nurses	Not mentioned	Not mentioned	Yes
Date of registration	Yes	Yes	Date of first registration	Not mentioned except for nurses and midwives	Not mentioned except for nurses	Not mentioned	Yes	First registration
Class of registration	Yes, provision under which registered	Yes, conditional, special purpose, etc	Description of registration granted	Not specified	Not mentioned	Yes, general, conditional, provisional, special purpose, etc	Specialties and authorisations	Yes, provision under which registered
Registers, Divisions	Register for each profession regulated	S43 Registers; Register for each profession regulated except Roll of Nurses (s44)	Registers for each profession regulated as practitioner or student, Divisions	Not specified	Not mentioned except for nurses (registered, enrolled)	Student, general and specialist	Not specified	Medical only
Conditions on registration	Any conditions	Any under this Act	Any current condition unless voluntary	Any conditions imposed on registration or any other order	Any conditions on registration and duration	Any condition of registration or limitation to the right to provide treatment	Yes and any modification to them	Any conditions applying, any change of conditions

State / Territory	ACT	NT	VIC	NSW	QLD	SA	TAS	WA
Date and period, renewal	Date and latest renewal	Date of registration and renewals	Date of original registration	Not mentioned	Not mentioned	Not mentioned	Yes	Not mentioned
Suspensions	Yes, dates commencing and finishing	Yes, see below	Separate list of suspended practitioners to be maintained	Not mentioned	Not mentioned	Yes, reason, date and duration of suspensions	Yes, including removal from register and restoration	Details of any exercise of power
Disciplinary history	Details of any refusal to register or cancellation	Yes, renewals, suspensions removal restoration, etc	No but register of cancelled or suspended registrants kept	Any conditions imposed on registration or any other order	Not mentioned	Yes, reasons for and dates of disqualification or suspension, etc	Any conditions, suspensions, approvals their addition or removal, etc	Yes, details of any exercise of power by board or State administrative tribunal
Qualifications for registration	Yes, including training	Yes	Yes, including institution and year	Not mentioned except for dentists where board issues and accredits	Not mentioned except for nurses	Yes	Not mentioned except for dentists and nurses	All qualifications held recognised by board
Additional qualifications	Not mentioned	Not mentioned	Yes	On payment of an additional fee, extra qualifications can be noted on the register	Not mentioned except for nurses	Not mentioned	Not mentioned	All qualifications
Authorisations and endorsements	Not mentioned	Authorisations and changes	Endorsements	Not mentioned except for nurses and midwives	Not mentioned except for nurses	Specialties only	Yes	Specialties only
Other (foreign) registrations	Provide certificate of standing	Information not recorded on register	Information not recorded on register	Not mentioned	To be noted	Information kept on de-registered register	Information not recorded on register	Yes

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State / Territory	ACT	NT	VIC	NSW	QLD	SA	TAS	WA
Other disciplinary processes	Details of any refusal to register or cancellation or impositions of conditions under 'foreign' laws recorded	S28 only makes it possible to refuse or cancel registration for addiction or conviction by boards or courts elsewhere	S6 only makes it possible to refuse or cancel registration for addiction or conviction by boards or courts elsewhere	Any conditions imposed on registration or any other order	Required to be noted and acted upon under *Health Practitioners (Professional Standards) Act 1999* ss11	Information kept on de-registered register	Acts only make it possible to refuse or cancel registration for addiction or conviction by boards or courts elsewhere	Yes
Criminal record	Not mentioned	See s28 above	See s6 above	Not mentioned	Disclosure may be required by board	Acts all define unprofessional conduct to include offence punishable by one year or more	See above	Registrants must advise of any criminal or civil proceedings against them
Excluded information	Private address and other information not required under s152 protected	Private address and health related conditions protected	Voluntary conditions due to health unless disclosure in public interest, private address	Private addresses are protected	Must treat private information as confidential, private address protected	Conditions and disqualifications once spent should be removed from de-registered register	Not mentioned	Not specified
De-registered register	No	No	Yes, cancelled or suspended	No	No	Yes – information removed if reinstated	No	None
Profession-specific requirements								
Chiropractic	Schedule 13	None	None	None	None	None	None	None

