Overview

The 14 NSW Health Profession Councils are pleased to be able to provide this submission to the Review of the National Registration and Accreditation Scheme.

The Councils support the continuation of the National Scheme including the NSW co-regulatory system. However, it is considered that there are a number of areas for improvement in the design and operation of the Scheme.

The Councils are strongly supportive of those aspects of the scheme that provide a uniform approach to registration and accreditation of health practitioners; that provide for a national and publicly accessible register of practitioners; and that allow for national consistency in the development of policy around access to drugs and poisons and practise restrictions. The Councils also support those aspects of the scheme that have resulted in a more robust, consistent and transparent process for managing complaints and notifications about practitioners on a nationwide basis.

The Councils are however critical of the cost of the national scheme and note that in most cases registration fees have significantly increased on what was levied in NSW prior to the scheme coming into operation. Councils are also concerned that while consistent policy development in areas such as practise restrictions and access to drugs and poisons is beneficial and has been effective in removing local political considerations from these important public health issues, the National Boards have spent significant resources developing a range of largely uniform policies in areas that might be viewed as peripheral to public protection such as social media policy and advertising.

Related to concerns about the cost of the national scheme the NSW Councils are concerned that the process through which the National Boards account for their costs is not transparent. As a specific example there are a number of NSW Councils which receive, as the complaints handling proportion of the fee, an arbitrarily determined 30% of the national registration fee paid by practitioners with a principal place of practice in NSW. While this amount was the agreed split back in early 2010 when the scheme was being established it does not appear to bear any relation to the on the ground reality and despite efforts to renegotiate the fee split it has not
changed. If it is the case that 70% of the resources of the relevant National Boards, are being expended on registration, accreditation and other back-office functions rather than on the management of complaints and notifications then the long term financial viability of the scheme must be questioned.

The Councils do acknowledge the major logistical and financial exercise associated with the establishment of the scheme and that significant financial investment was required. However the registration side of the national scheme appears to be working extremely efficiently, with over 95% of registration renewals occurring online. It is also understood that National Boards have established substantial financial reserves and in those circumstances it is appropriate to revisit the allocation of funding to complaints management.

The Councils are also conscious that in states other than NSW, and now Queensland, Health Ministers have political accountability and responsibility for the operation of the national scheme with little immediate and direct capacity to influence its operation and application. To a large extent this is an inevitable consequence of the adoption of laws model utilised to bring the scheme into existence however some amendment of structures such that Ministers, or their Heads of Department, have greater involvement in and capacity to exert influence over the system may be necessary to address this issue.

A logical extension of the arguments posited above is the development of co-regulatory arrangements nationwide. It is noted that with the recent commencement of co-regulatory arrangements in Queensland 50% of registered practitioners have a principal place of practice in co-regulatory jurisdictions and over 60% of complaints are generated in those jurisdictions. While no other jurisdiction has made any move towards a co-regulatory set-up it is noted that the Victorian Parliament has made recommendations for co-regulatory arrangements and if those recommendations were taken up three quarters of practitioners would be covered by co-regulatory arrangements.

Therefore it is appropriate to give greater consideration as to how the national scheme might evolve to accommodate such developments. While an option is
devolve to states and territories responsibility for complaints and notifications, such a system, in the absence of local control over registration processes, require each jurisdiction to be confident that each other jurisdiction had rigorous systems in place to manage complaints and notifications in a consistent manner. The Councils are not convinced that such rigour is possible either in the short term, or in fact at all but would nonetheless welcome any opportunity to be involved in future discussions on the evolution of the scheme.

**Discussion Points**

1. **Should the Australian Health Workforce Advisory Council be reconstituted to provide independent reporting on the operation of the National Scheme?**

   Yes. The reconstitution of AHWAC would provide a useful mechanism for reporting on those parts of the National Scheme that are embodied in the National Boards’ registration functions and AHPRA, as well as those parts of the scheme that have less visibility such as the development of a sustainable and responsive health workforce. However the Councils would like to sound a note of caution that AHWAC with its workforce focus may not be the most appropriate body to oversight the regulatory functions of the National Boards. The tension between public protection and the provision of services may mean that one body cannot oversight all relevant parts of the scheme.

