

CT Me

In reply please quote: MB/C96/1418

29 October 2008

Ms Bronwyn Nardi  
Chair  
Practitioner Regulation Subcommittee  
Health Workforce Principal Committee

Dear Ms Nardi,

**National Registration and Accreditation Scheme**

I refer to the consultation paper Proposed Registration Arrangements for the National Registration and Accreditation Scheme.

The ACT Medical Board's response may be found attached below.

Should you have any questions in relation to this matter, please do not hesitate to contact me by telephone on 02 6205 1600. I can also be reached by email at [bob.bradford@act.gov.au](mailto:bob.bradford@act.gov.au).

Yours sincerely,

R E Bradford  
Chief Executive Officer

**ACT MEDICAL BOARD  
RESPONSE  
TO**

NATIONAL REGISTRATION AND ACCREDITATION SCHEME  
FOR THE HEALTH PROFESSIONS

CONSULTATION PAPER

Proposed Registration Arrangements

**4.2 Information required on initial application**

**Proposal 4.2.1:** It is proposed that the national boards have the power to require the following information to accompany an initial application for registration:

- a. evidence of the applicant's qualifications and supervised practice experience that they believe qualifies them for registration
- b. evidence of successful completion of an examination (if required) set by or on behalf of the responsible board
- c. evidence of previous registrations and registration status, ie disciplinary history (where the applicant has been registered under another law)
- d. information on any complaints made against the applicant to bodies such as health complaints commissioners, Commonwealth, State or Territory bodies
- e. evidence of recency of practice (except for new graduates) (see section 9 of this paper)
- f. workforce data required for national workforce analysis (further discussion of this will be provided in the information-sharing paper), and
- g. any other information reasonably required by the responsible board.

**Board Submission**

The Board believes that there needs to be further discussion on what form of information on complaints will be required. Will it be information on the particulars of the complaints or a general statement? Will applicants be required to advise about complaints that were not proven or where if proven have been expunged over time?

The drafters may wish also to consider including:

- a. evidence of a knowledge of written and spoken English adequate to allow the person to practise;
- b. evidence of indemnity insurance; and
- c. evidence of identity/ change of name.

The ACT Medical Board is concerned that there is no discussion on the requirement to provide personal information in support of an application especially given the real possibility of identity fraud. Most of this maybe self-evident (name, address etc), however, the board believes that it is important that it be in the legislation and include the need to provide evidence of any change of name.

The board is also concerned about the need for applicants to provide workforce data at time

of application for registration as it is not a recognised regulatory activity. The board would argue, that collection of workforce data in addition to the collection of registration data in support of an application is not the core business of a regulatory authority and could be a distraction from that core business. Such data should only be collected as an adjunct to the registration data the non-collection of which should not be used to defer or delay the approval by the delegate of an application for registration or annual renewal of registration. The board believes that it may be better obtained embedded in existing requirements or obtained using other recognised data such as that maintained by Medicare.

### 4.3 Criminal history checks

**Proposal 4.3.1:** There are a number of options available on or relating to requirements for criminal history checking of applicants for registration and renewal of registration:

- Option 1:** That the legislation require criminal history checks be applied to all new applicants for registration from 1 July 2010, but not to existing registrants renewing their registration.
- Option 2:** That the legislation require criminal history checks on all new applicants and at renewal of registration, but these requirements be phased in over time from 1 July 2010.
- 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.
- Option 4:** That the legislation provide the power to require criminal history checks on applicants at the discretion of the relevant board, while not making checks mandatory for all applicants.

#### Board Submission

In the ACT, criminal history checks at time of initial application for registration as a medical practitioner have been a requirement since July 2005. The board believes that criminal history screening of all applicants should be mandated in the public interest. As such the board supports Option 3 as it permits the Board to undertake regular rolling screening.

In supporting Option 3 the board is keen to get clarification of a number of issues:

- a. How will the screening of international medical graduates be conducted or will such applicants be excluded from this requirement?
- b. Will the National Board be advised of charges or convictions or both?
- a. What will be the status of expunged convictions?
- c. Will the standards of criminal history check at time of initial application mirror the standards required at time of annual renewal of registration?
- c. What type of criminal history check will be required, e.g. name only or another form?

The discussion paper remains unclear on these aspects.

## 5. Qualifications for registration

**Proposal 5.1:** It is proposed that the legislation define the qualifications for general registration to mean one or a combination of the following:

- an approved course of study
- an approved period of supervised practice (if any) (i.e. an internship), and
- an examination (if any) set by or on behalf of the responsible board.

### Board Submission

The board supports this proposal as it best describes the current structure for the medical profession. i.e. a medical qualification, a period of supervised practice and for those who do not possess the first two elements an examination pathway to meet those requirements.

The board has some concerns, however, as to whether the examinations are solely for the purposes of assessment of international graduates or are they envisaged for any other purpose such as the testing of competence, testing of equivalence of qualifications or is it envisaged for some other purpose? The board would like to see further discussion on the purpose of the examinations.

