Psychotherapy & Counselling
Federation of Australia

PACFA submission to the Consultation on a National Code of Conduct for health care workers

Australian Health Ministers' Advisory Council

Submission Date: 30 April 2014

For further information contact:

Maria Brett
Chief Executive Officer, PACFA
maria.brett@pacfa.org.au

03 9486 3077

© Psychotherapy and Counselling Federation of Australia, April 2014

EXECUTIVE SUMMARY

The Psychotherapy and Counselling Federation of Australia (PACFA) is a leading peak body for counselling and psychotherapy in Australia. PACFA provides self-regulation functions for the counselling and psychotherapy profession through its training standards and the PACFA National Register of appropriately qualified counsellors and psychotherapists, which requires practitioners to undertake professional development and supervision annually and to hold professional indemnity insurance.

Importantly, PACFA's Code of Ethics sets high standards for ethical practice, and the complaints handling process provides a robust mechanism for consumers to have complaints against practitioners heard and resolved. As a federation of 29 member associations, PACFA also incorporates the codes of ethics and complaints handling processes of 29 professional associations for counselling and psychotherapy practitioners who practice in a wide range of therapy modalities throughout Australia. Member Associations are required to align their codes of ethics with PACFA's code to ensure similar standards.

PACFA supports the introduction of a National Code of Conduct for self-regulating health practitioners, but with some cautionary advice on the limitations of the generic National Code which has been proposed. Counselling and psychotherapy Codes of Ethics provide much more detailed guidance than a generic Code covering all health workers can provide, and are tailored to the health services provided by counsellors and psychotherapists. Complaints that are heard by PACFA or it members associations are heard by senior practitioners with expertise and training in the required ethical standards for counselling and therapy practice, and understanding of the harm caused to clients by unethical behaviour.

In this submission, PACFA provides detailed responses to the clauses proposed for the National Code of Conduct, and provides suggestions to improve the Code.

The benefits of a National Code of Conduct are principally the enforceability of sanctions where complaints are upheld against counsellors and psychotherapists and for orders to be recognised and enforceable across state and territory boundaries. The Code is welcomed as a first step towards improving regulation of health practitioners that are not covered by the National Law. However, these achievements could be taken further by considering PACFA's recommendation for the Code to be tailored to meet the needs of different health professions.

Recommendation:

PACFA recommends that the National Code of Conduct should be tailored to meet the needs of different health professions. Professional associations could have the option to develop a tailored version of the National Code of Conduct, as appropriate for their profession. Clauses not relevant to their profession could be removed and other clauses amended or added to ensure the Code more closely reflects the profession concerned. There could be a process for the tailored Code to be approved by the federal Department of Health or a delegate of AHMAC.

BACKGROUND TO PACFA

What is PACFA?

PACFA represents the self-regulating profession of counselling and psychotherapy. Counselling and psychotherapy is a self-regulating profession in a similar way to the social work profession which is regulated by the Australian Association of Social Workers, in addition to the codes of conduct which are in place for unregistered health professionals in New South Wales and South Australia (and soon to commence in Queensland). PACFA is a federation of 29 Member Associations which cover a range of modalities, including integrative counselling and psychotherapy, family therapy, experiential therapies, psychodynamic psychotherapy and psychoanalysis.

Self-regulation is provided at no cost to government or to the community. It provides effective regulation for the counselling and psychotherapy profession through:

- Professional training standards and probity checking undertaken by PACFA and its member associations;
- Codes of Ethics of PACFA and its member associations, which are tailored to the counselling and psychotherapy profession and provide detailed guidance on professional conduct for the profession and its diverse modalities;
- PACFA's National Register of suitably qualified and experienced counsellors and psychotherapists and ARCAP (the Australian Register of Counsellors and Psychotherapists) on which all PACFA Registrants are listed;
- Robust complaints processes to deal with complaints against counsellors and psychotherapists on the PACFA National Register and those who belong to PACFA member associations without listing on the PACFA Register;
- Emphasis on ongoing clinical supervision of practice and professional development as key mechanisms for regulating the quality of counselling and psychotherapy services;
- PACFA's constitutional power to expel member associations that do not act in accordance with the constitution or who bring the profession into disrepute; PACFA can also expel member associations that fail to deal appropriately with complaints.

PACFA's self regulation model was funded in its development stage by the Victorian Department of Health and accepted by the department as an appropriate model of regulation of counsellors and psychotherapists.

