Ms Clare Hawthorne  
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Dear Ms Hawthorne

Re: A National Code of Conduct for health care workers

ACN welcomes the development of the National Code of Conduct for health care workers (the National Code). In our view, the National Code will promote public safety and deliver significant benefits to health care consumers by specifying minimum professional standards for all practitioners who deliver health care.

We are pleased to provide feedback on specific aspects of the consultation paper.

Yours sincerely

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ACN Submission on the Consultation paper: A National Code of Conduct for health care workers

1. General comment

Australian College of Nursing (ACN) offers strong support for the introduction of a single enforceable statutory code of conduct for unregistered health practitioners and workers to promote greater consumer protection in their use of the vast range of health services available throughout Australia. The draft National Code of Conduct (the National Code) presents a sound set of enforceable minimum standards of professional conduct to be nationally applied to all health care workers including health practitioners registered with the Australia Health Practitioners Regulation Authority (AHPRA) when they provide services unrelated to their registration. While ACN offers overall support for the draft National Code, this submission identifies some concerns relating to the implementation of the National Code and provides feedback against specific clauses and consultation questions.

2. Key concerns

2.1 Proposed terms

ACN agrees with the application of the terms ‘health care worker’, ‘health service’ and ‘health complaints entity’ as defined under section 2.2 “Proposed terms of National Code of Conduct”. ACN acknowledges that both the other terms under consideration for health workers and health practitioners, ‘unregistered health practitioner’ and ‘health practitioner’ are problematic for the reasons outlined in section 3.2.

2.2 Application of the code

In relation to the application of the National Code, ACN notes an inconsistency within the consultation document regarding the intent of point 2 of the clause titled “Application of this Code” (page 13). Point 2 includes the statement that the Code applies to the provision of health services by “health care workers who are registered health practitioners under the Health Practitioner Regulation National Law (the National Law) and who provide health services that are unrelated to their registration.” With the discussion points in this section in mind, ACN believes this is an appropriate and necessary clause for inclusion within the National Code to ensure public protections where the National Law does not apply.

It is noted, however, that in section 1.3 (page 9) of the consultation paper the intent of this aspect of the National Code is more expansive. It states,

“The National Code, once implemented in each state and territory, is expected to prescribe minimum standards of professional conduct for any person who provides a health service which is not subject to regulation under the National Law. In some circumstances this will include health practitioners registered under the National Law, to the extent that they provide services that are unrelated to or outside the typical scope of practice of their registration as a health practitioner.”
It is noted that registration with the Nursing and Midwifery Board of Australia does not prescribe a typical scope of practice for nurses. For this statement to be valid for registered nurses it would need to state “or outside the typical scope of practice for their profession”. It is recommended that the existing draft clause remain the same and not include the underlined section of the statement above.

ACN also highlights that in instances when a registered health profession is being investigated for a potential breach of the National Code it is essential that all deliberations involve the relevant national board and are underpinned by effective engagement practices.

### 2.3 Implementation issues

#### National consistency

The National Code will be most effective if national uniformity and consistency in the implementation of a nationally accessible web-based register of prohibition orders is achieved and through mutual recognition of state and territory issued prohibition orders. Nationally consistent administrative arrangements are preferred assuming the agreed uniform approaches would best enable and support the intent of the National Code (including ‘fit and proper persons’ tests, complaints and prohibition mechanisms and powers and information sharing) and strengthen its impact in providing public protection.

#### Education

Currently there are no nationally agreed minimum educational requirements, practice codes or competency standards for unregistered or unlicensed personal care workers (PCW), however titled. Significant consideration must be given to how the introduction of the National Code will impact these workers. This category of health care worker represents a sizable workforce providing valuable services across a range of sectors including aged care, home and community services, and disability as well as in acute health care settings. In 2012, combined there were more than 176,300 Personal Care Attendants (PCAs) and Community Care Workers (CCW) employed in the aged care sector alone (King et al. 2012). PCAs make up 68% of direct care employees in residential facilities and form the largest and fastest growing occupational group in the sector (King et al. 2012). PCAs in aged care are increasingly obtaining qualifications through the vocational education system, however, there is still a portion of the workforce who have not received any formal training. For example, in 2012 just over 15% of PCAs employed in residential aged care had no post-school qualifications of which 7.8% had a year 10 qualification or below (King et al. 2012).

