ANMF Submission to COAG Health Council consultation

REGULATION OF AUSTRALIA'S HEALTH PROFESSIONS: KEEPING THE NATIONAL LAW UP TO DATE AND FIT FOR PURPOSE

31 OCTOBER 2018

Australian Nursing & Midwifery Federation

Australian Nursing and Midwifery Federation

What is your name / your organisation's name?

Australian Nursing and Midwifery Federation (ANMF)

Are you a:

- ☐ Consumer of health services
- ☐ Registered health practitioner
- ☐ Employer of health practitioners
- ☒ Representative of a professional association
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Would you like to be informed about the outcome of the consultation?

- ☒ **Yes**
- ☐ **No**

If you answered 'yes', please provide your contact details below.

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Position/title (if applicable):	Federal Secretary
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Consolidated list of questions

Governance of the National Scheme

Section 3.1: Objectives and guiding principles – inclusion of reference to cultural safety for Aboriginal and Torres Strait Islander Peoples

1. Should the guiding principles of the National Law be amended to require the consideration of cultural safety for Aboriginal and Torres Strait Islander Peoples in the regulatory work of National Boards, AHPRA, Accreditation Authorities and all entities operating under the National Law? What are your reasons?	Yes. The ANMF supports the guiding principles of the National Law being amended to require the consideration of cultural safety for Aboriginal and Torres Strait Islander Peoples in the regulatory work of National Boards, AHPRA, Accreditation Authorities and all entities operating under the National Law. Our reasons are: **1.** In June 2018 a Statement of Intent on a National Scheme Aboriginal and Torres Strait Islander Health Strategy was signed by the 15 national health practitioner boards, the Australian Health Practitioner Regulation Agency (AHPRA), accreditation authorities and Aboriginal and Torres Strait Islander health sector leaders and organisations.[1] 2. The COAG Health Council Indigenous Roundtable Communique of August 2018 in which Ministers "agreed that cultural safety in providing healthcare to Indigenous Australians was essential."[2] 3. Excerpt from the Congress of Aboriginal and Torres Strait Islander Nurses and Midwives (CATSINaM) position statement: *Embedding cultural safety across Australian nursing and midwifery* *Aboriginal and Torres Strait Islander peoples have poorer health status than other Australians … This reflects a history of dispossession, racism, marginalisation, poverty, and inter-generational disadvantage, which have had a profound effect on the health and wellbeing of Aboriginal and Torres Strait Islander peoples.* *Culturally safe health service delivery is one mechanism for addressing these social and health inequities.*[3]

	4. We support CATSINaM's definition of cultural safety which says (inpart): *Cultural safety is a philosophy of practice that is about how a health professional does something, not [just] what they do…. It is about how people are treated in society, not about their diversity as such, so its focus is on systemic and structural issues and on the social determinants of health….Cultural safety represents a key philosophical shift from providing care regardless of difference, to care that takes account of peoples' unique needs. It requires nurses and midwives to undertake an ongoing process of self-reflection and cultural self-awareness, and an acknowledgement of how a nurse's/midwife's personal culture impacts on care.*[4] 5. The Nursing and Midwifery Board of Australia (NMBA) recently took steps to embed cultural safety in the Code of Conduct for Nurses and the Code of Conduct for Midwives.[5] The ANMF considers that all national boards should amend their Codes of Conduct accordingly. 6. Cultural safety is also embedded in the accreditation standards for all entry to practise programs for nurses and midwives. This is seen to be important not only for improved care practises of nurses and midwives but also for the recruitment and retention of Aboriginal and Torres Strait Islander peoples into the nursing and midwifery professions. Increases in Aboriginal and Torres Strait Islander nurses and midwives is in turn positive for the professions, for health and aged care services, and for promoting trust in the Aboriginal and Torres Strait Islander community. 7. Cultural safety also means safe clinical care and better outcomes of health care for the recipient. The ANMF, therefore, contends cultural safety is an essential inclusion in the National Law and should not be considered optional. References: 1. https://www.ahpra.gov.au/About-AHPRA/Aboriginal-and-Torres-Strait-Islander-Health-Strategy/Statement-of-intent.aspx 2.https://www.coaghealthcouncil.gov.au/Portals/0/CHC%20Indigenous%20Roundtable%20Communique_010818.pdf

