Introduction

The frequently asked questions (FAQs) outlined in this document complement the national FAQs in relation to the Health Practitioner Regulation National Law Act 2009 (Bill B) provided on the website. They provide a Victorian stakeholder perspective that highlights changes to the current legislation in this state.


Abbreviations used in this document

<table>
<thead>
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<th>Term</th>
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<tr>
<td>Australian Health Practitioner Regulation Agency</td>
<td>the national agency</td>
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<td>Council of Australian Governments</td>
<td>COAG</td>
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<td>Division 1 nurses</td>
<td>registered nurses</td>
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<td>Division 2 nurses</td>
<td>enrolled nurses</td>
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<td>Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008</td>
<td>Bill A</td>
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<td>Health Practitioner Regulation National Law Act 2009</td>
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<td>Health Professions Registration Act 2005</td>
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<td>National Registration and Accreditation Scheme</td>
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<td>Nursing and Midwifery Board of Australia</td>
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<td>Professional indemnity insurance</td>
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<td>Victorian Civil and Administrative Tribunal</td>
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Section 1: General information

1. How did the National Registration and Accreditation Scheme (the national scheme) come about?

In March 2008 the Council of Australian Governments (COAG) signed an intergovernmental agreement committing the states, territories and the Commonwealth to establish a single national registration and accreditation scheme. The national scheme covers the 82 health practitioner registration boards across Australia and will come in effect from 1 July 2010.

2. How will the national scheme improve the quality and safety of the health care system?

The national scheme primarily helps protect the public by ensuring only those health practitioners who are suitably trained and qualified to practice are registered. This underpins the safety and quality of our health system. For example, the national scheme will maintain a public national register for each health profession that will ensure a professional who has been banned from practising in one place is unable to practise elsewhere in Australia.

Developing the national scheme has enabled health ministers to adopt the strongest elements of all jurisdictions, which will come together for the first time in a consistent set of national standards and processes for registration and accreditation of health professionals.

The national scheme will also help: reduce red tape for registrants, especially where they work across or move between, different states and territories; improve workforce development and mobility; provide greater safeguards for the public; and promote a more flexible, responsive and sustainable health workforce.

3. Which health professions will transition under the national scheme?

As of 1 July 2010, the ten health professions to transition to the national scheme are:

- chiropractors
- dental care practitioners (including dentists, dental hygienists, dental prosthetists and dental therapists)
- medical practitioners
- nurses and midwives
- optometrists
- osteopaths
- pharmacists
- physiotherapists
- podiatrists
- psychologists.

In July 2012 the partially regulated professions of Aboriginal and Torres Strait Islander health practitioners, Chinese medicine, medical radiation and occupational therapy will transition to the national scheme.

4. What legislation will cover the Chinese medicine and medical radiation practitioners currently registered in Victoria?

Both professions will continue to be regulated under the Health Professions Registration Act 2005 ('the HPR Act') between 1 July 2010 and 1 July 2012.

5. How is the national scheme being introduced in Victoria?

The national scheme will be introduced using a three-stage process.

**Stage 1:** On 25 November 2008, the Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008 (Bill A) received royal assent in Queensland. Bill A establishes the structural elements of the national scheme including establishing the Australian Health Practitioner Regulation Agency ('the national agency') and other national practitioner boards ('the national boards') with limited functions and powers necessary for the first stage implementation.
Stage 2: The *Health Practitioner Regulation National Law Act 2009* (Bill B) received royal assent in Queensland Parliament on 3 November 2009. Bill B contains: substantive provisions of the national scheme; the essential powers and functions of the boards with respect to registration, accreditation, complaints and discipline, privacy and information sharing; and arrangements for specialists.

Stage 3: This stage will see the preparation and passage of state and territory adoption Bills (Bill C) to enable the operation of the national scheme within each jurisdiction. In Victoria Bill C has been split into two stages. The first stage, the *Health Practitioner Regulation National Law (Victoria) Act 2009* received royal assent on 8 December 2009 and applies Bill B as a law of Victoria. The second stage is the Statute Law Amendment (National Health Practitioner Regulation) Bill 2010, which provides the necessary transitional and consequential amendments to Victorian legislation to allow for the effective operation of the National Law Act. This Bill also provides an ongoing regulatory framework under the HPR Act for Chinese medicine and medical radiation practitioners until they join the national scheme on 1 July 2012.

6. What are the functions of the national agency in the national scheme?

The national agency has been created as a statutory authority, responsible for administering the national scheme and providing support to the national boards.