PACFA Register and ARCAP

PACFA has approximately 1,400 practitioners listed on its National Register. Clinical Registrants have completed training in counselling and psychotherapy to at least Bachelors level or equivalent, and must have attained the equivalent of two years' full time practice (950 hours of client contact linked to 125 hours of clinical supervision) and demonstrate that they meet ongoing professional development requirements for renewal of registration. PACFA Registrants are recognised by some private health insurance funds for the provision of counselling services. Registrants are widely distributed and accessible throughout Australia in urban, regional, rural and remote areas.

PACFA has worked in collaboration with the Australian Counselling Association (ACA) to establish the Australian Register of Counsellors and Psychotherapists (ARCAP), a national register and credentialing system, to regulate counsellors and psychotherapists within Australia. Practitioners who are listed on the PACFA and ACA Registers are automatically listed on the ARCAP.

Codes of Ethics and Complaints Handling Processes

As PACFA is a federation overseeing 29 member associations, each member association is required to have its own Code of Ethics and complaints-handling process as a condition of PACFA membership, which must be aligned with the PACFA code to ensure consistent standards. Practitioners are required to follow the Code of Ethics for any PACFA member associations to which they belong, as well as the PACFA Code of Ethics if they are listed on the PACFA Register.

Consumers who decide to make a complaint about a practitioner, in the first instance contact the PACFA member association to which the practitioner belongs. Complaints can be heard by PACFA where a satisfactory outcome for the consumer is not achieved under the complaints handling process of the responsible member association. PACFA also hears complaints about our member associations in situations where the member association does not appropriately respond to complaints against their members.

COMPLAINTS AGAINST COUNSELLORS AND PSYCHOTHERAPISTS

In 2011, PACFA made a submission to the consultation undertaken by AHMAC on Options for regulation of unregistered health practitioners (PACFA, 2011). Data included in the submission indicated that the risk to the community from counsellors and psychotherapists is low.

Unfortunately, PACFA position was misrepresented in the subsequent report by AHMAC (AHMAC, 2013, p. 40) which contradicted PACFA's position by citing consumers who reported suffering at the hands of *untrained* counsellors. PACFA does not represent untrained counsellors or psychotherapists and makes no claims that these practitioners provide safe and ethical health services. PACFA represents *qualified* practitioners who meet PACFA's training standards and registration requirements. Only fully qualified and experienced practitioners are eligible for PACFA registration and these practitioners are required to follow the PACFA Code of Ethics. Practicing members of PACFA member associations are similarly required to meet the training standards of the association and to follow the association's Code of Ethics.

The Code of Conduct already introduced in some states, and the proposed National Code of Conduct, are most important for regulating *untrained* counsellors and psychotherapists as these practitioners fall outside the self-regulation provided by PACFA and other professional associations in the counselling and psychotherapy field. While the Code will strengthen regulation of practitioners already covered by the self-regulation regime, these practitioners are already being regulated well by the comprehensive Codes of Ethics which guide practice, and by robust complaints handling processes provided by PACFA and its member associations.

Data on complaints against counsellors and psychotherapists demonstrates that self-regulation of the counselling and psychotherapy profession is effective, with complaints numbers being very low (PACFA, 2011). This position is supported by more recent data collected by PACFA on complaints

made against the qualified practitioners regulated by PACFA and its members associations. MA data relates to 28 of the 29 PACFA MAs as data for one MA was not provided.

Table 1: Complaints to PACFA and PACFA member associations by State/Territory - 2013 and 2014

State/Territory	Complaints to PACFA	Complaints to PACFA member associations
ACT		
New South Wales	2	9
Northern Territory		
Queensland	3	1
South Australia		
Tasmania		
Victoria	2	2
Western Australia	2	2
Unspecified	1	1
Totals	10	15

Table 2: Complaints to PACFA and PACFA member associations by Category – 2013 and 2014

Complaint Category	Complaints to PACFA	Complaints to PACFA member associations
Breach of confidentiality	2	
Sexual misconduct		2
Dual and multiple roles	2	5
Discrimination		
Practicing under influence of Alcohol / Drugs		
Other professional misconduct / breach of ethics	3	5
Unsatisfactory service outcome	1	3
Complaint processes		1
Fees/costs		1
MA functions/activities	1	
PACFA functions/activities	1	
Totals	10	15

Table 3: Complaints to PACFA and PACFA member associations by Outcome - 2013 and 2014

Complaint Outcomes	Complaints to PACFA	Complaints to PACFA member associations
Not yet concluded		3
No case to answer		4
Withdrawn	3	1
Referred to another body	3	2
Resolution - Professional supervision required	1	2
Resolution – Apology given and accepted	1	
Resolution – Membership/Registration revoked		
Resolution – MA suspended		
Resolution – MA action required	1	
Other	1	3
Totals	10	15

PACFA submission

Section 2.2 – Proposed terms of National Code

Definitions

Is the term 'health care worker' an acceptable term to use to describe to whom the National Code applies, or is another term such as 'unregistered health practitioner' or 'health practitioner' preferable, as in NSW and South Australia?

