

2011

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[10.1080/10508422.2011.622176](https://doi.org/10.1080/10508422.2011.622176)

This is an Author's Accepted Manuscript of: Allan, A. (2011). The Development of a Code for Australian Psychologists. *Ethics and Behavior*, 21(6), 435-451. Available [here](#)

*This is an Accepted Manuscript of an article published by Taylor & Francis in Ethics and Behavior on 04 Nov 2011 available online: [here](#).*

This Journal Article is posted at Research Online.

<https://ro.ecu.edu.au/ecuworks2011/216>

## **The Development of a Code for Australian Psychologists**

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### Author Note

An earlier version of this paper was presented at the 4th International Congress on Licensure, Certification and Credentialing of Psychologists, Sydney, Australia. The opinions expressed in this paper are those of the author and not those of either the Psychology Board of Australia or the Australian Psychological Society. Thank you to Eyal Gringart for translating various documents from Hebrew to English and Maria Allan, Robyn Carroll, Graham Davidson, Kaye Frankcom and Brin Grenyer for comments on previous drafts of the paper.

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### **Abstract**

Section 35(1)(c) of the Health Practitioner Regulation National Law Act (National Act; 2009) requires the newly formed Psychology Board of Australia (PsyBA) “to develop or approve standards, codes and guidelines”. In 2010 the PsyBA decided to initially adopt the Australian Psychological Society’s (APS) Code of Ethics (Code; 2007) and develop a new code in the future with the involvement of key stakeholders without deciding, for instance, what the nature of this code will be. The PsyBA now has to decide exactly how it will proceed in future. My aim in this article is to examine the options available to the PsyBA by exploring the definition and function of codes, presenting a history of the APS Code and considering approaches that had been followed in Europe, Israel, New Zealand and South Africa.

Keywords: code of ethics, code of practice, ethical principles, minimum behavioral standards

## **The Development of an Australian Code for Psychologists**

The Psychology Board of Australia (PsyBA) is one of ten national health practitioner boards that have been established as part of the national registration and accreditation scheme for Australian health practitioners under the Health Practitioner Regulation National Law Act (National Act; 2009). Section (s)3(2)(a) of the National Act stipulates that the primary objective of the boards is to provide protection to the public by ensuring that only practitioners who are suitably trained and qualified to practice in a competent and ethical manner are registered to do so. In s4 the legislator describes the functions of the national boards and specify that they must be exercised in accordance with the guiding principles set out in s3(3). The guiding principle that is particularly relevant for this article is s3(3)(a) which provides that boards must “operate in a transparent, accountable, efficient and effective way”. The function of the PsyBA that is most pertinent is set out in s35(1)(c) which authorizes it to “develop or approve standards, codes and guidelines”. After consultation during the early part of 2010 the PsyBA “decided to initially adopt the Australian Psychological Society’s (APS) Code of Ethics (Code) and develop a new code in the future with the involvement of key stakeholders” (PsyBA, 2010a, p. 2). The PsyBA now has to decide exactly how it will proceed in future. My aim in this article is to examine the options available to the PsyBA by exploring the definition and function of codes, presenting a history of the APS Code and considering approaches that had been followed in Europe, Israel, New Zealand and South Africa.

### **Definition and function of Codes**

The word *code* is not defined in the National Act (2009) and it could therefore refer to a code of ethics or a code of practice or conduct. A *code of ethics* is an aspirational document that does not enumerate what psychologist must do, but stipulates the ethical principles of the profession. It puts the onus on psychologists to behave according to the aspirations of the profession by sensitizing them to what conduct is right and wrong and guiding them to make choices on the basis of cultural values, personal morality, principles, and the interests of other people who are involved. A *code of practice*, in contrast, is essentially a document that tells psychologists what to do by stipulating the minimum behavioral standards they need to adhere to. Most professional codes are hybrids and provide both inspirational ethical statements and minimum behavioral standards of conduct. As will be demonstrated below the Code is in this hybrid format and a more appropriate title for it may be the *Code of Ethics and Professional Conduct*, similar to that of the American Psychological Association (APA; 2002).

The function of the envisaged code is not made clear in the National Act (2009) either, but the words used in sections 35 and 39 suggest that it is meant to have a *regulatory* function, that is, to be used by registrants as a guide to self-regulation the PsyBA to regulate registrants. Other than these two functions, scholars believe that codes have numerous other functions. To start with, codes are used to *educate* psychologists (e.g., Allan, 2010a; Keith-Spiegel, 1994) regarding the ethical principles and standards of the profession taking into account the particular cultural, legal, political and social expectations in the relevant country. Codes also provide *support* to psychologists when they feel coerced by client, colleagues or employers to do something they feel would be unethical (e.g., Allan, 2010a; Weinberger & Sreenivasan, 1994). Professions also use their codes to *unify* their members (e.g., Allan, 2010a; Louw, 1997a; Louw, 1997b) and to shape the *image* of the profession (e.g., Allan, 2010a; Keith-Spiegel, 1994).

