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Submitted to: [nras.consultation@health.vic.gov.au](mailto:nras.consultation@health.vic.gov.au)

Dear NRAS Review Implementation Project Team,

**APS Response to the Proposed reforms to the Health Practitioner Regulation National Law**

The Australian Psychological Society (APS) welcomes the opportunity to provide a submission to the consultation on the proposed reforms to the Health Practitioner Regulation National Law.

The APS is supportive of the Health Practitioner Regulation National Law and its aim of creating a national registration and accreditation scheme for registered health practitioners.

In making this submission, the APS has reviewed the proposed reforms, including the three parts of the consultation relating to an expansion of information on the national public register, nationally consistent reinstatement orders, and strengthening protections for notifiers. The feedback provided below has been formulated based on consultation with APS members who are highly qualified psychologists and experienced practitioners.

As with all our work, we consider our response to this Inquiry in light of the Sustainable Development Goals (SDGs).<sup>1</sup> Of relevance to the current Senate Inquiry is SDG 3: Good health and well-being that is focused on ensuring healthy lives and well-being for all at all ages.<sup>2</sup>

We thank the Ministerial Council for the opportunity to respond to this important consultation. If any further information is required from the APS, I can be contacted through the national office on (03) 8662 3300 or by email at [z.burgess@psychology.org.au](mailto:z.burgess@psychology.org.au).

Yours sincerely,

**Dr Zena Burgess FAPS FAICD**  
Chief Executive Officer

## APS Response to the Proposed reforms to the Health Practitioner Regulation National Law

Name/Organisation	Dr. Zena Burgess, CEO, Australian Psychological Society
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Would you/your organisation like to receive project updates via email?

Yes

No

### Part 1 – Expansion of the information available on the national public register of health practitioners

1. Do you support the publication of practitioners' full regulatory history where there has been a finding of professional misconduct because of:

- sexual misconduct; or
- sexual boundary violations.

or where there has been a:

- conviction or finding of guilt for a sexual offence.

~~Yes/No/~~ **Unsure**. Please explain why.

The APS considers sexual boundary and sexual misconduct breaches, as well as convictions or findings of guilt for sexual offences, to be extremely serious. Practitioners who engage in this type of conduct with clients demonstrate unethical and unprofessional judgement. They may also have a poor capacity to maintain professional boundaries and adhere to required standards and guidelines, as well as displaying poor self-regulation, management, and awareness.

We believe it is important for the public to be protected from those who pose a significant risk to vulnerable clients, particularly those with a history of repetitively engaging in sexual misconduct. We therefore support the National Law having the appropriate mechanisms to protect the public. From this perspective, we consider it appropriate to retain information on the public register for those who engage in purposeful, repeat offences and violations, or where there has been a single offence showing gross misjudgement and/or malicious intent with vulnerable individuals, particularly where future risk to the public is considered high.

However, we are concerned with circumstances where publishing a practitioners' full regulatory history offers little benefit or protection to the public, and rather, may have significant negative implications for the practitioner's wellbeing. This is particularly relevant in scenarios where, for example, there was no malicious intent, sanctions have been applied, remediation has been undertaken and future risk of the practitioner reoffending, and hence risk to the public, has been assessed as low. Under these circumstances, it is unclear about how publishing a practitioner's full regulatory history will protect the public.

Under these circumstances, publishing a practitioner's full regulatory history may have the potential to do more harm than good, particularly from the perspective of their wellbeing.

We draw the NRAS Review Implementation Project Team's attention to recent research investigating the distress in health practitioners involved in a regulatory complaints process.<sup>3</sup> This research concludes that *"some contributors to practitioner distress require a systemwide, preventative approach, including addressing stigma and misinformation. A more compassionate approach to regulation has the potential to improve the experience for all those involved and, ultimately, benefit patients, families, practitioners, and the global healthcare system."*

Instances of sexual misconduct may not always be 'black and white', so careful management is required to ensure the circumstances of the incident are explored and the benefits and risks of publishing information on the public register is thoughtfully considered.

