



Composition of the Health Professional Councils under
the *Health Practitioner Regulation National Law (NSW)*

Discussion paper

May 2024

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Part 1: Purpose of discussion paper

The [Health Practitioner Regulation \(New South Wales\) Regulation 2016](#) (Regulation) is expected to be repealed on 1 September 2025 and the Ministry is looking at remaking the Regulation.

A significant aspect of the Regulation relates to the composition of the 15 health professional Councils established for the 16 health professions under the [Health Practitioner Regulation National Law \(NSW\)](#). In anticipation of the Regulation's repeal and remake, the Ministry of Health is reviewing the composition of the Councils to help ensure the Councils operate as effectively and efficiently as possible.

This discussion paper looks at the current composition of the Councils and raises some questions about whether the current composition is still appropriate.

Submissions received on this discussion paper will help inform the drafting of a new draft Regulation. The Ministry of Health will then seek further submissions on the draft Regulation.

In general, submissions received on this discussion paper may be made publicly available under the [Government Information \(Public Access\) Act 2009](#). In considering the submissions, the Ministry of Health may also circulate submissions to other interested parties for further comment or publish parts of submissions. If you want all or part of your submission to stay confidential, subject to the *Government Information (Public Access) Act 2009*, this should be clearly stated and marked on your submission.

Submissions should be sent via email to NSWH-LegalMail@health.nsw.gov.au or sent in hardcopy to:

Legal and Regulatory Services Branch
NSW Ministry of Health
Locked Mail Bag 2030
St Leonards NSW 1590

Submissions must be received by 28 June 2024.

Part 2: Introduction

2.1 Background

The national registration and accreditation scheme (**NRAS**) began on 1 July 2010 and is the national scheme for the registration and accreditation of health practitioners, such as medical practitioners, nurses, midwives, pharmacists and dentists. NRAS was established by all States and Territories generally adopting the [Health Practitioner Regulation National Law \(National Law\)](#), as set out in the schedule of Queensland's (**QLD**) *Health Practitioner Regulation National Law Act 2009*, subject to any local modifications. NSW's version of the National Law is the [Health Practitioner Regulation National Law \(NSW\) \(NSW Law\)](#).

Under the National Law, there are 15 National Boards established for 16 health professions. The National Boards are responsible for registering practitioners. Part 8 of the National Law sets out the processes for the National Boards to handle complaints. However, the NSW Law does not apply Part 8 of the National Law.¹ Instead, NSW has its own version of Part 8, which sets out complaints processes involving the Councils and the Health Care Complaints Commission (**HCCC**).

2.2 The Councils

[Section 41B](#) of the NSW Law establishes 15 Councils for 16 health professions (there is a single Council for nursing and midwifery).

The Councils, in consultation with the HCCC, make decisions relating to complaints about the health, performance and conduct of registered health practitioners in NSW. The Councils have processes and programs to support registered health practitioners to maintain appropriate standards of conduct and professional performance and to manage impairments. The Councils also handle conduct and health matters involving students registered in NSW health professional training programs. Overall, the Councils act in the interests of the public by ensuring that registered health practitioners are fit to practise and registered students in approved programs of study are fit to have contact with members of the public. The Pharmacy Council has an additional role of regulating pharmacy ownership and is required to maintain a register of NSW pharmacies.

The Councils are funded through a portion of registration fees that NSW health practitioners pay to the Australian Health Practitioner Regulatory Agency (**Ahpra**). The Councils also receive a portion of fees from practitioners who do not identify a principal place of practice.

¹ Because NSW does not apply the national complaints processes, it is known as a “co-regulatory jurisdiction”. Queensland is also a co-regulatory jurisdiction. In Queensland, complaints about registered health practitioners are dealt with by the Boards and Queensland's health ombudsman.

Part 3: Current composition of Councils

[Schedule 1](#) of the Regulation sets out the membership of the 15 Councils. Table 1 below summarises it and Appendix 1 to this discussion paper sets it out in further detail.

As a point of comparison, Appendix 2 summarises the composition of the National Boards that regulate health professionals in other Australian jurisdictions.

All the members of the Councils, other than the 5 elected members of the Pharmacy Council, are appointed by the Governor.

In this discussion paper, when the word “local” is used in relation to a health practitioner, it means a health practitioner whose principal place of practice is in NSW.

Table 1: Composition summary

| Council | Summary of composition |
|---|---|
| Aboriginal and Torres Strait Islander Health Practice Council | 4 members nominated by the Minister: <ul style="list-style-type: none"> - 3 Aboriginal and Torres Strait Islander health practitioners, including at least 1 local practitioner - 1 lawyer. |
| Chinese Medicine Council | 6 members nominated by the Minister: <ul style="list-style-type: none"> - 4 Chinese Medicine health practitioners, including at least 1 local practitioner - 1 lawyer - 1 community member who has never been a Chinese Medicine health practitioner. |
| Chiropractic Council | 4 members nominated by the Minister: <ul style="list-style-type: none"> - 3 chiropractors, including at least 1 local practitioner - 1 lawyer. |
| Dental Council | 12 members nominated by the Minister: <ul style="list-style-type: none"> - 7 local dentists, including 1 dentist who conducts programs of study - 1 local dental prosthetist - 1 local dental hygienist, dental therapist or oral health therapist - 2 community members who are not currently registered in the dental profession - 1 lawyer. |
| Medical Council | 19 members: <ul style="list-style-type: none"> - 12 medical practitioners: <ul style="list-style-type: none"> o 2 local practitioners nominated by the Australian Medical Association (NSW) o 8 local practitioners nominated by 8 specified medical specialist colleges |