	3. https://www.catsinam.org.au/static/uploads/files/embedding-cultural-safety-accross-australian-nursing-and-midwifery-may-2017-wfca.pdf 4. https://www.catsinam.org.au/policy/cultural-safety 5. https://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Professional-standards.aspx
2. Should the objectives of the National Law be amended to require that an objective of the National Scheme is to address health disparities between Indigenous and non-Indigenous Australians? What are your reasons?	Yes, the ANMF supports the objectives of the National Law being amended to require that an objective of the National Scheme is to address health disparities between Indigenous and non-Indigenous Australians. The ANMF agrees with the statement that *the National Scheme has an important role to play in supporting health outcomes for Aboriginal and Torres Strait Islander Peoples by enabling a health workforce that is culturally safe, accessible and responsive through its regulatory framework for health practitioners* (COAG Consultation paper, p16). Aboriginal and Torres Strait Islander peoples are Australia's First Nations' peoples and therefore warrant respect for the unique position they hold in our country. In a well-resourced country such as Australia there should be access to health care for all people. Aboriginal and Torres Strait Islander peoples have the right to live a healthy, safe and empowered life with strong connections to culture and Country.[4] The National Law governs the practice of 15 health practitioner groups. Embedding the requirement that an objective of the National Scheme is to address health disparities between Indigenous and non-Indigenous Australians, demonstrates leadership to all health practitioners who practise within the health and aged care sectors (and related education, employment, practice, research fields) on addressing health inequalities between Indigenous and non-indigenous Australians. The National Law may also act as an example for other sectors of the community, especially those areas of law mentioned under Section 3.3 of the consultation paper. See reference 4. above.

3. Do you have other suggestions for how the National Scheme could assist in improving cultural safety and addressing health disparities for Aboriginal and Torres Strait Islander Peoples?	The ANMF suggests advice is sought from organisations such as the Congress of Aboriginal and Torres Strait Islander Nurses and Midwives (CATSINaM), and The National Health Leadership Forum, the national representative body for Aboriginal and Torres Strait Islander peak organisations who provide advice on health policies for Australia's First Peoples. We reiterate the sentiments of a recommendation from our submission to the *Review of the National Registration and Accreditation Scheme for health professions*, October 2014, where we called for an additional protected position to be created for a National Board practitioner member who is an Aboriginal and Torres Strait Islander of the relevant health practitioner discipline.

Section 3.2: Chairing of National Boards

4. Which would be your preferred option regarding the appointment of chairpersons to National Boards? What are your reasons?	The ANMF supports Option 1. We maintain our position as stated in October 2014, that it is essential the Chairperson of the NMBA continues to be a practitioner member. The regulation and accreditation of education programs for the nursing and midwifery professions encompass complex processes. In order to understand the intricacies of these elements, the Chairperson must be a practitioner member. The Chairperson of the NMBA is regularly called upon to represent the nursing and midwifery professions in public forums and through the media. We concur that the Chairperson of the NMBA should be 'in a position to make authoritative statements about clinical matters' and, therefore, to have credibility with the nursing and midwifery professions and the public, must be a practitioner member. The practitioner, as Chairperson, has the skill set and knowledge which the community member may not have to understand the relevance of an issue to a practitioner's practise, essential in making decisions on the working life of a practitioner (such as in the case of notification decisions). There are many individuals within the ranks of the nursing and midwifery professions who have extensive experience in senior leadership roles, who are well versed in governance, chairing meetings, practised in collaboration and negotiation with external parties, and

	who can easily demonstrate the ability to take decisive action on complex and weighty issues. There is no evidence from the NMBA that the National Law needs to be changed regarding the holder of the Chairperson position.
5. If your view is that the role of chairperson should be reserved for practitioner members only, then how should circumstances be managed where there is no practitioner member willing or able to carry out the role, or where there is a need to appoint a non-practitioner for the good governance of the board?	Given the considerable numbers of nurses and midwives in Australia, the ANMF cannot foresee there would be a circumstance "where there is no practitioner member willing or able to carry out the role, or where there is a need to appoint a non-practitioner for the good governance of the board". As stated above, there are many individuals within the ranks of the nursing and midwifery professions who have extensive experience in senior leadership roles, who are well versed in governance, chairing meetings, practised in collaboration and negotiation with external parties, and who can easily demonstrate the ability to take decisive action on complex and weighty issues.
6. If your view is that the role of chairperson should be open to both community and practitioner members, then how should the need for clinical leadership be managed when a chairperson is required to speak authoritatively on behalf of the National Board?	As stated in Q4 response, the ANMF does not agree with the option of a community member taking the chairperson role for a national board.

