

RESPONSE TO

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

CONSULTATION PAPER

Proposed Registration Arrangements

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The Pharmacy Board of New South Wales has had the benefit of discussion of this consultation paper with the other Boards which together are the members of the Australian Pharmacy Council. Whilst many of these submissions will be common among those Boards, the following responses (highlighted in yellow) are given on behalf of the Pharmacy Board of New South Wales to the matters proposed in the Discussion Paper dated 19 September 2008.

2. Principles and approach

Proposal 2.1: It is proposed that the registration provisions be framed in a way that:

- a. reflects the wording and intent of the IGA
- b. builds on the best aspects of State and Territory schemes, rather than the lowest common denominator or replicating one existing registration scheme, and facilitates a smooth transition to the national arrangements
- c. enables a robust system that is designed to protect the public
- d. is the least restrictive law necessary to achieve the policy objectives, and includes legislated restrictions on practice only where the benefits to the community as a whole outweigh the costs, and there is no other more responsive method of achieving these benefits, and
- e. facilitates the transparent, accountable, efficient, effective and fair operation of the scheme.

Support

4. Initial registration

4.1 Applications for registration

Proposal 4.1.1: It is proposed that the legislation require applications for registration to be made to the responsible board, and that an application must be:

- in a form approved by the responsible board
- accompanied by the fee fixed for that profession, and
- accompanied by any information reasonably required by the responsible board.

It is not intended that the forms for registration be prescribed by regulation. It is expected that the national scheme will include a facility for registrants to make applications on line, as well as paper based applications.

In accordance with Clause 12.4 of the IGA, it is intended that the legislation empower the National Agency to publish a schedule of fees for each profession, for registration and other purposes, following agreement with the respective national boards.

Support - but oppose online initial registration due to the inability to appropriately confirm documentation – sighting of original documents is an essential part of confirming identity, verification of qualifications, good standing, etc

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.

Support – with amendment to sub-paragraph b. to include examinations and/or assessments

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.

Support Option 3 which recognises that this check as an appropriate function of the regulator with a view to the protection of the community and should not be left to the discretion of individual employers

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) (ie an internship), and
- an examination (if any) set by or on behalf of the responsible board.

Support – pharmacy internship presently includes a workplace integrated learning program in conjunction with supervised practice. To accommodate this model, qualifications for registration should refer to either:

- **“course or courses of approved study” - if that can be read to refer to the internship training program, or**

- insert a further dot point to specifically allow for a program of workplace integrated learning.

Consistent with comments under 4.2.1, dot point 3 should be amended to read “an examination or examinations and/or assessments”

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.

Support

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.

Students who are undertaking a program of study leading to registration in one of the regulated health professions at the time of the commencement of the new scheme will be eligible for registration when they complete that program on the terms on which they expected to be eligible for registration at the commencement of the program.

NOTE: Further detail on the proposed arrangements for accreditation of primary qualifications for registration and the nature of the relationship between a national board and an external accreditation body will be the subject of a further consultation paper.

Support – although reference to the expectation of a student is not considered appropriate. Proposal is supported if “... terms on which they expected to be eligible for registration” is replaced with “would have been eligible for registration on the terms which applied at the commencement of the program”

6. Registration decisions

6.1 Powers of boards before deciding applications for registration

Some State and Territory registration Acts make explicit the powers that boards may exercise before deciding applications for registration. Other Acts are silent on this matter.

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.

Support – but suggest reword sub-paragraph d to read “require the applicant to undergo written, and/or oral and/or practical examinations and/or assessments to assess the applicant’s competence to practise”

Proposal 6.1.2: With respect to terminology, it is proposed that the term ‘health assessment’ be used in the legislation rather than ‘medical examination’ because it allows a broader range of assessments to be conducted.

Support

6.2 Who makes registration decisions?

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 .

Support

In addition to this power to establish committees, there is a need for a mechanism in legislation that allows routine registration decisions to be made by staff of the State and Territory offices, on delegation from a national board.

