

**National Registration and Accreditation Scheme  
Consultation Paper –**

**Proposed arrangements for information sharing and privacy.**

**Submission on behalf of**

**The Royal Australasian College of Physicians**

**23 December 2008**

## **Introduction**

The Royal Australasian College of Physicians (RACP) supports the concept of a national registration and accreditation scheme for medical practitioners as it believes such a scheme would: -

- ensure that patient safety and the quality of patient care provided to all Australians is not reduced or compromised in any way;
- facilitate the ready movement of registered practitioners across Australian jurisdictional boundaries;
- be supported by nationally uniform policies and regulatory guidelines and not rely on mutual recognition of jurisdiction-based registration; and
- protect against unilateral departures from uniformity over time by individual jurisdictions as political responses to subsequent events within those jurisdictions.

The College has undertaken a review of the “*Consultation Paper – Proposed arrangements for information sharing and privacy*” - and feels that there are a number of proposals that require its comment.

The College broadly supports this paper and the proposals within it. In particular we support the collection of accurate and comprehensive national workforce data of medical practitioners for the purpose of developing an evidence base for workforce planning and to allow cross-jurisdiction comparability. We also support (restricted) data being available to the public, where in the public interest. It is important to achieve a balance between protecting public safety as well as the privacy of medical practitioners.

The College would however like further clarification on certain aspects of the proposed arrangements, particularly in relation to the protection of practitioner information that is not in the public interest, the criteria for how the public interest is to be measured (and by whom), and assurances that data collection will not be too onerous or lead to greatly increased costs for registrants. The need for the consultation paper to be sufficiently flexible in its terms to cover the diverse range of health professions encompassed by the Schemes proposals and the consequent lack of clarity and specificity is recognised, but these concepts need to be further considered and more stringently explained before we can offer our full support. Specific issues are noted below under the appropriate sections.

The College would also like to comment on the potential confusion coming from the overlap between this paper and the Registration paper. It is proposed that the approach taken in this consultation be re-considered before the next round of consultations. For example, on the issue of personal indemnity insurance, it is unclear whether registrants will have to have this prior to registering, which would prove very costly, as the workplace might require registration prior to a job offer.

The position of the College on various matters raised in the consultation paper, are set out below.

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

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

The College has no issue with the categories of information to be collected, as long as the process is not overly onerous for registrants, and does not invoke excessive costs.

The College supports the limitations on what data is to be made available on the public register.

#### **f) Criminal record.**

The College notes this subject has already been covered in the Consultation paper on Registration Arrangements, but would like to take this opportunity to state their preference for **Option 3 for proposal 4.3.1 of the Registration paper**, relating to criminal history checks:

**Option 3:** The legislation require criminal history checks on all new applicants for registration, with a discretionary power for boards to require checks at annual renewal, and self-declaration obligations imposed on registrants both at annual renewal and during the registration period.

#### **3.2 Employer Details**

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

There are two options to give effect to this arrangement:

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

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

**The College supports OPTION 2 in the interest of reducing unnecessary data collection, while still maintaining that submission of this data may be necessary in particular circumstances, and can be requested of practitioners.**

**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 College requires further clarification on the potential usage of the unique identifier by NEHTA and Medicare Australia, and specifically on how this information will be protected before it can support this. The concept of 'public interest' also needs to be more clearly defined, as does who will make this decision.**

### **3.4 Identity checking on initial registration**

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

There are three options to give effect to this arrangement:

**Option 1:** All boards to require identity checking on initial registration post 1 July 2010, but not for existing registrants.

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

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

**The College supports OPTION 1, on the proviso that this does not lead to an excessive increase in costs for new registrants. Given that the onus will be on registrants to provide identification, the impact on boards should be limited, and therefore should not impact on costs.**

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

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

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

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

**The College supports the creation of the national dataset for workplace planning purposes, and the additional questions as outlined. However, the College would like it noted that it does not support additional onerous or unnecessary burdens on practitioners through increased data requirements, and asks that this be borne in mind throughout the development of the new arrangements. The College acknowledges the statement in proposal 3.8.1 that the data collection will only be permitted if “it is not too burdensome”, but requires further clarification of the parameters.**

**We support the continuing involvement of AIHW in the management of workforce planning data.**

#### 4. Publicly available information

##### 4.2. De-registered practitioners

There are four options for recording de-registered practitioners.

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

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

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

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

**The College does not support proposal 4.2.1, and instead proposes that that OPTION 1 be adopted. All that the public and potential employers need to know is that the practitioner is no longer registered. It is not necessary that the actual reason for the de-registration, be it personal choice, a matter of conduct, or so on, be published in the public domain.**

**The College further suggests however that this information be available upon request, if it is judged that there is sufficient public interest to warrant this. As noted previously, the test of what determines whether something is in the 'public interest' will need to be clarified.**

**It seems appropriate that all de-registered practitioners are treated the same, and those currently listed as de-registered for conduct reasons should continue to be on the new list along with those newly de-registered for conduct reasons.**

##### 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.

**There is concern about what the interpretation of a 'health condition' by the general public might be upon viewing this on the register, and if it might have unwarranted negative implications for the practitioner. If there are no limiting factors or restrictions on practice identified, then it does not seem necessary to include information on the public register. Unless there is indisputable public interest in a practitioners health condition, i.e. that it would affect their professional work, then there appears no cause for this information to be released.**

#### **4.5. Release of public register information**

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

**The College is seeking clarification as to whether the entire register can be obtained via these means (noting that this is not permitted at 4.4 Online Public Register).**

**Relating to this, the College is seeking clarification as to whether any data provided through these means would be released digitally, wherein it could be used in a similar way to an online register and therefore more likely to be used for inappropriate purposes (as outlined in 4.4 Online public register), or only in hard copy/ paper form? Allowing the complete register to be available in digital form would be the same as allowing the whole register to be downloaded on line, which is accepted as inappropriate.**

**The College is also seeking clarification on who would make the judgement over the whether data is in the public interest, and what criteria would be used for such decisions?**

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

**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.

**The College suggests that further clarity is required on the criteria for making certain decisions confidential, and whether or not such judgement can be repealed? It is arguable that matters of conduct will be in the public interest, and therefore OPTION 1 should be taken.**

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.

**The College would question the removal of old decisions when 'no longer relevant', and would seek clarity as to what this means e.g. is the judgement of irrelevance related to the passing of a certain period time or specific to the issues of the case?**

## **5. The privacy regime**

### **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

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

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

(c) Use an existing State or Territory law

**Option 2:** A bespoke privacy law

***The College supports the adoption of OPTION 1, the use of the private sector provisions of the Privacy Act 1988. Adopting this structure will mean utilizing already existing and successful provisions, will prevent possible confusion with existing state or territory legislation, and avoid the various costs involved with developing and passing a new bespoke law.***

## **7. Information sharing**

***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.

***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*.

***In principle, the College has no issue with sharing information with Medicare and with DIAC. However, the circumstances wherein this data transfer might exist require further clarification before these proposals can be supported.***