

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

CONSULTATION PAPER ON

**Issues Supplementary to the Intergovernmental Agreement on a
National Registration and Accreditation Scheme for the health
professions to be included in the first bill**

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

Purpose

This paper outlines issues that are supplementary to the Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions (the IGA), to enable the finalisation of a draft Bill for consideration by Health Ministers. Following approval by Health Ministers the bill will be introduced into the Queensland Parliament.

If you wish to provide comments on this paper, please lodge a written submission in electronic form, marked "Attention: Practitioner Regulation Subcommittee", at nraip@dhs.vic.gov.au by close of business on Friday, 5 September 2008.

Background

On 26 March 2008, COAG signed the Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions.

The IGA can be downloaded from the following website: www.nhwt.gov.au/natreg.asp. An information sheet summarising the IGA is provided at Attachment 1 to this paper.

The legislative program required to implement the scheme is to be undertaken in three stages:

Stage 1: Preparation and passage of a National Health Practitioners Regulation Bill (Qld) to establish the structural elements of the National Registration and Accreditation Scheme for passage by the Queensland Parliament ('Bill A')

Stage 2: Preparation and passage of a Bill to amend the first Act, containing other substantive provisions of the scheme, proposed to be passed by the Queensland Parliament ('Bill B'), and

Stage 3: Preparation and passage of State and Territory adoption Bills to enable the statutory bodies established under Bill A (as amended by Bill B) to operate within each jurisdiction, and passage of a Commonwealth Bill to amend relevant Commonwealth legislation to recognise the national registration scheme ('Bills C'). The State and Territory Bills will also contain provisions that repeal existing state registration Acts, and transitional and consequential provisions to give effect to the national scheme.

Drafting of the first stage of legislation ('Bill A')

Drafting of Bill A has commenced through the Parliamentary Counsels' Committee. The drafting is being undertaken on the basis that Bill A will encompass the IGA and enable the National Agency and the National Boards to be established and operational in the first half of 2009.

While Bill A is being prepared on the basis that it encompasses the IGA, there are some matters which also need to be included in the Bill to enable it to establish the scheme. This paper describes supplementary matters which it is proposed to include in the Bill in addition to the IGA provisions. The matters included in boxes are considered of most interest to stakeholders and on which comment is sought. However comment should not necessarily be restricted to these areas.

1 Objects or purposes of the Act and commencement

1.1 Objects or purposes

The IGA sets out the principles and objectives of the scheme as follows:

5.3 The objectives of the national scheme, to be set out in the legislation, are to:

- (a) provide for the protection of the public by ensuring that only practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered
- (b) facilitate workforce mobility across Australia and reduce red tape for practitioners
- (c) facilitate the provision of high quality education and training and rigorous and responsive assessment of overseas-trained practitioners
- (d) have regard to the public interest in promoting access to health services, and
- (e) have regard to the need to enable the continuous development of a flexible, responsive and sustainable Australian health workforce and enable innovation in education and service delivery.

5.4 The scheme will operate under the following principles, to be set out in the legislation:

- (a) it should operate in a transparent, accountable, efficient, effective and fair manner
- (b) it should ensure that fees and charges are reasonable, and
- (c) it should recognise that restrictions on the practice of a profession should only occur where the benefits of the restriction to the community as a whole outweigh the costs.

The object of Bill A will make clear that its purpose is to facilitate the development and implementation of a national registration and accreditation scheme for the health professions regulated under the Act.

1.2 Commencement

The IGA provides that the national registration and accreditation scheme is to be operational by 1 July 2010.

To meet this deadline, a staged approach to commencement is being adopted. Bill A will be introduced into Queensland Parliament for debate and passage by the end of 2008. This first stage of legislation will commence, on a date to be proclaimed, that will enable the National Agency and the National Boards to be established with most of their functions during 2009. The second stage of legislation (Bill B) will include other substantive provisions for the scheme, including the information privacy regime for the use, disclosure, and protection of information about individual health practitioners and courses. The National Boards will be empowered to regulate practitioners, and accredit courses when the national scheme commences operation from 1 July 2010.

