

NEW SOUTH WALES MEDICAL BOARD

Response to NRAIP Consultation Paper – Other matters for Inclusion in Bill B

22 December 2008

The Other Matters Consultation Paper focuses principally on administrative issues which will have a significant bearing on how NRAS functions, in particular, delegation powers, committees, and interaction with other legislative schemes.

The New South Wales Medical Board Submission reflects its views expressed in relation to other Consultation Papers, namely that there needs to be maximum flexibility in powers of delegation and provisions relating to Committees, appointment of members to Committees, etc. In the complex environment with a high volume of business, the Board, or the various committees, panels, etc, exercising functions under the legislation must be able to do so in a reasonable timeframe, and with a degree of flexibility that will ensure that the right people are able to serve, and that decisions can be made and implemented effectively and rapidly.

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

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Other matters for inclusion in Bill B

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

CONSULTATION PAPER

Other matters for inclusion in Bill B

Issued by the Practitioner Regulation Subcommittee
Health Workforce Principal Committee
Australian Health Ministers' Advisory Council
12 November 2008

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ATTACHMENT 1: Delegation powers in State and Territory and New Zealand registration legislation

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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.

The paper outlines proposals and seeks comment on a number of matters that either have not been addressed in previous papers, or require further elaboration, in order to prepare advice to Health Ministers on the detail of the proposed scope and operation of the scheme.

1.2 Overview of the implementation of the national scheme

The national scheme was 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 covered those aspects of the IGA that address the structural elements of the new 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
- complaints, conduct, health and performance arrangements
- accreditation 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 in October and one in November 2008.

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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 carry 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 the fifth 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.

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 “Other Matters Submission, Attention: Practitioner Regulation Subcommittee”, at nraip@dhs.vic.gov.au by close of business on Tuesday, 23 December 2008. Please note that your submission will be placed on the website after the closing date for all submissions unless you indicate otherwise.

2 Statutory functions of national boards, national agency and Australian Health Workforce Advisory Council

The *Health Practitioner Regulation (Administrative Arrangements) National Law Bill* (the ‘National Law Bill’), sets out the statutory functions for the respective bodies under the scheme. Specifically, clauses 42(1), 26(1) and 20(1) set out the principal functions of the national boards, the national agency and the National Agency Management Committee.

The statutory functions of these bodies are framed narrowly in the National Law Bill, since they relate only to the set up phase of the scheme. The second stage of legislation will require more extensive provisions to give effect to the full scope of the scheme, for example, in order to confer on the national boards their full range of functions to register practitioners, receive and investigate complaints and deal with health, performance and conduct matters. These statutory provisions will be based on and will reflect the functions listed in the IGA.

With respect to the Australian Health Workforce Advisory Council (Advisory Council) clause 14 of the National Law Bill sets out the statutory functions of the Advisory Council. This clause replicates the provisions of the IGA.

3 Delegation powers of national boards

3.1 Background

Clause 46 of the *National Law Bill* sets out the powers of delegation of the national boards. For the purposes of establishment of the scheme, and because no registration or disciplinary powers will be exercised during this phase, these provisions have been framed broadly to enable maximum flexibility in delegations during the establishment phase.

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Clause 45 of the *National Law Bill* provides powers for a national board to establish committees to develop health profession standards, or to exercise any functions of the board or provide assistance to the board in the exercise of its functions. Clause 45(3) provides that members of a committee are to be selected and appointed in accordance with a procedure approved by the Ministerial Council.

To ensure timely and responsive decision making, it will be important for the second stage legislation to provide the flexibility for decisions to be taken, at the discretion of a national board, at either the national level (by the board itself or a committee of the board) or at a regional or State or Territory level, and by a range of persons. It is also important that the delegation arrangements provide for sufficient transparency and accountability in decision making including the right of review of delegated decisions.

3.2 The national scheme environment

The purpose of the national legislative scheme is to protect the public. Therefore, boards must be empowered to deal efficiently with the substantial administrative demands of the registration process, but also to take responsive action, for example, to deal immediately and swiftly with practitioners whose continued practise presents a risk to public health and safety, via imposition of conditions or immediate suspension of registration.

