

31 January 2023

Ahpra and National Boards

AhpraConsultation@ahpra.gov.au

Public consultation on a draft Data strategy

Avant is a member-owned doctors' organisation and Australia's largest medical indemnity insurer, committed to supporting a sustainable health system that provides quality care to the Australian community. Avant provides professional indemnity insurance and legal advice and assistance to more than 82,000 healthcare practitioners and students around Australia (more than half of Australia's medical practitioners). Our members are from all medical specialities and career stages and from every state and territory in Australia.

We assist members in civil litigation, professional conduct matters, coronial matters and a range of other matters. We have a Medico-legal Advisory Service that provides support and advice to members and insured medical practices when they encounter medico-legal issues. We also provide medico-legal education to our members with a view to improving patient care and reducing medico-legal risk.

In particular, Avant has vast experience assisting health practitioners who are involved in regulatory matters. We provide assistance when they are the subject of notifications, which includes addressing notifications, facilitating and providing education where appropriate, representation at Board and tribunal proceedings, and managing compliance with regulatory decisions. Avant is uniquely placed to view the impact of notifications on practitioners as well as the public.

Avant welcomes the opportunity to provide feedback on the draft Data strategy. We are concerned that there is renewed consideration of publishing past regulatory actions on the public register as it is beyond the scope of what is necessary to keep the public safe from the risk of harm, and it is likely to unnecessarily impact on the health of practitioners.

If further information is required in relation to this submission, please contact [REDACTED], General Manager, Advocacy, Education and Research at Avant at [REDACTED].

Yours sincerely

[REDACTED]
Dr Michael Wright
Chief Medical Officer
Avant Mutual

Public consultation on a draft Data strategy

Submission template

The Australian Health Practitioner Regulation Agency (Ahpra) is inviting feedback on our draft Data strategy. The Data strategy will guide how we use data that we collect and store.

We are inviting responses to specific questions about our future use of this data and general comments on the draft Data strategy.

In addition to the Data strategy on page 4 of the consultation paper, we are consulting on the future directions for three focus areas:

- the public register of health practitioners
- data sharing, and
- advanced analytics.

Publication of submissions

We publish submissions at our discretion. We generally publish submissions on our [website](#) to encourage discussion and inform the community and stakeholders about consultation responses. Please let us know if you do not want your submission published.

We will not place on our website, or make available to the public, submissions that contain offensive or defamatory comments or which are outside the scope of the subject of the consultation. Before publication, we may remove personally identifying information from submissions, including contact details.

We can accept submissions made in confidence. These submissions will not be published on the website or elsewhere. Submissions may be confidential because they include personal experiences or other sensitive information. A request for access to a confidential submission will be determined in accordance with the *Freedom of Information Act 1982* (Cth), which has provisions designed to protect personal information and information given in confidence. Please let us know if you do not want us to publish your submission or if you want us to treat all or part of it as confidential.

Published submissions will include the names of the individuals and/or the organisations that made the submission unless confidentiality is expressly requested.

Do you want your responses to be published?

- Yes I want my responses to be published
- No I do not want my responses to be published

Your contact details

Name: [REDACTED]

Organisation: Avant Mutual Group Limited

Contact email: [REDACTED]

How to give feedback

Please email your submission in a Word document (or equivalent) to AhpraConsultation@ahpra.gov.au by 31 January 2023.

Submission template

Please read the public [consultation paper](#) (including the draft Data strategy) before responding. The draft Data strategy can be found on page 7 of the consultation paper.

