

Common Protocol

Informing notifiers about the reasons for National Board decisions

Version 1.0 – 1 August 2018

1. About the Common Protocol

In September 2017, legislation was passed in the Queensland Parliament to amend the Health Practitioner Regulation National Law (National Law) to enable people who raise concerns about registered health practitioners (notifiers) to receive more information about how their matter is dealt with. Specifically, the amendments allow notifiers to be informed at key milestones in the notification process and to be provided with reasons for a National Board decisions in response to their concerns. These amendments enable National Boards to meet their regulatory responsibilities with greater transparency while continuing to respect the privacy interests of practitioners.

This Common Protocol has been developed by the National Boards to explain the circumstances in which notifiers will be informed about the reasons for National Board decisions. The Common Protocol also explains how information privacy considerations relating to practitioners and other people will be taken into account in disclosing reasons for decisions to notifiers.

2. Sharing reasons for decisions with notifiers under the National Law

In summary the National Law provides that notifiers:

- a. must be provided with written notice of a decision to take no further action following an assessment of a notification and the reason for that decision¹
- b. must be provided with written notice of a decision to take relevant action in response to a notification. The National Board has a discretion about whether to provide the notifier with the reasons for the decision²
- c. may be provided with notice of a decision to take immediate action that arises from the notification and the reasons for that decision³
- d. may be provided with notice of a decision made in relation to their notification, and the reasons for that decision, following an investigation⁴
- e. may be provided with notice of a decision made in relation to their notification, and the reasons for that decision, following a health⁵ or performance assessment,⁶ and
- f. must be provided with written notice of a decision made by a Health Panel or a Performance and Professional Standards Panel in response to their notification. The National Board has discretion about whether to provide a notifier with the reasons for a panel decision.⁷

3. Information privacy

The way National Boards and the Australian Health Practitioner Regulation Agency (AHPRA) collect, store, use and disclose personal information⁸ is regulated under the *Privacy Act 1988* (Cth), the Australian Privacy Principles, the National Law⁹ and AHPRA's Privacy Policy.

¹ Health Practitioner Regulation National Law, s151(3)&(4)

² Health Practitioner Regulation National Law, s180

³ Health Practitioner Regulation National Law, s159A

⁴ Health Practitioner Regulation National Law, s167A

⁵ Health Practitioner Regulation National Law, s177A; Notifiers will only be provided with limited information about a practitioner's health. See section 4(iv) to (v) below.

⁶ Health Practitioner Regulation National Law, s177A

⁷ Health Practitioner Regulation National Law, s192

⁸ 'Personal information' is defined by section 6 of the *Privacy Act 1988* (Cth) as:

'information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- a. Whether the information or opinion is true or not; and
- b. Whether the information or opinion is recorded in a material form or not.'

⁹ Health Practitioner Regulation National Law, Part 10

AHPRA and the National Boards often collect personal information about health practitioners, notifiers, patients and witnesses in order to respond to complaints made under the National Law. This information is often of a sensitive nature.

The Australian Privacy Principles facilitate the disclosure of personal information as required or authorised by law.¹⁰ As outlined above, the National Law authorises that complainants be notified of the reasons for National Board decisions that relate to their concerns. Reasons for National Board decisions may include personal information relating to practitioners, patients or witnesses.

Personal information will only be disclosed where it is reasonably necessary in order for a notifier to understand the basis of a National Board's decision in response to the concerns that they raised. In other circumstances, the personal information contained within the reasons for a decision may be provided to notifiers in a de-identified form.

Notifiers will be asked to treat other people's personal information confidentially and sensitively when it is disclosed to them as part of the reasons for a National Board's decision. Notifiers will also be reminded that Commonwealth, State or Territory laws may restrict how they can use other people's personal information.

4. What information about a decision will be disclosed to a notifier?

When a National Board decides to provide reasons for a decision to a notifier the information disclosed will:

- a. be limited to responding to the concerns raised by the notifier and will not address any additional issues about the health practitioner identified by the National Board or a third party
- b. de-identify personal information relating to other people unless it is reasonably necessary to disclose that information in order for a person to understand the basis on which a decision was made
- c. provide a general overview of performance assessment processes and conclusions as they relate to the concerns raised by the notifier. However, information provided about performance assessments will generally not provide detailed information about the care or treatment provided by a health practitioner to patients involved in the assessment
- d. not provide detailed information about health assessment processes and conclusions. Information provided to a notifier about a health assessment will usually be limited to the fact that the practitioner underwent a health assessment and whether the National Board considered that action under the National Law was required to be taken to protect public safety after considering the health assessors report, and
- e. not provide information about a practitioner's health. Information about the nature of a medical condition or disability experienced by a health practitioner, as well as the practitioner's prognosis and treatment, will not be provided to notifiers as part of the reasons for a National Board decision.

