Response template

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Making a submission

Once you have completed your response, please email it to NRAS Review Implementation Project Secretariat < NRAS.consultation@dhhs.vic.gov.au>

or post your response to:

NRAS Review Implementation Project Secretariat
Health and Human Services Regulation and Reform
Department of Health and Human Services
GPO Box 4057
MELBOURNE VIC 3001

Submissions are due by midnight, Wednesday 31 October 2018.

Publication of submissions

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About you / your organisation

What is your name / your organisation's name?

Australian Dental Association

Are you a:

- ☐ Consumer of health services
- ☐ Registered health practitioner
- ☐ Employer of health practitioners
- ☒ Representative of a professional association
- ☐ Representative from a health regulator
- ☐ Other – please state:_____

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- ☒ **Yes**, you may publish my submission, including my name/my organisation's name.
- ☐ **Yes**, you may publish my submission anonymously (do not include my name).
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Would you like to be informed about the outcome of the consultation?

- ☒ **Yes**
- ☐ **No**

If you answered 'yes', please provide your contact details below.

Name:	Damian Mitsch
Email:	ceo@ada.org.au

Thank you for taking the time to make a submission.

Consolidated list of questions

Governance of the National Scheme

Section 3.1: Objectives and guiding principles – inclusion of reference to cultural safety for Aboriginal and Torres Strait Islander Peoples

1. Should the guiding principles of the National Law be amended to require the consideration of cultural safety for Aboriginal and Torres Strait Islander Peoples in the regulatory work of National Boards, AHPRA, Accreditation Authorities and all entities operating under the National Law? What are your reasons?	Yes. ADA supports the recognition of Aboriginal and Torres Strait Islander Peoples in the regulatory work but there should also be recognition of cultural safety for all Australians regardless of their ethnicity.
2. Should the objectives of the National Law be amended to require that an objective of the National Scheme is to address health disparities between Indigenous and non-Indigenous Australians? What are your reasons?	The ADA does not object to this principle. However, it is not clear how the national registration scheme could overcome such disparity without diverting from its primary objectives of regulation of health practitioners and protection of the public. Similar disparities exist within non-Indigenous Australians, and similar consideration would need to be given to these groups. The detail of the approach methodology should be stated so that such objectives are seen to be more than just aspirational
3. Do you have other suggestions for how the National Scheme could assist in improving cultural safety and addressing health disparities for Aboriginal and Torres Strait Islander Peoples?	Cultural safety should be part of the undergraduate education of all health professionals and a component of assessment for overseas trained health professionals wishing to register in Australia.

Section 3.2: Chairing of National Boards

4. Which would be your preferred option regarding the appointment of chairpersons to National Boards? What are your reasons?	Option 1- No change The ADA does not support amendment of the National Law to allow non-practitioners to be appointed to the Chairperson Role. The safety of the public is of prime concern and where invasive and irreversible procedures are performed the board, especially the chair, must have an in-depth understanding of and experience with the procedures performed. The requirement that chairpersons will be called upon to represent the board means that they should have a detailed understand the profession which they are presiding over in order to understand the intent of the national law as it applies and maintain the confidence of the public.

5. If your view is that the role of chairperson should be reserved for practitioner members only, then how should circumstances be managed where there is no practitioner member willing or able to carry out the role, or where there is a need to appoint a non-practitioner for the good governance of the board?	Governance is not the sole responsibility of the Chairperson but rather every member of a Board. There are enough dental practitioners registered in Australia that it would seem unlikely that a suitable practitioner could not be appointed to hold the position of Chairperson. In the selection process for Board members, a criterion should be that each practitioner member applicant is willing to serve as Board Chairperson.
6. If your view is that the role of chairperson should be open to both community and practitioner members, then how should the need for clinical leadership be managed when a chairperson is required to speak authoritatively on behalf of the National Board?	N/A

Section 3.3: System linkages

7. Are the current powers of National Boards and AHPRA to share and receive information with other agencies adequate to protect the public and enable timely action?	Yes
8. Are the current linkages between National Boards, AHPRA and other regulators working effectively?	Yes
9. Should there be a statutory basis to support the conduct of joint investigations with other regulators, such as drugs and poisons regulators and public health consumer protection regulators, and if so, what changes would be required to the National Law?	No. The ADA does not support the conduct of joint investigations.

