

**Submission by the Australian Psychological Society to the  
Australian Health Practitioner Regulation Agency on its**

**Public Consultation Paper on  
common guidelines and  
*Code of ethics***

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## **Introduction**

The Australian Psychological Society (APS) welcomes the opportunity to comment on the Australian Health Practitioner Regulation Agency (AHPRA) public consultation paper on common guidelines and *Code of Ethics* (the Paper).

The APS has previously provided feedback on the AHPRA draft social media policy in 2012 and other areas of practice such as mandatory notification and advertising. The APS, as the largest national professional association for psychologists with over 21,000 members, has developed a number of policies and guidelines for its members. It has also been working collaboratively with the Psychology Board of Australia and AHPRA since their inception. In addition to the six guidelines and fourteen policies listed on the Psychology Board of Australia (PsyBA) website, the PsyBA has also adopted the APS Code of Ethics.

This submission will draw on our past submissions and reaffirm the position of the APS in these areas.

### **Part 1: Guidelines for advertising**

The APS is concerned with the ambiguity of the wording and far reaching nature of the example provided on page 15 of the draft guidelines where it is stated "*once the practitioner is aware of the testimonials (on a social media page), he or she must take reasonable steps to have the testimonial removed*". This statement implies that the practitioner is responsible for third party postings on both the practitioner's webpage and that of the third party. This is confirmed in section 8.1 of the Paper, where it is stated that "*a person is responsible for content of their social networking pages even if they were not responsible for the initial publication of the information or testimonial*".

The APS contends that these statements must be clarified for they risk AHPRA going beyond its statutory powers and potentially exposes AHPRA to legal challenges.

For example, if a client tagged a practitioner on his/her Facebook timeline, and the posting mentioned that the client would return again because of the "great services offered" by the practitioner, then the practitioner could be held liable for the post under the above guidelines. Similarly, if a client mentioned a practitioner in a tweet, and recommended their friends seek treatment from this practitioner, the practitioner could be held liable.

The APS does not believe it is the intention of the guidelines that practitioners be held liable for any third party posting on the third party's social media pages, irrespective of whether such postings mentioned a regulated health practitioner. The APS does agree, however, that practitioners cannot use quotes or postings from a third party on the practitioner's social media pages as a form of advertising or testimonial, irrespective of whether such pages are personal or professional in nature.

#### **1.1: Use of testimonials in non-clinical care**

The APS is seeking clarity about the use of testimonials when advertising a workshop for other practitioners and also testimonials on books, both of which are commonplace. Both running a workshop and publishing a book could be interpreted as a service provided by a psychologist.

The APS understands AHPRA's need to protect the public by restricting advertising. In particular, the practitioner is in a position of power and therefore of influence and control over the client when they are delivering clinical services. However, when the client is a peer or a fellow clinician, it can be argued that they are in equal positions of power. Where a practitioner is running workshops or writing a book mainly directed towards other practitioners they are unlikely to be exploiting the public. Similarly, for

organisational psychologists, whose clients are often multi-national companies, the power imbalance is also tilted towards the client.

Under these circumstances, the APS recommends that a distinction be made between advertising therapeutic or clinical services and other activities such as workshops, books and industrial/organisational consultations, which will then allow the use of testimonials on the latter products.

### **1.2: Use of titles, qualifications and memberships in advertising**

The APS finds the Paper's argument that "*those who choose to adopt the title 'Dr' in their advertising and they are not registered medical practitioners then they should state their profession*" is too simplistic and ignores the broader context of the word "doctor".

As stated in the Paper, there are four instances in which the word doctor can be applied:

1. In a professional context: A medical practitioner
2. In an academic context: A Doctorate degree
3. In a research context: A PhD
4. As a courtesy title: for example, chiropractors and dentists are called doctors even though they do not fit into any of the three above categories.

The word 'doctor' is not the exclusive domain of any one of these contexts. While the APS agrees that practitioners with such higher qualifications should be entitled to use the word doctor (and abbreviation Dr) in their titles, it is also of the view that *all practitioners*, including medical practitioners, must stipulate their profession after their title. In the same way that Dr Isobel Jones (Dentist) and Dr Walter Lin (Chiropractor) are expressed, the APS contends that the same rule should apply to medical practitioners: Dr James Singh (Medical Practitioner). This ensures equity among the regulated professions and offers consumers greater protection.

