RACGP

Royal Australian College *of* General Practitioners

Submission to the Council of Australian Governments (COAG) Health Council's proposed reforms to the Health Practitioner Regulation National Law

31 October 2018

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Proposed reforms to the Health Practitioner National Law (stage 2 consultation)

The Royal Australian College of General Practitioners (RACGP) provides this submission to the Council of Australian Governments (COAG) Health Council (CHC) in response to the July 2018 consultation paper, *Regulation of Australia's health professions: keeping the National Law up to date and fit for purpose*.

This submission draws on detailed and considered feedback from members across the RACGP and is in addition to RACGP previous submissions into Health Practitioner National Law.

About the RACGP

The RACGP is Australia's largest professional general practice organisation, representing more than 39,000 members working in or towards a career in general practice in urban and rural areas.

The RACGP is responsible for:

- defining the nature and scope of the discipline
- setting curricula and training requirements
- maintaining the standards for high-quality clinical practice
- supporting general practitioners (GPs) in their pursuit of excellence in patient care and community services.

Overarching comment on the National Registration and Accreditation Scheme

The RACGP acknowledges the important role of a nationally consistent registration and accreditation scheme. The RACGP supports the drive for improvements in this scheme and appreciates the ongoing consultation throughout the reform process.

However, it is important to acknowledge that significant improvements in the Registration and Accreditation Scheme are needed, particularly regarding the functioning of the notifications process. These issues are highlighted in the RACGP submission to the Senate Community Affairs References Committee's 2017 *Inquiry into complaints mechanism administered under the Health Practitioner Regulation National Law*.

The report from the 2017 Senate Inquiry was highly critical of the complaints process and made 14 recommendations for improvement. While some recommendations are addressed by these proposed reforms to the National Law, the lack of a timely and adequate government response, risks losing practitioner confidence in the regulatory process.

Our specialist GP members continually provide feedback that:

1. There is a perceived lack of balance in the current system: the rights of the patients are always seen as paramount. While the RACGP acknowledges that the system will rightly favour patient rights, our members believe the pendulum has swung too far towards patient rights.

2. Practitioners are subject to investigations that appear to assume their guilt. Practitioners are often not told which particular aspect of their care is considered significant by AHPRA. Rather practitioners are asked to respond to 'the complaint' made by the patient.

3. The current complaints mechanism is perceived as being adversarial in nature and more concerned with the prosecution of practitioners than protecting patient safety through remediation.

4. Lengthy investigative processes are extremely stressful for practitioners and can inadvertently risk patient safety. The process can result in practitioners questioning their clinical judgement, which could lead to altered, and possibly sub-standard, patient care and management.

5. The process is perceived to have no medical input or review.

Of major and ongoing concern is the significant impact the complaints process and actions by regulators can have on a practitioner, even in matters considered to be minor. This impact can last well beyond the time it takes to finalise a complaint, even if there is no adverse finding made against the practitioner.

As raised in the previous RACGP submission to Stage 1A of the consultation process, it is essential that mandatory reporting laws are changed so that a treating practitioner is not required to report the medical condition or other impairment of a registered health practitioner under their care. Patient safety and practitioner wellbeing are not competing or mutually exclusive interests, but complementary ones. The current reporting laws create a barrier for health practitioners to be open and honest about their health conditions, for fear this information may be divulged in the mandatory reporting process. The mental wellbeing of early career practitioners and those in the hospital system are particularly at risk.

It is important that practitioners receive the healthcare they need, rather than seek to hide issues through fear of being reported by their treating practitioner. Removing this mandatory reporting requirement, which prevents registered health practitioners from seeking healthcare, will improve patient safety.

The RACGP continues to call for:

- more support for the health and wellbeing of the practitioner, including the adoption of the Western Australian model exempting mandatory reporting by treating practitioners
- improved timeliness, communication and transparency in relation to the handling of all notifications
- appropriate acknowledgement of health system influences on practitioner performance.

The RACGP sees opportunity for these issues to be fully addressed as part of the review of the Health Practitioner National Law.

In response to the specific amendments outlined in the Stage Two consultation document, the RACGP makes the following comments and recommendations.

Inclusion of reference to cultural safety for Aboriginal and Torres Strait Islander peoples *(section 3.1)*

The RACGP supports the suggestion from the AHPRA Aboriginal and Torres Strait Islander Health Strategy Group to amend the guiding principles and objectives of the National Law. This will make explicit that all regulatory decision making in the National Scheme must consider the effects on the health and wellbeing of Aboriginal and Torres Strait Islander peoples.

Improving the health of Aboriginal and Torres Strait Islander peoples is one of Australia's highest health priorities. Aboriginal and Torres Strait Islander peoples have the right to be provided with clinically and culturally appropriate healthcare wherever they present. The RACGP encourages its members to develop an understanding of Aboriginal and Torres Strait Islander culture, history and health, and to incorporate this into their professional practice, through a holistic primary healthcare team-based approach.