Section 3.4: Name of the Agency Management Committee

10. Should AHPRA's Agency Management Committee be renamed as the Australian Health Practitioner Regulation Agency (AHPRA) Board or the AHPRA Management Board? What are your reasons?	No. The use of the term Board whilst consistent with normal practice under association or corporations' law, would, in this case, cause confusion between the national boards and the AHPRA Board.

Registration functions

Section 4.1: Registration improperly obtained – falsified or misleading registration documents

11. Should the National Law be amended to enable a National Board to withdraw a practitioner's registration where it has been improperly obtained, without having to commence disciplinary proceedings against them under Part 8?	Yes. The ADA would support an amendment to enable such action by a board.

Section 4.2: Endorsement of registration for midwife practitioners

12. Should the provision in the National Law that empowers the Nursing and Midwifery Board to grant an endorsement to a registered midwife to practise as a midwife practitioner be repealed?	The ADA does not have a view.

Section 4.3: Undertakings on registration

13. Should ss. 83 and 112 of the National Law be amended to empower a National Board to accept an undertaking from a practitioner at first registration or at renewal of registration?	Yes. However only if the Board has the additional power to revoke registration if the undertaking is not met as outlined below in question 14.
14. Should the National Law be amended to empower a National Board to refuse to renew the registration of a practitioner on the grounds that the practitioner has failed to comply with an undertaking given to the board?	Yes

Section 4.4: Reporting of professional negligence settlements and judgements

15. Should the National Law be amended to require reporting of professional negligence settlements and judgements to the National Boards?	No. Settlements may occur without fault being found. There is a misperception that settlement of a claim equates to negligence or culpability. This is incorrect. Many settlements are made on a commercial basis, with no admission of negligence or guilt. Under circumstances where a commercial agreement was reached, it may be necessary to provide an explanation for the reasons this course was taken and it is not clear whether the National Board would then embark on its own interpretation and investigation of the settlement. Settlements are also made as a gesture of goodwill, with no exploration of the issues or any culpability on the part of the practitioner.

	If practitioners are obliged to disclose settlements and judgments, this may impact on an informal system which has seen matters resolved directly between the patient and the practitioner in a timely and cost-effective manner. A notification system may discourage the resolution of matters informally, with subsequent increase in costs to patients to pursue claims, and time taken to resolve. The existing notifications process is adequate.
16. What do you see as the advantages and disadvantages of the various options?	There are no advantages with options 2,3 & 4 nor is there any evidence to suggest that the current model has deficiencies.
17. Which would be your preferred option?	Option 1 This option encourages openness and frankness by practitioners which then enables PI to have an accurate risk profile of the insured. The existing notification process and practitioner credentialing to detect at-risk practitioner's works effectively. There is no evidence to the contrary. Pursuant to Section 21 of the Insurance Contracts Act 1984 Clth practitioners have a duty to disclose to their Insurer every matter that they know or could reasonably be expected to know, is relevant to the Insurers' decision whether to accept the risk of insurance. This ensures public safety. There are significant disadvantages regarding Options 2, 3, and 4. The disadvantages are the same for all these options

Section 4.5: Reporting of charges and convictions for scheduled medicines offences

18. Should the National Law be amended to require a practitioner to notify their National Board if they have been charged with or convicted of an offence under drugs and poisons legislation in any jurisdiction?	Yes. ADA supports this amendment

Section 4.6: Practitioners who practise while their registration has lapsed

19. Should the National Law be amended to provide National Boards with the discretion to deal with a practitioner who has inadvertently practised while unregistered for a short period (and in doing so has breached the title protection or practice restriction provisions) by applying the disciplinary powers under	Yes. Providing this power is in line with the intention of the scheme and ensure that there are no unnecessary costs incurred for issues where public safety was not put at risk.

Part 8 s. 178 rather than prosecuting the practitioner for an offence under Part 7?	