In recognition of higher academic qualifications, the APS proposes the following hierarchy in relation to the use of titles, qualifications and memberships: Honorific, Name, Profession, Specialist Registration/Endorsement (as applicable), Academic Qualifications, and Memberships.

Examples of such a hierarchy include:

- Dr Maria Rosetti (Medical Practitioner, MBBS, FRACGP)
- Mr Kevin Morgan (Psychologist, Endorsed Community Psychologist, MPsych, MAPS)
- Dr Susan Brooks (Physiotherapist, PhD, BPhy, MAPA).

## **Part 2: Social media policy**

The position of the APS in relation to AHPRA's proposed policy on social media remains unchanged. Specifically, the APS contends that there is very little demonstrable need for AHPRA to set policies on social media for psychologists given the existing National Law requirements and the existing suite of policies and guidelines from the Psychology Board of Australia. Moreover, the APS Code of Ethics, as adopted by the Psychology Board of Australia, provides very explicit guidelines for psychologists to follow in relation to professional boundaries, professional behaviour, confidentiality and privacy, advertising and use of testimonials.

The original APS response to the draft AHPRA social media policy is attached at the end of this submission.

### **Part 3: Code of Ethics**

To formulate this component of our submission, APS has consulted extensively with the APS Ethics Committee through its Chair.

The APS *Code of Ethics* (2007) is discipline specific, reflecting both the unique ethical challenges faced by psychologists, and the common principles of professional conduct that all health practitioners must address.

Being principle based, the APS *Code of Ethics* affords psychologists a firm foundation from which to begin analysing and responding to unique, novel or emerging ethical issues that by their very nature are not addressed by more rule-based Codes. Rule-based codes are based to a greater extent on precedent and are therefore reactive. The APS *Code of Ethics* is more aspirational and lays out the expectations the profession has of any competent psychologist. This approach enables practitioners to engage with the idea of what is expected of them, in terms of professional standards, rather than trying to identify what behaviour is required in response to specific conditions.

The development of the APS *Code of Ethics* involved a very comprehensive review process, with exhaustive consultation involving key stakeholders such as the then State and Territory Psychologist Registration Boards, key individuals who had expertise in ethics, APS Branches, APS Colleges, and APS Interest Groups.

The APS contends that the replacement of the APS *Code of Ethics* with an AHPRA-wide *Code of Conduct* would be a retrograde step as it would mean reverting to a less comprehensive and carefully structured document that does not articulate the underlying principles on which the APS *Code of Ethics* is based. The issue of ethical principles is the strongest point of difference between the APS *Code of Ethics* and the proposed *Code of Conduct*. The APS *Code of Ethics* is founded on three ethical principles: respect for the rights and dignity of people and peoples, professional propriety and integrity. All ethical standards stem from the three foundation principles. This document provides the tools for psychologists to negotiate situations that may not be listed in the proposed *Code of Conduct*, and better prepares psychologists for the many potential ethical issues that might arise in their work.

The draft AHPRA *Code of Conduct* remains a generic and relatively brief document that emphasises certain aspects of common issues faced by the majority of practitioners. It provides a list of “dos” and “don’ts” and attempts to cover different contexts that health practitioners encounter. The disadvantage of such an approach is that it is unable to encompass dilemmas that are unique to specific professions. For example, there is no reference to the issue of multiple relationships, which is relevant for psychologists, and is actually a defined term in the APS *Code of Ethics*. Other sections which are well covered in the APS *Code of Ethics* but do not appear to the same level of depth in the proposed AHPRA *Code of Conduct* include:

- Justice
- Respect
- Release of information to clients
- Collection of information from associated parties
- Professional responsibility
- Use of interpreters
- Conflicting demands
- Psychological assessments
- Conflict of interest
- Authorship
- Financial arrangements.

The APS *Code of Ethics* is therefore a much more comprehensive resource for psychologists and goes well beyond what the proposed *Code of Conduct* offers.

Psychology, by its very nature, involves intensive, in-depth and emotionally charged professional relationships between clients and practitioners. The relative distinctiveness of this professional relationship means that ethical issues faced by psychologists in providing professional services require an ethical code that encompasses essential principles and practice.

