



**AASW**

Australian Association  
of Social Workers

*INTRODUCTION OF A NATIONAL  
CODE OF CONDUCT FOR  
UNREGISTERED PRACTITIONERS*



*AASW Position Paper*

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This paper has been developed by the Australian Association of Social Workers (AASW) in conjunction with key professional staff and other members.

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## Executive Summary

*“...the inclusion of social work in the National Registration and Accreditation Scheme (NRAS) is the only pathway for achieving adequate professional standards for the social work profession...”*

This is the Australian Association of Social Workers (AASW) position paper in response to the National Code of Conduct to be introduced to regulate unregistered health practitioners. In this paper, the AASW outlines its opposition to the proposed Code being applied to social workers.

Historically, the practice of social workers in Australia has been subject only to self-regulation via peer review. The AASW strongly supports the introduction of external regulation to ensure professional standards and secure public safety and protection for the very vulnerable people who might access social work services. However, the Code of Conduct for unregistered health practitioners is entirely inadequate in addressing these important issues. This paper will show that the National Code

of Conduct will at best, lead to action after harm has occurred in some cases, but will do nothing to prevent malpractice within the social work profession.

Internationally other jurisdictions have rejected this approach in favour of full public regulation of the social work profession rather than dealing individually with infractions after the fact, as the Code proposes. The AASW asserts that the inclusion of social work in the National Registration and Accreditation Scheme (NRAS) is the only pathway for achieving adequate professional standards for the social work profession, thereby covering all social workers, and ensuring public safety for those people who use social work services.

## *The social work platform*

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The social work profession is committed to maximising the wellbeing of individuals and society. It considers that individual and social wellbeing are underpinned by socially inclusive communities that emphasise principles of social justice and respect for human rights. Minimum standards of human rights include the right to adequate housing, income, employment, education and health care.

## **Australian Association of Social Workers (AASW)**

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The AASW is the national association for Australian professional social workers. We set the benchmark for professional education and practice in social work. We have a strong voice on matters of social inclusion, social justice, human rights and issues that impact upon the quality of life of all Australians. We seek a close and collaborative relationship with educational institutions, industry, government, client associations, and the community. The AASW acknowledges the critical importance of the contribution made by Aboriginal and Torres Strait Islander members.

### **AASW Leadership**



**Karen Healy**  
AASW  
National President



**Glenys Wilkinson**  
AASW  
Chief Executive Officer

## Introduction

The Australian Association of Social Workers (AASW) is the professional representative body for social workers and the social work profession in Australia, with more than 7,500 voluntary members nation-wide. The AASW has responsibility for promoting and self-regulating the social work profession in Australia.

While social work currently has self-regulation in Australia, it requires statutory regulation.

In July 2010, a new national registration scheme, known as the National Registration and Accreditation Scheme (NRAS) was established and practitioners from ten health professions were registered nationally with four more professions registered from July 2012. The Australian Health Practitioner Regulation Agency (AHPRA) is the organisation responsible for the implementation of NRAS across Australia. Boards are established for each registered profession and have significant power in terms of regulation and complaints procedures – primarily for the purposes of public protection.

This scheme excludes social work, and therefore leaves little public protection from malpractice of social work practitioners. Notably, in all comparable countries such as the UK, USA and New Zealand, social work is a registered profession and, as such, the public is assured that government has taken responsibility for ensuring minimum professional standards as well as safeguarding the public against malpractice.

*“The AASW believes that the only effective means of protecting the public from harm is by holding all social workers accountable through National Registration and Accreditation.”*

The AASW believes that the only effective means of protecting the public from harm is by holding all social workers accountable through National Registration and Accreditation. The strong regulation

of social work is essential given the vulnerabilities experienced by many social work clients. Social workers work with people who are: ill; in crisis; aged; mentally ill; abusing alcohol or other drugs; victims of domestic violence or sexual abuse; children at risk; living in poverty; homeless; socially and geographically isolated; or, of Indigenous heritage, and often in rural, remote or geographically isolated areas. Due to their vulnerabilities, these groups often lack the resources necessary to protect themselves from harm by professionals or to take steps to report harm or malpractice after it has occurred.