The term *health care worker* is certainly an improvement on the term *unregistered health practitioner* which has been used in the NSW and South Australian Codes of Conduct. The term *unregistered health practitioner* was an inaccurate term in relation to counsellors and psychotherapists and the many other health professionals who are registered within self-regulating professions. The term *unregistered health practitioner* is confusing and misleading for both consumers and practitioners. PACFA welcomes the move away from this term.

The term *health care worker* still does not accurately describe the professional health service provided by qualified counsellors and psychotherapists. PACFA represents many highly qualified and skilled health professionals who simply would not describe themselves as 'health care workers' to their client group. This is a significant downgrading of professional status, not only of professional counsellors and psychotherapists, but of other health professionals.

PACFA recommends either of the following terms: *Health Care Practitioner* or *Health Care Professional*.

Application of this Code

Is the proposed scope of application of the National Code acceptable?

No, PACFA supports a wider scope for the application of the National Code, as detailed below.

Is it preferable that the National Code apply to all health care workers whether registered or not? If so, what are the potential advantages and disadvantages of this approach?

PACFA submits that the National Code of Conduct should apply to all persons providing health services, regardless of whether the practitioner is subject to the *Health Practitioner Regulation National Law*. This approach is preferred as it will help to get away from misunderstanding and misuse of the Australian Health Practitioner Regulation Agency (AHPRA) registration system.

PACFA is concerned that registration with AHPRA in accordance with the National Law has become a status symbol with more professions seeking to be subject to this regulation regime, even where risks to consumers do not justify government regulation and the significant costs to the public associated with this form of regulation. AHPRA registration is not a status symbol but is a response to the very real need to regulate health practitioners who pose significant risks to the community. Even more concerning is the potential for those practitioners registered with AHPRA to be favoured as providers of government-funded health services or in relation to private health insurance rebates.

For example, the fact that psychologists are regulated by AHPRA should not be a rationale for them being providers of Medicare-funded counselling services while counsellors, who are not regulated by AHPRA, are not included as providers of these services. Similarly, PACFA has been advised by some Private Health Funds that they will not provide rebates for counsellors and psychotherapists to provide counselling services because they are not registered with AHPRA. When challenged about this, Private Health Funds responded that they are simply following what Medicare does i.e. only using AHPRA-registered practitioners to provide allied health services.

Furthermore, PACFA Registrants and members of its member associations include practitioners from AHPRA-registered professions such as psychologists, medical practitioners and psychologists, and practitioners who are viewed as "unregistered" by AHMAC. This is confusing for practitioners and consumers of counselling and psychotherapy services. To avoid this confusion, the National Code should apply to all health professionals.

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 services in a safe and ethical manner?

PACFA agrees that there should be a minimum enforceable standard in the National Code.

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?

There are problems with generic minimum standards that need to apply to a very wide range of health professions. For example, clause 1.2(c) refers to "appliances" which are not relevant to counselling and psychotherapy. Clause 1.2(h), which refers to adverse interactions between therapies and medication, is also not relevant to counselling and psychotherapy. A consumer reading the Code in relation to counselling and psychotherapy services may be confused by these standards. A practitioner is less likely to engage with and implement the Code if it contains clauses that are not relevant to the services they provide.

To overcome the shortcomings of a generic Code, PACFA recommends a process for tailoring the Code of Conduct to meet the needs of different professions. This proposal is discussed in detail under *Any Other Comments* below.

Other examples of generic wording that does not apply to counsellors and psychotherapists are detailed below:

- Subclause 1.2.(c) requires health care workers to only prescribe treatments or appliances that serve the needs of clients. This is not appropriate wording for counsellors and psychotherapists. Counsellors and psychotherapists do not "prescribe" treatments and appliances are not relevant.
- Subclause 1.2(g) requires health care workers to encourage clients to inform their medical practitioner of the treatment being provided. This may not always be appropriate in relation to counselling and psychotherapy as it may detract from the confidentiality and privacy of the therapeutic process and trigger a shame response. The clause should be amended to only require this in safe and appropriate circumstances.

- Subclause 1.2(h) requires health care workers to inform clients of potential adverse reactions between therapy and medications. This is not generally within the expertise of counsellors and psychotherapists who do not work specifically within a medical model. They do not provide medication but provide supplementary therapy to assist clients to cope with their lives. Moreover, in the considerable evidence base on the effectiveness of counselling and psychotherapy, there is no evidence to suggest adverse reactions between the counselling and psychotherapy and medication. There is considerable evidence that the provision of therapy enhances the effectiveness of antidepressant medication for depression (see for example Baldwin & Thompson, 2003). Therefore, it is recommended that this clause should not have to apply to counsellors and psychotherapists.

