



The Pharmacy  
Guild of Australia

**SUPPLEMENTARY SUBMISSION TO THE  
INQUIRY INTO THE NATIONAL  
REGISTRATION SCHEME FOR DOCTORS  
AND OTHER HEALTH WORKERS**

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## SUPPLEMENTARY SUBMISSION TO THE INQUIRY INTO THE NATIONAL REGISTRATION SCHEME FOR DOCTORS AND OTHER HEALTH WORKERS

### 1. Introduction

- 1.1 The Pharmacy Guild of Australia (**the Guild**) is an employers' organisation servicing the needs of independent community pharmacies. It strives to promote, maintain and support community pharmacies as the most appropriate primary providers of health care to the community through optimum therapeutic use of drugs, drug management and related services. Its members are pharmacist owners of around 5,000 pharmacies throughout Australia who employ approximately 45,000 people.
- 1.2 The Guild appreciates the Senate Community Affairs Committee delaying its report pending the publication of the exposure draft of the *Health Practitioner Regulation National Law* (the **National Law**).
- 1.3 The Guild supports having national registration of health practitioners including pharmacists and believes that it is essential step in facilitating workforce mobility.
- 1.4 However, the Guild has had some reservations in regard to the contents of the National Law and the speed in which it is being implemented.
- 1.5 The Guild refers to its original submission to the Committee made during May 2008 (**the initial submission**), and makes the following additional comments and recommendations, following a full consideration of the exposure draft of the proposed National Law, released by the Australian Health Workforce Ministerial Council.

## 2. Process by which National Law has been developed

### *Regulatory Impact Statement*

- 2.1 A Regulatory Impact Statement (RIS) for the proposed national registration scheme for health professionals has never been publicly published.
- 2.2 This is unlike:
- (a) the Council of Australian Governments (COAG) coordinated National Licensing Scheme for Specified Occupations, which published not only a regulatory impact statement during the Scheme's consultation stage but also a final regulatory impact statement in April 2009 prior to the finalisation of the intergovernmental agreement establishing the national scheme; and
  - (b) the proposal by the Safe Work Australia Council to publish an exposure draft and a regulatory impact statement simultaneously when releasing model nationally-consistent occupational health and safety legislation in September 2009.<sup>1</sup>
- 2.3 One of the major components of the proposed national scheme of registration is the abolition of state based registration boards, and the creation of an Australian Health Practitioner Regulation Agency (**the National Agency**).
- 2.4 In many Australian jurisdictions, the process of health practitioner registration and discipline forms part of an integrated scheme of ensuring the quality of health delivery to consumers.

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<sup>1</sup> Announced in the *Safe Work Australia Council Meeting One Communiqué* 10 June 2009

2.5 For example, in NSW both the Pharmacy Board and the Health Care Complaints Commission must discuss which agency should investigate a particular pharmacist against whom a complaint has been made, with the Commission having the additional responsibility of considering complaints in circumstances where it illustrates systematic problems within a health organisation.

2.6 Existing health registration boards, such as a State or Territory Pharmacy Board, possess significant knowledge as to how a profession operates in that jurisdiction.

2.7 Registration boards discharge particular responsibilities conferred by legislation passed by State or Territory parliaments.

For instance, in the context of pharmacy, boards are responsible for ensuring that pharmacies are only owned by properly qualified pharmacists, and in some but not all jurisdictions, ensure that pharmacies are properly registered and meet the standards required by law.

2.8 It is a basic tenet of regulatory design that the benefits of any proposed reform must outweigh the cost of implementation.

2.9 It is not immediately clear to the Guild that the costs of dismantling the current system of State and Territory Pharmacy Boards and creating an entirely new bureaucracy passes this test.

2.10 The Guild has never seen a published rationale as to how the benefit of abolishing state based registration agencies is outweighed by the establishment of a new bureaucracy.

**Recommendation 1**

**The Guild recommends that the Senate Community Affairs Committee requests that any regulatory impact statement or cost benefit analysis prepared for the proposed model for the national regulation of health professionals be published immediately.**

*Speed of Considering National Law*

- 2.11 As indicated in the original submission, the Guild is concerned that the legislation, which will determine the way in which Australia's health professions will be regulated for the foreseeable future, is being rushed.
- 2.12 There were only five weeks allowed for consideration to be given to the draft legislation constituting the proposed National Law (known as Bill B).
- 2.13 The Guild has provided comments on the Bill, which are appended to this supplementary submission as **Attachment 1**.
- 2.14 As the legislation is endorsed by the Australian Health Workforce Ministerial Council, the Guild understands that comments received on the exposure draft will be presented to the Queensland Parliament for processing, without any particular opportunity by the professions for amendment.
- 2.15 It is highly undesirable for legislation to be put through a parliamentary process without a quality assessment of the policy of a proposition and any legislation giving effect to policy.

2.16 As the Queensland Parliament Scrutiny of Legislation Committee said in its *Alert Digest* reviewing the first piece of legislation implementing a national scheme of health registration, the *Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008* (Qld):

5. It is the committee's practice to draw to the attention of the Parliament any provisions of a bill which are to give effect to national scheme legislation. The committee, in common with the legislative scrutiny committees of the Parliaments of other Australian States and the Commonwealth, has identified concerns that elements of intergovernmental legislative schemes might undermine the institution of Parliament. The committees' concerns relate to the potential for the executive to formulate, manage and possibly alter such schemes to the exclusion of legislatures. The committee has also warned against a perception of a reduced need for legislative scrutiny of an intergovernmental agreement proposed for ratification.