State / Territory	ACT	NT	VIC	NSW	QLD	SA	TAS	WA
Dentists	Schedule 6 Dentists, dental hygienists and dental therapists all registered; defines dental specialties	Dentist, dental specialist, dental hygienist, dental therapist, dental prosthetist, dental mechanic, dental technician	Dentists, prosthetists, therapists and hygienists	Dentists and dentists auxiliaries	Dentists	Separate registers for each profession	Dentists, dental therapists and dental hygienists all have separate registers	Dentist, dental therapist, hygienist or school dentist therapist
Dentists other	Schedule 8 Technicians and prosthetists	See above	See above	Dental technicians	Dental technicians and prosthetists; profession to be specified	N/A	Dental prosthetists; all requirements as for other dentists	Dental prosthetists are licensed only – no registry details
Nurses and midwives	Schedule 3 Nurses (enrolled nurse and nurse practitioners), 4 Midwives, separate registers	Nurses register called a Roll; usual divisions	Nurses, nurse practitioners and midwives can have registration endorsed to prescribe	Register of Nurses; Register of Midwives	Registers of Nurses and Midwives; Roll of Enrolled Nurses	General nurses, midwives and mental health nurses register and roll for enrolled nurses; specialties noted	Register for registered nurses and roll for enrolled nurses	Register for all; type of registration noted
Optometrists	Schedule 11	None	Can get endorsement	None	None	None	None	None
Osteopaths	Schedule 14	None	None	None	None	None		None
Pharmacists	Schedule 5 Restrictions on ownership and requirement to register pharmacy premises	Schedule 8 Restrictions on ownership and requirement to register pharmacy premises	Can get endorsement; restrictions on owning or having an interest in a pharmacy	None	None	Registers of pharmacies and pharmacy depots also kept	Changes in business or contact address must be advised to board	Council, not board. Residence or place of business registered
Physiotherapists	Schedule 10	None	None	None	None	None	None	None

State / Territory	ACT	NT	VIC	NSW	QLD	SA	TAS	WA
Psychologists	Schedule 7 none	None	None	Residential and practice address protected	None	None	None	None
Podiatrists	Schedule 9 none	None	Can get endorsement	None	None	None	None	None

ATTACHMENT 2

NATIONAL PRIVACY PRINCIPLES

1 Collection

1.1 An organisation must not collect personal information unless the information is necessary for one or more of its functions or activities.

1.2 An organisation must collect personal information only by lawful and fair means and not in an unreasonably intrusive way.

1.3 At or before the time (or, if that is not practicable, as soon as practicable after) an organisation collects personal information about an individual from the individual, the organisation must take reasonable steps to ensure that the individual is aware of:

(a) the identity of the organisation and how to contact it; and

(b) the fact that he or she is able to gain access to the information; and

(c) the purposes for which the information is collected; and

(d) the organisations (or the types of organisations) to which the organisation usually discloses information of that kind; and

(e) any law that requires the particular information to be collected; and

(f) the main consequences (if any) for the individual if all or part of the information is not provided.

1.4 If it is reasonable and practicable to do so, an organisation must collect personal information about an individual only from that individual.

1.5 If an organisation collects personal information about an individual from someone else, it must take reasonable steps to ensure that the individual is or has been made aware of the matters listed in subclause 1.3 except to the extent that making the individual aware of the matters would pose a serious threat to the life or health of any individual.

2 Use and disclosure

2.1 An organisation must not use or disclose personal information about an individual for a purpose (the secondary purpose) other than the primary purpose of collection unless:

(a) both of the following apply:

(i) the secondary purpose is related to the primary purpose of collection and, if the personal information is sensitive information, directly related to the primary purpose of collection;

(ii) the individual would reasonably expect the organisation to use or disclose the information for the secondary purpose; or

(b) the individual has consented to the use or disclosure; or

(c) if the information is not sensitive information and the use of the information is for the secondary purpose of direct marketing:

(i) it is impracticable for the organisation to seek the individual's consent before that particular use; and

(ii) the organisation will not charge the individual for giving effect to a request by the individual to the organisation not to receive direct marketing communications; and

