# Response template

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| Name/Organisation | Royal Australian College of General Practitioners (RACGP) |
| Email | healthreform@racgp.org.au |

Would you/your organisation like to receive project updates via email?

Yes ☒

No ☐

## About the RACGP

The Royal Australian College of General Practitioners (RACGP) is the voice of general practitioners (GPs) in our growing cities and throughout rural and remote Australia. For more than 60 years, we have supported the backbone of Australia's health system by setting the standards for education and practice and advocating for better health and wellbeing for all Australians.

As a charitable organisation and national peak body representing over 40,000 members working in or towards a career in general practice, our core commitment is to support GPs from across the entirety of general practice to address the primary healthcare needs of the Australian population.

We cultivate a stronger profession by helping the GPs of today and tomorrow continue their professional development throughout their careers, from medical students and GPs in training to experienced GPs. We develop resources and guidelines to support GPs in providing their patients with world-class healthcare and help with the unique issues that affect their practices. We are a point of connection for GPs serving communities in every corner of the country.

Patient-centred care is at the heart of every Australian general practice, and at the heart of everything we do.

## Part 1 – Expansion of the information available on the national public register of health practitioners

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| 1. Do you support the publication of practitioners' full regulatory history where there has been a finding of professional misconduct because of:<br>• sexual misconduct; or<br>• sexual boundary violations.<br>or where there has been a:<br>• conviction or finding of guilt for a sexual offence.<br>Yes / No / Unsure. Please explain why. |
| The RACGP is unable to provide a definitive answer to this question. As a general rule, it is important to strike the right balance between community protection and natural and procedural justice for health professionals. We welcome the work of the Australian Health Practitioner Regulation Agency (Ahpra) to protect the public and agree with the principle of transparency outlined in this proposed reform. Ensuring patient safety is critical, and patients |

must have the opportunity to make an informed choice about which health professionals they consult. This includes being able to view a practitioner's regulatory history.

Publishing and retaining a practitioner's regulatory history would ensure they are unable to practise if they have been de-registered and cannot misrepresent themselves to the public as being registered. It is also necessary to ensure that practitioners cannot move from one organisation to another if de-registered, and/or that prospective employers are notified of the terms of any conditions or restrictions and can undertake background checks as needed. Doctors may apply for work in clinical settings, as well as education, mentoring or supervisory roles.

Despite our members' support for accountability and transparency, they have expressed concern about retaining information on the public register permanently. It may be appropriate to publish information for a set period and then remove it from the register once it expires, which would be a similar approach to a Spent Convictions Scheme. The RACGP also requests additional clarification regarding what a full regulatory history would include, who is responsible for managing or updating this information, and where the information would be shared.

**Disproven or partially proven allegations**

The RACGP has previously raised concerns regarding the publication of information in relation to disciplinary proceedings on the public register. We do not support publishing 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 as we agree that the publication of previous disciplinary history has the potential to impact beyond the intended consequences of any regulatory action.

2. Is a tribunal finding of professional misconduct because of sexual misconduct or, sexual boundary violations or criminal convictions for sexual offences the appropriate threshold for prompting publication and retention of practitioners' regulatory history?

   Yes / No / Unsure. Please explain why.

Yes, a tribunal finding is the appropriate threshold for publishing and retaining a practitioner's regulatory history.

3. A practitioner's regulatory history could include any undertakings, conditions, reprimands, and prohibitions orders. The National Law does not currently allow this history to remain on the public register when they are no longer in force.

   Do you support publication and retention of these elements if the circumstances for publication are met?

   Yes / No / Unsure. Please explain why.

The RACGP supports retaining this information on the public register when conditions etc are no longer in force if the circumstances for publication are met. As noted in our response to question 1, it may be appropriate to place an expiry date on conditions so they do not remain on the register permanently. Spent convictions schemes in various jurisdictions generally place a limit of 10 years on a conviction before it is considered 'spent', provided the person in question does not reoffend. The RACGP does not have a firm position on a suitable expiry date for conditions – this would be a matter for Ahpra to determine.

