

Response template

This form has been provided as a template for your response to the consultation paper, **Regulation of Australia's health professions: keeping the National Law up to date and fit for purpose**. Use of this template is optional, but may help to guide your response. You do not need to answer every question, and you can choose to answer as many or as few questions as you like.

Making a submission

Once you have completed your response, please email it to [NRAS Review Implementation Project Secretariat](mailto:NRAS.consultation@dhhs.vic.gov.au) <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?

Australasian College for Emergency Medicine (ACEM)

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: Specialist Medical College accredited by the AMC and MCNZ

Can your submission be published on the COAG Health Council website?

- 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).
- No**, my response is private and confidential.

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:	Dr Peter White
Position/title (if applicable):	Chief Executive Officer
Email:	ceo@acem.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

<p>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?</p>	<p>ACEM believes that Section 3.1 is in line with our vision for reconciliation. ACEM is committed to improved access and equity to quality, acute health care in emergency departments by creating culturally safe places for Aboriginal and Torres Strait Islanders to receive such care.</p> <p>ACEM considers that the inclusion of cultural safety for Aboriginal and Torres Strait Islander Peoples, as either a guiding principle or objective of the National Law, is to be applauded. Such an inclusion will better enable the National Law to support health outcomes for Aboriginal and Torres Strait Islander peoples, as it will influence the broader workforce to prioritise a foundational need for health care services that are underpinned by cultural safety.</p> <p>To achieve this, ACEM considers this inclusion has a better chance of adoption and ownership as an objective to the Act.</p>
<p>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?</p>	<p>ACEM believes that quality and safe health care must be aware of, and responsive to, the cultural traditions and needs of patients. This is particularly relevant for Aboriginal and Torres Strait Islander patients and is an important step to address historic practices of marginalisation and degradation.</p> <p>ACEM supports an inclusion of cultural safety to the Objectives of the National Law.</p> <p>Objectives of the National Law are more definitive than guiding principles. ACEM considers this greater level of certainty, and of requirement, will have a higher probability of influencing those bound by the National Law.</p> <p>However, support must be provided throughout this process to educate those entities required to respond to this change in the National Law.</p>
<p>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?</p>	<p>In order to bring this to effect, and to deliver meaningful, positive health outcomes for Aboriginal and Torres Strait Islander people, ACEM calls on the COAG Health Council to engage with stakeholders to develop and agree on the wording of what this might look like. Such engagement must be underpinned with</p>

	open and genuine partnerships with Aboriginal and Torres Strait Islander representatives. ACEM suggests one key stakeholder to include in this work is Reconciliation Australia.
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Section 3.2: Chairing of National Boards

<p>4. Which would be your preferred option regarding the appointment of chairpersons to National Boards? What are your reasons?</p>	<p>ACEM is of the view that the role of a chairperson of a National Board is complex and best filled by a member of the relevant profession and considers Option 1 as the preferred option.</p>
<p>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?</p>	<p>The response to 4 above notwithstanding, ACEM recognises that were such a circumstance to arise, Option 3 with careful consideration of the support available to a non-practitioner would enable a practical solution to enable the Board in question to continue to operate.</p>
<p>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?</p>	<p>No additional response to that of 4 and 5 above.</p>

Section 3.3: System linkages

<p>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?</p>	<p>It is difficult for ACEM to evaluate the effectiveness of the current mechanisms of sharing of information between the National Boards, AHPRA and other agencies in terms of timeliness and adequacy to protect the public. ACEM is, however, supportive of mechanisms that would address identified deficiencies in these areas and achieve the objectives of the National Scheme, without expanding the scope of the scheme from its core activities.</p>
<p>8. Are the current linkages between National Boards, AHPRA and other regulators working effectively?</p>	<p>Refer to 7 above.</p>
<p>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?</p>	<p>ACEM is unable to comment on this due to the range of variations likely to be involved in 'joint investigations'. As per 7 above, ACEM is, however, supportive of mechanisms that would address identified deficiencies in these areas and achieve the objectives of the National Scheme, without expanding the scope of the scheme from its core activities.</p>

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?	ACEM is of the view that the current nomenclature does not assist in clarifying the operation of the National Scheme and is supportive of a name change to either of the options outlined in the consultation paper.
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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?	ACEM is supportive of this proposal where it has been proven that an individual has obtained registration improperly. This would appear to reflect what is understood to be a cornerstone objective of the National Law.
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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?	ACEM is supportive of this proposal.
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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?	ACEM sees this proposal as reasonable where there are no patient safety risks identified.
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?	With public safety considerations foremost in mind, ACEM is supportive of this proposal, providing the principles of natural justice are afforded to the practitioner.