The national agency, in conjunction with national boards, is required to establish procedures for developing registration standards, accreditation standards and codes and guidelines to ensure they are developed in accordance with good regulatory practice.

7. What will happen to the existing health professions statutory boards in Victoria?

On 1 July 2010 national boards for ten professions—chiropractors, dental care practitioners (including dentists, dental hygienists, dental prosthetists and dental therapists), medical practitioners, nurses and midwives, optometrists, osteopaths, pharmacists, physiotherapists, podiatrists, and psychologists—will come into force and replace the existing state and territory registration boards, including Victorian boards. The Chinese Medicine Registration Board and Medical Radiation Registration Board will continue under the Victorian HPR Act until 30 June 2012.

Under the National Law, a national board can establish a committee (which is known as a state and territory board) to help the board to undertake its functions at local level. Three of the national boards, have announced that they will have state or territory boards in each jurisdiction. These are medicine, nursing and midwifery and physiotherapy. Dental and psychology professions have proposed to establish multi-jurisdictional boards that will include boards that cover Victoria, the Australian Capital Territory and Tasmania. The remaining national boards have decided against having state and territory boards after 1 July 2010.

8. What role will the national boards have in the national scheme?

The role of the national boards is to protect the public through the stewardship for that profession. Principally they are responsible for the registration of suitably qualified and competent persons and will determine the necessary requirements for registration. In addition they will oversee the receipt, assessment and investigation of notifications about practitioners in the health profession. The national boards will also develop standards, codes and guidelines with respect to their profession.

9. What is the composition of the national boards?

The national boards will comprise of at least half but not more than two thirds of practitioners from the relevant profession and at least two members must be appointed as community members.

The national boards that represent the larger professions have 12 members (to allow for a practitioner member from each jurisdiction). The larger boards are the professions of dental care, medicine, nursing and midwifery, pharmacy, physiotherapy and psychology. The remaining national boards have nine members.

Appointments to the national boards were announced on 10 August 2009. For further information on the appointments, please go to the national agency’s website at <www.ahpra.gov.au>.
10. What role will the state boards have in the national scheme?

The role of state and territory boards is to manage local registration and complaint matters, and provide timely response. The jurisdictional boards are also required to act on the tasks delegated by the national board. Under the national scheme the respective state and territory health ministers will have a role in agreeing persons for appointment to the state or territory board of the national board.

11. Currently all Victorian health professions boards require a legal member. Will this be a requirement under the national scheme?

No. Under the National Law the composition of all boards (national as well as state and territory where they exist) will be required to be based on the principles that at least half, but not more than two-thirds, are practitioner members and at least two members must be community members. However, in practice this means that a lawyer member could be appointed in non-practitioner member roles. All of the boards will be able to call on professional legal advice provided by the national agency.

12. Mandatory reporting is currently limited in Victoria in matters relating to ill health only and medical practitioners. How will this work under the National Law?

Practitioners registered under the national scheme and employers must report a registrant who is placing the public at risk of harm. The National Law imposes a legal obligation on all registered health practitioners who in the course of practising their profession form a reasonable belief of notifiable conduct to report to the relevant national board any registered health practitioner who has either:

a) practised the profession while intoxicated by drugs or alcohol
b) engaged in sexual misconduct in connection with their practice of the profession
c) placed the public at risk of substantial harm in their practice because they have an impairment or
d) placed the public at risk of harm because of a significant departure from accepted professional standards.

In relation to (d) there is an implicit principle in law of a ‘reasonable person’ test. This would require that the practitioner making the report under (d) would be required to have the requisite capacity or knowledge to assess the other practitioner’s departure from acceptable standards.

If a practitioner has formed a reasonable belief during the practice of their profession that a professional colleague’s conduct is notifiable conduct and fails to report to the board in these circumstances, this may be considered a professional conduct issue by the board.

A practitioner is exempt from reporting in certain circumstances, including if they form a reasonable belief that a professional colleague’s conduct is notifiable conduct either:

• while they are employed by an insurer that provides professional indemnity insurance
• if they are a legal practitioner and form the belief while providing legal services
• if they form the belief in the course of exercising functions as a member of a quality insurance committee or
• if they reasonably believe that the notifiable conduct has already been reported to the national agency.

13. I am a Victorian student completing a health practitioner degree and under the existing law I am not required to register with a health professions board. Will this change under the National Law?

Under the national scheme national boards will be required to register students in approved programs of study for each health profession, with this requirement coming into effect at the beginning of 2011.

National boards will decide at what point during the program of study students will be registered, with consideration given to the level of risk to the public.