**Proposal 5.2:** It is proposed that, in addition to the powers above relating to the IGA clause 1.25(c) to register those with approved qualifications, boards have the power to register persons who have training and experience the responsible board considers to be substantially equivalent to an approved course of study and supervised practice. This will allow a national board to recognise substantially equivalent qualifications recognised by registration authorities in another country.

### Board Submission

The board in essence agrees with this approach with two caveats being:

- a. that a form of assessment or accreditation of those courses has been conducted under the auspices of the national board; and
- b. definition of “substantially equivalent qualifications” being included.

It is imperative, however, that such approvals should be linked to registration conditions that require any internationally trained practitioner to undertake orientation training to assist the practitioner to adapt to the Australian health system, culture and environment.

**Proposal 5.3:** It is proposed that qualifications that are ‘approved’ by a responsible board for the purposes of registration are not ‘prescribed in regulation’, but rather that the legislation enables boards to publish a list of approved qualifications on a website.

### Board Submission

The board agrees as this provides the national board with the degree of flexibility required in the performance of its role providing that the qualification has been through a form of accreditation within the guidelines as issued by the national board. The current tests applied by the Australian Medical Council in relation to international competent Authorities might assist in this regard.

## 6. Registration decisions

### 6.1 Powers of boards before deciding applications for registration

**Proposal 6.1.1:** It is proposed that the legislation provide for a responsible board at its discretion to exercise the following powers before deciding an application for registration:

- a. investigate the applicant
- b. require the applicant to attend before the board to answer questions about their application
- c. require the applicant to provide further information or any documents considered necessary by the board to decide the application
- d. require the applicant to undergo a written, oral or practical examination to assess the applicant's competence to practise, and
- e. require the applicant to undergo a health assessment (eg a medical examination or psychological assessment) to assess the applicant's capacity to practise.

#### **Board Submission**

The lack of detail in support of this proposal raises some concerns for the board. Whilst it agrees in principle with the power to investigate and require the applicant to appear before a board (or presumably appear before its delegate), natural justice would surely demand that there be protections and possible timeframes for such activities to be built into the legislation. Similar comments could be applied on the requirement to undergo a health assessment. What evidence would be required for a board or committee to order such an assessment?

### 6.2 Who makes registration decisions?

The statutory power to make registration decisions will reside with the respective national boards. However, because of the workload associated with the registration function for most of the professions, the legislation will need to make provision to allow decision-making on registration applications (both routine and non-routine applications) to occur at the State and Territory level.

It is anticipated that, in light of the workload, each national board will determine what functions should best be carried out nationally versus at the local level. Each board will determine the combination of committees it requires and that if the workload is relatively small, a single committee may carry out multiple statutory functions spanning the registration, investigation and disciplinary functions, either at the national or local levels. What is required in the legislation is the capacity for some committees of the board to act as the national board for the purposes of some decisions such as registration.

#### **Board Submission**

The board generally agrees with the process as described as it believes that regulatory decisions and activities are best managed at a local jurisdictional level within a national regulatory framework.

The board does, however, have some concern about multiple statutory functions being performed by a single committee. Whilst some functions could be grouped the board would suggest that health and performance programs should be managed separately from registration and discipline programs.

**Proposal 6.2.1:** It is proposed that when a committee makes registration decisions the responsible board would otherwise be empowered to make, it is constituted appropriately. In order to achieve this, the legislation would require provisions that:

- a. require a committee, when exercising registration functions, to comprise at least the following:
  - i. a chair appointed by the responsible board who may be a registrant (from the profession regulated by the responsible board), or a non-registrant
  - ii. at least two members who are registrants from the profession concerned
  - iii. at least one lawyer
  - iv. at least one community member who is not and has never been a registered practitioner in that profession, and
  - v. no more than two thirds of members being registrants from the profession concerned
- b. allow a committee to regulate its own proceedings, while requiring it to observe the principles of natural justice and procedural fairness, and
- c. allow members appointed to committees to be paid the sitting fees and allowances approved by the Ministerial Council .

### **Board Submission**

The board believes that in order for members of the medical profession not to feel disenfranchised that it is important that a medical practitioner from each state and territory be appointed to the national medical board. Similar importance is placed on such jurisdictional representation if viewed under the premise that regulation activities, such as impaired programs and performance programs as well as complaint handling and discipline is best undertaken at the local jurisdictional level. There is a certain amount of comfort to members of the health professions knowing that the various issues managed under such programs are being handled by members of the profession with knowledge of the local environment.

The board equally considers it important that community representation form a major part of committees of the national boards as well as any panel established at the local state level.

The Board remains to be convinced, however, of the necessity to have a lawyer on each local committee as it believes that appropriate national justice provisions and well-documented and implemented procedures would obviate the need for close legal involvement of the committees. The board believes that it is more important for lawyers to be appointed to notification assessment and disciplinary committees (however titled) than to registration committees.

### **6.3 Professional indemnity insurance**

**Proposal 6.3.1:** It is proposed that the legislation require registrants (except for non-practising registrants if any) to be covered by PII arrangements at all times during the registration period, as a condition of registration, and to require registrants demonstrate coverage to the satisfaction of the responsible board, at the time registration is granted for the first time, and annually on renewal of registration.

