AASW
Australian Association of Social Workers

Submission to the Australian Health Ministers Advisory Council (AHMAC)

Re: A National Code of Conduct for health care workers

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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 7500 voluntary members nation-wide. The AASW has responsibility for promoting and self-regulating the social work profession in Australia.

Overall comments

The AASW continues to assert 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.

While the AASW supports in principle the introduction of a single code of conduct for unregistered health practitioners, our position is that it will not be adequate in maximising public safety. Despite the proposed establishment of mutual recognition of prohibition orders across all states and territories, the Code of Conduct will not set or protect professional education or practice standards; nor will it define safe and competent scopes of practice; nor will it conduct qualification and fitness to practice checks prior to practice; and nor will it require minimum continuing professional development for practitioners. In addition it will not provide title protection for social workers, allowing unqualified people to use the term and mislead the public.

The following table demonstrates how NRAS, voluntary self-regulation, and a National Code of Conduct 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*

Further, while prohibition orders will go some way to protect the public, such orders are more draconian and less effective than regulation through NRAS, where a dual focus on protection of the public and professional development of the worker is possible through mandated restriction of practice and clinical supervision, following an adverse finding.

The AASW position in favour of registration of social work as the only pathway for achieving adequate professional standards and public safety is aligned with the recent report of a review of law in the United Kingdom [UK] relating to the regulation of health care professionals, and in England only, the regulation of social workers.

The UK Law Commission's (2 April, 2014) final report and draft Bill sets out a new single legal framework for the regulation of all health and social care professionals, including the recommendation that this is needed to enable regulators to uphold their duty to protect the public. It includes the recommendation that regulators must have rule-making powers to specify the precise detail of requirements that practitioners are appropriately qualified and fit to practice.

The AASW is concerned that the option of a code of conduct, a negative licensing scheme, is an inadequate response to risks and problems arising due to the practices of unregistered practitioners, and also, that in Australia there is an absence of mandatory regulation of social work.

The inclusion of social workers in NRAS is the only adequate means of maximising public protection.

Comments in support of a National Code of Conduct for health care workers

In principle, the AASW does support the introduction of a single national code of conduct for unregistered health practitioners, and believe this will go some way towards improving public safety.

We support the intention of a National Code to set minimum standards for professional conduct, which will be enforceable and applicable to all unregistered health practitioners in Australia.

Further, the AASW supports the fact that the National Code will be enforceable under law, and will apply to unregistered health practitioners regardless of their membership of a professional body. As the Code currently stands, it will provide coverage for those social workers working in a health setting who are not members of the AASW. The AASW has long held concerns about the lack of accountability to any code of conduct/ethics by such social workers who are not members of a professional body.

The AASW also supports the proposed power of the National Code to investigate alleged breaches and where appropriate, issue prohibition orders which will be accessible via a national register, with mutual recognition across all states and territories.

The AASW believes that for the National Code of Conduct to have gravitas, it will be critical for Health Complaints Entities to have strong and formal relationships with those entities (such as the AASW), which define and set the standards for health professionals in Australia.

Concerns regarding a National Code of Conduct for health care workers

The AASW is very concerned that the proposed description of social workers covered by the National Code is 'social workers who work in a health setting'.

This would mean that the social work profession would be divided into those whose clients have some protection, and those whose clients do not. This will leave a significant gap in the protection of the public.

This is divisive for members of the social work profession in Australia, as well as confusing to both members of the public, employers and social workers themselves.

Social workers have a direct influence on the health and wellbeing of some of Australia's most vulnerable citizens, across public, private and community settings, but as the Code currently stands, it may not apply to a large proportion of the social work workforce. For example, a Health Complaints Entity may currently interpret that a social worker providing a service in the area of child protection, domestic and family violence, sexual assault, homelessness or income security is not providing a 'health service', and therefore their vulnerable clients will not be protected by the Code.

Further, it is envisaged that such a divide would create unwanted complexities and loopholes, in terms of definitions and administration. The AASW is concerned that if some social workers are included under the National Code and some are not, that an unscrupulous or rogue practitioner may attempt to argue that the Code does not apply to them, and attempt to define their work as being in a 'non-health setting', or simply move their work out of a 'health setting', so as to practice without scrutiny or accountability. Sectional regulation could not guard against this.

Sectional regulation of social workers is unsound, not only because all social work practice is concerned with health and wellbeing, but also because of the mobility of the social work profession across the diverse areas of health and human services delivery.