The recent revelations of abuse by individuals or organisations trusted with the care of vulnerable children such as the Royal Commission into Institutional Responses to Child Sexual Abuse, highlights the risks and harm that can be caused when there are no strong safeguards in place to protect vulnerable people. In these cases abuse has taken decades to emerge and has required government inquiries rather than administrative or legal avenues to reveal the extent of the abuse.

There is significant evidence of the harm that social workers have caused and can continue to cause in countries like Australia where the profession is unregulated. This document identifies data from England and Australia comparing the outcomes available in both of these countries, based on registration status, where similar breaches of practice have occurred. The outcomes currently available in Australia are essentially inconsequential for social workers, whether members of the AASW or not. The evidence also demonstrates that the Code of Conduct proposed would do little to reduce the risk of harm to people who may be subject to incompetent, unethical or illegal practice by social workers in Australia.

## Background

In February 2011, the Australian Health Minister's Advisory Council (AHMAC) undertook a national consultation considering the need to strengthen the regulatory protection for those who access the services of unregistered health practitioners. The introduction of a Code of Conduct is the government's response to this consultation.

Essentially, the Code of Conduct is a form of 'negative licensing'. Negative licensing is a type of regulation whereby practitioners who behave in an incompetent, unethical or illegal manner, can be directly dealt with by the relevant authority. Existing examples are the Health and Community Services Complaints Commissioner in South Australia and the Health Care Complaints Commissioner in NSW.

Commissioners in both these States have the power to make 'prohibition orders'. A prohibition order may order a practitioner to cease practice for a limited period of time, or permanently, or place conditions on a practitioner for a limited period of time, or permanently.

The Health Care Complaints Commission in NSW advises that it is only in extreme cases of misconduct that information about breaches is published in the public domain. Further, they advise that employers are never informed of instances where employees have sanctions imposed by the Commissioner and the Commissioner relies on the individual practitioner to comply with orders imposed. This means that it is possible for a social worker to continue practicing even if they receive a temporary or permanent prohibition order.

The AASW provided a submission in response to this consultation in April 2011. The AASW response strongly stated that the negative licensing scheme *"would only address the most serious end of the spectrum of poor and negligent practice after the event. It would provide no protection to the public afforded by a public register of professionals, probity and fitness to practice checking of practitioners prior to practice and recourse to a dedicated legally binding complaints and disciplinary process. Rather, negative licensing would require vulnerable*

*social work clients to undertake their own checks of professionals, seek redress after abuse has occurred and leave them vulnerable to abuse by predatory practitioners who are able to move work places to avoid detection and continue practicing."*

*"'Negative licensing' schemes fail to pro-actively prevent professional misconduct and unethical behaviour."*

The AASW remains of the view that the introduction of a national code of conduct for unregistered health practitioners is an inadequate means of ensuring the safety and wellbeing of those who access social work services. 'Negative licensing' schemes fail to pro-actively prevent professional misconduct and unethical behaviour, just as they simultaneously fail to pro-actively support and encourage good practice and ethical conduct.

The AASW continues to strongly advocate and campaign for national regulation by including the social work profession under the National Registration and Accreditation Scheme (NRAS). The AASW views this as the best way to ensure all social workers are accountable for their practice and protect the public through probity checks of all social work professionals, accreditation of entry level and ongoing practice requirements, a dedicated complaints and disciplinary process and protection of the social work title.



## Evidence of harm caused by social workers and available consequences – England vs. Australia

The following table outlines two cases where social workers formally regulated and registered in England by the Health and Care Professions Council (HCPC) have been the subject of complaints through this authority. The HCPC registers sixteen health and care professions in the UK therefore operating in a similar manner to AHPRA. The table outlines the details of the misconduct and the subsequent outcomes imposed by the HCPC. The hearings relating to these cases of misconduct were held in 2013.