The legislation concerning PII must allow registrants to meet the requirements if they are covered by an employer's PII, their university's PII, or the PII of a health facility where they are a student, as well as when a registrant purchases their own PII cover.

**Proposal 6.3.2:** It is proposed that each national board have the power to issue a guideline about what constitutes acceptable arrangements for PII for registrants.

### **Board Submission**

In the ACT the need for PII for registered medical practitioners has been a legislated requirement since 2005. With this as background, the Board strongly agrees with this requirement.

The board further agrees that it is most appropriate for each board to issue guidelines on PII requirements which may in turn require provisions that relate to how public employees are able to address the PII requirement. In meeting this requirement currently, the board requires a written statement from the potential employer advising that the employer's insurance will cover the applicant.

## **6.4 Powers to refuse to grant registration**

**Proposal 6.4.1:** It is proposed that the legislation provide powers for a responsible board to refuse to grant registration on a number of grounds, including but not limited to the following:

- a. the applicant has not satisfied the board of their **competence to practise** in the regulated profession and this cannot be satisfactorily addressed by the imposition of conditions
- b. the applicant's **character** is such that it would not be in the public interest to allow the applicant to practise in the regulated profession
- c. the applicant is considered by the board to be unfit to practise because of **drug or alcohol dependency** or **physical or mental impairment**
- d. the applicant has been **convicted** of or made the subject of a criminal finding for an offence in any participating jurisdiction or an offence under a foreign law, and the circumstances of the offence are such as to render the applicant unfit in the public interest to practise in the regulated profession
- e. the applicant has previously been registered under this Act or a corresponding previous enactment of a participating jurisdiction, and that registration has been suspended or cancelled, or during the course of that registration, the practitioner has had proceedings brought against him or her and those **proceedings have never been finalised**
- f. the applicant has been **deregistered or suspended** under a foreign law, for any reason relating to conduct that would constitute professional misconduct under this Act, or during the course of that registration, the practitioner has had proceedings brought against him or her and those **proceedings have never been finalised**
- g. the applicant has had **insufficient recent practice** experience in the relevant profession (with the time period within which an applicant must demonstrate they have practised to be determined by the responsible board, eg two years is preferred in some professions, five years in others)
- h. the applicant's **English language proficiency** is not considered sufficient by the board for the applicant to practise in the relevant profession
- i. the applicant does not have arrangements for **professional indemnity insurance** that the responsible board considers sufficient, or
- j. the applicant is **disqualified from applying** for registration under this Act or a previous enactment of a participating jurisdiction.

It is expected that the application form for registration would require applicants to make a declaration with respect to each of the above matters, and provide supporting documentary evidence if required.

#### **Board Submission**

The Board agrees that this appears to be an appropriate list of grounds for possible refusal of registration. The Board suggests that there may be a further ground for refusal worth considering, that is refusal of registration previously by another regulatory authority.

Are all criminal convictions to be included or only those that may affect the person's practise of medicine?

The board believes that there may be some inconsistency between 6.4.1 (d) (grounds for refusal of registration based on **conviction** of a criminal offence) and the annual reporting requirements of 9.3.1 (b) (**charged** with a criminal offence). The board would argue that it is important that the same standard be applied at time of application for registration and at time of application for annual renewal of registration.

**Proposal 6.4.2:** It is proposed that the legislation provide for boards to deal with possible fraudulent registration applications. Failure to disclose relevant matters to a board (such as those listed above) might constitute a fraudulent application under the legislation. In such circumstances, the responsible board might refer the matter to the relevant State or Territory police force. In addition, it is proposed that the legislation set out a process for a responsible board to deal with a registrant whom it has reasonable grounds to believe has obtained, or is attempting to obtain registration by fraud. In such circumstances, the responsible board should be empowered to immediately suspend registration (if already granted), investigate the matter, and refer it, if necessary, for hearing by the relevant State or Territory tribunal. The tribunal would be empowered under the legislation to find that the practitioner's registration has or has not been obtained by fraud, and, if appropriate, order that the practitioner's registration be cancelled. The standard of proof that would apply in such proceedings would be on the balance of probabilities.

#### **Board Submission**

The processes as outlined appear to be suitable and are agreed to by the board. The board is interested, however, in whether there is envisaged that penalties will be included for making a fraudulent application or making false and misleading statements in support of the application. Such penalties might act as a further deterrent and would be supported by the board.

### **6.5 Refusal process**

**Proposal 6.5.1:** It is proposed that the legislation provide that in the event that a board is proposing to refuse an application for registration, or to attach conditions to a practitioner's registration, the board would be required to give the applicant notice of its proposal and provide the applicant with an opportunity to make a submission to the board. It is proposed that the legislation include timeframes for this process before a board makes such a decision.

#### **Board Submission**

The board agrees with this proposal providing that timeframes are reasonable for both parties to comply with. The 28 day period envisaged under proposal 6.5.2 would appear suitable in this regard.