The data above illustrates that there may be opportunities for delivering education about the National Code to PCWs through certificate course programs. However, it also highlights that there will be challenges for providing information and education to the existing workforce and to large numbers of workers who may not have participated in formal training. The appropriate delivery of information required to adequately support the implementation of the National Code is a major consideration for the PCW workforce. The National Code will present some new and complex principles (such as obtaining consent, complying with privacy laws, patient disclosure, appropriate record keeping and mandatory reporting) for this workforce group that does not currently have an established culture of professional codes and ethics. Many workers in this group are likely to need tailored training on the meaning and application of these concepts. Consideration will need to be given to the varying levels of literacy and health literacy within this workforce and it will be essential that individual workers are well aware and informed of their responsibilities under the Code, not only to safeguard the public, but to ensure workers are not unwittingly at risk of breaching the Code. Some PCWs may need to be empowered through education and training to enable them to confidently comply with parts the National Code.

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1. According to The Aged Care Workforce, 2012, there has been “...a substantial increase in the proportion of Personal Care Assistants and Community Care Workers with Certificate IV qualifications” (King et al. 2012).
The role of providers in delivering education

The role of the provider in delivering education on the National Code should be thoroughly explored. There may be existing mechanisms, such as accreditation requirements, through which providers may be obliged to provide appropriate education to health care workers on the National Code. If not, this may present a future avenue for the ongoing delivery of information and education in relation to the Code and its implications for health care workers, particularly in the aged care sector.

Practice framework for PCWs

While offering strong support for the establishment of regulatory arrangements for unregistered health care workers, ACN cautions that this method of regulation will not necessarily provide an ideal level of public safety assurance in relation to PCWs. Without minimum education requirements and established competency standards that provide measures against which practice competence can be determined, it is unlikely that there will be consistent assessment of PCW health service provision in the application of the National Code. ACN is of the view that it will be critical to scope and develop a nationally endorsed practice framework for PCWs. This nationally endorsed practice framework should include the National Code, codes of ethics and competency standards to guide PCWs, and the nurses to whom they report, in the delivery of competent and safe care. The development of a practice framework for PCWs will give greater effect to the proposed National Code by providing occupational standards for assessing safe and ethical practice within this occupational group.

Expanding scope of PCW role

With the establishment of the National Code it must not be assumed that PCWs are subject to a range of regulation equivalent to that of an enrolled or registered nurse. ACN notes our concern regarding the potential that the Code will provide an opportunity for the expansion of the role of PCWs into domains of nursing practices that are currently regulated through national registration.

3. Responses to specific questions

ACN offers in general support for the draft National Code unless otherwise specifically referred to below.

Section 2.2, Clause 1: Health care workers to provide services in a safe and ethical manner

Should the National Code include a minimum enforceable standard that addresses the provision of treatment advice? If so, do these subclauses cover all the principal professional obligations that should apply to any health care worker, regardless of the type of treatment or care they provide?

ACN supports the inclusion of this clause. While acknowledging that the intent of the clause is to make clear that health care workers must practice in a safe and ethical manner it is important to consider the implications of the clause on the role of the unlicensed personal care workers (PCW) (however titled). Sub-clause 2(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.”

It is queried whether this clause should note that it applies when knowledge of therapeutic and treatment interactions are an expected requirement of the occupational role. For example, this would not be an expectation of the PCW role.

Section 2.2, Clause 2: Health care workers to obtain consent

Should the National Code include a minimum enforceable standard that addresses informed consent? If so, then how should it be framed and how should the complexities of informed consent in emergencies and with respect to minors be dealt with? Is this clause expressed in a way that will best capture the conduct of concern?
ACN supports the inclusion of this clause with amendment. Recognising the complexities that can be associated with obtaining consent, consideration should be given to including a statement that obtaining informed consent should be considered in conjunction with relevant jurisdictional legislation, guidelines and, where applicable, professional codes.

Section 2.2, Clause 3: Appropriate conduct in relation to treatment advice

Should the National Code include a minimum enforceable standard that addresses the provision of treatment advice? If so, is this clause expressed in a way that will best capture the conduct of concern?

ACN supports the inclusion of this clause with amendment. To determine what is in the best interest of clients and to promote client participation in decision-making, it is recommended that sub-clause 3 include the need to communicate and co-operate with colleagues and other health workers and agencies in consultation with the client.

Section 2.2, Clause 4: Health care workers to report concerns about treatment or care provided by other health care workers

Should the National Code include as a minimum enforceable standard a mandatory reporting obligation for all health care workers to report other health care workers who in the course of providing treatment or care place clients at serious risk of harm? Should the wording more closely reflect the mandatory reporting provisions imposed on registered health practitioners under the National Law? If so, is this clause expressed in a way that will best capture the conduct of concern?

ACN supports the explicit inclusion of this clause within the National Code as a key measure for the identification of serious risk of harm to the public in the health care context. ACN does not believe that the wording needs to reflect the mandatory provisions imposed on registered health practitioners under the National Law given the powers to enforce the Code will sit with jurisdictional complaints entities under relevant state or territory legislation.