Draft Data strategy
<p>1. Does the draft Data strategy cover the right issues?</p>
<p>In general, Avant considers that the draft Data strategy covers important issues.</p> <p>It is noted that the possibility of past disciplinary history appearing on the public register has previously been considered extensively and acted upon by Ahpra and other authorities. This occurred in consultation with individuals, along with stakeholders including health practitioner and patient advocacy groups. Avant provided submissions in this area. Ultimately, it was decided that Ahpra would publish links on the public register to tribunal decisions where adverse findings were made about the practitioner. A decision was also made that there is no publication of links to tribunal decisions where no adverse findings are made about practitioners, or where conditions or undertakings had been removed after being complied with. It is unclear why this topic is being revisited.</p>
<p>2. Do you think that anything should be added to or removed from the draft Data strategy?</p>
<p>When the Data strategy is finalised, it should be accompanied by detailed information in relation to the aspects outlined in “Draft Data strategy – Domains and objectives” (page 7 of the public consultation paper). There needs to be more extensive information about much of the terminology used in this page to assist interpretation, particularly by the public, health practitioners and those who represent them.</p> <p>In particular, in the “Shared data value” column of the “Domains and objectives” (page 7):</p> <ol style="list-style-type: none">1. Ahpra needs to clearly define what data will be considered appropriate for the public to access, as it is not feasible to provide all data to the public. Further feedback from stakeholders should be sought once Ahpra has drafted a resource they will use to determine what is and is not provided to the public, prior to it being implemented.2. Ahpra should outline its cost recovery procedures, as it is not appropriate for health practitioners to bear the cost (via their registration fees) when other entities obtain data held by Ahpra. <p>Wherever changes are proposed that will impact on health practitioners who are the subject of regulatory action, the strategy should outline specific processes that will be followed to ensure individual practitioners are afforded natural justice for decisions that relate to them. We have elaborated on these in specific circumstances below.</p> <p>Avant considers that the possibility of past disciplinary history appearing on the public register is of marked importance to the health and welfare of practitioners, and it would redefine legal principles of what action is being taken in response to a notification. Avant does not consider this information should be published. However, if it is to be revisited by Ahpra, feedback should only be obtained and considered as a separate specific consultation rather than being included within the general terminology of “Data strategy”.</p>

Focus area 1: The public register

3. Do you agree with adding more information to the public register?

- If yes, what additional information do you think should be included?
- If no, please share your reasons

We agree that there may be value in some additional information being included on the public register. However, caution should be exercised when deciding what sorts of information are appropriate for the public register. Ahpra's paramount task is to protect the public from the risk of harm, and as such it should not go beyond that objective by facilitating other offerings.

Whilst not mentioned specifically in the consultation paper, Avant considers that Ahpra should continue to not publish details about impairment and health-related conditions and undertakings that apply to individual health practitioners.

Information that may be useful to publish

Some of the following suggested information may already be available to the public on practitioners' websites and may go beyond the role of Ahpra.

Additional information that may be useful to include:

1. Cultural safety training – if the training can be completed with an approved provider, is current and can be verified.
2. Preferred or professional name.
3. Practice name and location – only with the consent of the practitioner. This information should also be able to be removed immediately upon request from the practitioner, particularly where they indicate they may be at risk by having this information publicly available.
4. Whether or not the practitioner provides telehealth services may be of benefit, however this will need to be accurate and up to date.

Authority to prescribe, approval to provide specified MBS-funded services, and relevant licenses are largely unnecessary for medical practitioners, other than in limited circumstances. For other practitioners, this information should be verified before publication, and processes should be in place to ensure it is kept up to date.

Areas of special interest may be of some benefit but will be difficult to define in relation to what is published and will also be difficult to keep up to date. Some medical practitioners may have a large component of their practise and education devoted to a special interest, whilst others may have a passing interest in the area. Care should be taken to avoid extensive lists of special interests as a de facto advertisement.

Any publication of areas of special interest must not be able to be interpreted by readers as specialist registration. People unfamiliar with the website and terminologies may be easily confused.

Information about a practitioner's Aboriginal and Torres Strait Islander identity

This information could be published with the practitioner's consent, if it is culturally safe to do so.

However, there is also a risk of discrimination or racial vilification against any practitioner's cultural identity when that information can be found in the public arena.

It is recommended that Ahpra consult specifically and thoroughly with relevant stakeholders in relation to this aspect, rather than being included in this consultation paper.

It is also noted that identifying the cultural identity of a practitioner is not the same as having a special interest or expertise in providing health care to patients with the same cultural identity.

Additional qualifications

Avant considers it would be appropriate to publish some additional qualifications, but there is the potential for this to create confusion for the public. Important considerations include:

1. What qualifications would be appropriate or inappropriate to publish? It would be appropriate to publish professionally relevant qualifications obtained from an Australian university, or from an AMC-accredited college. It may not be appropriate to publish certificates of completion after short courses – certificates can be obtained after many CPD events. Undue weight should not be able to be placed on brief educational courses compared to medical degrees and specialist college fellowships.
2. Will publishing the qualifications create confusion about the registration status of a practitioner? For example, if a practitioner has specialist qualifications overseas, but those qualifications are not recognised for specialist registration in Australia, if the overseas qualifications are published, a reader may conclude that the practitioner is a specialist.
3. How will qualifications be verified?
4. If too many qualifications are listed, there is the potential for the presence or absence of the most important information (such as a medical degree or specialist college fellowship) to be missed and lead to confusion.

End dates of suspensions, conditions or undertakings

End dates that have been decided by a Board (or delegate committee) or tribunal can already be published as part of conditions and undertakings, and it is appropriate for that to continue.

