

**Privacy Committee of South Australia**

**Response to the Practitioner Regulation Subcommittee  
Health Workforce Principal Committee  
Australian Health Ministers' Advisory Council**

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

**CONSULTATION PAPER**

**Proposed Arrangements for Information Sharing and Privacy**

**15 December 2008**

## Introduction

The Privacy Committee of South Australia acknowledges the aims of the proposed scheme to ensure a national approach to the effective registration and accreditation of health professionals. The Committee also notes that the scheme aims to promote public safety, the maintenance and advancement of high quality health care and ensure openness and accountability in the registration and accreditation of health professionals.

The Committee's recommendations and comments on the proposals outlined in the consultation paper seek to promote high standards of privacy protection in the design and administration of the national scheme while keeping in mind the public interest in its aims.

The Committee's response has sought to address individually each of the proposals outlined in the consultation paper.

## 2 Overview of information required to operate the scheme

The Privacy Committee appreciates the specific functions of the boards and agencies in the administration and regulation of the registration of the health professions. This includes the recognition of the public interest in the proper collection, management and disclosure of the personal information of health professions to support these functions and promote public safety.

In addition to the responses to the proposals in the consultation paper consideration has also been given to the use and disclosure of information collected under the scheme for purposes beyond the core purposes of the scheme. In particular the broad arrangements for disclosure of identified and de-identified personal information and the use of information for workforce planning.

### *Information sharing protocols with Government authorities and agencies*

The consultation paper outlines that it is a function of the boards to establish information sharing protocols with a number of other Commonwealth, State and Territory Governments, the National E-Health Transition Authority (NEHTA), as well as overseas registration authorities.

Broad statements about information sharing across Government authorities and agencies may reduce registrants' confidence in the discretion of the proposed national boards and their capacity to deal appropriately and sensitively with personal information.. Any discussion or proposal of information sharing agreements should reference agencies specifically and clearly articulate both the nature of the information to be disclosed and the public interest to be served in that disclosure.

The Committee has outlined particular concerns in regard to information sharing protocols in its response to proposals at 7.1.1, 7.2.1, 7.4.1, 7.5.1 and 7.7.1.

### *Provision of de-identified workforce data to government, and as a public resource*

The consultation paper outlines that it is a function of the boards to make arrangements "to provide de-identified health workforce data to government, and as a public resource."

The Privacy Committee has a number of concerns with the proposal to make the collection of workforce data mandatory and available to government, and the public in a de-identified form.

It is not clear from the consultation paper exactly what it meant by the term “de-identified” and to what extent this process would consider issues of sample size and location and methods to avoid inadvertent identification (see further specific responses to proposals 3.8.4 and 4.1).

In addition the consultation paper has not clearly articulated the public interest in the broad availability of the workforce data nor does it acknowledge the collection of workforce data is beyond the purpose of the registration and accreditation process.

### **3 Information to be collected**

#### **3.1 Information to be collected for initial registration purposes**

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

While the Privacy Committee supports the intent of this proposal it is suggested that any requests for information will also indicate the particular boards usual practices in terms of disclosure, and if applicable, the fact that the request is authorised or required by law.

**Proposal 3.1.1:** It is proposed that the national scheme legislation provide for the following key categories of information for the registration of individuals: name and contact details; date of birth; qualifications; overseas trained registration details; details of recency of practice and other requirements; criminal record; professional indemnity insurance; registration details.

The Privacy Committee is generally satisfied with the key categories of information to be collected by the boards at initial registration.

In regard to the collection of criminal history checks, the Committee recommends that the legislation consider a set of relevant offences, and the exclusion of spent convictions for minor or irrelevant offences. The Committee also recommends that the role of boards in managing criminal history information be examined. It is not clear from the consultation paper exactly what criminal history information will be collected. If criminal history checks are to be retained by the board, how will they manage the storage, access and security of that information? Registrants should also be given the opportunity to check the accuracy of any information and seek correction if appropriate.

#### **3.2 Employer Details**

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

There are two options to give effect to this arrangement:

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

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

The Privacy Committee appreciates the public interest in the need for national boards to be able to notify employers when a practitioner's status changes or conditions are placed on practice. The Committee recommends option 2 in proposal 3.2.1.