Finally, professions used codes to publicly state their *ethical principles* (e.g., Allan, 2010a; Keith-Spiegel, 1994; Sinclair et al., 1987) because, as Rawls (1999) points out, it is an implication of Kant's theory (see especially Kant, 1795/2001) that bodies should give publicity to the ethical principles it profess to adhere to. Publicity is particularly important for a regulatory body such as the PsyBA whose main aim is the protection of the public as it seems essential that the public should know what the ethical principles are that govern psychologists.

### **The Australian Psychological Society's Code of Ethics**

The Code, which was at times called the Code of Professional Conduct, was first published in 1949 by the Australian Branch of the British Psychological Society (BPS; Allan, 2010b). Since then the Code has played an important role in the development of the APS whose "ethical position has been the cornerstone of its existence" (Frank Naylor, a former president of the APS (1991-1992), quoted by Cooke, 2000, p. 189) and acquired a status that has prompted commentators to say that it is more than merely a combination of principles and codified rules (Cooke, 2000; O'Neil, 1987). The APS used the Code to evolve psychology from a discipline to a profession in Australia by publicly stating the ethical principles of the profession, using it to bring a degree of solidarity amongst psychologists, to guide and support them in their everyday practice, and to educate and regulate them (Cooke, 2000). It was also the most prominent code in the country because the APS and its forerunner the Australian Branch of the BPS served as the de facto regulator of psychologists in Australia. This role of the APS started diminishing in 1965 with the formation of the Psychologists Registration Board of Victoria, but continued until the formation of the last registration board, that of Australian Capital Territories in 1995. Even then the Code remained influential because it was the only nationally accepted code, was used by a

number of the former registration boards, e.g. in Queensland, Victorian and Western Australia, and because the courts have ruled that it binds psychologists who are not members of the APS as a code of ethics, “not by force of a statute, but because reputable psychologists chose to comply with it” (*Psychologist Registration Board v Robinson*, 2004, paragraph 35).

Since 1949 the Code has been reviewed five times, the last time in 2007, and it is complimented by the Ethical Guidelines (Guidelines; Australian Psychological Society, 2010) to the Code. Initially these guidelines formed part of the Code, but during the 1997 revision some were deleted because they were dated or considered to be sufficiently covered by the Code and the remaining have since 1998 been published as a separate document. The reason for this separation was that psychologists failed to distinguish between the Guidelines and Code and accorded them equal weight and importance (A Garton, personal communication, 9 November 2010). The change also allows the Ethical Guidelines Committee to date the guidelines and revise them on a regular basis. To date 25 guidelines have been published and they facilitate the interpretation of the Code in everyday practice by clarifying and amplifying the principles and minimum behavioral standards (standards) contained in it. Although not part of the Code proper, successive Guidelines Committees have considered them as an extension of the Code and the weight they carry is demonstrated by the warning in the Preamble of the Code that psychologists who act inconsistently with them may be required to demonstrate that their behavior was not unethical.

### **Recent Review of the Code**

The most recent review of the Code commenced in November 2004 when the APS Ethics Committee, chaired at the time by the author, considered the impact of national and international

developments on it. Internationally, for instance, an Ad Hoc Joint Committee of the International Union of Psychological Science (IUPsyS) and the International Association of Applied Psychology (IAAP) were preparing the document which was later published as the Universal Declaration of Ethical Principles for Psychologists (Universal Declaration; 2008). In Australia various important pieces of legislation had been passed since the previous review of the Code, such as the amendment of the Federal Privacy Act (1988) in 2000; there had been a shift in government policies in respect of competition, the adequacy and mobility of the mental health workforce and the distribution of mental health services (Allan & Symons, 2010) and judgments such as that in Fisher v Stapley (2005) that was of importance for aspects such as informed consent.

Acting on a recommendation of the Ethics Committee the APS Board of Directors in 2005 appointed a working team<sup>1</sup> (Team) to review the code. The terms of reference were:

*To review the APS Code of Ethics in the context of the international principles currently being developed under the International Union of Psychological Science, and advise the Board.*

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<sup>1</sup> The members of the team were in alphabetical order: Alfred Allan (Chair), Elizabeth Allworth, David Collier (representative of Council of Psychologists Registration Boards) Graham Davidson, Sabine Hammond, Marie Joyce, Lyn Littlefield (Executive Director, APS), Anthony Love, Malcolm Mackenzie, Mick Symons (Manager Members Services, APS), Don Thomson, Bill Warren, and Jack White.