Culture is central to good health and wellbeing for Aboriginal and Torres Strait Islander peoples. The adoption of cultural safety as a policy tenet builds the overall capability of an organisation to positively affect health outcomes. It harnesses self-reflection on cultural underpinnings and awareness of power relationships inherent in health profession settings. This enables the development of greater competence and ease in working with Aboriginal and Torres Strait Islander peoples.

On its own, this change will not overcome disparities between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians. Factors external to the health system, such as employment, education, housing and systemic issues, also contribute to health disparities.[1] However, this proposal can make a difference to the overall picture of health.

Other suggestions to assist in improving cultural safety and addressing health disparities for Aboriginal and Torres Strait Islander peoples include:

- supporting Aboriginal and Torres Strait Islander health professional organisations and the National Aboriginal Community Controlled Health Organisation (NACCHO), to work with National Boards in implementing the proposed guiding principles
- supporting health practitioners to advocate for cultural safety in their work environment. This may be compromised by a range of factors, for example, junior doctors may not feel empowered to challenge existing hierarchies
- providing ongoing learning and development opportunities tailored to various stages of careers. This is particularly important for internationally trained practitioners
- working in partnership with Aboriginal and Torres Strait Islander organisations to develop guidance on how cultural safety can be measured, and what approach will be taken to handling health practitioners who are deemed culturally unsafe.

[1] Australian Health Ministers' Advisory Council, 2017, Aboriginal and Torres Strait Islander Health Performance Framework 2017 Report, AHMAC, Canberra.

Chairing of national boards *(section 3.2)*

The RACGP does not support the suggestion to allow a non-medical practitioner to chair the Medical Board of Australia. It is important that the chair has the appropriate knowledge, skills and experience to be able to effectively perform in the role. The in-depth knowledge gained as a registered member of the medical profession is fundamental to the role of chair.

The Medical Board makes decisions about the registration of practitioners, and the accreditation of courses to enter the profession. Decisions regarding performance, conduct issues and complaints are based on a peer test. Intimate knowledge of the profession is required to direct decisions in these areas and to ensure professional standards are maintained.

System linkages *(section 3.3)*

The RACGP requests further information about the specific system linkages that are proposed in order to be able to effectively analyse the potential impacts. We recognise that increased linkages between regulators may potentially provide some benefits, particularly in terms of remediation. However, given the profession's concerns regarding the handling of the complaints process under the Health Practitioner National Law, the RACGP is concerned that further system linkages could result in adverse consequences for practitioners. It is essential that the RACGP and other professional bodies are consulted regarding specific system linkages prior to implementation.

Linkages for the Medical Board and AHPRA to share and receive information with other agencies may improve efficiencies and reduce duplication in investigation procedures. However, the RACGP strongly recommends consideration of privacy and confidentiality protections for practitioners and patients before any changes are made. Our members have expressed concern, for example, that legal professional privilege may be eroded, or that different interpretations of billing practices may have an impact on their registration even if technically no error was made.

An issue to consider and further develop is the linkages with medical colleges, to allow the identification and management of trainees and doctors that require remediation. For example, GP training organisations should be included in the network of sharing information to ensure GP registrars with restrictions on their registrations are appropriately managed and supported. At present, GP registrars are only required to inform their employer and their supervisor about any restrictions, and this information is not always provided to the training organisation.

The specialty colleges are best placed to determine competence against professional standards and to make recommendations to the National Board concerning the outcomes of any assessment and/or remediation program.

Reporting of professional negligence settlements *(section 4.4)*

The National Law at present requires practitioners or their employers to report any professional negligence settlement or judgement above a certain threshold. The consultation paper suggests changing this threshold to require practitioners to self-report all details of their claims history to AHPRA, or requiring medical indemnity insurers to report the details of settlements and judgements to AHPRA.

The RACGP notes that a professional negligence settlement or judgement is not on its own an indication that poor practice has occurred, and no heightened reporting requirements in this area are supported. As raised previously, the RACGP is concerned about the onerous nature of the complaints process and the negative impact of complaints against medical practitioners which can extend for years beyond the closure of the complaint, particularly when recorded on the public register.

Referral to other entities *(section 5.2.2)*

The consultation paper identifies that at times, after a preliminary assessment, it may be appropriate for National Boards to refer a matter to be dealt with by another entity.

The RACGP does not support any broader powers for National Boards to refer matters to other entities such as health services or employers. Referral to other entities should be restricted to medical colleges and the court or tribunal directly related to the matter at hand. National Boards should not have the right to subsequently request that the entity provide information on how the matter was dealt with.

Discretion not to refer to a tribunal *(section 5.4.2)*

As identified in the consultation paper, National Boards are currently required to refer all matters relating to professional misconduct, or registrations improperly obtained, to a tribunal hearing, regardless of any ongoing risk to the public. It is reasonable that National Boards have discretion not to refer a matter to the responsible tribunal to conserve time and resources, provided there is no ongoing risk to the public.

Complaints should be managed with a responsive risk-based approach. Investigations can be extremely time consuming and stressful for all parties involved. National Boards should take the least intrusive course to protect the public from the risk of harm, and only escalate to formal enforcement when other strategies are not suitable.