If the board only needs to notify employers in circumstances where a practitioner's registration has changed then it should only need details of employers in those circumstances. Employer details in the medical profession can be very dynamic, with many practitioners' working for multiple employers and worksites at any given time. It may require significant administrative effort for boards to ensure employer information held is up to date. If information was collected at registration and renewal, the boards would still have the power to request this information, as necessary, in order to ensure full employer notification, as the practitioner's employer details may have changed after registration or between renewals.

Practitioner employer information should only be collected as and when it is necessary to ensure public safety and proper registration of practitioners. The collection of employer information where it is not specifically required for notification to ensure public safety could promote arbitrary interference with practitioner employment or the use of the information for other purposes.

### 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 health identifier in the new registration system.

The Privacy Committee has no objection to allocation of a unique identifier for the purposes of administering the new registration system.

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

The application of a unique identifier should be to support the purposes of the national scheme, that is, the best quality registration and accreditation system for medical professionals and the promotion of public safety. Consideration of the application of the unique identifier for other purposes, specifically its utilisation by NEHTA and Medicare Australia, does not support the core purposes of the scheme. It should be noted that the potential administrative benefits it might provide NEHTA and Medicare are not directly related to the purpose and aims of the scheme.

### 3.4 Identity checking on registration

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

There are three options to give effect to this arrangement:

Option 1: all boards 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 for their profession.

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

The Privacy Committee supports boards being given the power to require identity checking. The scheme should consider the standard for identity checking in light of developments associated with the National Identity Security Strategy. This includes moving away from the “100 point” identity check and the development a standard framework for Proof of Identity (POI). The Committee recommends that any decision on proof of identity checks for the scheme should take into consideration the Proof of Identity Framework approved by the Standing Committee of Attorney’s General in 2004.

The consultation paper does not provide any discussion on the specific procedures associated with identity checks. The boards would have to consider whether they would be holding or recording any information as part of the identity checking and verification process. If information is to be recorded, the boards will need to ensure it is stored and managed securely or disposed of when no longer required.

### **3.8 Information to be collected for workforce planning purposes**

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

The collection of practitioner information under the new system is for the primary purpose of ensuring proper registration and the maintenance of public safety. The collection of practitioner information for workforce planning purposes does not seem to support the primary purpose of collection. The Privacy Committee does not support the mandatory collection of practitioner information for the broad purpose of workforce planning.

The Committee understands that currently workforce-planning data is collected via voluntary paper based surveys carried out separately in each jurisdiction. There is appears no reason why a nationally standardised survey could not be conducted electronically at the time of registration and 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.

(see response to 3.8.1)

**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.

(see response to 3.8.1)

**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.

As outlined in its response to proposal 3.8.1, the Privacy Committee does not support the mandatory collection of practitioner information for the broad purpose of workforce planning.

The de-identification of any personal information specifically collected for workforce planning must take into consideration the sample size of specific data to ensure practitioners are not inadvertently identified. This is particularly relevant when considering the information of practitioners located in regional and remote communities, where geographical location information may easily identify specific practitioners (see also 4.1).

**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.

(see response to 3.8.4)

## 4 Publicly available information

### 4.1 Information on the public register

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

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

The Privacy Committee is generally satisfied with the proposed categories of information to be held on the public register. However, in regard to the recording of the postcode of the contact address and the name of postcode area, some consideration should be given to the likelihood that the listing of the postcode could provide an unreasonable disclosure of a practitioner's location, particularly in regional and remote communities. Consideration should be given as to whether it would be appropriate to allow for the suppression of location information on the public register where it poses a serious threat to a practitioner's safety, i.e. victims of domestic violence and victims of death threats etc.

Consideration also needs to be given as how the information on the register will be made available to the public. In recent times the Privacy Committee has received a number of complaints concerning public registers, particularly where the register has been made

available electronically on the Internet and information is searchable through a popular search engine.

## 4.2 De-registered practitioners

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

The Privacy Committee does not support proposal 4.2.1. If tribunal decisions in relation to investigations into the conduct of practitioners are published there seems little reason to maintain the names of de-registered practitioners on the public register. If they are no longer registered, and therefore no longer on the register, they are unable to practice and therefore do not pose any risk to public safety. It is understandable that the board would need to keep records of de-registered practitioners for future reference and assessment of registration applications. However, the consultation paper does not make clear what public interest is served in maintaining the names of de-registered practitioners on the public side of the register.