## 6.6 Rights of review of registration decisions

**Proposal 6.6.1:** It is proposed that the legislation include provision for registrants or persons refused registration to have a right of review to the relevant State or Territory tribunal. It is proposed that this would be a merits review (rather than a review on points of law). The legislation would specify the following decisions as reviewable:

- a. A decision to refuse a person's application for registration or renewal of registration.
- b. A decision to refuse a person's application for endorsement of registration or renewal of endorsement (see sections 10 and 11 of this paper).
- c. A decision to impose a condition on a person's registration or endorsement of registration otherwise than by agreement.
- d. A decision to withdraw registration on the basis that a requirement for registration is no longer met.

**NOTE:** The future consultation paper on complaints and discipline will set out the proposed reviewable decisions with respect to conduct, competence and impairment proceedings.

### Board Submission

The board pending further discussion in the complaints consultation paper agrees that it is most appropriate for the jurisdictional tribunal to hear such appeals.

## 7. Types of registration granted

**Proposal 7.1:** It is proposed that the legislation enable a national board to grant any one of a number of different types of registration, depending on the circumstances of the applicant, and to impose conditions on a grant of registration. The proposed types and sub-types of registration are set out in [Table 2](#) below.

While the labels vary, most jurisdictions provide in some legislative form for the sub-types of registration listed under specific registration.

**TABLE 2: PROPOSED TYPES AND SUB-TYPES OF REGISTRATION**

| Type of registration | Eligibility  |
|----------------------|--|
| <b>General</b>       | Applicants who hold approved qualifications (and have met any other requirements set by the responsible board). This category would include practitioners who hold approved specialist qualifications in addition to their approved general qualifications, and therefore hold a specialist endorsement on their general registration.   |
| <b>Specific</b>      | Applicants who do not qualify for general registration. This type of registration would entitle a registrant to practice, subject to a specified form of restriction. The following sub-types of specific registration would apply: <ol style="list-style-type: none"><li>a. <b>Provisional</b> – to allow an applicant to undertake an internship or other period of supervised clinical practice, following graduation from an approved course of study.</li><li>b. <b>Area of need</b> – to allow an applicant to work in an area of unmet need.</li><li>c. <b>Post-graduate supervised practice or training</b> – to allow an applicant to be registered on a temporary basis to undertake a period of post-graduate</li></ol> |

|                       |  |
|-----------------------|--|
|                       | <p>training approved by the responsible board.</p> <p>d. <b>Examination candidates</b> – to allow an applicant to undertake training in preparation for an examination approved by the responsible board.</p> <p>e. <b>Teaching or research</b> – to allow an applicant to fill a teaching or research position approved by the responsible board.</p> <p>f. <b>Recognised specialist qualifications and experience</b> – to allow an applicant with approved specialist qualifications to practise in the specialty.</p> <p>g. <b>Internationally trained specialists</b> – to allow an applicant with “specialist” qualifications that are not approved to undergo further training in that specialty.</p> <p>h. <b>Temporary registration in the public interest</b> – to allow an applicant without approved qualifications to be registered for a limited period if the responsible board considers it is in the public interest.</p> |
| <b>Non-practising</b> | Applicants who would otherwise be eligible for registration but who do not intend to practise during the registration period.  |
| <b>Student</b>        | Applicants who are enrolled in an approved course of study or undertaking approved supervised clinical training in preparation for an examination for registration.  |

### Board Submission

The board agrees that this is an appropriate listing of types of registration.

The board remains uncertain as to who will be responsible under this scheme to declare an “area of unmet need”. Currently in the ACT the CEO ACT Health is the delegate, however, the board is aware that other States and Territories have varying approval systems for the declaration of a position as an area of need. Is it intended that the current state based approvals will continue to apply or is there a policy intention that a declaration of area of workforce shortage by the Department of Health and Ageing would replace such State-based approvals? The board seeks further information in this regard.

## 7.1 General registration

Registrants granted general registration hold approved qualifications (either because they have graduated from an approved course of study or because their qualifications are judged equivalent under a mutual recognition (competent authority) arrangement.

However, general registration does not necessarily mean ‘unconditional’ registration. A grant of general registration may be subject to conditions imposed by the responsible board, either at the time of registration, at registration renewal or via a disciplinary, performance or impairment process. Further details on these matters will be available in later consultation papers.

The term ‘general’ is suggested to describe the type of registration granted to those with approved general (usually undergraduate) qualifications, because it is the most commonly used term across jurisdictions.

General registration will also include the ability to have specialist endorsement notated against a registrant’s name in the register to recognise practitioners who hold approved specialist qualifications in addition to their approved general qualifications, and therefore hold a specialist endorsement on their general registration (refer to section 10.1 – Specialist endorsement).