The AASW contends that all social work pursuits and activities are ultimately related to the health and wellbeing of persons in the context of their environments.

Specifically, the International Federation of Social Work (IFSW) definition of social work states that social work, "…..engages people and structures to address life challenges and enhance wellbeing".

The World Health Organisation (WHO) Ottawa Charter for Health Promotion describes the promotion of health as *"the process of enabling people to increase control over, and to improve, their health. To reach a state of complete physical, mental and social well-being, an individual or group must be able to identify and to realize aspirations, to satisfy needs, and to change or cope with the environment. Health is, therefore, seen as a resource for everyday life, not the objective of living. Health is a positive concept emphasizing social and personal resources, as well as physical capacities."*

Social work typically situates its efforts within health promotion and human rights frameworks which relate health to people's broader physical, mental, social, political and environmental demands.

So, while we would argue that all social workers work towards positive health and wellbeing outcomes for their clients, not all social workers work in 'health settings'. Therefore throughout their professional lifetime, some social workers will move in and out of 'health settings'. Indeed, some rogue practitioners may intentionally move *out* of 'health settings' so as to avoid detection and accountability under the proposed national code. Others will simply not be covered by the Code of Conduct by definition.

As the social workers in such situations will not be covered by the Code of Conduct, their clients will not be protected.

We would therefore argue that all social workers support people and communities both directly and indirectly towards improved health and wellbeing, and that the qualifying words 'in a health setting' should be removed from the reference to social workers as it currently stands in the draft National Code of Conduct for health care workers.

This significant flaw in the Code only further reinforces the need for the social work profession to be covered by a more all-embracing scheme such as the National Registration and Accreditation Scheme.

However, if this anomaly were to be addressed, the AASW would join AHMAC and the Health Complaints Entities in conveying to and educating social workers, employers, other health professionals and the general public, about the importance of all social workers being included under the National Code, until such time as full protection of the public is achieved in this country, through the registration of social work.

While we strongly advocate for the inclusion of all social workers under the National Code, we continue to reiterate our significant concerns that a *National Code of Conduct for health care workers* is not a substitute for the inclusion of social work in the National Registration and Accreditation Scheme (NRAS).

A national code will fail to provide sufficient protection for vulnerable social work clients as it fails to provide national protection of title, qualifications and probity checking of practitioner's prior to practice and ongoing accountability for quality standards. A national code of conduct will not set or protect professional education and practice standards; nor will it define safe and competent scopes of practice; nor will it require minimum continuing professional development for practitioners.

Consequently, a national code will continue to rely on employers to undertake these processes and with many social workers employed in small not for profit organisations or increasingly self-employed, rigorous qualifications and probity checking and ongoing management of workforce accountability remains problematic. Given the vulnerability of the social work client population this represents a considerable weakness in regulatory protection for this significant part of the Australian community.

The ongoing hearings of the *Royal Commission into Institutional Child Sexual Abuse* provides graphic testimony of the harm which can be caused to vulnerable Australians where governments fail to provide adequate workforce regulation of workers and organisations charged with delivering services to people who are unable to advocate for themselves, such as children in care. These findings should be a salutary reminder to governments of their responsibilities in this area, and provide clear evidence for the inclusion of social work in the strongest possible workforce protections, such as those available under the NRAS.

The AASW remains firmly of the view that a negative licensing scheme is inadequate and does not foster protection for vulnerable people accessing social work services from rogue or unsuitably qualified practitioners.

In summary, a national code of conduct will fall short of providing adequate protection for the Australian public.

Comments regarding specific questions posed in AHMAC consultation paper

The AASW has provided responses in relation to relevant sections of the consultation paper. We have not responded to every item.

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?

AASW response

The AASW strongly recommends that ***classes*** of persons that are to be subject to the National Code be used to accurately reflect and differentiate between the professional, vocational and untrained workers who will be covered by the Code.

The AASW recommends use of the following terms:

- 'Health practitioner' or 'Health professional' to describe workers with professional qualifications, accreditation and credentialing in their field of expertise. This term could refer to both registered and self-regulating health professions. The AASW would support the use of either 'Health practitioner' or 'Health professional' to describe this group of persons subject to the Code.
- 'Health care worker' to describe vocational and untrained workers subject to the Code.

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?

