COAG Health Council

(meeting as the Australian Health Workforce Ministerial Council)

Secretariat
Post Office Box 344
RUNDLE MALL SA 5000
Telephone: (08) 8226 6191
Email: secretariat@hcdsmc.sa.gov.au

Chairs of National Boards

c/o Mr Martin Fletcher

Chief Executive Officer

Australian Health Practitioner Regulation Agency

GPO Box 9958

MELBOURNE VIC 3001

Dear Chairs of National Boards

Thank you for your participation in a recently completed consultation on criteria and process for approval of specialties under section 13 of the *Health Practitioner Regulation National Law Act* as in force in each State and Territory (the National Law).

Under section 13(4) of the National Law, the Australian Health Workforce Ministerial Council (AHWMC) is empowered to provide guidance to National Boards in relation to the criteria for the approval of specialties. Pursuant to section 13(4), on 12 June 2014 the AHWMC approved guidance to National Boards.

The AHWMC approved guidance titled *Approval of specialties under section 13 of the Health Practitioner Regulation National Law Act. Guidance for National Board submissions to the Australian Health Workforce Ministerial Council* is attached to this letter.

In providing this guidance, the AHWMC recognises the need for a robust regulatory assessment process to be undertaken before a National Board recommends to the AHWMC approval of a new or revised specialty under the National Law.

This guidance is to be reviewed by AHWMC after three years of operation (from the date of this letter), or earlier on request from the Australian Health Practitioner Regulation Agency (AHPRA), a participating jurisdiction or the Commonwealth.

We trust that this guidance will provide clarity as to the AHWMC's expectations of a National Board when it makes a recommendation to the AHWMC under section 13(2) of the National Law.

Yours sincerely

Jillian Skinner

Jillian Skinner MP

Minister for Health

Minister for Medical Research

Chair, COAG Health Council

29 July 2014

COAG Health Council

(meeting as the Australian Health Workforce Ministerial Council)

Approval of specialties under section 13 of the

Health Practitioner Regulation National Law Act

Guidance for National Board submissions to the

Australian Health Workforce Ministerial Council

Purpose of this document

The purpose of this document is to provide guidance to National Boards in relation to the criteria for approval of specialties by the Australian Health Workforce Ministerial Council (the Ministerial Council), for the purposes of specialist registration in a health profession under the National Registration and Accreditation Scheme (NRAS).

This guidance is provided pursuant to section 13(4) of the *Health Practitioner Regulation National Law Act* as in force in each state and territory (the National Law). It addresses requirements for National Board submissions that recommend Ministerial Council approval under section 13 of the National Law of one or more specialties and associated specialist titles for a profession.

This guidance has been developed following a consultation conducted in 2011-12 by Nova Public Policy Pty Ltd, commissioned by the Health Workforce Principal Committee (HWPC) of Australian Health Ministers' Advisory Council (AHMAC). It draws on the Australian Medical Council's *Recognition of Medical Specialties: Policy and Process.*

Background

Section 13 of the *Health Practitioner Regulation National Law Act* empowers the Ministerial Council to:

a) approve a health profession for which specialist registration will operate under the National Law (section 13(1));

b) approve, on recommendation of a National Board, a list of specialties and specialist titles for the profession (section 13(2));

c) provide guidance to a National Board about the criteria for approval of specialties for the profession (section 13(4)).

It should be noted that the approval by the Ministerial Council of a specialty or specialist registration under the National Law in no way impacts on eligibility for Commonwealth benefit programs such as the Medicare Benefits Schedule or the Pharmaceutical Benefits Schedule. Eligibility for these programs is established under separate Commonwealth Government application and assessment processes.

A Ministerial Council approval under section 13(2) has the effect of extending the scope of

the offences that apply to the unauthorised use of restricted specialist titles and to persons who otherwise hold themselves out as authorised or qualified to practise in a recognised specialty when they are not. As such, these approvals are 'regulatory instruments' within the meaning of the *Council of Australian Governments Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies October 2007* ('the COAG Guidelines').

The COAG Guidelines require a robust regulatory assessment process be carried out prior to Ministerial Council decision. This assessment process is subject to oversight by the Office of Best Practice Regulation (OBPR) of the Australian Government Department of Finance and Deregulation. OBPR is responsible for scrutinising Regulatory Impact Statement (RIS) processes on behalf of COAG.

The criteria and processes that apply to Ministerial Council approvals under section 13(2) of the National Law are those required by the OBPR with respect to preliminary assessment of regulatory proposals, and if considered necessary (by OBPR), preparation of a Consultation Regulatory Impact Assessment (Consultation RIS) and Decision Regulatory Impact Assessment (Decision RIS) in accordance with the COAG Guidelines. These are the mechanisms through which governments can be satisfied that a public benefit test has been applied to decisions to extend the scope of the NRAS regulatory regime.