(iii) the individual has not made a request to the organisation not to receive direct marketing communications; and

(iv) in each direct marketing communication with the individual, the organisation draws to the individual's attention, or prominently displays a notice, that he or she may express a wish not to receive any further direct marketing communications; and

(v) each written direct marketing communication by the organisation with the individual (up to and including the communication that involves the use) sets out the organisation's business address and telephone number and, if the communication with the individual is made by fax, telex or other electronic means, a number or address at which the organisation can be directly contacted electronically; or

(d) if the information is health information and the use or disclosure is necessary for research, or the compilation or analysis of statistics, relevant to public health or public safety:

(i) it is impracticable for the organisation to seek the individual's consent before the use or disclosure; and

(ii) the use or disclosure is conducted in accordance with guidelines approved by the Commissioner under section 95A for the purposes of this subparagraph; and

(iii) in the case of disclosure—the organisation reasonably believes that the recipient of the health information will not disclose the health information, or personal information derived from the health information; or

(e) the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent:

(i) a serious and imminent threat to an individual's life, health or safety; or

(ii) a serious threat to public health or public safety; or

(f) if the information is genetic information and the organisation has obtained the genetic information in the course of providing a health service to the individual:

(i) the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety (whether or not the threat is imminent) of an individual who is a genetic relative of the individual to whom the genetic information relates; and

(ii) the use or disclosure is conducted in accordance with guidelines approved by the Commissioner under section 95AA for the purposes of this subparagraph; and

(iii) in the case of disclosure – the recipient of the genetic information is a genetic relative of the individual; or

(g) the organisation has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities; or

(h) the use or disclosure is required or authorised by or under law; or

(i) the organisation reasonably believes that the use or disclosure is reasonably necessary for one or more of the following by or on behalf of an enforcement body:

(i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law;

(ii) the enforcement of laws relating to the confiscation of the proceeds of crime;

(iii) the protection of the public revenue;

(iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct;

(v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal.

Note 1: It is not intended to deter organisations from lawfully co operating with agencies performing law enforcement functions in the performance of their functions.

Note 2: Subclause 2.1 does not override any existing legal obligations not to disclose personal information. Nothing in subclause 2.1 requires an organisation to disclose personal information; an organisation is always entitled not to disclose personal information in the absence of a legal obligation to disclose it.

Note 3: An organisation is also subject to the requirements of National Privacy Principle 9 if it transfers personal information to a person in a foreign country.

2.2 If an organisation uses or discloses personal information under paragraph 2.1(h), it must make a written note of the use or disclosure.

2.3 Subclause 2.1 operates in relation to personal information that an organisation that is a body corporate has collected from a related body corporate as if the organisation's primary purpose of collection of the information were the primary purpose for which the related body corporate collected the information.

2.4 Despite subclause 2.1, an organisation that provides a health service to an individual may disclose health information about the individual to a person who is responsible for the individual if:

(a) the individual:

(i) is physically or legally incapable of giving consent to the disclosure; or

(ii) physically cannot communicate consent to the disclosure; and

(b) a natural person (the carer) providing the health service for the organisation is satisfied that either:

(i) the disclosure is necessary to provide appropriate care or treatment of the individual; or

(ii) the disclosure is made for compassionate reasons; and

(c) the disclosure is not contrary to any wish:

(i) expressed by the individual before the individual became unable to give or communicate consent; and

(ii) of which the carer is aware, or of which the carer could reasonably be expected to be aware; and

(d) the disclosure is limited to the extent reasonable and necessary for a purpose mentioned in paragraph (b).

2.5 For the purposes of subclause 2.4, a person is responsible for an individual if the person is:

(a) a parent of the individual; or

(b) a child or sibling of the individual and at least 18 years old; or

(c) a spouse or de facto spouse of the individual; or

(d) a relative of the individual, at least 18 years old and a member of the individual's household; or

(e) a guardian of the individual; or

(f) exercising an enduring power of attorney granted by the individual that is exercisable in relation to decisions about the individual's health; or

(g) a person who has an intimate personal relationship with the individual; or

(h) a person nominated by the individual to be contacted in case of emergency.

