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RE: Proposed Reforms to The Health Practitioner Regulation National Law

INTRODUCTION

The Royal Australasian College of Surgeons (RACS) welcome this opportunity to provide input as it relates to the Australian health ministers' proposals for change and reform to the *Health Practitioner Regulation National Law* (Victoria included) with their focus on three key areas: Increased Transparency, Nationally Consistent Re-registration, and Protection for Complainants and Whistleblowers

While RACS supports these changes in principle, RACS would also like to provide further insight as to these proposals and the overall need for natural justice on behalf of our surgical fellowship. RACS will provide a reading of our understanding as to what these proposals mean and following that provide our critiques, and alternative solutions.

ABOUT RACS

RACS is the peak surgical organisation, and the leading advocate for surgical standards, professionalism and surgical education in Australia and Aotearoa New Zealand. RACS is a not-for-profit organisation which represents more than 8,300 surgeons and 1300 surgical Trainees and Specialist International Medical Graduates across Australia and Aotearoa New Zealand.

RACS supports healthcare and surgical education in the Asia-Pacific region and is a substantial funder of surgical research. RACS trains in all surgical specialties; Cardiothoracic Surgery, General Surgery, Neurosurgery, Orthopaedic Surgery, Otolaryngology Head and Neck Surgery, Paediatric Surgery, Plastic and Reconstructive Surgery, Urology and Vascular Surgery.

SUMMARY OF PROPOSALS

The proposed reforms aim to increase transparency by disclosing misconduct information on a national public register to inform patients. Additionally, the reforms seek to establish consistent re-registration requirements and strengthen protections for individuals who report concerns about a practitioner's conduct.

RACS CRITIQUE

While RACS acknowledges the well-intentioned focus on patient safety and vulnerable populations, some proposed changes lack crucial details regarding clinician protections. Lengthy adjudication processes and potential for erroneous accusations can significantly harm a clinician's career. Also, clinicians may be concerned about not being adequately protected by the law, so they will be discouraged to disclose information in full due to the fear of litigation or legal repercussions.ⁱ To ensure these changes are implemented fairly, clear and accessible appeal processes, along with defined safeguards for wrongly accused professionals, are essential.



The proposed reforms to healthcare practitioner regulation also raises privacy concerns, with potential for reputational damage due to public disclosures, even for unproven misconduct. Also, the public disclosure will also need to consider the privacy of patients and families and reduce any further harm due to the clinician information disclosure.ⁱ Balancing transparency, procedural fairness and natural justice, and the impact on both practitioners and complainants is crucial. Re-registration and complaint processes require careful design to avoid discouraging legitimate complaints, hindering rehabilitation, or enabling frivolous claims.

NON-DISCLOSURE AGREEMENTS

With regard to the proposed changes to NDAs, or non-disclosure agreements, RACS welcomes the proposition of a legal framework to clearly describe the role and limitation of NDA's in the disclosure of improper conduct. The provided documents correctly assert that there is a degree of ambiguity regarding the use of NDA's in this context given the paucity of case law examples.

RACS agrees that NDA's have the potential to impair notification of poor practice, and thus expose patients to potential harm or poor practice. This is an issue that has recently been addressed in the UK, where NDAs were used by NHS organisations to suppress evidence of poor practice.ⁱⁱ RACS supports review of the use of NDA's and further protection for whistleblowers, but also recognises that this must come with protections for persons against spurious allegations.ⁱⁱⁱ

RACS ALTERNATIVE SOLUTIONS

It's important to find a balance between public safety and practitioner privacy. While transparency is valuable, it shouldn't come at the cost of unfairly damaging reputations or discouraging practitioners from seeking help or re-registration. Alternative solutions could include the following-

- **Graduated Disclosure:** A tiered system could disclose only serious offences or those proven in court.
- **Clearer Explanations:** The register could include explanations of the situation and the outcome.
- **Shorter Listing Periods:** For unsubstantiated complaints, the information could be removed from the register after a set period.
- **Secure systems:** Secure systems to be implemented to ensure only relevant parties can access the full information on the register.

CONCLUSION

The Royal Australasian College of Surgeons (RACS) expresses concerns about the proposed healthcare practitioner regulation reforms, highlighting potential privacy breaches, reputational damage, and unintended consequences on both practitioners and complainants. As a consequence, RACS advocates for a balanced approach that prioritizes public safety while ensuring fairness, offering solutions like a tiered disclosure system, clearer explanations on the register, shorter listing periods for unsubstantiated complaints, and secure data access. RACS supports a balanced approach which prioritizes public safety while protecting the individual rights of medical practitioners.

Yours sincerely,

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President, RACS

Professor Mark Frydenberg
Chair, Health Policy & Advocacy Committee

ⁱ Holmes A, Bugeja L, Ranson D, Griffiths D, Ibrahim JE. The potential for inadvertent adverse consequences of open disclosure in Australia: when good intentions cause further harm. *Med Sci Law*. 2019 Oct;59(4):265-274. doi: 10.1177/0025802419872049. Epub 2019 Aug 25. PMID: 31446841.

ⁱⁱ UK House of Commons, *Whistleblowing and gagging clauses* by Patrick Briône, 22 September 2023

ⁱⁱⁱ With thanks for the input provided from the Royal Australasian College of Surgeons Trainees' Association (RACSTA)