

17 May 2021

Mr Martin Fletcher  
Chief Executive Officer  
Ahpra

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Dear Mr Fletcher

### **MIGA submission – Revised Regulatory Principles for the National Scheme**

MIGA appreciates the opportunity to comment on the Revised Regulatory Principles for the National Scheme.

This follows its earlier engagement with Ahpra on these issues, including its submission to the targeted consultation in mid-2020.

#### **MIGA's position**

MIGA supports regulatory principles 1, 2, 3, 4, 5 and 7, subject to minor wording changes to the revised preamble and revised principle 7.

Regulatory principle 6 requires further revision, particularly to reflect limitations on the underlying policy direction from the COAG Health Council to serious conduct, not performance or 'lower level' conduct matters.

Further work is required to develop a framework for National Board decision-makers and Ahpra staff to interpret these principles. MIGA looks forward to contributing to this work.

Implementation of the revised principles requires a clear and concise communication strategy, ensuring practitioners and the community have clear understandings of what remains unchanged, and what they mean.

#### **Principle 6 – community expectations, confidence and deterrence**

The COAG Health Council policy direction on which revised principle 6 is based is directed to matters involving unprofessional conduct or professional misconduct. However the revised regulatory principle is not confined. It should be. Otherwise the principle goes beyond the policy direction.

It would be inappropriate to give "*at least equal weight*" to public expectations as given to those of professional peers in matters of performance or 'lower level' conduct matters, the latter being those which do not meet the threshold of either unprofessional conduct or professional misconduct.

Public expectations in a performance matter hinge on ensuring protection of the public. It would be an unnecessary, confusing and unhelpful exercise to try and assess public expectations in a broader way in performance matters.

There are significant risks that giving "*at least equal weight*" to public expectations in all conduct matters, irrespective of seriousness, will lead to inconsistency and idiosyncrasies.

More serious conduct matters, involving unprofessional conduct or professional misconduct, are anchored to behaviours which would clearly call into question community confidence in healthcare. These involve issues of fitness to practice or other behaviours which would be condemned by the professions. It is important that the revised regulatory principle reflect these considerations.

Trying to assess public expectations for 'lower level' conduct would involve a wide range of interpretations and poses significant risks of different National Board decision-makers or Ahpra staff making inconsistent decisions / recommendations based on unclear and unobjective criteria.

In addition the assessment of public expectations and need to deter similar conduct must be based on well-established and clearly defined criteria.

To address this issue, MIGA proposes to split up revised regulatory principle 6 so that

- Revised regulatory principle 6 reads
  - 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.*
- Create a new regulatory principle which provides
  - When deciding on regulatory responses **for serious conduct / behavioural matters** we:*
    - ***carefully consider the well-established and clearly defined expectations of a practitioner's conduct or behaviour***
    - *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.*

### Framework for using principles

MIGA considers a framework for National Board decision-makers and Ahpra staff to use when interpreting the revised principles is needed, detailing how they would work in practice, and providing a range of examples.

There are inherent challenges interpreting and applying the revised principles, including

- What is unchanged, particularly the emphasis on public protection
- How 'necessary' regulatory responses are to be considered
- Assessing impacts of conduct / behaviour on vulnerable populations and Aboriginal and Torres Strait Islander peoples
- How to balance public and professional expectations appropriately, assess community confidence and consider deterrence in a range of scenarios.

### Minor wording changes – preamble and principle 7

MIGA proposes the following minor wording changes to the preamble and principle 7

- Preamble "The regulatory principles consider community expectations and reflect ~~ministerial~~ directions **from governments.**" – this makes the source of the direction clearer to the professions and community
- Principle 7 – "*We work with our stakeholders, including patient safety bodies, healthcare consumer bodies and professional ~~bodies associations~~, to protect the public.*" – reflecting the broader range of professional groups National Boards / Ahpra work with, including colleges, professional indemnity insurers and healthcare entities such as hospital services.

If you have any questions or would like to discuss, please contact Timothy Bowen, [REDACTED] / [REDACTED]

Yours sincerely

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