2. Health care workers to obtain informed consent

Should the National Code include a minimum enforceable standard that addresses informed consent?

Yes.

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?

Counsellors and psychotherapists explain what is involved in the counselling or psychotherapy service in first sessions with clients. Consent takes the form of a "contract" to provide therapy either on a time-limited or open-ended basis. This is required in the PACFA Code of Ethics in Section 3.2.2 Autonomy: "seek freely given and adequately informed consent; [and] engage in explicit contracting in advance of any commitment by the client"; and in Section 4.1.3 Keeping trust:

> B. Clients should be adequately informed about the nature of the services being offered. Practitioners should obtain adequately informed consent from their clients and respect a client's right to choose whether to continue or withdraw.
>
> C. Practitioners should ensure that services are normally delivered on the basis of the client's explicit consent. Reliance on implicit consent is more vulnerable to misunderstandings and is best avoided unless there are sound reasons for doing so. Overriding a client's known wishes or consent is a serious matter that requires commensurate justification. Practitioners should be prepared to be readily accountable to clients, colleagues and professional body if they override a client's known wishes (PACFA, 2012, p. 14).

In emergency situations, for example providing counselling during the aftermath of a natural disaster, informed consent is still relevant, even if the contract to provide a counselling service may be made in a more informal way. The fact that the form of the consent is not prescribed in this clause is supported by PACFA as consent can take many forms, either verbal or written, formal or informal, depending on the client, presenting issues and treatment context.

The process of obtaining consent for treatment is complex where the consumer is experiencing a serious mental disorder and he or she has diminished capacity to provide consent. Even if there is no serious mental disorder, clients often come to counselling or psychotherapy with a high level of distress, which can complicate the concept of informed consent. In relation to children and young

people, the consent of the responsible guardian should be obtained. The complexities of gaining consent from children and young people is also covered in the PACFA Code of Ethics (Section 4.1.3).

There are situations where counselling may be mandated, for example, under a court order in the criminal justice system or in debt recovery schemes. Although informed consent may be obtained, whether this is meaningful consent is questionable.

Is this clause expressed in a way that will best capture the conduct of concern?

The way this clause is expressed does not accurately reflect the contracting process that takes place when a consumer seeks counselling or psychotherapy. This is the limitation of a generic Code of Conduct. A Code tailored for counselling and psychotherapy would be expressed in terms of a *contract* to provide a counselling or psychotherapy service, in addition to *informed consent*.

3. Appropriate conduct in relation to treatment advice

Should the National Code include a minimum enforceable standard that addresses the provision of treatment advice?

Yes.

If so, is this clause expressed in a way that will best capture the conduct of concern?

Yes.

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?

The PACFA Code of Ethics provides guidance for practitioners about concerns about treatment or care provided by colleagues in Section 4.1.6, as follows:

> 4.1.6 Responsibilities to all clients
>
> A. Practitioners have a responsibility to protect clients when they have good reason for believing that other practitioners are placing them at risk of harm.
>
> B. They should raise their concerns with the practitioner concerned in the first instance, unless it is inappropriate to do so. If the matter cannot be resolved, they should review the grounds for their concern and the evidence available to them and, when appropriate, raise their concerns with the practitioner's manager, agency or professional body.
>
> C. If they are uncertain what to do, their concerns should be discussed with an experienced colleague, a supervisor or raised with PACFA.

However, a mandatory reporting requirement may be problematic for counsellors and psychotherapists if their clients provide information on the conduct of other health workers. Reporting this against the wishes of the client this would breach confidentiality and may be

detrimental to the therapeutic relationship. It is suggested the requirement should be for health practitioners to *encourage and support* the client to take this action.

If so, is this clause expressed in a way that will best capture the conduct of concern?

PACFA believes if there are to be mandatory reporting requirements they should cover all health practitioners. It is unnecessarily limited to state that Code-regulated practitioners can only report on other Code-regulated practitioners. Similarly, under the National Law, registered health practitioners can only report other registered health practitioners.

Health practitioners frequently work in multidisciplinary teams or interact with other types of health practitioners in the course of health service delivery. PACFA sees no reason why the mandatory reporting requirement should not extend to reporting concerns about treatments provided by health practitioners registered with AHPRA, as well as those provided by Code-regulated practitioners. As PACFA covers both registered and unregistered practitioners, this differentiation is of concern.

Should the wording more closely reflect the mandatory reporting provisions imposed on registered health practitioners under the National Law?

