

13 August 2015

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Via Email: legalmail@doh.health.nsw.gov.au

Dear Ms. Broderick

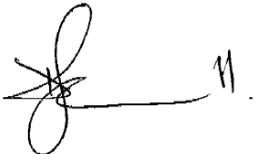
Re: Statutory Review of the Health Practitioner Regulation National Law – Discussion Paper

I refer to your letter dated 9 June 2015 requesting ADA NSW provide comment on Statutory Review of the Health Practitioner Regulation National Law – Discussion Paper.

Thank you for this opportunity, ADA NSW has considered the Discussion Paper and we provide the attached comments. In preparing this submission, ADA NSW has drawn on the expertise of the members of our NSW Council.

ADA NSW would be happy to discuss our views with you, should further information be required.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Cockrell', followed by a horizontal line and a small flourish.

Dr Deborah Cockrell
President

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| DOCUMENT TITLE: | Statutory Review of the Health Practitioner Regulation National Law - Discussion Paper |
| COMMENTS PROVIDED BY: | Australian Dental Association NSW Branch (ADA NSW) |
| General comments: | <p>ADA NSW appreciates the opportunity to provide a submission and provides comments in this document on each of the Issues for Consideration identified in the Discussion Paper.</p> <p>Feedback from our members indicates that there are opportunities to improve communication and education of the professions regarding their obligations under the Health Practitioner Regulation National Law. This relates to the various obligations, which can be complex, and includes mandatory reporting obligations as identified in the Discussion Paper. While the Law prevails, it would be extremely beneficial to have clear details to provide to members and a definitive statement of requirements at all levels.</p> <p>ADA NSW would welcome the opportunity to assist the Ministry to enhance communication and understanding.</p> |

| Issues for Consideration | ADA NSW Comments |
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| 1) Are the objectives of the Health Practitioner Regulation National Law (NSW) appropriate? | <p>ADA NSW considers the objectives to be appropriate.</p> <p>The issue of improved mobility throughout the Commonwealth could be argued as a success, although in dental practice it is not an overly common occurrence for dentists to transfer to a different state. It does however provide some assistance to those who practice close to State borders. This benefit could be enhanced should the States consider common requirements for employment.</p> <p>The NSW complaint system is very different from other States and Territories in Australia. ADA NSW believes that the current system in NSW has taken the successful features of the previous State Boards and has worked well with the HCC in maintaining, and indeed building on, these features.</p> |

| Issues for Consideration | ADA NSW Comments |
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| <p>2) Should the Health Practitioner Regulation National Law (NSW) have a provision that allows regulations to be made disallowing changes made to the Schedule of Health Practitioner Regulation National Law Act 2009 (Qld) or that requires regulations to be made in NSW before changes made to the Schedule of Health Practitioner Regulation National Law Act 2009 (Qld) take effect in NSW?</p> | <p>ADA NSW considers either approach warrants consideration, however ADA NSW would be concerned if there was any unreasonable diminution in nationally consistent legislation.</p> <p>ADA NSW stresses its concerns that the increased cost of administration of the National Law (passed on to practitioners) does not necessarily result in increased efficiency while the States continue to have independent requirements. So long as these exist, the concept of uniformity is flawed.</p> |
| <p>3) Should the NSW specific provisions be amended to replace the existing Councils for the nine low complaints professions (Aboriginal and Torres Strait Islander health practice, osteopathy, podiatry, Chinese medicine, chiropractic practice, medical radiation practice, occupational therapy, optometry and physiotherapy) with a Combined Council?</p> | <p>ADA NSW would be concerned regarding the ability of a Combined Council to represent a disparate group of health practitioners, and more specifically an individual practitioner within this combined group. ADA NSW does however recognise that such a change would be likely to have financial benefits and would reduce administrative burden.</p> <p>The internal budgets of each Council are unknown to ADA NSW. It is however clear that each Council has a directorship that sets a budget for their Council. It is difficult to see how several of these Councils are able to meet budget with small numbers of registrants and the costs of administering the Councils.</p> <p>ADA NSW has concerns that this proposed amalgamation may have a later impact on other professions. In all professions, independent of any Council structure, the importance of profession-specific expertise cannot be over estimated.</p> |
| <p>4) If so, what should be composition of the Combined Council?</p> | <p>Refer response to Issue 3, above.</p> <p>If individual Councils are not maintained it may be more prudent to group the nine smaller Councils into 2 or 3 Combined Councils that perhaps reflect broader scopes of practice rather than amalgamating them all into one category. Should such a direction be accepted, an evaluation of the outcomes of this 'intermediate' step would inform longer-term plans.</p> <p>ADA NSW acknowledges that Medicine, Nursing and Midwifery, Dentistry, Pharmacy and Psychology would and should remain as separate Councils. If the above tenet is agreed there is the option for two new Councils. ADA NSW considers the following groupings as being worthy of consideration.</p> <ol style="list-style-type: none"> 1. OT, Podiatry, Optometry and Physiotherapy |

