

A National Code of Conduct for health care workers



Communique

April 2015 A National Code of Conduct for health care workers

Health Ministers met in Sydney and considered the final report *A National Code of Conduct for health care workers* and the results of a national consultation on standards of conduct for all health care workers who are not registered under the National Registration and Accreditation Scheme for health practitioners.

Health Ministers noted that the report's findings that while the vast majority of unregistered health care workers practise in a safe, competent and ethical manner, "there are however, a small proportion of unregistered health care workers who present a serious risk to the public because they are incompetent, impaired or they engage in exploitative, predatory and illegal conduct such that if they were a registered health practitioner, would result in cancellation of their registration and removal of their right to practise". The report notes that code-regulation regimes are already operating in three states: NSW, South Australia and Queensland.

In releasing this report, Ministers agreed to the terms of the first National Code of Conduct for health care workers, at Attachment 1 to this Communique. The National Code will set standards of conduct and practice for all unregistered health care workers. Ministers agreed to use their best endeavours to give effect to the National Code and code-regulation regime, noting that those jurisdictions with existing schemes will consider adjustments to their codes and arrangements to achieve national consistency.

Ministers also agreed to a policy framework to underpin nationally consistent implementation of the National Code and code-regulation regime.

A common web portal will be developed and a nationally consistent suite of explanatory materials to support the National Code. This work will be led by the Australian Health Complaints Commissioners. There will also be a common framework for the collection and reporting of data and for annual performance reporting to the COAG Health Council. There will be an independent review of the national code-regulation regime after five years, or earlier at the request of Health Ministers.

Ministers have asked the Australian Health Ministers' Advisory Council (AHMAC) to oversee the joint work required to give effect to these arrangements.

A copy of the *Final Report – A National Code of Conduct for health care workers* is available at www.coaghealthcouncil.gov.au

Attachment 1

A National Code of Conduct for health care workers

National Code of Conduct for health care workers

Definitions

In this code of conduct: **health care worker** means a natural person who provides a health service (whether or not the person is registered under the Health Practitioner Regulation National Law).

health service has the same meaning as in [insert reference to agreed definition or relevant state or territory Act]

Application of code of conduct

This code of **conduct** applies to the provision of health services by:

- (a) health care workers who are not required to be registered under the Health Practitioner Regulation National Law (including de-registered health practitioners), and
- (b) health care workers who are registered health practitioners under the Health Practitioner Regulation National Law and who provide health services that are unrelated to their registration.

1. Health care workers to provide services in a safe and ethical manner

- 1) A health care worker must provide health services in a safe and ethical manner.
- 2) Without limiting subclause 1, health care workers must comply with the following:
 - a. A health care worker must maintain the necessary competence in his or her field of practice
 - b. A health care worker must not provide health care of a type that is outside his or her experience or training, or provide services that he or she is not qualified to provide
 - c. A health care worker must only prescribe or recommend treatments or appliances that serve the needs of clients
 - d. A health care worker must recognise the limitations of the treatment he or she can provide and refer clients to other competent health service providers in appropriate circumstances
 - e. A health care worker must recommend to clients that additional opinions and services be sought, where appropriate
 - f. A health care worker must assist a client to find other appropriate health care services, if required and practicable
 - g. A health care worker must encourage clients to inform their treating medical practitioner (if any) of the treatments or care being provided
 - h. A health care worker must have a sound understanding of any possible adverse interactions between the therapies and treatments being provided or prescribed and any other medications or treatments, whether prescribed or not, that he or she is, or should be, aware that a client is taking or receiving, and advise the client of these interactions.
 - i. A health care worker must provide health services in a manner that is culturally sensitive to the needs of his or her clients.

2. Health care workers to obtain consent

Prior to commencing a treatment or service, a health care worker must ensure that consent appropriate to that treatment or service has been obtained and complies with the laws of the jurisdiction.

