



**Submission in response to the
Proposed reforms to the Health Practitioner Regulation National
Law
Consultation Paper**

May 2017

Introduction

The Australian Healthcare and Hospitals Association (AHHA) is pleased to provide this submission to the COAG Health Council on the *Proposed reforms to the Health Practitioner Regulation National Law*.

The AHHA is Australia's national peak body for public hospitals and health care providers. Our membership includes state health departments, Local Hospital Networks and public hospitals, community health services, Primary Health Networks and primary healthcare providers, aged care providers, universities, individual health professionals and academics. As such, we are uniquely placed to be an independent, national voice for universal high quality healthcare to benefit the whole community.

Proposed reforms and consultation questions

| Proposed reforms | Consultation questions and stakeholder advice |
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| <p>Proposal to increase the monetary penalties for holding out offences, restricted title offences, restricted practice offences, and contravention of a prohibition order</p> <p>The maximum penalty for each of the following offences under the National Law is currently \$30,000 for an individual and, where applicable, \$60,000 for a body corporate:</p> <ul style="list-style-type: none"> • Section 113 – Restriction on use of protected titles • Section 115 – Restriction on use of specialist titles • Section 116 – Claims by persons as to registration as health practitioner • Section 117 – Claims by persons as to registration in particular profession or division • Section 118 – Claims by persons as to specialist registration • Section 119 – Claims about type of registration or registration in recognised specialty • Section 121 – Restricted dental acts • Section 122 – Restriction on prescription of optical appliances • Section 123 – Restriction on spinal manipulation • Section 196A(1) – (as included in the current stage 1 Bill) – contravention of a prohibition order <p>It is proposed to increase the maximum fines for the above offences. For example, maximum fines could be increased to double the current amounts, that is, to \$60,000 for an individual and \$120,000 for a body corporate.</p> | <p>What should the maximum monetary penalty for these offences be increased to?</p> <p>The AHHA supports a maximum monetary penalty being determined for these offences based on a mapping of penalties for comparable offences across jurisdictions (e.g. for other professions such as police officers).</p> <p>In determining the maximum monetary penalty, there would also be benefit from having an understanding of the actual penalties that have been applied by Courts historically across jurisdictions and the framework within which these penalties have been determined.</p> <p>There should be a clear framework in determining penalties up to the maximum that can be applied.</p> <p>Other comments</p> <p>If the intent is for the maximum monetary penalty for these offences to be a deterrent, there should be consideration about how these penalties are promoted to those who may breach them.</p> |

| Proposed reforms | Consultation questions and stakeholder advice |
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| <p>Proposal to introduce a multi-year imprisonment term for the above offences</p> <p>It is proposed to introduce a multi-year imprisonment term for the above offences.</p> | <p>Do you think a term of imprisonment should be introduced for these offences?</p> <p>A sentence of imprisonment may be required where there is a need to protect the community from the offender, e.g. where a person is likely to continue to perform restricted dental acts placing the public at risk of infectious diseases.</p> <p>If so, what do you think the maximum term should be?</p> <p>Similar to the response to the previous question, the AHHA supports introduction of an imprisonment term being determined based on a mapping of penalties for comparable offences across jurisdictions (e.g. for other professions such as police officers).</p> <p>The application of such sentencing should be done within a framework that guides decisions on the basis of principles of parsimony, proportionality, parity and totality.</p> |

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| <p>Proposal to introduce a nationally consistent time period for prosecuting offences under the National Law</p> <p>The time periods that apply under State and Territory legislation for bringing prosecutions of summary offences under the National Law currently range from 6 months (New South Wales, Tasmania and Northern Territory), to 12 months (Victoria, Queensland, Western Australia and the Australian Capital Territory), through to 24 months (South Australia).</p> <p>It is proposed to amend the National Law to introduce a nationally consistent and multi-year time period for bringing prosecutions for summary offences under the National Law.</p> <p>Specifically, the following amendment is proposed:</p> <p>A proceeding for a summary offence against the National Law must start within 2 years after:</p> <ul style="list-style-type: none">• The commission of the offence, or• The offence comes to the knowledge of the prosecution/complainant, but within 3 years after the commission of the offence, <p>whichever is the later.</p> | <p>What should be the nationally consistent time period for prosecuting offences under the National Law?</p> <p>AHHA supports the proposed amendment to achieve a nationally consistent time period for prosecuting offences. Increasing all states to the time period stated would be sensible to allow sufficient time for the reporting and investigation of offences.</p> |
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| <p>Proposal to introduce interim prohibition order powers in relation to unregistered practitioners whose conduct poses a serious risk to public health and safety</p> <p>In investigating a matter, AHPRA may discover a person whose practice poses serious risks to the public and an immediate response is required.</p> <p>The National Law does not currently allow for an interim prohibition order to be issued against a person whose continued provision of health services poses a serious risk to the health and safety of the public, but the person:</p> <ul style="list-style-type: none"> • is not and has never been registered and is under investigation and/or being prosecuted for holding out or reserved practice offences, or • was registered but is no longer registered because they have withdrawn or let their registration lapse. <p>While complaints commissioners in some jurisdictions already have interim prohibition order powers with respect to unregistered health care workers, where a serious public health and safety risk is identified by AHPRA in the course of its investigations, the public may be better protected by the capacity for immediate action to secure a prohibition order. Such an order could be time limited, pending prosecution of the matter before the relevant court or tribunal, or referral of the matter to be dealt with by another regulator.</p> | <p>Should there be a power under the National Law to issue an interim prohibition order where, during the course of an investigation by AHPRA, an unregistered person is found to be presenting a serious risk to public health and safety, and immediate action is necessary to protect the public?</p> <p>If so, then who should have the power to issue such an interim order – AHPRA, the responsible state or territory tribunal, or a relevant court in the jurisdiction?</p> <p>AHHA supports provisions under the National Law to ensure that where AHPRA investigators discover a person whose practice poses serious risks to the public, either:</p> <ul style="list-style-type: none"> • There be mandatory notification to the relevant state or territory regulator; <p>Or</p> <ul style="list-style-type: none"> • If such mechanisms are not in place or sufficient, that AHPRA’s statutory powers be extended to include capacity to make interim prohibition orders, time-limited pending prosecution of the matter before the relevant court or tribunal. |
| | <p>Do you have any other comments to make about these proposals?</p> <p>AHHA supports the COAG Health Council in its actions to ensure nationally consistent, timely and robust mechanisms to address these matters.</p> |

Additional information about stakeholders – please complete

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| Your name: Alison Verhoeven |
| Your position/title (if applicable): Chief Executive |
| Your organisation (if applicable): Australian Healthcare and Hospitals Association |
| Your email address: admin@ahha.asn.au |
| Please indicate which group relates to you: <input type="checkbox"/> Consumer of health services <input type="checkbox"/> Registered health practitioner <input type="checkbox"/> Employer of health practitioners <input type="checkbox"/> Professional association <input type="checkbox"/> Regulator <input checked="" type="checkbox"/> Other – please state: Peak body for public hospitals and health care providers |
| Would you like to be informed of the outcome of the consultation? Yes |



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