*To ensure the APS Code of Ethics applies across the diversity of settings in which psychologists work.*

Team members represented various specialties within the profession and the Council of Psychologists Registration Boards (CPRB), a body comprising of the chairpersons and registrars of the Australian state and territory psychology registration boards then in existence (Allan & Symons, 2010). Six broad review principles guided the Team. First, the Code had to be consistent with the international ethical principles and in particular the Universal Declaration and the various international documents on human rights. Second, the revised code should reflect the professional ethics of all Australian psychologists, local societal customs and expectations, and be consistent with the national law and the laws of all the states and territories. Third, it should maintain the tradition and uniqueness of its predecessors by retaining their format and terminology if functional. Fourth, the Code should solidify the public image of psychology as an ethical discipline and profession in Australia, and maintain the harmony amongst psychologists. Fifth, the code should guide and support all psychologists in their everyday practice, be a useful tool to educators, and should have utility as a regulatory tool. Finally, the revised code should be of a high technical standard, accessible, concise, non-trivial and, as far as possible, internally consistent.

### **Implementation of the Review Principles**

Guided by these broad review principles the Team, as is discussed in greater detail in Allan and Symons (2010), set out to produce a revised Code.

**Principled approach.**

To ensure that a Code is accessible, internally consistent and provides optimal guidance to all psychologists irrespective of the settings they work in, it should ideally be based on an ethical theory, principle or set of principles. The previous Codes, as most codes for psychologists, were based on a number of principles which were influenced by a range of ethical theories (Allan, 2008; McConkey, 1995). For example, virtually all codes incorporate the principle of respect for dignity and rights of people which is derived from Kant (1785/1959) and notions of utilitarianism.

After reviewing a number of codes for psychologists and scholarly writings available in English, Allan (2008, 2010c) identified eight common ethical principles. They are respect for the dignity and rights of people, autonomy, justice, non-maleficence, beneficence, veracity, fidelity, and responsibility and they are typically collapsed into three of more general principles. These principles are also reflected in the Universal Declaration which is the “moral framework of universally acceptable ethical principles based on human values across cultures” that the Ad Hoc Joint Committee of IUPsyS and IAAP identified after six years of research and intensive international consultation (Gauthier, Pettifor, & Ferrero, 2010).

It is likely that psychologists have been influenced to use this principle-based approach by Beauchamp and Childress (2009) who have been promoting it in successive editions of their work since 1977. Clouser and Gert (1990), criticize this approach, which they call *principlism*. Reduced to its barest essentials, their argument is that “principlism lacks systematic unity ... [because] ... there is no moral theory that ties the principles together” (p. 227) and because the relationship between the principles is not clearly stated there is no mechanism to reconcile competing principles in order to enunciate a meaningful directive for action.

In the Code and other modern codes, however, principles are not used as a comprehensive overarching ethical theory, but rather as a framework that has utility because it is grounded in a number of ethical theories and have face validity to psychologists across the world. To deal with Clouser and Gert's (1990) valid argument that the approach lacks a mechanism to reconcile obligations from competing principles the Team adopted Ross' (1930, 1939, 1954) approach. Ross considered each competing obligation as a prima facie obligation which must be obeyed unless a prima facie obligation flowing from another principle, or from the same principle but to another person, justifies its breach. The actual obligation in a specific setting is the prima facie obligation which is "in the circumstances ... more incumbent than any other" (Ross, 1930, p. 19) and must therefore be followed.

**Public statement.**

An important function of a code is to provide a clear public statement of the ethical principles of psychologists thereby providing a yardstick the public can use to judge psychologists' conduct and psychologists can use to monitor their own and their colleagues' conduct. To be functional this statement must be accessible, accurate, concise, credible and comprehensible.

To ensure that the Code, which is accessible on the web, is comprehensible it was written in plain English that is descriptive rather than prescriptive, that is, *psychologists safeguard the confidentiality of information* rather than *psychologists must safeguard the confidentiality of information* (Allan, 2010b). To keep the Code concise the Team included only those standards it considered to be essential and invariant in all areas of practice, leaving it to the guidelines committee to incorporate aspirational ethical standards and ethical standards relevant to specific specialties, work settings or populations into ethical guidelines. An exception to this general rule

was where the Team thought that the Code should be educative and more comprehensively reflect aspects of public policy. For instance, the Privacy Act (1988) and related national Privacy Principles (Office of the Privacy Commissioner, 2008) address the issue of informed consent which has traditionally been the domain of ethics, and the Team decided that it was appropriate to incorporate minimum standards in the Code to inform psychologists about the requirements contained in national policy. An example is standard A.3 that requires psychologists to obtain informed consent prior to providing a psychological service to clients. Whilst standard A.3.1 is a sufficient statement of the ethical standard, the Team added standard A.3.3 which stipulates the legal requirements as they constitute the minimum ethical standards to which psychologists must adhere under national policy. Another example is in respect of interpreters where the Team felt that it should give more guidance to psychologists, but where a specific guideline was not required.