| | |
|------------------------------------|--|
| | <ul style="list-style-type: none"> ○ 1 practitioner nominated by Minister who is a member of at least 1 of 5 specified specialist colleges ○ 1 local practitioner who is nominated jointly by the University of Sydney, the Council of the University of New South Wales and the Council of the University of Newcastle - 1 lawyer nominated by the Minister - 1 person nominated by Multicultural NSW - 5 people nominated by the Minister, including at least 4 community members. |
| Medical Radiation Practice Council | <p>6 members nominated by the Minister:</p> <ul style="list-style-type: none"> - 4 medical radiation practitioners, including at least 1 local practitioner - 1 lawyer - 1 community member who has never been a medical radiation practitioner. |
| Nursing and Midwifery Council | <p>15 members:</p> <ul style="list-style-type: none"> - 11 local practitioner members: <ul style="list-style-type: none"> ○ 4 registered nurses nominated by the Minister, including 1 who practises in mental health ○ 1 midwife nominated by the Minister ○ 2 enrolled nurses nominated by the Minister ○ 1 registered nurse, and 1 nurse or midwife, engaged in professional education ○ 1 registered nurse or midwife nominated by the Nurses and Midwives' Association ○ 1 registered nurse or midwife nominated by the Australian College of Nursing - 1 lawyer - 3 community members. |
| Occupational Therapy Council | <p>6 members nominated by the Minister:</p> <ul style="list-style-type: none"> - 4 occupational therapists, including at least 1 local practitioner - 1 lawyer - 1 community member who has never been an occupational therapist. |
| Optometry Council | <p>4 members nominated by the Minister:</p> <ul style="list-style-type: none"> - 3 optometrists, including at least 1 local practitioner - 1 lawyer. |
| Osteopathy Council | <p>4 members nominated by the Minister:</p> <ul style="list-style-type: none"> - 3 osteopaths, including at least 1 local practitioner - 1 lawyer. |
| Paramedicine Council | <p>6 members nominated by the Minister:</p> <ul style="list-style-type: none"> - 4 local paramedics - 1 community member who is not a paramedic - 1 lawyer. |
| Pharmacy Council | <p>10 members:</p> <ul style="list-style-type: none"> - 7 local pharmacists: |

| | |
|-----------------------|---|
| | <ul style="list-style-type: none"> ○ 5 local pharmacists elected by local pharmacists ○ 1 hospital-based local pharmacist nominated by the Minister ○ 1 local pharmacist, who conducts programs of study, nominated by the Minister <ul style="list-style-type: none"> - 2 community members who are not pharmacists - 1 lawyer. |
| Physiotherapy Council | <p>10 members nominated by the Minister:</p> <ul style="list-style-type: none"> - 6 local physiotherapists: <ul style="list-style-type: none"> ○ 4 physiotherapists ○ 1 physiotherapist from a panel nominated by representative bodies ○ 1 physiotherapist who is involved in the conduct of programs of study - 3 persons, including at least 2 community members - 1 lawyer. |
| Podiatry Council | <p>4 members nominated by the Minister:</p> <ul style="list-style-type: none"> - 3 podiatrists, including at least 1 local practitioner - 1 lawyer. |
| Psychology Council | <p>8 members nominated by the Minister:</p> <ul style="list-style-type: none"> - 5 local psychologists: <ul style="list-style-type: none"> ○ 3 psychologists from a panel nominated by the Australian Psychological Society Limited and other bodies the Minister may decide ○ 1 psychologist who is a member of the teaching staff of an educational institution involved in conducting approved programs of study ○ 1 psychologist - 2 community members - 1 lawyer. |

Part 4: Issues with current composition of Councils

4.1 Sizes of Councils

Table 2 sets out information about the 15 Councils.²

Table 2: Council information

| Name of Council | Number of members | Number of NSW practitioners 2023 | Number of complaints received in 2022/2023 | Number of complaints received in 2021/2022 |
|---|-------------------|----------------------------------|--|--|
| Aboriginal and Torres Strait Islander Health Practice Council | 4 | 227 | 3 | 1 |

² This information is based on the Health Professional Councils Authority Annual Reports from [2021/2022](#) and [2022/2023](#).

| | | | | |
|------------------------------------|----|---------|-------|-------|
| Chinese Medicine Council | 6 | 1,920 | 17 | 27 |
| Chiropractic Council | 4 | 2,092 | 45 | 56 |
| Dental Council | 12 | 7,818 | 356 | 399 |
| Medical Council | 19 | 40,356 | 3,078 | 3,312 |
| Medical Radiation Practice Council | 6 | 6,279 | 14 | 25 |
| Nursing and Midwifery Council | 15 | 126,998 | 937 | 863 |
| Occupational Therapy Council | 6 | 7,978 | 51 | 53 |
| Optometry Council | 4 | 2,152 | 29 | 25 |
| Osteopathy Council | 4 | 659 | 8 | 17 |
| Paramedicine Council | 6 | 6,171 | 95 | 124 |
| Pharmacy Council | 10 | 10,613 | 398 | 518 |
| Physiotherapy Council | 10 | 12,046 | 61 | 64 |
| Podiatry Council | 4 | 1,716 | 34 | 30 |
| Psychology Council | 8 | 14,867 | 409 | 366 |

Table 2 shows that there is no consistency in relation to the size of the Councils. The size of a Council is not necessarily reflective of the number of practitioners in a profession. For example, there are almost as many occupational therapists as there are dental professionals, yet the Occupational Therapy Council has half the number of members of the Dental Council. The size of a Council is also not necessarily reflective of the number of complaints in a profession. For example, the Physiotherapy Council, which has 10 members, handled 61 complaints in 2022/2023, while Psychology Council, which has 8 members, handled 409 complaints. The Chinese Medicine Council, with 6 members, has a lower number of practitioners and complaints than the Chiropractic Council and the Optometry Council, both of which have 4 members.

