

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 These submissions will not be published on the website or elsewhere.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: Dr Owen Bradfield

Organisation: MIPS

Contact email:

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
1. Does the draft Data strategy cover the right issues?
MIPS commends the work of Ahpra in developing this draft data strategy (“the strategy”). MIPS supports efforts to improve the efficiency of regulatory processes, the accuracy of information collected and used, and the quality and timeliness of regulatory decisions and outcomes. MIPS recognises the importance and relevance of the strategy in the context of the Commonwealth government’s “open data” policies, which seek to maximise the value of available data. However, the data held by Ahpra and the National Boards are sensitive and is used to make regulatory decisions that can adversely impact practitioners both personally and professionally. Therefore, the use of data in these circumstances requires particular caution.
2. Do you think that anything should be added to or removed from the draft Data strategy?
The strategy is a high-level aspirational document. It articulates the benefits of data sharing for patients, the public and the regulators, but also needs to call out the risks of data sharing for practitioners.
Focus area 1: The public register
3. Do you agree with adding more information to the public register?
<ul style="list-style-type: none">If yes, what additional information do you think should be included?If no, please share your reasons
Yes. However, it should be limited to qualifications and credentials beyond standard medical degree or specialist fellowship could be included. It is important that this information is verifiable and verified and does not become a <i>de facto</i> platform for marketing.
4. Do you agree with adding health practitioners’ disciplinary history to the public register?
<ul style="list-style-type: none">If yes, how much detail should be included?If no, please share your reasons
MIPS does not support Ahpra or the National Boards adding health practitioners’ disciplinary history to the public register. MIPS also does not support the current practice of attaching links to prior tribunal decisions about individual practitioners on the public register. This is for the following reasons. First, the case for adding this information is weak. If existing regulatory processes and sanctions are effective and fit-for-purpose, then the public should be sufficiently confident that when a National Board restricts a practitioner’s registration (through the imposition of conditions or a suspension, or the acceptance of an undertaking), that action was necessary to protect the public from an identified risk of harm posed by that practitioner. Likewise, the public should be sufficiently confident that once a National Board lifts a practitioner’s restrictions, it is because the risk that was previously found to have existed has been reviewed and a risk to the public no longer exists or can no longer be identified. Second, MIPS questions whether the inclusion of a practitioner’s disciplinary history is evidence-based or consistent with the theory of “right-touch regulation”. Regulatory action should be guided by an assessment of the nature of possible harms, an assessment of the likelihood and severity of the risks posed, and an assessment of whether regulatory interventions can control perceived risks. In a criminal context, overseas public registers that include identifying information about individuals

convicted of serious offences have been shown not to improve public safety and do not reduce the risk of recidivism. Likewise, there is no evidence that inclusion of a practitioner's disciplinary history would improve public safety or reduce future substandard professional conduct or performance. Once current sanctions have expired or been lifted, MIPS believes that the public neither has the *right* nor the *need* to know the details of the practitioner's disciplinary history because they lack relevance to the practitioner's current risk posed.

Third, MIPS is very concerned that the inclusion of a practitioner's disciplinary history may also undermine efforts by that practitioner to reintegrate into their profession or workplace, or to successfully rehabilitate following a period of impairment. We agree with the comment made in the strategy that *Continuing to publish disciplinary history could have ongoing consequences for practitioners, beyond the intended protective effect of regulatory action*. MIPS believes that the same holds true with respect to the existing practice of including links to tribunal decisions.

Fourth, MIPS believes that a practitioner's disciplinary history should not be included on the public register as a vehicle for protecting the reputation of the regulator. MIPS understands the concerns raised by Ahpra that where prior conditions have been reported in the media and remain in the public domain, the public might question why they do not appear on a public register. However, MIPS believes that public confidence in the regulator must be clearly differentiated from public protection, which must be secured with as little impact on practitioners as possible, consistent with their purpose. Protection of the reputation of the regulator is not a guiding principle under the National Law.

Finally, although MIPS is opposed to any disciplinary history appearing in the public register, MIPS is **especially opposed** to the following information being included on the public register:

- **Notifications:** MIPS is concerned that the inclusion of notifications (as opposed to sanctions) would be punitive and unfairly prejudicial to the interests of practitioners. The inclusion of unsubstantiated notifications may be confusing or misleading to the public, which may place undue weight on allegations or assertions, rather than on proven facts.
- **Immediate action:** MIPS strongly opposes any move for the outcomes of prior immediate action to be included on the public register, especially where the final regulatory outcome is that no further action was taken. One of the inherent limitations that regulators face in taking immediate action is that it is based on serious allegations alone without the ability to test evidence or reach conclusions of fact. This already puts practitioners in a challenging evidentiary position. Information about these interim decisions should not appear on the public register because they are based on incomplete information and untested assertions.
- **Health impairment:** health information about practitioners is especially sensitive and personal. There is growing evidence that fear and shame associated with mental health and substance use challenges limits practitioners' willingness to seek help early. The publication of details about health impairments on the public register would be particularly disastrous for unwell practitioners, who should be afforded a degree of privacy and circumspection to allow them to recover and regain their health. If practitioners knew that information about their health would appear on the public register, this could act as a further disincentive to seek support and treatment for their health. This could paradoxically increase the risk of harm to the public. The threat of inclusion of health information on the public register would impede Ahpra's commitment to improve the regulatory experience for impaired practitioners.

5. 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:

For the reasons outlined above, MIPS does **not** support the inclusion of a practitioner’s disciplinary history on the public register.

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

Only Ahpra and the relevant National Board should be able to add information to (or remove information from) the public register. This would ensure the accuracy, consistency, appropriateness, and fidelity of information contained on the public register. It is important to maintain the trust and confidence of practitioners and the professions in the information contained in the register. This can only be achieved when the information contained on the register has been rigorously verified.

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

Wherever possible, only de-identified information should be shared in order to protect the privacy and interests of practitioners whose information is being shared.

Focus area 2: Data sharing

8. 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?

MIPS supports data sharing where it is consistent with Ahpra’s obligations to protect the privacy of practitioners’ personal information, where it improves efficiency, and where it does not subvert decision-makers’ obligations to afford natural justice to practitioners who are subject to regulatory processes. The strategy must engender the trust and confidence of practitioners and the professions. Currently, the strategy focuses on the many potential benefits of sharing data with other organisations. The processes that will be employed to protect practitioners needs to be articulated.

Focus area 3: Advanced analytics

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

MIPS would encourage Ahpra to seek to better understand the ethical framework within which to use data noting the consultation states – *“However, it is essential that this new technology is applied within a strong legal and ethical framework, that complies with administrative law and the principles of good administrative practice.”* Consultation with experts in this field would be recommended including the Actuaries Institute to obtain another viewpoint on the use of advanced analytics and machine learning technologies and the ethical framework within which they should be considered. always be associated with an ethical framework. MIPS recognises the work with the Digital Health CRC may already provide a framework within which Ahpra will operate however it is a rapidly evolving field.

Other
10. Please describe anything else Ahpra should consider in developing the Data strategy.
Nil.

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.