SUBMISSION ON THE REVIEW OF THE NATIONAL REGISTRATION AND ACCREDITATION SCHEME FOR HEALTH PROFESSIONS

17 OCTOBER 2014

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AUSTRALIAN ACUPUNCTURE & CHINESE MEDICINE ASSOCIATION LTD
ACN 010 020 390
EXECUTIVE SUMMARY

The key issues for Chinese medicine that need to be considered in the NRAS review are:

- Title protection fails to protect the public: unregistered and deregistered practitioners with little or no oversight are using alternative titles to get around the National Law – the use of invasive therapies needs to be restricted to registered health practitioners (with some legitimate exemptions).

- Title protection has failed to fulfil the National Law’s objective ‘to facilitate the provision of high quality education and training of health practitioners’ – with education standards in acupuncture being jeopardised by the proliferation of short courses targeting both registered and unregistered persons under the label ‘dry needling’.

- Sections 116 and 117 of the National law: Is advertising a health service or claiming to be qualified to provide a health service not holding out to be qualified to practise in the related health profession? AHPRA interpretation of these provisions in relation to ‘acupuncture’ needs to be examined, reviewed and tested.

- Reducing the costs of registration: second option preferred (maintain the nine national boards but share functions).

- Notifications and complaints: Single point of contact preferred.

LIST OF RECOMMENDATIONS

Recommendations relating to invasive therapies
AACMA recommends that, in the interests of public safety, invasive therapeutic procedures, such as procedures that involve piercing the skin, should be restricted to registered health practitioners.

Exemptions would need to be clearly outlined, including:

- services provided by ambulance and other emergency workers
- self-medication of non-prescription medicines, such as Vitamin B12 injections
- self-medication of prescription medicines, such as insulin, clexane
- phlebotomists acting under the direction or supervision of a registered health practitioner
- a broad exemption in emergency situations for teachers and other workers or volunteers in supervision of minors, such as for using an epipen in the case of an allergic reaction to food
- cosmetic and personal appearances services, such as tattooing and body piercing.

The national boards and accreditation authorities already set minimum standards for education, training and practice related to their professions and, where appropriate, would be encouraged to work together on generic infection control and safety standards.
Recommendations regard Section 117 of the National Law
In order to provide clarity and certainty, Section 117 needs to be tested at law, taking into account the purpose of the National Law is to protect the public and that consistency in interpretation of the National Law applies across the registered professions.

The wording of section 117(1)(c) also need to be reviewed to more closely reflect the wording in section 116(1)(b)(ii) – that is, to add the words phrase ‘name, initial, symbol, word or description’ after the word ‘title.

A less costly alternative would be to add the term ‘acupuncture’ as a protected title of the Chinese medicine profession in the Table under section 113 of the National Law. This approach would remove all ambiguity and uncertainty about whether advertising ‘acupuncture’ services and claiming to be qualified to provide ‘acupuncture’ was holding out to be registered in the Division of Acupuncture in the profession of Chinese medicine.

Recommendations regarding Section 116(1)(b)(ii)
In order to provide clarity and certainty, Section 116(1)(b), in particular clause (ii), needs to be tested at law, taking into account the purpose of the National Law is to protect the public and that consistency in interpretation of the National Law applies across the registered professions.

A less costly alternative would be to add the term ‘acupuncture’ as a protected title of the Chinese medicine profession in the Table under section 113 of the National Law. This approach would remove all ambiguity and uncertainty about whether advertising ‘acupuncture’ services and claiming to be qualified to provide ‘acupuncture’ was holding out to be registered as an acupuncturist in the profession of Chinese medicine.

AACMA Contact Information
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1. **INTRODUCTION**

The Australian Acupuncture and Chinese Medicine Association Ltd (AACMA) is the peak national professional association of qualified and registered practitioners of acupuncture and Chinese medicine, representing over 2100 members nationally.

1.1. **Key Issues for Chinese Medicine**

The key issues for Chinese medicine that need to be considered as part of the NRAS review are:

- Title protection fails to protect the public: unregistered and deregistered practitioners with little or no oversight are using alternative titles to get around the National Law – the use of invasive therapies needs to be restricted to registered health practitioners (with some legitimate exemptions)

- Title protection has failed to fulfil the National Law’s objective of ‘to facilitate the provision of high quality education and training of health practitioners’ – with education standards in acupuncture being jeopardised by the proliferation of short courses targeting both registered and unregistered persons under the label ‘dry needling’

- Sections 116 and 117 of the National law: Is advertising a health service or claiming to be qualified to provide a health service not holding out to be qualified to practise in the related health profession? AHPRA interpretation of these provisions in relation to ‘acupuncture’ needs to be examined and tested.