There is a range of reasons for the different sizes of the Councils. This includes historic reasons, the number of practitioners in a profession, the number of complaints received in respect of each profession and the need to ensure each Council has a broad cross-sectional understanding of the relevant profession. In relation to the latter, it is noted that some Councils hear complaints across multiple professions or divisions of a profession (for example, the Nursing and Midwifery Council and the Dental Council) and the medical profession has a range of different specialities which may require a more diverse range of experience on the Medical Council.

Due to the need for the Councils to have the resources and scope of professional expertise to hear and determine complaints for different professional groups or specialities, it is unlikely that there will be consistency across all Councils in

terms of membership numbers. However, the Ministry would like to hear views on whether the current number of members across the Councils is appropriate and whether greater consistency could be achieved across the professions.

| Questions |
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| 1) Is the current membership number for each Council appropriate? 2) Should membership numbers be made more consistent across the Councils and, if so, how? |

4.2 Education members

As set out in Table 3 below, 6 of the 15 Councils have a member who is a practitioner engaged in the education of members of the profession for which the Council is established (**education member**).

Table 3: Education members

| Name of Council | Description of education member |
|-------------------------------|---|
| Dental Council | A registered dentist involved in conducting approved programs of study for the dental profession |
| Medical Council | A local medical practitioner nominated jointly by the Senate of the University of Sydney, the Council of the University of New South Wales and the Council of the University of Newcastle |
| Nursing and Midwifery Council | 2 nurses or midwives, nominated by the Minister, who are engaged in the tertiary or pre-enrolment education of nurses or midwives in NSW, at least 1 of whom is a registered nurse |
| Pharmacy Council | A local pharmacist, nominated by the Minister, involved in conducting approved programs of study for the pharmacy profession |
| Physiotherapy Council | A local physiotherapist, nominated by the Minister, involved in conducting approved programs of study for the physiotherapy profession |
| Psychology Council | A local psychologist, nominated by the Minister, who is a member of the teaching staff of an educational institution that is involved in conducting approved programs of study for the psychology profession in NSW |

The education member positions on the Councils are a pre-NRAS legacy. Prior to NRAS, in NSW there were Registration Boards for the then 12 registered professions. The former Registration Boards registered practitioners and were involved in accrediting educational programs. Since the NRAS was established, these registration and accreditation functions have been performed by the National Boards, not the Councils. Given this, the education member positions on

the Councils are arguably no longer required. On the other hand, the Councils handle complaints about, and manage performance issues of, practitioners. It may be worthwhile for some or all of the Councils to have at least 1 member with expertise about the education and expected knowledge of practitioners including to correctly benchmark risk and expectations in relation to education. However, it is not clear that this expertise can only be provided by having a specific education member, noting that most of the Councils operate without education members.

Even for the 6 Councils that have an education member, there is a lack of consistency of approach. For 5 Councils, the Minister nominates a practitioner member who conducts approved program of studies. However, for the Medical Council, the Senates of the University of Sydney, the University of New South Wales and the University of Newcastle jointly nominate a member. It is noted that there are 5 other universities that have accredited medical schools in NSW: Western Sydney University, the University of Wollongong, the University of New England, the University of Notre Dame and Macquarie University. For the Dental Council, the education member must be a registered dentist involved in conducting approved programs of study for the dental profession. However, the Council regulates different divisions in the dental profession: dentists, dental hygienists, dental prosthetists, dental therapists and oral health therapists.

The Ministry’s preliminary view is that the education members may not be required and could be removed from membership of the 6 Councils.

| Questions |
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| 3) Should the education member be removed from the 6 Councils that currently have an education member? |

4.3 College nominees

Certain Councils, being the Medical Council and the Nursing and Midwifery Council, have members who are nominated by specific professional colleges or who are nominated because they are members of specific professional colleges (**college members**).

Table 4: College members

| Name of Council | Description of college member |
|-----------------|---|
| Medical Council | <ul style="list-style-type: none"> - 1 local medical practitioner nominated by the Royal Australasian College of Physicians, New South Wales State Committee - 1 local medical practitioner nominated by the Royal Australian and New Zealand College of Obstetricians and Gynaecologists, New South Wales Regional Committee |

| | |
|-------------------------------|---|
| | <ul style="list-style-type: none"> - 1 local medical practitioner nominated by the Royal Australasian College of Surgeons, New South Wales State Committee - 1 local medical practitioner nominated by the Royal Australian College of General Practitioners, New South Wales and Australian Capital Territory Faculty - 1 local medical practitioner nominated by the Royal Australasian College of Medical Administrators, New South Wales State Committee - 1 local medical practitioner nominated by the Royal Australian and New Zealand College of Psychiatrists, New South Wales Branch - 1 local medical practitioner nominated by the Australasian College for Emergency Medicine - 1 local medical practitioner nominated by the Australian and New Zealand College of Anaesthetists - 1 medical practitioner, nominated by the Minister, who is a member of 1 or more of the following bodies: <ul style="list-style-type: none"> o The Australasian College of Dermatologists, o The Australian College of Rural and Remote Medicine, o The Royal Australian and New Zealand College of Ophthalmologists, o The Royal Australian and New Zealand College of Radiologists, o The Royal College of Pathologists of Australasia |
| Nursing and Midwifery Council | 1 registered nurse or midwife nominated by the Australian College of Nursing |

The college member positions on the Councils are, in part, a legacy from the former Registration Boards. The former Registration Boards registered practitioners and were involved in accrediting educational programs that would have been run by the various colleges. Similar to the education members, having a specific college member may no longer be required because the current Councils do not accredit educational programs, though there may be a benefit in having Council members who understand the education, training and expected knowledge of a practitioner.