   The Councils are also concerned that AHWAC’s responsibilities for reporting to Ministers and for contributing to the development of broad public policy relating to the health workforce be clearly defined and recognised by proper public funding of AHWAC. The Councils are concerned that a reconstituted AHWAC does not simply become another large bureaucracy searching for meaningful work to do and thereby complicate the operation of the Scheme.

   The Councils also strongly reject any suggestion that AHWAC be funded from practitioner fees.
2. **Should the Health Workforce Advisory Council be the vehicle through which any unresolved cross-professional issues are addressed?**

The resolution of cross-profession workforce disputes is an appropriate function for AHWAC. The resolution of inter-profession disagreements is an important consideration both in terms of the effective operation of the health system and also in terms of the promotion and development of a sustainable and responsive health workforce. As such any activity of AHWAC in dealing with these matters should be properly funded by governments rather than the professions.

As noted above in the response to discussion point 1 the Councils do not wish to see further cost increases, or a restriction on the funds available for proper regulatory responsibilities, due to a call to fund activities more appropriately funded by government. The Councils also wish to draw the Reviewer’s attention to the increase in costs that has been experienced as a result of the national scheme and do not wish to see further increases in costs associated with the funding of AHWAC.

3. **Should a single Health Professions Australia Board be established to manage the regulatory functions that oversee the nine low regulatory workload professions? Estimated cost saving $11m per annum.**

4. **Alternatively, should the nine National Boards overseeing the low regulatory workload professions be required to share regulatory functions of notifications and registration through a single service? Estimated cost saving $7.4m pa.**

The NSW Councils acknowledge that over 95% of complaints in the national scheme are generated by 5 of the 14 professions. This situation is replicated in NSW (which is part of the national scheme) where 96% of complaints are made about those 5 professions and only 4% about the remaining 9
professions. In fact 3 professions (medicine, nursing & midwifery, and dental account for over 85% of complaints alone).

The Councils do not however consider that the total number, or proportion, of complaints should be the sole consideration of the need for a dedicated Board or Council. In this respect it is noted that on a per 1,000 practitioner basis there are more complaints about a number of professions (including chiropractic and podiatry) than there are about nursing and midwifery. The Councils are of the view that the primary consideration in this respect should be the potential harm that can arise from unprofessional or unethical conduct by a member of the profession, or from a practitioner’s impairment or poor performance.

In terms of streamlining and efficiency it is noted that NSW already has in place arrangements whereby secretariat and administrative functions are shared across a number of Councils. The secretariat and administrative services provided to 10 Councils (the 9 low volume professions plus psychology) are shared in 3 teams. Further streamlining of these functions into a single team may be a valuable exercise. However if this approach is taken care is needed to ensure that the smaller professions, and those newly admitted professions with less mature systems are not swamped by the larger and more established professions and also that there is no unwarranted cross-subsidisation between professions.

Alternately proper examination of this option may demonstrate its value and also that cross subsidisation cannot be avoided. If that is the case and there is no practical way to avoid cross-subsidisation the guiding principles of the scheme may require updating to reflect that reality.

5. **Should the savings achieved through shared regulation under options 1 or 2 be returned to registrants through lower fees?**

While returning savings to registrants is an option, and has been supported by some Councils, another option is to utilise those savings to develop the
scheme and to enhance the services that are provided by the Boards and Councils for those consolidated professions into regulatory alignment with all others. Most obviously the savings could be applied to drive accelerated development of sophisticated performance and health management systems.