- Reducing the costs of registration: second option preferred (maintain the nine national boards but share functions)

- Notifications and complaints: Single point of contact preferred.

2. **TITLE PROTECTION FAILS TO PROTECT THE PUBLIC**

*Title protection for Acupuncture fails to facilitate the provision of high quality education and training of health practitioners.*

*Alternate titles for Acupuncture are being used to subvert the objectives of the national law.*

We understand that the primary purposes of the National Law and NRAS are to protect the public via a protection of title model and to facilitate the provision of high quality education and training of health practitioners via accreditation of education programs. Another objective of the National Law is to provide for workforce flexibility, but clearly not at the expense of education standards or the quality delivery of services.

Current arrangements for title protection regarding acupuncture seem contrary to the objectives in these areas.

Acupuncture, which primarily involves insertion of acupuncture needles into the body, was deemed a sufficient risk to public health and safety in the hands of an unqualified practitioner to justify registration.
Because of the risks inherent to the practice of acupuncture, acupuncturists were registered as Chinese medicine practitioners in Victoria and later under NRAS. Restricting who can use the title ‘acupuncturist’ has been the primary mechanism used to protect the public. Practitioners who are authorised to use the title ‘acupuncturist’ are deemed to be qualified to practise acupuncture.

Acupuncture is a distinct Division of the Chinese medicine profession under the National Law, with its own standards of education and practice. This is similar to the separate divisions of Nurses and Midwives under the Nursing and Midwifery Board.

As with some other health professions, such as midwifery and podiatry, protection of title has resulted in unregistered and deregistered practitioners continuing to practise in a registered health profession but using unprotected titles to avoid prosecution under the holding out provisions.

2.1. The title and practice of dry needling

Since registration was introduced in Victoria in the previous decade, the use of the term ‘dry needling’ emerged as an alternative term to describe the practice of acupuncture by those people who were unable or unwilling to be registered acupuncturists.\(^1\) Previously, it had been a relatively unknown term in Australia.

Since national registration, the practice of ‘dry needling’ has grown exponentially, in our view, to amount to a potentially serious public health risk.

Practitioners of ‘dry needling’ insert acupuncture needles into the ‘trigger points’ of patients, and manipulate those needles, in order to treat a health problem, often musculoskeletal in nature. Practitioners of acupuncture assess the patient, diagnose and treat health conditions, usually using acupuncture needles inserted into patients, and manipulated, according to the therapeutic intent.

A trigger point is a hyper-irritable point in a taught band of muscle which reproduces a pattern of pain when pressed. Trigger points are commonly treated as part of an acupuncture treatment where pain or musculoskeletal dysfunction is involved. In Chinese medicine, these are one of a number of different types of acupuncture points called *ashi* or painful points and their existence is elicited on palpation as part of patient assessment.

Practitioners of dry needling variously describe dry needling as:
- similar to acupuncture\(^2\)
- myofascial dry needling (also known as acupuncture)\(^3\)
- acupuncture and dry needling (that is, as the same service)
- dry needling (acupuncture)
- dry needling (acupuncture alternative)\(^4\)
- dry needle acupuncture\(^5\)
- dry needle acupuncture (Deep Dry Needling), a modern adaptation of acupuncture\(^6\)
- acupuncture (dry needling),\(^7,8\)
- acupuncture/dry needling\(^9,10,11\)
- dry needling (western acupuncture)\(^12\)
- dry needling is a branch of acupuncture but differs slightly\(^13\)
- dry needling is known as ‘Acupuncture’ in the far east\(^14\)
- dry needling (musculoskeletal acupuncture)\textsuperscript{15}
- dry needling gets its name largely to distinguish it from other types of needling that involve the injection of substances into the affected area\textsuperscript{16}
- it is in no way, shape or form related to acupuncture – the only similarity between acupuncture and dry needling would be the use of the needles\textsuperscript{17}
- dry needling is based on western medical aetiology and therefore different to acupuncture
- the main difference between acupuncture and dry needling is the philosophy behind each discipline\textsuperscript{18}
- It has been shown that if you map Acupuncture points with Trigger Points, 80\% of them actually coincide. Have we been calling the same thing by two different names?\textsuperscript{19}