AASW response

- No, the AASW is strongly of the view that the term 'health care worker' is too broad and vague and fails to differentiate between the professional, vocational and untrained workers captured by the legislation.
- The term 'health care worker' minimises the professional qualifications of those providing services and the nature of the services delivered, particularly by the registered and self-regulating health professions.
- As per above, the AASW recommends use of the following terms:
  - 'Health practitioner' or 'Health professional' to describe workers with professional qualifications, accreditation and credentialing in their field of expertise. This term could refer to both registered and self-regulating health professions. The AASW would support the use of either 'Health practitioner' or 'Health professional' to describe this group of persons subject to the Code.
  - 'Health care worker' to describe vocational and untrained workers subject to the Code.
- Further, it is critical that definitions of 'health service' under relevant state or territory legislation reflect the definition of health in the World Health Organisation's Constitution (1946), which states, "Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". This definition makes it clear that there are social dimensions to health and well-being. The knowledge base of social work equips social workers to assess and provide services which attend to people's physical, mental and social wellbeing, and therefore social workers are health practitioners.

- Although it is specified in the Consultation paper that the list of occupational groups (page 9) is not exhaustive, the AASW strongly recommends that the occupation 'social workers' is included. It should be made clear in the code, and in the Bill, that social workers are covered by the legislation.

Application of this Code

Is the proposed scope of application of the National Code acceptable?

AASW response

- The scope of the Code is not adequate to protect vulnerable Australians from incompetent or unethical social workers working in primary health settings in the community. Many social workers in these settings frequently work in isolated and crisis situations delivering care to Australians with complex physical, psychological or psychiatric impairments which are exacerbated by adverse social circumstances.
- Social work is frequently delivered in the non-government or private sectors where small community based organisations are insufficiently resourced to undertake adequate qualification, competence and probity checking and monitoring, leaving vulnerable clients at risk of harm from incompetent or unethical practitioners.
- The proposed Code as it currently stands fails to provide consistent coverage of social workers in these sectors and settings across states and territories and will consequently prove difficult to implement nationally.

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?

AASW response

- Although full registration of social work is the preferred regulatory option, the AASW prefers that the National Code should apply to all health practitioners, whether registered or not.
- We acknowledge the potential benefits of the Health Complaints Entities (HCE) providing one entry point for complaints about registered and unregistered health practitioners in each State and Territory.
- Having one entry point would also remove the onus on clients/complainants needing to know whether a practitioner was registered or not and having to work out the most appropriate body to receive their complaint.
- However, we would recommend that such a process be made as seamless as possible for clients/complainants, with the HCE facilitating the complaint process as much as possible, so as to avoid complainants being referred from complaint body to complaint body.
- We would also be concerned that such processes might result in delayed timeframes for parties if complaints are being discussed and referred between complaint bodies. This could mean potential natural justice and procedural fairness implications for all parties.

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?

AASW response

- In line with the UK Law Commission's recent report regarding regulation of health and social care practitioners, the AASW supports the need for specialist regulators of each different profession to set minimum standards applicable to the context of the work carried out by each profession. There are disadvantages to having an overly generic approach to establishing minimum standards.
- It is essential that minimum standards are enforceable, and clearly specify safe and ethical practice.

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?

AASW response

- The inclusion of professional, vocational and untrained workers in the same legislation creates significant problems in applying the same obligations to all workers. Definitions of competent and ethical behaviour will have to take into account a wide range of professional/occupational/work based skills, knowledge, ethics and competencies creating significant complexity in implementation.
- The AASW proposes an additional clause which provides more clarity about ethics and standards applicable in different fields of practice:

  "A health care practitioner must be aware of, and maintain practice competence which is in accordance with codes of ethics and practice standards, including those relating to informed consent, in his or her field of practice."

- It is strongly recommended that Health Complaints Entities work closely with the standard setting bodies in each field of practice, where applicable, for guidance in relation to minimum qualifications, competence, standards and scope of practice in that field.

2. Health care workers to obtain informed consent

AASW response

- We note that in the draft Code of Conduct itself, section two refers only to 'consent', not 'informed consent'. We strongly recommend that this section refers to '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?

AASW response

- Yes, the National Code should include a minimum enforceable standard in relation to informed consent.
- If the additional clause as proposed in our response to section one above is included, this would provide a measure of guidance regarding ethical and competent informed consent practices in different practice contexts.
- If an additional clause such as that proposed above is not included, then we would strongly recommend the expansion of section two to include further clauses regarding informed consent for minors and consent to discuss information with third parties/other professionals.