Section 4.7: Power to require a practitioner to renew their registration if their suspension spans a registration renewal date

20. Should the National Law be amended to require a practitioner whose registration was suspended at one or more registration renewal dates, to apply to renew their registration when returning to practice?	Yes- to ensure that they have met all of the other requirements for registration.
21. Noting the current timeframes for registered practitioner's applying to renew their registration (within one month of the registration period ending) and for providing written notice to a National Board of a 'notifiable event' (within seven days), what would be a reasonable timeframe for requiring a practitioner to apply to renew their registration after returning to practice following a suspension?	Applicants should be allowed to apply for registration so that they are able to commence practice as soon as their suspension time has elapsed assuming they can meet all of the registration requirements.

Health, performance and conduct

Section 5.1: Mandatory notifications by employers

22. Should the National Law be amended to clarify the mandatory reporting obligations of employers to notify AHPRA when a practitioner's right to practise is withdrawn or restricted due to patient safety concerns associated with their conduct, professional performance or health? What are your reasons?	No. The onus should be incumbent upon the practitioner in question, not a third party. Introducing such a requirement may cause further confusion. Rights to practise withdrawals may be related to matters which are unrelated to practitioner regulation or bear no risk to the public. Further penalties should be imposed in cases where there is a risk of public harm and the offending practitioner does not notify their employer.

Section 5.2.1: Access to clinical records during preliminary assessment

23. Should Part 8 Division 5 of the National Law (preliminary assessment) be amended to empower practitioners and employers to provide patient and practitioner records when requested to do so by a National Board?	The ADA supports this amendment in principle.

Section 5.2.2: Referral to another entity at or following preliminary assessment

24. Should Part 8 Division 5 of the National Law be amended to clarify the powers of a National Board following preliminary assessment, including a specific power to enable the	The ADA supports this amendment in principle pending further information as to the referral bodies

National Board to refer a matter to be dealt with by another entity?	and as long as any such referrals do not negate the practitioners' professional indemnity insurance.

Section 5.3.1: Production of documents and the privilege against self-incrimination

25. Should the provisions of the National Law about producing documents or answering questions be amended to require a person to produce self-incriminating material or give them the option to do so? If so: • **Should this only apply to the production of documents but not answering questions or providing information not already in existence?** • **What protections should apply to the subsequent use of that material?** • **Should the material be prevented from being used in criminal proceedings, civil penalty proceedings or civil proceedings?** • **Should this protection only extend to the material directly obtained or also to anything derived from the original material?**	No
26. Should the provisions be retained in their current form? What are your reasons?	Yes. The usual standards of law as per any other legal case should be reciprocated, there should be no difference in the judiciary requirements for professionals as are upheld for the general public.

Section 5.4.1: Show cause process for practitioners and students

27. Should the National Law be amended to enable a National Board to take action under another division following a show cause process under s. 179?	Yes
28. Should the National Law be amended to provide a statutory requirement for a National Board to offer a show cause process under s. 179 in any circumstance where it proposes to take relevant action under s. 178?	Yes

Section 5.4.2: Discretion not to refer a matter to a tribunal

29. Should the National Law be amended to empower a National Board to decide not to refer a matter to the responsible tribunal for hearing when the board reasonably forms the view that there are no serious ongoing risks to the public? If not, why? If so, then why and what constraints should be placed on the exercise of such discretion?	Yes.

Section 5.4.3: Settlement by agreement between the parties

30. Should the National Law be amended to provide flexibility for National Boards to settle a matter by agreement between the practitioner, the notifier and the board where any public risks identified in the notification are adequately addressed and the parties are agreeable? What are your reasons?	Yes. Any processes which reduce unnecessary costs to the scheme and stress for the practitioner and patient should be available If both parties are in agreement, this will allow for an efficient process that should prove to be in the best interests of both the patient and the practitioner. Consideration should be made to amending the current notification form to include a question to the patient as to whether they would be agreeable to the matter being settled by mutual agreement.