The Team was mindful of the risk that the public and non-psychologists who adjudicate complaints made against psychologists may develop unrealistic expectations if the Code was too aspirational. The fear was that members of the public could feel betrayed when they realize that psychologists can be held accountable only if their behavior fails to meet the minimum requirements, or that psychologists may be held to an unreasonably high standard when complaints are assessed. The Team therefore avoided overly lofty aspirational statements and clearly distinguishes aspirational statements from the minimum enforceable behavioral standards.

The Team was particularly careful in how it referred to human rights. Typically what people refer to in this regard is the United Nations' (UN) Universal Declaration of Human Rights (United Nations, 1948) and other documents it has adopted since. These include the International

Covenant on Civil and Political Rights (United Nations, 1966a) and the International Covenant on Economic, Social, and Cultural Rights (United Nations, 1966b). Other UN decisions of importance to psychologists are those dealing with the rights of people with intellectual disabilities (United Nations, 1971) and mental illness (United Nations, 1991), and those dealing with torture (United Nations, 1975) and the rights of children (United Nations, 1990) and Indigenous people (United Nations, 2007). Despite the use of the word *rights*, a UN decision only creates legal rights once it is adopted as part of a country's domestic law. As Australia, like most other countries, has not adopted all these UN conventions in their entirety the Team avoided formulating standards that place obligations on psychologists that are not enforceable.

### **Educate, guide and support.**

Codes are used to educate novice, and remind experienced psychologists about the ethical aspirations of the profession and the appropriate standards of professional conduct (Love, 2010). Psychologists use them as guides in their everyday practice and when confronted with novel problems, and as a support when they feel others, for instance clients or employers, are trying to coerce them into behaving in an unprofessional manner. The information in a code must therefore be so clear, coherent, and comprehensible that it is easy for psychologists to internalize, recall when needed, and to use as support when they feel pressured to do something unethical. To achieve these aims and to make a clear distinction between the aspirational component of the code and the enforceable standards the Team used the three tiered format most modern codes in psychology have.

The first, and most abstract and aspirational level of the Code, consists of the three general principles that represent the eight underlying principles. These eight principles were

collapsed into three general principles because the standards linked to each of the principles overlap to such an extent that it is difficult to organize them without duplication. The general principles are not presented in any specific hierarchical order but are in the sequence that makes the Code most comprehensible.

The second tier consists of an explanation of the aspirational implications of the general principles with reference to the eight underlying principles. The aim of this explanation is to assist psychologists when they face novel issues and to encourage higher order reasoning by them.

The third tier is essentially a code of conduct as it provides the minimum behavioral standards that psychologists *must* meet. The Team considered two formats that can be used to organize standards (see, e.g., Wassenaar, 1998). One approach is grouping standards together with reference to functionality, that is, all standards related to, for instance, psychological testing, are presented together. The advantage of this approach is that all the standards relevant to a specific issue are in close proximity. Alternatively the standards derived from specific principles can be grouped together. The Team used this format because it reduces the amount of repetition and therefore allows for a more coherent code, and, importantly, is more educative in that it makes the relationships between principles and minimum behavioral standards explicit which may reduce rule bound reasoning about ethics.

### **Face value.**

A code should address issues that are pertinent to the public, stakeholders and all psychologists irrespective of their specialization or the settings they work in (Behnke, 2006). Little is known about the public's expectations of how psychologists should behave, but psychologists' opinions

have frequently been examined. The group that reviewed the Code in 1976 had, for instance, invited psychologists to submit “examples of the kinds of things they thought were unethical” (Cooke, 2000, p. 190). There is also a substantial body of international research on the ethical problems encountered by psychologists (Colnerud, 1997; Lindén & Rådeström, 2008; Pope & Vetter, 1992; Slack & Wassenaar, 1999; Sullivan, 2002), the standards they are subject to (Leach & Harbin, 1997; Leach & Oakland, 2007) and the principles they use to solve ethical problems (Allan, 2008, 2010c; Sinclair, Poizner, Gilmour-Barrett, & Randall, 1987). The Team decided that it was not necessary to collect more data from psychologists and that it was beyond its brief to collect data from the public and stakeholders. It did, however, note that Knowles and McMahon (1995) and Weier and Davidson (1999) had found that the Australian public’s expectations around confidentiality was in accordance with the provision in the Code. The Team therefore decided that it was sufficient to invite APS members, other psychologists and stakeholders to comment on a penultimate draft of the code which was published on the web and sent to specific people and groups such as the chairs of the various Colleges of the APS, interest groups and the registration boards. The Team gave serious consideration to the often contradictory feedback it received and made amendments to the draft where they were indicated (Allan & Symons, 2010).