The COAG Guidelines state:

The Council of Australian Governments (COAG) has agreed that all governments will ensure that regulatory processes in their jurisdiction are consistent with the following principles:

1. *establishing a case for action before addressing a problem;*
2. *a range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their benefits and costs assessed;*
3. *adopting the option that generates the greatest net benefit for the community;*
4. *in accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:*
    a. *the benefits of the restrictions to the community as a whole outweigh the costs, and*
    b. *the objectives of the regulation can only be achieved by restricting competition*
5. *providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear;*
6. *ensuring that regulation remains relevant and effective over time;*
7. *consulting effectively with affected key stakeholders at all stages of the regulatory cycle; and*
8. *government action should be effective and proportional to the issue being addressed.*

Approval process

Part A sets out the requirements that a National Board should meet in preparing and making a submission to the Ministerial Council for approval of a specialty under section 13 of the National Law.

A submission to the Ministerial Council for approval of a specialty under section 13(2) may also include an application from a National Board for approval under section 13(1)(c) as a

health profession for which specialist recognition operates under the National Law.

If a National Board proposes to amend a specialty field of practice that has been approved in relation to a specialty, then this is to be considered an amendment to the specialty and therefore will require Ministerial Council approval.

Part B sets out how the Ministerial Council deals with submissions and recommendations from National Boards.

Part A: National Board submission

1. Proposal development

A National Board develops a proposal for a new or amended specialty. This may be in response to representations from external groups, or on its own initiative.

2. Notice to Ministerial Council

The National Board gives written notice to the Ministerial Council of its intention to commence the process of assessing the need for recognition of a new or amended specialty under the National Registration and Accreditation Scheme (NRAS).

3. Preliminary assessment of whether a RIS process is required

If the National Board decides there is a prima face case for proceeding to assess the case for recognition of a new or amended specialty, then the National Board seeks advice from Office of Best Practice Regulation (OBPR) on whether a Regulatory Impact Statement (RIS) process is required.

See Appendix 1 for requirements for preliminary assessment by the OBPR.

A copy of the National Board's submission to the OBPR should be provided to each participating jurisdiction and the Commonwealth, through the Health Workforce Principal Committee of the Australian Health Ministers Advisory Council.

4. Public consultation

The National Board prepares a consultation paper for public release.

If the OBPR has advised the National Board that a RIS process is required (see point 3 above), the National Board:

- prepares the consultation paper in the form of a Consultation RIS and seeks confirmation from OBPR that it meets COAG best practice regulation requirements before releasing the paper publicly;
- conducts a national consultation in accordance with the COAG best practice regulation requirements (see the COAG Guidelines for details).

If OBPR has advised that a RIS process **is not** required, the National Board proceeds with its usual consultation processes in accordance with the AHPRA guidelines *Consultation Process of National Boards* (http://www.ahpra.gov.au/Legislation-and-Publications/AHPRA-Publications.aspx).

5: Impact assessment and public benefit test

The National Board prepares a final report of the results of the consultation and its analysis of impacts of options including recognition of the proposed specialty within NRAS.

If OBPR has required a RIS process be followed (see step 3 above), the National Board report is prepared in the form of a Decision RIS and submitted to OBPR for confirmation of compliance with the COAG best practice regulation requirements, prior to making a submission to the Ministerial Council.

6. Recommendation to Ministerial Council

The National Board makes a submission to the Ministerial Council recommending approval of a new or amended specialty. Appendix 2 sets out matters the National Board should address in its submission.

Where a RIS process has been undertaken, the National Board's submission should include the Decision RIS with confirmation from OBPR that the Decision RIS complies with COAG best practice regulation requirements.

Part B: Ministerial Council decision

On receipt of a submission from a National Board with a recommendation for approval of a new or amended specialty, the Ministerial Council refers the submission to the Australian Health Ministers Advisory Council (AHMAC) for advice.

AHMAC assesses the submission and provides advice to the Ministerial Council.

The Ministerial Council may:

- decide to approve a health profession for which specialist recognition operates (where the health profession is not already approved); AND/OR
- decide to approve the specialty and proposed specialist titles; OR
- request further information from the National Board or another body prior to making a decision; OR
- advise the National Board that the specialty is not approved at this time and the reasons why.

The Ministerial Council, in approving the specialty, must be satisfied that:

- there has been sufficient consultation with key stakeholders during development of the proposal for approval of the specialty; and
- the COAG best practice regulation requirements have been met;
- approval of the specialty provides the greatest net public benefit, compared with alternative options.

Appendix 1

Preliminary assessment of proposals by the Office of Best Practice Regulation (OBPR)

The OBPR is responsible for assessing whether a recommendation for decision by the Ministerial Council under section 13 of the National Law to approve a specialty triggers the need to prepare a Regulation Impact Statement (RIS).

The OBPR's website advises of the following:

To allow the OBPR to assess if a proposal requires a RIS, departments and agencies should contact the OBPR once the administrative decision is made that regulation may be necessary, but before a policy decision is made, and provide the following information:

- *Name of the Agency / Department*
- *Name of the Proposal*
- *A description of the proposal detailing:*
    - *the nature of the proposal*
    - *the intent of the proposal*
    - *whether the proposal is likely to impact on business or not-for-profit organizations, either directly or indirectly*
    - *the nature of the impacts – whether the proposal restricts the activities of certain businesses or whether it acts more indirectly, and*
    - *the size of the likely impacts– how many businesses will be affected and whether there will be effects on the community more broadly.*

At this stage, the information you provide to the OBPR does not need to be particularly detailed; it just needs to allow the OBPR officer to make an accurate assessment about the likely impacts of the proposal.