Many practitioners and organisations do not differentiate between ‘acupuncture’ and ‘dry needling’, simply adding or substituting the words ‘dry needling’ where acupuncture was previously listed or they list a common set of conditions for which ‘acupuncture (and) dry needling’ is effective. Others use definitions of dry needling that are in fact definitions of acupuncture.\textsuperscript{20}

Some practitioners of dry needling claim:
- that dry needling is a faster alternative to acupuncture\textsuperscript{21}
- it is a technique or type of remedial massage or physiotherapy\textsuperscript{22,23}.

In terms of claims about what dry needling can treat, various claims are made which indicate it is being used to treat a range of health conditions, and not just musculoskeletal pain:
- Non-surgical facial rejuvenation (10 weeks), pain relief, neck pain, back pain, shoulder pain, hip pain, joint pain, headaches, migraines, sciatica, regulate hormones, make menstrual cycles more regular and return to the normal pattern of 28-31 days, carpal tunnel or RSI, increase the success rate for IVF, induce labour, reduce stress and anxiety, depression, quitting smoking, sugar craving and weight loss for dieters and increasing energy\textsuperscript{24}
- Pain Management, Neck, Back, Sciatica/Leg Pain, Buttock pain, Disc Prolapse, (‘pinched nerve’), Sinus Congestion, Hay Fever / Itchy Eyes, Headaches, Dizziness, Blurry Vision, Nausea, Chronic Fatigue Syndrome, Post Viral Symptoms (eg. Ross River), Tiredness / Low Immune System, Insomnia, Morning Sickness, Menopausal Symptoms\textsuperscript{25}.

However, the common factor in all these descriptions of what dry needling is or what it can do is use of the word ‘acupuncture’ and acupuncture as a point of reference.

**Who is practising dry needing?**

Practitioners of dry needling include unregistered healthcare providers such as:
- massage therapists
- myotherapists (myotherapy is form of massage therapy)
- sports and musculoskeletal therapists
- naturopaths, homoeopaths and other natural therapists.

The practice of dry needling is also increasingly being taken up by registered health practitioners such as physiotherapists, podiatrists and chiropractors, even though the avenue
is available to them to become registered as acupuncturists if they meet a sufficient educational standard in keeping with the intent of the National Law.

**Sources of data**

Due to the short time-frame to prepare a submission, a comprehensive Australia-wide search to identify how widely dry needling is practised by unregistered health practitioners was not possible. Instead, a snapshot of the nation in Western Australia was seen to be a good indicator of the problem nationally.

Nationally the figures are:
- 4157 CMBA registered acupuncturists
- 412 registered medical doctors endorsed for acupuncture under Section 97 of the National Law, most of whom are based in Victoria
- 44 other registered health practitioners (all based in Victoria) endorsed for acupuncture under Section 97 of the National Law (chiropractors: 33, physiotherapists: 9; osteopaths: 2),

making a total of 4,613 registered practitioners authorised to use the protected title ‘acupuncturist’.

According to AHPRA data, there are 210 practitioners in WA registered with the Chinese Medicine Board the Division of Acupuncture and 26 registered medical practitioners endorsed for the practice of acupuncture by the Medical Board under Section 907 of the National Law. This makes a total of 236 registered health practitioners authorised to use the protected title ‘acupuncturist’ in Western Australia.

A search for the term ‘dry needling’ on Yellow Pages Online nationally returned 1203 records, of which:
- 920 were collectively tagged as registered health practitioners (physiotherapists: 832; podiatrists: 61; chiropractors: 36; osteopaths: 31; ), and
- 219 were tagged as unregistered health practitioners (massage therapy: 196; Pilate’s method: 10; myotherapy: 10; naturopathy: 3).

A search for the term ‘dry needling’ in WA on Yellow Pages Online returned 133 records, of which:
- 122 were also tagged as registered health practitioners (physiotherapists: 104; chiropractors: 9; podiatrists: 9), and
- 10 were also tagged as unregistered health practitioners (massage therapy: 9; naturopaths).

