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Dear Colleagues

At its meeting on 31 October and 1 November 2019, the COAG Health Council resolved to issue two policy directions to Ahpra and National Boards to make clear that when administering the National Registration and Accreditation Scheme (the National Scheme) public protection is paramount, and to require consultation with patient safety bodies and health care consumer bodies on new and revised registration standards, codes and guidelines. These policy directions are given under section 11 of the *Health Practitioner Regulation National Law 2009*, as in force in each state and territory (the National Law).

The policy directions are as follows.

#### **POLICY DIRECTION 2019-1**

##### **Paramountcy of public protection when administering the National Scheme**

The purpose of this policy direction is to provide clarity to the Australian Health Practitioner Regulation Agency (Ahpra) and the National Boards on the application of the guiding principle for the National Registration and Accreditation Scheme provided in section 3(3)(c) of the National Law. This principle requires that *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.*

However, Ahpra and the National Boards need a clear mandate to prioritise public protection, and this policy direction is intended to give effect to this intent. It is the responsibility of Ahpra and the National Boards to protect the public and prevent harm.

The policy direction is:

1. The Council supports that regulatory decision making by Ahpra and 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 Law, when determining whether it is necessary for regulatory action to be taken, 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 deterring 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.

To support the policy direction, and the protection of the public, the COAG Health Council authorises disclosures of information under section 216(2)(h) as per the following:

1. Where a matter regarding potential unprofessional conduct or professional misconduct by a registered health practitioner has been referred to a responsible tribunal, Ahpra and National Boards are authorised to disclose the following information to other registered practitioners with whom the practitioner shares premises and other entities referred to in section 132(4) of the National Law at the point of filing:
  - the name of the practitioner,
  - the tribunal that the practitioner has been referred to, and
  - the nature of the referral of the practitioner to the Tribunal.
2. Where a matter regarding potential unprofessional conduct or professional misconduct by a registered health practitioner is being investigated by Ahpra, Ahpra and National Boards are authorised to disclose the following information to other registered practitioners with whom the practitioner shares premises and other entities referred to in section 132(4) of the National Law on commencement of the investigation:

- the name of the practitioner, and
  - the subject of the investigation.
3. Where a matter regarding potential unprofessional conduct or professional misconduct by a registered health practitioner has been referred to a responsible tribunal, Ahpra and National Boards are authorised to disclose the following information to the state or territory health department in the jurisdiction in which the conduct is alleged to have occurred at the point of referral to the tribunal:
- the name of the practitioner,
  - the tribunal that the practitioner is being referred to,
  - the nature of the referral of the practitioner to the Tribunal, and
  - the known employer(s) and/or locations where the registered practitioner provide health services.

## **POLICY DIRECTION 2019-2**

### **Requirement to consult with patient safety bodies and health care consumer bodies on every new and revised registration standard, code and guideline**

The purpose of this policy direction is to provide clarity to Ahpra and the National Boards on consultation requirements with patient safety bodies and consumer bodies on every new or revised registration standard, code and guideline prepared under sections 25(c) and 35(c) of the National Law. Section 25(c) of the National Law requires that Ahpra establish procedures for the development of registration standards and codes and guidelines approved by National Boards, for the purpose of ensuring the national registration and accreditation scheme operates in accordance with good regulatory practice. Section 35 of the National Law tasks National Boards with functions including to develop registration standards (for approval by the COAG Health Council) and develop and approve codes and guidelines for the relevant health profession (section 35(c)).

Section 40 of the National Law requires National Boards to ensure that there is wide-ranging consultation during the development of a registration standard, code, or guideline. However, Ahpra and the National Boards need a clear mandate and clear direction from the COAG Health Council that this wide-ranging consultation must include consultation with patient safety bodies and health care consumer bodies. This is to ensure the health and safety of patients and to prevent harm by ensuring that the perspectives, experience, and expertise of patient safety organisations and consumers are considered during the development and review of standards, codes and guidelines.

The policy direction is:

1. The Council directs Ahpra and National Boards to consult with patient safety bodies and consumer bodies on every new or revised registration standard, code and guideline.
2. In applying the requirements under section 40 of the National Law, National Boards and Ahpra must:
  - a. consult with patient safety bodies and healthcare consumer bodies

- b. take into account the health and safety of vulnerable members of the community, and Aboriginal and Torres Strait Islander people
- c. prepare a patient health and safety impact statement to accompany advice and recommendations in relation to the new or revised registration standard, code or guideline
- d. publish a patient health and safety impact assessment when a new or revised registration standard, code or guideline is published.

In line with section 17 of the National Law, it is requested that these directions be published by Ahpra and National Boards on their websites as soon as practicable, and in the 2019–20 Ahpra annual report. The Council thanks Ahpra and National Boards for their timely response to implementing these policy directions.

Yours sincerely



Hon Natasha Fyles MLA  
Chair  
COAG Health Council

- 3 JAN 2020

cc: Mr Martin Fletcher, CEO, AHPRA: [martin.fletcher@ahpra.gov.au](mailto:martin.fletcher@ahpra.gov.au)