The APS therefore recommends the development of a threshold that triggers the publication of a practitioner's full regulatory history. That is, a risk assessment regarding the benefit of publicly publishing a practitioners history balanced against the potentially negative impact on the practitioner.

The APS additionally recommends greater clarity regarding the definitions for 'sexual misconduct' and 'sexual boundary violations', particularly within the context of 'intent'.

2. *Is a tribunal finding of professional misconduct because of sexual misconduct or, sexual boundary violations or criminal convictions for sexual offences the appropriate threshold for prompting publication and retention of practitioners' regulatory history?*

~~Yes/No~~ / **Unsure**. Please explain why.

As outlined in our response to Question 1, we believe that under certain circumstances publication of a practitioner's regulatory history is appropriate. On the other hand, there may be other circumstances where the benefits and protection that would be gained by publishing a practitioner's full history is less clear.

In cases of sexual misconduct and boundary violation, it may be beneficial for a tribunal to determine the drivers and intent of such behaviour and where appropriate allow for a supportive and remedial framework to be put in place. However, clearly where there is evidence of a practitioner engaging in repeated malicious behaviour with intent and the future risk to the public remains high, it is appropriate to publish the practitioner's full regulatory history.

A tribunal finding for sexual offences is an appropriate threshold for publication and retention of a practitioner's regulatory history.

3. *A practitioner's regulatory history could include any undertakings, conditions, reprimands, and prohibitions orders. The National Law does not currently allow this history to remain on the public register when they are no longer in force.*

*Do you support publication and retention of these elements if the circumstances for publication are met?*

~~Yes~~/ **No** / ~~Unsure~~. Please explain why.

As outlined in our responses to Questions 1 and 2, we believe that the circumstances for publication require case-by-case consideration and that the threshold must be clearly defined. Overall, when the threshold has been met and the undertakings, conditions, reprimands, and prohibitions orders are in place, we support the approach to publish this information. Although we strongly disagree with allowing this history to remain on the public register when the undertakings, conditions, reprimands, and prohibitions orders are no longer in force and the risk of further sexual misconduct, boundary violations and/or sexual offences is assessed as low.

4. *It is proposed to use the guidelines in the Medical Board of Australia's Guidelines: Sexual Boundaries in the Doctor-Patient Relationship<sup>1</sup> to define the scope of behaviours covered by these reforms.*

a) *Does this sufficiently encompass all conduct which should be considered in scope for this reform?*

b) *Should other specific conduct, such as grooming, be included?*

We consider the Medical Board of Australia's *Guidelines: Sexual Boundaries in the Doctor-Patient Relationship* a good resource and appropriate for the medical profession and within doctor to patient scenarios. However, from the perspective of the profession of psychology, we believe it is more appropriate to refer to the existing APS Ethical Code and associated guidelines.

We are concerned that broadly applying the Medical Board of Australia's Guidelines does not reflect the diversity of the psychology profession.

The APS supports the inclusion of conduct such as grooming, specifically where there has been gradual, orchestrated, and intent driven behaviour to sexualise a professional relationship either in person or online or using other forms of communication.

5. *Are there any other initiatives or actions which could improve public protection and transparency regarding practitioners' regulatory history?*

The APS is open to working more closely with the regulator to improve public protection and transparency regarding practitioners' regulatory history.

<sup>1</sup> Ahpra and National Boards, 'Guidelines: Sexual boundaries in the doctor-patient relationship'  
<https://www.medicalboard.gov.au/Codes-Guidelines-Policies/Sexual-boundaries-guidelines.aspx#>.

Doing so has the potential for stakeholders to develop future preventative initiatives to improve education and compliance, particularly where some ambiguity exists, such as sexual boundary violations. We are keen to increase dialogue with Ahpra regarding matters relevant to professional conduct and believe a collaborative and preventative approach has the potential to improve education, standards, and compliance.

6. Do you have any further comments or suggestions?

No

## Part 2 – Establishing of nationally consistent reinstatement orders

1. Do you support a nationally consistent requirement for practitioners to seek a reinstatement order from a tribunal before applying for re-registration after being disqualified or cancelled?