In general terms, the more the proposed regulation impacts on business operations, and the greater the number of businesses or not-for-profit organizations that will be affected, the more likely it is that a RIS will be required.

To assist you in providing this information to the OBPR, a preliminary assessment form is available below (it is not compulsory for you to use this form).

NOTE: These requirements are published on the OBPR website and may be subject to change from time to time. See http://www.ahpra.gov.au/Legislation-and-Publications/AHPRA-Publications.aspx

Matters that a National Board should address in a submission to the Ministerial Council under section 13 of the National Law

A National Board submission to the Ministerial Council under section 13 of the National Law should address at least the areas outlined below.

If OBPR requires a RIS process, the Final RIS should be prepared in accordance with the COAG Guidelines and should be attached to the submission to the Ministerial Council. Since the Final RIS will cover much of the information sought below, a covering letter summarising key points may be all that is required in addition to the Decision RIS.

If the OBPR does not require a RIS process, National Boards are still encouraged to structure their submissions in accordance with the seven elements set out in the COAG Guidelines, ensuring they incorporate the areas outlined below.

1. Purpose of submission

Identify what the National Board is asking the Ministerial Council to approve and whether specialist registration already operates for the profession. Include details of proposed specialist title or titles for which approval is sought.

Identify whether the submission is for approval of a new specialty, or for a variation to an existing approved specialty or specialties. If the National Board is seeking a change to an existing approval, provide details of approval that currently applies and nature of the amendment sought.

2. Identify existing arrangements

Identify existing scope and legitimacy of field of practice

Provide details of the scope of practice of the proposed specialty.

Provide details of the extent to which the proposed specialty is a legitimate and distinctive practice area with specialist knowledge and skills that are over and above those required for generalist practice and separate from other existing specialties or fields of practice. This might include, for example, the extent to which the field of practice has:

- an established and distinct body of knowledge;
- a comprehensive and developing body of international and local research, literature, practice and innovation;
- formal recognition as a specialty in comparable countries.

Identify existing governance structures for field of practice

Provide details of the extent to which the field of practice has structures and governance arrangements in place that demonstrate substantial institutional support for its practice, including for example:

- professional bodies that represent practitioners in the field of practice;

- recognition by government and non-government health service funders, regulators and service delivery bodies.

Identify existing education & training arrangements in field of practice

Provide details of existing education and training arrangements including for example:

- how education, training and supervision in the field of practice is delivered and assessed;
- the extent to which advanced education, training and supervision in the field of practice is accessible around the country;
- what accreditation standards and accreditation processes are in place for the field of practice;
- what processes are in place for recognition of qualifications and assessment of overseas trained practitioners in the field of practice.

3. Identify nature of the problem that recognition of a new or amended specialty within registration regime is intended to address

Provide details as to the problems with existing arrangements, and why further regulation in the form of recognition of a new or additional specialty may be warranted, including:

- the nature of the problem associated with lack of recognition of the proposed specialty within the registration regime, for example, in terms of:
    - safety of service delivery
    - quality of service delivery
    - access to services for consumers
    - efficiency of the health system
- why existing arrangements are unsatisfactory.

4. Identify objectives, alternative options and assessment of impacts

Identify objective/s of proposal in broad terms, that is, what additional regulation is intended to achieve.

Identify alternative options (both regulatory and non-regulatory) for addressing the problems. At least two options should be presented and compared:

- existing arrangements (no change); and
- approval of proposed specialty.

Identify the stakeholder groups likely to be affected by recognition of the proposed specialty (the profession or segments of the profession, consumers, service providers, funding bodies, education providers etc).

Identify expected impacts of each option on the various stakeholder groups, including workforce impacts, financing impacts, business impacts, competition impacts.

Identify recommended option and how recognition of the proposed new or amended specialty within the registration regime is in the public interest. Identify how it is expected to advance the objectives of the National Scheme, as set out in section 3 of the National Law, that is, to:

- enhance protection of the public;
- facilitate workforce mobility;
- facilitate access to health services;
- contribute to a more flexible, responsive and sustainable health workforce.

Advise of strategies for dealing with any unintended consequences of recognition of the proposed specialty within the registration regime, including potential for:

- unnecessary fragmentation of health care knowledge, skills and provision of care,
- unnecessary deskilling of or restriction of the scope of practice of other non-specialist practitioners,
- reduced flexibility in the deployment of the workforce.

5. Report on consultations undertaken

Provide details of the consultations undertaken including:

- the stakeholder groups affected
- who was consulted, when and how
- results of consultation and key issues raised
- nature of alternative views expressed
- how alternative views have been taken into account in submission and recommendation.