Yes, it would provide a more seamless system if all health practitioners follow the same mandatory reporting obligations. These could be the obligations set out in the National Law. As specified above, the reporting obligations should extend to all types of practitioners, regardless of their regulation arrangements.

Should the National Code include a subclause which prohibits health care workers from making complaints that are frivolous, vexatious or lacking in substance?

PACFA supports the inclusion of a prohibition in the Code against making complaints that are frivolous, vexatious or lacking in substance. While this issue is not a matter of public protection, the Code should prohibit the making of these inappropriate complaints as the potential impact of unwarranted complaints on practitioners is serious and potentially damaging to practitioners.

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?

Yes.

If so, is this clause expressed in a way that will best capture the conduct of concern?

This clause does not define ‘adverse events’, which may make it difficult for consumers and practitioners to understand the required standard of conduct expected of practitioners. In the context of counselling and psychotherapy services, practitioners may encounter clients at risk of suicide or self-harm, and may become aware that third parties, including children, may be at risk of harm. The code should be more transparent that these are adverse events requiring positive action by the practitioner. While it may not be helpful to attempt to provide a definitive definition which

may not be inclusive of all possible events, there should at least be principles which provide clearer guidance on the expected standards in relation to adverse events.

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?

No, this is not relevant to all health practitioners, including counsellors and psychotherapists.

Furthermore, infection control is outside the training and expertise of counsellors and psychotherapists. In the case that health service users suffering from infectious diseases seek counselling or psychotherapy, they are seeking treatment for their mental distress or to support their wellbeing. Counsellors and psychotherapists should not be expected to adopt infection control procedures as this is the responsibility of other health practitioners. Moreover, this clause may cause concern or confusion for clients accessing counselling and psychotherapy services.

If so, is this clause expressed in a way that will best capture the conduct of concern?

If this clause is to be included in the Code, a proviso should be added that this clause applies only where the health service involves infection risks.

7. Health care workers diagnosed with infectious medical conditions

Should the National Code include a minimum enforceable standard that addresses health care workers diagnosed with infectious medical conditions?

PACFA does not object to the inclusion of this 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?

Yes.

If so, is this clause expressed in a way that will best capture the conduct of concern?

Yes.

9. Health care workers not to misinform their clients

Should the National Code include a minimum enforceable standard that addresses misinformation and misrepresentation in the provision of health products and services?

Yes.

If so, is this clause expressed in a way that will best capture the conduct of concern?

Yes, as PACFA registrants and member associations are already required to meet this standard. The PACFA Code of Ethics addresses this requirement in Section 4.6.1 Probity of professional practice:

B. All information about services should be honest, accurate, avoid unjustifiable claims, and be consistent with maintaining the good standing of the profession.

C. Particular care should be taken over the integrity of presenting qualifications, accreditation and professional standing (PACFA, 2012, p. 21).

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?

Yes.

If so, is this clause expressed in a way that will best capture the conduct of concern?

Yes.

11. Health care workers with certain mental or physical impairment

Should the National Code include a minimum enforceable standard that addresses health care workers who suffer from physical or mental impairments that may impact their provision of treatment or care to their clients?

Yes.

Is subclause 2 necessary, or does subclause 1 sufficiently capture the behaviour of concern?

Yes, subclause 2 provides a necessary qualification to this clause. There is the risk of inappropriate discrimination or disqualification from practice by qualified practitioners with disabilities, including those resulting from mental disorders. Seeking advice from a suitably qualified health practitioner will help counsellors and psychotherapists make appropriate decisions about their capacity to practice.

It is also important in this regard that the code recognises the considerable contribution to mental health service delivery made by consumers and peer mental health workers.

12. Health care workers not to financially exploit clients

Should the National Code include a minimum enforceable standard that addresses financial exploitation of clients?

Yes.

If so, is this clause expressed in a way that will best capture the conduct of concern, particularly in relation to the treatment or care of elderly, disabled and seriously or terminally ill clients?

There may be situations where a referral fee is paid, for example where a marketing service is being provided to source clients. Clause 12.2(b) may be unreasonably restrictive and should either be deleted or amended to allow for legitimate referral fees.

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?

Yes.

If so, is this clause expressed in a way that will best capture the conduct of concern?

As the term ‘close personal nature’ in clause 13.1 is not defined, it is difficult to anticipate the kind of conduct that is prohibited. Some practitioners may take the view that some physical contact, such as hugging a client in the context of a contracted therapy session, can be therapeutic for certain clients. This is a grey area so the wording of this clause is potentially problematic.