2. Australian Health Workforce Ministerial Council

The IGA provides that the new scheme will contain a Ministerial Council comprising the Commonwealth Health Minister and the Ministers with responsibility for health from each State and Territory.

The Ministerial Council:

- approves legislation to be put before governments and parliaments
- may provide policy directions to the scheme
- makes appointments to the national boards and the Agency Management Committee
- gives final approval of registration and accreditation standards, and
- has no role in individual registration and accreditation decisions.

2.1 Publication of decisions

Clause 7.5 of the IGA confers a number of decision making responsibilities on the Ministerial Council. All Ministerial Council decisions must be by consensus. However, the IGA is drafted in such a way that it is only clear under Clause 7.5(i) that the Council's power to intervene on budgets and fees must be transparent.

It is proposed that all interventions by the Ministerial Council should be transparent. It is therefore proposed that when the Ministerial Council gives written directions to the National Agency, or any of the professional boards, that the legislation require the written directions to be:

- published by the Ministerial Council on its internet site, and
- included in the National Agency's annual report, which is to be tabled in the Houses of Parliament of all participating jurisdictions.

3. Australian Health Workforce Advisory Council

The IGA provides for the creation of the Australian Health Workforce Advisory Council to provide advice to the Ministerial Council on matters relating to the scheme, as established by the legislation. The IGA specifies the length of appointment for members of the Advisory Council is, initially, for three years, with membership and terms of reference reviewed by the Ministerial Council after that time. The Advisory Council will be funded by governments.

The IGA also provides that the advice provided by the Advisory Council to the Ministerial Council will be public and transparent with all advice published. Where the Ministerial Council has reached a decision on a matter on which the Advisory Council has provided advice, the Advisory Council's advice will be published as soon as possible. Where the Ministerial Council has not been able to reach a decision on a matter on which the Advisory Council has provided advice, the Advisory Council's advice will be published no later than 15 days after the Ministerial Council has considered the advice.

3.1 Decision making procedure

The Advisory Council will have powers to:

- regulate its own proceedings, subject to directions from the Ministerial Council
- conduct meetings via contemporary and electronic means of communications, and
- discuss matters and make advisory resolutions without formal meetings.

3.2 Sitting fees and allowances, and length of appointments

The legislation will provide that sitting fees and allowances for members of the Advisory Council will be determined by the Ministerial Council. The legislation will also provide that the term of office for members of the Advisory Council will be three years.

3.3 Conflict of interest

The legislation will require members of the Advisory Council to disclose conflicts of interests, including potential conflicts of interest.

3.4 Leave of absence and acting members

The legislation will not make specific provision for leave of absence and acting arrangements for members.

3.5 Resignation and removal

It is proposed that the legislation make provision for members of the Advisory Council to resign their appointments by written notice to the Chair of the Ministerial Council. It is further proposed that the Chair of the Ministerial Council, acting with the authority of the Ministerial Council, have power to terminate the appointment of an Advisory Council member, but only on the grounds specified in the legislation. This could include grounds such as bankruptcy and engaging in paid employment that conflicts, or could conflict, with the performance of duties.

3.6 Coverage for legal liability – indemnities and immunities

It is proposed that the legislation make provision for any immunities for members of the Advisory Council, as is necessary and appropriate to the exercise of their advisory role.

3.7 Confidentiality provisions and information sharing

The confidentiality of information obtained by members of the Advisory Council will be included in the member's written instrument of appointment in addition to restrictions imposed by existing privacy laws.

3.8 Reporting requirements

It is proposed that the legislation will require the Advisory Council to submit to the Ministerial Council an annual report with respect to its role, as soon as possible after 30 June each year after the first year of operation, and for the Ministerial Council to have capacity to make directions concerning the matters to be reported.