Settlement by agreement between parties *(section 5.4.3)*

The RACGP supports constructive processes that provide an avenue for resolving issues between patients and practitioners, and strengthen the trust and engagement between health practitioners and the public. The RACGP also supports the National Boards having an option to use alternative dispute resolution processes such as conciliation or mediation. Mediation is often a more exploratory approach than a full fitness to practice investigation, which is considered adversarial.

It is important that settlement processes are confidential, and any information exchanged during the process cannot be used in later proceedings.

Public statements and warnings *(section 5.4.4)*

Any public statement should only be issued after the investigation is complete and all appeals processes have been exhausted/finalised, and where it is considered essential for public safety (for example, if there is a risk of imminent serious harm to a significant number of people). Public statements should only be made as a last resort after all other avenues for risk mitigation have been explored.

A show cause process, whereby the practitioner has the opportunity to make their case in writing, must be followed to ensure that no public statement is issued where the practitioner is not at fault. This is of particular concern to the specialty of general practice, as GPs operate in a small business environment characterised by patient choice and competition between providers.

Power to disclose details of chaperone conditions *(section 5.5.1)*

The RACGP does not support amending the National Law to empower a National Board to require a practitioner to disclose to their patients the reasons for a chaperone condition imposed on their registration. This particularly should not be required if the chaperone is in place while the notification is under investigation and not yet proven. However, if a patient asks their doctor why the chaperone is present, the doctor should provide an honest answer without compromising patient confidentiality.

Chaperones do not need to be briefed on the reason a chaperone condition is legally required, they need only to be aware of the basic parameters of the requirement. Divulging this information can create a risk of identifying patients involved in the case, particularly if it is a public case or has been in the media.

Right to appeal a caution *(section 5.6.1)*

The RACGP supports amending the National Law to enable appeal against a decision by a National Board to issue a caution. Appeals processes are an important mechanism of review to ensure that the correct decision has been made. While the RACGP recognises that certainty and timeliness are important factors for all parties, there is considerable benefit in ensuring that parties have the ability to seek review of any board decision.

Title protection: cosmetic surgeons *(section 6.1)*

As outlined in the RACGP's submission to the Medical Board of Australia, for patient safety reasons, only appropriately qualified medical practitioners should be able to use the title of cosmetic surgeon. Titles should be sufficient for the consumer to have an understanding of the skill level of the provider, for example, whether they are a plastic surgeon or dermatologist with Fellowship of the relevant medical college, GP or nurse.

While title protection is supported in principle, it must not disrupt the provision of procedures by qualified GPs, especially in areas of need where other medical specialists are less accessible.

Advertising *(section 6.3)*

It is appropriate that current advertising monitoring processes and penalties be reviewed in the light of the changing nature of social media and technology.

It is extremely important that advertising is used appropriately in the health sector. While healthcare is a business, patient health should not be considered a commodity. Patients should not be encouraged to partake in health programs or treatments that could fragment their care or result in unnecessary testing.

Our members have raised concerns that current advertising penalties are difficult to enforce and penalties are inconsistently applied between individual practitioners and organisations. There is also concern that many practitioners are contractors who have no direct control over advertising or marketing. It is appropriate that penalties no longer apply to testimonials on websites that are not controlled by the practitioner or their employer.

Disclosure of information and privacy issues *(section 7.1)*

There is a need to balance the competing rights of the practitioner with the public's interest in disclosure to enable informed decisions and public protection. It is important that the public register does not move away from its primary regulatory purpose of indicating current registration status.

The RACGP has previously raised concerns regarding the publication of information in relation to disciplinary proceedings on the public register. We were pleased to see AHRPA reverse the decision to publish tribunal outcomes where allegations against the practitioner have been disproved.

Additional concerns were raised around the publication of tribunal outcomes for complex cases, such as those which result in time limited conditions or those where allegations were proven in part. The RACGP recommended the publication of tribunal outcomes for these complex cases be considered on a case by case basis. The RACGP also recommended that the publication of time limited conditions should be removed from the public register once the condition has expired.

The RACGP supports the suggestion in the consultation paper to allow practitioners to request information be removed from the public register where there is a risk to their safety or that of their family. Such applications should also be able to be made by a practitioner's friend or relative on their behalf and with their knowledge. Information which may be suppressed should include employment details.

Practitioner use of aliases *(section 7.2)*

Additional names or aliases under which a practitioner offers regulated health services to the public should be recorded on the public register, but only with the practitioner's consent. There are circumstances where practitioners will not want to disclose their alias, for example for their own safety or the safety of their family.

For the same reasons, practitioners should be able to have control over how their personal information is publicly recorded, including the ability to request removal of their name or place of work.

Next steps and further consultation

The RACGP thanks the CHC again for the opportunity to comment on the proposed processes. Please notify the RACGP regarding future progress on these changes, particularly in the area of system linkages. This will allow a fuller analysis of the potential impacts on our members. We would be happy to work with you to develop guidance or principles to assist practitioners regarding any changes to the Health Practitioner National Law.

If you have any further questions or comments regarding this correspondence, please contact Ms Susan Wall, Program Manager – Funding and Health System Reform on 03 8699 0574 or via susan.wall@racgp.org.au.