

Targeted consultation response form

1 September 2025

Draft guidance: Sexual misconduct and the National Law

The Australian Health Practitioner Regulation Agency (Ahpra) is conducting targeted consultation with key stakeholders on draft guidance: Sexual misconduct and the National Law.

Our consultation material is also publicly accessible on the [National Law amendments](#) webpage.

We invite your feedback on the draft guidance by close of business on **Monday 6 October 2025**. You may like to answer all or some of the questions below.

Please provide your response in a word document (not PDF) via email to nationallawamendments@ahpra.gov.au.

How your response will be treated

As this consultation is targeted to key stakeholders, we will treat your response as **confidential** and your feedback will not be published. If Ahpra receives a request for access to a confidential submission, it 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.

Your details

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Are you making a submission as: *(please check the relevant box)*

- ☐ Consumer organisation
- ☐ Government or statutory authority
- ☐ Individual consumer/member of the public
- ☐ Individual health practitioner
- ☒ Peak body / professional association (registered health professions)
- ☐ Professional body (profession not regulated under NRAS): [Click or tap here to enter text.](#)
- ☐ Other – please describe: [Click or tap here to enter text.](#)
- ☐ Prefer not to say

Feedback

1. Is the content of the draft guidance clear?
Is the language as plain and simple as it could be?
Could the content of the guidance be improved?

The APS welcomes the opportunity to respond to Ahpra's draft guidance regarding changes to the National Law, legislated in the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2025*. The primary focus of this guidance relates to Sections 225A and 225B of the National Law which requires that additional information will be published permanently on the National Register when a practitioner is found by a tribunal to have engaged in professional misconduct involving sexual misconduct. We recognise that when National Boards determine whether conduct is sexual misconduct following a tribunal decision, that the Boards' main guiding principle will be the protection of the public and public confidence in the safety and services provided by registered health practitioners and students. The APS urges Ahpra and the National Boards to balance the need for greater protection of the public and transparency of information provided on the National Register with fair treatment and support for practitioners.

Following the passing of these legislative amendments, Ahpra has acknowledged that some stakeholders remain concerned regarding the potential reputational damage for practitioners resulting from the permanent publication of information on the National Register.¹ The APS has expressed concern regarding the public benefit of retaining this information permanently, particularly when sanctions have been applied, remediation has been undertaken and the future risk that the practitioner will repeat past behaviours (misconduct) has been assessed as low.² While recognising that Ahpra and the National Boards are bound by these legislative requirements, the APS reiterates our concerns, questioning whether permanent publication of this information serves the best interests of the community, particularly when the practitioner has demonstrated rehabilitation. An unintended consequence of this requirement may be that practitioners experience unnecessary detriment for the remainder of their careers, for limited public benefit. We recommend that this legislative requirement is revisited in future.

Clarity needed to understand obligations

Given the potentially significant and lifelong consequences for practitioners following these National Law changes, the APS considers it is important for Ahpra to provide as much clarity as possible to enable health practitioners to better understand these obligations. The content of the draft guidance could be improved by including information regarding the impact of these National Law changes on specific cohorts of practitioners, including students. Students can be a particularly vulnerable cohort in terms of their (lack of) knowledge, experience and understanding regarding the lifelong impact that these National Law changes could potentially have on their careers. The APS therefore recommends that additional information be included in the guidance regarding the application of these changes to students, including relevant case studies and whether the National Boards will take a student's (lack of) knowledge and experience into account when making a determination.

Another area where more clarity could be provided in the guidance relates to findings of professional misconduct involving sexual misconduct where conduct is not directly connected with the practitioner's profession. 'Professional misconduct', e.g., is defined in the National Law as including, but not limited to: 'conduct of the practitioner, whether occurring in connection with the practice of the health practitioner's profession or not, that is inconsistent with the practitioner being a fit and proper person to hold registration in the profession'.¹ Most of the examples included in Ahpra's Information Guide¹ to illustrate conduct that likely meets the threshold for publication of additional information include tribunal findings of professional misconduct where conduct relates directly to the practice of the relevant profession. Practitioners' understanding about obligations regarding conduct

not directly related to professional practice may not be as well developed as their understanding regarding obligations directly related to professional practice. The APS recommends that inclusion of additional examples in the draft guidance illustrating scenarios where sexual misconduct has occurred in a context not directly related to a practitioner's profession may help to improve practitioners' knowledge about these obligations.