### Board Submission

The board agrees to the use of 'general' registration and of specialist endorsements. The board does, however, request that further consideration be given to a number of areas:

- a. The ACT Medical Board currently maintains a specialist register where two types of specialist are included, the first being those specialist who also hold general registration and the second being those who do not hold general registration (i.e. IMG who have not completed the AMC examinations but who possess recognised specialist qualifications). How is it intended for these two groups to be differentiated on the register without causing confusion to the public?
- b. Is there any intention to permit those in the teaching and research category to undertake clinical activity with patient contact? If so then the category descriptor needs to be amended accordingly.
- c. Is there any intent for professionals to be able to hold concurrent registration in a number of categories? International medical graduates often seek a widening of their conditions to allow them to work outside of their limited areas of practice e.g. area of unmet need registrants in a limited area of practice seeking locum work.

The board would appreciate seeing further discussion on these matters.

### 7.3 Non-practising registration

**Proposal 7.3.1:** It is proposed to include in legislation the capacity for boards to adopt a non-practising category of registration if they wish, in order to:

- make more transparent the distinction between those registrants who are and are not in active practice
- better target competency requirements, and
- provide more accurate data for workforce planning purposes.

It may also mean some non-practising registrants maintain a connection with their profession that may facilitate their return to active practice.

**ALTERNATIVE OPTION:** Boards be required to have a non-practising category of registration.

### Board Submission

Non-practising registration has been in use in the ACT since July 2005 and the board believes that it is appropriate to maintain such a category under the NRAS model. The board's attitude on what such registrants are able to undertake under this category is included in its submission on proposal 7.3.2.

In some jurisdictions, there is a lack of clarity about what a registrant who is 'non-practising' is and is not authorised to do.

**Proposal 7.3.2:** If a non-practising registration is to be provided under the legislation, then it is proposed that those granted this type of registration registrants would be required, as a condition of their registration, not to practise at all. This means that such registrants would be acting unprofessionally (and possibly also committing an offence), if they were to breach the conditions attached to their registration. For example, if a non-practising medical practitioner were to write a prescription this would constitute active practise in breach of their

non-practising registration.

### **Board Submission**

The board strongly believes that such registrants should not practise medicine at all. Most importantly they should not be able to prescribe or refer to specialists as such referrals and prescribing are most probably limited to family and friends and as such is not good medical practice.

Such a policy stance would then beg the question as to why anyone would remain registered utilising this category and may mean that practitioners remain registered to undertake a limited form of practice. This of course may be a positive thing but as it may have ramification on regulating practice, it needs to be addressed.

## **7.4 Student registration**

**Proposal 7.4.1:** It is proposed that the legislative provisions with respect to student registration would be framed to:

- require only those students who are undertaking clinical training that involves contact with patients/clients to be registered
- empower boards to deal with students whose ability to undertake clinical training is affected by physical or mental impairment, drug or alcohol dependency, and
- give boards the discretion to include or not include a student category of registration.

Alternative options are as follows:

- Option 1:** The legislation include powers to register and regulate students, but only for specified professions and boards, for example, the medical and dental professions.
- Option 2:** The legislation include powers for all boards to register and regulate students, and student registration be mandatory, but only for those students who are undertaking clinical training, that is, those who are at the point in their course where they are in direct contact with patients.
- Option 3:** The legislation include powers for all boards to register and regulate students, and student registration be mandatory for students in all regulated professions, at the point of enrolment and for the duration of their course.

## **Board Submission**

The board supports Option 3. In particular relation to medical students, the board considers such registration should reflect registration requirements for the remainder of the profession. This should include criminal history checks.

The board believes that the focus of such student registration should be the future practise of medicine rather than current student clinical training activity. Student interaction with patients should always be under the supervision of suitably qualified practitioners and would rarely result in a student being subject to a board inquiry - more rightly should anything go wrong then it is the supervisor that would be subject to board action.

The board further believes that student registration should be linked to the need to ensure that only those who are able to practise medicine in time do so. Students are often able to pass examinations and gain a qualification but the qualification itself does not necessarily mean that the person can safely practise medicine. Often the wellness issues of individuals are recognised during their university education, however, they are generally not addressed at that time nor do they necessarily stop the student from obtaining their medical qualification. The board believes that it is better to identify such issues whilst the person is at university and for them to be addressed by the appropriate board rather than registration being possibly refused after graduation. Student registration empowers the board to undertake such remedial action prior to intern registration.

The board further believes that mandated reporting obligations should be included in the legislation and apply to employers and trainers (universities) alike.

## **8. Authorities conferred by registration**

### **8.1 Title protection**

**Proposal 8.1.1:** With respect to the use of courtesy titles, such as the title 'doctor' or 'professor', it is proposed that these not be legislated as protected titles, nor reserved for use only by members of one or a number of regulated health professions.

Therefore, unregistered persons using such titles would risk prosecution only where use of a courtesy title could, in the circumstances, lead others into believing the person is qualified and registered under the Act in a regulated health profession when they are not.

## **Board Submission**

The board agrees that this is an appropriate avenue of regulation although it would prefer that the use of titles be extended to use of specialist titles for those who are endorsed in that area of expertise. It believes that this would be advantageous to the public.