- A definition of 'informed consent' may also be important to include in a glossary. For example, the AASW Code of Ethics uses the following definition of informed consent:

  > *"In general, for consent to be considered valid six standards must be met: (1) coercion and undue influence must not have played a role in the client's decision; (2) clients must be mentally capable of providing consent; (3) clients must consent to specific procedures or actions; (4) the consent forms and procedures must be valid; (5) clients must have the right to refuse or withdraw consent; and (6) clients' decisions must be based on adequate information".* (Reamer, F 2006, Social work values and ethics, 3rd edn, Colombia University Press, New York)

- Further, the range of workers covered by the Code creates significant problems around the implementation of appropriate levels of informed consent across professions, occupations and settings. For example, some professions will require rigorous protocols around informed written consent whereas some untrained workers may have much lower expectations around implied consent for action.

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

AASW response

- No, this clause is not currently expressed in a way that best captures the conduct of concern.
- As above, this section requires more detail through the inclusion of additional clauses. The depth of this area of conduct cannot be adequately captured in one sentence.

3. Appropriate conduct in relation to treatment advice

Should the National Code include a minimum enforceable standard that addresses the provision of treatment advice?

AASW response

- Again, the range of professions and occupations covered by the Code will create significant complexity in effective implementation.

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?

AASW response

- Yes, the AASW supports a mandatory reporting obligation for all health professionals and health care workers to report other health professionals and health care workers who in the course of providing treatment or care place clients at serious risk of harm.
- This removes the onus from the client to be the one to have to make the complaint, in instances where the client does not feel safe or able to do so.
- Further, a mandatory reporting obligation would be consistent with the ethical responsibilities of many existing health professionals. For example, the AASW Code of Ethics requires that social workers take action where serious ethical misconduct and/or harm to a client is alleged to have occurred.

- Having said this, we are also concerned that this will be a difficult standard to implement, given the range the professions and occupations covered by the Code.
- For example, if the Code is not to apply to social workers working in community settings, it will be very difficult to identify which social workers have mandatory reporting obligations and which do not, given the complexity of health care provision across primary health care settings.

Should the wording more closely reflect the mandatory reporting provisions imposed on registered health practitioners under the National Law?

AASW response

- Yes, we support this standard closely reflecting the mandatory reporting provisions imposed on registered health practitioners under the National Law, as the greater the mandatory reporting obligations the greater protection of the community.
- However, we are also strongly of the view that the Code should include provisions to protect workers from vexatious, frivolous or defamatory complaints.

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?

AASW response

- Yes, we support a minimum enforceable standard that addresses appropriate conduct in dealing with emergencies and adverse events.

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?

AASW response

- Yes, we support the inclusion of a minimum enforceable standard that addresses misinformation and misrepresentation in the provision of health products and services.
- We strongly recommended that Health Complaints Entities work closely with the standard setting bodies in each field of practice, where applicable, for guidance in relation to what constitutes minimum qualifications, training and professional affiliations in that field.

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?

AASW response

- Yes, we support a clear minimum enforceable standard that addresses the provision of treatment or care to clients while under the influence of alcohol or drugs.

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?

AASW response

- The AASW supports minimum enforceable standards provided any standards in this area do not impinge on worker's privacy and are in line with human rights and anti-discrimination principles.

12. Health care workers not to financially exploit clients

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

AASW response

- Yes, the AASW strongly supports the inclusion of a minimum enforceable standard that addresses financial exploitation of clients.
- This has been an area where unethical social workers have been prosecuted for committing breaches in countries where social work is registered.
- This is another example of where inclusion of all social workers in this legislation would offer far greater protections to vulnerable Australians. Breaches by social workers in this area have been significant, including such behaviour as defrauding clients of assets and pension entitlements and lawful beneficiaries of their rightful inheritance. It is precisely the community based nature of much of social work intervention that heightens the risk of harm of this nature.

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?

AASW response

- Yes, the AASW strongly supports the inclusion of a minimum enforceable standard that prohibits sexual misconduct by health professionals and health care workers.

If so, is this clause expressed in a way that will best capture the conduct of concern?

AASW response

- No, we have serious concerns about clause 13.3, which currently states:

  "Before engaging in a sexual or other close personal, physical or emotional relationship with a former client, a health care worker should ensure that a reasonable period of time has elapsed since the conclusion of the therapeutic relationship."