3. Appropriate conduct in relation to treatment advice

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- 1) A health care worker must accept the right of his or her clients to make informed choices in relation to their health care.
- 2) A health care worker must not attempt to dissuade a client from seeking or continuing medical treatment.
- 3) A health care worker must communicate and co-operate with colleagues and other health service providers and agencies in the best interests of their clients.

4. Health care workers to report concerns about the conduct of other health care workers

A health care worker who, in the course of providing treatment or care, forms the reasonable belief that another health care worker has placed or is placing clients at serious risk of harm must refer the matter to [Insert name of relevant state or territory health complaints entity].

5. Health care workers to take appropriate action in response to adverse events

- 1) A health care worker must take appropriate and timely measures to minimise harm to clients when an adverse event occurs in the course of providing treatment or care.
- 2) Without limiting subclause (1), a health care worker must:
 - a. ensure that appropriate first aid is available to deal with any adverse event
 - b. obtain appropriate emergency assistance in the event of any serious adverse event
 - c. promptly disclose the adverse event to the client and take appropriate remedial steps to reduce the risk of recurrence
 - d. report the adverse event to the relevant authority, where appropriate.

6. Health care workers to adopt standard precautions for infection control

- 1) A health care worker must adopt standard precautions for the control of infection in the course of providing treatment or care.
- 2) Without limiting subclause (1), a health care worker who carries out skin penetration or other invasive procedure must comply with the [insert reference to the relevant state or territory law] under which such procedures are regulated.

7. Health care workers diagnosed with infectious medical conditions

- 1) A health care worker who has been diagnosed with a medical condition that can be passed on to clients must ensure that he or she practises in a manner that does not put clients at risk.
- 2) Without limiting subclause (1), a health care worker who has been diagnosed with a medical condition that can be passed on to clients must take and follow advice from a suitably qualified registered health practitioner on the necessary steps to be taken to modify his or her practice to avoid the possibility of transmitting that condition to clients.

8. Health care workers not to make claims to cure certain serious illnesses

- 1) A health care worker must not claim or represent that he or she is qualified, able or willing to cure cancer or other terminal illnesses.
- 2) A health care worker who claims to be able to treat or alleviate the symptoms of cancer or other terminal illnesses must be able to substantiate such claims.

9. Health care workers not to misinform their clients

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- 1) A health care worker must not engage in any form of misinformation or misrepresentation in relation to the products or services he or she provides or the qualifications, training or professional affiliations he or she holds.
- 2) Without limiting subclause (1):
 - a. a health care worker must not use his or her possession of a particular qualification to mislead or deceive clients or the public as to his or her competence in a field of practice or ability to provide treatment
 - b. a health care worker must provide truthful information as to his or her qualifications, training or professional affiliations
 - c. a health care worker must not make claims either directly to clients or in advertising or promotional materials about the efficacy of treatment or services he or she provides if those claims cannot be substantiated.

10. Health care workers not to practise under the influence of alcohol or unlawful substances

- 1) A health care worker must not provide treatment or care to clients while under the influence of alcohol or unlawful substances.
- 2) A health care worker who is taking prescribed medication must obtain advice from the prescribing health practitioner or dispensing pharmacist on the impact of the medication on his or her ability to practise and must refrain from treating or caring for clients in circumstances where his or her capacity is or may be impaired.

11. Health care workers with certain mental or physical impairment

- 1) A health care worker must not provide treatment or care to clients while suffering from a physical or mental impairment, disability, condition or disorder (including an addiction to alcohol or a drug, whether or not prescribed) that places or is likely to place clients at risk of harm.
- 2) Without limiting subclause (1), if a health care worker has a mental or physical impairment that could place clients at risk, the health care worker must seek advice from a suitably qualified health practitioner to determine whether, and in what ways, he or she should modify his or her practice, including stopping practice if necessary.