As discussed in previous consultation papers, it is important to observe the difference between the national scheme and current State and Territory schemes. First, the scale of the scheme is different and in some cases very different from the matters current boards administer. It is unlikely that the new national boards will handle any particular matters themselves. Rather they will be engaged in setting directions, appointments and broader policy and standard-setting matters. The requirements for decision-making below the level of the board will therefore be larger in the new scheme.

Second, the ten professions that will be part of the scheme when it commences differ both in the size and the complexity of their operational requirements. As a result, care is needed not to impose through the national legislation a set of requirements which while suitable for medicine or nursing would be unnecessary and inefficient for much smaller professions.

While the system should seek to minimise the administrative load on the smaller Boards, it should do this by enabling them to opt out or not have to follow any such requirements. In most cases the complexity is there for good reasons, and it would be a significant threat to the ability of the bigger Boards to regulate in the public interest if operational requirements were oversimplified to make it easier for the smaller Boards.

In order to determine the most suitable delegation arrangements for the national scheme it is useful to understand, first, the types of committees that might operate and the types of key decision making powers that they might exercise.

3.3 Types of committees

There are three types of committees that a board might establish and operate under the national scheme:

- ‘advisory’ committees – such committees might be established from time to time by a board, pursuant to its general powers to establish committees, and would operate in an advisory capacity
- ‘delegated’ committees – such committees might be established by and operate in accordance with a written delegation from a board, and

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- ‘statutory’ committees – such committees might be established by a board, but constituted in accordance with the legislation, with powers conferred by legislation to make statutory decisions (such as those outlined below) on their own authority rather than under a delegation.

All State and Territory registration Acts make provision in some form for these three types of committees. With respect to statutory committees, the most common form in legislation is the committees or panels that are established by boards from time to time, to hear disciplinary matters arising from complaints or notifications to the board.

3.4 Key decisions

With respect to the functions that are to be conferred on the national boards in the second stage legislation, for each main function there are a number of types of key decision that will be required. These include but are not limited to:

Registration function:

- Decision to register
- Decision to refuse to register
- Decision to impose conditions on registration
- Decision to refuse to endorse registration or impose conditions on an endorsement

Complaints handling and performance, health and conduct management functions:

- Decision to immediately suspend registration in response to possible risk to public health and safety
- Decision following preliminary assessment of a notification
- Decision to impose conditions on registration or accept undertaking
- Decision following a hearing
- Decision to refer to external tribunal for hearing

Course approval function:

- Decision to approve a course of study for registration purposes
- Decision to refuse to approve a course of study for registration purposes.

In existing State and Territory registration legislation, the extent to which the legislation provides for the key decisions listed above to be delegated beyond the board or a statutory committee of the board varies considerably across jurisdictions (See [Attachment 1](#)), although a trend is apparent, towards statutory provisions that allow a board greater flexibility to delegate, at its discretion, decision-making beyond the board itself, to committees and/or staff of the board.

In New Zealand for example, Clauses 17 and 18 of Schedule 3 of the *Health Practitioners Competence Assurance Act 2003* provide for a broad delegation power (that is, any decision of the board can be delegated except for hearings that must be conducted by a statutory panel appointed by the board). There are, however, some checks and balances on the exercise of delegated decision making – the legislation provides a right for a person who is adversely affected by a decision made under delegation, to seek a review of the decision to the authority within a specified timeframe. The authority can also delegate the conduct of the review.

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3.5 More flexible committee arrangements

The consultation papers on registration arrangements and complaints outline a proposed schema for how the decisions outlined above might be made under the national scheme, and the extent of delegation powers available to boards (see section 6.2 of registration arrangements consultation paper and section 5.4 of the complaints consultation paper).

Initial feedback on these papers suggests some concern about the complexities of proposed arrangements, with multiple statutory committees established under legislation to make various types of decisions. Some submissions have advocated more flexibility for national boards to have discretion to delegate decision-making, in effect to 'delegated' committees, rather than establishing a series of statutory committees under the legislation.

In response to this feedback and in order to further gauge views, this paper proposes a revised model of committee and delegation arrangements under the new scheme.

Given the need for flexibility and responsiveness of decision making, and for certain decisions to be taken at the local State and Territory level, it may be preferable for the legislation to make provision for more flexible delegation powers than those proposed in the consultation papers on registration arrangements and complaints, but which provide sufficient safeguards and accountability.