## 4.3 Recording of conditions on practice

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

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

The Privacy Committee notes the public interest in the recording of restrictions of practice on the public register. Restrictions on practice should indicate the limits of the practitioner's registration in practical terms. If restrictions on practice are published, it is not clear in what circumstances the public interest would be served in the disclosure of a practitioner's specific medical condition. This is considered sensitive information and the practical consequences of negative and ill-informed perceptions arising from such a disclosure may hamper a practitioner's ability to practice at all, even though it may be completely safe for them to do so within the conditions of registration.

## 4.5 Release of public register information

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

The Privacy Committee recommends limiting the ability for bulk downloads of information from the public register. It would also recommend there are limits on access to bulk copies or large extracts of the register. If the register can be searched by name or registration number, on the Internet or at a public office, it is not clear in what circumstances it would be in the public interest to provide a person with a full copy or large extract of the register.

The Privacy Committee also recommends the new legislation outline the specific purposes for establishing the public register and outline proper uses for information obtained from the register. Prescribed purposes for the use of information obtained from the register could be established with penalties for inappropriate use.

#### 4.6 Public access to the findings of formal proceedings

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

The Privacy Committee supports the proposal to publish details of conduct decisions of Tribunals where it is in the public interest to do so.

The Committee notes that it is likely the public interest would not be served by the publication of conduct findings where the registered practitioner was cleared of any wrongdoing, particularly if the findings restate the original allegations or suspicions of misconduct.

**Proposal 4.6.2:** There is a public interest in making board or committee (Tribunal?) 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 (Tribunal?) 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.

As per the response to Proposal 4.6.1, conduct decisions should only be published where it is in the public interest to do so. The board should provide clear guidance to registered practitioners as to the circumstances that would lead to the publication of conduct decision.

The publication of conduct decisions should also take into consideration the privacy of the information of patients and third parties to the tribunal's investigations. If conduct decisions are published the de-identification of patient and third party information should also consider issues of fine geography, particularly in relation to individuals from small and regional or remote communities.

## 5 The privacy regime

### 5.1 Legislative options

**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.

The Committee has no objection to Proposal 5.1.1. The private health sector is subject to and familiar with the current national privacy principles so it would make sense that they apply to the scheme.

## 5.2 Reference or incorporation

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

The Committee supports proposal 5.2.1.

## 7 Information sharing

### 7.1 Enabling e-health developments

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

The Privacy Committee supports proposal 7.1.1 in part. It would be sensible to ensure the legislation prevents the adoption of the scheme's health practitioner identifier for other purposes and other bodies. However, the Committee questions the need to provide for an exemption to allow the adoption of the identifier for the purposes of e-health (see response 3.3.2).

### 7.2 Research

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

The research provisions of the National Privacy Principles should provide sufficient scope to allow for the use and disclosure of personal information collected as part of the scheme for research purposes (including statistical research). The conditions applied by the National Privacy Principles include the review of the proposed research by a properly constituted Human Research Ethics Committee.

The de-identification of any personal information for research use must take into consideration the sample size of specific data to ensure practitioners are not inadvertently identified. This is particularly relevant when considering the information of practitioners located in regional and remote communities, where geographical location information may easily identify specific practitioners.

### 7.3 Professional Services Review Scheme (PSR Scheme)

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

The Privacy Committee has no objection to proposal 7.3.1.

## 7.4 Medicare Australia

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

The Privacy Committee has no significant objection to proposal 7.4.1. However, the specified purposes for disclosing information to Medicare need to be carefully considered to ensure that they only apply to matters of significant public interest, such as ensuring public safety, rather than simply matters of administrative efficiency.

## 7.5 Overseas trained practitioners

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

The application of the National Privacy Principles should provide sufficient scope for the disclosure of information to DIAC to support their regulatory role.

## 7.7 State and Territory government health bodies

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

The Privacy Committee has no significant objection to proposal 7.7.1. However, the specified purposes under which information can be disclosed to State and Territory Government health bodies should be related only to matters of significant public interest, such as ensuring public safety, rather than simply matters of administrative efficiency.

## 7.8 Notification to Commonwealth, State and Territory health departments

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

The Privacy Committee supports proposal 7.8.1.

## 8 Health records

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

The Committee is not convinced that the national boards are the appropriate body for undertaking the role outlined in proposal 8.1. The storage and management of patient files, including redistribution, has the potential to require significant resources. It would require boards to develop expertise in records management and secure storage. In addition, under these circumstances the records should remain within the State or Territory where they were created and be the responsibility of the State or Territory Government not the Commonwealth.

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