4. National Agency

The IGA provides for the establishment of the National Agency to administer the scheme and to be governed by an agency management committee. The agency will:

- provide support to boards and their committees
- maintain the national registers
- be required to agree fees profession by profession with the boards, and
- set business rules for the development of professional standards (not professional content, which is to be set by the national boards).

4.1 Corporate structure

The legislation will make provision for the establishment of the National Agency as a statutory body corporate, with perpetual succession, a common seal, and capacity to sue and be sued in its corporate name. It will have powers to enter into contracts, acquire, hold, deal with and dispose of property, conduct general banking, and make financial investments.

It will also be necessary for the legislation to make provision for the Agency to exercise its powers beyond the State of Queensland, within States and Territories (subject to the relevant State and Territory adoption laws, or in the case of Western Australia, complementary legislation).

4.2 Terms of office – length of appointments, sitting fees and allowances

Consistent with membership of the Advisory Council, it is proposed that the legislation specify that the length of appointment of members of the Agency Management Committee be for a period of three years.

4.3 Leave of absence and acting members

The legislation will not make specific provision for leave of absence and acting members. This will be at the discretion of the Chair of the Ministerial Council.

4.4 Decision making in management committee

The committee will have powers to:

- regulate its own proceedings, subject to directions from the Ministerial Council
- conduct meetings via contemporary and electronic means of communications, and
- discuss matters and make advisory resolutions without formal meetings.

4.5 Conflict of interest

The legislation will require that members of the Agency Management Committee disclose conflicts of interests, including potential conflicts of interest. The legislation will also require the committee to establish and maintain a system for the declaration and registration of material personal interests of board and committee members. Legislated conflict of interest requirements would also apply to persons delegated certain functions or powers to ensure effective operation of the Agency.

4.6 Coverage for legal liability – indemnities and immunities

It is proposed that the legislation's indemnity provisions provide protection from personal liability for a person assisting the National Agency in the performance of its functions (including Agency Management Committee and staff), provided the person has acted honestly and reasonably.

4.7 Confidentiality provisions

The legislation will include a duty of confidentiality that protects the information gained during the administration of the legislation, or because of an opportunity provided by involvement in the administration of the legislation.

The second stage of legislation will make provision for an information privacy regime that allows the various bodies within the scheme to share information across State and Territory boundaries, and with other organisations outside the scheme, where it is necessary to carry out their respective regulatory functions.

4.8 Ownership of data

It is considered that ownership of data is connected with determining appropriate information-sharing and privacy provisions for the national scheme, which will be the subject of the second stage legislation.

4.9 Staffing arrangements – capacity to employ, set terms and conditions

It is proposed that the legislation make provision for the National Agency to be empowered to directly engage its own staff and decide the terms and conditions of employment, subject to any relevant industrial instrument. This will among other things enable flexibility for the agency having regard to the previous employment arrangements of staff transferring from existing boards into the new agency.

4.10 Financial provisions

The IGA provides that the resources of the scheme will comprise fees received for registration functions and accreditation functions, appropriate resources of the registration boards, current Commonwealth, State and Territory contributions to registration, accreditation and related workforce functions and a contribution of \$19.8 million to the establishment of the new scheme agreed by COAG under a cost share arrangement from all States, Territories and the Commonwealth. The IGA says that it is intended that in the longer term the scheme will be self funding.

The IGA also provides for fees and charges to be set that are reasonable, and that the fees for each profession are to be agreed between the agency and the national boards. If agreement cannot be reached, the matter is to be referred to the Ministerial Council.

Agency funds

It is proposed that the legislation make provision for the Agency Management Committee to have financial powers, including the ability to:

- keep a fund under the name of the National Agency, into which all fees, fines and penalties paid or recovered by the Agency under the Act must be paid
- pay any other money received by it into the fund, including income from the investments of the fund administered by the Agency Management Committee, and
- pay the expenses incurred by the Agency in the administration of the Act.