The national scheme will enable national boards to act where a student has an impairment or where the student is charged, convicted or found guilty of an offence of a serious nature that may impact on public safety. It is likely that most national boards will register students by a deeming process. However, some boards may also require lists of students to be supplied to the national boards by education providers. Students already registered under state or territory legislation before the commencement of the national scheme will be deemed
to be registered from 1 July 2010 to ensure continuity of registration. More information will be available on the relevant national board website (refer to question 15 for all national board web addresses).

14. How will complaints be managed under the National Law compared with the HPR Act?

The model of complaints management under the National Law is similar to the current structure under the Victorian HPR Act. The key role of the national boards is to protect the public; however, this must be balanced with the rights of the practitioner.

Where a complaint is made to a national board, the board will conduct a preliminary assessment and determine the appropriate action to be taken. Options include whether the matter raises issues of concern regarding the practitioner’s health, performance or conduct, or whether no further action is necessary. The legislation requires that through all stages of this process the national boards must communicate with the practitioner and the person or organisation that made the complaint.

The national boards are required to deal flexibly with notifications in relation to practitioners and, where necessary:
- investigate
- decide that the registered health practitioner or student to undergo a performance, or health assessment
- refer the matter to a health panel, performance panel or a professional standards panel
- refer more serious matters to the Victorian Civil and Administrative Tribunal (VCAT).

Practitioners have extensive rights of review under the National Law, including internal merits-based reviews of decisions, as well as external review mechanisms. External review of matters will continue to be heard by VCAT in Victoria.

Serious matters in relation to a practitioner’s conduct will be referred to VCAT, which is the same as the current Victorian model.

Where the matter is of a serious nature (placing the public at immediate risk) the board may choose to suspend a practitioner’s registration. In making a decision to suspend, the board must show just cause. This power currently exists under HPR Act.

15. Who are the registering bodies and where can I find out more information?

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<td>Dental (including dentists, dental hygienists, dental prosthetists and dental therapists)</td>
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<td><a href="http://www.dentalboard.gov.au">www.dentalboard.gov.au</a></td>
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<tr>
<td>Medicine</td>
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<td>Registered and enrolled nurses – nursing and midwifery</td>
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Other useful information sources

The Australian Health Practitioner Regulation Agency  www.ahpra.gov.au

Health Practitioner Regulation National Law (Victoria) Act 2009

The Act is available from the Victorian Law Today website: www.legislation.vic.gov.au

Further information is provided in the national FAQs document
Section 2: For the community

1. How do I make a complaint against a practitioner?

The national agency will have a dedicated telephone line for members of the public wishing to make a complaint. It will also have an office in every state and territory to which complaints can also be addressed. Further details of telephone contact numbers and addresses will be provided on the national agency’s website at <www.ahpra.gov.au>.

Complaints will be passed to the relevant national board to be dealt with through the appropriate state and territory office. Assistance will be provided to members of the public who need help to make a complaint. This new service will not affect the service provided by health services commissioners across the country.

2. Is there a fair representation of community members on boards under the national scheme?

Yes. The model of community representation on boards that exists in Victoria under the HPR Act has been mirrored in the National Law.

On a national board (and a state board where they are established), no more than two-thirds of the members can be practitioner members and at least two members must be appointed as community members.

3. Will VCAT and the Victorian Health Services Commissioner continue to have a role in the complaints management process?

The model of complaints management under the National Law is similar to the current structure under the Victorian HPR Act, in that the national boards have the same mechanism in place to deal with notifications made against health practitioners through either a health performance or professional standards panel. Serious matters in relation to a practitioner’s conduct will be referred to VCAT.

The Victorian Health Services Commissioner will continue to have a strong role and relationship with the national boards, as the commissioner currently does with the existing state boards.

4. What role does the Victorian Health Minister have in the national scheme?

Under the national scheme the Ministerial Council comprises the Commonwealth Health Minister and the state and territory health ministers. The Ministerial Council is responsible for:

- providing policy direction
- approving registration standards
- approvals in relation to specialist registration
- approving areas of practice for purposes of endorsement
- publishing directions and appointment approvals to national, state and territory boards.

Further information is provided in the national FAQs document.
Section 3: For health practitioners

Registration

1. Criminal history checks are not mandatory under the HPR Act. What is the process under the National Law?

A criminal history check will be carried out on all health professionals registering for the first time in Australia. All other registrants will be required to make an annual declaration on criminal history matters at the time of renewing their registration. Declarations will be audited on a random basis.

2. I am currently not compelled to have professional indemnity insurance (PII) in Victoria. How will this change under the National Law?