6. **Should future proposals for professions to be included in the National Scheme continue to require achievement of a threshold based on risk to the public and an associated cost benefit analysis?**

Yes, the Councils agree that any proposal for a profession to be included in the National Scheme should be subject to assessment against a threshold based on risk to the public and an associated cost benefit analysis. The risk assessment should take account of risks associated with the potential loss of workforce as the financial burden of the scheme may beyond the reach of small professions.

7. **Should the National Law be amended to recognise those professions that provide adequate public protection through other regulatory means?**

No Comment.

8. **Should a reconstituted Australian Health Workforce Advisory Council be the vehicle to provide expert advice on threshold measures for entry to the National Scheme to the Health Workforce Ministerial Council?**

No Comment

9. **What changes are required to improve the existing complaints and notifications system under the National Scheme?**
The Councils consider that the co-regulatory system that applies in NSW provides a suitable approach to managing complaints and notifications. The NSW system provides for multiple points of entry, AHPRA, the Councils and the Health Care Complaints Commission, but in doing so requires that all complaints/notifications be dealt with by the Councils and the Commission in a consultative manner.

The NSW system is by no means perfect and there remain consumer dissatisfactions, however both the Councils and the Commission are locally accountable and responsive to the Minister for Health and/or the NSW Parliament. In addition the NSW arrangements ensure profession specific input at all points from the initial consultation on a complaint through to membership of the disciplinary Tribunal or other body, thereby helping to ensure that regulatory decisions have the imprimatur of the profession and are accepted.

10. Should the co-regulatory approach in Queensland, where complaints are managed by an independent commissioner, be adopted across all States and Territories?

The Councils are observing developments in Queensland with interest. However it is far too early to assess whether or not the approach that is being taken in Queensland will be successful and if so translatable into other jurisdictions.

As a specific observation on the structure of the Queensland approach it is noted that significant decision making power rests within the Ombudsman’s office without the obligation for profession specific input. It is unclear whether this may undermine the authority of the Ombudsman’s decisions within the regulated professions and by extension through the community at large.

Therefore while the Councils will continue to take an interest in developments in Queensland they are strongly of the view that the Queensland approach
should not be adopted in NSW and also that it should not be considered for the rest of the country without a rigorous evaluation of its effectiveness.

11. Should there be a single entry point for complaints and notifications in each State and Territory?

As noted above the Councils consider that the approach in NSW, whereby there are multiple points of entry to the system, but mandatory consultation and consistency in management of complaints provides a valuable approach. The Councils are not aware of any evidence that the multiple points of entry to the system in NSW cause unreasonable confusion to consumers or result in matters not being appropriately managed.

12. Should performance measures and prescribed timeframes for dealing with complaints and notifications be adopted nationally?

NSW is developing a range of performance indicators and timeframes for the management of complaints and notifications. However the Councils consider that while there is superficial attractiveness in establishing prescribed timeframes it is vital to recognise that complaints and notifications are all different, albeit sometimes in very subtle ways, and that prescribing hard and inflexible timeframes does not guarantee that matters will be handled effectively and in fact can sometimes have the opposite result.

13. Is there sufficient transparency for the public and for notifiers about the process and outcomes of disciplinary processes? If not, how can this be improved?

The Councils consider that increased transparency is always important and valuable and that greater efforts can be made to ensure that complainants/notifiers are kept up to date with progress of matters, especially for matters under consideration over a lengthy period. In acknowledging the value of greater transparency the Councils are however mindful of the need to
strike an appropriate balance between transparency and the rights of individual practitioners to privacy.

Specifically the Councils support the publication of disciplinary decisions from Tribunals and professional standards committees (and the equivalent interstate bodies) where those bodies conduct their proceedings in public. The Councils also support the publication of information about outcomes and practitioners where such publication is in the public interest.