Fee setting powers

- It is proposed that the legislation clarify that the agreement on fees between the agency and each board may include the provision for fee refunds, waivers or reductions, and the imposition of late or restoration fees.

4.11 Privacy and powers to disclose information to and request information from other agencies and persons

The second stage of legislation will make provision for an information privacy regime that allows the various bodies within the scheme to share information across State and Territory boundaries, and with other organisations outside the scheme, where it is necessary to carry out their respective regulatory functions.

4.12 Reporting requirements for agency

It is proposed that the legislation will also require the National Agency to prepare an annual report each financial year, submitted to the Ministerial Council, to be tabled in the Houses of Parliament for each jurisdiction. The annual report of the Agency may be consolidated with reports from the National Boards.

4.13 Relationship to other bodies such as Auditor-General and Ombudsman

In determining suitable accountability arrangements for the national scheme, the legislation will need to ensure sufficient accountability and transparency of decision making, while at the same time ensuring a single set of accountability mechanisms apply, rather than multiple State and Territory systems.

5. National Boards

The IGA provides for the creation of profession specific national boards. Members of the relevant profession will form the majority of each board. For each profession, the boards:

- will oversee development of standards for registration and accreditation
- will oversee registration and accreditation functions, including individual registration and accreditation decisions
- will decide on committees needed to perform these functions
- may delegate powers to State and Territory committees, and
- can provide policy advice to Ministers.

The hearing of serious disciplinary matters will be undertaken by entities external to the scheme which are individually identified in each jurisdiction.

The legislation will make provision for the establishment of ten national boards, one for each of the professions (or groups of professions) listed in Table 1 of the IGA, with the addition of the podiatry profession.

The IGA specifies the composition of each national board as follows:

1.23 All boards will comprise:

- (a) a chair who is a member of the relevant profession
- (b) at least 50 per cent of the remaining members must be from the relevant profession, with no more than two-thirds of the board, including the chair, being members of the relevant profession, and
- (c) at least two community members.

1.24 Board members will be appointed by the Ministerial Council and:

- (a) appointments will be based on skills and experience relevant to the registration and accreditation functions
- (b) appointments will be made following an open and transparent process, where nominations are sought from individuals and professional bodies
- (c) the administration of the appointments process will be undertaken by the agency management committee
- (d) board members will be appointed from a pool of eligible applicants through the instrument of appointment specified in legislation
- (e) board members will not represent any professional body or organisation, and
- (f) board members will be provided with appropriate statutory immunities.

5.1 Names of boards

It is proposed that the ten National Boards be established with the following titles:

Australian Chiropractors Board
Australian Dental Care Practitioners Board
Australian Nurses and Midwives Board
Australian Medical Practitioners Board
Australian Optometrists Board
Australian Osteopaths Board
Australian Pharmacists Board
Australian Physiotherapists Board
Australian Podiatrists Board
Australian Psychologists Board

5.2 Decision making procedure

The legislation will specify that the National Boards will have powers to:

- regulate their own proceedings, subject to directions from the Ministerial Council
- conduct meetings via contemporary and electronic means of communications, and
- make resolutions without formal meetings.

5.3 Sitting fees and allowances, and length of appointment

It is proposed that the legislation provide that sitting fees and allowances for members of the Boards will be determined by the Ministerial Council. It is proposed that the legislation specify that the length of appointment be for a period of three years.

5.4 Confidentiality provisions

The legislation will include a duty of confidentiality that protects the confidentiality of information gained during the administration of the legislation, or because of an involvement in the administration of the legislation.

The second stage of legislation will make provision for an information privacy regime that allows the various bodies within the scheme to share information across State and Territory boundaries, and with other organisations outside the scheme, where it is necessary to carry out their respective regulatory functions.

5.5 Leave of absence and acting members

The legislation will make provision for the appointment of acting members to the National Boards, by the Chair of the Ministerial Council, acting by and with the authority of the Ministerial Council. For example, this could apply during a vacancy, during periods of leave or when a member is unable to perform the duties of office.