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| | <p>2. TCM, Osteopathy and Chiropractics</p> <p>OR</p> <p>1. Physiotherapy, Osteopathy and Chiropractics 2. OT, Podiatry, Optometry and TCM</p> |
| <p>5) If a Combined Council is established, should the NSW specific provisions be amended to require a complaint against a health practitioner to be heard and determined by a subcommittee of the combined health profession Council comprised of members of the practitioner’s profession as well as having access to community and legal members to sit on any complaint as appropriate?</p> | <p>Subject to our response to Issue 3, above, ADA NSW considers that such composition of a subcommittee would be appropriate.</p> <p>This would seem a fair way to ensure profession-specific expertise however this may well compromise the intent of ‘cost-saving’.</p> |
| <p>6) If a consolidated Health Professional Council is not created, should the legislation be amended to “future proof” the legislation in order to deal with the situation of a Council being financially unviable?</p> | <p>ADA NSW considers that Councils should only incur losses in exceptional circumstances and in the short term. As such, any short-term deficiencies should be Government funded.</p> <p>If a consolidated HPC is not established then ADA NSW recommends that the individual financial reports be subject to review annually with the option to consolidate should Councils continue to be unviable.</p> |
| <p>7) If so, should a regulation making power be included allowing regulations to be made amending the complaints handling processes for a profession in the event that the Council for that profession is not financially viable?</p> | <p>ADA NSW believes that such a provision is unlikely to be required however, should such circumstances arise, any costs incurred should be considered a Government expense.</p> |
| <p>8) In respect of the Aboriginal and Torres Strait Islander Health Practice Council, what changes should be adopted to address the financial constraints of the Council?</p> | <p>ADA NSW recommends review of the benefits of maintaining a separate Council for ATSI health practitioners. On the assumption that a separate Council promotes better indigenous health outcomes, funding of the Aboriginal and Torres Strait Islander Health Practice Council should be subsidised by the Government and not funded solely through funds derived by the HPCA.</p> <p>ADA NSW is cognisant of the significant health issues affecting Indigenous Communities and recognises the impact of ATSI Health Practitioners. ADA NSW believes that government support for ATSI Health</p> |

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| | Practitioners should be a priority. |
| 9) Is the current complaints model whereby there are different and distinct streams, health, conduct and performance, to deal with complaints appropriate and effective? | ADA NSW considers the current complaints model to be appropriate in that it covers most, if not all, complaints. ADA NSW supports the roles of the DCNSW and HCC in addressing complaints, fairly and equitably, in an expedient manner. |
| 10) What changes, if any, are required for PSCs and Council inquiries to hearing complaints in a timely, cost effective manner that both protects the public and ensures natural justice for practitioners the subject of a complaint? | <p>While ADA NSW recognises that most Council inquiries progress at a satisfactory pace, there have been notable cases that have been significantly delayed for a range of reasons.</p> <p>In order to address this concern, ADA NSW recommends the implementation of a smaller quorum required to sit on any inquiry.</p> <p>With regards to the Dental Council, the legislation requires a quorum of at least half of the Council to be in attendance (6 or more). This unnecessarily complicates and slows the process; it is more difficult to coordinate a group of this size to be in attendance. The result is that inquiries are usually scheduled to be heard on Council meeting days (since Council members are generally available).</p> <p>A reduction to 3-4 members would have benefits in allowing greater flexibility in terms of dates but would also have the benefit of allowing multiple inquiries to occur on the same day and further eliminate delays. It is also important to note that a panel of 3 to 4 would be less intimidating than a panel of six or more.</p> <p>ADA NSW notes that the Council has a protective rather than punitive remit. In light of this, ADA NSW suggests that a smaller quorum would address public safety more expeditiously.</p> |
| 11) Should the requirement that a medical practitioner sit on an Impaired Registrants Panel remain in the legislation? | ADA NSW considers that the requirement that a medical practitioner sit on an Impaired Registrants Panel should remain in the legislation. Such a practitioner provides impartial and expert advice. |
| 12) If not, what should be the composition of the Panel? | ADA NSW recommends that the current requirements remain. |
| 13) What changes, if any, are required to the Impaired Registrants Panel, particularly in | ADA NSW does not consider any changes are required to the powers of the Impaired Registrants Panel. The current process should remain with the Panel making recommendations for the relevant Council to act upon. |