Proposal 6.2.2: It is proposed that the legislation include powers for a responsible board to delegate, in writing, to a member of the responsible board or a member of a committee, a person employed by the National Agency, or a person engaged by the National Agency to provide services to the board, its registration powers and functions under the legislation, other than its powers to:

- a. refuse to grant, or refuse to renew a registration or an endorsement of registration
- b. impose conditions on a registration or endorsement of registration
- c. impose conditions on a registration renewal or endorsement renewal
- d. amend, vary or revoke conditions on a registration or endorsement, and
- e. remove a person’s name from the register where the person no longer meets the requirements for registration (see section ‘12.5 Removal from the register’ of this paper).

Support – members of committees and staff need statutory immunity in common with members of the National Board and the National Agency respectively.

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.

Support – but with the heightened requirement that in order to be covered at all times pharmacists be required to have individual PII. The changing nature of practice means cover should be sufficient to include advice offered when removed from traditional settings, off-site consultations and unexpected approaches for professional information. There is a lack of absolute certainty with regard to who is covered and at what point in time by policies held by employers.

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.

Support – including power to identify appropriate run-off cover

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.

Support – but recommend that sub-paragraph e be amended so reference to suspension is to registration that “... has been suspended and remains suspended at the time of application”

Appropriate transitional arrangements for paragraphs d, e and j are recommended to provide for the situation where participating jurisdictions may join the national registration scheme at different dates

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.

Support

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.

Support

Proposal 6.5.2: It is proposed that the legislation require a board to notify an applicant of its decision, within a specified period, eg 28 days after determining an application for registration or renewal of registration, and if the application has been refused, or conditions have been imposed, to provide reasons for the decision. The legislation should also require a board to inform the applicant of their right to seek a review of the board’s decision and advise of the appropriate review body (the relevant State or Territory tribunal). It is proposed that the same entitlements and obligations would apply with respect to an endorsement of registration (see section 10 of this paper).

Support

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.

Support

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.

Support proposal that legislation enable a national board to grant any one of a number of different types of registration but, in Table 2, prefer the term “limited” to “specific” to avoid the possibility that the public may perceive any person with “specific” registration to be a “specialist”.

TABLE 2: PROPOSED TYPES AND SUB-TYPES OF REGISTRATION

Type of registration	Eligibility
General	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.
Specific	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"> a. Provisional – to allow an applicant to undertake an internship or other period of supervised clinical practice, following graduation from an approved course of study. b. Area of need – to allow an applicant to work in an area of unmet need. c. Post-graduate supervised practice or training – to allow an applicant to be registered on a temporary basis to undertake a period of post-graduate training approved by the responsible board. d. Examination candidates – to allow an applicant to undertake training in preparation for an examination approved by the responsible board. e. Teaching or research – to allow an applicant to fill a teaching or research position approved by the responsible board. f. Recognised specialist qualifications and experience – to allow an

	<p>applicant with approved specialist qualifications to practise in the specialty.</p> <p>g. Internationally trained specialists – to allow an applicant with “specialist” qualifications that are not approved to undergo further training in that specialty.</p> <p>h. Temporary registration in the public interest – 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>
Non-practising	Applicants who would otherwise be eligible for registration but who do not intend to practise during the registration period.
Student	Applicants who are enrolled in an approved course of study or undertaking approved supervised clinical training in preparation for an examination for registration.

7.1 General registration

7.2 Specific registration

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.

Support the proposal not the alternative.

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.

Support – this has serious implications for pharmacy where ownership of pharmacies is reserved to pharmacists who are held responsible for the conduct of their practices. Every owner or partner of a pharmacy, must on a regular basis make themselves sufficiently aware of the manner in which the pharmacy is being conducted to determine that the pharmacy is being carried on in accordance with the law and good pharmaceutical practice, and if he or she finds that it is not, must intervene to ensure that the pharmacy is so conducted. Being aware of how the pharmacy practice is being conducted includes maintaining an oversight of the goods

being sold - particularly those known to be subject to abuse or misuse - and that the owner's procedures and policies are being followed.

Ref. David and Sandra Loewy v The Pharmacy Board of Victoria [1991] VSC 11301.

Pharmacy ownership by its very nature requires competence in professional pharmacy practice and therefore proprietors should have practising registration.

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.

Support Option 3.

7.5 Corporate registration

Proposal 7.5: It is not proposed that the legislation make provision for registration of corporations.