A potential benefit of the college member positions on the Medical Council is that they ensure at least 9 medical specialties are represented, enhancing the diversity of experience on the Council. Further, in reviewing and assessing a matter about a medical practitioner from a particular specialty, it is arguably worthwhile having a medical practitioner from the same specialty involved, as that practitioner may better understand the nuances of the specialty. The college member positions increase the likelihood that this will occur.

However, there could be ways to access specialist expertise other than by having college member positions. For example, the Minister could nominate medical practitioners to be Council members, subject to the requirement that the Minister is satisfied that different specialties are represented across the Council. Alternatively, if a matter about an anaesthetist, for example, is being reviewed and assessed, another anaesthetist could be brought in to help the Council in relation to that matter or the Council could consult with other anaesthetists about the matter to better understand specific standards and practices applicable to anaesthetists. In practice, Councils already sometimes seek specialist expertise beyond their members.

A number of Councils (like the Medical, Nursing and Midwifery, Pharmacy and Dental Councils) delegate complaint management to committees. The committees are made up of some but not all of the members of the Council. Sometimes, a non-Council member has been appointed as a committee member to provide additional expertise. Such an approach may mean that prescribing specialty experience in a Council composition is not necessary.

If it is decided to retain college members, other questions arise in relation to how college members are to be selected and which colleges should be entitled to nominate members.

In relation to the Medical Council and the medical profession, there are currently 16 specialist medical colleges accredited by the Australian Medical Council.³ However, the colleges do not all have the same entitlements in nominating college members:

- 8 specialist medical colleges are entitled to directly nominate college members.
- 5 specialist medical colleges are not entitled to directly nominate college members. However, the Minister is required to nominate 1 medical practitioner who is a member of at least 1 of the colleges.

There are 3 other specialist medical colleges that, like the 13 colleges mentioned above, are accredited by the Australian Medical Council but are not entitled to directly or indirectly nominate college members: the Australasian College of Sport and Exercise Physicians, the College of Intensive Care Medicine of Australia and New Zealand and the Royal Australasian College of Dental Surgeons.

If college members are to be retained, consideration should be given as to whether the current approach to nominating college members should be retained.

³ This information is based on the Australian Medical Council's list of [specialist medical colleges](#), as accessed on 28 December 2023. Note, that a number of the accredited faculties are part of a broader college, for example the Australasian Chapter of Palliative Medicine is part of the Royal Australasian College of Physicians

Questions

- 4) Should the Medical Council and the Nursing and Midwifery Council continue to have college members?
- 5) If so, how should college members be selected?

4.4 Association nominees

As set out in Table 5, 4 of the 15 Councils have members who are nominated by professional associations (association members).

Table 5: Association members

| Name of Council | Description of association member |
|-------------------------------|--|
| Medical Council | 2 local medical practitioners nominated by the Australian Medical Association (NSW) |
| Nursing and Midwifery Council | A registered nurse or midwife nominated by the New South Wales Nurses and Midwives' Association |
| Physiotherapy Council | The Australian Physiotherapy Association, NSW Branch, and any other body representing physiotherapists decided by the Minister, nominates physiotherapists to be on a panel. The Minister then nominates 1 local physiotherapist from the panel. |
| Psychology Council | The Australian Psychological Society Ltd, and other bodies the Minister may decide, nominates psychologists to be on a panel. The Minister then nominates 3 local psychologists from the panel. |

There are several matters to consider in relation to association member positions on Councils, including the following:

- 11 Councils do not have association members, although there are professional associations relating to several of the professions for which these 11 Councils are established. This raises a question about whether it is appropriate for some professional associations to be able to nominate members on Councils while other professional associations cannot.
- While the association member positions allow for people held in high standing by professional associations to be involved in the regulation of their professions, there may be a risk that they could be seen as being appointed to represent the views of the association and therefore the profession, rather than seeking to serve the Council and protect the public.

- On the Medical Council and the Nursing and Midwifery Council, professional associations directly nominate association members. On the other hand, on the Physiotherapy Council and the Psychology Council, professional associations nominate people to be on a panel from which the Minister nominates an association member. There is a question about whether this inconsistency is justifiable.

| Questions |
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| 6) Should Councils continue to have association members? |
| 7) If so, how should association members be nominated? |
| 8) Should specific professional associations be named? |

4.5 Elected members

The Pharmacy Council is unique among the 15 Councils in that 5 of its 10 members are elected by local pharmacists.

It is arguable that the election of Pharmacy Council members is in keeping with the self-regulation of the profession and provides an opportunity for individual pharmacists to be involved in the regulation of the profession. Further, the election of members could be said to provide an opportunity for pharmacists who are held in high standing in the profession, but who might not otherwise be nominated for Council membership, to be selected by their peers.

