

16 February 2024

Department of Health
NRAS Consultation

By email only: NRAS.Consultation@health.vic.gov.au

To whom it may concern,

Proposed reforms to the Health Practitioner Regulation National Law

Thank you for the opportunity to comment on the proposed changes to the *Health Practitioner Regulation National Law Act 2009* (the **National Law**).

The Office of the Victorian Information Commissioner (**OVIC**) has combined oversight of freedom of information, privacy and information security, administering both the *Freedom of Information Act 1982* (Vic) and the *Privacy and Data Protection Act 2014* (Vic) (**PDP Act**). OVIC has an interest in this consultation as it relates to disclosing personal information of individuals.

This submission provides comments in relation to Part 1: Expansion of the information available on the national public register. The comments reflect OVIC's expectations of Victorian public sector organisations regulated under the PDP Act. However, OVIC notes that the PDP Act does not apply to the National Law.¹

Expansion of information on the national public register

The National Law requires National Boards and the Australian Health Practitioner Regulation Agency to publish certain information on a national public register of practitioners. This includes whether practitioners have had any conditions, reprimands, or undertakings on their registration and whether a practitioner's registration has been suspended.

The proposed reforms would require a practitioner's full regulatory history to be published where a tribunal determines that a practitioner has engaged in professional misconduct because of sexual misconduct, sexual boundary violation, or where there has been a conviction or finding of guilt for a criminal sexual offence. This would involve publishing information about a practitioner's regulatory history that is unrelated to the sexual misconduct professional misconduct.

¹ Section 7 of the *Health Practitioner Regulation National Law (Victoria) Act 2009* (Vic) excludes the PDP Act from applying to the National Law.

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A practitioner's regulatory history will remain permanently visible on the register. This includes future regulatory actions.

Given the inherent power imbalance in the patient-practitioner relationship, health practitioners must be held to a high ethical standard and level of accountability. The national register is an important transparency mechanism that the community can use to inform and protect themselves. There's a strong public interest in knowing which health practitioners have engaged in serious and harmful behaviour. The purpose of the proposed reforms helps to support this public interest, and aligns with Information Privacy Principle 2.1(d),² to prevent or lessen serious threats to an individual's or the public's health or safety.

However, the Department may wish to consider the proportionality and necessity of publishing a practitioner's entire regulatory history, indefinitely. OVIC considers a practitioner's regulatory history should only be disclosed where it is necessary to prevent or lessen serious threats to public health or safety. If publishing a practitioner's entire regulatory history is necessary for this purpose, OVIC suggests that information about a practitioner's regulatory history outlines when and in what circumstances the regulatory actions ceased. For example, when a condition on a practitioner's registration was removed and why. This will help to explain and provide context to the regulatory history.

Any new information published on the national register should continue to protect the privacy of individuals other than the health practitioner (for example, patients and notifiers).

I have no objection to this submission being published by the Department without further reference to me. I also propose to publish a copy of this submission on the OVIC website, but would be happy to adjust the timing of this to allow the Department to collate and publish submissions proactively.

If you would like to discuss this submission, please do not hesitate to contact me or my colleague Sarah Crossman, Senior Policy Officer, at sarah.crossman@ovic.vic.gov.au.

Yours Sincerely



Sean Morrison
Information Commissioner

² In Schedule 1 to the PDP Act.