4. It is proposed to use the guidelines in the Medical Board of Australia's *Guidelines: Sexual Boundaries in the Doctor-Patient Relationship*[1] to define the scope of behaviours covered by these reforms.

[1] Ahpra and National Boards, 'Guidelines: Sexual boundaries in the doctor-patient relationship' https://www.medicalboard.gov.au/Codes-Guidelines-Policies/Sexual-boundaries-guidelines.aspx#.

a) Does this sufficiently encompass all conduct which should be considered in scope for this reform?

b) Should other specific conduct, such as grooming, be included?

The guidelines sufficiently streamline the scope of behaviours covered by these reforms, and grooming should also be included. Although grooming can only be proven after an offence has occurred, this should not preclude it from being included if appropriate wording is used.

5. Are there any other initiatives or actions which could improve public protection and transparency regarding practitioners' regulatory history?

- The RACGP supports allowing practitioners to request that 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.
- Empowering the public as to their rights and responsibilities in their interaction with healthcare professionals and prohibiting any interaction they find uncomfortable during a consultation. This will then reduce the risk of harm leading to practitioner transgression in this regard.
- Providing education and support to overseas trained doctors who come from cultures vastly different to Australia's would assist with prevention and early intervention in cases of professional misconduct.

6. Do you have any further comments or suggestions?

**Need for safeguards to prevent misinterpretation**

Informed consent is at the core of medical practice, with doctors fostering patient agency in decision-making (i.e. the doctor explaining the reasoning for a proposed action and the patient deciding whether to provide consent).

Appropriate safeguards and guidelines are needed to prevent situations where routine and important procedures, such as taking a sexual history, are interpreted as harassment. A doctor's reluctance to conduct intimate examinations due to a fear of sexual assault claims may lead to a delayed diagnosis and place the patient at unnecessary risk.

**Use of chaperones**

Having a chaperone or observer present during an intimate physical examination of a patient could protect health practitioners from vexatious complaints. The RACGP *Standards for general practices* (5th edition) (the Standards) address the presence of a third party during a consultation at *Criterion C2.2 Indicator A*:

> C2.2►A Our practice obtains and documents the prior consent of a patient when the practice introduces a third party to the consultation.

The explanatory notes at this Criterion set out a number of key points, including seeking prior patient consent for the presence of a third party or chaperone, as well as documenting the consent process within a patient's health record. Specifically concerning chaperones and observers, the Standards state:

> *In a general practice setting, there are a number of situations where a practitioner or a patient may wish, or need, to have a chaperone present during a consultation. The practice must clearly document the presence of a chaperone. If the practitioner requests the presence of a third party for this purpose, they must obtain and document prior consent from the patient. Details of the chaperone must be recorded so that they can be subsequently identified if required. If the patient declines the offer of a chaperone, it is a good idea to document this.*

## Part 2 – Establishing of nationally consistent reinstatement orders

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| 1. Do you support a nationally consistent requirement for practitioners to seek a reinstatement order from a tribunal before applying for re-registration after being disqualified or cancelled?<br><br>Yes / No / Unsure. Please explain why. |
| Yes. There are too many state-based practices currently and a nationally consistent requirement would streamline the process for practitioners. |
| 2. Do you agree that the National Law should be amended to adopt the New South Wales model for reinstatement orders?<br><br>Yes / No / Unsure. Please explain why. |
| The RACGP did not receive a sufficiently broad spread of member responses to enable us to comment specifically on the New South Wales model.<br><br>Members did question what the criteria for reinstatement would be in the context of a sexual offence. There are some offences where it is not possible to ensure public safety without restrictions being imposed. |
| 3. Are there any other initiatives or actions which could improve public protection and support national consistency for practitioners seeking re-registration after being disqualified or cancelled? |
| Members suggest that practitioners seeking re-registration after being disqualified should be required to undergo the following assessments:<br><br>• Physical and mental health<br>• Capacity to practise<br>• Ability to understand and obey the law<br><br>A requirement that re-registered practitioners attend ongoing counselling with a peer and report to registration bodies for a stipulated period would support national consistency, provide transparency and encourage the practitioner to follow a path of non-recurrence of sexual transgressions with patients.<br><br>Our members also note that while practitioners should be able to apply for a reinstatement order, there must be a mechanism to automatically reject this if they continually reapply when their application has been refused multiple times. |
| 4. Do you have any further comments or suggestions? |
| Members suggest it would be beneficial to create a support system for practitioners to assist in their recovery from the time of de-registration and continuing for a set period if they are re-registered. This would enable greater transparency in the process and assist in public protection, as the practitioner would be under surveillance and monitoring by their peers. |