However, there are several arguments that suggest it might not be appropriate for the Pharmacy Council to have elected members:

- The Pharmacy Council, as with all Councils, has a disciplinary and protective role, not a representative role. The concept of elections runs the risk of elected members, the pharmacy profession and the public, confusing the role and purpose of the Council and elected members.
- Unlike other members appointed to the Council, no further screening processes are taken in relation to the elected members. This means, for example, a pharmacist who is or has been subject to complaints or disciplinary processes could be elected as a member of the Council. There is also no capability or experience assessment for elected members and this may in turn undermine the public's confidence when Council members are appointed on the basis of popular vote.
- The elections attract costs. For example, in 2021, the Australian Electoral Commission was paid \$48,000 to conduct the Pharmacy Council election. These costs are borne by all pharmacists through their registration fees.
- Of the 9,890 pharmacists registered at the time of the 2021 Pharmacy Council election, only 1,900 voted. The fact that less than 20% of pharmacists voted in the election arguably raises a question about whether the elections are justifiable.

- NSW is the only jurisdiction that has elected members to its complaints bodies. Elected members are not part of the National Board appointment processes. Further, the Pharmacy Council’s election process is not consistent with the other appointment processes for Councils in NSW.

For these reasons, the Ministry’s preliminary view is that election of members is no longer appropriate or in keeping with professional regulation and that the Regulation should be amended to remove the requirement for elected members. The Ministry’s preliminary proposal is that, instead of the 5 elected member positions on the Pharmacy Council, the Minister would nominate 5 local pharmacists, who have a financial interest in a pharmacy business in NSW.

| Questions |
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| 9) Should the Regulation be amended to remove the election of 5 Pharmacy Council members? |
| 10) If so, how should the 5 members be nominated? |

4.6 Community members

A **community member** of a Council is a member appointed to the Council who can bring the experiences of patients and the community to the Council. 10 of the 15 Councils have community members, as set out in Table 6.

Table 6: Community members

| Name of Council | Description of community member |
|------------------------------------|--|
| Chinese Medicine Council | 1 person nominated by the Minister who: <ul style="list-style-type: none"> - in the Minister’s opinion, is conversant with the interests of patients as consumers of health services provided by the Chinese Medicine profession - is not, and has never been, a health practitioner in the Chinese Medicine profession. |
| Dental Council | 2 persons, who are not registered under the Law in the dental profession, nominated by the Minister to represent the community. |
| Medical Council | 5 persons nominated by the Minister, not less than 4 of whom are to be persons who, in the Minister’s opinion, are conversant with the interests of patients as consumers of medical services. |
| Medical Radiation Practice Council | 1 person nominated by the Minister who: <ul style="list-style-type: none"> - in the Minister’s opinion, is conversant with the interests of patients as consumers of health services provided by the medical radiation practice profession - is not, and has never been, a health practitioner in the medical radiation practice profession. |

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| Nursing and Midwifery Council | 3 persons nominated by the Minister to represent the community |
| Occupational Therapy Council | 1 person nominated by the Minister who: <ul style="list-style-type: none"> - in the Minister's opinion, is conversant with the interests of patients as consumers of health services provided by the occupational therapy profession - is not, and has never been, a health practitioner in the occupational therapy profession. |
| Paramedicine Council | 1 person, who is not a paramedic, nominated by the Minister to represent the community |
| Pharmacy Council | 2 persons, who are not pharmacists, nominated by the Minister to represent the community |
| Physiotherapy Council | 3 persons nominated by the Minister, at least 2 of whom are not physiotherapists and are nominated to represent the community |
| Psychology Council | 2 persons, who are not psychologists, nominated by the Minister to represent the community |

When the Councils exercise their functions under the NSW Law, the protection of the health and safety of the public must be the paramount consideration.⁴ Given this, it is important to have community members on Councils to help balance the views and experiences of professional members with the views and experiences of the broader community.

However, there are inconsistencies across the Councils in relation to community members.

Councils that do not have community members

While the 10 Councils mentioned in Table 6 have community members, the Aboriginal and Torres Strait Islander Health Practice Council, the Chiropractic Council, the Optometry Council, the Osteopathy Council and the Podiatry Council do not.

The Councils that do not have community members are all generally the smallest Councils in terms of both practitioners and complaints (although as noted earlier, in 2022-2023, the Chinese Medicine Council, which has 6 members, had a smaller number of practitioners and complaints than the Chiropractic Council and the Optometry Council). Having 4 members on these Councils allows practitioners to form the majority of members while having a legal member, which is consistent across the other Councils. However, views are sought as to whether this is an appropriate arrangement and whether there should be a community member.

Councils that do have community members

⁴ See the NSW Law, [section 3B](#).

Across the 10 Councils with community members, there are different numbers of community members. For example, the Chinese Medicine Council has 1 community member out of 6 members, the Dental Council has 2 community members out of 12 members, the Psychology Councils has 2 community members out of 8 members, the Nursing and Midwifery Council has 3 community members out of 15 members and the Medical Council has 4-5 community members out of 19 members. Having said that, the percentage of members on the Councils who are community members broadly falls between 17% and 30%.

The descriptions of community members are also inconsistent across the Councils that currently have community members. In 6 of the Councils with community members, a community member is a person nominated by the Minister to represent the community. In the other 4 Councils, a community member is a person who, in the Minister's opinion, is conversant with the interests of patients as consumers of health services provided by the health profession for which the Council is established.

There is also inconsistency about what professional experience a community member can have in a health profession. In 3 of the Councils with community members, a community member cannot be, or have ever been, a health practitioner in the health profession for which the Council is established. In 5 Councils, a community member cannot currently be a health practitioner in the health profession for which the Council is established. In the other 2 Councils, the community member could be, or have been, a health practitioner in the health profession for which the Council is established.