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| <p>respect of the powers of the Panels, to ensure that complaints that raise impairment issues are handled in a cost effective, fair and timely manner?</p> | <p>In cases where a serious risk to the public is identified the Councils can rapidly progress down the s150 pathway and the law on mandatory notification still applies to members of the Panel.</p> <p>The Panel works better as a means for assessing medical impairment, however giving it the ability to place conditions may reduce the willingness of practitioners to cooperate with the Panel.</p> |
| <p>14) Should the Performance Review Panels be abolished?</p> | <p>ADA NSW makes no comment on this issue as performance review panels have not been used by the Dental Council (to date). ADA NSW believes that performance assessment would be a valuable method of assessing individuals but also recognises that the associated costs may be prohibitive.</p> <p>ADA NSW supports the current process of 'counselling' by a Professional Officer.</p> |
| <p>15) Are there other options to simplify and streamline the processes while maintaining the effectiveness of the Performance Stream?</p> | <p>In the absence of a formal Performance Stream protocol, ADA NSW is unable to comment on other options. ADA NSW is committed to supporting all practitioners and continues to develop internal processes. ADA NSW enjoys a cooperative relationship with the Dental Council and continues to work on options for performance review.</p> |
| <p>16) Should Assessment Committees be retained in the NSW specific provisions?</p> | <p>ADA NSW recommends that Assessment Committees be maintained.</p> <p>Assessment Committee are an invaluable means of assessing complaints providing a degree of independence from the Council and thereby, a fairer process.</p> <p>ADA NSW endorses the appointment process of the Dental Council; transparency and objectivity are critical to the successful work of the committees. The critical element is independence. ADA NSW endorses the use of this objective and impartial structure to ensure a 'fair' hearing.</p> |
| <p>17) Should alternative structures be adopted?</p> | <p>No, ADA NSW considers that Assessment Committees appear to be an effective means of reviewing complaints.</p> |
| <p>18) Are changes required to s150 to ensure that immediate action can be taken to protect the public while still ensuring natural justice for practitioners?</p> | <p>ADA NSW does not consider that changes are required to s150 and is committed to the protection of the public.</p> <p>The current process of a s150 hearing should be maintained. s150 hearings are not common relative to the number of complaints and are only used in exceptional circumstances where an immediate risk to the public is identified. This may include issues such as substance abuse, boundary violations or risks to health such as those reflected in recent infection control breaches.</p> |

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| | <p>In many cases the practitioner will cooperate in the process, however the practitioner is entitled to attend the proceeding and have a support person in attendance (usually a solicitor). S150 conditions are interim and are designed to remove any risks in the short term until full investigations can occur or changes have been implemented.</p> |
| <p>19) Should the Tribunal have a power to make an interim suspension order?</p> | <p>ADA NSW considers that the Tribunal should not have the power to make an interim suspension order since the Tribunal's current powers are sufficiently broad to appropriately protect the public by allowing the Tribunal to place conditions on the practitioner's practice or make other appropriate orders on an interim basis.</p> <p>ADA NSW notes that the Tribunal has the power to recommend an urgent s150, which provides an additional safeguard.</p> |
| <p>20) If so, in what circumstances should the Tribunal be able to make an interim suspension order?</p> | <p>Refer response to Issue 19, above.</p> <p>ADA NSW considers that the ability to impose an interim suspension order should only occur in exceptional circumstances - this would be in cases where the Tribunal members had sufficient reason to believe that the practitioner had a health impairment due to psychiatric disorders, substance abuse that affected their ability to practice safely, where serious boundary violations had occurred or there were real concerns at their knowledge and/or ability to perform certain procedures, or in cases of criminal conduct.</p> |
| <p>21) If the Tribunal has a power to make an interim suspension order, what safeguards or appeal rights should be included in the legislation?</p> | <p>ADA NSW considers that the rights of appeal should be the same/similar as in a s150 hearing or any other proceedings under the National Law.</p> |
| <p>22) Should Part 8 of the Health Practitioner Regulation National Law (NSW) be amended to clarify that the Tribunal can hold an inquiry where a complaint has been admitted?</p> | <p>ADA NSW considers that such amendments would be appropriate.</p> |
| <p>23) Should a new section be included in Part 8 requiring the Tribunal to give written reasons when making orders in circumstances where</p> | <p>ADA NSW supports the inclusion of a new section requiring the Tribunal to give written reasons when making orders in circumstances where a complaint has been admitted. This would assist all parties in all aspects of case management.</p> |