However the Councils do not support the routine publication of disciplinary decisions where proceedings are not conducted in public, and expressly reject any suggestion that proceedings in the various health and performance programs should be made public. The rationale for rejecting the publication of health and performance proceedings is that the relevant programs, irrespective of the manner in which they are run, are concerned with rehabilitation, education and improvement. In short these programs are concerned with the future and, at their pinnacle, the practitioners’ return to unrestricted productive professional practice. Publication of decisions in these areas does not serve the broader public interest. In this respect the Councils are mindful that publication of decisions and outcomes should only be the norm where it serves the broader public interest and not because one or more members of the public may have an interest in the information.

Notwithstanding the above concerns there is a view within some Councils that restrictions on the publication of outcomes should not be such that they restrict the ability of Councils, National Boards and educators to utilise those outcomes in the education of existing members of the professions and students. Councils also consider that the review should consider changes to the legislative scheme to ensure that appropriate information can be provided to notifiers and other relevant parties.

14. Should there be more flexible powers for National Boards to adopt alternative dispute resolution, for instance to settle matters by consent between the Board, the practitioner and the notifier?
These functions are most appropriately managed by health complaints entities. The National Boards (and the NSW Councils) are professional regulators, they are not consumer complaints bodies. The inclusion of a power for National Boards to resolve matters by consent may see the Boards seeking to resolve complaints about fees and similar matters which do not concern public protection and professional standards.

Similarly the inclusion of alternative dispute resolution type powers may see regulators becoming more inclined to attempt to negotiate complaints away rather than dealing with them in a transparent fashion. This approach, albeit in an informal manner, was a feature of a number of previous jurisdiction based schemes that attracted substantial criticism from NSW authorities. Resolving complaints with a goal of making the original complainant happy with the result, has the potential to erode the public protection function of the scheme. Any erosion of the public protection aspect of the scheme will inevitably draw criticism from the professions and undermine the legitimacy of decisions. In this respect it is vital to understand that the regulatory system and the complaints process are designed to protect the public and to maintain public, employer and political confidence in the registered professions. This confidence can only be maintained in circumstances where important decisions and the processes behind them are transparent.

By way of example the Councils express their concern that the National Boards are too inclined to accept undertakings from practitioners in circumstances where objectively the imposition of conditions sends a stronger message to all stakeholders about the conduct in question. A particular example of this is the outcome of complaints prosecuted by the Chiropractic Board of Australia in the Victorian Civil and Administrative Tribunal in Chiropractic Board of Australia v Hooper (Review and Regulation) [2013] VCAT 1346 (2 August 2013). This case resulted in findings of professional misconduct, and quite pointed criticism of the practitioner by the Tribunal. However the practitioner and the Board jointly agreed that after a period of suspension the practitioner would have undertakings on his registration.
While there may have been good reason to take this course of action, such as avoiding further waste of funds and Tribunal time, those reasons are not clear and a member of the public seeing the undertakings on the national register, without having carefully read the decision of the Tribunal, would be forgiven for thinking that the conduct in question was of a lower level of seriousness than is indicated by the Tribunal’s reasoning.

Despite the Councils’ view that alternative dispute resolution processes have no place in the Councils’ and Boards’ processes there is a strong view that the counselling process that is available under in the NSW context is a valuable mechanism to provide an outcome from lower level complaints which is both meaningful for the complainant/notifier and also salutary and educative for the practitioner.

15. At what point should an adverse finding and the associated intervention recorded against a practitioner be removed?

It is important in the context of adverse findings to note that there is an important distinction between the adverse findings of a body such as a Tribunal and the recording of conditions and reprimands on the national register.