Some of these differences, particularly in terms of numbers, is reflective of different sizes of the Council. However, in general the Ministry of Health's position is that the approach to community members should be as consistent as possible across the Councils.

| Questions |
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| 11) Should all Councils have community members? |
| 12) If so, should there be a standard percentage of members who are community members? |
| 13) Should a person be able to be appointed as a community member on a Council for a health profession if they have had professional experience in that profession? |
| 14) Should a person be able to be appointed as a community member on a Council for a health profession if they have had professional experience in a different health profession? |

4.7 Legal members

All 15 Councils have 1 member, nominated by the Minister, who is an Australian lawyer (**legal member**).

In making decisions about the health, performance and conduct of registered health practitioners, the Councils are required to interpret and apply legislation. Councils also need to understand and apply the key legal principle of procedural fairness. Given this, it is arguably useful for each Council to have a member with a legal background.

However, there are potentially other avenues for the Councils to access legal expertise, including through staff of the Health Professional Councils Authority. It is also noted that the National Boards – which deal with complaints about health practitioners in other Australian jurisdictions – are not required to have legal members, though many of the National Boards currently have practitioner or community members with a legal background.

Questions

15) Should the Councils continue to have legal members?

4.7 Other issues relating to consistency

There are other provisions in the Regulation that lead to an overall inconsistent approach to the appointment of Council members.

First, in relation to the Medical Council, 1 of the members of the Medical Council is a person nominated by Multicultural NSW, a government agency responsible for promoting and monitoring multicultural principles in NSW.⁵ No other Council has such a membership requirement. Having a nominee appointed by Multicultural NSW nominee can help to ensure that at least 1 person on the Medical Council has a deep understanding of the multicultural principles, which is arguably useful in bringing a more holistic perspective to the review and assessment of matters about medical practitioners.

However, there is a question about whether there are other ways to promote the multicultural principles that are more effective than having a single Multicultural NSW nominee on only 1 of the 15 Councils. This could include training about the multicultural principles being given to Council members and/or additional consideration being given to nominating members who are representative of culturally and linguistically diverse communities.

Second, the appointment of members to the Councils are not overall consistent in terms of who selects members. In general, there are two approaches. The first

⁵ The multicultural principles are set out in [section 3](#) of the *Multicultural NSW Act 2000*.

approach is to allow different organisations or persons to nominate or elect different members of the Council. This is the approach taken by the Medical Council, the Nursing and Midwifery Council and the Pharmacy Council. This approach allows diverse input to the membership of Councils. The other approach is allowing the Minister to nominate members who the Minister considers have qualifications, experience or expertise in specified areas. This is the approach taken for the other 12 Councils.

In practice, this approach involves people applying to be members in response to a request for expressions of interest. Applicants are assessed by an independent panel, which consults with the Health Professional Councils Authority about the needs of the relevant Council. The panel then makes recommendations to the Minister. Arguably, this approach provides a more consistent process for selecting Council members. It also helps to ensure that Councils have the expertise required to perform their functions of handling complaints about health practitioners and that there is a broad reflection of backgrounds and experience across Council members.

Third, there is inconsistency about whether Council members need to have a connection to NSW. 6 Councils require all practitioner members to have NSW as their principal place of practice,⁶ while 9 Councils require only some practitioner members to have NSW as their principal place of practice.⁷ Further, community members and legal members are not required to have NSW as their principal place of practice or residence. Arguably, requiring Council members to have NSW as their principal place of practice or residence helps to ensure members are connected to NSW and attuned to the interests of the NSW public. Having said that, there may be people who do not have NSW as their principal place of practice or residence but who would be well-placed to be members, for example people who live or work close to the NSW border.

Questions

- 16) Should the Medical Council continue to have a member nominated by Multicultural NSW?
- 17) Should there be a consistent approach to selecting Council members?
- 18) Should Council members be required to have NSW as their principal place of residence/practice?

⁶ The following Councils require all practitioner members to have NSW as their principal place of practice: the Dental Council, the Nursing and Midwifery Council, the Paramedicine Council, the Pharmacy Council, the Physiotherapy Council and the Psychology Council.

⁷ The following Councils require some, but not all, practitioner members to have NSW as their principal place of practice: the Aboriginal and Torres Strait Islander Health Practice Council, the Chinese Medicine Council, the Chiropractic Council, the Medical Council, the Medical Radiation Practice Council, the Occupational Therapy Council, the Optometry Council, the Osteopathy Council and the Podiatry Council.

Part 6: Conclusion

The health professional Councils play an important role in regulating registered health practitioners in NSW. Alongside the HCCC, the Councils decide how best to handle complaints against and concerns about registered health practitioners.

There are several issues and inconsistencies with the current composition of the Councils, as summarised in this discussion paper. These issues include the size of the Councils, what type of members are on each Council, how the members are selected and whether the members are required to have a connection to NSW. Submissions received on the issues raised in this discussion paper will inform the Ministry of Health's review of the composition of the Councils and, ultimately, the drafting of a new draft Regulation under the [Health Practitioner Regulation National Law \(NSW\)](#). The review and resulting new draft Regulation will then help ensure the Councils can operate as efficiently and effectively as possible.