### **Regulation.**

Even a good code such as that of the Canadian Psychological Association (CPA) is not necessarily useful to registration boards if it is not enforceable (Dobson & Breault, 1998). As some registration boards used the Code it was important to ensure that the revised Code would be enforceable. At the same time the Team was mindful of the impact disciplinary

investigations and proceedings can have on the professional and personal lives of psychologists who are involved (see e.g., Poythress & Brodsky, 1992). The Team therefore tried to ensure that the standards were achievable and clear to psychologists, disciplinary panels, tribunals, courts, investigators and lawyers who interpret and apply them. To avoid ambiguities and inconsistencies standards were formulated as brief and tight as possible and behavioral descriptors were used where possible or, alternatively, the process that should be followed was described (Allan, 2010b; Allan & Symons, 2010). Finding the right level of specificity for a standard is difficult. Regulators prefer standards that are formulated at such a level of abstraction that they are easy to apply, but psychologists find them vague and prefer standards that are concrete and provide specific guidance. The latter is unpractical because it is impossible to anticipate and formulate a standard to provide for every conceivable situation and it is inevitable that there will be occasions where standards will be in conflict. It is also questionable whether all aspects of professional behavior can and should be regulated tightly because professionals' ability to act in the best interests of their clients may be jeopardized by such rigid standards. Especially as many disciplinary matters are today adjudicated by legal tribunals whose members may interpret those standards strictly if they do not fully understand the practical implications involved. The Team therefore formulated standards as specific as possible and to ensure that standards were enforceable and fair. An internal lawyer of the APS and a firm of external lawyers reviewed the penultimate draft of the code.

### **Acceptance**

The members of the APS adopted the reviewed Code of Ethics (2007) at the Annual General Meeting in September 2007 and in the same year the CPRB resolved “That members of the

CPRB go back to Boards to endorse the Code of Ethics as a model for a National Code”. The Code has received academic approval by Lewis, Sandquist, Stark and Grenyer (2009) who undertook a content analysis study of six psychology ethical codes which were at the time current in Australia. Lewis et al. (2009) concluded that the Code (2007) was the most comprehensive of the codes six codes, with only three of the remaining codes addressing more than half of the APS ethical standards. The authors conclude that while there may be some issues that may require consideration in the Code, it “would make an appropriate new National Code” (p. 269). Psychologists also have accepted the reviewed Code and believe that it provides guidance, standards, and structure for the profession and that it gives psychologists something to aspire to (Bell, 2010).

### **Options Available to the PsyBA**

Section 35(1)(c) which provides that it is a function of the boards “to develop or approve standards, codes and guidelines” is open to a number of interpretations and seven possible options will be discussed next.

#### **No Code**

Some professionals, including Australian psychologists, question the need for a profession to have a code (see e.g., Fine & Teram, 2009; Grounds, Gunn, Myers, Rosner, & Busch, 2010; Warren, 2010). Warren (2010), for instance, refers to the work of Johan Anderson (1942, 1943, 1944) whose philosophy was “that there is an ethical quality, goodness, which characterizes certain human activities or social movements, but which is fully objective, natural, and non-

prescriptive” (Mackie, 1962, p. 273). Anderson, whilst acknowledging the existence of codes, consequently opposes the “laying down a rule” (Anderson, 1944, p. 185).

Whatever the merit of this and other similar philosophical arguments, the reality is that codes have a special place in the history of professions, including psychology. The association between professions and codes goes back to antiquity (Sinclair, 2010; Sinclair et al., 1987) and ownership of a code has become one of the hallmarks of modern professions (Dobson & Breault, 1998; Sinclair, Simon, & Pettifor, 1996). Since the late 1940s professional guilds such as the APA, APS, and CPA have used ethics in general, and their codes specifically, as mechanisms to professionalize psychology and to convince society that psychologists are competent and have the “institutional means of making sure such competence will be put to socially responsible uses” (Parsons, 1968, p. 536).

Furthermore, as said above, the functions of codes go beyond the guiding and regulating of the members of psychologists. It is therefore hardly surprising that not one of the submissions received by PsyBA in response to its consultation paper dated 5 March 2010 suggested that it should not have a code or adopt a code (PsyBA, 2010b).

Finally, and probably most importantly, as a regulatory body the PsyBA needs to adopt, endorse or develop a code that it can use to determine, as required by s144(1) of the National Act (2009), whether the conduct of psychologists against whom complaints have been lodged was of a lesser standard than that which might reasonably be expected of them by the public or their professional peers.