- While we acknowledge that in some instances, it might be appropriate to wait a 'reasonable' period of time before engaging in a sexual/other close personal, physical or emotional relationship with a former client, we would also strongly argue that in some instances it is never appropriate to engage in a relationship with a former client.
- We are also concerned about how a 'reasonable period of time' will be interpreted. We note the discussion point in the Consultation paper (page 27) which argues it is not possible to specify a particular period of time that must elapse between the end of a treatment relationship and the commencement of a personal relationship.
- We acknowledge the complexities in attempting to define a 'reasonable period of time', however as it currently reads, clause 13.3 suggests that in all cases, all a health care worker would need to consider is *time*. It does not allow for other critical factors to be considered, such as issues of power, dependency, exploitation, and the possibility as stated above, that in some instances it may never be appropriate to enter into a relationship with a former client.

- As per the AASW Code of Ethics, we would strongly recommend that clause 13.3 be strengthened to actively discourage the commencement of any sexual or personal relationship with a former client, and include a further statement, such as:

  In circumstances where any relationship with a former client is considered, it is essential that the worker undertakes professional consultation, preferably with their professional association or the equivalent standard setting body for their field of practice, in order to explore issues relating to power, and the potential of exploitation or harm to the former client.

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?

AASW response

- The AASW's preferred approach would be to expand the definition of 'prescribed offences' to include offences under respective state and territory criminal codes, as well as offences under National Law. This would enable a prohibition order to be breached even though the Code has not been breached.
- For example, 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 the 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.
- By expanding the definition of prescribed offences, this would enable a national prohibition order to be issued in such a case as described above.

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?

AASW response

- Yes, the AASW supports a minimum enforceable standard in relation to breaches of client privacy by health professionals and health care workers.

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?

AASW response

- Yes, the AASW supports a minimum enforceable standard in relation to clinical record keeping by health care workers and client access to and transfer of their health records; however we envisage that this could be difficult to implement across the range of professions and occupations covered by the Code.

If so, is this clause expressed in a way that will best capture the conduct of concern?

AASW response

- We recommend that this section also provides some guidance about the length of time records should be kept in the absence of legislation.
- For example, the AASW Practice Standards specifies that social workers should store adult records for seven years following last contact (in the absence of relevant legislation) and stores child records until the day the child would turn 25 years of age (in the absence of relevant legislation).
- Further, we recommend that clauses 15.2 and 15.3 be expanded (or a new clause added) to discuss instances where there might be compelling professional, ethical or legal reasons for refusing a client access to their record.
- Further, we are concerned that clause 15.3 does not make it clear that the worker should also keep a copy of the client record for the relevant period of time, even if the record is transferred to another health service.

Are subclauses 2 and 3 necessary, or does subclause 1 sufficiently capture the conduct of concern?

AASW response

- Subclauses 2 and 3 and absolutely necessary, and should be further expanded, as above.

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?

AASW response

- Yes, the AASW supports the inclusion of a minimum enforceable standard in relation to the professional indemnity insurance obligations of health professionals and health care workers.

If so, is this clause expressed in a way that will best capture the conduct of concern?

AASW response

- We would recommend consideration be given as to how this standard would apply to/impact on volunteers.

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?

AASW response

- Yes, the AASW supports a minimum enforceable standard in relation to displaying the National Code, qualifications and avenues for complaint.

Should there be a requirement, as in the SA Code, for health care workers to display their qualifications?

AASW response

- Yes, the AASW would support this applying to all health professionals and health care workers.

Are the exemptions to the requirement to display the National Code and qualifications appropriate?

AASW response

- Do these exemptions mean that any worker in a public health system, private health facility, ambulance service or approved aged care service is exempt from adhering to the Code, or just exempt from displaying the Code?
- There should be national consistency in the requirement for every worker subject to the Code to display the Code.

Items not included in the draft National Code of Conduct

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

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?

AASW response

- Yes, the AASW would support the inclusion of an additional clause such as the one proposed.
- It is recommended that Health Complaints Entities consult with the relevant standard setting bodies in each field regarding complexities in determining the scope of practice and what is 'evidence based' practice in a field.

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?

AASW response

- The AASW strongly recommends that the term 'Social workers who work in a health setting' be replaced with the term 'Social workers'.

Is the term 'health care worker' acceptable, or is another term preferable?