Section 5.4.4: Public statements and warnings

31. Should the National Law be amended to empower a National Board/AHPRA to issue a public statement or warning with respect to risks to the public identified in the course of exercising its regulatory powers under the National Law? What are your reasons?	Yes, but only in circumstances where there is a strongly held belief that there is a significant risk to the public.
32. If public statement and warning powers were to be introduced, should these powers be subject to a 'show cause' process before a public statement or warning is issued? What are your reasons?	Yes. There must be processes in place such that the risk would have to be rigorously assessed as being extremely high. There must be procedural fairness and show cause process demonstrated before a public statement is made

Section 5.5.1: Power to disclose details of chaperone conditions

33. Should the National Law be amended to empower a National Board to require a practitioner to disclose to their patients/clients the reasons for a chaperone requirement imposed on their registration? What are your reasons?	No. This could affect the confidence of the patient in the treating practitioner and undermine the process of rehabilitation of the practitioner. If the Board has the confidence that the practitioner is able to treat patients, the patient should not be given any reason to become alarmed.
34. Should the National Law be amended to provide powers for a National Board to brief	Yes.

chaperones as to the reasons for the chaperone? What are your reasons?	

Section 5.5.2: Power to give notice to a practitioner's former employer

35. Should the National Law be amended to enable a National Board to obtain details of previous employers and to disclose to a practitioner's previous employer(s) changes to the practitioner's registration status where there is reasonable belief that the practitioner's practice may have exposed people to the risk of harm? If not, why? If yes, then why and what timeframe should apply for the exercise of these notice powers?	Yes, but only in cases where there is irrevocable evidence of further risk of public safety.

Section 5.6.1: Right of appeal of a caution

36. Should the National Law be amended to enable a right of appeal against a decision by a National Board to issue a caution?	Yes, but the cost for an appeal should be borne by the individual registrant rather than spread across all of the profession.
37. Which would be your preferred option?	Option 2

Section 5.6.2: The rights of review of notifiers

38. Should the National Law be amended to provide a right for a notifier (complainant) to seek a merits review of certain disciplinary decisions of a National Board? What are your reasons?	No. There is insufficient evidence to support a change.
39. Which would be your preferred option?	Option 1.
40. If yes, which decisions should be reviewable and who should hear such appeals, for example, an internal panel convened by AHPRA or the National Health Practitioner Ombudsman and Privacy Commissioner, or some other entity?	N/A

Offences and penalties

Section 6.1: Title protection: surgeons and cosmetic surgeons

41. Should the National Law be amended to restrict the use of the title 'cosmetic surgeon'? If not, why? If so, why and which practitioners should be able to use this title?	Yes. In the absence of a recognised speciality training programme, it would be difficult to identify practitioners who would be eligible to use such a title.
42. Should the National Law be amended to restrict the use of the title 'surgeon'? if not,	Yes. Given that dentists are trained in surgical procedures from a registration perspective. They

why? If so, why and which practitioners should be able to use such titles?	should be entitled to be called dental surgeons as a protected title.

Section 6.2: Direct or incite offences

43. Are the current provisions of the National Law sufficient to equip regulators to deal with corporate directors or managers to direct or incite their registered health practitioner employees to practise in ways that would constitute unprofessional conduct or professional misconduct?	No. Efforts must be made to strengthen the national law to enable regulators to deal with corporate directors or managers who own or operate a health care service. Such directors/managers should as per the case of a dentist being deregistered for serious misdemeanours be barred from being a director/ manager of a corporate owning a dental practice or any other health facility and allowing such misdemeanours to occur. Directors/managers must face strong penalties as part of their failure to adequately supervise pursuant to the varying Acts for practice.
44. Are the penalties sufficient for this type of conduct? Should the penalties be increased to $60,000 for an individual and $120,000 for a body corporate, in line with the increased penalties for other offences?	No. The penalties should be increased as suggested for individuals i.e. $60,000 and increased to $240,000 for a body corporate and with the power to remove directorship in serious cases. Non-dentist practice owners including directors of corporations should also face penalties of s similar amount.
45. Should there be provision in the National Law for a register of people convicted of a 'direct or incite' offence, which would include publishing the names of those convicted of such offences?	Yes If the board wants to publicly list practitioners in default then so should those who incite or direct such offences which should include directors/managers of corporations and non-dentist practice owners.
46. Should the National Law be amended to provide powers to prohibit a person who has been convicted of a 'direct or incite' offence from running a business that provides a specified health service or any health service?	Yes.