2.6 In subclause 2.5:

child of an individual includes an adopted child, a step child and a foster child, of the individual.

parent of an individual includes a step parent, adoptive parent and a foster parent, of the individual.

relative of an individual means a grandparent, grandchild, uncle, aunt, nephew or niece, of the individual.

sibling of an individual includes a half brother, half sister, adoptive brother, adoptive sister, step brother, step sister, foster brother and foster sister, of the individual.

3 Data quality

An organisation must take reasonable steps to make sure that the personal information it collects, uses or discloses is accurate, complete and up to date.

4 Data security

4.1 An organisation must take reasonable steps to protect the personal information it holds from misuse and loss and from unauthorised access, modification or disclosure.

4.2 An organisation must take reasonable steps to destroy or permanently de-identify personal information if it is no longer needed for any purpose for which the information may be used or disclosed under National Privacy Principle 2.

5 Openness

5.1 An organisation must set out in a document clearly expressed policies on its management of personal information. The organisation must make the document available to anyone who asks for it.

5.2 On request by a person, an organisation must take reasonable steps to let the person know, generally, what sort of personal information it holds, for what purposes, and how it collects, holds, uses and discloses that information.

6 Access and correction

6.1 If an organisation holds personal information about an individual, it must provide the individual with access to the information on request by the individual, except to the extent that:

(a) in the case of personal information other than health information—providing access would pose a serious and imminent threat to the life or health of any individual; or

(b) in the case of health information—providing access would pose a serious threat to the life or health of any individual; or

(c) providing access would have an unreasonable impact upon the privacy of other individuals; or

(d) the request for access is frivolous or vexatious; or

(e) the information relates to existing or anticipated legal proceedings between the organisation and the individual, and the information would not be accessible by the process of discovery in those proceedings; or

(f) providing access would reveal the intentions of the organisation in relation to negotiations with the individual in such a way as to prejudice those negotiations; or

(g) providing access would be unlawful; or

(h) denying access is required or authorised by or under law; or

(i) providing access would be likely to prejudice an investigation of possible unlawful activity; or

(j) providing access would be likely to prejudice:

(i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law; or

(ii) the enforcement of laws relating to the confiscation of the proceeds of crime; or

(iii) the protection of the public revenue; or

(iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct; or

(v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of its orders; by or on behalf of an enforcement body; or

(k) an enforcement body performing a lawful security function asks the organisation not to provide access to the information on the basis that providing access would be likely to cause damage to the security of Australia.

6.2 However, where providing access would reveal evaluative information generated within the organisation in connection with a commercially sensitive decision making process, the organisation may give the individual an explanation for the commercially sensitive decision rather than direct access to the information.

Note: An organisation breaches subclause 6.1 if it relies on subclause 6.2 to give an individual an explanation for a commercially sensitive decision in circumstances where subclause 6.2 does not apply.

6.3 If the organisation is not required to provide the individual with access to the information because of one or more of paragraphs 6.1(a) to (k) (inclusive), the organisation must, if reasonable, consider whether the use of mutually agreed intermediaries would allow sufficient access to meet the needs of both parties.

6.4 If an organisation charges for providing access to personal information, those charges:

(a) must not be excessive; and

(b) must not apply to lodging a request for access.

6.5 If an organisation holds personal information about an individual and the individual is able to establish that the information is not accurate, complete and up to date, the organisation must take reasonable steps to correct the information so that it is accurate, complete and up to date.

6.6 If the individual and the organisation disagree about whether the information is accurate, complete and up to date, and the individual asks the organisation to associate with the information a statement claiming that the information is not accurate, complete or up to date, the organisation must take reasonable steps to do so.

6.7 An organisation must provide reasons for denial of access or a refusal to correct personal information.

7 Identifiers

7.1 An organisation must not adopt as its own identifier of an individual an identifier of the individual that has been assigned by:

(a) an agency; or

(b) an agent of an agency acting in its capacity as agent; or

(c) a contracted service provider for a Commonwealth contract acting in its capacity as contracted service provider for that contract.

7.1A However, subclause 7.1 does not apply to the adoption by a prescribed organisation of a prescribed identifier in prescribed circumstances.