12. Health care workers not to financially exploit clients

- 1) A health care worker must not financially exploit their clients.
- 2) Without limiting subclause (1):
 - a. a health care worker must only provide services or treatments to clients that are designed to maintain or improve clients' health or wellbeing
 - b. a health care worker must not accept or offer financial inducements or gifts as a part of client referral arrangements with other health care workers
 - c. a health care worker must not ask clients to give, lend or bequeath money or gifts that will benefit the health care worker directly or indirectly.

13. Health care workers not to engage in sexual misconduct

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- 1) A health care worker must not engage in behaviour of a sexual or close personal nature with a client.
- 2) A health care worker must not engage in a sexual or other inappropriate close personal, physical or emotional relationship with a client.
- 3) A health care worker should ensure that a reasonable period of time has elapsed since the conclusion of the therapeutic relationship before engaging in a sexual relationship with a client.

14. Health care workers to comply with relevant privacy laws

A health care worker must comply with the relevant privacy laws that apply to clients' health information, including the *Privacy Act 1988* (Cth) and the [insert name of relevant state or territory legislation]

15. Health care workers to keep appropriate records

- 1) A health care worker must maintain accurate, legible and up-to-date clinical records for each client consultation and ensure that these are held securely and not subject to unauthorised access.
- 2) A health care worker must take necessary steps to facilitate clients' access to information contained in their health records if requested.
- 3) A health care worker must facilitate the transfer of a client's health record in a timely manner when requested to do so by the client or their legal representative.

16. Health care workers to be covered by appropriate insurance

A health care worker should ensure that appropriate indemnity insurance arrangements are in place in relation to his or her practice.

17. Health care workers to display code and other information

- 1) A health care worker must display or make available a copy of each of the following documents at all premises where the health care worker carries on his or her practice:
 - a. a copy of this Code of Conduct
 - b. a document that gives information about the way in which clients may make a complaint to [insert name of state or territory health complaints entity].
- 2) Copies of these documents must be displayed or made available in a manner that makes them easily visible or accessible to clients.
- 3) This clause does not apply to any of the following premises:
 - a. the premises of any entity within the public health system (as defined in the [insert name of relevant state or territory legislation])
 - b. private health facilities (as defined in [insert name of relevant state or territory legislation])
 - c. premises of the [insert name of ambulance service] as defined in ([insert name of relevant state or territory legislation])
 - d. premises of approved aged care service providers (within the meaning of the *Aged Care Act 1997* (Cth)).

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It will be up to each state and territory to examine how the National Code of Conduct for health care workers is implemented and progressed. For further information, please email your jurisdiction:

Victoria: health.workforceregulation@dhhs.vic.gov.au

South Australia: HealthPolicyLegislation@sa.gov.au

Western Australia: mail@hadsco.wa.gov.au

Northern Territory: ocmo.doh@nt.gov.au

Queensland: national_workforce@health.qld.gov.au

New South Wales: hccc@hccc.nsw.gov.au

Australian Capital Territory: healthworkforceregulation@act.gov.au

Tasmania: grasp@dhhs.tas.gov.au

Frequently Asked Questions

What is the purpose of the National Code of Conduct?

The purpose of the National Code of Conduct, also referred to as the National Code or coderegulation regime, is to protect the public by setting minimum standards of conduct and practice for all unregistered health care workers who provide a health service. It will set national standards against which disciplinary action can be taken and if necessary a prohibition order issued, in circumstances where a health care worker's continued practice presents a serious risk to public health and safety.

The vast majority of health care workers practice in a safe, competent and ethical manner. However there is a small proportion who present a serious risk to the public because they are incompetent or impaired, or engage in exploitative, predatory or illegal conduct such that if they were a registered health practitioner, their registration would be cancelled and their right to practice withdrawn.

What are the key features of a 'code-regulation' regime?

