

Consultation March/April 2014

A National Code of Conduct for health care workers

QUICK RESPONSE FORM

In June 2013, the Standing Council on Health (SCoH) agreed in principle to strengthen state and territory health complaints mechanisms via:

- a single national Code of Conduct for unregistered health practitioners to be made by regulation in each state and territory, and statutory powers to enforce the Code by investigating breaches and issuing prohibition orders;
- a nationally accessible web based register of prohibition orders; and
- mutual recognition of state and territory issued prohibition orders.

To give effect to these decisions, Ministers asked the Australian Health Ministers' Advisory Council (AHMAC) to undertake a public consultation on the terms of the first national Code of Conduct and proposed policy parameters to underpin nationally consistent implementation of the code, for consideration by Ministers.

The purpose of this consultation paper is to seek public comment on:

- the terms of the first national Code of Conduct (National Code) for healthcare workers, having regard to a draft National Code based on the Codes of Conduct that already apply in NSW and South Australia
- the legislative provisions necessary to apply and enforce the National Code, and the extent to which national uniformity is considered necessary or desirable
- proposed administrative arrangements for public access to information on prohibition orders issued by the state and territory health complaints entities that are, or in the future may be responsible for enforcing the National Code.

Interested parties are invited to make submissions addressing the issues raised in the paper. Questions placed throughout the paper in the 'What are your views?' sections are reproduced here to assist with submissions.

Please note that use of this quick response form is optional and all written submissions to the consultation will be considered.

The full version of the consultation paper is available at the following address:

www.ahmac.gov.au



Australian Health Ministers' Advisory Council

PLEASE FORWARD YOUR QUICK RESPONSE FORM BY EMAIL TO:

practitioner.regulation@health.vic.gov.au

Name: Australian Primary Health Care Nurses Association (APNA)

Address: Level 2, 159 Dorcas Street, South Melbourne VIC 3205

Email: stephanie.hille@apna.asn.au

Are you a:

- Consumer of health services
- Health care worker (please specify type)
- Registered health practitioner (please specify type)
- Employer of health care workers
- **Professional association**
- Education provider
- Regulator
- Other – Please state:

If you are a professional association, can you provide an estimate of the number of health care workers you believe to be practising in your profession or field?

Of the 320,000 nurses registered in Australia there are 11,000 working in general practice and an innumerable amount working in primary health care.

Their settings are diverse and include Aboriginal health, aged care, occupational health and safety, telephone triage, palliative care, sexual health, prison nursing, refugee health, drug and alcohol, school nursing, women's health, men's health, infection control, chronic disease management, cardiovascular care, immunisation, cancer nursing, asthma care, COPD, mental health, maternal and child health, community health, health promotion, population health, diabetes, wound management, research and much more.

Section 2.2 – Proposed terms of National Code

Definitions

- How should the class or classes of person that are to be subject to this National Code be identified?
- Is the term 'health care worker' an acceptable term to use to describe to whom the National Code applies, or is another term such as 'unregistered health practitioner' or 'health practitioner' preferable, as in NSW and South Australia?

'Health care worker' or 'unregulated health care worker' is appropriate.

Application of this Code

- Is the proposed scope of application of the National Code acceptable?
- Is it preferable that the National Code apply to all health care workers whether registered or not? If so, what are the potential advantages and disadvantages of this approach?

The proposed scope is acceptable.

The alternative model may be unduly complicated. Regulated health professionals already have codes and standards and complaint pathways. This code is about unregulated healthcare provision therefore should not confuse regulated professional practice.

Each National Board would need to assess their Code of Conduct against this Code, to ensure it meets or surpasses these minimum standards. Where there is a deficiency a code may require revision to align with these requirements.

However, for clarity, all complaints should be notified to both the health complaints entity and respective Board.

If the complaint can be resolved at health complaints level it should be; but we know minor, consistent complaints can also signal more serious issues, and the Board needs to be in the loop in order to monitor this.

1. Health care workers to provide services in a safe and ethical manner

- Should the National Code include a minimum enforceable standard that addresses the provision of services in a safe and ethical manner?

Yes.

- If so, do these subclauses cover all the principal professional obligations that should apply to any health care worker, regardless of the type of treatment or care they provide?

This Code appears to focus on quality assurance rather than quality improvement.

A code of conduct must require both individual and group quality improvement activities. In the absence of assertive requirements, such as auditing, lone practitioners will continue to practice in isolation. It is inadequate to continue a person-based view of patient safety.

Minimum enforceable standards are essential.