Section 3.3: System linkages

7. Are the current powers of National Boards and AHPRA to share and receive information with other agencies adequate to protect the public and enable timely action?	There should be no change as AHPRA already has extensive powers to share and receive information with other agencies. The ANMF notes that AHPRA has recently developed a number of memorandums of understanding with varying law enforcement agencies across the country. It is important that communication is always open and transparent, enabling information to be shared in an efficient manner.

8. Are the current linkages between National Boards, AHPRA and other regulators working effectively?	Linkages between AHPRA and national boards are not currently always working effectively. For example, ANMF state and territory Branches report inconsistencies in interpretation of the National Law and policies between AHPRA officers in the various jurisdictions. These differences in interpretation lead at times to our nurse and midwife members being disadvantaged (sometimes to a serious degree) and burdened with unnecessary requirements. There clearly needs to be further oversight by AHPRA including greater investment into on-going education to ensure consistency of messaging and decision-making regarding decisions made by AHPRA officers about health practitioners. This can mean the difference of whether a nurse or midwife can continue to practice or not, affecting mental and/or physical health, employment status and thus income, registration status, and professional standing. We recommend that AHPRA develops stronger links with: • the aged care regulators, currently the Australian Aged Care Quality Agency and the Aged Care Complaints Commissioner. In addition, it will be important for AHPRA to link with the Aged Care Quality and Safety Commission when this entity commences in 2019; and, • the Australia Commission on Safety and Quality in Healthcare.
9. Should there be a statutory basis to support the conduct of joint investigations with other regulators, such as drugs and poisons regulators and public health consumer protection regulators, and if so, what changes would be required to the National Law?	No, there should not be a statutory basis to support the conduct of joint investigations with other regulators.

Section 3.4: Name of the Agency Management Committee

10. Should AHPRA's Agency Management Committee be renamed as the Australian Health Practitioner Regulation Agency (AHPRA) Board or the AHPRA Management Board? What are your reasons?	The ANMF does not consider there is evidence for a name change for the AHPRA Agency Management Committee. This Committee oversights the administrative functions of AHPRA in supporting the national boards in their role of enacting regulatory functions under the national law, which governs the practice of health practitioners. The name of this Committee should definitely not include the word 'Board' as this would create confusion with the national boards and their roles. The current name reflects the role of this group and makes it clear to practitioners that the Committee does not exercise control over the national boards.

Registration functions

Section 4.1: Registration improperly obtained – falsified or misleading registration documents

11. Should the National Law be amended to enable a National Board to withdraw a practitioner's registration where it has been improperly obtained, without having to commence disciplinary proceedings against them under Part 8?	The ANMF does not support the National Law being amended to enable a National Board to withdraw a practitioner's registration where it has been improperly obtained, without having to commence disciplinary proceedings against them under Part 8: There is an existing mechanism that allows a National Board to take immediate action (under amended s.156)* **and** (not 'or' as written in the consultation paper p.24) to refer the matter to a tribunal (under s.193). There is no warrant for instituting a different track as these processes can already be undertaken simultaneously. The current mechanisms under the National Law provide for the dual purpose of public safety and procedural fairness. *Amended s.156 *Power to take immediate action* (1) (e) the National Board reasonably believes the action is otherwise in the public interest. Example of when action may be taken in the public interest — A registered health practitioner is charged with a serious criminal offence, unrelated to the practitioner's practice, for which immediate action is required to be taken to maintain public confidence in the provision of services by health practitioners.

Section 4.2: Endorsement of registration for midwife practitioners

12. Should the provision in the National Law that empowers the Nursing and Midwifery Board to grant an endorsement to a registered midwife to practise as a midwife practitioner be repealed?	The ANMF does not see any reason for repealing this title.