## Part 3 – Strengthening protections for notifiers and prospective notifiers

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| 1. Do you support the proposed reforms to strengthen protections for notifiers and prospective notifiers?<br><br>Yes / No / Unsure. Please explain why. |
| Yes. A well-functioning notifications process is essential so that patients, colleagues and practice staff feel comfortable making complaints about a practitioner's conduct, noting that doctors must also be protected from any malicious or unwarranted claims. |

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| 2. Do you support changes to make it an offence to seek to include an NDA in an agreement without advising the affected person that they can still make a notification to Ahpra, National Boards or another relevant regulatory body?<br><br>Yes / No / Unsure. Please explain why. |
| Our members do not support non-disclosure agreements (NDAs) in the context of a sexual boundary violation or sexual misconduct. If an NDA is made however, the affected person should be informed that they can still make a notification to Ahpra or another regulatory body. Rather than making it an offence not to inform an affected person of their right to make a notification, it would be simpler to make NDA clauses void if notification advice is not given. |
| 3. Do you support changes which would mean that an NDA is void to the extent that it prevents a person making a notification to Ahpra, National Boards or other regulatory body?<br><br>Yes / No / Unsure. Please explain why. |
| Yes. An NDA should not preclude a notification to Ahpra, National Boards or another regulatory body. |
| 4. Are there any other initiatives or actions which could improve protections for notifiers and prospective notifiers? |
| The RACGP has longstanding concerns about Ahpra's management of vexatious notifications, where there is a genuine attempt by a patient or another person (eg a colleague or family member of the patient) to cause harm to the practitioner.<br><br>The Ahpra notifications process can place significant additional stress on practitioners. This is particularly of concern where it eventuated that the notification was vexatious or frivolous in nature and the additional stress placed on the practitioner was completely unwarranted.<br><br>The RACGP has previously recommended an overhaul of the notifications process with the intention of easing pressure on Ahpra and the National Boards. A revised process can ensure that complaints are directed appropriately for vetting and assessment, freeing up resources for Ahpra to appropriately manage legitimate notifications. We acknowledge Ahpra has taken steps in recent months to address this issue, including halving its use of investigative powers and accepting 15 recommendations to help reduce the risk of suicide and harm to practitioners subject to notifications. |
| 5. Do you have any further comments or suggestions? |
| No further comments. |

## Other considerations

The RACGP stresses the need for robust processes to deal with sexual abuse and misconduct committed against doctors themselves by colleagues and supervisors. This is particularly important to protect female GPs and GPs in training. Research has found that around 33% of doctors in training have experienced sexual harassment in the workplace, with women at higher risk.[1,2]

## Conclusion

The RACGP looks forward to contributing to further discussions around these proposed reforms. Please contact Ms Samantha Smorgon, National Manager – Funding and Health System Reform, on (03) 8699 0566 or via samantha.smorgon@racgp.org.au if you have any questions regarding this submission.

[1] Fnais N, Soobiah C, Chen MH, et al. Harassment and discrimination in medical training: a systematic review and meta-analysis. Academic Medicine 2014;89(5):817–27.
[2] Stone L. Doctors are being sexually harassed at work. This needs to stop. The Conversation. 25 October 2023.