## **A Meta-code**

The PsyBA could develop a meta-code that sets out the overarching ethical principles of the profession in Australia. This meta-code could be similar to the meta-code of the European Federation of Psychologists Associations (EFPA; 2005) which stipulated the generally accepted ethical principles of psychologists in Europe, but leaves it to the various national bodies to use these principles to develop their own more detailed codes. The PsyBA could develop a code that sets out the principles of Australian psychologists and leave it to guilds to develop their own codes of practice and guidelines under this umbrella. Unlike the EFPA, however, which is a guild organization, the PsyBA is the national arbitrator of the adequacy of the professional conduct and performance of all Australian psychologists and the code it adopts, endorses or develops binds them all. The risk of this option is that it could lead to a proliferation of non binding codes of varying quality that may cause confusion as happened in South Africa when various guilds published their own codes (Wassenaar, 1998). Should this happen it will not be efficient and effective as the PsyBA will have the burden of monitoring the various codes to ensure that they do in fact adhere to the meta-principles.

### **Adopt and Follow an Existing Code Other than that of the APS**

During the consultations of both the APS and the PsyBA some respondents suggested the adoption the APA's or CPA's codes of ethics, and the PsyBA could also, like some of the other Boards, adopt the generic code for health practitioners based on the *Good medical practice: A Code of Conduct for Doctors in Australia* (Australian Medical Council, 2009). Whilst it may be cost efficient for the PsyBA to do this, it is unlikely that many Australian psychologists would support either of these options. The generic code is, as can be expected, a general and vague document because it has been developed for a range of professions. The APA and CPA Codes,

whilst very good, are the codes of professional bodies and concerns have been expressed regarding the utility of the CPA Code for regulatory bodies (Dobson & Breault, 1998). Furthermore, whilst there is a “common moral framework that guides and inspires psychologists worldwide toward the highest ethical ideals in their professional and scientific work” (Preamble of the Universal Declaration, 2008), there is also broad acknowledgement that a shared or a common code is not feasible because a national code must reflect the particular cultural, legal, political and social beliefs of the country where it will be applied (Gauthier et al., 2010; Leach & Leong, 2010; Tomaszewski, 1979). Even where countries use the same meta code, such as that of the European Federation of Psychologists Associations (2005), the different national professional bodies are encouraged, and most do, use this code only as a template for their own codes (Lindsay, 2010). The national codes in Europe are therefore distinct even though they may have the same foundation.

### **Use the Code and Monitor its Future Development**

The PsyBA could maintain the adoption of the Code whilst monitoring its evolution and reviewing its endorsement regularly. Should this happen the APS may consider making the editorial changes necessary to clarify the application of the Code. It is not unique for registration and licensing boards to adopt or use the code of a guild. A number of the former Australian registration boards used the Code prior to the commencement of the national scheme and approximately 34 of the 50 United States (US) jurisdictions have adopted or follow the APA Ethics Code (Behnke, 2010). The situation in Israel is especially informative as the situation resemble that in Australia because the guild, the *Histadrut Hapsichologim BeIsrael* (Israel Psychological Union or IPU), has had a code since 1958 (Rubin, 2010; Shefler, 2004). When the

regulatory body, the *Moetzet Hapsichologim*, was established in 1977 it, with the input of the IPU, developed its own regulations. The two documents existed side-by-side but by the early 1990s psychologists requested the two bodies to publish a single code (Rubin, 2010). After a comprehensive review process the IPU published a draft code in 2004 which was ratified by the members of the IPU in June 2004 and adopted by the *Moetzet Hapsichologim* in 2006 (Geva & Zahavi, undated; Shefler, 2004).

The adoption of the code of a professional guild is a cost efficient way for a regulatory body to acquire a well-respected local code and is acceptable if the relevant code is available to the public free of charge and is enforceable. Doing this should not jeopardize public safety or diminish the PsyBA's regulatory powers as it remains responsible for the adjudication of complaints. To counter possible criticism that professional codes tend to serve the interests of the profession rather than the public (see e.g., Lichtenberg, 1996) the PsyBA could require that the code be reviewed on a regular basis by a committee that include representatives of the PsyBA, other stakeholders and, specifically, community members.

A factor the PsyBA needs to consider if it maintains the status quo is that the Guidelines which form an integral part of the Code are not available free of charge to non-members. Members of the public and psychologists who are not members of the APS will therefore have to purchase them from the APS. The APS may be reluctant to make the Guidelines available to non-members free of charge because they are resources that have been developed and maintained by members for the benefit of the membership and are important membership benefits and therefore a commercial asset. Given that a very high percentage of PsyBA registrants are members of the APS, the membership of the APS may, however, consider whether it would not serve a greater good to make the Guidelines available to non-members and the public. As giving

publicity to the ethical principles of a profession is consistent with the Kant's notion of moral behaviour by those who formulate them (see Rawls, 1999), it could be argued that it will be consistent with the core values of the APS to disseminate the Guidelines widely. It will be to the benefits of the APS, the public, and the profession of psychology if materials that enhance the competent and ethical practice of psychology are made as widely available as possible. By allowing public scrutiny of the Guidelines the APS will show an appropriate level of transparency and it could also be argued that by giving non-APS members access to the Guidelines the APS reduces the risk that they may act in a manner that will harm members of the public thus protecting the image of all psychologists, including APS members.