A code-regulation regime provides:

- a 'negative licensing' regulatory regime that does not restrict entry to practice, but allows effective action to be taken against an unregistered health care worker who fails to comply with proper standards of conduct or practice
- a set of objective and clear standards (a code of conduct) against which to assess a health care worker's conduct and practice in the event of a complaint or serious adverse event
- an independent investigator to receive and investigate complaints about breach of the National Code

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- power for the independent investigator (or a tribunal) to issue prohibition orders and give public warnings about health care workers who have failed to abide by the required standards of conduct and practice, and
- offence provisions for any person who breaches a prohibition order to be prosecuted through the appropriate court.

How was the National Code of Conduct developed?

In 2011, the then Victorian Department of Health, on behalf of the Australian Health Minister's Advisory Council (AHMAC), undertook a national public consultation on options for the regulation of unregistered health practitioners. In June 2013, in response to the report of the consultation, Health Ministers agreed in principle to strengthen state and territory health complaints mechanisms via:

- a single national Code of Conduct for unregistered health practitioners to be made by regulation in each state and territory, and statutory powers to enforce the National Code
- investigating breaches and issuing prohibition orders
- a nationally accessible web-based register of prohibition orders
- mutual recognition of prohibition orders across all states and territories.

In March 2014, the then Victorian Department of Health, on behalf of AHMAC, undertook a second national public consultation process on the terms of a proposed National Code and policy parameters to underpin the nationally consistent implementation of the National Code. A draft Code of Conduct was prepared for discussion, based on the codes already applied in New South Wales and South Australia.

What does the National Code of Conduct include?

The National Code includes the following main clauses (further detail is set out in subclauses):

Clause 1: Health care workers to provide services in a safe and ethical manner

Clause 2: Health care workers to obtain consent

Clause 3: Appropriate conduct in relation to treatment advice

Clause 4: Health care workers to report concerns about treatment or care provided by other health care workers

Clause 5: Health care workers to take appropriate action in response to adverse events

Clause 6: Health care workers to adopt standard precautions for infection control

Clause 7: Health care workers diagnosed with infectious medical conditions

Clause 8: Health care workers not to make claims to cure certain serious illnesses

Clause 9: Health care workers not to misinform their clients

Clause 10: Health care workers not to practice under the influence of alcohol or drugs

Clause 11: Health care workers with certain mental or physical impairment

Clause 12: Health care workers not to financially exploit clients

Clause 13: Health care workers not to engage in sexual misconduct

Clause 14: Health care workers to comply with relevant privacy laws

Clause 15: Health care workers to keep appropriate records

Clause 16: Health care workers to be covered by appropriate insurance

Clause 17: Health care workers to display code and other information

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Who does the National Code of Conduct apply to?

The National Code, once enacted in a state or territory, applies to any person who provides a health service and is not subject to regulation under the National Registration and Accreditation Scheme (NRAS). In some circumstances it also applies to health practitioners registered under NRAS, to the extent that they provide services that are unrelated to or outside the typical scope of practice of their registration.

While each state and territory's statute will identify who is subject to the National Code, health occupations likely to be captured will include (but are not limited to):

allied health assistants	medical scientists
art therapists	music, dance and drama therapists
aromatherapists	myotherapists
assistants in nursing	naturopaths
audiologists and audiometrists	nutritionists
ayurvedic medicine practitioners	optical dispensers
bioresonance practitioners	orthoptists
cardiac scientists	orthotists and prosthetists
clinical perfusionists	paramedics
complementary and alternative medicine (CAM) practitioners	pharmacy assistants
counsellors and psychotherapists	phlebotomists
dental technicians	reflexologists
dental assistants	reiki practitioners
dietitians	respiratory scientists
herbalists	shiatsu therapists
homoeopaths	sleep technologists
hypnotherapists	social workers
lactation consultants	sonographers
massage therapists	speech pathologists

Which states and territories already have a code-regulation regime for unregistered health care workers?

As at April 2015, three states have already established Codes of Conduct for unregistered health practitioners or code-regulation regimes. They are:

- NSW – enacted 2007, commenced 2008
- South Australia – enacted 2012, commenced 14 March 2013
- Queensland – enacted 2013, commenced 1 July 2014.