We recommend the Code require reflective practice with the end stage (of a recurring process) being clinical audit which goes beyond the individual, as the risk of suboptimal practice is increased where a practitioner's QA&CPD takes place without oversight.

2. Health care workers to obtain informed consent

- Should the National Code include a minimum enforceable standard that addresses informed consent? If so, then how should it be framed and how should the complexities of informed consent in emergencies and with respect to minors be dealt with?

- Is this clause expressed in a way that will best capture the conduct of concern?

The Code must include a minimum enforceable standard.

APNA recommends including in the standard:

In considering whether a minor is capable of consenting to treatment, health care workers need to consider the circumstances of each case and seek advice if necessary. Without the informed consent of a client, the health care worker risks legal liability for a complication or adverse outcome, even if it was not caused by his or her negligence.

3. Appropriate conduct in relation to treatment advice

- Should the National Code include a minimum enforceable standard that addresses the provision of treatment advice?
- If so, is this clause expressed in a way that will best capture the conduct of concern?

Yes this is essential and expressed appropriately.

4. Health care workers to report concerns about treatment or care provided by other health care workers

- Should the National Code include as a minimum enforceable standard a mandatory reporting obligation for all health care workers to report other health care workers who in the course of providing treatment or care place clients at serious risk of harm?
- If so, is this clause expressed in a way that will best capture the conduct of concern?
- Should the wording more closely reflect the mandatory reporting provisions imposed on registered health practitioners under the National Law?

Yes this is essential and should closely reflect the National Law.

5. Health care workers to take appropriate action in response to adverse events

- Should the National Code include a minimum enforceable standard that addresses appropriate conduct in dealing with emergencies and adverse events?
- If so, is this clause expressed in a way that will best capture the conduct of concern?

Yes this is essential and expressed appropriately.

This clause should include the need to investigate the cause of the adverse event and take steps to mitigate the likelihood of harmful events in future.

6. Health care workers to adopt standard precautions for infection control

- Should the National Code include a minimum enforceable standard that addresses the adoption of infection control procedures?
- If so, is this clause expressed in a way that will best capture the conduct of concern?

Yes, there should be a requirement for infection control, referencing the National Health and Medical Research Council (NHMRC) Guidelines and relevant State, Territory and local government guidelines.

7. Health care workers diagnosed with infectious medical conditions

- Should the National Code include a minimum enforceable standard that addresses health care workers diagnosed with infectious medical conditions?
- If so, is this clause expressed in a way that will best capture the conduct of concern?

Yes this is essential and expressed appropriately.

8. Health care workers not to make claims to cure certain serious illnesses

- Should the National Code include a minimum enforceable standard that addresses claims to cure or treat life threatening and terminal illnesses?
- If so, is this clause expressed in a way that will best capture the conduct of concern?

Yes this is essential and expressed appropriately.

9. Health care workers not to misinform their clients

- Should the National Code include a minimum enforceable standard that addresses misinformation and misrepresentation in the provision of health products and services?
- If so, is this clause expressed in a way that will best capture the conduct of concern?

Yes this is essential and expressed appropriately.

10. Health care workers not to practise under the influence of alcohol or drugs

- Should the National Code include a minimum enforceable standard that addresses the provision of treatment or care to clients while under the influence of alcohol or drugs?
- If so, is this clause expressed in a way that will best capture the conduct of concern?

Yes this is essential and expressed appropriately.

11. Health care workers with certain mental or physical impairment

- Should the National Code include a minimum enforceable standard that addresses health care workers who suffer from physical or mental impairments that may impact their provision of treatment or care to their clients?
- If so, is this clause expressed in a way that will best capture the conduct of concern?
- Is subclause 2 necessary, or does subclause 1 sufficiently capture the behaviour of concern?

Yes this is essential and expressed appropriately.

Subclause 2 is appropriate, although may be unfeasible to monitor.

12. Health care workers not to financially exploit clients

- Should the National Code include a minimum enforceable standard that addresses financial exploitation of clients?

- If so, is this clause expressed in a way that will best capture the conduct of concern, particularly in relation to the treatment or care of elderly, disabled and seriously or terminally ill clients?

Yes this is essential and expressed appropriately.

13. Health care workers not to engage in sexual misconduct

- Should the National Code include a minimum enforceable standard that prohibits sexual misconduct by health care workers?
- If so, is this clause expressed in a way that will best capture the conduct of concern?
- Should the draft National Code be strengthened to specifically address sexual or physical assault in the health care setting, or is the preferred approach to expand the definition of 'prescribed offences' and rely on clauses 3 and 4?

