

AOA SUBMISSION

Public consultation on a draft
Data strategy

31 January 2023





The Australian Orthopaedic Association (AOA) welcomes the opportunity to submit a submission regarding Ahpra and National Boards Release of a draft Data strategy on how they will use data collected and stored.

The Australian Orthopaedic Association is the peak professional body for orthopaedic surgeons in Australia. AOA provides high quality specialist education, training and continuing professional development. AOA is committed to ensuring the highest possible standard of orthopaedic care and is the leading authority in the provision of orthopaedic information to the community.

AOA strongly supports reforms within Ahpra that result in an improved quality of healthcare in Australia and improved patient safety.

AOA has reviewed the information provided and has consulted widely with our membership. Through a survey, members were provided with largely unaltered versions of the questions provided by Ahpra, while being encouraged to provide any further feedback. We are happy with the response rate received in the time provided, but will seek broader feedback in future; in this instance AOA was unable to find any notification regarding the consultation.

Core issues

While AOA has provided specific information structured along the lines of the prepared questions below, key points emerged in member responses throughout the feedback they provided to the draft strategy.

1. *It's difficult to provide approval on many of the core aspects of the strategy without far more detail on their implementation.*

The decision to consider broad principles before developing specific implementation strategies makes some sense. However, some elements of the key points are so dependent on details of implementation for viability that it is difficult to express support for them until much greater detail is available. Even where members provided responses that indicate some support for the proposals, it is almost invariably tempered by a strong desire for more specific information and a need for very strict, tight controls on data sharing and storage.

Specifically, the proposal to publish further details regarding practitioners on the register is difficult to assess without further detail. Would practitioners have any control over what information is associated with their profile? If disciplinary history is added, would all past limitations be published, or would there be specific criteria for publication? If so, what criteria and the length of retention?

Without such information, it is difficult to express any support for these proposals.

2. *Concerns regarding some issues with Ahpra's processing of notifications undercuts some members' ability to endorse these proposals, which would potentially amplify perceived issues.*

Among members who have had occasion to deal with Ahpra in relation to notifications, or who have had a peer or colleague go through such processes, there is already concern regarding Ahpra's ability to fairly and efficiently handle complaints. The process is seen to be slow and often in itself punitive. Members often lack confidence in Ahpra's ability to properly mitigate the impact of frivolous, vexatious or complex complaints. Thus the expansion of the scope of Ahpra operations in ways that could magnify this impact would require particularly careful handling.

3. *Consideration of publication of disciplinary history does not sit neatly within a Data strategy.*

Members repetitively referred to the proposal to publish disciplinary history in responses to many other questions. This reflects how seriously practitioners take the issue. The request that



the consultation paper should provide further information should be treated with respect and explored thoroughly.

Also, bundling the matter of disciplinary history, the use of data analytics and intentions to improve internal processing complicated responses. It divided attention between separate issues that perhaps merit individual consideration.

Survey responses

The draft Data strategy

Do you think the draft Data strategy covers the right issues?

61 per cent of respondents believe that the draft Data strategy **does not** cover the right issues.

Some themes drawn from comments provided from this group include:

- Difficulty in understanding the strategy, with a lack of specific details on how practitioners' rights will be protected and what sort of data will be collected and matched to current Ahpra data
 - Concerns that medical practitioner records are in the public domain with no control on their accuracy and context – seen as unacceptable practice
 - Concerns of privacy and data breaches and the strong view that there is no statutory reason to publish any more than is necessary to ensure that the register of practitioners is maintained.
- **39 per cent** of respondents believe that the draft data strategy **does** cover the right issues. However, key themes from this group indicated limitations or concerns, which include:
 - Gaps evident in the strategy such as the engagement with colleges/specialty groups to inform best practice
 - Increasing the volume of stored data and the systems within which it is stored increases the risk of data breaches similar to those experienced by major health funds in 2022
 - Examples of the benefits of data analytics should be well communicated before any implementation and demonstrate how it will not be flawed with bias
 - A desire to be provided a better understanding on how data collection may occur and what the specific data may be in some parts of the strategy.

Given the above, AOA would appreciate further dialogue about how Ahpra makes assessments with respect to balancing the interest of individual practitioners and the public.