Note: There are prerequisites that must be satisfied before those matters are prescribed: see subsection 100(2).

7.2 An organisation must not use or disclose an identifier assigned to an individual by an agency, or by an agent or contracted service provider mentioned in subclause 7.1, unless:

(a) the use or disclosure is necessary for the organisation to fulfil its obligations to the agency; or

(b) one or more of paragraphs 2.1(e) to 2.1(h) (inclusive) apply to the use or disclosure; or

(c) the use or disclosure is by a prescribed organisation of a prescribed identifier in prescribed circumstances.

Note: There are prerequisites that must be satisfied before the matters mentioned in paragraph (c) are prescribed: see subsections 100(2) and (3).

7.3 In this clause: identifier includes a number assigned by an organisation to an individual to identify uniquely the individual for the purposes of the organisation's operations. However, an individual's name or ABN (as defined in the *A New Tax System (Australian Business Number) Act 1999*) is not an identifier.

8 Anonymity

Wherever it is lawful and practicable, individuals must have the option of not identifying themselves when entering transactions with an organisation.

9 Transborder data flows

An organisation in Australia or an external Territory may transfer personal information about an individual to someone (other than the organisation or the individual) who is in a foreign country only if:

(a) the organisation reasonably believes that the recipient of the information is subject to a law, binding scheme or contract which effectively upholds principles for fair handling of the information that are substantially similar to the National Privacy Principles; or

(b) the individual consents to the transfer; or

(c) the transfer is necessary for the performance of a contract between the individual and the organisation, or for the implementation of pre contractual measures taken in response to the individual's request; or

(d) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between the organisation and a third party; or

(e) all of the following apply:

(i) the transfer is for the benefit of the individual;

(ii) it is impracticable to obtain the consent of the individual to that transfer;

(iii) if it were practicable to obtain such consent, the individual would be likely to give it; or

(f) the organisation has taken reasonable steps to ensure that the information which it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with the National Privacy Principles.

10 Sensitive information

10.1 An organisation must not collect sensitive information about an individual unless:

(a) the individual has consented; or

(b) the collection is required by law; or

(c) the collection is necessary to prevent or lessen a serious and imminent threat to the life or health of any individual, where the individual whom the information concerns:

(i) is physically or legally incapable of giving consent to the collection; or

(ii) physically cannot communicate consent to the collection; or

(d) if the information is collected in the course of the activities of a non profit organisation—the following conditions are satisfied:

(i) the information relates solely to the members of the organisation or to individuals who have regular contact with it in connection with its activities;

(ii) at or before the time of collecting the information, the organisation undertakes to the individual whom the information concerns that the organisation will not disclose the information without the individual's consent; or

(e) the collection is necessary for the establishment, exercise or defence of a legal or equitable claim.

10.2 Despite subclause 10.1, an organisation may collect health information about an individual if:

(a) the information is necessary to provide a health service to the individual; and

(b) the information is collected:

(i) as required or authorised by or under law (other than this Act); or

(ii) in accordance with rules established by competent health or medical bodies that deal with obligations of professional confidentiality which bind the organisation.

10.3 Despite subclause 10.1, an organisation may collect health information about an individual if:

(a) the collection is necessary for any of the following purposes:

(i) research relevant to public health or public safety;

(ii) the compilation or analysis of statistics relevant to public health or public safety; or

(iii) the management, funding or monitoring of a health service; and

(b) that purpose cannot be served by the collection of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained; and

(c) it is impracticable for the organisation to seek the individual's consent to the collection; and

(d) the information is collected:

(i) as required by law (other than this Act); or

(ii) in accordance with rules established by competent health or medical bodies that deal with obligations of professional confidentiality which bind the organisation; or

(iii) in accordance with guidelines approved by the Commissioner under section 95A for the purposes of this subparagraph.

10.4 If an organisation collects health information about an individual in accordance with subclause 10.3, the organisation must take reasonable steps to permanently de-identify the information before the organisation discloses it.

10.5 In this clause: non profit organisation means a non profit organisation that has only racial, ethnic, political, religious, philosophical, professional, trade, or trade union aims.