Part 7: Glossary

| Phrase used | Meaning |
|---|---|
| Ahpra | Australian Health Practitioner Regulatory Agency |
| Association member of a Council | A Council member who represents a professional organisation |
| College member of a Council | A Council member nominated by a specific professional college or nominated because they are a member of a specific professional college |
| Community member of a Council | A Council member appointed to represent the public interest, rather than a health profession |
| Councils | The 15 Councils established for health professions by the NSW Law |
| Education member of a Council | A Council member who is a practitioner engaged in the education of members of the profession(s) to which the Council corresponds |
| Former Registration Boards | The 12 Boards that, before the commencement of the NRAS, registered health professionals and, alongside the HCCC, handled complaints about health professionals |
| HCCC | Health Care Complaints Commission, being the body that, alongside the Councils, handles complaints about health professionals |
| Legal member of a Council | A Council member, nominated by the Minister, who is an Australian lawyer |
| Local (in relation to a health practitioner) | A health practitioner whose principal place of practice is in NSW |
| Minister | Minister for Health |
| National Law | <i>Health Practitioner Regulation National Law, as set out in the schedule of QLD's Health Practitioner Regulation National Law Act 2009</i> |
| NRAS | National registration and accreditation scheme established by multiple States and Territories adopting a version of the National Law |
| NSW Law | <i>Health Practitioner Regulation National Law (NSW)</i> |
| Regulation | <i>Health Practitioner Regulation (New South Wales) Regulation 2016</i> |

Appendix 1: Current composition of Councils

Aboriginal and Torres Strait Islander Health Practice Council

The Aboriginal and Torres Strait Islander Health Practice Council has 4 members nominated by the Minister:

- 3 health practitioners registered in the Aboriginal and Torres Strait Islander health practice profession, at least 1 of whom is a local health practitioner, and
- 1 Australian lawyer.

Chinese Medicine Council

The Chinese Medicine Council has 6 members nominated by the Minister:

- 4 health practitioners registered in the Chinese Medicine profession, at least 1 of whom is a local health practitioner,
- 1 Australian lawyer, and
- 1 person who:
 - o In the Minister's opinion, is conversant with the interests of patients as consumers of health services provided by the Chinese Medicine profession, and
 - o Is not, and has never been, a health practitioner in the Chinese Medicine profession.

Chiropractic Council

The Chiropractic Council has 4 members nominated by the Minister:

- 3 health practitioners registered in the chiropractic profession, at least 1 of whom is a local health practitioner, and
- 1 Australian lawyer.

Dental Council

The Dental Council has 12 members nominated by the Minister:

- 6 local dentists,
- 1 local dentist involved in conducting approved programs of study for the dental profession,
- 1 local dental prosthetist,
- 1 person who is a local dental hygienist, dental therapist or oral health therapist,
- 2 persons, who are not registered in the dental profession, nominated to represent the community, and
- 1 Australian lawyer.

Medical Council

The Medical Council has 19 members:

- 1 Australian lawyer nominated by the Minister,
- 2 local medical practitioners nominated by the Australian Medical Association (NSW),
- 1 person nominated by Multicultural NSW,
- 1 local medical practitioner nominated jointly by the Senate of the University of Sydney, the Council of the University of New South Wales and the Council of the University of Newcastle,
- 1 local medical practitioner nominated by the Royal Australasian College of Physicians, New South Wales State Committee,
- 1 local medical practitioner nominated by the Royal Australian and New Zealand College of Obstetricians and Gynaecologists, New South Wales Regional Committee,
- 1 local medical practitioner nominated by the Royal Australasian College of Surgeons, New South Wales State Committee,
- 1 local medical practitioner nominated by the Royal Australian College of General Practitioners, New South Wales and Australian Capital Territory Faculty,
- 1 local medical practitioner nominated by the Royal Australasian College of Medical Administrators, New South Wales State Committee,
- 1 local medical practitioner nominated by the Royal Australian and New Zealand College of Psychiatrists, New South Wales Branch,
- 1 local medical practitioner nominated by the Australasian College for Emergency Medicine,
- 1 local medical practitioner nominated by the Australian and New Zealand College of Anaesthetists,
- 5 persons, nominated by the Minister, at least 4 of whom are, in the Minister's opinion, conversant with the interests of patients as consumers of medical services, and
- 1 medical practitioner, nominated by the Minister (potentially after consulting with 1 or more of the following bodies), who is a member of 1 or more of the following bodies:
 - o The Australasian College of Dermatologists,
 - o The Australian College of Rural and Remote Medicine,
 - o The Royal Australian and New Zealand College of Ophthalmologists,
 - o The Royal Australian and New Zealand College of Radiologists,
 - o The Royal College of Pathologists of Australasia.

If a body other than the Minister is responsible for nominating a medical practitioner and fails to do so in the required time or way, the Minister can nominate a medical practitioner who is a member of the body.

Medical Radiation Practice Council

The Medical Radiation Practice Council has 6 members nominated by the Minister:

- 4 health practitioners, registered in the medical radiation practice profession, at least 1 of whom is a local health practitioner,
- 1 Australian lawyer, and
- 1 person who:
 - o In the Minister's opinion, is conversant with the interests of patients as consumers of health services provided by the medical radiation practice profession, and
 - o Is not, and has never been, a health practitioner in the medical radiation practice profession.

Nursing and Midwifery Council

The Nursing and Midwifery Council has 15 members:

- 3 registered nurses nominated by the Minister,
- 1 midwife nominated by the Minister,
- 2 enrolled nurses nominated by the Minister,
- 2 nurses or midwives engaged in the tertiary or pre-enrolment education of nurses or midwives in NSW nominated by the Minister, at least 1 of whom is a registered nurse,
- 1 registered nurse or midwife nominated by the New South Wales Nurses and Midwives' Association,
- 1 registered nurse or midwife nominated by the Australian College of Nursing,
- 1 registered nurse, nominated by the Minister, who practises nursing in the area of mental health,
- 1 Australian lawyer nominated by the Minister, and
- 3 persons nominated by the Minister to represent the community.

