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Public Consultation on revised Regulatory Principles for the National Scheme

Thank you for the opportunity to comment on the revised regulatory principles of the National Scheme.

Avant is Australia's largest medical defence organisation, providing professional indemnity insurance and legal advice and assistance to more than 78,000 medical practitioners and students around Australia.

Overall, although the revised regulatory principles reflect the policy directions issued by Health Ministers, we are concerned about the directions themselves and the way the revised regulatory principles will be applied in practice.

It is important to get the balance right between the need to protect the public and ensuring that legislation and regulatory processes are proportionate and fair to practitioners.

Avant is concerned about the significant impact regulatory systems can have on the health and wellbeing of practitioners, which can have flow-on effects on the community and public safety.

Avant supports a 'right touch', risk-based, regulatory approach to medical regulation. This was the approach outlined in the previous version of Ahpra's regulatory principles. We are concerned that there is a shift in the policy directions and the revised regulatory principles towards a more punitive and disproportionate approach to medical regulation.

We do not agree with the change in the wording in principle 5 from "minimum regulatory force" to "necessary regulatory response" and suggest the current wording "minimum regulatory force" be maintained.

We are also concerned about the requirement in the policy directions that National Boards “must give at least equal weight to the expectations of the public as well as professional peers regarding the expected standards of practice by the registered practitioner.” This is referred to in the proposed regulatory principle 6.

There is often a fine balance between managing community expectations and fairness to practitioners. “Expectations of the public” is undefined in the policy direction. Determining what the public’s expectations of reasonable standards are in any particular case may be difficult, and the expectations placed on medical practitioners can be unrealistic. We are concerned about the implication in this policy direction that community expectations might trump professional peer opinion about the appropriate standard of practice, particularly where the practitioner’s clinical judgment is at the heart of the notification.

As a matter of procedural fairness, practitioners are entitled to know the case against them and to have the opportunity to be heard in response. Practitioners should be informed of what sources were used in deciding what constitutes the ‘public expectation’ in their particular case. Practitioners are only able to answer the case against them if they are made aware of the standard and expectations that they are being judged against. Traditionally, practitioners demonstrate they have met the standard through peer opinion in expert reports. It is unclear how practitioners will be able to demonstrate that they have met public expectations and what sources they can rely upon in their defence.

In relation to deterrence, we submit that in implementing this policy direction, Ahpra should not prioritise general deterrence to the profession over the specific deterrence of a practitioner. For example, if the practitioner has been rehabilitated such that there is no effective need for specific deterrence then that, and the protection of the public, should prevail over general deterrence and the reputation of the profession.

Please contact me on the details below if you require any further information or clarification of the matters raised in this letter.

Yours sincerely,



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