This clause must be included.

14. Health care workers to comply with relevant privacy laws

- Should the National Code include a minimum enforceable standard in relation to breaches of client privacy by health care workers?
- If so, is this clause expressed in a way that will best capture the conduct of concern?

Yes this is essential and expressed appropriately.

15. Health care workers to keep appropriate records

- Should the National Code include a minimum enforceable standard in relation to clinical record keeping by health care workers and client access to and transfer of their health records?
- If so, is this clause expressed in a way that will best capture the conduct of concern?
- Are subclauses 2 and 3 necessary, or does subclause 1 sufficiently capture the conduct of concern?

It would be optimal to include all three clauses.

It may impose compliance costs but this is not unreasonable given the benefit to public safety.

16. Health care workers to be covered by appropriate insurance

- Should the National Code include a minimum enforceable standard in relation to the professional indemnity insurance obligations of health care workers?
- If so, is this clause expressed in a way that will best capture the conduct of concern?
- Is this clause likely to impose unreasonable compliance costs on health care workers?

Yes this is essential and expressed appropriately.

It may impose compliance costs but this is not unreasonable given the benefit to public safety.

17. Health care workers to display code and other information

- Should the National Code include a minimum enforceable standard in relation to display of the National Code, their qualifications and avenues for complaint? If so, is this clause expressed in a way that will achieve this intent?
- Should there be a requirement, as in the SA Code, for health care workers to display their qualifications?
- Are the exemptions to the requirement to display the National Code and qualifications appropriate?

Yes they should demonstrate their training.

The exemptions are appropriate.

It would be beneficial to display the Australian Charter of Healthcare Rights.

Items not included in the draft National Code of Conduct

1. Sale and supply of optical appliances

- Is this an acceptable approach to dealing with regulation of the sale and supply of optical appliances?

This is not in scope for APNA but seems reasonable for public safety.

2. Health care workers required to have a clinical basis for treatments

- Is the proposed approach adopted in this draft National Code appropriate given the complexities of determining what treatments do and do not have 'an adequate clinical basis'?
- Should the National Code include an additional clause along the following lines 'A health care worker must take special care when a treatment they are offering to a client is experimental or unproven, to inform the client of any risks associated with the treatment'? If so, how should complexities with identifying which treatments are 'unproven' be dealt with?

APNA only supports evidence-based clinical care.

Yes this clause is essential and expressed appropriately.

Section 3.2 - Scope of application of the National Code

Definition of a health care worker

- What terminology is preferred to identify and define the class or classes of person who are to be subject to the National Code?
- Is the term 'health care worker' acceptable, or is another term preferable?

The term 'health care worker' is acceptable.

Definition of a health service

- How important is national consistency in the scope of application of the National Code, particularly with respect to the definition of what constitutes a 'health service'?

- If consistency is considered necessary, how should 'health service' and 'health care worker' be defined?
- Is there a need to include a reference to 'volunteer' in the definition of provider/health service provider

APNA supports national consistency, and the proposed definition is acceptable. A national definition would be less problematic to enforce, recognising the potential issues around implementation.

APNA believes any entity providing 'health advice' in the context of a paid consultation or point of authority (e.g. Heart Foundation, Diabetes Australia, etc) requires an element of regulation.

Whether someone is a volunteer or employed should be immaterial, if they are providing healthcare they should be compliant with the Code.

Section 3.3 Application of a 'fit and proper person' test

- Should there be power to issue a prohibition order on the grounds that a person is not fit and proper to provide health services where they present a serious risk to public health and safety?
- Is there a preferred option for enabling the application of a fit and proper person test?
- Is consistency across jurisdictions considered important in the approach adopted?

APNA would support application of a fit and proper person test with consistency across states.

APNA would support Option 3.

Section 3.4 Who can make a complaint?

- How important is national consistency in who may make a complaint?
- If consistency is considered important, is there a preferred approach for specifying in legislation who may make a complaint?

APNA would reasonably consider complaints from users and relatives, and discretion by the Commissioner to accept a complaint from any other person 'in the public interest'.

Section 3.5 Commissioner's 'own motion' powers

- How important is national consistency with respect to the power for a Commissioner to initiate an investigation of a matter on his or her own motion, without a complaint?
- If consistency is considered important, should all state and territory Commissioners have such 'own motion' powers?

APNA would reasonably consider national consistency with Commissioner's 'own motion' powers.

Section 3.6 Grounds for making a complaint

- How important is national consistency in the grounds for making a complaint?
- If consistency is considered important, is there a preferred approach for defining the grounds for making a complaint and what terminology is preferred?

