

Public consultation

23 March 2021

Public consultation on revised Regulatory principles for the National Scheme

National Boards and Ahpra are undertaking a review of the Regulatory principles for the National Scheme¹ (the regulatory principles).

Preliminary consultation

In 2020, National Boards and Ahpra undertook a targeted preliminary consultation with key stakeholders. This enabled the National Boards and Ahpra to test their proposals with key stakeholders and refine them before proceeding to public consultation. It also provided an opportunity for feedback to improve the clarity of the consultation documents.

A range of stakeholders submitted written responses, including professional associations, jurisdictions (Commonwealth and state/territory health departments) and other regulatory bodies.

National Boards and Ahpra are now releasing this consultation paper for public feedback.

Your feedback

National Boards and Ahpra are seeking to consult on their draft revised regulatory principles. In addition to general feedback, we are interested in stakeholders' feedback on specific questions about the revised principles.

We encourage you to use the [online survey](#) to make your submission. However, if this is not possible, you may make a written submission, in Word format or equivalent. Submissions should be emailed to regulatorygovernance@ahpra.gov.au.

The questions in the online survey and the consultation paper are the same.

Publication of submissions

The National Boards and Ahpra publish submissions at their discretion. We generally publish submissions on our websites to encourage discussion and inform the community and stakeholders. Please advise us if you do not want your submission published.

We will not place on our websites, 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.

The National Boards and Ahpra can accept submissions made in confidence. These submissions will not be published on the website or elsewhere. Submissions may be confidential because they include

¹ The National Registration and Accreditation Scheme

personal experiences or other sensitive information. Any 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 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 requested.

Next steps

After public consultation closes, the National Boards and Ahpra will review and consider all feedback from this consultation before making decisions about the final version of the revised regulatory principles.

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Overview of the review

The [Regulatory Principles for the National Scheme](#) (the regulatory principles) underpin the work of the National Boards and Ahpra in regulating Australia's health practitioners, in the public interest.

The regulatory principles are based on the Health Practitioner Regulation National Law² (the National Law) with public protection the primary consideration. They have encouraged a responsive, risk-based approach to regulation across all professions within the National Scheme. They also acknowledge the importance of community confidence and working with the professions to achieve good outcomes.

Launched in 2014, and after an initial 12-month pilot, the regulatory principles were formally adopted by all National Boards and the Ahpra Agency Management Committee. They are now embedded into the work of the National Scheme guiding the National Boards and Ahpra when making regulatory decisions. The regulatory principles form part of our ethical framework which provides high-level guidance and direction on how we will implement our [National Scheme Strategy 2020-2025](#).

Context

Over the past several years, Health Ministers and their departments have been undertaking work to amend the National Law to strengthen public protection and ensure the effective operation of the National Scheme.

This work is ongoing, however, on 31 October 2019, Health Ministers approved a further tranche of amendments to the National Law to proceed to drafting and agreed to issue two policy directions in support of reforms to improve public protection. These policy directions were released in January 2020.

Policy directions

The [COAG Health Council](#) issued the National Boards and Ahpra with the two policy directions³:

- Policy direction 2019-1 *Paramountcy of public protection when administering the National Scheme* (CHC Policy Direction 1), and
- Policy direction 2019-2 *Requirement to consult with patient safety bodies and healthcare consumer bodies on every new and revised registration standard, code and guideline* (CHC Policy Direction 2).

On 22 January 2020 the two policy directions were [published](#) as required under section 17 of the National Law.

Objective of the review

The objective of the review is to make sure that the regulatory principles remain contemporary and keep pace with our changing and dynamic environment and are aligned to the two policy directions issued by COAG Health Council. In the interest of transparency, we will consult widely and publish the revised regulatory principles on Ahpra's website.

The National Boards and Ahpra are inviting responses to specific questions and general comments on the draft revised regulatory principles. Any unintended impacts raised during consultation will be considered and actions taken to mitigate any potential negative impacts of the revised principles particularly for Aboriginal and Torres Strait Islander Peoples and vulnerable members of the community.

² as in force in each state and territory

³ Under Section 11 of the National Law, the Ministerial Council may issue Ahpra and National Boards with policy directions.

Draft revised regulatory principles

The two policy directions provide a clear mandate to the National Boards and Ahpra to prioritise public protection in the work of the National Scheme.

CHC Policy Direction 1 sets out the considerations that the National Boards and Ahpra must give to the public, including vulnerable people in the community, when determining whether to take regulatory action about a health practitioner. This includes whether taking regulatory action to deter other practitioners from participating in similar conduct would protect the public. The National Boards and Ahpra are required to also give 'at least equal weight' to the expectations of the public as professional peers with regards to expected standards of practice of practitioners.