Section 4.3: Undertakings on registration

13. Should ss. 83 and 112 of the National Law be amended to empower a National Board to accept an undertaking from a practitioner at first registration or at renewal of registration?	The ANMF supports the National Law being amended to empower a National Board to accept an undertaking from a practitioner at first registration. This would provide more flexibility for both the practitioner and the National Board, particularly as it would: a) potentially reduce delays in processing a registration application, and b) mean that a practitioner would have an 'undertaking' (which they've entered into voluntarily) on the public register rather than a 'condition' (which has been imposed by the regulator). The requirement of public protection is still met. We do not, however, support the National Law being amended to empower a National Board to accept an undertaking from a practitioner at renewal of registration. In this case, the practitioner is already registered, thus in the system, and there are appropriate actions which can be taken under existing provisions in the National Law.
14. Should the National Law be amended to empower a National Board to refuse to renew the registration of a practitioner on the grounds that the practitioner has failed to comply with an undertaking given to the board?	The ANMF does not support the National Law being amended to empower a National Board to refuse to renew the registration of a practitioner on the grounds that the practitioner has failed to comply with an undertaking given to the Board. This change would remove any flexibility for the Board to examine the reasons why compliance with the undertaking had not occurred, and there may well be valid reasons for the practitioner not being able to do so. In addition, the ANMF is concerned the change may enable the Board to employ much more extensive powers in order to assess whether an undertaking had indeed been breached.

Section 4.4: Reporting of professional negligence settlements and judgements

15. Should the National Law be amended to require reporting of professional negligence settlements and judgements to the National Boards?	The ANMF does not support the National Law being amended to require reporting of professional negligence settlements and judgements to the National Boards. There are already mechanisms within the National Law enabling the process for disclosure.
16. What do you see as the advantages and disadvantages of the various options?	The ANMF supports Option 1 – No change. Current provisions in the National Law are more than adequate. There are no advantages to Options 2, 3 or 4.
17. Which would be your preferred option?	The ANMF prefers Option 1 – No change.

Section 4.5: Reporting of charges and convictions for scheduled medicines offences

18. Should the National Law be amended to require a practitioner to notify their National Board if they have been charged with or convicted of an offence under drugs and poisons legislation in any jurisdiction?	The ANMF does not support the National Law being amended to require a practitioner to notify their National Board if they have been charged with or convicted of an offence under drugs and poisons legislation in any jurisdiction. The current scheme already provides for relevant National Boards being informed of criminal histories. For minor offences that might result in a diversion order, for example, this may have no impact on fitness to practice or pose any risk of harm to the public. Registered practitioners should not be subject to greater obligations and scrutiny for drug/poisons offences than any other form of offending. In situations where the offending has had an impact on the health of the practitioner, and therefore their fitness to practice, this will come to attention via notification for health reasons. Alternatively, if the offending is connected with employment at a health service, this will, if appropriate, be subject to performance and conduct notification. In the circumstances, creating an additional requirement to notify seems unnecessary and has the potential to expose members to greater scrutiny and potential conditions on registration than currently.

Section 4.6: Practitioners who practise while their registration has lapsed

19. Should the National Law be amended to provide National Boards with the discretion to deal with a practitioner who has inadvertently practised while unregistered for a short period (and in doing so has breached the title protection or practice restriction provisions) by applying the disciplinary powers under Part 8 s. 178 rather than prosecuting the practitioner for an offence under Part 7?	The ANMF supports the National Law being amended to provide National Boards with the discretion to deal with a practitioner who has inadvertently practised while unregistered for a short period (and in doing so has breached the title protection or practice restriction provisions) by applying the disciplinary powers under Part 8 s. 178 rather than prosecuting the practitioner for an offence under Part 7. However, the term 'short period' requires a definition. Is this measured in days or weeks?

Section 4.7: Power to require a practitioner to renew their registration if their suspension spans a registration renewal date

20. Should the National Law be amended to require a practitioner whose registration was suspended at one or more registration renewal dates, to apply to renew their registration when returning to practice?	The ANMF does not support the National Law being amended to require a practitioner whose registration was suspended at one or more registration renewal dates, to apply to renew their registration when returning to practice. This is unnecessarily onerous and is applying yet another condition on the practitioner who has already completed the requirements of their suspension. The ANMF agrees that "once a practitioner's suspension ends, all of the practitioner's rights and privileges as a registered health practitioner are 'revived' (along with their obligations), and so the practitioner should not be required to undergo an additional process to demonstrate their suitability to practice (such as registration renewal)." The ANMF contends the practitioner should not have to undergo a period of catch up with regard to meeting registration standards from during their period of suspension (such as the recency of practice or continuing professional development requirements), particularly if their period of suspension was lengthy. This is yet a second layer of rehabilitation. The National Law should allow the National Board to draw a line in the sand on these requirements, and instead of retrospective catch up, have the flexibility of individual assessment of these practitioners as to a period of supervised practice.