In this context, it is proposed that the second stage legislation include more flexible delegation arrangements along the following lines:

Proposal 3.5.1: It is proposed that the second stage legislation provide a broad delegation power (as in Clause 46 of the National Law Bill), that would allow a national board to delegate any of its functions, including all of the key decisions listed above, to committees of the board or to staff or other persons, other than the power of delegation. Under such an arrangement, a board would have the discretion to determine the constraints or boundaries placed on any delegation, as well as the number and make up of any committees it requires in order to make key decisions listed above.

Supported.

The only exception to this arrangement would be the conduct of a hearing (of a health, performance or conduct matter), where the legislation would contain specific provisions that limit the discretion of boards in the way such matters are conducted.

Hearing panels would be convened at the discretion of the board as a matter indicates, but once appointed, would act under their own statutory powers in making decisions. They would be 'statutory committees' in the sense that the legislation would set out, amongst other things:

- the minimum requirements concerning the constitution of a hearing panel
- any procedural requirements
- the findings and determinations or orders available to the panel following a hearing and
- review rights.

Proposal 3.5.2: It is proposed that the only statutory committees in the new scheme would be panels convened for the purposes of hearing individual matters (health, performance or conduct).

Supported

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Proposal 3.5.3: It is proposed that the legislation require a minimum of three members on a panel for the purposes of statutory decision-making with at least 50 per cent and no more than two thirds of the members being registrants from the profession concerned and at last one member being a community member.

As a safeguard against prejudging matters before a panel, a panel should not include any person who was a member of the board or committee that took the decision to refer the matter to the panel.

Supported.

Proposal 3.5.4: It is proposed that the legislation provide that a panel should not include any person who was a member of the board or committee that took the decision to refer the matter to the panel.

There may be some circumstances where there is no detriment and positive advantages in having someone sitting on a panel who has previously dealt with a matter. Often in Health and Performance proceedings, there will be a number of panels and hearings over the course of a practitioner's involvement with the Program. It will often be both practical and appropriate for a panellist who is familiar with the case and has established a rapport with the practitioner to be involved on an ongoing basis. This would always be subject to the requirement of natural justice and apprehended bias.

Proposal 3.5.5: It is proposed that where a board establishes any committee other than a statutory committee or panel that the composition is not prescribed in legislation but rather is a matter for the board to determine in line with any directions from Ministerial Council.

Supported.

3.6 Further safeguards around delegations

If more flexible delegation arrangements are included in the legislation, then it would be desirable for the legislation also to include some checks and balances on the operation of delegated decision making. The next section considers the constraints that should be imposed in relation to the appointments of committees. Other provisions are set out below.

Proposal 3.6.1: It is proposed that the legislation provide for safeguards relating to the delegation of board powers as follows:

- a delegation must be in writing and specify the person or persons to whom the delegation made, the decision or decisions that may be taken under delegation, and the period to which the delegation relates, as well as any conditions the board has attached to the exercise of the decision making under delegation, and include the ability to rescind a delegation
- a right of review for a person whose interests are affected by a decision made under delegation similar to the rights of review against decisions of the board itself (with powers for the board to delegate the conduct of such a review)
- a statutory limit on the length of time a practitioner's registration may be suspended without review by the board (or delegate of the board)
- a right of review for key registration and panel hearing decisions, as outlined in section 10 of the complaints consultation paper, to the relevant State or Territory tribunal for decision

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- general and specific provisions with respect to conflicts of interest that require a person to exclude themselves from decision-making in the event of a conflict, including, for example, where a small number of practitioners operate in a single geographical area, and
- general provisions with respect to procedural fairness, such as separation of powers between original decision making and review of decisions.

The principle of a right of review against decision-making is supported, but it should not be too prescriptive. For example, a decision made by a staff member under delegation may be reviewed by being referred to internal review, or review by a Committee of the Board, followed by a further review to the full Board, or possibly the Tribunal. The appropriate avenues for review would depend upon the nature and level of the decision.

4 Appointments to board (non-statutory) committees or (statutory) panels

The IGA provides (Clause 1.26 of the attachment) that committee members will be drawn from a process approved by the Ministerial Council. Clause 6.10 of the IGA states *‘To further ensure a smooth transition to the scheme, all existing members of jurisdictional boards and supporting hearing panels for the nine professions will, if they agree, be appointed to a list of persons from which national boards may form committees for a period of two years from commencement of the operation of the scheme’*. These transitional provisions will be included in the national legislation.

