



AUSTRALIAN COUNCIL OF
DEANS OF HEALTH SCIENCES

National Registration and Accreditation Project
NRAS.Project@dhhs.vic.gov.au

12 May 2017

ACDHS response to the Stakeholder Consultation:

Proposed reforms to the Health Practitioner Regulation National Law

The Australian Council of Deans of Health Sciences (ACDHS) welcomes the opportunity to respond to the proposed reforms to the Health Practitioner Regulation National Law. ACDHS is the peak representative body of the Australian universities that provide pre-professional education in the allied health sciences.

Six professions regulated under the National Law are taught by our members. While many teach a broader range of health programs, including other regulated professions, the following professions fall within the remit of our Council:

Clinical exercise physiology/sport and exercise science	Pharmacy
Medical laboratory science	Physiotherapy
Nutrition and dietetics	Podiatry
Occupational therapy	Prosthetics and orthotics
Optometry	Medical radiation science
Orthoptics	Speech pathology

ACDHS has addressed the proposed reforms in the template provided. Thank you for the opportunity to comment.

Yours sincerely

Robyn Adams
Executive Officer
Australian Council of Deans of Health Sciences.

STAKEHOLDER CONSULTATION:

Proposed reforms to the Health Practitioner Regulation National Law

Background

An Independent Review of the National Registration and Accreditation Scheme for the health professions (the National Scheme) was undertaken in 2014-15, which recommended a number of reforms to the Health Practitioner Regulation National Law (the National Law).

The reforms to the National Law are being progressed in two stages.

The stage one reforms are currently being progressed in the draft *Health Practitioner Regulation National Law Amendment Law 2017* (the draft Bill), which was subject to stakeholder consultation earlier this year.

At the COAG Health Council meeting on 24 March 2017, Health Ministers considered the draft Bill, noting that once enacted, it will make a number of important reforms to the National Scheme, and the powers of National Boards and the Australian Health Practitioner Regulation Agency.

In addition, Health Ministers discussed the adequacy of penalties under the National Law, in light of recent cases of individuals holding themselves out as health practitioners when they are not registered under the National Law.

Health Ministers agreed that new multi-year custodial sentences and increased fines and additional prohibition powers are needed for offences committed by people who hold themselves out to be a registered health practitioner, including those who use reserved professional titles or carry out restricted practices when not registered.

Ministers requested that these important reforms be fast tracked to strengthen public protection under the National Law.

We are therefore seeking your views on the proposed reforms.

In summary, the reforms propose to:

- Increase the monetary penalties for holding out offences, restricted title offences, restricted practice offences, and contravention of a prohibition order;
- Introduce a multi-year imprisonment term for the above offences;
- Introduce a nationally consistent time period for prosecuting offences under the National Law; and
- Introduce interim prohibition order powers in relation to unregistered practitioners whose conduct poses a serious risk to public health and safety.

How to provide advice

Feedback on the proposed reforms can be sent to NRAS.Project@dhhs.vic.gov.au by **Friday 12 May 2017**. Stakeholders may wish to use the table below for written responses, however comments do not need to be limited to the consultation questions proposed.

Proposed reforms and consultation questions

Proposed reforms	Consultation questions and stakeholder advice
<p>Proposal to increase the monetary penalties for holding out offences, restricted title offences, restricted practice offences, and contravention of a prohibition order</p> <p>The maximum penalty for each of the following offences under the National Law is currently \$30,000 for an individual and, where applicable, \$60,000 for a body corporate:</p> <ul style="list-style-type: none"> • Section 113 – Restriction on use of protected titles • Section 115 – Restriction on use of specialist titles • Section 116 – Claims by persons as to registration as health practitioner • Section 117 – Claims by persons as to registration in particular profession or division • Section 118 – Claims by persons as to specialist registration • Section 119 – Claims about type of registration or registration in recognised specialty • Section 121 – Restricted dental acts • Section 122 – Restriction on prescription of optical appliances • Section 123 – Restriction on spinal manipulation • Section 196A(1) – (as included in the current stage 1 Bill) – contravention of a prohibition order <p>It is proposed to increase the maximum fines for the above offences. For example, maximum fines could be increased to double the current amounts, that is, to \$60,000 for an individual and \$120,000 for a body corporate.</p>	<p>What should the maximum monetary penalty for these offences be increased to?</p> <p>The doubling of the current maximum fines to \$60,000 for an individual and \$120,000 for a body corporate offers an increased range of sanctions that could be applied for the offences listed.</p> <p>The upper limit appears to be consistent with the monetary penalties for a number of summary offences.</p> <p>Other comments</p> <p>Imposing monetary penalties is intended to be punitive and to act as a deterrent.</p> <p>The use of the maximum fines should be structured within a hierarchy of sanctions available to the regulator and be constructed with consideration of the evidence of effectiveness of deterrence-based and compliance-based sanctions.</p> <p>Consideration of severity, public safety and recidivism are factors that may inform the application of monetary penalties and the amount to be paid.</p>
<p>Proposal to introduce a multi-year imprisonment term for the above offences</p> <p>It is proposed to introduce a multi-year imprisonment term for the above offences.</p>	<p>Do you think a term of imprisonment should be introduced for these offences?</p> <p>The introduction of multi-year imprisonment terms escalates the level of sanction from disciplinary action to criminal action. As noted above, such options should be carefully constructed in a hierarchy of sanctions with specific indications for use.</p>