21. Noting the current timeframes for registered practitioner's applying to renew their registration (within one month of the registration period ending) and for providing written notice to a National Board of a 'notifiable event' (within seven days), what would be a reasonable timeframe for requiring a practitioner to apply to renew their registration after returning to practice following a suspension?	As per response above, the ANMF does not agree with the registered practitioner having to apply to renew their registration.

Health, performance and conduct

Section 5.1: Mandatory notifications by employers

22. Should the National Law be amended to clarify the mandatory reporting obligations of employers to notify AHPRA when a practitioner's right to practise is withdrawn or restricted due to patient safety concerns associated with their conduct, professional performance or health? What are your reasons?	There is a confusing change of language in the consultation paper between 'restriction of right to practice' (p.39) and 'withdrawal of clinical privileges'(p.40). Restriction of a practitioner's right to practice is the remit of a National Board. Therefore, the ANMF does not support the National Law being amended to clarify the mandatory reporting obligations of employers to notify AHPRA when a practitioner's right to practise is withdrawn or restricted due to patient safety concerns associated with their conduct, professional performance or health. However, the National Law could be amended to clarify the mandatory reporting obligations of employers to notify AHPRA when a practitioner's clinical privileges are withdrawn or restricted due to patient safety concerns associated with their conduct, professional performance or health.

Section 5.2.1: Access to clinical records during preliminary assessment

23. Should Part 8 Division 5 of the National Law (preliminary assessment) be amended to empower practitioners and employers to provide patient and practitioner records when requested to do so by a National Board?	The ANMF does not support Part 8 Division 5 of the National Law (preliminary assessment) being amended to empower practitioners and employers to provide patient and practitioner records when requested to do so by a National Board. The treatment of patient records is appropriately confined to the formal investigation process under Part 8.

Section 5.2.2: Referral to another entity at or following preliminary assessment

24. Should Part 8 Division 5 of the National Law be amended to clarify the powers of a National Board following preliminary assessment, including a specific power to enable the National Board to refer a matter to be dealt with by another entity?	The ANMF does not support Part 8 Division 5 of the National Law to be amended to clarify the powers of a National Board following preliminary assessment, including a specific power to enable the National Board to refer the matter to be dealt with by another entity. The only possible exception to this is to enable the National Board to be able to refer the matter back to the employer. That is, the National Board would be confined to referring back to the employer, if the employer is the complainant, and not to other entities. This would enable performance management issues to be referred straight back to the employer if the employer is the complainant.

Section 5.3.1: Production of documents and the privilege against self-incrimination

25. Should the provisions of the National Law about producing documents or answering questions be amended to require a person to produce self-incriminating material or give them the option to do so? If so: • **Should this only apply to the production of documents but not answering questions or providing information not already in existence?**	The ANMF does not support the provisions of the National Law about producing documents or answering questions being amended to give the option for a person to produce self-incriminating material or give them the option to do so.

• **What protections should apply to the subsequent use of that material?** • **Should the material be prevented from being used in criminal proceedings, civil penalty proceedings or civil proceedings?** • **Should this protection only extend to the material directly obtained or also to anything derived from the original material?**	
26. Should the provisions be retained in their current form? What are your reasons?	Yes. Privilege against self-incrimination is a fundamental right for a person and there is no justification for its removal.

Section 5.4.1: Show cause process for practitioners and students

27. Should the National Law be amended to enable a National Board to take action under another division following a show cause process under s. 179?	The ANMF supports the National Law being amended to enable a National Board to take action under another division following a show cause process under s.179.
28. Should the National Law be amended to provide a statutory requirement for a National Board to offer a show cause process under s. 179 in any circumstance where it proposes to take relevant action under s. 178?	The ANMF supports the National Law being amended to provide a statutory requirement for a National Board to offer a show cause process under s.179 in any circumstance where it proposes to take relevant action under s.178.