While the IGA has provided a method for appointment at the commencement of the scheme, consideration now needs to be given as to what type of process the Ministerial Council might approve for the appointment of members of committees and panels not covered by the transition arrangement. Boards will need an efficient mechanism for accessing such persons, sometimes at short notice, particularly for panels.

The process of selection and appointment of members who sit on ‘statutory’ committees or panels (and how this is reflected in legislation) may be different to the process for other committees that exercise powers under delegation or committees which are advisory only.

Proposal 4.1.1: With respect to advisory committees, it is proposed that the legislation, while providing powers for boards to establish such committees, would be silent on the process through which a board might select members of its advisory committees. This would afford a board maximum flexibility to determine their terms of appointment.

With respect to committees established by boards for the purposes of decision making under delegation from the boards, there are three options:

- Option 1:** The legislation empowers boards to appoint persons to such committees in accordance with a process approved by the Ministerial Council. The Ministerial Council process requires:
- an open and transparent process where nominations are sought publicly from individuals and professional bodies
 - minimum membership requirements for any committee delegated decision making, to ensure a balance of registrant and non-registrant members, and
 - appointments for periods of up to three years.
- Option 2:** As for Option 1, except that the Ministerial Council’s approved process would include a nominee of the Ministerial Council on selection panels, with that nominee not having a right of veto.

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Option 3: The legislation makes provision for any person appointed by a board to a committee delegated key decision making to be drawn from a list of persons approved by the Ministerial Council.

The key is to maximise flexibility and to ensure that procedures take into account the volume and complexity of work undertaken by bigger Boards.

In addition to twenty Board members, the NSWMB has a panel of some two hundred medical members and twenty five lay members. Notwithstanding this large pool, it is frequently necessary to go beyond it where a clinical issue arises involving a narrow specialist area or one where there are few practitioners, and hence conflict of interest questions. Accordingly, while having an appointed Panel is desirable from the point of view of transparency, it must not preclude the need for flexibility if a suitable panellist is not available.

Proposal 4.1.2: The stakeholders are asked to advise of their preferred option for appointments to committees to which board powers are delegated.

With respect to statutory panels established by boards for the purposes of conducting hearings arising from conduct, performance or health matters, while the legislation would specify procedural matters, there are three options with respect to the appointment process:

Option 1: The legislation empowers boards to appoint persons to such committees in accordance with a process approved by the Ministerial Council. The Ministerial Council process requires:

- an open and transparent process where nominations are sought publicly
- minimum membership requirements for any committee delegated decision making, to ensure a balance of registrant and non-registrant members, and
- appointments for periods of up to three years.

Option 2: As for Option 1, except that the Ministerial Council approved process would include a nominee of the Ministerial Council on selection panels, with that nominee not having a right of veto, and would provide for persons to be appointed to a list. Persons on the list would then be eligible for appointment by a board to sit on a hearing panel arising from a conduct, performance or health matter.

Option 3: The legislation makes provision for any person appointed by a board to a statutory committee or hearing panel to be drawn from a list of persons approved by the Ministerial Council.

Option 3 is preferred, but there must be scope for appointing a person with suitable skills, etc, at short notice if required, rather than involving what could be a cumbersome administrative procedure. As outlined above, a large Board with a wide and complex range of processes needs an extensive pool from which to draw suitable panel members. Even with such a pool, cases arise where a particular form of expertise not available within its members is required, and there must be the flexibility to appoint additional members at short notice.

Public solicitation is appropriate for community and general members, but it is considered that it is unlikely to attract the specialised members that will be required to deal with many clinical issues.

Proposal 4.1.3: Stakeholders are requested to advise of their preferred option for appointments to statutory hearing panels.

As for 4.1.2.

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5 Interaction of national scheme with other legislative schemes

The national scheme is to operate in concert with, and complementary to, a range of other State and Territory laws. Policy decisions are required in order to determine the nature of the interfaces between the national scheme and these other legislative schemes.

In some instances, the IGA has specified how the interface is to be dealt with, for example the following will continue to remain with all State and Territory laws applying.

- tribunal arrangements
- Health Care Complaints Commission arrangements, and
- drugs and poisons legislation.

In a number of other cases, there are alternative options available for consideration.