In relation to this point "*Sexual misconduct may occur in relation to a person under the practitioner's care even if the person consents to, initiates, or willingly participates in the conduct*" (p 3), the APS considers that it may be useful to emphasise that the nature/context of the relationship will be considered in making a determination as to whether or not sexual misconduct has occurred. While these points are made later in the draft guidance, it is critical that this point is emphasised earlier in the guidance.

2. Is the structure of the draft guidance logical and easy to follow?
If not, what changes would help improve this?

Ahpra's targeted consultation paper³ includes a flowchart illustrating the process that will be followed to publish additional information. The APS recommends that the inclusion of a similar flowchart in the draft guidance may assist practitioners' understanding of this process.

3. Is the process that the National Boards and Ahpra follow to lawfully publish the additional information on the public register clear?
If not, please tell us what was not clear, and what changes could be made to make it more understandable.

The National Law amendments regarding the publication of additional information on the National Register apply retrospectively, meaning that they apply from when a health profession was first regulated under the National Registration and Accreditation Scheme (1 July 2010 for psychology). However, we understand that the National Boards will have limited discretion to determine whether a tribunal finding of professional misconduct involves sexual misconduct.

As outlined in response to Question 1, while the APS acknowledges that the primary consideration for Ahpra and the National Boards is the protection of the public and transparency of information on the National Register, we note that the retrospective nature of these legislative changes has the potential to undermine practitioners' ability to be treated fairly and equitably.

Ahpra anticipates that its legal team will review approximately 1,200 tribunal hearings since 2010 where there has been a finding of professional misconduct to determine whether these are in scope and meet the obligation for publishing additional information.¹ For procedural fairness for practitioners, it is important that Ahpra ensures this process is documented and transparent for both retrospective and prospective tribunal determinations.

Ahpra acknowledges that when reviewing these historical tribunal findings (matters) to decide whether additional information will be published retrospectively, that Ahpra may not be able to contact practitioners to advise them about the proposed publication, supports available and the opportunity to make a submission for the Board's consideration.³ The APS urges Ahpra to consider how the principle of procedural fairness will be upheld during this review process, particularly for practitioners who are unable to be contacted and consequently unable to provide a defence. We also recommend that information regarding how Ahpra intends to uphold procedural fairness for practitioners is included in the draft guidance.

4. Is our explanation of the categories of sexual misconduct clear in the draft guidance?
If not, how can we improve this?

In the absence of a 'sexual misconduct' definition in the National Law, the draft guidance refers to sexual misconduct being a broad term which encompasses a wide range of behaviours that fall within the ordinary meaning of the term. The behaviours listed cover a wide spectrum, ranging from explicit acts such as sexual assault and harassment to behaviours that may appear less obvious, and to some, benign, which may still cause harm and violate ethical standards. As the aim of these amendments is cultural change to improve public safety, this breadth in the meaning of 'sexual misconduct' can be problematic in terms of clearly communicating health practitioners' obligations and promoting behavioural change where required.

The APS appreciates that Ahpra has provided examples in the draft guidance outlining the type of contextual and behavioural factors that National Boards will consider when making determinations. As practitioners may not be aware that sexual misconduct can include conduct that is not directly connected with professional practice as well as behaviour for which the practitioner has not been charged or pleaded guilty to a criminal offence, there may be value in highlighting this in the guidance.

We also recommend that Ahpra considers including de-identified case studies based on National Boards' determinations to provide practitioners with greater clarity regarding behaviour that constitutes sexual misconduct. This may be particularly helpful regarding behaviours (and contexts) which appear less obviously to practitioners and the community as sexual misconduct.

5. In addition to FAQs, is there any other type of information or resource we could develop to help practitioners and the public better understand the publication of this additional information?
If so, what would be most helpful?