Do you think that anything should be added to or removed from the draft Data strategy?

- **72 per cent** of respondents believe that **changes need to be made** to the current draft data strategy with either additional components need to be added or aspects removed.

For those that indicated changes need to be made, the following key themes emerged:

- A desire for the ability for the practitioner to view and correct information before it is released
- Some members strongly believe that past history should not be made available if all the issues have been dealt with and fully resolved according the board's assessment
- Practitioner's data rights and protections should be clearly stated.



- **Of the 28 per cent** of respondents who believe **no additional components** need to be added or aspects removed to the Data strategy, no further commentary was provided.

This fairly high result indicates that as it stands the proposed draft data strategy **does not meet** the needs of our members and AOA would welcome the opportunity to consult further with Ahpra.

Focus area 1: The public register

Proposed future direction for the public register

Do you agree with adding more information to the public register?

- **77 per cent** of respondents **do not agree** with adding more information to the public register.

Further detail provided includes:

- There is enough already in the public sphere and only strictly factual data should be available along the lines of name, registration, and any applicable current disciplinary actions/limitations. A blanket statement for additional data added is too easily abused and misinterpreted, whether deliberate or not
 - It is not clear what is actually being proposed and the value this move will bring for patients and practitioners. The framework and rationale are too vague - evidence for current structure being problematic and detail required on how vulnerable practitioners are protected
 - Consumer data is not appropriate and not the role of a regulator.
- Of the **23 per cent** of respondents who do agree with adding more information to the public register, limited information was provided at this stage other than the data should be accurate and further consultation is required.

Do you agree with adding health practitioners' disciplinary history to the public register?

Responses highlight members' deep misgivings regarding the treatment of this information. Many respondents view long-term publication and its potential impact on a practitioner's career as a very significant addition to the punitive impact of investigations.

They also seek reassurance that frivolous and vexatious complaints will not be added to listings on the register, and that no notifications will be listed prior to proper investigation. Given that approximately 90 per cent of the 5,445 notifications in 2021/2022 (Ahpra and National Boards Annual Report 2021-22) were deemed as not requiring any further action and of that 18 per cent transpired to be minor (referred to another body or retained by a health complaints entity), publishing such information would pointlessly limit some practitioners' contributions to the needs of the public while simultaneously drowning out information of legitimate concern to patients; both would run contrary to Ahpra's core objective of protecting the public.

- **68 per cent** of respondents **do not agree** with adding health practitioners' disciplinary history to the public register.

The reasons for opposing this move include:

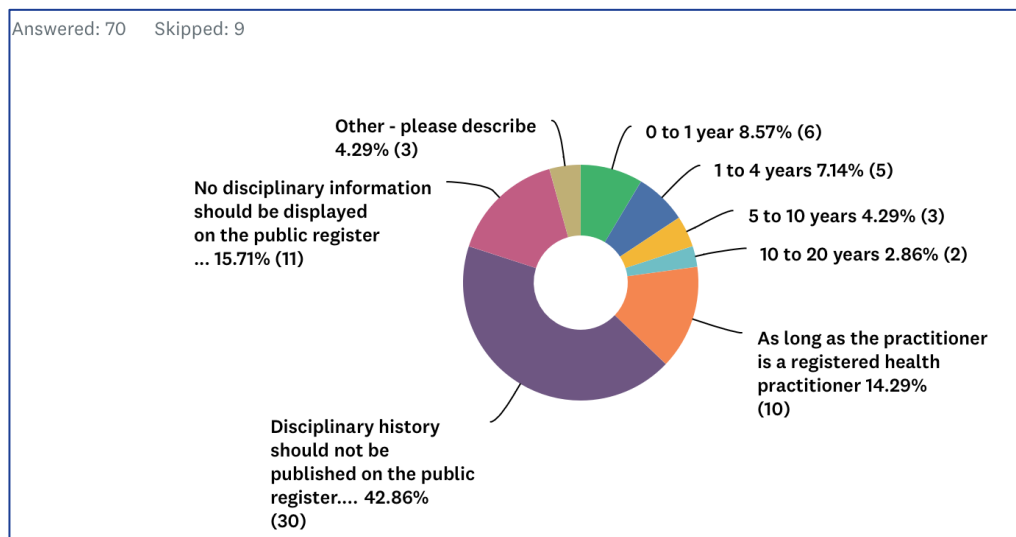
- Practitioners will keep paying by associated loss of reputation
- The statutory reason for publishing any restrictions on the register is for the protection of the public. If the Board decides that a surgeon is no longer a substantial risk to the public, there is no statutory reason to continue to publish restrictions and it is compromising that surgeon's reputation in the public eye and not appropriate when the issues have been resolved
- For some members, a lack of confidence in Ahpra's ability to properly and fairly process notifications