5.6 Resignation and removal

It is proposed that the legislation make provision for members of the National Boards to resign their appointments by written notice to the Chair of the Ministerial Council.

It is further proposed that the Chair of the Ministerial Council, acting with the authority of the Ministerial Council, have power to terminate the appointment of a Board member, but only on the grounds specified in the legislation. This could include grounds such as bankruptcy and engaging in paid employment that conflicts, or could conflict, with the performance of duties.

It is further proposed that the legislation make provision for members of the National Boards to cease to be members if they are absent without notice to the Chair, for three consecutive meetings.

5.7 Coverage for legal liability - indemnities and immunities

As for National Agency it is proposed that the legislation's indemnity provisions provide protection from personal liability for Board members and persons acting on their behalf in the performance of functions conferred on them by the Act provided the person has acted honestly and reasonably.

5.8 Reporting requirements

It is proposed that the legislation require the National Boards to prepare a contribution on their functions and operations for the Agency-coordinated annual report on the scheme.

5.9 Powers to disclose information to, and request information from, other agencies and persons

The second stage of legislation will make provision for an information privacy regime that allows the various bodies within the scheme to share information across State and Territory boundaries, and with other organisations outside the scheme, where it is necessary to carry out their respective regulatory functions.

5.10 Arrangements for Ministerial Council to review composition of boards

The IGA provides for the size and composition of each board to be decided by the Ministerial Council, following consultation with the relevant profession.

It is proposed that the legislation clarify that the initial decision by the Ministerial Council on the size and composition of boards at the beginning of the new scheme can be reviewed by the Ministerial Council as is necessary from time to time, and in consultation with the relevant profession.

5.11 Responsibility for developing accreditation standards (accreditation committee or bodies)

In relation to the development of accreditation standards, the IGA implies that the National Boards will not develop the standards, but will ensure that this development occurs. It is proposed that the legislation clarify this point by stating that the accreditation standards will be developed by any accreditation body or committee assigned by Ministerial Council to perform the accreditation functions.

5.12 Conflict of interest

The legislation will require members of the Boards to disclose conflicts of interests, including potential conflicts of interest. Legislated conflict of interest requirements would also apply to persons delegated certain functions or powers from the Boards.

NATIONAL HEALTH PRACTITIONER REGISTRATION AND ACCREDITATION

INFORMATION SHEET 1: AUGUST 2008 OUTLINE OF THE NEW SCHEME AGREED BY COAG

A new scheme

A new national scheme for the registration and accreditation of health practitioners is being implemented by 1 July 2010.

The new scheme was agreed by the Council of Australian Governments (COAG) in March 2008 and is described in an Intergovernmental Agreement (IGA) available at www.nhwt.gov.au/natreg.asp. The scheme is being implemented under the guidance of the Australian Health Ministers' Conference in accordance with the provisions of the IGA.

The health professions to be covered by the new scheme from 1 July 2010 are:

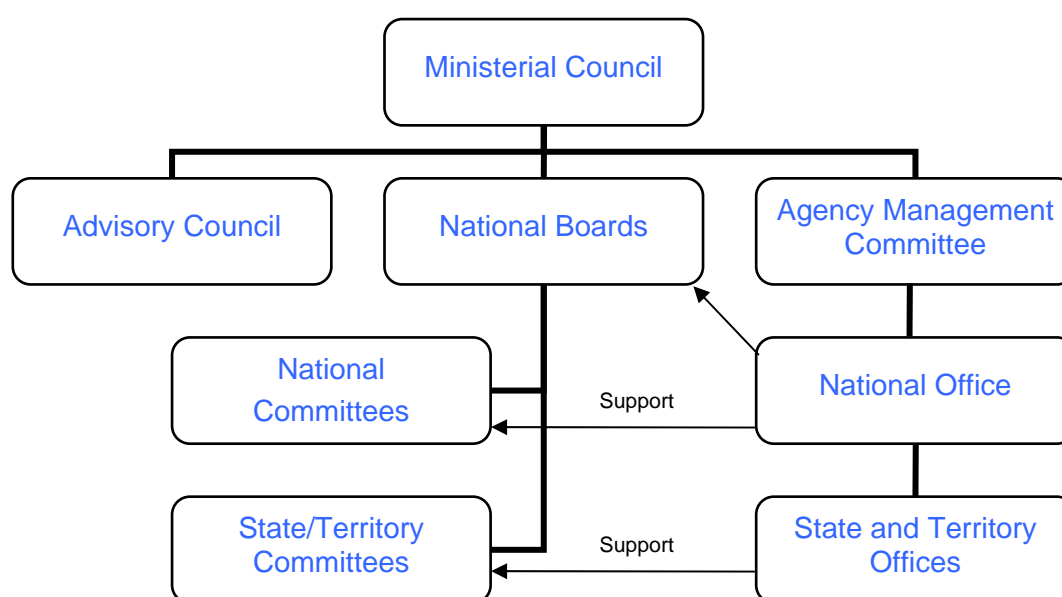
Chiropractic	Optometry	Podiatry
Dental care	Osteopathy	Psychology
Medical	Pharmacy	
Nursing and Midwifery	Physiotherapy	

Other professions may be added to the scheme over time.

The structure of the new scheme

The new scheme provides for a Ministerial Council, comprising all health ministers, an Advisory Council, a National Board for each profession, a new national agency governed by an Agency Management Committee, and other bodies as shown in the diagram below.

The structure of the new scheme



The roles of the key bodies in the new scheme can be summarised as follows:

The Ministerial Council

- Approves legislation to be put before governments and parliaments
- May provide policy directions to the scheme
- Makes appointments to the national boards and the Agency Management Committee
- Gives final approval of registration and accreditation standards
- Has no role in individual registration and accreditation decisions

The Advisory Council

- Provides advice to Ministers on matters relating to the scheme
 - this includes matters referred to the Advisory Council by Ministers or matters considered appropriate by the Advisory Council
- The secretariat for the Council will be independent of the scheme and the Council will be funded by governments separately to the scheme

The National Boards

- Oversee development of standards for registration and accreditation
- Oversee registration and accreditation functions, including individual registration and accreditation decisions
- Decide on committees needed to perform these functions
- May delegate powers to State and Territory committees
- Can provide policy advice to Ministers

The hearing of serious disciplinary matters will be undertaken by entities external to the scheme which are individually identified in each jurisdiction

The Registration and Accreditation Agency

- Provides support to boards and their committees
- Maintains the national registers
- Must agree fees profession by profession with the boards
- Sets business rules for the development of professional standards (not professional content)

Transition provisions

There are a number of provisions in the IGA which are designed to ensure a smooth transition to the new arrangements. These include:

- All existing members of State and Territory registration boards and supporting hearing panels will, if they agree, be appointed to a list of persons from which national boards may appoint committees for a period of two years
- Accreditation functions will be assigned to existing external accreditation bodies for the first three years, with certain conditions applying after 12 months
- First consideration will be given to existing registration boards staff to operate the State and Territory offices of the new agency, and
- Governments will make a contribution of \$19.8m to the establishment of the new scheme

Implementation arrangements

The IGA requires that the scheme is to be put in place through legislation passed in every State and Territory Parliament on a timetable that allows the scheme to commence on 1 July 2010.

- Queensland will host the initial legislation
- Other States and Territories (except Western Australia) will then adopt this legislation
- Western Australia will enact corresponding legislation
- Each State and Territory will also have to repeal existing laws covering the functions to be performed by the new scheme. Some consequential amendments to Commonwealth legislation will also be required.

Commitment to consultation

In the IGA, governments give a commitment to consultation during the implementation period. Matters on which consultation is specifically mentioned in the IGA and on which Ministers will take a final decision include:

- The inclusion of other health professions in the scheme
- The size and composition of each national board, and
- Assignment of accreditation functions to existing bodies