Adverse findings of decision making bodies such as Tribunals are routinely on the public record and remain so indefinitely. This permanent record is a touchstone of open and transparent decision making as well as serving the broader purpose of providing education about professional standards to the public and professions. The Councils do not support any suggestion that the published decisions of disciplinary bodies should be removed from public access at a point in time. While this position is primarily policy driven it also reflects the reality that as a practical matter a published decision can never truly be removed from the public domain and therefore creating an expectation that this can happen is a mistake.
Conditions on a practitioner’s registration and, in National Board jurisdictions, undertakings given by a practitioner are placed on practitioners’ registration for the protection of the public. If that premise is accepted it logically flows that such public protection measures should only be removed at the point where the public no longer requires protection. This point will be different in every case and a review mechanism that assesses the need for protection and outstanding risk is the appropriate mechanism to determine if that point has been reached. The NSW Councils therefore broadly support arrangement similar to those that currently apply in NSW whereby a properly established review body is able to review conditions on a practitioner’s registration and, if satisfied that it is in the public interest, remove those conditions and fact of their previous existence from the public register.

However the Councils acknowledge that this is a very difficult issue that has generated significant debate within the professions, academic circles and the broader community. It is understood that there are diverse opinions as to the recording of conditions on the register and whether conditions should be permanently recorded. In line with this diversity of views the 14 NSW Councils are unable to reach a consensus on this point and in fact within each individual Council there is often a lack of consensus.

16. Are the legislative provisions on advertising working effectively or do they require change?

No comment.

17. How should the National Scheme respond to differences in States and Territories in protected practices?

No comment.

18. In the context of the expected introduction of a National Code of Conduct for unregistered health practitioners, are other mechanisms or
provisions in the National Law required to effectively protect the public from demonstrated harm?

No comment.

19. Should the mandatory notification provisions be revised to reflect the exemptions included in the Western Australian and Queensland legislation covering health practitioners under active treatment?

The NSW Councils note that mandatory reporting was first introduced for medical practitioners in NSW in 2008 (then known as reportable misconduct). While a slightly narrower range of matters were reportable as reportable misconduct under the Medical Practice Act 1992 (NSW) there has never been an exemption for treating practitioners in NSW and no identified need to create it.

In the absence of objective evidence, as opposed to anecdote and assertion, that mandatory reporting has had an adverse impact on practitioners seeking treatment the NSW Councils are strongly opposed to any narrowing of the matters that are to be notified under the mandatory notification provisions and are also opposed to any narrowing of the practitioners who are required to make those reports.

In addition the Councils consider that the evidence from recent studies, including that presented by Dr Marie Bismark at the last AHPRA National Conference, provides support for the continuation of cross profession reporting.

20. To what extent are National Boards and Accrediting Authorities meeting the statutory objectives and guiding principles of the National Law, particularly with respect to facilitating access to services, the development of a flexible, responsive and sustainable health workforce, and innovation in education and service delivery?
The Councils note that a significant part of the National Registration and Accreditation Scheme and the intergovernmental agreement was concerned with access to services and the development of a flexible and responsive health workforce. Many of these matters seem to have been lost in the transition from state based regulation to national regulation which has focused on the immediate issues of registration and complaints and notification handling.

21. Should a reconstituted AHWAC carry responsibility for informing regulators about health workforce reform priorities and key health service access gaps?

Yes (see response to discussion points 1 and 2).

22. To what extent are Accrediting Authorities accommodating multidisciplinary education and training environments with coordinated accreditation processes or considering future health practitioner skills and competencies to address changes in technology, models of care and changing health needs?

No comment.

23. What relationship, if any, is required between regulators and educational institutions to ensure the minimum qualification for entry to professions remains available?

The experience of the Councils is that inexperience in practice rather than the level of qualification is more often a better indicator of complaints about a practitioner’s performance. The Councils’ broad experience therefore does not suggest that a constant increase in the base level of qualification will deliver benefit to consumers.
The Councils therefore support moves to ensure that educational institutions continue to offer appropriate programs that provide the base-level qualifications for entry to the professions.

24. How effective are the current processes with respect to assessment and supervision of overseas trained practitioners?

The Councils’ perception is that overseas trained practitioners may be overrepresented in complaints and notifications. This perception is supported by research previously undertaken by the NSW Medical Board and the General Medical Council (UK) on the involvement of international medical graduates in performance programs. However, the Councils are not aware of any broader research in professions other than medicine.