A similar search on the Natural Therapy Pages returned 751 entries nationally, of which the vast majority were also tagged as remedial massage services. Although, some of these may be registered health practitioners (physiotherapists: 74; chiropractors: 66). These figures are probably a more reliable indication of the extent the practice of dry needling by unregistered health practitioners than Yellow Pages Online as the Natural Therapy Pages are targeted specifically at natural therapists, most of whom are not registered health practitioners. Of the 751 listings, 160 listings were based in Western Australia.
Training standards in dry needling

Our research indicates that primary difference between ‘dry needling’ and acupuncture is the level of training.

Acupuncturists must complete a four to five year approved bachelor degree program majoring acupuncture, incorporating substantial western medical health science and the principles of evidence-based practice, in order to be eligible for general registration. In contrast, a typical course of training in ‘dry needling’ is one or two days or as much as 60 hours.26

However, it must be stressed that there is no legal requirement for anyone to have any training whatsoever before inserting acupuncture needles into an unsuspecting member of the public. The trend of some registered health practitioners to use the term ‘dry needling’ also has the potential to mislead the public to believe that that unregistered practitioners using this same term have met a similar standard as registered practitioners and are providing a high quality health service.

There is evidence that the incidence of serious risks associated with acupuncture practice (such as pneumothorax) is related to duration of training and this has direct implications for the practice of dry needling.27

A national insurer who provides professional risks cover for some non-acupuncturists who practise acupuncture has warned that a review of insurance claims ‘shows a disturbing number of claims for pneumothorax, as a complication of dry needling’. 28 This is supported by a recent article on pneumothorax from deep dry needling.29

Put simply, dry needling is the practice of acupuncture after little or no training and the public is misled by being told it is something other than the unqualified practice of acupuncture.

Title protection for acupuncture has had a mixed effect on education standards.

On the one hand, several course providers have ceased offering acupuncture courses which do not meet the Chinese Medicine Board’s accreditation standard. On the other hand, at least one of these course providers that had discontinued its acupuncture program instead now offers courses in dry needling to unregistered health practitioners.30

In the absence of any effective regulation of unregistered healthcare providers practising acupuncture under the title ‘dry needling’ various industry bodies are now setting minimum standards for dry needling training. The Australian Association of Massage Therapists’ Policy Statement: Practice Guideline – Myofascial Dry Needling states:

The nominal delivery hours of this unit (Provide Myofascial dry needling) is 60 hours and the student must demonstrate competency on a minimum of 10 clients.

The regulation of training programs that do not lead to registration or endorsement as an acupuncturist, and the practice of acupuncture by individuals who do not use the title ‘acupuncturist’ are outside of the authority of the Chinese Medicine Board and AHPRA.

Even so, these developments should be considered in the context of the objectives of the
National Law regarding the protection of public health and safety and facilitating high standards of education and training for health practice.

Some further concerns include:
- practitioners of dry needling, while bound by State skin penetration regulations/guidelines, are probably unaware of their existence and the State/Territory public health bodies may be unaware of the existence of this growing body of unregistered practitioners providing skin penetration services within their jurisdictions;
- The CMBA Guidelines on the Prevention and Control of Infection in Acupuncture Practice were developed for a registered profession with tertiary training. The risk assessment based approach in the guidelines is not necessarily directly transferable to practitioners who have a massage qualification and 24 to 64 hours training in acupuncture.

Another compounding factor is the exponential growth in the number and frequency of training programs in ‘dry needling’ that are targeted at massage therapists and other unregistered healthcare practitioners.\(^{51}\)

Since the publication in 2011 of two peer-reviewed articles on dry needling and education standards,\(^{32,33}\) there are now more than double the number of short courses in acupuncture using the term ‘dry needling’ compared to the number preceding commencement of national registration of acupuncture practitioners. These courses are typically of two days duration and, while some target registered health professionals, many target massage therapists and others who are not regulated health professionals.

The proposed Code of Conduct for unregulated health practitioners would not adequately address these ‘dry-needling’ issues.

### 2.2. The practices of Point Injection Therapy and Biomesotherapy

Point injection therapy is a relatively new practice that involves the injection of a saline or other approved sterile solution into acupuncture points, including ‘trigger points’. When provided by a qualified acupuncturist, it can be effective in the treatment of a range of conditions, but mainly musculoskeletal problems, especially those that fail to respond to more conventional treatment.

Biomesotherapy is the combination of point injection therapy with oral homoeopathy or homotoxicology (another term for homoeopathy).