Section 5.4.2: Discretion not to refer a matter to a tribunal

29. Should the National Law be amended to empower a National Board to decide not to refer a matter to the responsible tribunal for hearing when the board reasonably forms the view that	The ANMF supports the National Law being amended to empower a National Board to decide not to refer a matter to the responsible tribunal for hearing when the board reasonably forms the view that there are no serious ongoing risks to the public.

there are no serious ongoing risks to the public? If not, why? If so, then why and what constraints should be placed on the exercise of such discretion?	This would allow for greater flexibility in the Board's decision making and for processes of natural justice to apply to the practitioner especially where hardship can be demonstrated. Constraints placed on the exercise of such discretion should meet the public interest test of 'justice being seen to be done' and for the event to appear 'on the public record to act as a deterrent [and to enable] improvements in practice [to be] made'.

Section 5.4.3: Settlement by agreement between the parties

30. Should the National Law be amended to provide flexibility for National Boards to settle a matter by agreement between the practitioner, the notifier and the board where any public risks identified in the notification are adequately addressed and the parties are agreeable? What are your reasons?	The ANMF supports the National Law being amended to provide flexibility for National Boards to settle a matter by agreement between the practitioner, the notifier and the board where any public risks identified in the notification are adequately addressed and the parties are agreeable. This provides for greater flexibility for the regulator in potentially achieving speedier resolution of cases at an earlier stage, and, has the advantages of 'buy in' and thus commitment from all parties to resolve issues, and enables the practitioner to move forward.

Section 5.4.4: Public statements and warnings

31. Should the National Law be amended to empower a National Board/AHPRA to issue a public statement or warning with respect to risks to the public identified in the course of exercising its regulatory powers under the National Law? What are your reasons?	The ANMF does not agree with the National Law being amended to empower a National Board/AHPRA to issue a public statement or warning with respect to risks to the public identified in the course of exercising its regulatory powers under the National Law. We consider there are enough measures already in place in the National Law and National Boards should have confidence in the existing system.
32. If public statement and warning powers were to be introduced, should these powers be subject to a 'show cause' process before a	If public statement and warning powers were to be introduced, the ANMF agrees that these powers should be subject to a 'show cause' process before a public statement or warning is issued. This is in accordance with the application of natural justice.

public statement or warning is issued? What are your reasons?	

Section 5.5.1: Power to disclose details of chaperone conditions

33. Should the National Law be amended to empower a National Board to require a practitioner to disclose to their patients/clients the reasons for a chaperone requirement imposed on their registration? What are your reasons?	The ANMF does not support the National Law being amended to empower a National Board to require a practitioner to disclose to their patients/clients the reasons for a chaperone requirement imposed on their registration. We consider that the National Board must tell the chaperone the reasons for the chaperone requirement imposed on the practitioner's registration, and this should be sufficient.
34. Should the National Law be amended to provide powers for a National Board to brief chaperones as to the reasons for the chaperone? What are your reasons?	The ANMF supports the National Law being amended to provide powers for a National Board to brief chaperones as to the reasons for the chaperone. Further to our response above, disclosure of the reason for a chaperone being required must be given to the person acting as chaperone to enable full protection for the public, and, in the interests of the chaperone's own safety.

Section 5.5.2: Power to give notice to a practitioner's former employer

35. Should the National Law be amended to enable a National Board to obtain details of previous employers and to disclose to a practitioner's previous employer(s) changes to the practitioner's registration status where there is reasonable belief that the practitioner's practice may have exposed people to risk of harm? If not, why? If yes, then why and what timeframe should apply for the exercise of these notice powers?	The ANMF does not support the National Law being amended to enable a national board to obtain details of previous employers and to disclose to a practitioner's previous employer(s) changes to the practitioner's registration status where there is reasonable belief that the practitioner's practice may have exposed people to risk of harm. The Register should be the point of reference for any previous, current or potential employers on the registration status of a practitioner. The ANMF considers that this unnecessary reach of investigation carries a high administrative function for the National Board to track previous employers, especially if the practitioner does not self-disclose this information. The National Law already has

	mandatory reporting and other mechanisms to cover this matter without the need for amendment.