Example	Country	Details of complaint and harm caused	Outcome
Example 1.	England (HCPC) April 2013 <sup>1</sup>	<ul style="list-style-type: none"> <li>• Making indecent photograph or pseudo-photograph of a child x 4</li> <li>• Possession of extreme pornographic Images x 1</li> <li>• Possession of extreme pornographic Images x 1</li> </ul>	<p>Struck off the HCPC register – unable to practice as a Social Worker</p> <p>Identifying information about the Social Worker and the case publicly available on the HCPC website.</p>
Example 2.	England (HCPC) May 2013	<ul style="list-style-type: none"> <li>• Social Worker worked as a child protection practitioner</li> <li>• Working with a vulnerable parent whose child had been removed from her care for a period of 5 weeks</li> <li>• Parenting concerns required to be addressed.</li> <li>• When the child was returned to the care of the parent, the Social Worker began a sexual relationship with the parent following a disclosure from the parent that she loved the Social Worker.</li> <li>• The Social Worker moved in with the parent and the baby</li> <li>• The Social Worker kept confidential information and case records at the home of the parent.</li> <li>• It was proved that the parent/client had accessed confidential information about other clients brought into the home.</li> </ul>	<p>Struck off the HCPC register – unable to practice as a Social Worker.</p> <p>Identifying information about the Social Worker and the case publicly available on the website and reported in newspapers and online articles.</p>

1. Health and Care Professions Council Hearings and Decisions, Accessed 19th July 2013  
<<http://www.hcpc-uk.org/complaints/hearings/index.asp?EventType=H&category=18&month=7&year=2013&SubmitButton=GO>>

Without formal regulation and mandatory registration of social workers, no such sanctions, as listed in the English examples, are available for Australian authorities with respect to social workers who have breached professional codes of ethics/practice.

In 2012, the AASW became aware via information in the public domain that one its members had been charged and convicted of possessing child pornography. The AASW Board promptly expelled this member from the Association and made the social worker ineligible for membership – the most severe consequence available for the AASW to impose. However, as long as the social work profession remains unregistered in Australia, this social worker, while ineligible for AASW membership, could still, potentially, set up as a private practitioner, where neither police checks nor registration with an authority are required. Further, because social work is an unregulated profession very few employers check with the AASW whether an employee or potential employee is eligible for membership of the AASW despite this often being a requirement for a position. The vast majority of employers rely solely on proof of the attainment of a degree in social work as proof of eligibility for membership. This means that even social workers who have been expelled from the AASW are unlikely to be excluded from employment as a social worker in Australia.

It is of great concern that in example 2 above, the similar conduct of this social worker in England involving possession of child pornography results in the social worker being publicly named, struck off the register permanently and therefore unable to practice as a social worker. In the publicly available committee finding for this case, the Panel stated when providing the rationale for the outcome of 'striking off', that *'the nature and gravity of the allegations are such that any lesser sanction would lack a deterrent effect and would undermine public confidence in the regulatory process and the Social Work profession'* (HCPC 2013).

In the Australian example, no such consideration is given to deterrence, public protection and public confidence in the social work profession, beyond the limited powers of the AASW in this current self-regulated environment. The introduction of a negative licensing scheme would do nothing to change these inadequacies. In the example described above, if the social worker had not been a member of the AASW, the AASW would not have

had the power to do anything with this information, regardless of the fact that it was in the public domain. This is incongruous considering the very similar ethical and practice standards between Australian and English social work and the ability for Australian social workers to, in most instances, work in England and vice versa.

The AASW Ethics Complaint Management Process (ECMP) has dealt with complaints in recent years involving very similar calibre breaches of professional practice as outlined in example 2. The most severe penalty available to the ECMP is expulsion from the AASW and being listed (name only) as ineligible for membership on the AASW website. This process does not have the power to prevent expelled members from ongoing social work practice, nor can the details of the complaint and the actions of the social workers be made available in the public domain, meaning a greater unintended risk to the public.

The reality is that in Australia, social workers known to have seriously breached professional practice standards, including serious sexual boundary violations are able to continue practicing and enjoy a high level of protection from public scrutiny and consequences. On the contrary, in providing their rationale for the 'strike off' outcome in relation to case example 2, the HCPC stated *'There is also a need to protect the public, deter others and maintain public confidence in the profession and the regulatory process.....In light of the serious failings identified and lack of remediation the Panel have concluded that the only appropriate and proportionate sanction in this case is strike off.'* (HCPC 2013)