Our research indicates that the majority of practitioners of biomesotherapy are unregistered health practitioners, mainly:
- massage therapists
- myotherapists
- sports and musculoskeletal therapists
- homoeopaths and other natural therapists.

There is also a relatively small number of registered health providers (mainly physiotherapists, podiatrists and chiropractors) also utilising point injection therapy.
While there are reputable and ethical providers of point injection training, this is certainly not universal. A typical course of training in biomesotherapy is a one day, weekend course or extended weekend course. Some education providers include it as part of a subject (up to 60 hours) in a massage or musculoskeletal program.

Apart from the level of training that may have occurred before an unregistered health practitioner engages in this practice, there are no effective regulatory mechanisms to protect the public in these circumstances.

Anecdotal reports indicate some questionable practices, such as:
- storing partially used vials for later use on other patients
- plugging the partially used vial with blue tack
- injecting substances that have not been TGA-approved for injection purposes, such as homoeopathic products approved for oral use only
- providing it as an alternative to Botox for cosmetic purposes.

These questionable practices would be directly related to the standard of education and training of the providing practitioner.

Biomesotherapy is widely advertised on the Natural Therapy Pages and is often described as the combination of homoeopathy and acupuncture. The average person could be forgiven for not realising that it involved injections by people with little or no training in its safe use and with minimal regulatory oversight.

A search for biomesotherapy on the Natural Therapy Pages returned 93 listings, of which only 25 (27%) had a registered health practitioner providing the treatment. Some practices had both registered and unregistered practitioners delivering biopuncture treatments.

The most common professions and services also advertised by the unregistered practitioners providing biomesotherapy treatments were:
- homoeopathy and homotoxicology
- naturopathy and herbal medicine
- massage and remedial therapy
- acupuncture and ‘chakra –puncture’
- kinesiology, and
- live blood analysis.

2.3. Recommendations relating to invasive therapies

Other registered health professions are facing similar issues such as:
- deregistered midwives in more than one state continuing to practise midwifery under an alternate title
- deregistered podiatrist in SA continuing to practise podiatry as a foot technician
- deregistered medical doctor with a cognitive impairment allegedly directing and supervising a registered nurse in WA in providing injections.

AACMA recommends that, in the interests of public safety, invasive therapeutic procedures, such as procedures that involve piercing the skin, should be restricted to registered health practitioners.
Exemptions would need to be clearly outlined, including:
- services provided by ambulance and other emergency workers
- self-medication of non-prescription medicines, such as Vitamin B12 injections
- self-medication of prescription medicines, such as insulin, clexane
- phlebotomists acting under the direction or supervision of a registered health practitioner
- a broad exemption in emergency situations for teachers and other workers or volunteers in supervision of minors, such as for using an epipen in the case of an allergic reaction to food
- cosmetic and personal appearances services, such as tattooing and body piercing.

The national boards and accreditation authorities already set minimum standards for education, training and practice related to their professions and, where appropriate, would be encouraged to work together on generic infection control and safety standards.
3. **SECTIONS 116 and 117 OF THE NATIONAL LAW**

Sections 116 and 117 of the National Law relate to protection of title and claims to be a registered practitioners or to be registered in a particular division of a profession.

Section 116 of the National Law relates to unregistered persons ‘holding out’ to be a registered health practitioner or to be authorised or qualified to practise in a registered health profession:

**Section 116**

**Claims by persons as to registration as health practitioner**

1. A person who is not a registered health practitioner must not knowingly or recklessly—
   a) take or use the title of “registered health practitioner”, whether with or without any other words; or
   b) take or use a title, name, initial, symbol, word or description that, having regard to the circumstances in which it is taken or used, indicates or could be reasonably understood to indicate—
      i) the person is a health practitioner; or
      ii) the person is authorised or qualified to practise in a health profession; or
   c) claim to be registered under this Law or hold himself or herself out as being registered under this Law; or
   d) claim to be qualified to practise as a health practitioner.

2. A person must not knowingly or recklessly—
   a) take or use the title of “registered health practitioner”, whether with or without any other words, in relation to another person who is not a registered health practitioner; or
   b) take or use a title, name, initial, symbol, word or description that, having regard to the circumstances in which it is taken or used, indicates or could be reasonably understood to indicate—
      i) another person is a health practitioner if the other person is not a health practitioner; or
      ii) another person is authorised or qualified to practise in a health profession if the other person is not a registered health practitioner in that health profession; or
   c) claim another person is registered under this Law, or hold the other person out as being registered under this Law; or
   d) claim another person is qualified to practise as a health practitioner if the other person is not a registered health practitioner.