### **A Unique Code for the PsyBA**

The PsyBA could independently develop its own unique code. The situation in South Africa is instructive in this regard (Louw, 1997a; Wassenaar, 1998). Limited non-compulsory registration of psychologists by the then South African Medical and Dental Council (SAMDC; currently called the Health Professions Council of South Africa) started in 1955. In this year the South African Psychological Association (SAPA), which was the first national psychological association in the country, published a code of ethics. Formal registration of psychologists commenced in 1974 with the promulgation of the Medical, Dental, and Supplementary Health Service Professions Act (1974) and the formation of the Professional Board for Psychology (Board). The Board published a very basic set of ethical rules (South African Medical and Dental Council, 1977) and in the following years a number of rival professional guilds developed codes, of which that of the South African Institute of Clinical Psychologists (SAICP; Steere & Wassenaar, 1985) was arguably the most prominent. None of the rival guilds that existed in the

1980s and early part of 1990s had the resources to develop an authoritative code. It was in this vacuum that the Board commenced developing its own code and this process was well underway when the competing guilds jointly formed the Psychological Society of South Africa (PsySSA) in January 1994 (Wassenaar, 1998). The PsySSA ethics committee, chaired by the author at the time, considered developing a code, but the advanced stage of the development of the Board's code, concerns about duplicate codes and a lack of resources made it impractical. One of the resource issues was that most of those with the necessary expertise were members of the Board and therefore working on its code. During this time the PsySSA ethics committee used the codes of the APA, CPA and SAICP for guidance. After a developmental period of about ten years the Board published its Ethical Code of Professional Conduct (Professional Board for Psychology, 1999) which was replaced by the current code in 2002 (Professional Board for Psychology, 2002). PsySSA currently uses the Board's code (PsySSA, 2003).

In Australia, however, the situation is reversed and it is the PsyBA that will have to develop a code that will compete with an established code and must do this in an accountable, efficient and effective manner. This may be difficult as it is a complex task to create a novel and original code that is suitable for the relevant culture and not merely a clone of a well-known code (Korkut, 2010; Lindsay, 1996; Wassenaar, 1998). It is furthermore an expensive and time consuming undertaking that requires people with knowledge of ethical theory, the development of codes in general, the codes of other professions and other psychological codes (Allan & Symons, 2010; Korkut, 2010). There are few psychologists in Australia who are competent and have the time and interest to develop a code, which raises the question whether it is justifiable or sustainable to have two or more competing codes for a relatively small number of Australian psychologists. Especially as the existence of two competing codes may confuse members of the

public and frustrate them when they try to find out what are the ethical responsibilities of psychologists. Those registrants who are also members of the APS will find themselves subject to at least two, if not more codes if they belong to bodies, such as unions, that have codes (Warren, 2010). This creates a risk of confusion, especially if there are real or apparent conflicts between codes. Finally a code must be “owned” by psychologists (Korkut, 2010, p. 293) and it is a question whether the members of the APS, who are not all registrants of the PsyBA, will want to give up their code at this stage given its tradition, historical importance, quality and the high regard Australian psychologists, even those who are not members, have of it (Cooke, 2000). Having competing codes may therefore not only harm the image of the profession as a unified harmonious profession, but may cause actual disharmony.

### **A Code of Practice or Conduct**

The PsyBA could develop code of practice, as some of the previous Australian registration boards had done (for a list of them see Lewis et al., 2009). As a code of practice is essentially a list of minimum behavioral standards it must, to be effective, provide a comprehensive set of standards that caters for every conceivable situation psychologists could encounter. It should have no internal inconsistencies and to avoid uncertainty and loopholes the standards must be precisely and tightly drafted leaving very little, if any, discretion to psychologists. It is practically impossible to draft such a document and if it was possible it would probably be very long and cumbersome to use. As codes of practice, unlike codes of ethics, do not provide a context in the form of ethical theories or principles, users have no way of dealing with such inconsistencies or novel situations. This could lead to situations where psychologists feel compelled to follow a standard even though the outcome is not ethically optimal (Burke, Harper,

Rudnick, & Kruger, 2006) or engage in lower levels of moral thinking such as rule-following as described by Kohlberg (1976) and Gilligan (1993).

Codes of practice can also lead to unnecessarily rigid enforcement. On the one hand adjudicators have little discretion, if psychologists contravened a standard they must be found in breach of the code even where the behavior had been justified. On the other hand, adjudicators can only make an adverse finding against psychologists who have clearly acted unethically if they can demonstrate that what the psychologists' conduct is covered by a standard.