Some counsellors and psychotherapists work somatically and this may include the use of therapeutic touch. The PACFA member association for somatic psychotherapists, ASPA, has its own Code of Ethics (ASPA, n.d.) to guide the use of touch in therapy, which emphasises the importance of client consent, and they have the expertise to consider complaints in relation to this issue.

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?

PACFA’s view is that sexual assault should be specifically addressed in the Code, for example as a subclause of clause 1. The ‘prescribed offences’ under the Code should include breach of the relevant provisions of the Criminal Code in the state concerned, as is the case in South Australia. Relying on clauses 3 and 4 would not provide sufficient protection in the case of sexual assault.

The lack of a specific time period for establishing a relationship with a service user following the termination of the service is of concern, given the complexity of counselling and psychotherapy relationships, especially those that are longer term. In the PACFA Code of Ethics, Section 4.1.3 Keeping trust with clients provides much more nuanced guidance necessary for the counselling and psychotherapy profession:

> (a) Sexual relations with clients are prohibited both during therapy and for a period of at least two years post therapy. “Sexual relations” includes intercourse and/or any other type of sexual activity or sexualised behaviour.
>
> (b) Practitioners do not engage in sexual relations with former clients even after a two-year interval except in the most unusual circumstances.
>
> Practitioners who engage in such activity after the two years following cessation or termination of therapy and of having no sexual contact with the former client bear the burden of demonstrating that there has been no exploitation, in light of all relevant factors, including:
>
> - The amount of time that has passed since therapy terminated;
> - The nature, duration, and intensity of the therapy;
> - The circumstances of termination;
> - The client’s personal history;
> - The client’s current mental status;
> - The likelihood of adverse impact on the client;

- Any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the client (PACFA, 2012, p. 14).

14. Health care workers to comply with relevant privacy laws

Should the National Code include a minimum enforceable standard in relation to breaches of client privacy by health care workers?

Yes.

If so, is this clause expressed in a way that will best capture the conduct of concern?

Yes. However, this clause should not prevent appropriate disclosure in the event that the health practitioner has concerns about the safety of the client or a third party.

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?

Yes.

If so, is this clause expressed in a way that will best capture the conduct of concern?

Yes, subject to comments below on subclause 2.

Are subclauses 2 and 3 necessary, or does subclause 1 sufficiently capture the conduct of concern?

Subclause 2 is necessary as clients are not always aware that they have the right to see their client records in the context of counselling and psychotherapy services. However, there needs to be a proviso in clause 2 for situations where disclosing the contents of the client's records poses a risk to the client's mental health. Counsellors and psychotherapists exercise professional judgment to determine whether it would be detrimental to the client's mental health and treatment to disclose their client records to them.

Subclause 3 is necessary to ensure continuity of care for clients.

16. Health care workers to be covered by appropriate insurance

Should the National Code include a minimum enforceable standard in relation to the professional indemnity insurance obligations of health care workers?

Yes. This is a requirement of PACFA registration and the PACFA Code of Ethics, so it is supported by PACFA.

If so, is this clause expressed in a way that will best capture the conduct of concern?

Yes. PACFA agrees that it is not appropriate to prescribe the level of insurance cover required.

17. Health care workers to display code and other information

Should the National Code include a minimum enforceable standard in relation to display of the National Code, their qualifications and avenues for complaint?

Yes.

If so, is this clause expressed in a way that will achieve this intent?

No. PACFA believes the generic Code proposed is potentially confusing for counselling and psychotherapy clients as it contains clauses that are not relevant to counselling and psychotherapy services, and omits some ethical matters that are specific to counselling and psychotherapy, and may confuse or cause concern for clients when they see it displayed.

An amendment to this clause is suggested to enable members of each profession which has viable self-regulation in place to display a version of the Code that is tailored to its own needs with the approval of the Department of Health or a delegate of AHMAC. For details, see *Any Other Comments* on pp. 18-19 below).

Should there be a requirement, as in the SA Code, for health care workers to display their qualifications?

Yes.

Are the exemptions to the requirement to display the National Code and qualifications appropriate?

It is not clear to PACFA why the exemptions to displaying the Code are included. Even when clients are receiving a health service in one of these premises, they should be fully informed of the Code.

Items not included in the draft National Code of Conduct

1. Sale and supply of optical appliances

Is this an acceptable approach to dealing with regulation of the sale and supply of optical appliances?

Yes, PACFA agrees that this is best left out of the Code because it is not generally applicable to most health practitioners.

2. Health care workers required to have a clinical basis for treatments

Is the proposed approach adopted in this draft National Code appropriate given the complexities of determining what treatments do and do not have 'an adequate clinical basis'?