**Maximum penalty**—

   a) in the case of an individual—$30,000; or
   b) in the case of a body corporate—$60,000.

In contrast, Section 117 of the National Law refers to registered health practitioners claiming to be registered in or qualified to practice in a profession or division of a profession:

**Section 117**

**Claims by persons as to registration in particular profession or division**

1. A registered health practitioner must not knowingly or recklessly—
   a) claim to be registered under this Law in a health profession or a division of a health profession in which the practitioner is not registered, or hold himself or herself out as being registered in a health profession or a division of a health profession if the person is not registered in that health profession or division; or
   b) claim to be qualified to practise as a practitioner in a health profession or a division of a health profession in which the practitioner is not registered; or
   c) take or use any title that could be reasonably understood to induce a belief the practitioner is registered under this Law in a health profession or a division of a health profession in which the practitioner is not registered.
(2) A contravention of subsection (1) by a registered health practitioner does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.

(3) A person must not knowingly or recklessly—

(a) claim another person is registered under this Law in a health profession or a division of a health profession in which the other person is not registered, or hold the other person out as being registered in a health profession or a division of a health profession if the other person is not registered in that health profession or division; or

(b) claim another person is qualified to practise as a health practitioner in a health profession or division of a health profession in which the other person is not registered; or

(c) take or use any title in relation to another person that could be reasonably understood to induce a belief the other person is registered under this Law in a health profession or a division of a health profession in which the person is not registered.

Maximum penalty—

(a) in the case of an individual—$30,000; or

(b) in the case of a body corporate—$60,000.

Note. A contravention of this subsection by a registered health practitioner may also constitute unprofessional conduct for which health, conduct or performance action may be taken.

The primary differences between the two sections are:

- ‘holding out’ is defined more broadly for unregistered health practitioners
- whether or not the alleged conduct is an ‘offence’.

It appears that AHPRA has taken the view that a practitioner advertising that they provide acupuncture is not a breach of sections 116 or 117

The apparent reason for this view is that it is the title ‘acupuncturist’ that is protected, not the word ‘acupuncture’ and that the service of acupuncture can be advertised or even advertise that they are trained to provide acupuncture so long as they do not use the protected title ‘acupuncturist’.

Interpreting Section 116

Applying this interpretation of section 116(1)(b)(ii) of the National Law, any unregistered or deregistered health practitioner, who is neither a registered acupuncturist nor endorsed for the practice of acupuncture, can advertise acupuncture services or claim to be qualified to provide acupuncture services.

Taken to its logical conclusion, any unregistered or deregistered practitioner can advertise and claim to be qualified to provide any service that is not a restricted practice under the National Law, such as:

- a massage therapist advertising physiotherapy, without being a registered physiotherapist, because the practice of physiotherapy is not protected, nor is the term ‘physiotherapy’
- a pedicurist advertising podiatry, without being a registered podiatrist, because the practice of podiatry is not protected, nor is the term ‘podiatry’
- a doula advertising midwifery, without being a registered midwife, because the practice of midwifery is not protected nor is the term ‘midwifery’
- and so forth.

If this is the intention of the section 116(1)(b) of the National Law, then protection of title as the main form of regulation has failed its purpose.
Clearly this cannot have been the intention of the national law to permit unregistered and deregistered health practitioners to advertise services that have been deemed sufficiently dangerous to warrant registration of the related profession.

From the perspective of the public, if an unregistered or deregistered health care provider is able to advertise a particular service such as acupuncture, the public should have confidence that they are registered in that profession and therefore qualified to be providing that service.

Interpreting Section 117

Applying this same interpretation to section 117 of the National Law any registered health practitioner who is neither a registered acupuncturist nor endorsed for the practice of acupuncture, can advertise acupuncture services or claim to be qualified to provide acupuncture services.