5.1 Options

There are six main options for determining suitable arrangements with respect to the interface between the national scheme and each of the legislative schemes listed. These are:

Option 1: One jurisdiction's law applies (for example Queensland or Commonwealth)

Option 2: All applicable State and Territory laws apply

Option 3: No jurisdiction's laws apply (for example the Bill and/or consequential amendments to other legislation specifically remove the scheme from coverage)

Option 4: Tailor made provisions are included within the legislative scheme itself

Option 5: Consequential amendments to another legislative scheme to recognise the national registration scheme (technically different to option 1, but has the same effect), or

Option 6: Interface is dealt with administratively rather than legislatively.

5.2 Criteria

There are a number of criteria that can be used to guide these policy deliberations:

- efficiency of operation – for example, the need to avoid unnecessary duplication of effort and minimise costs to boards of administering the scheme
- transparency of decision making – for example, the same rules should apply, no matter where a consumer, complainant or registrant are located
- accountability of decision makers – for example, the legislation should provide clarity as to who makes decisions under the scheme and what avenues of review are available
- consistency and/or uniformity of application across Australia – for example, wherever possible, given the objective is to establish a national scheme, national laws should apply, rather than multiple State and Territory laws.

If NRAS is to be a truly national scheme, consistency in this area must be maximised. Where Commonwealth law exists, it should apply. The recommendations following reflect this, and are supported.

Table 1 below lists each legislative area for which policy decisions are required and the proposed treatment of each with reference to the six options set out above.

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TABLE 1: State and Territory laws that will interface with the national registration scheme

Interface	Proposed approach
<i>Freedom of information</i>	<p>In order to ensure transparency and accountability in the operation of the national scheme, it is considered desirable that it be subject to a single freedom of information regime rather than multiple regimes, and that there be clarity for any person making an FOI application as to which legislative scheme applies.</p> <p>The National Law Bill gives effect to Option 1, that is, the Queensland <i>Freedom of Information Act</i> applies during the establishment phase of the scheme. However, in framing the second stage legislation, it is possible that either the Commonwealth or the Queensland FOI legislation might apply.</p> <p>Proposal 5.2.1: With respect to freedom of information, it is proposed that the Commonwealth <i>Freedom of Information Act</i> apply (Option 1).</p>
<i>Privacy & confidentiality</i>	<p>With respect to confidentiality and lawful disclosure provisions, the National Law Bill gives effect to Option 4 (tailor made provisions). It is expected that the second stage legislation will contain similar provisions imposing obligations on those administering the scheme (such as board members, committee members and staff) to keep confidential any information they obtain in the course of carrying out their responsibilities.</p> <p>Proposal 5.2.2: With respect to confidentiality and lawful disclosure, it is proposed that tailor made provisions along the lines of Clause 53 of the National Law Bill be included in the second stage legislation (Option 4).</p> <p>With respect to privacy law, the question of which privacy regime should apply to the national scheme has been addressed in a separate consultation paper titled ‘Privacy and Information Sharing’ with various options proposed. The Australian Law Reform Commission’s report on Australian Privacy Law and Practice has found Australia’s privacy laws to be multilayered, fragmented and inconsistent, causing complexity, significant compliance burdens and costs, as well as impeding projects in the public interest.</p> <p>Changes are expected in privacy regimes as a result of the report. Flexibility to adjust to future changes can be included in the national legislation.</p> <p>Proposal 5.2.3: With respect to the application of a privacy regime, it is proposed that the existing Commonwealth private sector privacy regime and the National Privacy Principles apply, and are incorporated by reference into the national scheme legislation (Option 1).</p>

