Consultation process of National Boards

November 2023

Introduction

One of the key functions of the National Boards is to develop or review registration standards, codes and guidelines for health practitioners registered in their respective professions[1]. As part of the development or review of a registration standard, code or guideline, a National Board must ensure a wide-ranging consultation about its content[2].

Ahpra is responsible for establishing procedures for the development of accreditation standards, registration standards and codes and guidelines approved by National Boards, to ensure the National Registration and Accreditation Scheme (the National Scheme) operates in accordance with good regulatory practice[3]. The Ahpra Board has approved the:

- *Procedures for the development of registration standards, codes and guidelines*, and
- *Procedures for the development of accreditation standards*

These Ahpra procedures are published on the Ahpra website.

Purpose

This document provides an overview of the consultation process as part of the regulatory work related to the development or review of a registration standard, code or guideline by a National Board or Boards. This document aims to support all stakeholders of the National Boards and Ahpra in identifying opportunities to provide input and/or respond to consultations on new or revised registration standards, codes or guidelines. While there can be some variations to the consultation approach of each National Board, some key activities are consistent across all the National Boards' consultations.

Development or review of a new registration standard, code or guidelines

The National Boards' primary responsibility is to protect the public. Registration standards, codes and guidelines must take into account the paramount principle and the objectives and guiding principles of the National Law.

Under the National Law[4], a National Board must develop, and recommend for approval to the Ministerial Council[5], a registration standard outlining the requirements related to:

- professional indemnity insurance arrangements
- criminal history
- continuing professional development
- English language skills, and
- recency of practice.

[1] See section 35 of the Health Practitioner Regulation National Law, as in force in each state and territory (the National Law).
[2] See section 40 of the National Law.
[3] See section 25(c) of the National Law.
[4] See section 38 of the National Law.
[5] See section 12 of the National Law.

A National Board may also develop, and recommend for approval to the Ministerial Council, a registration standard about other matters e.g. a registration standard related to the eligibility of individuals for registration in the profession or the suitability of individuals to competently and safely practise the profession; a registration standard related to endorsement.

A National Board may also develop codes and guidelines[6]:

- to provide guidance to the health practitioners it registers, and
- about other matters relevant to the exercise of its functions.

Consultation approach

Each National Board will consult widely when developing a new or reviewing an existing registration standard, code or guideline. Details about how to respond to the consultation will be published on the National Board's website.

The National Board values the important perspectives provided through the consultation process. The feedback and submissions received will be taken into account by the National Board. The National Board will publish information about feedback received, the submissions (except where confidentiality is requested or required) and how the proposed new or amended registration standard, code or guideline addresses key issues raised in the feedback.

The National Board may also publish explanatory material to provide further information about a registration standard, code or guideline.

Process

Initial testing and the public consultation process are part of the policy development process, which has six key steps:

1. develop
2. consult (preliminary)
3. review
4. consult (public)
5. revise and finalise
6. publish and implement.

Step 1: Develop

The National Board will identify the need for a registration standard, code or guideline informed by:

- evidence and data
- feedback/information from the community
- feedback/information from governments
- feedback/information from the profession
- the National Law
- research, and/or
- other factors.

[6] See section 39 of the National Law.

The National Board will also regularly review its registration standards, codes and guidelines as part of good regulatory practice.

As part of the development process, the National Board will advise other National Boards about its proposal and explore opportunities for collaboration between National Boards where relevant.

The National Board will also consult its state and territory/regional boards and/or committees (where applicable) and seek initial operational and legal advice from Ahpra to ensure early identification of implementation issues and advance planning.

The National Boards will comply with the COAG Health Council Policy Direction 2019-02 which directs National Boards and Ahpra to consult with patient safety bodies and healthcare consumer bodies on every new or revised registration standard, code and guideline[7].

The National Boards' processes will also take account of the updated *2023 Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies* (the RIS Guide) and work to address the National Scheme's Aboriginal and Torres Strait Islander Health and Cultural Safety Strategy 2020–2025, and the Statement of Intent including the baseline definition of cultural safety for the National Scheme.

Step 2: Consult (Preliminary)

The National Board will develop initial consultation material, including a draft of the proposed new or revised registration standard, code or guideline, together with the reasons for its development and any other relevant material to explain the proposal.

In line with the COAG Health Council Policy Direction 2019-02, the National Boards will prepare the Health Impact Statement. This process will assist the National Boards to identify both positive and negative impacts, steps to address or mitigate any negative impacts and establish processes for ongoing monitoring throughout the development or review of a standard, code or guideline. The Health Impact Statement will be included in the National Boards' consultation material.

The National Board will 'road test' the proposed content before public consultation. This preliminary stage will consider implementation and any transitional issues that must be addressed in implementing the standard, code or guideline. It may also involve user testing the consultation material e.g. through focus groups.

The National Board will consult with targeted stakeholders, as part of the testing phase, before consulting more widely. These would usually include, in alphabetical order:

- accreditation authorities
- co-regulatory bodies, such as the Office of the Health Ombudsman (OHO) in Queensland and the Health Professional Councils Authority (HPCA) and Health Care Complaints Commission (HCCC) in New South Wales
- governments

[7] In applying the requirements under section 40 of the Health Practitioner Regulation National Law as in force in each state and territory (the National Law), National Boards and Ahpra must:
a. consult with patient safety bodies and healthcare consumer bodies
b. take into account the health and safety of vulnerable members of the community, and Aboriginal and Torres Strait Islander Peoples
c. prepare a patient health and safety impact statement to accompany advice and recommendations in relation to the new or revised registration standard, code or guideline
d. publish a patient health and safety impact assessment when a new or revised registration standard, code or guideline is published.