In addition to the *Code of Ethics*, the APS also produced the accompanying *Ethical Guidelines*. While the *Ethical Guidelines* have not been officially adopted by the Psychology Board of Australia, they nevertheless represent an invaluable resource for psychologists faced with ethical dilemmas. The *Guidelines* are reviewed and updated frequently, through an exhaustive consultation process with key stakeholders. As a result, the *Guidelines* represent a summary of the accumulated wisdom of the profession by expanding on the principles of the *Code of Ethics* as applied to 23 different types of situations or client groups, which would potentially be lost if the proposed AHPRA *Code of Conduct* replaced the APS *Code of Ethics*.

The APS recommends that the Psychology Board of Australia does not adopt the proposed AHPRA *Code of Conduct* and retains the APS *Code of Ethics*.

#### **Part 4: Mandatory Notifications**

The APS has previously raised objections on a number of occasions to the requirement that a treating health practitioner is mandated to make a notification against another health practitioner with health impairment. We continue to object to this requirement as it reduces the likelihood that practitioners experiencing health problems, including mental health problems, will seek assistance.

The APS is now aware that there is an exception to the mandatory notification requirement for psychologists practising in Western Australia who are not required to make a mandatory notification if the health practitioner is a client of the psychologist. The APS understands that this situation arose as Western Australia entered the National Registration and Accreditation Scheme (NRAS) after the rest of Australia, and was able to arrange some changes in its compliance with the National Law as there had already been some incidences of this requirement being of concern under the NRAS.

This exception to mandatory notification where the health practitioner is a client of another health practitioner should be applicable across Australia. Affected health practitioners should be able to confidentially seek psychological assistance for impairment without risking mandatory notification. A psychologist would be ethically obliged to discuss with the health practitioner the impact on their capacity to practice and encourage him or her to make a self-report to AHPRA about any health impairment and to take some significant time off work. The APS does not believe it is the intention of the National Law to criminalise self-help seeking behaviour of health practitioners and that encouraging self-help by practitioners would result in a net benefit and enhanced protection to the public.

The APS therefore strongly urges AHPRA to investigate the required changes to the National Law to enable this exception in Western Australia to be applied to all practising psychologists.

In addition, the APS also wishes to highlight a second situation where the mandatory notification requirement may need to be waived. This situation occurs in psychological practice settings where clients may indicate concerns about another practitioner during the course of therapy. For example, a client may reveal to a psychologist that she was inappropriately managed by another practitioner who is still practicing, but indicate to

the treating psychologist that they do not wish to report the matter as it would be re-traumatising and exacerbate her current depressive episode.

The psychologist could then face a dilemma: to report the incident as required, which effectively ceases the therapeutic relationship with the client and, by doing so, not only leaves the client exposed to further harm from her depression but also the re-traumatisation of her past assault through the notification and investigation process. Referring the client to another psychologist is not an option, as the second psychologist is under the same mandatory notification obligations. The only option is for the psychologist to refer the client to an unregulated "counsellor", who may not be able to offer the quality of services of a registered psychologist. In at least two ways it would thus negate the very aim of the National Law: to protect consumers from harm.

Again, the APS recommends that AHPRA consider including exceptional circumstances, such as the one highlighted above, in which the requirements for mandatory reporting can be waived.

#### **4.1: General concerns about notification processes**

The APS would like to provide feedback on the notifications process followed by AHPRA. The APS receives many calls from members who have been the subject of notifications lodged with the Psychology Board of Australia. On many occasions APS staff have been made aware of instances where psychologists have been asked to respond to a client complaint to the Board but the psychologist has not been informed of what they are supposed to have done to whom, when and in what context such complaints arose. The psychologist is generally provided with a letter from the Board stating that a notification has been made and requesting a response from the psychologist by a due date. They are also required to respond within a very short timeframe to what is a serious allegation and can affect their livelihood. They may in some instances be provided with a copy of the notification. Having a full copy of the notification does not always mean that it is clear to the psychologist what aspect(s) of their behavior or performance is/are in question and specifically, what charge is raised.

Psychologists who have had a notification made against them should be fully informed with regard to the charge to which they must respond. It is vital that AHPRA ensures that its processes are consistent with principles of natural justice. Respondents to complaints must be given reasonable opportunity to respond to the complaint. They must be given a clear description of the allegation and sufficient time to put together a response which may require input from a solicitor via their professional indemnity insurance company. The APS therefore suggests the following format for a letter of notification to practitioners:

1. Date of alleged behaviour/action
2. Nature of alleged behaviour/action
3. Place of alleged behaviour/action
4. Name of person making the notification (if appropriate).