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Interface	Proposed approach
<p><i>Ombudsman legislation</i></p>	<p>All States and Territories and the Commonwealth have enacted ombudsman legislation (see Attachment 5 in complaints consultation paper for summary of laws).</p> <p>The National Law Bill gives effect to Option 1, that is, the Queensland <i>Ombudsman Act</i> applies. However, further work is underway to analyse the implications of Option 1 (one jurisdiction’s law applies) and Option 2 (all applicable State and Territory laws apply) with respect to the full operation of the scheme, in order to determine a preferred position to put to Ministers. Given the need for consistency across Australia, the Commonwealth <i>Ombudsman Act 1976</i> is preferred..</p> <p>Proposal 5.2.4: With respect to ombudsman legislation, it is proposed that the <i>Commonwealth Ombudsman Act 1976</i> apply (Option 1).</p>
<p><i>Financial accountability legislation</i></p>	<p>The National Law Bill gives effect to Option 4 (tailor made provisions). This approach is considered to provide the necessary financial, auditing and reporting accountabilities. It is possible for additional provisions to be included in the second stage legislation to ensure a suitable financial accountability framework to support the full operation of the scheme, for example, to provide clarity as to the investment powers of the national agency.</p> <p>Proposal 5.2.5: With respect to financial accountability, it is proposed that tailor made provisions be included in the second stage legislation (Option 4).</p>
<p><i>Public sector administration legislation</i></p>	<p>The National Law Bill gives effect to Option 4 (tailor made provisions). This approach allows staff to be employed directly by the national agency, under relevant awards, rather than as Queensland public servants.</p> <p>This approach appears to provide the necessary independence and flexibility for the national scheme and is proposed to be carried forward in the second stage of legislation.</p> <p>Proposal 5.2.6: With respect to the employment arrangements and accountability of staff and board members under the scheme, it is proposed that tailor made provisions be included in the second stage legislation (Option 4).</p>

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Interface	Proposed approach
<p>Statutory interpretation legislation</p>	<p>The National Law Bill gives effect to Option 4 (tailor made provisions). The approach taken is to apply the interpretation provisions in Schedule 2 of the <i>Consumer Credit Code</i>, set out in the <i>Consumer Credit (Queensland) Act 1994</i>, to the National Law as if the provisions were a part of the National Law.</p> <p>Tailor made provisions are considered to provide the necessary clarity, certainty and consistency of interpretation of the legislation across jurisdictions (rather than multiple Acts interpretation regimes applying). It is proposed that tailor made provisions be included in a Schedule attached to the National Law in the second stage legislation, rather than adopted by reference from the Consumer Credit Code.</p> <p>Proposal 5.2.7: With respect to statutory interpretation, it is proposed that tailor made provisions be included in the second stage legislation (Option 4).</p>
<p>Warrant powers</p>	<p>The consultation paper on complaints proposes Option 2 (all State and Territory laws apply). This would mean that when a national board requires a warrant to enter and search premises, it would make application to the relevant State or Territory Magistrates Court (or equivalent).</p> <p>Proposal 5.2.8: With respect to warrant powers, it is proposed that the national scheme legislation require application for a warrant to be made via existing State and Territory legislation (Option 2).</p>
<p>Working with children checks legislation</p>	<p>It is proposed that Option 2 (all State and Territory laws apply).</p> <p>Protocols will be required between the national agency and State and Territory agencies that administer the working with children checks, to deal with how the agencies interact with respect to applications for checks, when matters affecting eligibility status come to the attention of either party, and the obligations on parties to inform each other.</p> <p>Proposal 5.2.9: With respect to working with children legislation, it is proposed that existing State and Territory legislation, where it exists, continues to apply (Option 2).</p>

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Interface	Proposed approach
<i>Special events legislation</i>	<p>It is proposed that Option 2 (all State and Territory laws apply).</p> <p>Special events legislation will no longer need to apply to practitioners from interstate (since they will be nationally registered). However, jurisdictions may still wish to have capacity to streamline arrangements through which practitioners from overseas visiting for large events are conferred with various authorities and/or exempted from committing holding out and other offences. Consequential amendments in Bills C may be required. Protocols may also be required between those State and Territory government departments responsible for administering special events legislation, and the national boards.</p> <p style="background-color: #e1f5fe;">Proposal 5.2.10: With respect to special events legislation, it is proposed that existing State and Territory legislation, where it exists, continues to apply (Option 2).</p>

6 Trans-Tasman Mutual Recognition and the national scheme

It is important that the national scheme is implemented in a way that implements the Trans-Tasman Mutual Recognition Principle with respect to the regulated health professions, that is, that a practitioner registered in an equivalent occupation in New Zealand is automatically eligible for registration in that occupation in Australia and vice versa. It is intended that existing linkages, for example, between national accreditation bodies and the equivalent registering authorities in New Zealand be maintained and strengthened, and that existing joint standard setting and assessment processes continue.

