

## Terms of reference

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05 September 2016

### Independent review of chaperones to protect patients

On 10 August 2016, the Australian Health Practitioner Regulation Agency (AHPRA) and the Medical Board of Australia announced they had commissioned an independent review on the use of chaperones to protect patients.

The independent review is now inviting submissions.

#### Terms of reference

This review will consider whether, and if so in what circumstances, it is appropriate to impose a chaperone condition on the registration of a health practitioner to protect patients while allegations of sexual misconduct are investigated.

In particular, the reviewer will:

1. consider:

- a) whether chaperone conditions are an effective measure to protect patients
  - b) whether chaperone conditions are appropriate given the importance of trust and informed consent in the professional relationship between patients and their health practitioners
  - c) in what circumstances chaperone conditions are not appropriate
  - d) if chaperone conditions are appropriate in some circumstances, what steps need to be taken to ensure patients are protected (including effective monitoring of chaperone conditions to ensure compliance) and are adequately informed
  - e) the approach of Board committees in assessing the need for immediate action and use of chaperone conditions, and
  - f) the national [Chaperone protocol](#) and current practice, including processes for monitoring and compliance, notice to employers and places of practice, provision of information to patients, information sharing with other agencies, and escalation processes in the case of a suspected breach
2. recommend any other regulatory measures to protect patients while allegations of sexual misconduct are investigated
  3. recommend whether any change is needed to the [Regulatory Principles for the National Scheme](#), and
  4. recommend what (if any) legislative reform should be considered by Ministers to protect patients while allegations of sexual misconduct are investigated.

The reviewer will have regard to the [National Law](#) and the [Regulatory Principles for the National Scheme](#), and relevant legal principles, including adequate protection of the public by a health regulator and fairness to practitioners under investigation.

The review will focus on medical practitioners.

The reviewer will evaluate and report on:

- published and unpublished literature and documentation
- information received through a call for submissions, including information received during face-to-face meetings
- available evidence
- legal authority
- decisions of courts and tribunals, and
- current practice of leading international health regulators (in particular, in the United Kingdom, Canada, the United States and New Zealand).

The reviewer will report his findings and recommendations to the Medical Board of Australia and AHPRA by early 2017. The review report will be provided to Health Ministers and will be made publicly available.

## Reviewer

The independent review will be undertaken by Professor Ron Paterson who is Professor of Law at the University of Auckland and Distinguished Visiting Fellow at Melbourne Law School. He was New Zealand Health and Disability Commissioner 2000–2010 and New Zealand Parliamentary Ombudsman 2013–2016.

Professor Paterson is an international expert on patients' rights, complaints, healthcare quality and the regulation of health professions. He is co-editor of the textbook *Health law in New Zealand* (2015) and author of *The good doctor: What patients want* (2012). He was Chairman of the New Zealand Banking Ombudsman Scheme (2010–2013) and a non-Fellow Board member of the Board of the Royal Australasian College of Physicians (2010–2013).

## How to make a submission

The review will be undertaken independently of AHPRA and the Medical Board of Australia – although Professor Paterson will have full access to information about current policy and practice. Secretariat support for the review will be provided through the Office of the National Health Practitioner Ombudsman.

**Submissions to the review are invited by close of business on Monday 3 October 2016.**

Please send written submissions to:

Professor Ron Paterson  
Chaperone Review  
c/- National Health Practitioner Ombudsman and Privacy Commissioner  
GPO Box No 2630  
Melbourne, Victoria 3001

Or, email to: [ChaperoneReview@nhpopc.gov.au](mailto:ChaperoneReview@nhpopc.gov.au).

Submitters may request a face-to-face meeting with Professor Paterson in their submission. Please explain why you would like the opportunity to make an oral submission. Your request will be assessed on an individual basis.

Submitters may find it helpful to refer to the [submission guide](#) (168 KB,PDF), [Word version](#) (24.5 KB,DOCX).

## Background

The Medical Board of Australia and AHPRA have commissioned this independent review of their use of chaperones to protect patients.

The Board's primary role is to protect the public by ensuring that only medical practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered. AHPRA supports National Boards in exercising their functions and administers the National Registration and Accreditation Scheme for the registration of health practitioners in Australia.

When a National Board receives a notification alleging that a health practitioner has engaged in serious misconduct, it must consider how to deal with these allegations and what, if any, immediate action it should take to protect patients while an investigation is undertaken.

If a Board reasonably believes that a practitioner poses a serious risk to patients and that it is necessary to take immediate action to protect public health or safety, the Board may suspend the practitioner, impose a condition, or accept the surrender of the practitioner's registration.<sup>1</sup>

In relation to allegations of sexual misconduct, a Board sometimes accepts an undertaking from the practitioner or imposes a condition requiring the presence of a chaperone when seeing all or certain types of patients. A condition or undertaking requiring a chaperone is used as a protective measure on an interim basis while allegations are investigated and the matter is heard and decided at a hearing. This may include police investigations. Sometimes, a Tribunal or Court may impose restrictions requiring a chaperone as a part of their final orders.

Of Australia's 106,857 registered medical practitioners, 47<sup>2</sup> currently have chaperoning restrictions on their registration (0.04%).

When a chaperone condition is imposed by a Board, practitioners must comply with the national [Chaperone protocol](#)<sup>3</sup> and their compliance with the protocol is monitored.<sup>4</sup> Restrictions are published on the online [Register of practitioners](#).

### **Do you have a complaint or concern about a registered health practitioner?**

The purpose of the review is to determine the appropriateness of imposing a chaperone condition on the registration of a health practitioner to protect patients while allegations of sexual misconduct are investigated. The review cannot look at specific complaints of sexual misconduct by a health practitioner. If you have a complaint or a concern about a registered health practitioner, you should contact AHPRA directly via its [website](#) or by calling 1300 419 495.

### **Where to go for help**

Discussions of sexual abuse can be distressing to survivors and their families. Support is available:

**Lifeline: 131114**

**National sexual assault helpline 1800RESPECT: 1800 737 732**

**Beyondblue: 1300 224 636**

### **Further information**

National Health Practitioner Ombudsman and Privacy Commissioner: 1300 795 265

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<sup>1</sup> Health Practitioner Regulation National Law, s 156.

<sup>2</sup> As of 10 August 2016.

<sup>3</sup> See AHPRA *Chaperone protocol* at [www.ahpra.gov.au](http://www.ahpra.gov.au).

<sup>4</sup> NSW Health Professional Councils impose and monitor chaperone conditions for health practitioners in NSW, according to NSW protocols.