~~Yes/No/~~ **Unsure**. Please explain why.

While the APS supports the principle of national consistency, we do not support implementing a general requirement for a practitioner to seek a reinstatement order from a tribunal before applying for re-registration after being disqualified or cancelled.

We understand the intent of this proposal being to increase transparency for both the public and the profession, as well as providing a greater opportunity for thorough exploration of, and suitability for, re-registration. However, the extent of information to be released to the public regarding remedial measures and suitability, especially for vulnerable practitioners, needs to be carefully considered.

We recommend the process of seeking a reinstatement order from a tribunal before applying for re-registration only be mandated where it is shown that there was an intentional sexual offence, misconduct, and/or boundary violation.

2. Do you agree that the National Law should be amended to adopt the New South Wales model for reinstatement orders?

~~Yes/~~ **No** / ~~Unsure~~. Please explain why.

As outlined in our response to Part 2, Q1, whilst we understand that the intent of the proposal to adopt the NSW model for reinstatement orders is for greater transparency, we consider this process unnecessary in some cases. Ultimately, it would create a situation where two decision points for reinstatement are required, which is likely to have negative implications on resourcing and timeliness, and create undue pressure on the system.

3. *Are there any other initiatives or actions which could improve public protection and support national consistency for practitioners seeking re-registration after being disqualified or cancelled?*

We believe it is important for proposed reforms and decision making to be informed by evidence and data. As such, transparency in data sharing to determine and understand the size and nature of the problem is important. For example, understanding the prevalence of repeat offences, those who demonstrate malicious intent, and hence the prevalence of those who continue to pose a significant risk to the public in terms of misconduct and unethical and unprofessional practice. This data would help to develop targeted educational and proactive approaches, including training and support to practitioners providing supervision or remedial support.

4. Do you have any further comments or suggestions?

No

### Part 3 – Strengthening protections for notifiers and prospective notifiers

1. *Do you support the proposed reforms to strengthen protections for notifiers and prospective notifiers?*

**Yes** / ~~No~~ / ~~Unsure~~. Please explain why.

The APS supports the proposed reforms to strengthen protections for notifiers and prospective notifiers. It is important for individuals making a notification in good faith to have protections and appropriate support to do so.

2. *Do you support changes to make it an offence to seek to include an NDA in an agreement without advising the affected person that they can still make a notification to Ahpra, National Boards or another relevant regulatory body?*

**Yes** / ~~No~~ / ~~Unsure~~. Please explain why.

The APS supports the changes to make it an offence to seek to include an NDA in an agreement without advising the affected person that they can still make a notification to Ahpra, National Boards or another relevant regulatory body.

It is important that people should not be precluded from making a notification where an NDA is in place. In addition, it is important for the threshold for consent around this change to be explicitly outlined.

<p>3. Do you support changes which would mean that an NDA is void to the extent that it prevents a person making a notification to Ahpra, National Boards or other regulatory body?</p> <p><b>Yes</b> / <del>No</del> / <del>Unsure</del>. Please explain why.</p>
<p>The APS supports the changes that make an NDA void to the extent that it prevents a person making a notification to Ahpra, National Boards or other regulatory body.</p>
<p>4. Are there any other initiatives or actions which could improve protections for notifiers and prospective notifiers?</p>
<p>Please see our responses to Part 1, Question 5, and Part 2, Question 3, which outline other initiatives or actions which the APS supports.</p>
<p>5. Do you have any further comments or suggestions?</p>
<p>No</p>

## References

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- <sup>1</sup> United Nations Department of Economic and Social Affairs. (2022). *Sustainable Development*. <https://sdgs.un.org/>
- <sup>2</sup> United Nations Department of Economic and Social Affairs. (2022). *Sustainable Development*. <https://sdgs.un.org/goals/goal3>
- <sup>3</sup> Biggar, S., van der Gaag, A., Maher, P., Evans, J., Bondu, L., Kar Ray, M., ... & 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*, 35(4), mzad076. <https://doi.org/10.1093/intqhc/mzad076>