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| a complaint has been admitted? | |
| 24) Should the legislation be amended to clarify who should have a right to appear before, or be heard, in matters where an application for a review is made under s163A? | ADA NSW supports such an amendment. |
| 25) If so, who should be that person or body? | ADA NSW considers that reviews should be conducted by the same body that imposed the conditions. |
| 26) Should Schedule 5D clause 12 be amended to give a list of mandatory factors a PSC or Tribunal must consider in determining whether it is not in the public interest for an inquiry or appeal to continue? | ADA NSW agrees with the Ministry's preliminary view that it is not necessary to amend clause 12 of Schedule 5D. Establishment of a comprehensive list of criteria would be cumbersome and may actually limit the process. |
| 27) Are the current administrative arrangements for dealing with practitioners who have conditions on their registration adequate or are legislative amendments required? | <p>ADA NSW considers that legislative amendments are required.</p> <p>Issues can arise when practitioners move from one state to another with conditions imposed on their practice, in some cases the conditions are difficult to comply with such as appointment of mentors. The relevant Council should be able to simply modify conditions to allow easier compliance for both the practitioner and authorities.</p> |
| 28) If legislative amendments are required, what changes are needed? | ADA NSW considers that changes are needed to allow the relevant Council to modify conditions without reference to AHPRA or an interstate authority, to ensure ease of compliance. |
| 29) What is the best way to protect the public from practitioners who may be placing the public at risk of substantial harm in the professional practice because of the practitioner's impairment? | ADA NSW considers that maintenance of the current requirements of mandatory notification appears to be the most sensible approach, the threshold for notification is, as noted, reasonably high. |
| 30) Are any changes to the legislation required? | ADA NSW agrees with the Ministry's preliminary view that no changes to the current requirements are required. |
| 31) Should there be additional information | ADA NSW considers that further education should be provided explaining obligations, possible areas of |

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| provided to practitioners to ensure that they understand their mandatory reporting obligations? | concern and the legal protection available. |
| 32) Should the reporting requirements of medical superintendents under s151 remain? | Yes but subject to the comment below in relation to Issue 33. |
| 33) Should s151 of the National Law be amended to require the medical superintendent to notify a health practitioner Council of a registered health practitioner or student who is detained in a mental health facility under the Mental Health Act only after either the s27 examinations have occurred or the patient has been seen Mental Health Review Tribunal? | ADA NSW considers that notification to AHPRA under s151 should be amended so that the reporting only occurs following a s27 assessment or a Mental Health Review Tribunal hearing, as the assumption is the practitioner would be unable to practice as they are detained until assessed and as such public safety is protected. |
| 34) Should the Health Practitioner Regulation National Law (NSW) be amended to require the National Board to keep a public register of disqualified practitioners? | ADA NSW agrees that a public register of disqualified practitioners be maintained. |
| 35) What changes should be made to Part 8 to make it more user friendly? | As noted by the Ministry this is difficult without knowing what changes will be made to the Law that are reflected in Part 8. ADA NSW supports simplification and uniformity of language. |
| 36) Should the minor amendments set out in Appendix A be made? | ADA NSW supports the proposed minor amendments. |
| 37) Should the Health Practitioner Regulation National Law (NSW) be amended to require the fees in relation to pharmacy licences and registration to be set out in the Regulation? | ADA NSW makes no comment on this issue. |
| 38) What other changes can be made to administration of the licence provisions, such as a simplified system for applications | ADA NSW makes no comment on this issue. |

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| <p>and renewals and a better targeted approach to compliance, so as lessen regulatory burden while still maintaining public safety.</p> | |
| <p>39) Is the current terminology and definitions used in Schedule 5F of the Health Practitioner Regulation National Law (NSW) appropriate for today's pharmacy businesses?</p> | <p>ADA NSW makes no comment on this issue.</p> |
| <p>40) Are the current protections on pharmacy businesses appropriate?</p> | <p>ADA NSW makes no comment on this issue.</p> |