At present PII is not mandatory in Victoria but will be mandatory under the national scheme from 1 July 2010. National boards will set out in their registration standards the PII arrangements that registrants must have in place at all times during their practice of the profession. On annual renewal, a declaration to this effect will be required. This requirement is vital to ensuring public protection under the National Law.

3. How will PII apply to midwives who undertake home birthing?

A transitional clause has been included in the National Law that provides an exemption from holding PII for privately practising midwives. This exemption is subject to specific requirements, including informed consent and reporting. Health ministers have committed to this exemption for two years effective from July 2010 until June 2012, unless insurance becomes available earlier.

4. What will be the divisions of nursing under the National Law?

The Nursing and Midwifery Board of Australia (NMBA) will have two registers:

- a register for nurses, including divisions of registered nurses (division 1) and enrolled nurses (division 2)
- a register for midwives.

The nurses can be on either or both registers. The NMBA will write to practitioners to inform them of how their current registration will be transitioned into the national scheme.

5. Why has ‘division 2’ nursing been removed under the National Law?

The majority of jurisdictions refer to a division 2 nurse as an enrolled nurse and therefore to allow for a nationally consistent approach the Ministerial Council agreed on adopting the term ‘Enrolled nurse (Division 2)’ in the National Law.

6. As a registered division 2 nurse (also referred to as an ‘enrolled nurse’ under the national scheme) will my medication endorsement be valid under the National Law?

On 22 December 2009 the NMBA submitted their proposal on mandatory registration standards, registration standards for endorsements for nurse practitioners and for scheduled medicines for Ministerial Council’s approval. The NMBA have proposed that, from 1 July 2010, enrolled nurses will not require an endorsement to administer medications as this endorsement has tended to become the entry standard for enrolled nurse practice and preparation, rather than an additional authority required for enrolled nurses into the future. The NMBA have indicated that where enrolled nurses do not have appropriate training, they will need to have a condition on their registration stating that they are not qualified to administer medications.

7. Which division of the register will I transition to if I am currently a division 3, 4 or 5 nurse? Also, will my qualifications in mental Health/psychiatric nursing or maternal and child health be noted on my registration in the national scheme?

It is expected that the NMBA will individually notify practitioners in writing of their registration status under the new arrangements in April 2010. There will be an opportunity for registrants to seek review in cases where they are unsatisfied with the new allocated registration type.
8. Will my immunisation endorsement transition to national registration?

To date the NMBA has not reached a decision with respect to endorsements. Further updates will be posted on its website.

9. In Victoria there is currently no restriction of supply and distribution of cosmetic contact lenses. How will this change under the National Law?

Under the National Law cosmetic contact lenses have been included in the definition of an optical appliance. Prescription of optical appliances (including cosmetic lenses) will be restricted to registered optometrists or medical practitioners. Orthoptists will also be permitted to prescribe spectacles in public health facilities or under the supervision of registered optometrists or medical practitioners.

10. Victoria doesn’t restrict spinal manipulation at the moment, how will this change under the National Law?

The cervical spine area has been identified as posing the greatest risk to the public should manipulation be carried out by non-trained persons. Under the national scheme, cervical spinal manipulation will be restricted to those registered in the medical, chiropractic, osteopathy or physiotherapy professions, or students if done as part of a supervised program of study in one of these health professions.

11. What activities are restricted to registered dental practitioners under the National Law?

A range of dental acts will be restricted to: those registered in the dental or medical professions; medical or dental students (if done as part of their programs of study); or dental technicians practising under the order of dentists or dental prosthetists. The National Law defines restricted dental acts as ‘performing any irreversible procedure on the human teeth or jaw or associated structures’. This is very similar to the provisions in the current Victorian HPR Act.

Accreditation

12. In Victoria the Minister for Health currently approves courses of study via external accrediting bodies. How will this change under the national scheme?

Accreditation functions under the national scheme can be undertaken by an external accreditation body or a committee of the board. Under the National Law, ministers have now appointed external accreditation bodies for nine of the ten professions. Arrangements for nursing and midwifery will be announced prior to 1 July 2010.

13. What powers will health ministers have under the National Law in regard to accrediting bodies and accreditation standards?

Under the National Law, accreditation standards will be approved by the national boards. The Ministerial Council has a reserve power to give a direction in relation to accreditation standards only if it has the opinion that:

- the accreditation standard will have a substantive and negative impact on the recruitment or supply of health practitioners
- it has first considered the potential impact of the direction on the quality and safety of health care.

Further information is provided in the national FAQs document.