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How is the National Code of Conduct to be implemented?

Each state and territory is responsible for progressing legislative changes to give effect to the National Code or code-regulation regime. A number of jurisdictions already have statutory Codes of Conduct and code-regulation regimes. These jurisdictions will examine the National Code, how it should apply and its relationship to jurisdiction-based codes.

A lead jurisdiction (still to be determined) will undertake national work that will include making arrangements for the administration of a national register of prohibition orders; developing and maintaining explanatory materials; and establishing a common framework for data collection and performance reporting.

How do I make a complaint about a health care worker who I believe has breached the National Code of Conduct?

You may contact the relevant health complaints entity in the state or territory where you live. A list is provided below. However, please be aware that while Health Ministers have agreed to take necessary action to implement the National Code of Conduct, a coderegulation regime is not yet in force in every state and territory. Therefore, while your complaint about an unregistered health care worker can be lodged with your state or territory health complaints entity, only some complaints will be able to be accepted and investigated. In other situations, your local Commissioner may not currently have the legislative power to address your complaint, including issuing prohibition orders and/or making a public statement.

Who is responsible for investigating complaints about breaches of the National Code of Conduct?

Each state and territory determines the body or bodies responsible for receiving and investigating complaints about a possible breach of the National Code of Conduct. In most cases, this will be the state or territory's health complaints entity.

A health complaints entity has the same meaning as in section 5 of the *Health Practitioner Regulation National Law*, that is, an entity that is established by or under an Act of a jurisdiction and whose functions include conciliating, investigating and resolving complaints made against health service providers and investigating failures in the health system.

State and territory health complaint entities and their contact details:

ACT: Health Services Commissioner / Human Rights Commission: (02) 6205 2222

NSW: Health Care Complaints Commission: (02) 9219 7444

NT: Health and Community Services Complaints Commission: (08) 8999 1969

Qld: Office of the Health Ombudsman: (07) 3120 5999

SA: Health and Community Services Complaints Commissioner: (08) 8226 8666

WA: The Health and Disability Services Complaints Office: 1800 813 583

Tas: Health Complaints Commissioner: 1800 001 170

Vic: Health Services Commissioner: 1300 582 113

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What powers does a health complaints entity have with respect to the National Code?

State and territory health complaints entities have powers to receive and investigate complaints about health care workers. In those jurisdictions that have enacted (or amended) legislation to give effect to a code-regulation regime, the health complaints entity has powers to issue a prohibition order or interim prohibition order, where the National Code has been breached or where the health care worker has been charged with or found guilty of certain specified and serious criminal offences.

What happens if a health care worker does not comply with a prohibition order?

Either the police or the health complaints entity in a state or territory initiates a prosecution before the relevant state or territory court. If the health care worker is found guilty of breaching a prohibition order, the court may impose a penalty. Penalties for breach of a prohibition order are specified in each state or territory's statute. Penalties commonly include a fine and/or imprisonment for periods of up to 12 months or two years.

Where can I find out whether a health care worker is subject to a prohibition order?

Health Ministers have agreed to proceed to establish a National Register of Prohibition Orders that is accessible via the internet. In the interim, the prohibition orders published in those states that have already implemented a code-regulation regime are published on their respective websites. You may check the following websites:

New South Wales:

<http://www.hccc.nsw.gov.au/Hearings---decisions/Public-Statements-Warnings>

South Australia:

<http://www.hcscc.sa.gov.au/orders-issued-code-conduct-unregistered-health-practitioners/>

Queensland:

<http://www.oho.qld.gov.au/news-updates/prohibition-orders/>

How can I find out more about the National Code of Conduct and the code-regulation regime?

Further information is available on this website, including the reports and communiqués released by Health Ministers.

<http://www.coaghealthcouncil.gov.au/Announcements/ArtMID/527/ArticleID/54/ANational-Code-of-Conduct-for-health-care-workers-final-report>

You may also contact your local health complaints entity.