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?	Whilst ACEM can see some justification for an amendment, the nature of the matters in question (timeframe, proof of judgement versus decision to settle based on cost, etc.) renders this a less than simple matter.
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<p>16. What do you see as the advantages and disadvantages of the various options?</p>	<p>See 15 above.</p>
<p>17. Which would be your preferred option?</p>	<p>On balance, Options 2 or 3 carefully monitored and administered may be the most appropriate; however, the potential for unintended consequences and misuse of amendments must be considered prior to any decision to change.</p>

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

<p>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?</p>	<p>ACEM recognises that there are occasions where such notification may be in the interest of public safety, as well those in which minor transgressions may occur that present no risk to public safety. Accordingly, ACEM would be supportive of amendments to the definition of a 'relevant event' under s.130 of the National Law that enabled all relevant instances where a risk to public safety was involved to be incorporated.</p>
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Section 4.6: Practitioners who practise while their registration has lapsed

<p>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 Part 8 s. 178 rather than prosecuting the practitioner for an offence under Part 7?</p>	<p>Where the occurrence was due to oversight or similar on the part of the practitioner, ACEM would be supportive of what appears to be a sensible amendment.</p>
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Section 4.7: Power to require a practitioner to renew their registration if their suspension spans a registration renewal date

<p>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?</p>	<p>ACEM would be supportive of what appears to be a reasonable approach, particularly where the period of suspension was not short and a practitioner's circumstances may have changed since their last renewal.</p>
<p>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</p>	<p>ACEM recognises the variations in circumstances of individual practitioners that may be involved here and would suggest that a period of fourteen (14) days would be appropriate.</p>

registration after returning to practice following a suspension?	
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Health, performance and conduct

Section 5.1: Mandatory notifications by employers

<p>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?</p>	<p>Should the requirements under s.130 of the National Law as quoted on p.39 of the Consultation Paper not be sufficient, ACEM would support this proposed amendment as the circumstances involved would appear to represent significant deviations from accepted professional standards.</p>
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Section 5.2.1: Access to clinical records during preliminary assessment

<p>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?</p>	<p>Given the information provided in relation to this proposal, ACEM would be supportive of the amendment on the basis of enabling a more timely completion of preliminary assessments, without risk of breaching privacy obligations.</p>
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Section 5.2.2: Referral to another entity at or following preliminary assessment

<p>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 National Board to refer a matter to be dealt with by another entity?</p>	<p>ACEM would be supportive of this proposal on the basis of enabling a more timely process.</p>
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Section 5.3.1: Production of documents and the privilege against self-incrimination

<p>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:</p> <ul style="list-style-type: none"> • 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? 	<p>ACEM is concerned with the proposal to remove the right of practitioners not to self-incriminate; however, does appreciate the objectives of the National Scheme in terms of public protection. Were this amendment to gain support from Ministers, ACEM feels that it should be restricted to information that is already in existence.</p>
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<ul style="list-style-type: none"> • 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? 	
26. Should the provisions be retained in their current form? What are your reasons?	Refer to 25 above.

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?	ACEM would be supportive of this amendment which appears consistent with the objectives of the National Law; however, is mindful of the potential for protracted processes should appropriate administrative structures not accompany the proposed amendment.
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?	As per the Consultation Paper, given that 'the existing s.179(3) is inconsistent with current operational practice and may also be out of step with emerging law in relation to procedural fairness in regulatory processes', this would seem a reasonable amendment.

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?	ACEM would be supportive of what appears to be a reasonable amendment.
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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?	In much the same way as the Australian Medical Council does not entertain conciliation of individual complaints in relation to education providers accredited by them, ACEM would rather that National Boards continue to consider matters at a broader level where notifications indicate concerns, rather than mechanisms to resolve individual disputes.
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Section 5.4.4: Public statements and warnings

31. Should the National Law be amended to empower a National Board/AHPRA to issue a	ACEM appreciates this proposal for instances where the risks are considered significant and clear risks to
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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?	the public are indicated; however, the absolute, irrevocable nature of this power is understood and the consequences of errors in its use potentially extreme for the individual(s) involved.
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?	See 31 above.

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?	ACEM is of the view that a patient/client should be provided with sufficient information to enable them to be informed as to the reasons for the need of a third party (e.g. chaperone) to be involved in a consultation, but in a manner that is commensurate with the risks involved to the patient/client.
34. Should the National Law be amended to provide powers for a National Board to brief chaperones as to the reasons for the chaperone? What are your reasons?	As per 34 above, ACEM is of the view that a chaperone should be provided with sufficient information to enable them to be informed as to the reasons for their need to be involved in a consultation, but in a manner that is commensurate with the risks involved to the patient/client.