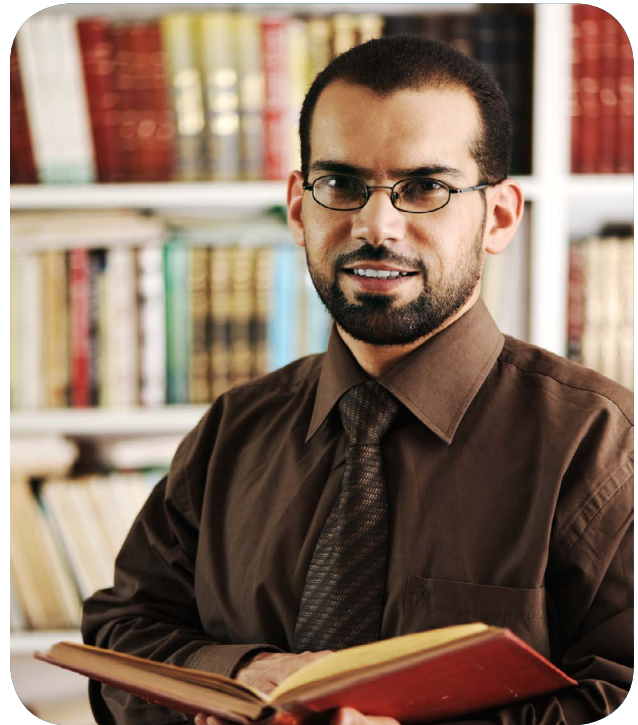


## *AASW position on a national code of conduct for unregistered practitioners*

The AASW opposes a national code of conduct (negative licensing scheme) for the social work profession. Such a scheme would patently fail to protect vulnerable Australian social work consumers such as those outlined above. As stated previously, the proposed scheme is a reactive process which will respond to malpractice and unethical practice after harm has occurred and relies on vulnerable victims to initiate a complaint.

Given the nature of breaches in jurisdictions with social work registration, it is clear that many social work breaches would go undetected if complaints relied on victim initiation. The proposed negative licensing scheme also fails to provide for mandatory reporting of professional misconduct or incompetence as provided under NRAS, further exposing victims of social work malpractice to ongoing harm. Whilst the proposed national register of restrictions on practice with mutual recognition of breaches between states is a welcome addition to the proposed scheme, the AASW is concerned that the requirement to refer complaints to state health entities will add an unnecessary layer of bureaucracy for the public to negotiate. Inclusion of social work in NRAS would obviate this problem and offer the strongest possible safeguards against worker misconduct.

In NSW, if a social worker received a permanent practice prohibition order following breach of the Code of Conduct for Unregistered Health Practitioners there would be no safeguards to prevent this social worker continuing to practice. Future potential employers would need to actively check the HCCC website for any previous misconduct issues. The social worker could potentially work privately, meaning potential future clients would also need to actively check the HCCC website for any previous misconduct issues. The only way to work towards prevention and to ensure misconduct cannot recur is to include the social work profession in the NRAS.



Harm is best avoided by acting prior to it occurring, and thus the objective of Government action should be to ensure that all members of a profession are required to be accountable in meeting professional standards, as well as providing a mechanism to remove from practice those who breach safe standards of practice. Currently two thirds of social workers or approximately 15,000 workers work outside of any professional accountability requirements. This means that following graduation with an accredited social work qualification, workers have no further professional requirement responsibilities other than those of their employers for the remainder of their careers.

The following table demonstrates how voluntary self-regulation, a National Code of Conduct and NRAS compare on some of the most important measures which serve to mitigate the risk of harm to vulnerable Australians:

Requirements to ensure the safety of the public from incompetent, unethical and illegal practices	NRAS**	Voluntary self-regulation	National Code of Conduct
Accreditation standards to ensure that only competent professionals enter the labour market	✓	✓	✗
Fitness to practice requirements including criminal checks and declarations of diminished intellectual or physical capacity are required prior to practice	✓	✗	✗
Accountability to a dedicated professional code of ethics	✓	✓	✗
Adherence to best practice professional standards including professional supervision requirements for all social workers	✓	✓	✗
Continuing professional education programs that ensure all social workers have contemporary expertise	✓	✓	✗
Regulations regarding recency of practice	✓	✗	✗
Provisional practice is available for workers requiring supervision to meet minimum practice standards	✓	✓	✗
The authority to remove incompetent or unethical practitioners from the workforce	✓	✗	✓

\*\*Covers all of the social work profession

\*Covers only one third of the current social work workforce

A “negative licensing” scheme on its own without all of the measures above will not protect the public until after a high level of harm has occurred at least once, and will then rely upon the client to take action before the practitioner can be sanctioned. Even following sanction, and although illegal, practitioners could potentially continue to practice and avoid detection.