It is clear that further research is required in this area. Any such research should also examine the underlying causes of any overrepresentation of overseas trained practitioners in complaints and notifications. There may be a range of factors, other than educational factors, that are in play, including communication and cultural factors as well as the possibility of a higher propensity for consumers to complain about overseas trained practitioners.

The Councils support the establishment of a collaborative research initiative involving the Councils and the National Boards in this area and to assist in identifying if more assessment and supervision of overseas trained practitioners is required.

25. Should the appointment of Chairperson of a National Board be on the basis of merit?

The NSW Councils consider that current processes already result in merit selection of Chairpersons of National Boards.
The Councils are strongly of the view that the role of the National Boards in regulating the professions means that it is critical that each Board has the confidence of its profession. The Councils consider that this confidence is greatly assisted by the Chairperson being a respected senior member of the profession.

26. Is there an effective division of roles and functions between National Boards and accrediting authorities to meet the objectives of the National Law? If not, what changes are required?

Those Councils with direct experience of the accreditation process consider that the current arrangements work well and that the division of functions and arms-length arrangements between National Boards and accreditation authorities should be maintained.

27. Is there sufficient oversight for decisions made by accrediting authorities? If not, what changes are required?

Again those Councils with direct experience of the accreditation functions consider that the current oversight, review and appeal mechanisms are appropriate.

28. The Review seeks comment on the proposed amendments to the National Law.

There is significant support amongst the Councils for revisiting a number of the key definitions used within the scheme in order to achieve greater consistency in approach between national law jurisdictions and co-regulatory jurisdictions.

Councils also request that consideration be given to limiting the number of consecutive terms of office to which a National Board member may be appointed. In NSW Council members may be appointed for consecutive terms of office totalling a maximum of 9 years. A similar limit on the number
of consecutive years that National Board members, and Chairs, can serve would ensure a regular turnover in members. This regular turnover would help to ensure that new ideas and perspectives are constantly introduced to National Board decision making and processes.

Of the specific amendments proposed in the discussion paper those amendments are broadly supported by the NSW Councils. Where Councils are either strongly supportive of the amendments, or do not support them the rational for that view is set out below:

Amendments already approved by Ministers

Statutory protection for health practitioners reporting serious offences to police
It is noted that this amendment has already been approved by Ministers. However the Councils note for the record that this type of provision has not previously been incorporated in NSW health practitioner legislation and there is no evidence that its absence resulted in the non-reporting of matters to the Police. Therefore despite that fact that Ministers have approved this amendment the Councils question the objective need for its inclusion.

Time-frames for taking proceedings for offences
Standardisation of the time period for commencing a prosecution for an offence is essential to ensure that both AHPRA and the National Boards can efficiently undertake their public protection functions. Therefore this amendment is strongly supported.

Proposed further legislative amendments made by AHPRA and the National Boards

Information on the Register
The rationale for this proposed amendment is not clearly explained. It is unclear the circumstances in which a third party might seek to have information suppressed from the register and the factors that might be
considered in such a case. For example might a practitioner’s spouse or child be able to request that conditions on registration are suppressed due to their potential to cause embarrassment?

The Councils note that the public register serves an important function in providing information to the public and are of the view that substantially more detail is required before this proposed amendment can be properly considered.

**Conditions on registration**
The Councils are strongly supportive of the proposed amendments to sections 125(2)(b), 126(3)(b) and 127(3)(b) to allow co-regulatory jurisdictions to change a condition imposed by an adjudication body in a National Board jurisdiction. In fact the Councils consider these amendments to be essential.

These amendments will significantly improve the management of those practitioners with National Board conditions or undertakings who have a principal place of practice in a co-regulatory jurisdiction.

**Abrogation of right against self incrimination**
The Councils note that an equivalent provision exists in the NSW Law and support its extension to National Board jurisdictions.