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 risk of harm? If not, why? If yes, then why and what timeframe should apply for the exercise of these notice powers?	ACEM is supportive of this proposal where 'there is reasonable belief that the practitioner's practice may have exposed people to risk of harm'.
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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?	Given the climate in which health practitioners operate and evolving community expectations, ACEM is of the view that all such decisions should be open to 'appeal', despite the relatively low perceived level of a 'caution' relative to other sanctions.
37. Which would be your preferred option?	While the possibility of increased costs to the scheme are acknowledged, Option 3 would seem the most appropriate, enabling consistency with current arrangements.

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?	Consistent with 30 above, ACEM would encourage the scheme to continue to operate at a high regulatory level, rather than become a mechanism for the reconsideration of matters by individual notifiers.
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. Refer to 42 below.
42. Should the National Law be amended to restrict the use of the title ‘surgeon’? if not, why? If so, why and which practitioners should be able to use such titles?	ACEM recognises the complexity of this matter; however, is of the view that the use of the title ‘surgeon’ should be restricted to those who have obtained relevant qualifications that render the use of the term congruent with the procedures involved with the scope of practice of those individuals.

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?	Despite there having been no prosecutions under the relevant section of the National Law to date, ACEM sees these provisions as valuable in ensuring the protection of practitioners from unscrupulous individuals and would welcome promulgation of the provisions and education in relation to their existence.
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?	ACEM has no comment on this question.
45. Should there be provision in the National Law for a register of people convicted of a ‘direct or incite’ offence, which would include	As with other aspects of this consultation, there is a question of the ‘degree’ of offence involved and the timeframe for which names would remain published on such a register.

publishing the names of those convicted of such offences?	
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?	As per 45 above, this may not best involve a ‘one size fits all’ approach and a graded approach similar to that involved in corporate cases where individuals are banned from acting as company directors for varying periods of time based on the severity of the act may be appropriate.

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?	ACEM recognises the complexities of this matter in the context of social media; however, is of the view that there is, and should remain, a clear distinction between solicited testimonials and those provided by others without the involvement of a practitioner.
48. Which would be your preferred option?	Option 1; status quo.

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?	ACEM has no comment on this question.
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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?	ACEM recognises this as a complex area where the desire of patients/clients and others for more information than that which is currently available, particularly in regard to some ‘high profile’ instances, needs to be balanced against privacy considerations and the rights of individuals to be able to ‘move on’ past relatively minor, isolated instances. On balance, except where very significant findings that have resulted in the imposition of conditions/restrictions on a practitioner’s practice, and a public safety risk is still identified, ACEM is of the view that the balance of information currently available is appropriate.
51. Should the National Law be amended to expand the type of information recorded on the national registers and specialist registers?	Refer to 50 above.
52. What additional information do you think should be available on the public register? Why?	Refer to 50 above.

<p>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:</p> <ul style="list-style-type: none"> • 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? 	<p>Refer to 50 above.</p>
<p>54. Should s. 226 of the National Law be amended to:</p> <ul style="list-style-type: none"> • 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? 	<p>ACEM is of the view that the provisions of s.226 should be such that it enables the registered practitioner to apply where the safety of them, their family or other individuals is at risk, with the relevant Board empowered to evaluate the applications on a case-by-case basis.</p>

Section 7.2: Use of aliases by registered practitioners

<p>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?</p>	<p>ACEM recognises that the use of an alias may be legitimate. If the practitioner uses this name in their practice, it should be recorded on the register to enable the public to make informed decisions.</p>
<p>56. Should the public registers be searchable by alias names?</p>	<p>Yes</p>
<p>57. Should the National Law be amended to require a practitioner to advise AHPRA of any aliases that they use?</p>	<p>Yes, where the alias is used for the delivery of health services under the National Law to the public.</p>
<p>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 reasons</p>	<p>Other than circumstances relevant to Section 7.1 of the Consultation Paper, no.</p>

<p>could the board consider for an alias to be removed from or suppressed on the public register?</p>	
<p>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?</p>	<p>If the practitioner is using the alias to deliver health services to the general public under the National Law, ACEM would see this as reasonable.</p>

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

<p>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?</p>	<p>Yes.</p>
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Other comments

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

ACEM welcomes the opportunity to provide feedback on the issues raised in the Consultation Paper and looks forward to further work in relation to this important piece of work, including any further consultation that may occur as a result of responses to this paper.