Section 5.6.1: Right of appeal of a caution

36. Should the National Law be amended to enable a right of appeal against a decision by a National Board to issue a caution?	The ANMF supports the National Law being amended to enable a right of appeal against a decision by a National Board to issue a caution. We agree with the Senate Community Affairs References Committee 2017 recommendation that the decision to issue a caution be an appellable decision, in line with other decisions made by the National Boards. This amendment provides an option for the practitioner.
37. Which would be your preferred option?	The ANMF supports Option 3: *Amend the National Law to include a caution as an appellable decision*.

Section 5.6.2: The rights of review of notifiers

38. Should the National Law be amended to provide a right for a notifier (complainant) to seek a merits review of certain disciplinary decisions of a National Board? What are your reasons?	The ANMF does not support the National Law being amended to provide a right for a notifier (complainant) to seek a merits review of certain disciplinary decisions of a National Board. The decision should rest with the National Board which has undertaken the investigation.
39. Which would be your preferred option?	The ANMF's preferred option is Option 1: *No change.*
40. If yes, which decisions should be reviewable and who should hear such appeals, for example, an internal panel convened by AHPRA or the National Health Practitioner Ombudsman and Privacy Commissioner, or some other entity?	N/A

Offences and penalties

Section 6.1: Title protection: surgeons and cosmetic surgeons

41. Should the National Law be amended to restrict the use of the title 'cosmetic surgeon'? If not, why? If so, why and which practitioners should be able to use this title?	No comment
42. Should the National Law be amended to restrict the use of the title 'surgeon'? if not, why? If so, why and which practitioners should be able to use such titles?	No comment

Section 6.2: Direct or incite offences

43. Are the current provisions of the National Law sufficient to equip regulators to deal with corporate directors or managers to direct or incite their registered health practitioner employees to practise in ways that would constitute unprofessional conduct or professional misconduct?	The ANMF does not consider that the current provisions of the National Law are sufficient to equip regulators to deal with corporate directors or managers who direct or incite their registered health practitioner employees to practise in ways that would constitute unprofessional conduct or professional misconduct.
44. Are the penalties sufficient for this type of conduct? Should the penalties be increased to $60,000 for an individual and $120,000 for a body corporate, in line with the increased penalties for other offences?	The National Law does not currently provide sufficient scope or penalty for employers who direct and incite their registered health practitioner employees to practise in ways that would constitute unprofessional conduct or professional misconduct. The current penalties are not sufficient and should be increased for a body corporate.

45. Should there be provision in the National Law for a register of people convicted of a 'direct or incite' offence, which would include publishing the names of those convicted of such offences?	The ANMF agrees there should be provision in the National Law for a register of people convicted of a 'direct or incite' offence, which would include publishing the names of those convicted of such offences. We consider this would act as a deterrent, as well as being a means of protecting employees.
46. Should the National Law be amended to provide powers to prohibit a person who has been convicted of a 'direct or incite' offence from running a business that provides a specified health service or any health service?	The ANMF supports the National Law being amended to provide powers to prohibit a person who has been convicted of a 'direct or incite' offence from running a business that provides a specified health service or any health service. The phrase should be amended to read: "direct, incite or creates an environment which seeks to direct and/or incite".

Section 6.3.1: Prohibiting testimonials in advertising

47. Is the prohibition on testimonials still needed in the context of the internet and social media? Should it be modified in some way, and if so, in what way? If not, why?	The ANMF considers the prohibition on testimonials in the context of the internet and social media is still relevant to a registered health practitioner's, or their employer's, website. However, the prohibition should be modified in relation to a service directory site or a consumer blog, where these are not linked to the practitioner and for which the practitioner has no control as to the content.
48. Which would be your preferred option?	The ANMF prefers Option 2: *Amend the National Law to limit the scope of the prohibition on using testimonials in advertising to apply only to advertising undertaken by the registered health practitioner or their employer.*

Section 6.3.2: Penalties for advertising offences

49. Is the monetary penalty for advertising offences set at an appropriate level given other offences under the National Law and community expectations about the seriousness of the offending behaviour?	No. The ANMF supports Option 3 which is to *increase the penalties for breaching advertising provisions by another amount to more closely align with advertising breaches under the Australian Consumer Law* (Consultation paper p.63).