Further, data from the Psychology Board of Australia on outcomes of notifications showed that a high number of notifications to the Board (82%) resulted in no further action taken. It seems judicious, therefore that the Psychology Board of Australia develops a process that allows screening of notifications with a view to closing those that have no clear basis or are obviously trivial or vexatious. This would streamline the notification process considerably and focus resources only on those notifications that genuinely require attention. Notifications should only proceed following an initial screening and a determination on the allegation that has been made against the psychologist.

## **Part 5: Transparency in Board-approved supervisor selection process**

A number of cases have arisen where the Psychology Board of Australia rejected supervisors nominated by supervisees or their employers, even when the supervisors were Board approved and worked in the relevant field of psychology. In these cases the Board chose to identify potential supervisors, and provided a list of three supervisors from which the supervisee must select. Examples of such a process have been raised with the APS under the supervision requirements for the internship pathway as well as where a psychologist has been required to work under supervision following action taken in response to a notification. No explanation was provided for the decision to reject the supervisors proposed by the supervisee or their workplace. In general, the requirement to work with the Board nominated supervisors led to a significant increase in costs for the supervisee. In some cases, this was a barrier to the continuation of their supervision. It is important that the Board provides clear reasons for rejecting proposed supervisors and provide transparent reasoning for the recommendation of particular Board approved supervisors, especially where the supervisee's preferred supervisors are already Board approved.

**Submission by the Australian Psychological Society to the Australian Health Practitioner Regulation Agency on its**

# **Preliminary Consultation Paper on Social Media Policy**

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## **Introduction**

The Australian Psychological Society (APS) welcomes the opportunity to comment on the AHPRA preliminary consultation paper on social media policy (the Paper).

Social media has undergone significant development in the past four to five years, and is being increasingly used by individuals from all sections of the community for socialising, networking, communicating and blogging; as well as by the business community for marketing and promotion of services and products. Social media is also being used for health promotion, dissemination of research and for broad community-based public health awareness campaigns. Similarly, health practitioners are finding their way into social media to continue their lifelong learning, to network with fellow professionals, and reach a large audience with evidence-based methods and ideas. The APS, like many other professional associations and entities, has a social media profile including an active Twitter account.

It is widely acknowledged that the growth in social media and communication technology generally, will always outpace regulation. This means that it is very difficult to set policies that can cover for all eventualities and that any policies set by regulators such as AHPRA would inevitably need to be updated regularly.

### **Does AHPRA need a social media policy?**

The APS, as the largest national professional association for psychologists with over 20,000 members, has developed a number of policies and guidelines for its members. It has also been working collaboratively with the Psychology Board of Australia and AHPRA since their inception. In addition to the six guidelines and fourteen policies listed on the Psychology Board of Australia (PsyBA) website, the PsyBA has also adopted the APS Code of Ethics.

Reading through the Paper, the rationale behind the need for a social media policy is not immediately clear. The APS appreciates the role of AHPRA in protecting the public. Specifically, S.133 of the National Law empowers AHPRA to act on registered health practitioners in relation to advertising of health services. This is strengthened by S.35 and S.39 of the National Law, which allowed for the National Boards to develop standards, codes and guidelines for registered health practitioners.

However, it should be noted that existing policies and guidelines from the Psychology Board of Australia, the APS Code of Ethics and the National Law are already very explicit in their wording regarding the obligations of psychologists in relation to professional boundaries, professional behaviour, confidentiality and privacy, advertising and use of testimonials. Psychologists are therefore already under strict guidelines in relation to their professional practice. Under these circumstances, a separate social media policy will only be valuable if it covers issues which are not addressed by the current suite of codes, policies and guidelines.