PACFA agrees that this clause should not be included in the Code. Practitioners who meet the PACFA training standards are trained to provide counselling and psychotherapy services that have been demonstrated to be effective. There is a clear research-base to support the effectiveness of counselling and psychotherapy, although not all interventions have the same level of research to support them. PACFA's view is that the phrase "clinical basis" is vague; not all practitioners have the research expertise required to assess the interventions they use against this provision, although they do have the necessary training in their modality to provide evidence-based treatments.

Should the National Code include an additional clause along the following lines 'A health care worker must take special care when a treatment they are offering to a client is experimental or unproven, to inform the client of any risks associated with the treatment'?

No. This type of clause would be too problematic to implement in counselling and psychotherapy practice.

Section 3.2 - Scope of application of the National Code

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?

See response to the definition of 'health care worker' on p. 5 above.

Is the term 'health care worker' acceptable, or is another term preferable?

See response to the definition of 'health care worker' on p. 5 above.

Definition of a health service

How important is national consistency in the scope of application of the National Code, particularly with respect to the definition of what constitutes a 'health service'?

National consistency in the regulation of health practitioners is very important. Lack of national consistency is confusing for consumers and practitioners who move across state and territory boundaries and creates problems with the enforceability of prohibition orders. PACFA is in favour of uniform national provisions and a single national definition of 'health service' and 'health care worker'.

If consistency is considered necessary, how should 'health service' be defined?

The definition of 'health service' should be as broad as possible to accommodate all health professions covered by the National Code. PACFA supports options 2 where a single national definition of 'health service' is agreed and given effect in each jurisdiction.

The proposed single national definition has a strong emphasis on medical language and PACFA believes the definition would be strengthened by also including the concept of 'wellbeing'. For example, the Queensland definition is 'maintaining, improving, restoring or managing peoples' health and wellbeing.' PACFA supports the inclusion of the mental or psychological health in the definition but this should be worded as 'mental or psychological health and wellbeing'.

Is there a need to include a reference to 'volunteer' in the definition of provider/health service provider?

Yes. Counsellors and psychotherapists do sometimes provide health services on a voluntary basis, however if the term 'health care practitioner' is used rather than 'health care worker' this distinction relating to volunteers may not be needed.

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 fit and proper to provide health services where they present a serious risk to public health and safety?

Yes. Health Care Complaints entities should be able to issue prohibition orders where there is no specific breach of the Code but where a person is not a fit a proper person to provide health services.

Is there a preferred option for enabling the application of a fit and proper person test?

PACFA would support whatever mechanism is considered to be most effective to protect the public from practitioners who are not fit and proper persons to provide health services. All three options suggested seem likely to achieve this outcome.

Is consistency across jurisdictions considered important in the approach adopted?

Yes.

Section 3.4 Who can make a complaint?

How important is national consistency in who may make a complaint?

PACFA considers national consistency to be important.

If consistency is considered important, is there a preferred approach for specifying in legislation who may make a complaint?

PACFA favours the broad approach taken in the NSW and Queensland Codes that enable any person to make a complaint. It would be appropriate for there to be a public interest test applied by the Commission to ensure that vexatious or inappropriate complaints are not heard.

Section 3.5 Commissioner’s ‘own motion’ powers

How important is national consistency with respect to the power for a Commissioner to initiate an investigation of a matter on his or her own motion, without a complaint?

PACFA considers national consistency to be important.

If consistency is considered important, should all state and territory Commissioners have such ‘own motion’ powers?

Yes.

Section 3.6 Grounds for making a complaint

How important is national consistency in the grounds for making a complaint?

PACFA considers national consistency to be important.

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

PACFA favours complaint grounds that mirror the grounds in the National Law, as has been achieved in NSW and Queensland.

Section 3.7 Timeframe for lodging a complaint

How important is national consistency in the timeframe within which a complaint must be lodged?

PACFA considers national consistency to be important.

If consistency is considered important, is there a preferred approach, that is, should a timeframe be specified, and if so, what should it be and should there be discretion to extend it an in what circumstances?

The longest timeframe considered appropriate should be allowed. Where clients have psychological difficulties or have experienced trauma, it is feasible that it could take a long time (i.e. many years) to process and understand negative events in their counselling or psychotherapy treatment and to reach a decision or be sufficiently empowered to make a complaint.

Section 3.8 Interim prohibition orders

How important is national consistency with respect to the issuing of interim prohibition orders?

PACFA considers national consistency to be important.

If consistency is considered important, what is the preferred approach with respect to the grounds for issuing an interim order, the process and the maximum time period?

PACFA supports the approach where the Commission has the power to issue and interim prohibition order if it is satisfied, on reasonable grounds, that the practitioner poses a serious threat to consumers. PACFA supports the wider grounds for interim orders available in South Australia where the ‘prescribed offences’ includes offences under the Criminal Code.