6. In *The Constitutional Systems of the Australian States and Territories*, Professor Gerard Carney provides a summary of concerns regarding the legislative scrutiny of national scheme legislation:

*A risk of many Commonwealth and State cooperative schemes is 'executive federalism'; that is, the executive branches formulate and manage these schemes to the exclusion of the legislatures. While many schemes require legislative approval, the opportunity for adequate legislative scrutiny is often lacking, with considerable executive pressure to merely ratify the scheme without question. Thereafter, in an extreme case, the power to amend the scheme may even rest entirely with a joint executive authority. Other instances of concern include, for example, where a government lacks the authority to respond to or the capacity to distance itself from the actions of a joint Commonwealth and State regulatory authority. Public scrutiny is also*

*hampered when the details of such schemes are not made publicly available. For these reasons, a recurring criticism, at least since the Report of the Coombs Royal Commission in 1977, is the tendency of cooperative arrangements to undermine the principle of responsible government. A further concern is the availability of judicial review in respect of the decisions and actions of these joint authorities.*

*Certainly, political responsibility must still be taken by each government for both joining and remaining in the cooperative scheme. Some blurring of accountability is an inevitable disadvantage of cooperation – a disadvantage usually outweighed by the advantages of entering this scheme. But greater scrutiny is possible by an enhanced and investigative role for all Commonwealth, State and territory legislatures.*

- 2.17 The Guild believes that it is not in the public interest for legislation to be put through the parliamentary process without careful analysis of the quality of the legislation, simply because COAG or a Ministerial Council has signed off on it.
- 2.18 Given the importance of ensuring that the national scheme of registration is ‘best practice’, the Guild hopes that, unlike the interim legislation establishing the national scheme, the National Law is properly assessed.
- 2.19 A suitable parliamentary committee should review the proposed legislation, to consider the quality of the policy contained in the legislation. The committee could either be:
- (a) a committee of the Queensland Parliament as the ‘host’ jurisdiction for the legislation; or

- (b) the Senate Community Affairs Committee, given the proposed National Law proposes conferring responsibilities to the Privacy Commissioner, the Administrative Appeals Tribunal (through having to hear freedom of information disputes) and the Ombudsman under the scheme, involvement of these agencies created by Commonwealth legislation means the Commonwealth Parliament would have a role in ensuring that the proposed scheme would be properly designed to serve the interest of all Australians.

**Recommendation 2**

**The Guild recommends that either the Senate Community Affairs Committee or a committee of the Queensland Parliament (the ‘host’ jurisdiction for the National Law) carefully examine the quality of both the policy and the legislative drafting of the National Law before it is passed by the Parliament of the host jurisdiction.**



### **3. Preferred administrative model**

3.1 The Guild accepts that as a general proposition the National Law gives effect to the model contained in the *Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions*.

3.2 However, the Guild believes there is a better administrative model that could enhance the protection of health consumers, whilst retaining the advantages of workforce mobility implicit in a single scheme of national registration.

3.3 In addition, the Guild has concerns about other aspects of the National Scheme, as proposed to be implemented by the National Law.

3.4 The Guild particularly notes:

- the disruption inherent in creating a new bureaucracy through abolishing existing state registration bodies and creating a National Agency;
- the loss of local knowledge that will occur as the experience accumulated by staff members of jurisdictionally-based regulators is lost; and
- the powers conferred on the National Agency, which if fully exercised could compromise the Pharmacy Board of Australia's capacity to make decisions in the best interests of Australian health consumers.

3.5 To minimise disruption to the regulation of Australian health practitioners, while ensuring that the COAG goals of maximising workforce mobility within Australia, the Guild would prefer the implementation of a 'co-regulatory model', which:

- creates a national Pharmacy Board comprised of representatives from each jurisdiction's pharmacy board and appropriate representatives from relevant pharmacy organisations and consumers to approve (after full consultation with stakeholders) national registration and accreditation standards following policies developed by the Australian Health Workforce Ministerial Council; but
- retains State and Territory registration boards to perform the initial registration, and subsequent discipline of, practitioners as well as any other powers of functions conferred on the board by legislation of the jurisdiction;

3.6 This is similar to the 'national delegated agency' model approved by COAG in the *Intergovernmental Agreement for a National Licensing System for Specified Occupations* which creates a central agency to establish national licensing policy, whilst retaining the existing jurisdictional agencies to perform registration and enforcement responsibilities.

3.7 The Guild notes the Decision Regulatory Impact Statement for the Specified Occupations Scheme tested a single agency model and a delegated agency model which concluded:

The advantages of this approach (that is the delegated agency model) are that it minimises the risk of disruption in the transition and initial implementation phases for all stakeholders while providing opportunities for the identification of further reform once the national licensing system has been established. It reduces the initial costs of establishing the new system and maintains the benefits of integrated operational functions at the jurisdictional level.<sup>2</sup>

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<sup>2</sup> *National Licensing System for Specified Occupations Decision Regulation Impact Statement* April 2009 p.20

3.8 This regulatory impact statement is provided as **Attachment 2** to this supplementary submission.

3.9 The Guild asks the Committee to recommend that the proposed national scheme not proceed until the costs and benefits of the Guild's proposed co-regulatory model are analysed.

### **Recommendation 3**

**The Guild recommends that the proposed national scheme contained in the National Law not proceed until the costs and benefits of the Guild's proposed 'co-regulatory' model, (which is similar to the 'national delegated agency' model proposed in the *Intergovernmental Agreement for A National Licensing System for Specified Occupations*) are analysed and compared with any cost benefit analysis prepared for the 'single agency' regulatory structure proposed in the National Law.**

### **ATTACHMENT 1**

**The Pharmacy Guild of Australia's comments on the exposure draft to *the Health Practitioner Regulation National Law***

### **ATTACHMENT 2**

***National Licensing System for Specified Occupations Decision Regulation Impact Statement April 2009***