Response template

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Would you/your organisation like to receive project updates via email?

Yes ☒

No ☐

Part 1 – Expansion of the information available on the national public register of health practitioners

1. Do you support the publication of practitioners' full regulatory history where there has been a finding of professional misconduct because of:
   - sexual misconduct; or
   - sexual boundary violations.

or where there has been a:

   - conviction or finding of guilt for a sexual offence.

~~Yes / No~~ / Unsure. Please explain why.

Our impression is that there can be substantial differences between the elements described in each dot point in q.1 above.

We formed an impression there may be potential inconsistency between q.1 above and certain text in the part 1 'background paper'.

The word 'or', in q.1 above (highlighted) suggests an intent for the proposed reform to apply in cases where there has been a finding of professional misconduct *or* where there has been a conviction or finding of guilt for a sexual offence.

This seems to vary slightly from certain elements included in the 'background paper'. Specifically, p.6 of the background paper largely resembles the text used in q.1 above but is absent the word 'or' (highlighted above).

> *National Boards would be required to publish the practitioner's full regulatory history on the register where a tribunal determines that a registered health practitioner has engaged in 'professional misconduct' because of any of the following:*
>
> - *sexual misconduct;*
> - *sexual boundary violation;*
>
> *where there has been a:*
>
> - *conviction or finding of guilt for a criminal sexual offence.*

Discussion at p.14-15 of the 'background paper' appears to reinforce an impression that a conviction or finding of guilt for a criminal sexual offence would be a necessary element to trigger the proposed reform.

> *A practitioner's full regulatory history will be published if they have been convicted, or subject to a finding of guilt, for a criminal sexual offence.*

However, other discussion at p.12 of the 'background paper' appears more consistent with q.1, above.

> *Under the proposed reform, if a practitioner is found by a tribunal to have engaged in 'professional misconduct' because of sexual misconduct and/or a sexual boundary violation, or where there has been a conviction or finding of guilt for a criminal sexual offence, …*

So we're not certain which of two different approaches is intended:

1. that a conviction or finding of guilt for a criminal sexual offence is a *necessary* precursor, or
2. that a conviction or finding of guilt for a criminal sexual offence is an *optional* precursor.

We suggest NRAS approach its interpretation of responses to this question cautiously and endeavour to further clarify this aspect.

2. Is a tribunal finding of professional misconduct because of sexual misconduct or, sexual boundary violations or criminal convictions for sexual offences the appropriate threshold for prompting publication and retention of practitioners' regulatory history?

   ~~Yes / No~~ / Unsure. Please explain why.

We find the construction of the above question makes it slightly difficult to answer.

Our initial reading was that it seeks opinions (yes/no/unsure) on whether a finding of *any* of these matters, by any relevant authority, would demonstrate an appropriate threshold for prompting publication and retention of practitioners' regulatory history.

Another reading is that it seeks opinions on *which* of the possible findings (i.e. professional misconduct because of sexual misconduct, or sexual boundary violations, or criminal convictions for sexual offences) would demonstrate an appropriate threshold.

And yet another reading is that it seeks opinions on whether a finding by a certain type of authority (or all authorities) would demonstrate an appropriate threshold.

In the Australian legal system, two distinct standards of proof exist based on the type of case: balance of probabilities for civil matters and beyond reasonable doubt for criminal matters.

While the overall goal of finding the truth exists in both civil and criminal cases, the authorities making findings and the standards they apply differ significantly.

Noting differences in the offences listed, differences between civil and criminal standards of proof, and differences between tribunals and courts, which have varying ability to make findings on the offences – it may be helpful to consider each scenario individually, or alternatively to highlight the proponent's intent to treat them all equally (if that is the intent).

Because respondents might be thinking of a particular scenario, or might treat them all as the same thing, we suggest NRAS approach its interpretation of responses to this question cautiously.

3. A practitioner's regulatory history could include any undertakings, conditions, reprimands, and prohibitions orders. The National Law does not currently allow this history to remain on the public register when they are no longer in force.

   Do you support publication and retention of these elements if the circumstances for publication are met?

   ~~Yes~~ / No / ~~Unsure~~. Please explain why.

The National Law does not currently allow undertakings, conditions, reprimands, and prohibitions orders to remain on the public register when they are no longer in force.

We acknowledge that sound arguments exist in favour of publication and retention of these elements where proposed circumstances for publication are met (although we're not presently clear on what those circumstances are proposed to be).

Arguments to which we are absolutely sympathetic may go to public protection, transparency and accountability, and striking a balance.