Section 6.3.1: Prohibiting testimonials in advertising

47. Is the prohibition on testimonials still needed in the context of the internet and social media? Should it be modified in some way, and if so, in what way? If not, why?	Yes, testimonials are not a source of accurate assessment of the quality of clinical work and are open to abuse There must be penalties for both practitioners and consumers publishing false, misleading and defamatory content. They must not be able to post under a pseudonym. Indirect solicitation by practitioners for positive reviews will not be seen to be enforceable until sites such as

	Whitecoat are banned. The major shareholders of Whitecoat, i.e. Bupa and NIB both own dental practices as well have an extensive contracted provider network. Both actively encourage policyholders to post reviews which in many cases can be viewed as testimonials. Dental services must be provided where deemed clinically necessary and not on the basis of clever advertisements or testimonials. Puffery should also not be allowed.
48. Which would be your preferred option?	Option 1 – Status quo Eliminating testimonials all together regarding health care services.This is clear and concise. Non-dentist sites should be equally culpable as per Q.44 response i.e. the penalties should be increased as suggested.

Section 6.3.2: Penalties for advertising offences

49. Is the monetary penalty for advertising offences set at an appropriate level given other offences under the National Law and community expectations about the seriousness of the offending behaviour?	No. Option 2 with the increases suggested below. The financial benefit gained from the breach is often not reflected in the fine. The deterrent should be the financial penalty. The penalties should be increased as suggested for individuals ie $60,000 and increased to $240,000 for a body corporate and with the power to remove directorship in serious cases Individual directors, as well as the body corp, should face penalties.

Information and privacy

Section 7.1: Information on the public register

50. Is the range of practitioner information and the presentation of this information sufficient for the various user groups?	Yes. However, there is no need for information about tribunal hearings in which no further action was taken.
51. Should the National Law be amended to expand the type of information recorded on the national registers and specialist registers?	No. The register should not become a default directory for health practitioners. Only information specific to the registration as a health care provider should be provided.
52. What additional information do you think should be available on the public register? Why?	None

53. Do you think details, such as a practitioner's disciplinary history including disciplinary findings of other regulators, bail conditions and criminal charges and convictions, should be recorded on the public register? If not, why not? If so: • **What details should be recorded?** • **What level of information should be accessible?** • **What should be the threshold for publishing disciplinary information and for removing information from a published disciplinary history?**	Yes but only if the matter was upheld with the outcome being a reprimand or greater.
54. Should s. 226 of the National Law be amended to: • **broaden the grounds for an application to suppress information beyond serious risk to the health or safety of the registered practitioner?** • **require or empower a National Board to remove from the public register the employment details (principal place of practice) of a practitioner in cases of domestic and family violence?** • **enable National Boards not to record information on, or remove information from, the public register where a party other than the registered health practitioner may be adversely affected?**	No. There is sufficient capacity within the current system to allow for these situations. However, the ADA would support "**require or empower a National Board to remove from the public register the employment details (principal place of practice) of a practitioner in cases of domestic and family violence?"**

Section 7.2: Use of aliases by registered practitioners

55. Should the National Law be amended to provide AHPRA with the power to record on the public registers additional names or aliases under which a practitioner offers regulated health services to the public?	Yes. The national register should reflect the name by which the practitioner is known when practising as well as the name under which they are registered.
56. Should the public registers be searchable by alias names?	Yes
57. Should the National Law be amended to require a practitioner to advise AHPRA of any aliases that they use?	Yes. Consideration could be given to the introduction of substantial penalties should the practitioner not comply.
58. If aliases are to be recorded on the register, should there be provision for a practitioner to request the removal or suppression of an alias from the public register? If so, what	No, except when they meet the current provisions in Section 226.

reasons could the board consider for an alias to be removed from or suppressed on the public register?	
59. Should there be a power to record an alias on the public register without a practitioner's consent if AHPRA becomes aware by any means that the practitioner is using another name and it is considered in the public interest for this information to be published?	Yes, but only if they have contacted the practitioner in the first instance and a valid reason as per s226 is given for it not to be listed.

Section 7.3: Power to disclose identifying information about unregistered practitioners to employers

60. Should the National Law be amended to enable a National Board/AHPRA to disclose information to an unregistered person's employer if, on investigation, a risk to public safety is identified? What are your reasons?	Yes If the matter is of sufficient concern that the public is likely to be at risk.

Other comments

<Do you have any other comments to make about these proposals?>