- Concerns regarding publishing practitioner disciplinary history when it is no longer current, where a practitioner maybe subject to accusations and be exonerated yet the information would still be published; publishing past disciplinary proceedings and examples of false claims recorded on the practitioners’ record for a prolonged period during the investigation stage
- Concerns regarding a perceived aggressive and severe approach to notification management.
- **32 per cent** of respondents **do agree** with adding health practitioners’ disciplinary history to the public register with the following additional commentary:
 - Currently there is nothing in the strategy framework that enhances support for the vulnerable practitioner
 - There is a need for the practitioner to be able to check for accuracy
 - Complaints that are not upheld should not be listed.

How long should a health practitioner’s disciplinary history be published on the public register?

- **59 per cent** of respondents believe that disciplinary history **should not** be published on the public register. With **16 per cent** of this group indicating that **only current conditions or limits on practise** should be publicised on the public register.



Who should be able to add additional information to the public register?

The majority of feedback (43 per cent of the comments provided) indicates that only Ahpra should be able to maintain information on the register; however, there must be a mechanism for review where incorrect information has been published. Some feedback indicates that the relevant practitioner board e.g. the Medical Board could also have permission (12 per cent of comments) as well as the specialist colleges and associations – in this case AOA and RACS (13 per cent of comments). 15 per cent of comments stated no one should have access to add information.

Are there other ways to enhance the effectiveness and value of the public register for the public and/or practitioners?

The consistent view from the feedback indicated that it should remain a register that contains only what is absolutely necessary, current and relevant. This included a list of registered practitioners.

We support RACS in noting the inconsistency with how qualifications are recorded and hope that this issue will be addressed in this strategy. The award of a degree by a tertiary institution should not be treated in the same manner as the award of a fellowship with a specialist medical college. While a tertiary qualification is awarded permanently without requiring an on-going



relationship between the recipient and the institution, a fellowship requires on-going maintenance of standards and oversight to retain.

Focus area 2: Data sharing

Proposed future direction for data sharing

The Health Practitioner Regulation National Law enables Ahpra to share data with other organisations in certain situations. Do you have concerns about this practice?

Member responses indicated a need for further discussion with the specialist colleges as there are a range of privacy and confidentiality issues involved, and the scope and the effective collaboration required for meaningful benefit needs to be agreed.

Do you have suggestions about how Ahpra could share data with and/or receive data from other organisations to benefit the public, practitioners and/or our regulatory work?

Members that provided responses urged caution and the implementation of strict, transparent and well-enforced limits on the nature and scope of any shared data. Some members suggest that, wherever possible, practitioner consent should be sought before any data concerning them is shared with any other body.

Where (in quite limited responses) support for increased sharing is expressed, members cite a limited range of recipients. Further information, with clear details and identified limits, regarding the proposed bodies with which data would be shared will be required before this proposal can be supported.

Focus area 3: Advanced analytics

Proposed future direction for advanced analytics

Do you have any suggestions about how Ahpra should approach using advanced analytics and machine learning technologies?

Feedback from members indicate strongly that the implementation of advanced analytics and machine learning technology requires key stakeholder support for systematic structural change. Early engagement with a range of organisations including AOA will be essential, as will appropriate attention to a number of critical issues such as bias, maturation of technology, expense vs benefits mapping and overall stakeholder engagement strategy.

AOA believes these issues are highly important and require more conversation. We would welcome the opportunity to discuss any and all aspects of this submission further and can make ourselves available.

We would be grateful if communications regarding the potential for direct conversations and notifications on future developments could be directed to AOA Chief Member Experience Officer, [REDACTED] at [REDACTED]

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