## **9. Renewal of registration and continuing competence**

### **9.1 Background**

One of the key functions of registration boards is to ensure that registered practitioners meet minimum acceptable standards of competence, and are safe to practise. The key objectives here are public safety and quality of healthcare. Historically, scrutiny of a registrant's competence has occurred mainly through the application of initial registration criteria, and thereafter, only following a complaint to the board. This was based on the expectation that membership of a profession somehow guaranteed a commitment by the practitioner to keeping their skills and knowledge up to date. However, in response to increasing community expectations, the powers of many registration boards have been strengthened in

recent years. Boards are now expected to be more proactive with respect to ensuring practitioners are safe to practise.

There is a range of indirect or proxy measures of competence and a range of systems that have been developed. These include requirements for 'recency of practice' and participation in continuing professional development (CPD), self assessment and self-declaration against established competencies, performance assessment by boards, and credentialing by health service agencies, etc. Some State and Territory Acts contain provisions that empower registration boards to require practitioners demonstrate recency of practice, self-assessment, or CPD participation. See Attachment 6 for an overview of existing State and Territory registration mechanisms for ensuring competence.

Clause 1.25 of Attachment A of the IGA provides a role for the national boards to manage the development of standards and requirements, including with respect to registration, competency, and CPD.

Under the national scheme, a board must have sufficient powers to satisfy itself of the competence and fitness to practise of a practitioner, both at initial registration, and at renewal of registration. In addition, boards must be in a position to monitor the ongoing competence and fitness to practice of registrants, during the registration period.

#### **Board Submission**

The board strongly supports the intent outlined above. The legislation in the ACT treats an application for annual renewal of registration the same as an application for registration. The board is able then at time of annual renewal to require that practitioners provide evidence of recency of practice, completion of CPD, insurance requirements etc, similar to the requirements of the board at time of application for registration. The board currently chooses to accept a declaration from the practitioner of meeting these requirements, however, the board is able at any time to audit practitioners.

The board strongly recommends such an approach under the national model.

### **9.3 Annual reporting obligations on registrants**

**Proposal 9.3.1:** It is proposed that the legislation require registrants to submit to their respective boards at the time of annual renewal various items of information required by the board in order to determine whether the practitioner is fit to practise. As part of such an annual return, the legislation might require reporting on a range of matters including:

- a. how the board's continuing competence requirements have been met
- b. if charged with or convicted/subject of a finding of guilt for an offence punishable by 12 months imprisonment or more
- c. any medical negligence claims
- d. if any clinical privileges or credentials have been withdrawn or restricted by a health service body or third party payer, and
- e. any data required to be provided to the Ministerial Council for workforce planning purposes.

#### **Board Submission**

The board supports the requirement for registered practitioners to provide a range of supporting evidence or to notify of compliance at time of application for annual renewal. The board would also support an approach which allows the National Board to decide whether documented evidence is to be provided or whether a declaration by the practitioner would suffice.

The board does have concerns regarding the need to advise of any medical negligence claims as it fails to see what purpose the information could be put to use. Medical negligence claims are unfortunately a fact of life but they do not necessarily indicate substandard or unprofessional practice. This board believes that it would be better to place regulatory energies into educating the public of the complaint processes rather than collect information on medical negligence claims, much of which if settled will most likely be subject to suppression orders.

### ***Reporting obligations on registrants – during the registration period***

**Proposal 9.4.3:** It is proposed that the legislation require registrants to report to boards, at any time during the registration period, and within 30 days, on the following matters:

- a. if charged with or convicted/subject of a finding of guilt for an offence punishable by 12 months imprisonment or more
- b. any medical negligence claims
- c. any withdrawal or limitation of clinical privileges or credentials by a health service body, and
- d. any other matter set down from time to time by the Ministerial Council.

### **Board Submission**

The board agrees with this approach except for sub paragraph b. See comments above on medical negligence claims under 9.3.1.

## **10. Endorsement of registration**

Endorsement of a practitioner's registration is a mechanism through which particular registrant subgroups who have additional qualifications recognised by a board can be identified to the public, employers and other users of register information. An endorsement is also a method of identifying practitioners considered qualified by a board, who may then be authorised by another body to provide a particular type of service.

Some registration Acts contain provisions that allow additional qualifications that are recognised by the board to be entered on the public register against the name of the practitioner, in addition to those required for registration purposes. However, this type of provision has limitations because the certification is not subject to annual renewal (although a board might amend its list of recognised qualifications from time to time), and it does not provide powers for a board to attach conditions to the certification, or to expect the registrant to update or revalidate their qualification.

Endorsements may be of various types and have various effects. The main types are as follows:

- a. an endorsement that confers the right under the registration legislation to use a specific professional title which is otherwise restricted and hold themselves out as qualified under the legislation to practise as a particular type of practitioner. Examples are:
  - endorsement to use the title 'nurse practitioner' or 'acupuncturist', or
  - endorsement that identifies those practitioners who have specialty (post-graduate) training recognised by the relevant board and can hold themselves out as a specialist (for example, medical specialists);
- b. an endorsement that is recognised under another Act or regulation (either State or Commonwealth), thereby conferring an authority to provide certain types of services. Examples are:

- endorsement that qualifies the registrant for authority to prescribe scheduled drugs under relevant state/territory drugs and poisons legislation, or
- endorsement that qualifies the registrant for accreditation to provide Medicare or PBS funded services, or eligibility for provider rebate status under private health insurance regulations.