Section 3.10 Grounds for issuing prohibition orders

How important is national consistency in the grounds for issuing a prohibition order?

PACFA considers national consistency to be important.

If consistency is considered important, is there a preferred approach?

PACFA favours the approach taken in NSW where the grounds for a prohibition order are that an investigation has been completed; the Commission finds the practitioner has breached the Code of Conduct or committed a relevant offence; and the Commission is of the opinion that the practitioner poses a *serious* risk to the health and safety of members of the public.

In PACFA’s experience, professional supervision provides a good safeguard against ethical breaches, so if the breach of the Code is less serious in nature, supervision is generally a more appropriate

sanction than a prohibition order. Prohibition orders should only be made where the concern for public safety is *serious* or there have been repeated breaches.

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?

PACFA considers national consistency to be important.

If consistency is considered important, is there a preferred approach?

PACFA favours the broad powers in the South Australian scheme enabling the Commission to publish statements about prohibition orders made by the Commission. Commissions should have the power to publish both interim prohibition orders and prohibition orders.

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?

PACFA considers national consistency to be important.

If consistency is considered important, is there a preferred approach for achieving mutual recognition of prohibition orders?

There should be mutual recognition legislation enabling prohibition orders and interim prohibition orders to be recognised and enforced in all States and Territories, without the need for any additional administrative or regulatory action. There should be a streamlined mechanism for protecting the public.

Section 4.1 Mutual recognition

What is the preferred option for making publicly accessible information about prohibition orders that are issued in each state and territory?

See response to 3.12 above.

Any other comments?

Do you have any other comments to make about the draft National Code, policy parameters or administrative arrangements?

The Draft National Code of Conduct, being generic in nature and applying to a wide variety of different health practitioners, is not tailored to the needs of the counselling and psychotherapy profession or counselling and psychotherapy service users. The Draft Code does not adequately reflect the types of ethical breaches that counselling and psychotherapy clients are likely to be concerned about, based on our considerable experience of ethical complaints made by clients.

Additionally, as detailed in the analysis of the Draft Code above, not all provisions of the Code are relevant to counsellors and psychotherapists, and the language used is often inappropriate to describe the standards of practice expected of the profession.

From the consumer's perspective, the Draft Code of Conduct is potentially confusing. For example, if a client is attending a therapy centre for counselling or psychotherapy, the displayed Code of Conduct will refer to some matters that are of no relevance to counselling and psychotherapy, and also omits some ethical matters that are specific to the conduct of counselling and psychotherapy practitioners.

By having a generic Code, all of the unique ethical issues applicable in different health professions will not be addressed. Even within the counselling and psychotherapy profession, there is a range of ethical principles and challenges depending on the modality e.g. the body-oriented (somatic) psychotherapists have ethical issues specific to their form of therapy around clients' consent to the use of physical touch prior to commencing therapy (ASPA Code of Ethics, n.d.).

Recommendation:

PACFA recommends that the National Code of Conduct should be tailored to meet the needs of different health professions. Professional associations could have the option to develop a tailored version of the National Code of Conduct, as appropriate for their profession. Clauses not relevant to their profession could be removed and other clauses amended or added to ensure the Code more closely reflects the profession concerned. There could be a process for the tailored Code to be approved by the federal Department of Health or a delegate of AHMAC.

REFERENCES

Australian Health Ministers Advisory Council (AHMAC). (2013). *Final report: Options for regulation of unregistered health practitioners.* Retrieved from http://ris.dpmc.gov.au/files/2013/08/unregistered-health-practitioners-final-report-decision-RIS.pdf

Australian Somatic Psychotherapists Association (ASPA). (n.d.) *ASPA Code of Ethics.* Retrieved from http://www.somaticpsychotherapy.asn.au/code-of-ethics

Baldwin, D., & Thompson, C. The future of antidepressant pharmacotherapy. *World Psychiatry, 2*(1), 3-8. Retrieved from http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1525061/

Psychotherapy and Counselling Federation of Australia (PACFA). (2011). *PACFA response to consultation: Options for regulation of unregistered health practitioners.* Retrieved from http://www.pacfa.org.au/sb/modules/news/attachments/251/PACFA_Response_Options_for_Regulation_of_Unregistered_Health_Practitioners.pdf

Psychotherapy and Counselling Federation of Australia (PACFA). (2012). *PACFA Code of Ethics 2012.* Retrieved from http://www.pacfa.org.au/sitebuilder/aboutus/knowledge/asset/files/4/2012pacfacodeofethics.pdf