Proposed reforms	Consultation questions and stakeholder advice
	<p>The introduction and application of imprisonment terms should consider whether the primary approach adopted by the regulator is deterrence-based or compliance-based.</p> <p>Imprisonment, along with removal of a practitioner’s name from a register are the former and such deterrence-based sanction should be reserved for use when other compliance-based sanctions have failed, including for example, where sanctions for repeat offences have failed.</p> <p>If so, what do you think the maximum term should be?</p> <p>2 years</p> <p>This is the maximum term for summary offences in some states (South Australia, for example) and would be align with the proposal below to develop consistent time periods for prosecutions for summary offences under the National Law.</p> <p>Other comments</p> <p>The effectiveness of profession specific compliance-based mechanisms may be limited in cases of ‘<i>holding out</i>’ where the offender is not a member of that profession (that the person is ‘<i>holding out</i>’ to be) or other regulated profession.</p> <p>Depending on the severity and implications for public safety, the use deterrence-based strategies may be more effective and exemplary for the professionals and the community.</p>
<p>Proposal to introduce a nationally consistent time period for prosecuting offences under the National Law</p> <p>The time periods that apply under State and Territory legislation for bringing prosecutions of summary offences under the National Law currently range from 6 months (New South Wales, Tasmania and Northern Territory), to 12 months (Victoria, Queensland, Western Australia and the Australian Capital Territory), through to 24 months (South Australia).</p> <p>It is proposed to amend the National Law to introduce a nationally consistent and multi-year time period for bringing prosecutions for summary offences under the National Law.</p>	<p>What should be the nationally consistent time period for prosecuting offences under the National Law?</p> <p>Achieving consistency between states is important as practitioners are registered under the national law (<i>the Health Practitioner Regulation National Law</i>), albeit enacted within each state.</p> <p>The proposed time frames are consistent with commencing proceedings for summary offences more broadly than those under the Health Practitioner Regulation National Law.</p>

Proposed reforms	Consultation questions and stakeholder advice
<p>Specifically, the following amendment is proposed:</p> <p>A proceeding for a summary offence against the National Law must start within 2 years after:</p> <ul style="list-style-type: none"> • The commission of the offence, or • The offence comes to the knowledge of the prosecution/complainant, but within 3 years after the commission of the offence, whichever is the later. 	<p>However, achieving resolution in the shortest possible timeframes is worth consideration for all parties involved.</p> <p>Other comments</p>
<p>Proposal to introduce interim prohibition order powers in relation to unregistered practitioners whose conduct poses a serious risk to public health and safety</p> <p>In investigating a matter, AHPRA may discover a person whose practice poses serious risks to the public and an immediate response is required.</p> <p>The National Law does not currently allow for an interim prohibition order to be issued against a person whose continued provision of health services poses a serious risk to the health and safety of the public, but the person:</p> <ul style="list-style-type: none"> • is not and has never been registered and is under investigation and/or being prosecuted for holding out or reserved practice offences, or • was registered but is no longer registered because they have withdrawn or let their registration lapse. <p>While complaints commissioners in some jurisdictions already have interim prohibition order powers with respect to unregistered health care workers, where a serious public health and safety risk is identified by AHPRA in the course of its investigations, the public may be better protected by the capacity for immediate action to secure a prohibition order. Such an order could be time limited, pending prosecution of the matter before the relevant court or tribunal, or referral of the matter to be dealt with by another regulator.</p>	<p>Should there be a power under the National Law to issue an interim prohibition order where, during the course of an investigation by AHPRA, an unregistered person is found to be presenting a serious risk to public health and safety, and immediate action is necessary to protect the public?</p> <p>Yes</p> <p>Where there is a serious risk to public health and safety, an interim time-limited order, pending prosecution of the matter before the relevant court or tribunal, or referral of the matter to be dealt with by another regulator should be included as a power under the National Law.</p> <p>If so, then who should have the power to issue such an interim order – AHPRA, the responsible state or territory tribunal, or a relevant court in the jurisdiction?</p> <p>The priority should be an entity that has national coverage to achieve some level of consistency.</p> <p>As such AHPRA may be the body to issue interim orders.</p> <p>Other comments</p>
	<p>Do you have any other comments to make about these proposals?</p> <p>While understanding the reasons for reforms to address current inadequacies in the range of available penalties, the application of the new, more punitive, penalties will require careful implementation within a well-structured hierarchy of sanctions with specific indications for use.</p>

Additional information about stakeholders – please complete

Your name: Robyn Adams
Your position/title (if applicable): Executive Officer
Your organisation (if applicable): Australian Council of Deans of Health Sciences (ACDHS)
Your email address: acdhs@jcu.edu.au
Please indicate which group relates to you: <input type="checkbox"/> Consumer of health services <input type="checkbox"/> Registered health practitioner <input type="checkbox"/> Employer of health practitioners <input type="checkbox"/> Professional association <input type="checkbox"/> Regulator <input checked="" type="checkbox"/> Other – please state: Educators of health professionals
Would you like to be informed of the outcome of the consultation? Yes

Thank you for taking the time to make a submission.