Support

8. Authorities conferred by registration

8.1 Title protection

Clause 1.28 of Attachment A of the IGA states that the primary basis for regulation is to be 'protection of professional title', with statutory offences to prevent unregistered or unauthorised persons using professional titles. Table 2 in Attachment A of the IGA sets out the professional titles that are proposed to be restricted under the legislation, with a role for the Ministerial Council in determining any further titles to be restricted.

TABLE 2. PROFESSIONAL TITLES PROPOSED TO BE RESTRICTED UNDER THE NATIONAL SCHEME

Profession	Titles to be protected
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Chiropractic	<ul style="list-style-type: none"> • 'chiropractor' • catchall provision along the lines of 'any other title, name, symbol, description, etc, which given the circumstances could be reasonably understood to indicate the person is a registered chiropractor'
Dental	<p>Titles restricted to those registered in the relevant division of the register:</p> <ul style="list-style-type: none"> • 'dentist' • 'dental therapist' • 'dental hygienist' • 'dental prosthetist' • 'oral health therapist' • catchall provision as above
Medical	<ul style="list-style-type: none"> • 'medical practitioner' • catchall provision as above
Nursing and Midwifery	<p>Titles restricted to those registered in the relevant division of the register:</p> <ul style="list-style-type: none"> • 'nurse' • 'nurse practitioner' • 'enrolled nurse' • 'midwife' • catchall provision as above
Optometry	<ul style="list-style-type: none"> • 'optometrist' • 'optician' • catchall provision as above
Osteopathy	<ul style="list-style-type: none"> • 'osteopath' • catchall provision as above

Profession	Titles to be protected
Pharmacy	<ul style="list-style-type: none"> • 'pharmacist' • 'pharmaceutical chemist' • catchall provision as above
Physiotherapy	<ul style="list-style-type: none"> • 'physiotherapist' • 'physical therapist' • catchall provision as above
Psychology	<ul style="list-style-type: none"> • 'psychologist' • catchall provision as above

Rather than protecting multiple titles for a profession (or sub-profession), the approach is to protect only those key titles commonly used by the profession, and to include a catchall provision that allows a board to prosecute a person who might be 'holding themselves out' as a registered practitioner in a regulated profession.

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.

Support – note should be taken that in any discussions at state/territory level with respect to registration of pharmacy premises, protection should be extended to include the term “pharmacy”

8.2 Practice protection

Clause 1.28(c)(i) states that the professions of dentistry and optometry will be subject to legislative definitions of core practices and offences to prevent practice by unregistered or unauthorised persons. Clause 1.28(d) states that general exemptions from title and practice offences will apply to:

- regulated professionals undertaking their usual activities;
- students
- assistants working under supervision;
- businesses employing registered practitioners; and
- persons assisting in emergencies.

Support

8.3 Dentistry practice restrictions

Attachment 4 sets out the current arrangements in each jurisdiction for defining and restricting dentistry practice.

Proposal 8.3.1: With respect to protection of the practice of dentistry, it is proposed that there be defined in legislation a number of restricted acts relating to dentistry and that there be an offence for a person who carries out a restricted act and is not a registered dental care practitioner or a person who falls into a class of exempted persons (for example a registered medical practitioner). It is proposed that the restricted acts with respect to the practice of dentistry be along the following lines:

- a. the performance of any operation on the human teeth or jaws or associated structures
- b. the correction of malpositions of the human teeth or jaws or associated structures
- c. fitting or intra-oral adjustment for a person of artificial teeth or corrective or restorative dental appliances, and
- d. the performance of any operation on, or the giving of any treatment or advice to, any person that is preparatory to or for the purpose of the fitting, insertion, adjusting, fixing, constructing, repairing or renewing of artificial dentures or restorative dental appliances.

Support

8.4 Optometry practice restrictions

Attachment 5 sets out the current arrangements in each jurisdiction for defining and restricting optometry practice.

Proposal 8.4.1 With respect to protection of the practice of optometry, it is proposed that the legislation prohibit unregistered or unauthorised persons from prescribing optical appliances. It is proposed that an optical appliance would be defined as: 'contact lenses, spectacle lenses, or any other appliance designed to correct, remedy or relieve any refractive abnormality or defect of sight'.

Stakeholders are invited to address in their submissions whether the definition of optical appliance should be framed broadly to include all contact lenses (whether for therapeutic or cosmetic purposes), or narrowly, to exclude 'plano' or cosmetic contact lenses.