In relation to workforce capacity, negative licensing does nothing to ensure that two thirds of the social work workforce is accountable for their practice through ongoing requirements to meet professional practice and ethical standards. The lack of continuing skill development, practice requirements, supervision and support for workers frequently working in difficult and stressful environments represents an unnecessary restriction on workforce capability and consequent risk to the safety of vulnerable clients. These omissions could be easily addressed through the inclusion of social work in NRAS and the failure of governments to guarantee such a move by proposing negative licensing as an appropriate regulatory option for social work demonstrates a failure to appreciate the importance of workforce capacity and accountability in ensuring public safety.

Governments also have the responsibility to ensure the community is equipped to identify the skills, qualifications and expertise that a range of professionals working in the ‘helping’ field offer.

While the AASW accredited courses are all four year university degrees (or equivalent), the absence of protection of title means the community is not able to ascertain what qualifications or standards someone with the title of social worker actually has. With national registration, a practitioner employed as a social worker, or a person purporting to be a social worker would, legally, be required to have adequate qualifications.

The AASW views a national code of conduct as a very poor substitute for Governments taking action on entry level accreditation standards, fitness of practice requirements, practice standards, a clear scope of practice, protection of title, and a public register and dedicated complaints and disciplinary process. A national code can only be enforced in the breach. It will not provide an accountable regulatory framework for contemporary best practice across the social work workforce that will ensure the best possible consumer outcomes. For the vulnerable Australians who represent the majority of social

work consumers this represents a significant regulatory failure on the part of governments. For those governments to have proposed such a weak regulatory option at the same time as national and state inquiries have revealed the human cost of extensive abuse of trust by carers of vulnerable Australians over many years is difficult to comprehend.

The reluctance to consider extending the highest possible regulatory safeguards to vulnerable social work consumers such as is available under NRAS represents a significant abdication of responsibility on the part of governments. The AASW is hopeful that the Health Workforce Principle Committee will understand this regulatory failure and ensure provision is made for social work to be considered for entry into NRAS in the pending review of the introduction of NRAS.

*“Governments also have the responsibility to ensure the community is equipped to identify the skills, qualifications and expertise that a range of professionals working in the ‘helping’ field offer.”*

## Political support

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While every effort has been made by the AASW to implement self-regulation, it is impossible to monitor the standards of practice of those working outside of this framework, and those who use the title 'social worker' without holding a professional qualification. There is much evidence highlighting the damage that has been caused and continues to be caused by incompetent, rogue or unqualified social work practitioners. This must stop.

Social workers represent one of the largest allied health professions practicing in Australia; therefore, the costs of regulating the profession can undoubtedly be supported. The AASW calls on the government to regulate the social work profession in Australia. The only way of achieving this is through inclusion of the social work profession in the NRAS.

Further information can be found at [www.aasw.asn.au/whatwedo/registration-campaign](http://www.aasw.asn.au/whatwedo/registration-campaign), but of particular note is that the AASW's 2012/13 registration campaign culminated in Minister Kim Hames, from Western Australia, listing the issue of registration of social workers on the agenda for the November 2012 meeting of the Australian Health Workforce Ministerial Council (AHWMC).

This issue was referred for advice and further consideration to the Australian Health Ministers Advisory Council (AMHAC) at its March 2013 meeting.

At that meeting on 8 March 2013, AHMAC requested that the Health Workforce Principal Committee (HWPC) include in its work plan the progressing of a management process for the inclusion of unregistered professions in the NRAS and that the AASW be advised of this. It is anticipated that the HWPC discussed this at their meeting on 8 August 2013.

In addition, the Review of NRAS legislated to be undertaken three years after commencement, will also address the issue of introduction of other health professions, and the AASW eagerly anticipates this.

## Conclusion

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This position paper outlines the myriad of reasons why the AASW is not in support of a national code of conduct for unregistered health professionals. The AASW is firmly of the view that such a scheme is inadequate and does not foster protection for vulnerable people accessing social work services from rogue or unsuitably qualified practitioners.

The AASW's view is that in order to ensure such protection, the social work profession must be included in the National Registration and Accreditation Scheme. Any other measures simply fall short of providing the required protection for the Australian public.



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