### **Board Submission**

The board supports the endorsement approach as outlined under sub paragraph a, i.e. endorsement that recognises specialist qualifications. The board does, however, have some reservations to this approach in relation to how the public would view or indeed understand what the endorsement does or what it represents especially in relation to medical specialists. The board recommends that further consideration be given as to how information on specialists is able to be presented to the public.

See also the Board's comment under item 7.1.

**NOTE:** Details of the exact offences and the protected titles, and exemptions from offences proposed for each profession will be set out in the consultation paper on complaints and discipline.

It is expected that recognition of specialties and specialists will be required under the scheme, for at least the medical profession. The Australian Medical Council currently carries out the function of assessing applications for recognition of new specialties for the medical profession, and makes recommendations to the Federal Health Minister on these matters for purposes such as Medicare. Under the new arrangements, it is expected that the AMC (at least for the first three years of the scheme) would continue to carry out these functions, but might make its recommendations to the Medical Board of Australia, which would then seek Ministerial Council approval of specialties for the purposes of the registration scheme. Further details on the current and proposed roles of these respective bodies will be set out in the consultation paper on the accreditation function.

There may also be a case for recognition via the relevant practitioner register of a limited number of specialties in a small number of other professions. For example, it is intended that the public registers maintained by the national boards to be the source of authoritative information for Medicare (and others), and to identify which practitioners have certified qualifications for reimbursement purposes, rather than, for example, a specialist college or professional association. Decisions as to which services are rebated and which ones not would continue to reside with the relevant third party payer.

### **Board Submission**

The board believes that collection and supply of such information may detract from the prime purpose of registration, that is the protection of the public and may need to be carefully managed. Should agreement be reached to share such information it should include provisions for an equal flow of identified information on practitioners from agencies such as Medicare Australia. Information held by Medicare would greatly assist the National Boards in their regulatory functions.

## **11.1 Duration of registration**

**Proposal 11.1.1:** It is proposed that the legislation provide for the national boards to grant registration for a period of up to 12 months and that a grant of registration be subject to annual renewal.

It is not proposed that there be a standard registration period in legislation that applies to all practitioners, for example a calendar year or a financial year. Rather, it is proposed that the legislation enable, for example, renewals to be staggered throughout the year, with the renewal date for each practitioner falling due 12 months after they first registered or renewed their registration.

### **Board Submission**

The board generally supports a 12-month registration period. It accepts, however, that given the annual administrative cost of the approach, consideration should be given to say a three year registration period similar to state driver's licences. Such an approach could reduce administrative costs and is feasible if supported by audit programs in areas of insurance, performance, CPD and recency of practice. Extended periods of registration, however, should also be linked to a photographic licence.

Whilst generally supportive of the staggered approach to annual renewal as outlined, the board would prefer to see further explanation/discussion as to what is envisaged. Given that the majority of university graduates gain their health qualification late in the year (and most contracts go from January to December each year), it may be unwise to link annual renewal of registration to the date of first registration as this more than likely will coincide with the Christmas New Year period which is when boards already receive the majority of their applications for registration. To avoid renewals over such periods of other peak workloads, it may be wiser to link to another anniversary such as date of birth or using an alphabetically based system.

**Proposal 11.2.2:** It is proposed that the legislation provide for these certificates/renewals to be in a form approved by the responsible board (subject to the operational framework established by the National Agency in consultation with the national boards). It is not proposed that there be a separate 'practising certificate' in addition to the certificate of registration or renewal of registration. It is proposed that if practitioners are required, by their employers or agents for example, to demonstrate their right to practise, then they should show their current registration or renewal certificate. There should be flexibility under these arrangements to allow a responsible board to issue either electronically or otherwise, on first registration, an attractive certificate suitable for display, and to issue a renewal in different form (for example a wallet sized card).

### **Board Submission**

The board agrees that there not be two certificates issued and prefers that one annual practising certificate be made standard.

The board does not agree to the issue of a "display" certificate in addition to a licence of current registration. Such "display" certificates are out of date almost at time of issue and can only lead to possible confuse as to a person's registration status by members of the public.

The board would argue instead that consideration be given to the feasibility of issuing a photographic licence similar to driver's licences. This could be financially viable if linked to longer periods of registration and would add to the protection to the public element of the scheme.

**Proposal 11.2.3:** It is proposed that the legislation require a practitioner whose registration has been suspended or cancelled to return their certificate of registration to the responsible board. It is proposed that the legislation also provide that, for the purposes of legal certainty, in the absence of evidence to the contrary, a certificate of registration is evidence that the person to whom the certificate is issued is registered.

### **Board Submission**

The board agrees with this proposal. This approach also supports the board contention that the issue of a “display” certificate in addition to a practising certificate can only potentially confuse the public as to the status of the practitioner.

**Proposal 11.2.4:** It is proposed that the legislation impose an obligation on registered practitioners to notify the responsible board of a change of contact address, within 28 days and that a penalty apply for failure to comply.