Information and privacy

Section 7.1: Information on the public register

50. Is the range of practitioner information and the presentation of this information sufficient for the various user groups?	The ANMF considers the range of practitioner information and the presentation of this information on the public register is sufficient for the various user groups.
51. Should the National Law be amended to expand the type of information recorded on the national registers and specialist registers?	The ANMF does not consider the National Law needs to be amended to expand the type of information recorded on the national registers. We reiterate that privacy should be upheld and prompt action taken when requests are made by the practitioner for specific information to be removed for personal safety reasons.
52. What additional information do you think should be available on the public register? Why?	The ANMF does not consider any additional information needs to be available on the public register.
53. Do you think details, such as a practitioner's disciplinary history including disciplinary findings of other regulators, bail conditions and criminal charges and convictions, should be recorded on the public register? If not, why not? If so:	The ANMF does not support details, such as a practitioner's disciplinary history, including disciplinary findings of other regulators, bail conditions and criminal charges and convictions, be recorded on the public register. Our reason is that if any of that information was directly related to the practitioner's practice, then it would already be on the public register.

• **What details should be recorded?** • **What level of information should be accessible?** • **What should be the threshold for publishing disciplinary information and for removing information from a published disciplinary history?**	
54. Should s. 226 of the National Law be amended to: • **broaden the grounds for an application to suppress information beyond serious risk to the health or safety of the registered practitioner?** • **require or empower a National Board to remove from the public register the employment details (principal place of practice) of a practitioner in cases of domestic and family violence?** • **enable National Boards not to record information on, or remove information from, the public register where a party other than the registered health practitioner may be adversely affected?**	The ANMF supports s.226 of the National Law being amended to: • broaden the grounds for an application to suppress information beyond serious risk to the health or safety of the registered practitioner, (and include the words from the consultation paper p.68) "their family or wider network" • require or empower a national board to remove from the public register the employment details (principal place of practice) of a practitioner in cases of domestic and family violence (add the words) "as they relate to the practitioner, their family or wider network" • enable National Boards not to record information on, or remove information from, the public register where a party other than the registered health practitioner may be adversely affected.

Section 7.2: Use of aliases by registered practitioners

55. Should the National Law be amended to provide AHPRA with the power to record on the public registers additional names or aliases under which a practitioner offers regulated health services to the public?	The ANMF supports the National Law being amended to provide AHPRA with the power to record on the public registers additional names or aliases under which a practitioner offers regulated health services to the public.

56. Should the public registers be searchable by alias names?	The ANMF supports the public registers being searchable by alias names, used in the context of a practitioner's practice – a common/preferred name.
57. Should the National Law be amended to require a practitioner to advise AHPRA of any aliases that they use?	The ANMF supports the National Law being amended to require a practitioner to advise AHPRA of any aliases that they use.
58. If aliases are to be recorded on the register, should there be provision for a practitioner to request the removal or suppression of an alias from the public register? If so, what reasons could the board consider for an alias to be removed from or suppressed on the public register?	The ANMF considers that, if aliases are to be recorded on the register, there should be provision for a practitioner to request the removal or suppression of an alias from the public register. Reasons the National Board should consider for an alias to be removed from or suppressed on the public register include legitimate legal reasons, such as: • in the case of domestic violence • where a practitioner may be on a witness protection program.
59. Should there be a power to record an alias on the public register without a practitioner's consent if AHPRA becomes aware by any means that the practitioner is using another name and it is considered in the public interest for this information to be published?	The ANMF does not support there being a power to record an alias on the public register without a practitioner's consent, in the case that AHPRA becomes aware by any means that the practitioner is using another name and it is considered in the public interest for this information to be published. We consider the practitioner should have a say in this and should be given the opportunity under natural justice to show cause regarding the use of an alias.

Section 7.3: Power to disclose identifying information about unregistered practitioners to employers

60. Should the National Law be amended to enable a National Board/AHPRA to disclose information to an unregistered person's employer if, on investigation, a risk to public safety is identified? What are your reasons?	The ANMF considers disclosure to an employer should only apply in jurisdictions where there is no regulatory authority for unregistered workers, and, the person was formerly a registered practitioner. This amendment would not be required for states with co-regulatory arrangements.

Other comments

<Do you have any other comments to make about these proposals?

No further comments.