Proposal 6.1: It is proposed that the national scheme legislation and any consequential amendments be framed in a way that allows for the Trans-Tasman Mutual Recognition Principle, and preserves the linkages between Australian and New Zealand regulatory authorities and supports joint standard setting and accreditation.

TTMR has not applied to medical practitioners because of significant differences in entry standards for IMGs.

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**ATTACHMENT 1: Delegation powers in State and Territory and
New Zealand registration legislation**

Jurisdiction	Delegation provisions in State and Territory and New Zealand registration legislation
<p>ACT Health Professions Regulations 2004</p>	<p>Section 45. Delegation by board A health profession board may delegate a function to:</p> <ul style="list-style-type: none"> (a) a board member; or (b) the board's executive officer; or (c) a committee of the board; or (d) anyone else the board considers appropriate. <p><i>Note:</i> For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4 – provides, amongst other things, that delegation must be in writing, power to delegate may not be delegated, delegation may be made to two or more persons, appointer may exercise delegated power, etc.</p>
<p>NSW <i>Medical Practice Act 1992</i></p>	<p>Section 136. Delegation by board and Registrar</p> <ul style="list-style-type: none"> (1) The board may delegate to a person the exercise of any of its functions, other than this power of delegation. (2) The Registrar may delegate to a person the exercise of: <ul style="list-style-type: none"> (a) any of the functions of the Registrar under this Act, other than this power of delegation, or (b) any functions delegated to the Registrar by the board, unless the board otherwise provides in its instrument of delegation to the Registrar. (3) In this section, a reference to a person includes a reference to a group of persons, including a committee established under section 133.
<p>NT <i>Health Practitioners Act 2004</i></p>	<p>Section 13. Delegation</p> <ul style="list-style-type: none"> (1) A board may delegate to a person, member, committee or the Registrar of the board any of its powers and functions under this Act, other than this power of delegation. (2) A power or function delegated under this section, when exercised or performed by the delegate, is taken to have been exercised or performed by the board. (3) A delegation under this section: <ul style="list-style-type: none"> (a) must be in writing; and (b) does not prevent the exercise of a power or the performance of a function by the board.
<p>Qld <i>Medical Practitioners Registration Act 2001</i></p>	<p>Section 14. Delegation by board</p> <ul style="list-style-type: none"> (1) The board may delegate its powers under this Act to: <ul style="list-style-type: none"> (a) a member; or (b) a committee of the board consisting of appropriately qualified persons, one of whom must be a member; or (c) the executive officer; or (d) with the agreement of the executive officer--an appropriately qualified member of the office's staff. (2) However, the board may not delegate its power under this Act: <ul style="list-style-type: none"> (a) to decide to refuse to register an applicant for registration; or

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	<p>(b) to decide to refuse to renew a renewable registration; or (c) to decide to refuse to restore a renewable registration; or (d) to decide to cancel a registration; or (e) to decide to remove conditions on a registration; or (f) to enter into a service agreement.</p> <p>(3) Despite subsection (2) (e), the board may delegate its power under this Act to decide to remove internship conditions.</p> <p>(4) In this section - appropriately qualified includes having the qualifications, experience or standing appropriate to exercise the power.</p> <p><i>Example of standing for a member of the office's staff - the staff member's classification level in the office</i></p>
<p>SA <i>Medical Practice Act 2004</i></p>	<p>Section 15. Delegations</p> <p>(1) The board may delegate any of its functions or powers under this Act other than: (a) this power of delegation; and (b) the power to hear and determine proceedings under Part 5.</p> <p>(2) A delegation: (a) may be made: (i) to a member of the board, the Registrar or an employee of the board; or (ii) to a committee established by the board; and (b) may be made subject to conditions and limitations specified in the instrument of delegation; and (c) is revocable at will and does not derogate from the power of the board to act in a matter.</p>
<p>Tas <i>Medical Practitioners Registration Act 1996</i></p>	<p>Section 10. Delegation</p> <p>(1) The Council may delegate any of its functions or powers, other than this power of delegation, to a member of the Council, the Registrar or a committee.</p> <p>(2) The Registrar may, with the Council's approval, delegate any of the Registrar's functions or powers to another employee of the Council.</p>
<p>Vic <i>Health Professions Registration Act 2005</i></p>	<p>Section 133. Delegation</p> <p>(1) A responsible board may, in writing, delegate to: (a) a member of the responsible board; or (b) the registrar or another person employed by the board under section 132; or (ba) a person engaged by the board to provide services to the board - its powers and functions under this Act, other than: (c) the power to refuse to grant or refuse to renew registration or endorsement of registration; or (d) the power to impose or to amend, vary or revoke conditions on registration or endorsement of registration; or (e) the power to refuse to approve an application under Part 6 or revoke an approval under Part 6; or (f) the power to impose conditions on an approval under Part 6; or (g) the power to conduct any hearing or to make any determination under Part 3; or</p>