If cosmetic contact lenses are included in the definition of a restricted optometry act, the effect would be to make it illegal to supply cosmetic contact lenses to a person, except in accordance with a prescription issued by a registered optometrist or other authorised person.

Support

8.5 Restrictions on spinal manipulation

Proposal 8.5.1: With respect to protection of the practice of spinal manipulation, it is proposed that further consideration be given to practice restrictions as detailed in the IGA at 1.28(c)ii).

Stakeholders from the registered and unregistered professions, as well as consumers are invited to include in their submissions on this paper comments on the need, if any, for inclusion in the national legislation of a restricted act with respect to spinal manipulation, and if so, how broadly or narrowly this restricted act should be framed and what definition should be adopted.

Support

9. Renewal of registration and continuing competence

9.2 Continuing competence requirements

Proposal 9.2.1: With respect to ensuring continuing practitioner competence, it is proposed that the legislation require the boards to establish requirements within each profession for registrants to demonstrate continuing competence at the time of annual renewal, with the scheme to be implemented for each profession on 1 July 2010. Since continuing competence would be a condition of registration renewal, requirements would apply to all registered health professionals, regardless of whether they work in public or private settings, and are employees or self-employed.

Support

Proposal 9.2.2: It is proposed that the legislation enable the national boards to:

- a. develop and publish minimum standards (approved by the Ministerial Council) for:
 - i. the continuing competence requirements that registrants must meet in order to renew their registration in a regulated profession, and
 - ii. the requirements that any accreditation/certification/performance appraisal scheme

must meet in order for registrants who participate to be able to satisfy the board's continuing competence requirements

- b. oversee a system of approval of various accreditation/certification/performance appraisal providers or schemes, or approve an external body or bodies to ensure these schemes meet the board's standards
- c. refuse to renew the registration of a practitioner on any ground on which the board might refuse to grant registration (see section 6.4 of this paper), and on grounds that the registrant has not met the responsible board's continuing competence requirements and therefore has not demonstrated, to the satisfaction of the board, that they are competent to practise in the regulated profession, and
- d. impose conditions on registration at renewal in the same way conditions may be imposed at first registration, including with respect to those registrants who have not met the continuing competence requirements of the board.

Support

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.

Support – on the assumption that legal advice confirms that requiring a practitioner to notify at the time of being charged, as proposed in sub-paragraph b, does not contravene natural justice expectations.

Re sub-paragraph b - It is submitted that a practitioner should be required to report where an offence attracts any period of imprisonment and not only offences where the term is 12 months or more. For pharmacy practice the requirement to report should also extend to Pharmaceutical Benefit Scheme fraud, insurance fraud and breaches of the relevant Drugs, Poisons and Controlled Substances legislation.

Re: sub-paragraph c – reference should be to “professional” rather than “medical” negligence including all claims, judgements and settlements.

9.4 Monitoring the professional competence of registrants

Proposal 9.4.1: In addition to the proposed continuing competence arrangements outlined above, it is proposed that the legislation include a range of provisions which empower boards to effectively monitor practitioners whose competence or fitness to practice may be in question. Some of these powers will be addressed in more detail in the consultation paper on complaints and discipline. However, in general terms, it is proposed that the legislation confer on boards the following powers.

Support

Powers to issue guidelines about professional standards

Proposal 9.4.2: It is proposed that the national boards have a general power to issue guidelines for registrants about standards recommended by the responsible board with respect to professional practice.

While the legislation would not make compliance with board issued guidelines mandatory, a registrant's compliance or otherwise with any guidelines issued may be taken into account by internal or external disciplinary or performance panels when making findings and determinations with respect to unprofessional conduct or professional misconduct.

Support

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.

Support with the same considerations as applied to 9.3.