It will not be necessary to publish end dates that were in the past, in circumstances where conditions, undertakings or suspensions are no longer in place. The publication of these should be removed when the end date is reached.

Registration history

The public register already includes details relating to when medical practitioners obtained their medical degree, specialist fellowship, AMC certificate and/or Australian registration. This should not change.

It is unnecessary to publish other information about a practitioner's registration history, such as when there were gaps in registration. Gaps can occur for a variety of reasons unrelated to patient safety, many of which will not be able to be explained on the public register. Ahpra and the Boards already have oversight of this when making decisions about applications for new registration, renewing registration or re-registration, and will have decided whether each practitioner is safe to practise.

Membership of professional associations

It is the experience of Avant that where practitioners have published that they are members of professional associations, the information can easily be confused as implying that the practitioners

have additional qualifications, or that their type of practise has been endorsed by those associations.

Given the large number of professional associations that offer membership, it is potentially cumbersome and confusing to have these listed.

Membership (or fellowship) of an AMC-accredited college is already published in the specialist register wherever it is used for the purposes of specialist registration. This should continue.

Further practitioner and/or consumer generated information about a registered health practitioner for example, consumer feedback

Avant considers that the public register does not need to act as a forum for patients to provide comments about practitioners, and it does not need to provide a promotional platform for practitioners.

Furthermore, if any of this material is published by Ahpra, it will be necessary for Ahpra to assess, moderate and manage all the information. This would be difficult logistically and would place Ahpra at risk of criticism if incorrect information is published. Ahpra also needs to consider the possibility that as the publisher of third party information, they may be the subject of legal action including defamation proceedings.

The subject of testimonials and advertising has been extensively considered by Ahpra, parliaments and inquiries. The publication of practitioner or consumer generated information risks being in conflict with current acceptable practises.

If Ahpra published adverse comments about health practitioners, this would be very similar to (but far less controlled than) the publication of registration conditions or undertakings, without any investigation process.

Health practitioners should be afforded the opportunity to review any information from third parties that Ahpra is considering publishing, and to ask for it to not be published.

Any consideration of publication of these types of information should undergo a further consultation process when specific details have been drafted by Ahpra.

2. Do you agree with adding health practitioners' disciplinary history to the public register?

- If yes, how much detail should be included?
- If no, please share your reasons

Avant does not support this proposal.

Practitioners subject to disciplinary action should be allowed to get on with their lives without stigma when there is no longer any risk to the public. Ongoing publication of historical information is punitive and is above and beyond what has been decided by Boards.

The health of practitioners who are the subject of regulatory proceedings is often impacted by those proceedings, sometimes quite severely. If historical conditions or undertakings are added to the public register, the impact on those practitioners will be extended, often for a seemingly indefinite period. There are very few, if any, other occupations in society where past disciplinary history is available to the public.

Any suggestion that patients will be kept safe by virtue of the fact they could make decisions based on past regulatory history is tenuous. When imposing conditions or accepting undertakings, Ahpra, Boards and tribunals thoroughly interpret and consider all available information to make decisions necessary to keep the public safe from the risk of harm. The public does not have access to most of the information that is considered in a notification, or what is outlined in decisions made by Ahpra and the Boards. Much of that information is sensitive and would never be in the public domain. Additionally, when deciding to remove conditions or undertakings, Ahpra, Boards and tribunals must be similarly comprehensively satisfied that the public is no longer exposed to the risk of harm. The responsibility for imposition, acceptance and removal of conditions and undertakings cannot be delegated to additional parties. It is unnecessary for other parties to then be provided with historical information to make a further determination, based on far less information, that public safety is still at risk.

If a practitioner's disciplinary history is made available to patients, either on the register or via request, there is the potential for the practitioner to continue to be judged at the same standard as was the case when the action was taken. If Ahpra proposes to publish historical conditions and undertakings, individual practitioners should be afforded natural justice by being provided with a show cause process.

Historical conditions or undertakings often have no relevance to how a practitioner currently practises.

No past conditions should ever remain published if they have been removed by a tribunal or, in the case of immediate actions, if they are removed by the Board when more information is known.

Avant also notes Ahpra's comment in the consultation paper (at paragraph 21) that the current status is "Some types of information, such as disciplinary history, which are not published, are available on request." We understand that this is not generally correct, and the public cannot be provided with this information from Ahpra. This comment should not be used to suggest it is a simple extension to make this information available either "on request" or on the public register.