We are also mindful of sound arguments against such actions, which could include:

- Publicly accessible records can stigmatise practitioners even after they've addressed the issues and served their disciplinary orders. This could hinder their ability to find work, rebuild their careers, and contribute positively to society.
- Knowing future records will be permanently listed might discourage practitioners from cooperating with investigations or accepting undertakings, fearing long-term reputational damage even after fulfilling their obligations.
- In some cases, the original offense might be minor or have limited relevance to future practice, raising questions about the public interest in maintaining permanent records.
- Continuing sanctions beyond the disciplinary period could be seen as an additional, disproportionate punishment exceeding the intended disciplinary action.
- Practitioners might argue that publicly accessible records infringe on their right to privacy and confidentiality, especially after fulfilling disciplinary actions.

4. It is proposed to use the guidelines in the Medical Board of Australia's *Guidelines: Sexual Boundaries in the Doctor-Patient Relationship*[1] to define the scope of behaviours covered by these reforms.
    a) Does this sufficiently encompass all conduct which should be considered in scope for this reform?
    b) Should other specific conduct, such as grooming, be included?

Nil comment at this stage.

5. Are there any other initiatives or actions which could improve public protection and transparency regarding practitioners' regulatory history?

Nil comment at this stage.

6. Do you have any further comments or suggestions?

Nil comment at this stage.

Part 2 – Establishing of nationally consistent reinstatement orders

1. Do you support a nationally consistent requirement for practitioners to seek a reinstatement order from a tribunal before applying for re-registration after being disqualified or cancelled?

   ~~Yes / No /~~ Unsure. Please explain why.

[1] Ahpra and National Boards, 'Guidelines: Sexual boundaries in the doctor-patient relationship' https://www.medicalboard.gov.au/Codes-Guidelines-Policies/Sexual-boundaries-guidelines.aspx#.

We are concerned to ensure public safety and uphold the highest ethical standards within our profession. While we understand the need for robust regulatory measures, we also advocate for fair and proportionate processes that promote rehabilitation and reintegration for practitioners who have made mistakes. A standardised tribunal process could ensure rigorous assessments of a practitioner's fitness to practice after disqualification or cancellation, potentially minimising risks to the public. However, we'd urge careful consideration of the potential financial and emotional burden on practitioners seeking reinstatement, ensuring the process is accessible and proportionate to the original offense.
2. Do you agree that the National Law should be amended to adopt the New South Wales model for reinstatement orders? ~~Yes / No~~ / Unsure. Please explain why.
Instead of endorsing or opposing the NSW model's adoption, we would advocate for a thorough analysis and potential adaptation, which considers: • Evaluating the effectiveness of the NSW model in achieving its objectives and potential impact on different stakeholders. • Consultation with health practitioners, regulatory bodies, and public representatives to understand diverse perspectives and concerns. • Ensuring that any amendment to the National Law incorporates proven elements from the NSW model while addressing identified concerns and ensuring flexibility for individual assessments.
3. Are there any other initiatives or actions which could improve public protection and support national consistency for practitioners seeking re-registration after being disqualified or cancelled?
Sharing information about disqualified or cancelled practitioners across international jurisdictions could improve public awareness and prevent them from practicing elsewhere. Educating health consumers about disciplinary processes, reinstatement orders, and how to verify practitioner credentials can help empower informed choices. Offering reasonably consistent access to rehabilitation, mentorship, and professional development programs across jurisdictions could help facilitate meaningful change and improve reintegration success.
4. Do you have any further comments or suggestions?
Nil comment at this stage.

Part 3 – Strengthening protections for notifiers and prospective notifiers

1. Do you support the proposed reforms to strengthen protections for notifiers and prospective notifiers? Yes / No / Unsure. Please explain why.
Nil comment at this stage.
2. Do you support changes to make it an offence to seek to include an NDA in an agreement without advising the affected person that they can still make a notification to Ahpra, National Boards or another relevant regulatory body? Yes ~~/ No / Unsure~~. Please explain why.

Patients deserve to know their options and have the right to report concerns to regulatory bodies without undue hindrance. Making it an offence to include an NDA without proper disclosure could deter practitioners from using them inappropriately to prevent legitimate complaints or investigations.
3. Do you support changes which would mean that an NDA is void to the extent that it prevents a person making a notification to Ahpra, National Boards or other regulatory body? Yes / ~~No / Unsure~~. Please explain why.
Please see comments above.
4. Are there any other initiatives or actions which could improve protections for notifiers and prospective notifiers?
Providing easily accessible and comprehensive information on the notification process, available support services, and the potential consequences of making a notification. Keeping notifiers informed about the progress of investigations and providing feedback on the outcomes, even if confidential details cannot be shared. Ensuring mandatory training programs for healthcare professionals on their ethical obligations, professional boundaries, and proper responses to potential misconduct are contemporary and appropriate.
5. Do you have any further comments or suggestions?
No further comments at this stage.