10. Endorsement of registration

10.1 Specialist endorsement

Proposal 10.1.1: Given the framework set out in the IGA, it is proposed that the legislation include the following provisions:

- a. A general power (in the part of the legislation which sets out the broad powers and functions of the national boards) for the national boards to recommend to the Ministerial Council specialties that should be recognised for their profession, and the qualifications that the responsible board considers should apply for the purposes of endorsement of registration in each recognised specialty. This would be in addition to the role of the national boards in recommending to the Ministerial Council approved qualifications for registration purposes.
- b. Powers for the Ministerial Council, following recommendation from a national board to:
 - i. approve those professions for which specialist recognition will operate under the national scheme
 - ii. approve the list of specialties against which those boards referred to above will approve suitably qualified registrants for endorsement of their registration
 - iii. approve the qualifications required for endorsement in each approved specialty, and
 - iv. approve changes, from time to time, to the list of recognised specialties for a regulated profession and the qualification requirements for specialist endorsement within an approved specialty.
- c. For those boards with a specialist endorsement function, the same powers as when dealing with an application for registration or renewal of registration, that is, powers to receive an application for endorsement of registration, require further information, require

attendance at the board, refuse an endorsement or attach conditions to an endorsement, etc. Review rights would also apply.

- d. Offences for registered or unregistered persons who:
- i. Use restricted titles listed in the legislation (for example, the titles of 'medical specialist', 'surgeon' or 'dental specialist') when they are not entitled to; or
 - ii. Hold themselves out as being registered and endorsed as a specialist under the legislation when they are not.

Support

Proposal 10.1.3: With respect to protection of specialist titles, it is proposed that:

- for registered medical practitioners:
 - those with specialist endorsement from the Medical Board of Australia be authorised to use the title 'medical specialist', and
 - there be an offence for a person who is not a registered medical practitioner with endorsement as a specialist to hold themselves out as a medical specialist
- for registered dentists:
 - those endorsed as dental specialists by the Dental Care Practitioners Board of Australia be authorised to use the title 'dental specialist', and
 - there be an offence for a person who is not a registered dentist with endorsement as a specialist to hold themselves out as a dental specialist
- for registered podiatrists:
 - there be an offence for a person who is not a registered podiatrist with endorsement as a podiatric surgeon to hold themselves out as a podiatric specialist.

Support

10.2 Endorsement as qualified to prescribe scheduled medicines

Clause 1.32 of the IGA (Attachment A), states:

State and Territory drugs and poisons legislation will, at the discretion of States and Territories, provide a mechanism through which suitably qualified registrants of the nursing and allied health professions may be authorised to possess, administer and prescribe scheduled medicines, with :

- a) *responsibility for determining the qualification requirements and endorsing qualified individuals residing with the relevant board, and*
- b) *authorisation for particular professions (or sub-groups within professions) to obtain, possess, use, sell or supply (administer or prescribe) medicines to be granted under State and Territory drugs and poisons legislation.*

Therefore, the intention is that the registration legislation work in combination with State and Territory drugs and poisons legislation to identify and authorise suitably qualified practitioners to prescribe scheduled medicines.

Proposal 10.2.1: To give effect to this, it is proposed that the national legislation make provision for a prescribing endorsement for those boards that regulate the nursing and allied health professions. This will link to various authorities conferred on identified practitioners under State and Territory drugs and poisons legislation.

Support – however, where practitioners will be nationally registered, and many will practise in multiple jurisdictions, the lack of nationally consistent drugs and poisons legislation is an issue needing urgent attention to enable this to be appropriately and safely administered.

10.3 Other endorsements on registration

Proposal 10.3.1: It is proposed that the national legislation make provision for a mechanism through which a board may identify a sub-group of practitioners within the profession who have specific training and are considered qualified to deliver a particular type of service that they would otherwise be prevented by law from delivering.

In order to give effect to this, it is proposed that the legislation include provisions that:

- a. empower a responsible board to endorse a registrant whom it considers qualified to practice in an 'approved area of practice', and to impose any conditions on an endorsement
- b. empower the Ministerial Council, on application from a responsible board, to approve an 'area of practice' for the purposes of endorsement of registration and, at any time, to amend, vary or revoke a notice approving an area of practice
- c. require the responsible board to publish a list of 'approved areas of practice' on its website and in a publication circulated to registrants regulated by the board, and
- d. set out the powers of boards with respect to applications for endorsement qualifications required for endorsement and powers to refuse an endorsement (in a similar manner to those provisions relating to applications, qualifications for and refusal of registration).

The distinction between an endorsement with respect to an 'approved area of practice' and an endorsement as a 'specialist' would be the level and complexity of the training required, and whether this is or may in the future be part of an undergraduate qualification (an approved area of practice), or is only available to post-graduates (specialties).