3. How long should a health practitioner's disciplinary history be published on the public register?

- 0 to 1 year
- 1 to 4 years
- 5 to 10 years
- 10 to 20 years
- As long as the practitioner is a registered health practitioner
- Disciplinary history should not be published on the public register. Only current conditions or limits on practise should be published on the public register.
- Other, please describe: Avant does not support the publication of a health practitioner's disciplinary history on the public register after any conditions or undertakings have been removed from the practitioner's registration.

4. Who should be able to add additional information to the public register?

As the public register is provided by Ahpra, then ultimately Ahpra is responsible for information that appears. The integrity of the register would be best protected when a person submits information to Ahpra, who then determines what information would be listed.

Information should not be able to be added directly by other parties. It would not be feasible for Ahpra to continuously and appropriately assess the merits of information provided by patients or employers (for example) in the context of ongoing disputes, and where this information is more appropriately considered in the notification process.

Undoubtedly there would be resourcing issues if Ahpra was to retain oversight over extensive amounts of information from third parties being published on its website. Ahpra would need to approve the information, be satisfied the information is correct, provide a show cause process to practitioners, and then maintain the information and remove it wherever necessary.

5. Are there other ways to enhance the effectiveness and value of the public register for the public and/or practitioners?

Ahpra should consider education of the public to raise awareness of the public register, including how to use it, and how to interpret the information available. If large amounts of information are available (for example, a long list of qualifications), the public needs to be able to easily interpret what is important for their health care decision making.

Consumer testing could be undertaken to assess whether the public is aware of the register, if they know how to use it appropriately, and if they are interpreting information correctly.

When information is published on the public register, it can be “mirrored” by third party websites. Ahpra needs to consider in its strategy about how that information is being used and published, because the third party websites will not necessarily be updated whenever details on the public register are subsequently changed. Whilst third parties are generally not under the control of Ahpra, Ahpra does need to be mindful that this occurs. As part of the promotion of the use of the public register, Ahpra should ensure users are aware that the Ahpra website is the only reliable source of this information.

Focus area 2: Data sharing

6. The [Health Practitioner Regulation National Law](#) enables us to share data with some other organisations in certain situations. Do you have suggestions about how Ahpra could share data with and/or receive data from other organisations to benefit the public, practitioners and/or our regulatory work?

Avant generally supports the central concept of improving quality and safety in healthcare.

We encourage Ahpra to consider what types of data would be shared to achieve this in light of privacy obligations, and we ask that Ahpra considers the potential for significant impacts on practitioners if there is any improper use of their information.

Where data is received from or provided to other entities, this information should also be provided to health practitioners in a timely and comprehensive manner. Practitioners should be advised if this information is going to be used or published, with a show cause process.

Focus area 3: Advanced analytics

7. Do you have any suggestions about how Ahpra should approach using advanced analytics and machine learning technologies?

Avant agrees that advanced analytics may be of some benefit, however the following should be considered:

1. Decision making should be by the personnel who comprise the Boards and committees, or Ahpra staff members, using the data obtained and analysed by advanced analytics as an aid. Source material should be available and considered by decision makers, rather than relying on the output of an advanced analytics process.
2. The introduction of advanced analytics should be done in conjunction with established processes, rather than as an immediate replacement. Outcomes from the two processes running in parallel should be measured and analysed to ensure the advanced analytics are reliable and valid.
3. Whilst advanced analytics have the potential to reduce the resources required for managing notifications, they also have the potential to increase the associated costs. Any increase in costs should not be passed on to health practitioners in the form of increased registration fees, as Ahpra already has existing processes in place to analyse information from current and past notifications.

Other

8. Please describe anything else Ahpra should consider in developing the Data strategy.

Avant notes that the draft Data strategy does not make reference to how data being held by Ahpra is being protected, particularly in relation to patients and practitioners. In light of recent high profile data breaches in large organisations, Ahpra needs to comprehensively consider this issue, and manage the risk. Avant considers this should be a high priority for Ahpra to address and provide reassurance to practitioners and the public that sensitive information relating to them is robustly protected.

As part of the risk mitigation and consistent with privacy principles, Ahpra should only seek and hold data that is necessary to fulfill its functions. For example, when a practitioner renews their registration, if they indicate they have a medical condition, the information sought, obtained and held by Ahpra should only be in relation to the specific condition, rather than a comprehensive medical history and other personal details.

Thank you

Thank you for participating in this consultation. Your feedback will support Ahpra and the National Boards to use data to improve public safety.

Please email your submission to AhpraConsultation@ahpra.gov.au by 31 January 2023.

Ahpra acknowledges the Traditional Owners of Country throughout Australia and their continuing connection to lands, waters and communities. We pay our respect to Aboriginal and Torres Strait Islander cultures and Elders past, present and emerging.