If a body other than the Minister is responsible for nominating a registered nurse or midwife and fails to do so in the required time or way, the Minister can nominate a registered nurse or midwife.

Occupational Therapy Council

The Occupational Therapy Council has 6 members nominated by the Minister:

- 4 health practitioners, registered in the occupational therapy profession, at least 1 of whom is a local health practitioner,
- 1 Australian lawyer, and
- 1 person who:

- In the Minister's opinion, is conversant with the interests of patients as consumers of health services provided by the occupational therapy profession, and
- Is not, and has never been, a health practitioner in the occupational therapy profession.

Optometry Council

The Optometry Council has 4 members nominated by the Minister:

- 3 health practitioners registered in the optometry profession, at least 1 of whom is a local health practitioner, and
- 1 Australian lawyer.

Osteopathy Council

The Osteopathy Council has 4 members nominated by the Minister:

- 3 health practitioners registered in the osteopathy profession, at least 1 of whom is a local health practitioner, and
- 1 Australian lawyer.

Paramedicine Council

The Paramedicine Council has 6 members nominated by the Minister:

- 4 local registered paramedics,
- 1 person, who is not a paramedic, nominated to represent the community, and
- 1 Australian lawyer.

Pharmacy Council

The Pharmacy Council has 10 members:

- 5 local pharmacists elected by local pharmacists in accordance with [Schedule 2 of the NSW Regulation](#),
- 1 local pharmacist, nominated by the Minister, who has expertise in working at a hospital pharmacy,
- 1 local pharmacist, nominated by the Minister, who is involved in conducting approved programs of study for the pharmacy profession,
- 2 persons, who are not pharmacists, nominated by the Minister to represent the community, and
- 1 Australian lawyer nominated by the Minister.

Physiotherapy Council

The Physiotherapy Council has 10 members nominated by the Minister:

- 4 local physiotherapists,
- 1 local physiotherapist from a panel of physiotherapists nominated by the Australian Physiotherapy Association, New South Wales Branch, and any other body representing physiotherapists decided by the Minister,
- 1 local physiotherapist involved in conducting approved programs of study for the physiotherapy profession,
- 3 persons, at least 2 of whom are not physiotherapists, nominated to represent the community, and
- 1 Australian lawyer.

If the panel of physiotherapists is not nominated in the required time or way, the Minister can nominate a physiotherapist.

Podiatry Council

The Podiatry Council has 4 members nominated by the Minister:

- 3 health practitioners registered in the podiatry profession, at least 1 of whom is a local health practitioner, and
- 1 Australian lawyer.

Psychology Council

The Psychology Council has 8 members nominated by the Minister:

- 3 local psychologists from a panel of psychologists nominated by the Australian Psychological Society Limited and other bodies the Minister may decide,
- 1 local psychologist who is a member of the teaching staff of an educational institution that is involved in conducting approved programs of study for the psychology profession in NSW,
- 1 local psychologist,
- 2 persons, who are not psychologists, nominated to represent the community, and
- 1 Australian lawyer.

If the panel of psychologists is not nominated in the required time or way, the Minister can nominate a psychologist.

Appendix 2: Comparison: composition of National Boards

In Australian jurisdictions other than NSW, the 15 National Boards play a key role in handling complaints against registered practitioners. Unlike NSW – where there are many types of Council members – there are only 2 types of members on the National Boards:

- **practitioner members** who are registered in the health profession for which the Board is established, and
- **community members** who are not, and have never been, registered in the health profession for which the Board is established (note that this does not stop practitioners registered in other health professions from being community members).

However, in line with the national nature of NRAS, the National Law provisions about the composition of the National Boards have a focus on jurisdictional representation of practitioner members and an emphasis on rural and regional members. More than half but less than two-thirds of the members must be practitioner members and at least 1 member must live in a regional or rural area.

Outside of the above parameters, National Board members are appointed by the Health Ministers’ Meeting, having regard to the members’ skills and experience as relevant to the National Board’s functions. The Health Ministers’ Meeting may decide the size and composition of a National Board, though each National Board must have at least 8 members, namely at least:

- 5 practitioner members from NSW, QLD, SA, VIC and WA, respectively,
- 1 practitioner member from the ACT, the NT or TAS, and
- 2 community members.

As detailed in Table 7, in December 2023, the number of members on the National Boards ranged from 8 to 12.

Table 7: National Boards

| Name of National Board | Number of members | Number of registered practitioners nationally (including NSW) | Number of notifications about practitioners lodged with Ahpra in 2022/23 |
|---|-------------------|---|--|
| Aboriginal and Torres Strait Islander Health Practice Board | 8 | 887 | 3 |
| Chinese Medicine Board | 9 | 4,823 | 14 |
| Chiropractic Board | 8 | 6,345 | 67 |
| Dental Board | 12 | 26,692 | 610 |
| Medical Board | 12 | 136,742 | 5,615 |

| | | | |
|----------------------------------|----|---------|-------|
| Medical Radiation Practice Board | 12 | 18,976 | 34 |
| Nursing and Midwifery Board | 11 | 514,308 | 1,890 |
| Occupational Therapy Board | 9 | 29,742 | 83 |
| Optometry Board | 8 | 6,762 | 27 |
| Osteopathy Board | 9 | 3,325 | 20 |
| Paramedicine Board | 9 | 24,164 | 104 |
| Pharmacy Board | 12 | 36,425 | 379 |
| Physiotherapy Board | 12 | 42,098 | 140 |
| Podiatry Board | 9 | 6,038 | 49 |
| Psychology Board | 11 | 46,347 | 671 |