Specifically, the policy direction states (key considerations are marked in bold):

1. The Council supports that regulatory decision-making by Ahpra and the National Boards within the National Registration and Accreditation Scheme **must act in the interests of public protection, patient safety and support the safety and quality of health services.**
2. In applying the guiding principle contained in section 3(3)(c) of the National Law⁴, when determining whether it is necessary for regulatory action to be taken, the National Boards and Ahpra must:
 - a. take into account the **potential impact of the practitioner's conduct on the public, including vulnerable people within the community** such as children, the aged, those living with disability and people who are the potential targets of family and domestic violence; and
 - b. consider the extent to which **detering other practitioners from participating in similar conduct would support the protection of the public and engender confidence** in the regulated profession.
3. When considering whether a registered practitioner's conduct may be considered unprofessional conduct or professional misconduct, National Boards and Ahpra must **give at least equal weight to the expectations of the public as well as professional peers** with regards to the expected standards of practice by the registered practitioner.
4. In considering the nature of regulatory action that should be taken with regard to matters of unprofessional conduct or sanctions sought with regard to professional misconduct by a registered health practitioner, the risk that the practitioner poses to the public and **the need for effective deterrence must outweigh consideration of the potential impacts upon the practitioner from any regulatory action.**

The CHC Policy Direction 2 requires the National Boards and Ahpra to consult with patient-safety bodies and healthcare consumer bodies on every new and revised registration standard, code and guideline. The policy direction also requires the National Boards and Ahpra to take into account the health and safety of vulnerable members of the community, and Aboriginal and Torres Strait Islander Peoples.

Proposed changes

The following changes are proposed to the regulatory principles to ensure they are aligned to the policy directions. The draft revised regulatory principles are at [Attachment A](#).

Current preamble	Proposed preamble	Rationale
These regulatory principles underpin the work of the Boards and AHPRA in regulating Australia's health practitioners, in the public interest. They	These regulatory principles underpin the work of the National Boards and Ahpra in regulating Australia's health practitioners, in the public	The preamble serves as an introduction. The preamble has been strengthened with reference to community.

⁴ restrictions on the practice of a health profession are to be imposed under the scheme only if it is necessary to ensure health services are provided safely and are of an appropriate quality

shape our thinking about regulatory decision-making and have been designed to encourage a responsive, risk-based approach to regulation across all professions.	interest. They shape our thinking about regulatory decision-making and have been designed to encourage a responsive, risk-based approach to regulation across all professions. The regulatory principles consider community expectations and reflect ministerial directions.	expectations and ministerial policy directions.
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Current principle	Proposed principle	Rationale
1. The Boards and AHPRA administer and comply with the Health Practitioner Regulation National Law, as in force in each state and territory. The scope of our work is defined by the National Law.	The National Boards and Ahpra administer and comply with the Health Practitioner Regulation National Law, as in force in each state and territory. The scope of our work is defined by the National Law.	Minor editorial change.
2. While we balance all the objectives of the National Registration and Accreditation Scheme, our primary consideration is to protect the public.	Public protection is our paramount objective in the National Registration and Accreditation Scheme. We act to support safe, professional practice and the safety and quality of health services provided by registered health practitioners.	Principle two rewritten to reflect mandate for Ahpra and National Boards to prioritise public protection in the work of the National Scheme. Reordered this principle from three and moved to two.
3. We protect the health and safety of the public by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered.		No change to principle. Reordered this principle from two and moved to three.
When we are considering an application for registration, or when we become aware of concerns about a health practitioner, we protect the public by taking timely and necessary action under the National Law.		Removed this principle from the regulatory principles. The key theme has been referenced elsewhere. Timely has been incorporated into principle four which covers the spectrum of regulatory decision-making.
4. In all areas of our work we: <ul style="list-style-type: none"> • identify the risks that we are obliged to respond to • assess the likelihood and possible consequences of the risks, and • respond in ways that are proportionate and manage risks so we can adequately protect the public. 	In all our work we: <ul style="list-style-type: none"> • identify the risks that we need to respond to • assess the likelihood and possible consequences of the risks • respond in ways that are proportionate and manage risks so we can adequately protect the public, and 	Minor editorial changes.