The APS previously recommended that a risk assessment regarding the benefit of publicly publishing a practitioner's regulatory history be balanced against the potentially negative impact on the practitioner.² We believe that it would be beneficial for practitioners and the public to understand the threshold of risk to the public that the National Boards consider when deciding to publish information on the National Register.

As outlined in response to Question 1, the APS recommends that inclusion of additional examples in the draft guidance illustrating where sexual misconduct has occurred in a context that is not directly related to the practitioner's profession may contribute to improving practitioners' understanding about these obligations.

As outlined in response to Question 4, the APS proposes the addition of de-identified case studies describing the interpretation and decisions made by National Boards to publish additional information on the National Register would be helpful for practitioners.

6. Do you have any other feedback that you would like to provide?

The APS commends Ahpra for expanding the support services available to victims and survivors of sexual misconduct who are navigating the regulatory and tribunal process.¹ Research has also identified the significant impact that experiencing regulatory complaints processes can have on health practitioners' emotional health and wellbeing, pointing to the need for a more nuanced and humane model of regulation.⁴ The APS recommends greater investment in additional support services for health practitioners, including psychologists, who are navigating this process. For example, The Essential Network (TEN) for Health Professionals, funded by the Black Dog Institute, provides up to five free mental health support sessions with a clinical/provisional psychologist or psychiatrist for health professionals.⁵ However, as there can be a wait list up to a few months to access this service⁶, additional investment in similar support services is recommended to help meet demand.

While possibly beyond the scope of this consultation, the APS recommends that Ahpra considers conducting a review following the implementation of these National Law amendments to assess the extent to which the National Boards are applying these changes consistently across the professions. The Dawson Report⁷ identified the need to achieve greater procedural fairness for health practitioners. Assessing and achieving improvements in the consistency with which health practitioners from different professions are regulated by their respective National Boards is one way to achieve this objective.

Thank you for participating in this targeted consultation.

References

1. Australian Health Practitioner Regulation Agency and National Boards. (2025). *How Ahpra will implement changes to the Health Practitioner Regulation National Law: An information guide*. <https://www.ahpra.gov.au/About-Ahpra/Ministerial-Directives-and-Communiques/National-Law-amendments.aspx>
2. Australian Psychological Society. (2024). *APS Response to the Proposed reforms to the Health Practitioner Regulation National Law*. <https://psychology.org.au/psychology/advocacy/submissions/professional-practice/2024/aps-response-to-the-proposed-reforms-to-the-health>
3. Australian Health Practitioner Regulation Agency. (2025). *Targeted consultation paper: Draft guidance—Sexual misconduct and the National Law*. <https://www.ahpra.gov.au/About-Ahpra/Ministerial-Directives-and-Communiques/National-Law-amendments.aspx>
4. Biggar, S., van der Gaag, A., Maher, P., Evans, J., Bondu, L., Kar Ray, M., Phillips, R., Tonkin, A., Schofield, C., Ayscough, K., Hardy, M., Anderson, S., Saar, E., & Fletcher, M. (2023). 'Virtually daily grief'-understanding distress in health practitioners involved in a regulatory complaints process: A qualitative study in Australia. *International Journal for Quality in Health Care: Journal of the International Society for Quality in Health Care*, 35(4), mzad076. <https://doi.org/10.1093/intqhc/mzad076>
5. Black Dog Institute. (n.d.). Talk to a mental health professional at Black Dog Institute. *Black Dog Institute | Better Mental Health*. Retrieved September 24, 2025, from <https://www.blackdoginstitute.org.au/the-essential-network/talk-to-someone/talk-to-a-mental-health-professional-at-black-dog-institute/>
6. Australian Health Practitioner Regulation Agency (Director). (2025, July 9). *Practitioner support and understanding regulatory processes webinar* [Video recording]. <https://vimeo.com/user/14422535/folder/26377639?isPrivate=false>
7. Australian Government Department of Health, Disability and Ageing. (2025). *Transforming health professionals regulation in Australia: Independent Review Final Report*. Australian Government Department of Health, Disability and Ageing. <https://www.health.gov.au/resources/publications/transforming-health-professionals-regulation-in-australia-independent-review-final-report?language=en>