**ALTERNATIVE OPTION:** There be no penalty for failure to notify of change of address.

### **Board Submission**

The obligation for the practitioner to advise the board of a change of address within a stated period is supported, however, the board believes that the imposition of a penalty for failure to do so may be counter productive.

**Proposal 11.2.5:** It is proposed that the legislation provide a power for boards to require registrants provide details of each practice address from which they offer regulated health services. Special arrangements would be required so that the reporting obligations are manageable for locum practitioners whose practice address changes regularly.

**ALTERNATIVE OPTION:** There be no requirement to provide a practice address.

### **Board Submission**

The board believes that it is more important to know where to contact a practitioner rather than where they may be providing a health service. It may be administratively difficult to maintain an accurate listing of practice addresses in all cases.

The Board does believe, however, that it is important that those practitioners with conditions on their registration or who are the subject of a notification to the board be required to report any and all of their practice addresses. This would enable the local committees (where it is envisaged will administer performance, health and conduct programs in local areas) to monitor compliance with conditions or undertakings of such professionals. It would assist the local committees with ensuring required reviews are undertaken and where necessary take action where breaches are identified.

The Board thus supports the option if it can be adapted as suggested.

## **11.3 Failure to renew**

**Proposal 11.3.1:** It is proposed that the legislation include provision for a ‘grace’ period of three months following expiry of registration, during which a practitioner is ‘deemed’ to be registered, but that if they fail to renew by the end of this period, then the board removes their name from the relevant register.

**ALTERNATIVE OPTION:** That there is no ‘grace’ period and that if a practitioner fails to renew their registration on time, their name is removed immediately from the register and they may be committing an offence if they continue to practise.

### **Board Submission**

The board is strongly opposed to a grace period being offered.

If there was to be a grace period, the board would prefer that a late fee be added to the annual renewal fee for say a two week period, and that failure to pay at the end of that period would result in removal from the register.

The board would support an approach where reinstatement provisions apply with an appropriate level of fee charged which would provide retrospective cover (to previous renewal date) for PII and if necessary Medicare Australia purposes.

## **11.4 Reinstatement to the register**

**Proposal 11.4.1:** It is proposed that the legislation include provisions that allow a practitioner's name to be restored to the register, if they re-apply within a period of two years following a lapse of registration (under this Act, or a previous enactment of a participating jurisdiction), and they meet any continuing competence requirements set by the responsible board.

**ALTERNATIVE OPTION:** There be no provision for restoration to the register, and practitioners who hold outdated qualifications and let their registration lapse be required to meet current registration requirements in the event that they reapply for registration, that is, they complete either an approved course of study and supervised practice, or an approved re-entry or refresher course.

### **Board Submission**

The board prefers that the alternative option be promoted requiring that practitioners meet recency of practice requirements. Restoration options currently in use in Australia recognise that practitioners may have moved interstate and left their registration lapse accordingly. National registration obviates this requirement.

Any practitioners who move overseas need to undergo the full registration process in order that the board may satisfy itself that the person meets all suitability to practice requirements such as recency of practice, PII, CPD etc prior to them returning to practice in Australia.

## **12. Transition arrangements**

**Proposal 12.1:** With respect to transition arrangements, it is proposed that transitional provisions provide for:

- a. all persons who are registered on 30 June 2010 in one or more of the ten regulated health professions be automatically deemed to be registered under the new national scheme on 1 July 2010, on the register or division of the register specified in the transition provisions, and for the term specified in their registration renewal
- b. all persons who have endorsements on their registration of a type available under the national scheme on 30 June 2010 be deemed to have endorsement of that type under the national scheme from 1 July 2010
- c. all persons who have conditions imposed on their registration or endorsement of registration on 30 June 2010 in one jurisdiction be automatically deemed to have the same conditions imposed on their registration or endorsement of registration from 1 July 2010
- d. where there are disparities between the types of registration or endorsements available under the national scheme and those conferred by existing State and Territory legislation,

wherever possible registrants be migrated across to the national scheme with the widest possible scope of practice that is consistent with public safety. They would then be expected to practice within their competence, with conditions imposed only if it is considered necessary to limit their practice in order to protect the public

- e. where a practitioner is registered in more than one jurisdiction and these registrations expire at different dates, then they be automatically deemed to be registered through until the latest date of registration that applies, unless they have conditions placed on their registration, in which case, they will be deemed to be registered through until the first expiration date that applies, and
- f. if a practitioner holds or has held multiple registrations and has been either deregistered in one jurisdiction, or has not renewed in a jurisdiction where an investigation or disciplinary process was not finalised, then they not be automatically 'deemed' to be registered from 1 July 2010 and will be required to make a fresh application for registration with an expeditious process required.

### **Board Submission**

The Board would argue that in sub paragraph d that the most restrictive conditions in place in a jurisdiction should apply and that provisions be included to allow the affected practitioner to make application in time for the board to review those conditions. This would provide a great level of public safety during what will be a somewhat confusing and disruptive changeover to the national scheme. The process outlined in sub paragraph f would appear to support this contention.