Taken to its logical conclusion, any registered practitioner can advertise and claim to be qualified to provide any other health service, such as:

- physiotherapy, without being a registered physiotherapist, because the practice of physiotherapy is not protected, nor is the term 'physiotherapy'
- chiropractic, without being a registered chiropractor, because the practice of chiropractic (other than cervical manipulation) is not protected, nor is the term ‘chiropractic’
- occupational therapy, without being a registered occupational therapist, because the practice of occupation therapy is not protected, nor is the term ‘occupational therapy’
- podiatry, without being a registered podiatrist, because the practice of podiatry is not protected, nor is the term ‘podiatry’
- midwifery, without being a registered midwife, because the practice of midwifery is not protected nor is the term ‘midwifery’
- and so forth.

If this is the intention of the section 117 of the National Law, then protection of title as the main form of regulation has failed its purpose.

Clearly, it cannot be the intention of Parliaments to permit registered health practitioners to flaunt the protection of title provisions of the National Law in this way.

The existence of Section 97 of the National Law indicates that Parliament did not intend registered health practitioners to use the title ‘acupuncture’ or ‘acupuncturist’ without being registered with the Chinese Medicine Board in the Division of Acupuncture or otherwise endorsed under Section 97.

It is also clear that national boards (apart from the Medical Board) have not considered it necessary to utilise Section 97 and have advised their registrants to apply for registration as an acupuncturist if they want to use the title. This is supported by the fact that there are only 33 currently other registered practitioners from Victoria who took up the option of acupuncture endorsement under the superseded Victorian law in the decade that preceded the national scheme.

From the perspective of the public, if a registered health care provider is advertising a particular service such as acupuncture or chiropractic or midwifery, the public should have
confidence that they are registered in that profession and therefore qualified to be providing that service.

3.1. Contraventions of Section 117 of the National Law - registered practitioners

Due to the short timeframe to lodge submissions, targeted research was conducted to ascertain the extent of alleged contraventions of Section 177 by AHPRA registered health practitioners. Research to obtain more comprehensive national data is ongoing and will be subject of a further submission to AHPRA and Health Ministers if required.

According to the June 2014 AHPRA statistics, in Western Australia there are:
- 214 registered Chinese medicine practitioners, of which 210 are registered in the Division of Acupuncture
- 26 registered practitioners endorsed for the practice of acupuncture under section 97 of the National Law, all of who were registered medical practitioners.

Therefore, the data show a total of 236 practitioners in Western Australia authorised under the National Law to use the protected title ‘acupuncture’.

A search of Yellow Pages Online for the term ‘Acupuncture’ in Western Australia, returned 333 listings, of which:
- 73 were physiotherapy practices, made up of 68 unique practices, many with multiple physiotherapy practitioners
- 26 were podiatry practices
- 20 were chiropractic practices.

Apart from one practice, no registered or endorsed acupuncturist could be identified at any of these physiotherapy, podiatry or chiropractic practices that were advertising acupuncture to the general public.

A limited Google search for acupuncture WA for these three professions returned data showing at least 35 individual registered practitioners advertising acupuncture in some form and at least 19 individual practitioners advertising that they are qualified or have qualifications in the practice of acupuncture. An AHPRA registration check indicated that none of these practitioners were registered with the Chinese Medicine Board in the Division of Acupuncture.

These are minimum numbers, not maximum numbers, and the actual numbers are likely to be much higher.

Some of the terms used are:
- Acupuncture
- Acupuncturist
- Anatomical acupuncture
- Anatomical acupuncturist
- Special interest in acupuncture
- Western acupuncture
- Dry needling acupuncture or dry needling (acupuncture)
- Dry needling advertised under heading ‘acupuncture’ service.
However, on the indicative data obtained to date, there is clear evidence of the widespread use of the title ‘acupuncture’ in advertising by individual registered health practitioners and by their clinics/practices in circumstances where those practitioners are not authorised under the National Law to use the protected title ‘acupuncturist’.

We also believe it is not appropriate for AHPRA to be apparently condoning this type of conduct that undermines the purpose and intent of the National Law in protecting the public. Any legal advice that supports this interpretation of the National Law is, in our view, fundamentally flawed and should be revisited.

**Recommendations regard Section 117 of the National Law**

In order to provide clarity and certainty, Section 117 needs to be tested at law, taking into account the purpose of the National Law is to protect the public and that consistency in interpretation of the National Law applies across the registered professions.

The wording of section 117(1)(c) also need to be reviewed to more closely reflect the wording in section 116(1)(b)(ii) – that is, to add the words phrase ‘name, initial, symbol, word or description’ after the word ‘title.

