

Respondent

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Time to complete

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4. 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. *

- Submission can be published
- Submission NOT to be published

5. Do the draft revised regulatory principles reflect the policy directions issued by CoAG Health Council? If not, how could the principles be improved?

The draft revised regulatory principles appear to reflect the policy directions (in detail) issued by CoAG Health Council regarding public protection and requirement to consult. The revisions emphasize previous elements relating to public protection and introduce new elements relating to consultation, public expectation and deterrence.

6. Do the draft revised regulatory principles support Ahpra and the National Boards regulatory decision-making? If not, how could they be improved?

The revision uses contemporary terminology and a 'plain English' approach to the responsibilities of the Boards. Each of the clauses will require interpretation by Boards. Some key concepts require elaboration or clarification. PREAMBLE 'Community expectations' - an important addition. What process, support to explore and evidence will be used by the Board to determine what these are in relation to a case. Clearly illegal behaviour of behaviour that breaches professional codes of conduct or requirements of registration would not meet community expectations. But these were previously covered in the old principles. Elaborate this concept so the Board itself is clear on its obligations, 'Reflect Ministerial directions' - a significantly new addition. In the rationale the term 'ministerial policy directions' is used, but in the proposed preamble only 'ministerial directions' is used. Ministers have discretion to direct - it is unclear whether the revision permits direction outside policy, or whether any direction will be framed and constrained by policy. This needs to be clarified so the position of the Board in relation to the Minister or Minister's office is clear. Whether or not this concept applies to principles or may also relate to cases under management is not clear. PRINCIPLES Principles 1-5: provide clarity to inform Board decision-making. Principle 6: The principle is worthy but the expression is unclear - 'Our responses are designed to not punish practitioners' - this odd sequence of words may be because it introduces a legal precision in meaning but a lay person might expect the sentence to read 'Our responses are not designed to punish practitioners'. Even so, there is a clear intention in the revised principles to include 'deterrence' as an element in Board responses where required. Deterrence aims to dissuade or discourage by demonstrating the adverse impacts that can be incurred by a protagonist who engages in particular actions. Deterrence thus adds additional considerations to a Board's response which may indeed be designed to 'punish' so as to demonstrate the consequences of an action that are substantial enough to dissuade others. Therefore saying that 'responses are designed to not punish' seems at odds with the new emphasis on deterrence in deciding responses. I think the Boards may have difficulty in balancing these two principles as they are currently written - on the one hand to 'not punish' and on the other hand to 'deter'. It would be helpful to have this prospectively clarified rather than testing the tension between the two through appeals. Principle 7: Clear.

7. Is the content of the draft revised regulatory principles helpful, clear and relevant?

In the event responses to this survey are considered separately for each question, I am restating my answers to Question 6 here. Some key concepts require elaboration or clarification. PREAMBLE 'Community expectations' - an important addition. What process, support to explore and evidence will be used by the Board to determine what these are in relation to a case. Clearly illegal behaviour of behaviour that breaches professional codes of conduct or requirements of registration would not meet community expectations. But these were previously covered in the old principles. Elaborate this concept so the Board itself is

clear on its obligations, 'Reflect Ministerial directions' - a significantly new addition. In the rationale the term 'ministerial policy directions' is used, but in the proposed preamble only 'ministerial directions' is used. Ministers have discretion to direct - it is unclear whether the revision permits direction outside policy, or whether any direction will be framed and constrained by policy. This needs to be clarified so the position of the Board in relation to the Minister or Minister's office is clear. Whether or not this concept applies to principles or may also relate to cases under management is not clear. PRINCIPLES Principles 1-5: provide clarity to inform Board decision-making. Principle 6: The principle is worthy but the expression is unclear - 'Our responses are designed to not punish practitioners' - this odd sequence of words may be because it introduces a legal precision in meaning but a lay person might expect the sentence to read 'Our responses are not designed to punish practitioners'. Even so, there is a clear intention in the revised principles to include 'deterrence' as an element in Board responses where required. Deterrence aims to dissuade or discourage by demonstrating the adverse impacts that can be incurred by a protagonist who engages in particular actions. Deterrence thus adds additional considerations to a Board's response which may indeed be designed to 'punish' so as to demonstrate the consequences of an action that are substantial enough to dissuade others. Therefore saying that 'responses are designed to not punish' seems at odds with the new emphasis on deterrence in deciding responses. I think the Boards may have difficulty in balancing these two principles as they are currently written - on the one hand to 'not punish' and on the other hand to 'deter'. It would be helpful to have this prospectively clarified rather than testing the tension between the two through appeals. Principle 7: Clear.

8. Is there any content that needs to be changed, added or deleted in the draft revised regulatory principles?

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Board's response which may indeed be designed to 'punish' so as to demonstrate the consequences of an action that are substantial enough to dissuade others. Therefore saying that 'responses are designed to not punish' seems at odds with the new emphasis on deterrence in deciding responses. I think the Boards may have difficulty in balancing these two principles as they are currently written - on the one hand to 'not punish' and on the other hand to 'deter'. It would be helpful to have this prospectively clarified rather than testing the tension between the two through appeals. Principle 7: Clear.

9. Please add any other comments or suggestions for the draft revised regulatory principles.

The revision and principles are silent on the use of research evidence in health practice as a standard to inform professional and community expectation. Community expectation may or may not align with best available research evidence for public health, clinical practice and human services. Professionals are expected to maintain currency with best available evidence so principles can be silent in relation to evidence based practice because it is captured in competency standards for registration. How will the validity of community expectation as a benchmark for protection be balanced with the desirability of translating best available evidence into practice. On the one hand they may be aligned, but on the other in a liberal democracy striving for inclusion there will inevitably be a diversity of community expectation which must be heard and, as the principles now say, given 'equal weight'. Currently 'the law' could be the arbiter of what is and is not reasonable in public or professional expectation but it is not sufficient nor it is likely to capture the nuance of protection and public safety issues that may be presented to Boards. Further consideration of the place of research evidence in health practice may be helpful or at the very least introduce a standpoint that the public, professionals and the Boards can all use.