## **Do current codes and regulations cover social media?**

It is acknowledged that the “personal” and “professional” lives of psychologists can be permeable and not readily separable. However, the APS contends that the litmus test is the definition of “conduct” as described in the APS Code of Ethics, as:

*“any act or omission by psychologists*

*(a) that others may reasonably consider to be a psychological service;*

*(b) outside their practice of psychology which casts doubt on their competence and ability to practise as psychologists;*

*(c) outside their practice of psychology which harms public trust in the discipline or the profession of psychology;*

*(d) in their capacity as Members of the Society; as applicable in the circumstances.”*

While not explicitly mentioning social media, psychologists offering their professional services online would be subject to the above definition and therefore the Code of Ethics. Similarly, S.133 of the National Law can also be interpreted as covering social media as it states “a person must not advertise a regulated health service, or a business that provides a regulated health services, in a way that...”. The key words “in a way” suggests a manner or methodology of advertising, of which, the APS argues, would cover social media.

## **Unintended consequences**

The APS draws AHPRA’s attention to several potential unintended consequences that a social media policy may bring to psychology and other health disciplines:

1. *Implication for information dissemination, particularly in relation to research and public health.* There are many psychologists undertaking research and involved in public health education campaigns. Social media is increasingly being used in these fields of practice both as a way of informing the public (particularly generations X and Y, who are heavy users of social media) and to network with other clinicians and researchers. The Paper is not clear if such professional practice activities will be covered under existing codes, policies and guidelines, or under the proposed social media policy, or both.
2. *The definition of social media.* Other forms of media such as print, fax and emails are all accepted as common methods of communication. One can easily transmit information and data via these traditional media to a number of individuals, who, in turn, may forward to other people. However, the proposed social media policy will only cover “websites and applications for social networking”. Again, it is not clear how the proposed social media policy will complement existing codes, policies and guidelines.
3. *Cost of policing.* The cost to the National Boards on policing of social media use by registered health practitioners is likely to be high and be mired by the blurring between the “personal” and “professional” information. The APS is

alarmed by the inclusion of information “published anonymously” on social media under the proposed policy’s coverage. The methodology by which AHPRA uncovers such anonymous postings is not spelt out and raises questions regarding how AHPRA will find out if such anonymous posters are registered health practitioners and its implications for the posters’ privacy. AHPRA may also be aware of the current debate regarding the keeping and tracking of electronic data by the Australian Government for criminal investigations, among other purposes.

4. *Unsolicited third party testimonials and endorsements.* If a client “Tweeted” or “Liked” a psychologist or their professional business practice does that constitute a breach of S.133 of the National Law? Similarly, if a commenter said on a blog or webpage that “*I found this advice very useful. I wish my previous psychologist knew about this recent development.*” Is the weblog owner responsible for taking down this comment because it constitutes a testimonial, even if the commenter is not a patient, but just a reader of the blog? This has implications not only for registered health practitioners, but also their practices and the public in general. The APS urges further consideration of this issue.

## **A way forward**

The APS acknowledges the need for more information and guidance for psychologists regarding the impact of social media on their professional practice. However, the setting up of a separate policy on social media may not be the best way forward. The APS contends that the existing suite of codes, policies and guidelines are already sufficient in protecting the public against unscrupulous registered health practitioners. The fact that the method of communication occurs online or via social media does not change the psychologist’s obligations.

The APS agrees that more can be done to raise awareness among psychologists of their obligations when using social media. A viable way forward is for the Psychology Board of Australia to work with the APS to strengthen existing guidelines and the Code of Ethics and make explicit reference to social media in relation to professional boundaries, behaviours as well as in advertising and testimonials. In addition, AHPRA could take note of relevant social media guidelines already developed by professional associations then work with these key stakeholders to adopt and disseminate such guidelines.

Moreover, the APS contends that any policies regarding social media are best drafted and administered by a relevant government department (in this case, the Department of Broadband, Communications and the Digital Economy) rather than relying solely on a statutory agency such as AHPRA.

A parallel example of this is the Health Records Act (2001) in Victoria and its counterparts in other jurisdictions. The responsibility to administer these Acts rest with the state and territory health departments, which, in turn, refer to registration boards (where applicable) and other health tribunals when breaches occur.

## **Conclusion**

The APS urges AHPRA to reconsider its Paper in light of the issues raised in this submission and suggests that a separate policy on social media is not warranted at present and that strengthening of existing codes, policies and guidelines is a preferred way forward. The APS appreciates the importance of addressing the complex issue of social media utilisation in the health domain and agree that psychologists and other registered health providers should be given guidance on appropriate use of social media in their professional practice. However, this is best achieved via a relevant government department such as Department of Broadband and Digital the Economy, or via their respective professional associations.