Section 2.2, Clause 5: Health care workers to take appropriate action in response to adverse events

Should the National Code include a minimum enforceable standard that addresses appropriate conduct in dealing with emergencies and adverse events? If so, is this clause expressed in a way that will best capture the conduct of concern?

ACN supports the inclusion of this clause. There may be value in including a more specific statement supporting open disclosure when errors are made. Additionally, the following amendment should be considered to sub-clause 2(b) to provide additional guidance “b) obtain appropriate and timely emergency assistance...”.

Section 2.2, Clause 6: Health care workers to adopt standard precautions for infection control

Should the National Code include a minimum enforceable standard that addresses the adoption of infection control procedures? If so, is this clause expressed in a way that will best capture the conduct of concern?

ACN is in support of this clause noting however that the discussion indicates that the intent of the clause is to make clear the requirement to adopt universal infection control procedures yet the clause does not state ‘universal’.

Section 2.2, Clause 7: Health care workers

Should the National Code include a minimum enforceable standard that addresses health care workers diagnosed with infectious medical conditions? If so, is this clause expressed in a way that will best capture the conduct of concern?

ACN supports the inclusion of this clause. It is recommended that the following amendment be made to subclause 2:

“Without limiting subclause (1), a health care worker who has been diagnosed with a medical condition that can be passed on to clients should must take and follow advice from an appropriate registered health care professional with expertise in infectious diseases”
Section 2.2, Clause 8: Health care workers not to make claims to cure certain serious illnesses

Should the National Code include a minimum enforceable standard that addresses claims to cure or treat life threatening and terminal illnesses? If so, is this clause expressed in a way that will best capture the conduct of concern?

ACN supports the inclusion of this clause. It is recommended that consideration be given to including within the scope of the sub-clauses debilitating complex chronic conditions including chronic conditions that, without appropriate treatment, may have a deleterious effect on health, to protect people with such conditions from exploitation and/or physical harm.

Section 2.2, Clause 9: Health care workers not to misinform their client

Should the National Code include a minimum enforceable standard that addresses misinformation and misrepresentation in the provision of health products and services? If so, is this clause expressed in a way that will best capture the conduct of concern?

ACN supports the inclusion of this clause. ACN suggests that further consideration be given to the issue of working titles as the drafting of the National Code may prove an opportunity to explicitly reinforce restrictions relating to the use of protected professional titles.

Section 2.2, Clause 10: Health care workers not to practise under the influence of alcohol or drugs

Should the National Code include a minimum enforceable standard that addresses the provision of treatment or care to clients while under the influence of alcohol or drugs? If so, is this clause expressed in a way that will best capture the conduct of concern? If so, is this clause expressed in a way that will best capture the conduct of concern?

ACN supports the inclusion of this clause with the recommendation that sub-clause 2 be amended to include over-the-counter medications that have the potential to impair function for example, anti-histamines.

Section 2.2, Clause 13: Health care workers not to engage in sexual misconduct

Should the National Code include a minimum enforceable standard that prohibits sexual misconduct by health care workers? If so, is this clause expressed in a way that will best capture the conduct of concern? Should the draft National Code be strengthened to specifically address sexual or physical assault in the health care setting, or is the preferred approach to expand the definition of ‘prescribed offences’ and rely on clauses 3 and 4?

ACN supports the inclusion of a minimum enforceable standard prohibiting sexual misconduct and argues for the strengthening of the National Code to specifically address sexual or physical assault. Given the risk of harm associated with physical assault it is not adequate to rely on clause 1 and sub-clause 13(1) which do not explicitly refer to physical assault.

ACN also queries the use of “reasonable period of time” (page 27) within sub-clause 3 and recommends the inclusion of a definition or explanatory note to reduce ambiguity of the wording.

Section 2.2, Clause 15: Health care workers to keep appropriate records

Should the National Code include a minimum enforceable standard in relation to clinical record keeping by health care workers and client access to and transfer of their health records? If so, is this clause expressed in a way that will best capture the conduct of concern? Are subclauses 2 and 3 necessary, or does subclause 1 sufficiently capture the conduct of concern?

ACN supports the inclusion of this clause. It is noted however that explanatory notes would be beneficial to provide guidance on the intent of this clause to Code-regulated health care workers who do not routinely handle or contribute to clinical records.

ACN also queries how the National Code will interface with organisational policies on record keeping and whether explanatory notes will be required to provide health care workers and health care services with guidance.
Section 3.2: Definition of a ‘health care worker’

What terminology is preferred to identify and define the class or classes of person who are to be subject to the National Code of Conduct? Is the term ‘unregistered health practitioner’ appropriate? Is the term ‘health care worker’ acceptable, or is another term preferable?