APNA would reasonably consider national consistency for grounds for making a complaint, and would consider a breach of the Code grounds.

Section 3.7 Timeframe for lodging a complaint

- How important is national consistency in the timeframe within which a complaint must be lodged?
- If consistency is considered important, is there a preferred approach, that is, should a timeframe be specified, and if so, what should it be and should there be discretion to extend it in what circumstances?

APNA would reasonably consider national consistency important with the Code in its entirety.

Section 3.8 Interim prohibition orders

- How important is national consistency with respect to the issuing of interim prohibition orders?
- If consistency is considered important, what is the preferred approach with respect to the grounds for issuing an interim order, the process and the maximum time period?

APNA would reasonably consider national consistency important with the Code in its entirety.

There must be a timely resolution, for instance no more than 12 weeks. Timeframe is important it is a person's livelihood and if they are found not to have breached code, prohibition is unwarranted punishment.

Section 3.9 Who is empowered to issue prohibition orders

- How important is national consistency with respect to the body that is conferred with powers to issue prohibition orders?
- If consistency is considered important, which body should have the power to issue ongoing prohibition orders, the Commissioner or a tribunal?

APNA would reasonably consider national consistency important with the Code in its entirety.

Section 3.10 Grounds for issuing prohibition orders

- How important is national consistency in the grounds for issuing a prohibition order?
- If consistency is considered important, is there a preferred approach?

APNA would reasonably consider national consistency important with the Code in its entirety.

Section 3.11 Publication of prohibition orders and public statements

- How important is national consistency in the publication of public statements that include the details of prohibition orders issued?
- If consistency is considered important, is there a preferred approach?

APNA would reasonably consider national consistency important with the Code in its entirety.

Section 3.12 Application of interstate prohibition orders

- How important is national consistency in achieving application across Australia of prohibition orders and interim prohibition orders issued in each state and territory?
- If consistency is considered important, is there a preferred approach for achieving mutual recognition of prohibition orders?

APNA would reasonably consider national consistency important with the Code in its entirety.

Section 3.13 Right of review of a prohibition order

- How important is national consistency with respect to review rights for practitioners who are subject to a prohibition order?
- If consistency is considered important, is there a preferred approach?

APNA would reasonably consider national consistency important with the Code in its entirety.

Section 3.14 Penalties for breach of a prohibition order

- How important is national consistency with respect to the offences and penalties that apply for breach of a prohibition order?
- If consistency is considered important, what is the preferred approach?

APNA would reasonably consider national consistency important with the Code in its entirety.

Section 3.15 Powers to monitor compliance with prohibition orders

- How important is national consistency with respect to powers to monitor practitioner compliance with prohibition orders issued?
- If consistency is considered important, is there a preferred approach?

APNA would reasonably consider national consistency important with the Code in its entirety.

Section 3.16 Information sharing powers

- How important is national consistency with respect to the sharing of confidential information between HCEs and with other regulators?
- If consistency is considered important, what is the preferred approach?

APNA would reasonably consider national consistency important with the Code in its entirety, and would support sharing of information with regulators.

Section 4.1 Mutual recognition

- What is the preferred option for making publicly accessible information about prohibition orders that are issued in each state and territory?
- Are there any issues that need to be considered when designing and implementing such arrangements?

Option 3 would appear reasonable and in the best interests of public safety and consistency.

Any other comments?

Do you have any other comments to make about the draft National Code, policy parameters or administrative arrangements?

- APNA understand this Code encompasses all unregulated health workers, therefore we are in favour as a matter of public safety.
- The Code needs to be effective. The quality loop should be closed by clinical audit and/or reflective practice. The Code needs to complement registration (regulated professionals), therefore reporting mechanisms need to align – with the health complaints bodies *and* with the National Board under which the worker is associated. APNA recommend there be a provision to share information between state health complaints units, in the case of the health care worker moving state, similar to police checks.
- The Code of Conduct seems focused on quality assurance rather than quality improvement. A Code of Conduct must require both individual and group quality improvement activities such as audit. In the absence of such assertive requirements, lone practitioners will continue to practice in isolation. It is inadequate to continue a person-based view of patient safety.
- If some professions are to continue to practice outside the regulatory framework, the rules by which this decision is made need to be clear and unambiguous.
- We believe a Code is essential to ensure evidence-based practice, endorse initiatives to minimise public risk and ensure quality service.

Would you like to be informed of the outcome of the consultation?

Yes

No

Thank you for taking the time to make a submission.