Furthermore, unlike the state and territory regional boards that operated within a specific legal jurisdiction, the PsyBA is a national body which means that it must take into account the law across multiple jurisdictions. Each state and territory has unique laws that can differ notably. There are, for example, prominent differences in the local laws in respect of the mandatory reporting of suspected child abuse by psychologists. It is therefore difficult to formulate a standard that is broad enough to capture all the different provisions, but specific enough to be meaningful. Finally, whilst the PsyBA can only enforce minimum behavioral standards it is likely that the public, stakeholders and most psychologists would want it to promote higher aspirational standards for the profession in its code.

### **A Joint Code of the PsyBA and another body**

A final alternative is that the PsyBA could collaborate with one or more professional guilds to either develop a new code or to adapt and adopt a current code. In New Zealand, for instance, a joint working party of the New Zealand Psychologists Board, the New Zealand Psychological Society, and the New Zealand College of Clinical Psychologists collaborated to develop a code (New Zealand Psychologists Board, 2002). The advantage of having regulatory bodies involved

in the preparation of a code is that they are able to monitor the conduct and performance of psychologist by analyzing the complaints against psychologists, have close relationships with the boards of the other health professions and policy making bodies, and consist of psychologists and community members from different backgrounds and geographical areas across the country. There are, however, a number of issues that the PsyBA will need to consider if it follows this approach. First, who to collaborate with? Whilst involving a range of stakeholders may make the process representative, an all-inclusive approach may make the process unwieldy and obstruct the production of a credible code. Second, decisions will have to be made about the type of code (ethic versus practice) and whether to develop an original code or evolve the Code. Third, will it be cost efficient and fourthly, to counter concerns about the PsyBA working too closely with guilds, it should ensure that the collaboration is open, transparent and accountable by inviting representatives from the community, other professions and stakeholders to participate in the review process. This will ensure that different perspectives and interests will be represented and have the added value of utilizing the expertise of knowledgeable, skilled and experienced non-psychologists. Forth, if the PsyBA collaborates with the APS to adapt and further develop the Code some agreement will have to be reached in respect of matters such as intellectual property right of the new code.

Finally, in drafting any provision by which the PsyBA adopts or applies the Code of another body, care will need to be taken to ensure that no misunderstanding that eligibility for registration by the PsyBA is distinct from eligibility for membership for any other body or association which might share the same code of ethics. The Code (2007), for instance, explicitly defines a psychologist for purposes of the Code as a member of the APS irrespective of his or her

registration status. The adoption of the APS Code by the PsyBA would not mean that a person who is not registered with the PsyBA could claim to be a psychologist.

### Conclusion

It is beyond the ambit of this article to determine which of these seven options the PsyBA should implement, but in concluding this paper I will try to narrow the options down taking into account the general functions of codes discussed earlier and the legal principles that guide the PsyBA, namely, the protection of the public (*protection principle*) and what I will call the *responsibility principle*, that is, the requirement in s3(3)(a) that it must “operate in a transparent, accountable, efficient and effective way” (National Act, 2009).

The public protection principle makes it essential for the PsyBA to have a code that is publicly available and the *no code* option can therefore immediately be discarded. At first sight it appears as if a *meta-code* will meet the requirements of responsibility principle as it should not be overly onerous or time consuming to develop a concise statement of the ethical principles of the profession as perceived by the PsyBA. A meta-code in itself is, however, not very useful for regulatory purposes and the PsyBA may end up having to adopt a more developed code of ethics. This may in itself be difficult if there is a proliferation of codes. Such an increase of codes could also confuse psychologists and the public about the ethical standards of the psychologist. Even though both the protection and responsibility principles would be met if the PsyBA adopted *the code of a foreign guild or another profession*, such former will not reflect cultural, legal, political and social expectations in Australia and the latter will not address the specific needs of psychologists. The major objection to the development of a *code of conduct* is that it will not provide a clear expression of the principles of Australian psychologists and that it will be

difficult, if possible at all, to formulate standards in certain areas that are specific and comprehensive given the multiple legal systems in the country. Developing a *unique code* is unlikely to be cost-efficient and such a code will have to compete with the Code which is embedded in the history of professional psychology in Australia; well established and accepted; and an effective tool to protect the public. It may be more effective for the PsyBA to work in *partnership* with the APS and other stakeholder to develop a new code using the Code as basis, but the ownership of the joint product will have to be resolved as the Code is of great sentimental and historical importance to the APS, which also holds the intellectual property rights to it. Maintaining the *status quo*, that is, carrying on using the Code is likely to be the most cost-efficient option, but as indicated above the lack of public accessibility to the Guidelines which form an integral part of the Code may be an obstacle to the PsyBA continuing the status quo. Both the last two options nevertheless appear to be feasible and provided that all involved do the ethically correct thing by placing the interests of the public and the profession above their own the obstacles to implementing either of them do not appear to be insurmountable.

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