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	<p>(h) this power to delegate.</p> <p>(2) A responsible board may, in writing, delegate to the members of an investigations committee established by the board under Schedule 2 any of its powers and functions under Part 3 relating to investigations of health practitioners or registered students.</p>
<p>WA <i>Medical Practitioners Act 2008</i></p>	<p>Section 13. Delegation by board</p> <p>(1) The board may delegate any power or duty of the board under another provision of this Act, other than those referred to in the Table to this subsection, to —</p> <p>(a) a member of the board; or</p> <p>(b) a committee; or</p> <p>(c) a member of a committee.</p> <p>Medical Practitioners Act 2008 Part 2 Medical Board and committees Division 3 Relationship of board with Minister s. 14 page 10 No. 22 of 2008 As at 27 May 2008 Extract from www.slp.wa.gov.au, see that website for further information</p> <p>Table</p> <p>s. 30 s. 38 s. 86 s. 99 s. 31 s. 39 s. 87 s. 103 s. 33 s. 46 s. 97 s. 109 s. 34 s. 47 s. 98</p> <p>(2) The delegation must be in writing executed by the board.</p> <p>(3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.</p> <p>(4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.</p> <p>(5) Nothing in this section limits the ability of the board to perform a function through the registrar or any other member of staff or an agent.</p> <p>Note: The effect of this section and the table provisions is to prevent the board from delegating the following:</p> <ul style="list-style-type: none"> • general registration • conditional registration for internship or supervised clinical practice • conditional registration for general practice in remote and rural WA • special purpose conditional registration • registration of specialists • recommend to Governor prescribing of specialties • refusal of renewal of registration • actions following recommendations from complaints assessment committee • interim orders suspending registration or prohibiting activity, a • actions following receipt of medical examination report or report of impairment review committee • receipt of reports from various committees & actions following, including referral to tribunal • registration of previously disqualified person
<p>New Zealand</p>	<p>Section 17. Delegation by authorities</p>

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	<p>(1) Each authority may from time to time, by written notice, delegate any of its functions, duties, or powers (other than any power under section 69 or section 71) to a committee appointed under clause 16 or to its Registrar.</p> <p>(2) A delegation under this clause may be subject to any conditions stated in the delegation.</p> <p>(3) The Registrar of an authority may not under a delegation under this clause:</p> <ul style="list-style-type: none"> (a) exercise a power of decision in respect of any matter that the Registrar is required to submit or refer to the authority; or (b) review a decision made by the Registrar or by a Deputy Registrar; or (c) order or direct the Registrar or a Deputy Registrar to take any action. <p>(4) Unless otherwise provided by this clause or in the delegation, a delegate may perform or exercise a function, duty, or power of the authority delegated to the delegate under this clause in the same manner and with the same effect as if the delegate were the authority, but may not further delegate the function, duty, or power.</p> <p>(5) Any delegation under this clause may be revoked at any time, and the delegation of a function, duty, or power does not prevent the authority from exercising the function, duty, or power itself.</p> <p>(6) Every delegate purporting to act under a delegation under this clause is, until the contrary is proved, presumed to be acting in accordance with the terms of the delegation.</p> <p>Section 18. Review of decisions of delegate</p> <p>(1) A person who is adversely affected by a decision made by a person under a delegation given under clause 17 may, within 20 working days after the communication of the decision to the person, by application in writing to the authority concerned, request the authority to review the delegate's decision, and, on any such application the authority must, as soon as practicable, review the delegate's decision, and must either confirm or revoke that decision.</p> <p>(2) A person may not apply under subclause (1) for a review of a decision if the person has brought an appeal against the decision.</p> <p>(3) An application under subclause (1) for a review of a decision lapses if the applicant brings an appeal against the decision.</p>