- key patient safety bodies and healthcare consumer bodies
- other National Boards (where applicable and if it has not already done so)
- professional associations, and
- state/territory/regional boards and/or committees of the National Board developing the document (where applicable and if it has not already done so).

Ahpra and the National Board will assess the potential regulatory impact of any proposed new or revised standard, code or guideline against the principles set out in the Ahpra procedures. If the decision-maker[8] asks for a Regulatory Impact Statement (RIS) to be prepared, contact will be made with the Office of Impact Analysis (the OIA). The OIA administers the *Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting*. Not all regulatory proposals will require a RIS.

Step 3: Review

The National Board will review feedback provided through this preliminary process and revise the content of the registration standard, code or guideline as appropriate.

Consistent with the changes agreed by National Cabinet to regulatory impact assessments, the decision maker (either the National Board or the Ministerial Council) can ask for a RIS be prepared if needed, preferably before public consultation and informed by advice from Ahpra and the National Boards on the likely regulatory impacts of a proposal.

Step 4: Consult (Public)

The National Board will consult publicly on its proposal, usually for at least eight weeks unless a shorter period is necessary. This will include publishing the consultation material on the National Board's website and distributing to stakeholders, which will usually include, in alphabetical order:

- accreditation authorities
- community or consumer groups, patient safety bodies and healthcare consumer bodies
- co-regulatory bodies, such as the Office of the Health Ombudsman (OHO) in Queensland and the Health Professional Councils Authority (HPCA) and Health Care Complaints Commission (HCCC) in New South Wales
- education providers
- governments
- National Boards
- professional associations/organisations
- registered practitioners, and
- other relevant stakeholders depending on the consultation.

Ways of inviting feedback may include:

- response templates
- email submissions
- online survey
- focus groups, and/or
- other means, as appropriate.

[8] In April 2023, National Cabinet agreed changes to the impact analysis requirements that apply to decisions in the Federal Relations Architecture. It is no longer mandatory for impact analysis to be finalised with the Office of Impact Analysis (the OIA), unless it is requested by the relevant decision maker. In the case of the National Scheme, this is either by the National Boards or the Ministerial Council, depending on who approves the proposal.

The consultation material may seek input on other explanatory information the National Board considers useful for the proposed registration standard, code or guideline.

The consultation material[9] will:

- address the purpose and desired outcomes of the proposed registration standard, code or guideline
- address the draft content of the document
- provide an outline of the implementation plan and any transitional requirements, and
- provide an assessment of the likely impact of the registration standard, code or guideline.

The National Board will acknowledge the submissions but may do this in different ways depending on the volume received. The National Boards receive extensive responses to consultations and are generally unable to provide a specific response to each submission received.

Step 5: Revise and finalise

The National Board will consider the feedback provided through the consultation process. The National Board will make a decision about the proposal and revise the proposed registration standard, code or guideline, as required.

If necessary, the National Board may undertake further consultation on the revised registration standard, code or guideline with key stakeholders, practitioners or the public.

The National Board will then provide the new or revised registration standards to the Ministerial Council for approval, consistent with the requirements of the National Law[10].

The National Board will finalise proposed codes or guidelines itself, as Ministerial Council approval is not required.

The National Boards will also consider developing and publishing additional information to support the implementation of the final registration standard, code or guideline.

In line with the COAG Health Council Policy Direction, the National Boards will undertake the Health Impact Assessment to indicate how issues or risks raised during the consultation process have been considered and/or mitigated by the National Board, and how these will be monitored.

Step 6: Publish and implement

When the content is finalised and approved, the National Board will publish the registration standard, code or guideline on its website including details of any transitional arrangements, along with the Health Impact Assessment. The National Board may apply a transitional period to allow time for practitioners to become aware and comply with the new requirements. The National Board will engage with health

[9] Note that if a RIS is requested, National Boards will prepare a Consultation RIS and a Decision RIS per the RIS Guide.
[10] See section 12 of the National Law.

practitioners to ensure that they are aware of the National Board's expectations as detailed in the standard, code or guideline.

In the interests of transparency, the National Board will publish submissions received during the public consultation, unless otherwise requested, or there are valid reasons[11] not to publish. Before publishing, the National Boards will remove personally identifying information from submissions, including contact details.

The National Board will consider how best to promote awareness of the registration standard, code or guideline, including:

- publishing the outcome on the National Board's website
- communicating with registered practitioners about the new or revised registration standard, code or guideline and the National Board's expectations
- communicating with stakeholders to promote awareness of the new or revised registration standard code or guideline
- advising participants that the consultation process is complete, and that the final outcome has been published, and/or
- considering whether material such as videos, webinars and infographics would be helpful.

Date of approval: November 2023

[11] The National Boards will not place on their websites, or make available to the public, submissions that contain offensive or defamatory comments or which are outside the scope of the subject of the consultation.