AASW response

- No, the AASW is strongly of the view that the term 'health care worker' is too broad and vague and fails to differentiate between the professional, vocational and untrained workers captured by the legislation.
- The term 'health care worker' minimises the professional qualifications of those providing services and the nature of the services delivered, particularly by the registered and self-regulating health professions.
- As per our response to section 2.2 above, the AASW recommends use of the following terms:
  - 'Health practitioner' or 'Health professional' to describe workers with professional qualifications, accreditation and credentialing in their field of expertise. This term could refer to both registered and self-regulating health professions. The AASW would support the use of either 'Health practitioner' or 'Health professional' to describe this group of persons subject to the Code.
  - 'Health care worker' to describe vocational and untrained workers subject to the Code.

- Although it is specified in the Consultation paper that the list of occupational groups (page 9) is not exhaustive, the AASW strongly recommends that the occupation 'social workers' is included. It should be made clear in the code, and in the Bill, that social workers are covered by the legislation.

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'?

AASW response

- National consistency in the scope of application of the National Code, and in particular what constitutes a 'health service', is critical.
- If national consistency is not achieved in the definitions of 'health service' and 'health care workers' (or 'health practitioners' or 'health professionals', as per the terms recommended by the AASW) this will significantly weaken the efficacy and applicability of the Code. For example, mutual recognition capacity will be weakened; as will the effectiveness of public education, data collection and reporting.
- Lack of consistency around who is a 'health care worker' and what is a 'health service' between states and territories is the most significant flaw in the applicability of the National Code and will be exceedingly difficult for Health Complaint Entities to implement with national coherence.
- Similarly it will be exceptionally difficult for national professional bodies to provide accurate information and advice to their stakeholders and members of the public across the different states and territories.

If consistency is considered necessary, how should 'health service' and 'health care worker' be defined?

AASW response

- It is critical that definitions of 'health service' under relevant state or territory legislation reflect the definition of health in the World Health Organisation's Constitution (1946), which states, "Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". This definition makes it clear that there are social dimensions to health and well-being. The knowledge base of social work equips social workers to assess and provide services which attend to people's physical, mental and social wellbeing, and therefore social workers are health practitioners.
- Until such time as registration of social work is achieved in this country, social workers must be included in the National Code because social work practices have an impact on aspects of physical, mental and social wellbeing. Some examples:
  - a risk assessment undertaken by a social worker in a child protection setting can impact on a child either being at further physical and psychological risk or not;
  - a risk assessment and actions taken by a social worker in a domestic violence agency has a major impact on the immediate and long term physical and mental safety and health of those involved
  - a case work role in a disability setting and the referrals made (or not made) for physical care support can impact significantly on a client's physical health.

- From a social work perspective, it is exceptionally important to include the social determinants of health in the definitions of 'health professional', 'health care worker' and 'health service' as per the Queensland, Australian Capital Territory, Tasmania, and Northern Territory legislation.
- As indicated above, many social workers work in primary health care in community settings, with clients suffering from physical, psychological or psychiatric impairments that are compounded by significant social disadvantage and/or vulnerability, for example, children at risk and the frail age, homelessness, poverty, substance abuse, domestic violence, disability, rural and remote locations, Aboriginal and Torres Strait Islander clients and people from culturally and linguistically diverse backgrounds.
- The provision of services in community settings to address the context of social disadvantage can result in significant improvements in physical and emotional health for these clients. However, if the Code fails to include these workers, the lack of protections afforded by the Code could have significant adverse effects on the health outcomes for clients in these settings.
- The issue of coverage of social workers working in child protection should be of major concern to state and territory governments for the following reasons:
  - Social workers in state and territory child protection departments and their partner agencies in the community play a pivotal role in protecting the physical health and wellbeing of children at serious risk of physical, emotional or sexual abuse. These workers work closely with tertiary, secondary and primary health care providers in obstetrics, paediatric and children's health to identify and manage families at risk, for example, the prevention of foetal alcohol syndrome, monitoring of at risk children etc. To exclude community workers in this important area represents a significant weakening of regulatory protections for these vulnerable children and families.
  - The work of the *Royal Commission into Institutional Child Sexual Abuse* highlights the risks of inadequate regulatory protection for children in the care of trusted authorities such as occurred across all major religious organisations responsible for children in care. Following these revelations, governments would be extremely negligent if they failed to extend the strongest possible regulatory protections to all workers involved with the care of children at risk.
- In countries where social work is registered, incompetent and unethical workers have been prosecuted for serious ethical misconduct, such as failing to provide court mandated risk assessment visits for periods in excess of eight months and engaging in sexual relationships with adolescents on the worker's care caseload.