Current principle	Proposed principle	Rationale
<p>This does not only apply to the way in which we manage individual practitioners but in all of our regulatory decision-making, including in the development of standards, policies, codes and guidelines.</p>	<ul style="list-style-type: none"> • take timely and necessary action under the National Law. <p>This applies to all our regulatory decision-making, the development of standards, policies, codes and guidelines as well as the way we regulate individual practitioners.</p>	
<p>5. When we take action about practitioners, we use the minimum regulatory force to manage the risk posed by their practice, to protect the public. Our actions are designed to protect the public and not to punish practitioners. While our actions are not intended to punish, we acknowledge that practitioners will sometimes feel that our actions are punitive.</p>	<p>When we learn about concerns regarding practitioners, we apply the necessary regulatory response to manage the identified risk posed by their practice, to protect the public. Our responses consider the potential impact of their conduct on the public including vulnerable people in the community and Aboriginal and Torres Strait Islander Peoples.</p>	<p>This principle has been rewritten to reflect the need to consider the potential impact of the practitioner's conduct on the public, including vulnerable people within the community and Aboriginal and Torres Strait Islander Peoples.</p> <p>A footnote has been included in the principles which picks up those vulnerable communities identified in Policy Direction 2019-1.</p> <p>Also changed minimum to necessary and force to response to reflect overall intent of the policy directions. The use of 'necessary' aims to support the capacity to take the regulatory action needed. 'Response' is contemporary terminology and ensures consistency across all principles.</p>
<p>6. Community confidence in health practitioner regulation is important. Our response to risk considers the need to uphold professional standards and maintain public confidence in the regulated health professions.</p>	<p>The primary purpose of our regulatory response is to protect the public and improve the standard of practice of registered health practitioners. Our responses are designed to not punish practitioners. When deciding on regulatory responses we:</p> <ul style="list-style-type: none"> • give at least equal weight to the expectations of the public as well as professional peers • consider the importance of maintaining community confidence in regulated health professions, and • consider the need to effectively deter other practitioners from engaging in similar conduct. 	<p>This principle has been rewritten to reflect intent of Policy Direction 2019-01 relating to community confidence, equal weight to the expectations of the public as well as professional peers and the need for effective deterrence.</p>

Current principle	Proposed principle	Rationale
7. We work with our stakeholders, including the public and professional associations to achieve good and protective outcomes. We do not represent the health professions or health practitioners. However, we will work with practitioners and their representatives to achieve outcomes that protect the public.	We work with our stakeholders, including patient safety bodies, healthcare consumer bodies and professional associations, to protect the public. We do not represent the health professions, health practitioners or consumers. However, we work with practitioners and their representatives and consumers to achieve outcomes that protect the public.	Minor changes that reflect intent of both policy directions.

Questions for consideration

The National Boards and Ahpra are inviting feedback on the following questions:

1. Do the draft revised regulatory principles reflect the policy directions issued by CoAG Health Council? If not, how could the principles be improved?
2. Do the draft revised regulatory principles support Ahpra and the National Boards regulatory decision-making? If not, how could they be improved?
3. Is the content of the draft revised regulatory principles helpful, clear and relevant?
4. Is there any content that needs to be changed, added or deleted in the draft revised regulatory principles?
5. Please add any other comments or suggestions for the draft revised regulatory principles.

Attachment A

Draft revised Regulatory principles for the National Scheme

March 2021

These regulatory principles underpin the work of the National Boards and Ahpra in regulating Australia's health practitioners, in the public interest. They shape our thinking about regulatory decision-making and have been designed to encourage a responsive, risk-based approach to regulation across all professions. The regulatory principles consider community expectations and reflect ministerial directions.

1. The National Boards and Ahpra administer and comply with the Health Practitioner Regulation National Law, as in force in each state and territory (the National Law). The scope of our work is defined by the National Law.
2. Public protection is our paramount objective in the National Registration and Accreditation Scheme. We act to support safe, professional practice and the safety and quality of health services provided by registered health practitioners.
3. We protect the health and safety of the public by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered.
4. In all our work we:
 - identify the risks that we need to respond to
 - assess the likelihood and possible consequences of the risks
 - respond in ways that are proportionate and manage risks so we can adequately protect the public, and
 - take timely and necessary action under the National Law.

This applies to all our regulatory decision-making, the development of standards, policies, codes and guidelines as well as the way we regulate individual practitioners.

5. When we learn about concerns regarding practitioners, we apply the necessary regulatory response to manage the risk posed by their practice, to protect the public. Our responses consider the potential impact of their conduct on the public including vulnerable people¹, in the community and Aboriginal and Torres Strait Islander Peoples.
6. The primary purpose of our regulatory response is to protect the public and improve the standard of practice of registered health practitioners. Our responses are designed to not punish practitioners. When deciding on regulatory responses we:
 - give at least equal weight to the expectations of the public as well as professional peers
 - consider the importance of maintaining community confidence in regulated health professions, and
 - consider the need to effectively deter other practitioners from engaging in similar conduct.
7. We work with our stakeholders including patient safety bodies, healthcare consumer bodies and professional associations to protect the public. We do not represent the health professions, health practitioners or consumers. However, we work with practitioners and their representatives and consumers to achieve outcomes that protect the public.

¹Such as children, the aged, those living with disability, people who are the potential targets of family and domestic violence