ACN agrees that the term ‘unregistered health practitioner’ is problematic for the range of reasons presented in the consultation paper including that it may undermine the professional status of particular groups of health workers. Furthermore, the use of the term ‘health practitioner’ also could imply, or be perceived as referring to, a person who practices a profession. This could be equally misleading when the scope of the National Code will include health workers with no minimum educational requirement or level of qualification. As noted above, ACN accepts the term ‘health care worker’ but notes that the term also conveys an assumption that a worker is providing health care in the health care setting. As acknowledged in the consultation paper, some unlicensed workers in health care settings provide ‘support’ as opposed to health care provision in the health care setting and the term ‘health worker’ is an alternative that could address this issue.

Section 3.2: Definition of a ‘health service’

How important is national consistency in the scope of application of the National Code of Conduct, particularly with respect to the definition of what constitutes a ‘health service’? If consistency is considered necessary, how should ‘health service’ and ‘health care worker’ be defined? Is there a need to include a reference to ‘volunteer’ in the definition of provider/health service provider?

ACN is in support of national consistency in the scope of the application of the National Code of Conduct to maximise its effectiveness. Recognising the importance of agreed national definitions of ‘health service’ to facilitate mutual recognition, public education and data collection and reporting, ACN believes Option 2 for dealing with issues of definition of a health service, “Option 2: A single national definition of ‘health service’ is agreed and given effect in each jurisdiction’s legislation”, should be pursued. Option 3 is an acceptable alternative should the pursuit of Option 2 ultimately risk the implementation of the National Code.

ACN supports the view that volunteers providing care or support in health care settings should be Code-regulated unless existing jurisdictional regulatory mechanisms are in place offering an equal level of public protection.

Section 3.3: Application of a ‘fit and proper person’ test

Should there be power to issue a prohibition order on the grounds that a person is not a fit and proper person to provide health services where they present a serious risk to public health and safety? Is there a preferred option for enabling the application of a fit and proper person test? Is consistency across jurisdictions considered important in the approach?

ACN believes there should be an appropriate power to issue a prohibition order on the grounds that a person is not a fit and proper person to provide health services where they present a serious risk to public health and safety. ACN gives preference to Option 1 or Option 2 to enable the application of a fit and proper person test and the issuing of prohibition orders. ACN places a high level of importance in promoting consistency where possible in dealing with Code breaches across jurisdictions particularly if this will reduce legislative gaps that may diminish powers to issue prohibition orders. If Option 1 would potentially expedite implementation of the relevant powers across jurisdictions then this option should be pursued.

Section 3.4: Who can make a complaint

How important is national consistency in the grounds for making a complaint? If consistency is considered important, is there a preferred approach for defining the grounds for making a complaint and what terminology is preferred?

ACN supports national consistency in the grounds for making a complaint in order to prevent any legal loopholes between jurisdictions. Any person should be legally entitled to make a complaint. Broader rather than narrower parameters for who may make a complaint would strengthen channels for monitoring health care worker conduct and strengthen the applicability and impact of the Code of Conduct. With the aim to impose mandatory reporting
through the National Code it will be essential to ensure all jurisdictional complaints arrangements give effect to the clause.

**Section 3.11: Publication of prohibition orders and public statements**

How important is national consistency in the publication of public statements that include the details of prohibition orders issued? If consistency is considered important, is there a preferred approach?

ACN is in strong support of the consistent publication of prohibition orders. In support of this, ACN members have recommended a requirement for health services to routinely review or receive updates on the public statements.

**Section 3.12: Application of interstate prohibition orders**

How important is national consistency in achieving application across Australia of prohibition orders and interim prohibition orders issued in each state and territory? If consistency is considered important, is there a preferred approach for achieving mutual recognition of prohibition orders?

Mutual recognition of prohibition orders, including interim prohibition orders, across all jurisdictions is of paramount importance to providing public protections when prohibition orders have been issued.

**Section 3.13: Right of review of prohibition order**

How important is national consistency with respect to review rights for practitioners who are subject to a prohibition order? If consistency is considered important, is there a preferred approach?

ACN supports national consistency for the right of review of a prohibition order in line with other administrative arrangements. ACN members suggested the preferred approach include the establishment of a national complaints assessment tribunal to review or appeal a prohibition order with a presence in all states and territories.

**Section 4.1: Mutual recognition**

What is the preferred option for facilitating public access to information about prohibition orders that are issued in each state and territory? Are there any issues that need to be considered when designing and implementing such arrangements?

ACN is in strong support of a centralised web portal facility for public access to information about prohibition orders giving preference to Option 2 or Option 3 for adoption.

**References**