Is there a need to include a reference to 'volunteer' in the definition of provider/health service provider?

AASW response

- Yes, the AASW supports the inclusion of 'volunteers' in the definition of providers.
- However, we also suggest that the obligations of volunteers would be significantly different to paid employees and a significant proportion of responsibility should rest with employing organisations to ensure volunteer compliance with the legislation.

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?

AASW response

- Yes, the AASW would support the 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 consistency across jurisdictions considered important in the approach adopted?

AASW response

- National consistency is critical.

Section 3.4 Who can make a complaint?

How important is national consistency in who may make a complaint?

AASW response

- National consistency is critical.

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?

AASW response

- National consistency is critical.

Section 3.6 Grounds for making a complaint

How important is national consistency in the grounds for making a complaint?

AASW response

- National consistency is critical.

Section 3.7 Timeframe for lodging a complaint

How important is national consistency in the timeframe within which a complaint must be lodged?

AASW response

- National consistency is critical.

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 an in what circumstances?

AASW response

- Yes, we are of the view that a timeframe should be specified. Our understanding is that standard industry practice in complaints management is wherever possible for complaints to be lodged within two years of the alleged misconduct.
- There should be provisions to consider extenuating circumstances on a case by case basis for extending the timeframe. For example, extenuating circumstances may include the client being unable to make a complaint within the time period due to illness or impairment arising from the alleged misconduct itself.

Section 3.8 Interim prohibition orders

How important is national consistency with respect to the issuing of interim prohibition orders?

AASW response

- National consistency is critical.
- Inconsistency will significantly weaken the efficacy and applicability of the Code. For example, mutual recognition capacity will be weakened, as will protection of the public.

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?

AASW response

- National consistency is critical.
- We are concerned that the legislation already provides for inconsistency, and this needs to be addressed.

If consistency is considered important, which body should have the power to issue ongoing prohibition orders, the Commissioner or a tribunal?

AASW response

- We are of the view that it will be important that regardless of which body has the power to issue ongoing prohibition orders, that this power does not rest with just one single person.

Section 3.10 Grounds for issuing prohibition orders

How important is national consistency in the grounds for issuing a prohibition order?

AASW response

- National consistency is critical.

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?

AASW response

- National consistency is critical.

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?

AASW response

- National consistency is critical.

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?

AASW response

- National consistency is critical.

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?

AASW response

- National consistency is critical.

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?

AASW response

- National consistency is critical.

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?

AASW response

- National consistency and information sharing between HCEs and other regulators is essential.
- Further considerable work is required in relation to the interface between the National Code and the existing processes of self-regulating professions in relation to dealing with allegations of serious misconduct. For example:
  - How will Health Complaints Entities (HCEs) convey decisions about prohibition orders and public statements to relevant professional bodies (such as the AASW), so as to ensure that professional bodies take any appropriate action.
  - If a Health Complaints Entity finds a social worker of serious sexual misconduct against a vulnerable client, and the social worker is also a member of the AASW (and may also hold some kind of additional AASW accreditation, such as mental health accreditation and are using a Medicare Provider Number on that basis), how will the HCE ensure that the AASW is made aware of such findings?
- Other issues which will need to be considered include:
  - Will the HCE deal with all complaints about unregistered health practitioners or where the practitioner is a member of a self-regulating professional association; will the complaint be referred to that regulator?
  - What if a complaint is made to both a HCE and a professional association?
  - Under what circumstances should either a HCE or a professional association refer a complaint to the other body to respond?
  - How will each body report its findings and outcomes with each other?

Other comments

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

AASW response

- It was stated at the Victorian consultation forum that while Queensland has enacted legislation in relation to an enforceable statutory code, they are awaiting the outcome of the national code of conduct process before implementation commences.
- Similarly, the AASW strongly recommends that the implementation of the National Code of Conduct for health care workers await the outcome of the National Registration and Accreditation Scheme (NRAS) Review, as both processes have potential significant implications for the other.
- The interface between the National Code of Conduct for health care workers and the existing processes for dealing with serious misconduct used by the self-regulating professions is a critical administrative issue to be addressed.

Conclusion

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 the National Registration and Accreditation Scheme (NRAS) following the pending review of the scheme.

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

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