The endorsement function would serve as a means of identifying practitioners with particular qualifications who are then authorised to undertake practices or provide certain kinds of services that are otherwise restricted under the Act or under other legislative or administrative schemes, such as Medicare, PBS.

Support however the lack of nationally consistent drugs and poisons legislation will potentially lead to confusion and non-compliance by health practitioners practising in multiple jurisdictions and/or moving between jurisdictions.

11. Other matters

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.

Support

11.2 Registration certificates

Proposal 11.2.1: It is proposed that the legislation provide powers for the national boards to issue certificates of registration or renewal of registration to those persons who have met the registration or renewal requirements specified by the responsible board.

Support

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).

Support – there should be a common requirement that the annual registration document be clearly dated and provides information as to the status of registration and any practice conditions

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.

Support – the certificate of registration issued at initial registration can only be prima facie evidence of registration status at date of issue. It is the annual renewal document which would offer prima face evidence of current registration

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.

Support 11.2.4

A view has been expressed that, in order to protect the public, the new system needs to provide for the tracking of movement of practitioners across the country, so that a responsible board is able to determine in which jurisdictions and/or practice locations a practitioner is working.

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.

Support 11.2.5 but the penalty should be one which is capable of being imposed directly by the Board and not requiring prosecution or the initiation of legal proceedings

11.3 Failure to renew

Some State and Territory registration Acts contain provisions that specify what happens if a practitioner fails to renew their registration. In some jurisdictions, practitioners are afforded a 'grace' period (for example of three months following the date the renewal fell due), during which either they are automatically deemed to be registered or once they renew, their registration is backdated. This means that in the event that they have, inadvertently, continued to practise during this period (thereby 'holding out' as registered), their practice is not illegal and their PII arrangements continue to apply.

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.

Support alternative option – there are no grace periods for car registration or drivers licences. Registration is for the protection of the public and registration is a privilege and it is a registrant's responsibility to take their registration seriously. This has consequences for pharmacist owners who also need to demonstrate responsibility. Grace periods involve considerable additional administrative procedures and imposition of late fees.

11.4 Reinstatement to the register

Some State and Territory Acts contain provisions that provide a streamlined process for practitioners to be reinstated to the relevant Register, within a two year period after they have let their registration lapse. Such a provision facilitates re-entry to practice for those who can demonstrate recent practice but who hold older qualifications that may no longer be approved for registration purposes. Without such a mechanism, such senior practitioners might otherwise not be eligible for registration.

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.

Support 11.4.1 but for a period of 3 years. Provisions need to be included dealing with re-entry after the 3 year period and it would be expected to provide powers to the Boards to set the rules for re-entry, ie restoration to the register. This could be achieved by bringing together 11.4.1 and the alternative option with the inclusion in the alternative of an ability to assess for competence by examinations and/or assessments.

11.5 Removal from the register

A number of State and Territory registration Acts make provision for a practitioner's name to be removed from the register in a range of circumstances, such as when the practitioner dies, when the practitioner was wrongfully registered, or fails to renew for whatever reason. In some cases this includes a power to remove from the register when the person no longer meets the mandatory requirements for registration. Examples include where a medical practitioner is granted registration under an 'area of need' provision which is linked to employment with a particular agency in a particular location, and the practitioner leaves that employment, or a student who 'drops out' and therefore is no longer enrolled in an approved course of study (which defines student registration).

Proposal 11.5.1: It is proposed that the legislation include provision for a responsible board to remove a person's name from the register for a range of specified reasons, including where they no longer meet the mandatory requirements for registration, removal in cases of death, failure to renew, cancellation by agreement or via a tribunal decision.

Support – voluntary removal but conditional on this not being a means to avoid disciplinary proceedings

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.

It should be noted that the provision at (a) caters for the circumstances of those whose qualifications have been gained through programs of study which are no longer accredited.

As long as the practitioner is registered on 30 June 2010, they will continue to be registered under the national scheme on 1 July 2010.

Support except sub-paragraph e. The concepts of payment of a renewal fee and the duration of application of any conditions imposed on registration must be separated so that conditions continue to apply for the whole of the period for which they were originally imposed.