5. Notifier eligibility to receive reasons for a National Board decision

Notifiers will be informed about the reasons for a National Board decision in response to the concerns that they raised when:

- a. the National Law requires disclosure of the reasons for a decision (see heading 2 above), or
- b. the National Law provides a discretion to disclose the reasons for a decision (see heading 2 above), and
 - i. the notifier has had direct involvement in the subject matter of a notification; and
 - ii. the disclosure of information would not:
 - A. negatively affect AHPRA and the National Boards ability to investigate or otherwise deal with the matter under the National Law
 - B. place a person's health or safety at risk

¹⁰ Australian Privacy Principle 6: Use or disclosure of personal information

- C. place a person at risk of harassment or intimidation, or
- D. negatively affect the ability of another regulatory or law enforcement entity to deal with the matter, or a related matter.

6. Notifier involvement in the subject matter of a notification

A National Board will exercise its discretion to provide reasons for a decision to a notifier when that person has had direct involvement in the subject matter of the complaint. This helps to ensure that personal information contained within the reasons for decisions is not inappropriately released to people who do not have a genuine need to know that information.

For example, a notifier will be assessed as having had direct involvement in the subject matter of their complaint when they are:

- a. a patient, or the guardian of a patient, who is complaining about health services provided to them or their dependent
- b. the executor of the estate of a person who has died who is complaining about health services provided to a patient before their death
- c. a person¹¹ that employed, or contracted, the health practitioner, who is the subject of the notification, to deliver health services and the concerns raised relate to the practitioner's health, conduct or performance in the workplace
- d. a person who controls a health facility or business at which the health practitioner, who is the subject of the complaint, delivers health services and the concerns raised relate to the practitioner's health, conduct or performance in delivering those services, or
- e. a law enforcement, regulatory or judicial authority that has made a notification under the National Law about a health practitioner's health, conduct or performance that arises from a related matter.

A National Board will generally not provide reasons for regulatory decisions to a person who has made a notification about a health practitioner but was not directly involved in the health service or behaviour that formed the subject matter of the complaint. For example:

- a. a person who makes a complaint about the health services received by another person where the complainant is not acting on behalf of, or with the consent of, the patient and does not have another connection with the delivery of the health service
- b. a person who makes a complaint about health services provided to a deceased person, was not present when the health services were provided and does not have the consent of the executor of the deceased person's estate, or
- c. a colleague of a health practitioner who did not observe, and was not otherwise involved in, the events that form the subject matter of a notification and is not acting on behalf of the health practitioner's employer or the management of a facility where a health service was provided.

However, a National Board will provide reasons to a notifier who did not have direct involvement in the subject matter of a complaint if that person has the consent of the relevant health practitioner, or another person who is entitled to provide consent for the disclosure of personal information¹².

7. How will notifiers be informed about the reasons for a decision?

Notifiers are provided with notice of National Board decisions and the reasons for decisions within a letter from AHPRA.

The letter will advise the notifiers of the decision that was made in response to the concerns that they raised and the reasons for that decision. The nature of the information provided to notifiers will be determined with reference to the National Law, the Australian Privacy Principles and this document.

¹¹ For the purposes of the *Common Protocol* the term 'person' includes a natural person and an incorporated entity. However, an unincorporated business is not a person.

¹² For example, a patient may provide their consent to receive reasons for a decision to a family member or a friend.

Wherever possible, the wording used by the National Board in articulating their reasons for a decision will be provided to notifiers within outcome letters.

Wherever possible, reasons for regulatory decisions under the National Law will be written in plain English so that they can be easily understood.

8. What information will health practitioners receive?

When a notification is received by AHPRA, the health practitioner involved will be advised that reasons for National Board decisions relating to the matter may be provided to the notifier. This provides a reasonable opportunity for practitioners to inform the National Board about any information that should be taken into consideration in deciding whether to provide the notifier with reasons for decisions.

The notice that is sent to a health practitioner following a National Board decision will state whether reasons for the decision have been provided to the notifier.

9. Complaints about decisions relating to the provision of reasons to notifiers

A person can make a complaint to AHPRA if they are concerned that a decision to provide, or not to provide, reasons for a National Board decision to a notifier may have been inappropriate.

Complaints will be assessed against the *Common Protocol: Informing notifiers about the reasons for National Board decisions* in order to determine whether a decision to disclose, or not disclose, reasons for a decision was appropriate.

In the first instance people are encouraged to raise their concerns directly with the AHPRA staff member who has managed their concern.

If the concerns have not been resolved through informal discussion then the matter can be formally raised through the AHPRA complaint process.

Notifiers may also seek to access further information by making a Freedom of Information (FOI) application.

Information about the complaint process and how to make an FOI application can be found on the AHPRA [website](#).

If a person who has made a complaint to AHPRA believes that the response was not appropriate then a further complaint may be made to the [National Health Practitioner Ombudsman and Privacy Commissioner](#).

If concerns relate to the inappropriate disclosure of information in breach of the *Privacy Act 1988* (Cth) or the Australian Privacy Principles then people may also complain to the [National Health Practitioner Ombudsman and Privacy Commissioner](#) if they have been unable to resolve the issues through the AHPRA complaint process.