A less costly alternative would be to add the term ‘acupuncture’ as a protected title of the Chinese medicine profession in the Table under section 113 of the National Law. This approach would remove all ambiguity and uncertainty about whether advertising ‘acupuncture’ services and claiming to be qualified to provide ‘acupuncture’ was holding out to be registered in the Division of Acupuncture in the profession of Chinese medicine.

**3.2. Contraventions of Section 116 of the National Law - unregistered practitioners**

Advertising by unregistered ‘acupuncture’ services is also continuing in flagrant breach of Section 116 of the National Law.

The incidence of section 116 contraventions is less than for alleged breaches under Section 117, primarily because many unregistered practitioners who are practising acupuncture now do so under a different title such as ‘dry needling’.

However, AHPRA appears powerless or unwilling to prosecute an unregistered practitioner for holding to be a registered practitioner, even if they:
- advertise acupuncture services
- claim to be qualified in acupuncture or qualified to provide acupuncture services
- use pictures and symbols that are associated with the practice of acupuncture.

All these actions would lead the public to believe they are an acupuncturist and thus AHPRA-registered, even though the person may have avoided use of the specific title ‘acupuncturist’.

**Recommendations regarding Section 116(1)(b)(ii)**

In order to provide clarity and certainty, Section 116(1)(b), in particular clause (ii), needs to be tested at law, taking into account the purpose of the National Law is to protect the public
and that consistency in interpretation of the National Law applies across the registered professions.

A less costly alternative would be to add the term ‘acupuncture’ as a protected title of the Chinese medicine profession in the Table under section 113 of the National Law. This approach would remove all ambiguity and uncertainty about whether advertising ‘acupuncture’ services and claiming to be qualified to provide ‘acupuncture’ was holding out to be registered as an acupuncturist in the profession of Chinese medicine.

4. REDUCING THE COSTS OF REGISTRATION

It is necessary to find effective mechanisms to reduce the costs of registration but still retain standards and quality. Chinese medicine has a high annual registration fee compared to other similar-sized registered professions.

AACMA supports the second option – retaining the nine low regulatory workload boards as distinct boards but sharing resources such as notifications and other regulatory functions common to the boards.

We think that a Health Professions Australia Board for the nine low regulatory workload boards is premature and therefore would not support this option at this time.

5. COMPLAINTS AND NOTIFICATIONS

In the consultation forums, it was made clear that AHPRA is not a complaints resolution body, and that it only deals with notifications. Members of the public and many registered practitioners would be unaware of the distinction between a complaint and a notification and can be confused and dissatisfied with the notifications process if they are primarily seeking a resolution of their complaint.

AACMA supports a single point of contact, either nationally or in each state, for notifications and complaints. This will enable matters that need to be referred to AHPRA as notifications to be identified and to treat the remaining matters as complaints that need some form of resolution for the patient and the practitioner or health service. Some matters may be both a complaint and a notification, the response to which could be coordinated through a single contact point.

6. RESPONSE TO SPECIFIC QUESTIONS

1. Should the Australian Health Workforce Advisory Council be reconstituted to provide independent reporting on the operation of the National Scheme?
   Yes

2. Should the Health Workforce Advisory Council be the vehicle through which any unresolved cross professional issues are addressed?
   Maybe, we are unsure at this stage.
3. Should a single Health Professions Australia Board be established to manage the regulatory functions that oversee the nine low regulatory workload professions? Estimated cost saving $11m per annum.
   No

4. Alternatively, should the nine National Boards overseeing the low regulatory workload professions be required to share regulatory functions of notifications and registration through a single service? Estimated cost saving $7.4m pa.
   Yes

5. Should the savings achieved through shared regulation under options 1 or 2 be returned to registrants through lower fees?
   Yes

6. Should future proposals for professions to be included in the National Scheme continue to require achievement of a threshold based on risk to the public and an associated cost benefit analysis?
   Yes

7. Should the National Law be amended to recognise those professions that provide adequate public protection through other regulatory means?
   No

8. Should a reconstituted Australian Health Workforce Advisory Council be the vehicle to provide expert advice on threshold measures for entry to the National Scheme to the Health Workforce Ministerial Council?
   Maybe

9. What changes are required to improve the existing complaints and notifications system under the National Scheme?
   Simplification of the process for complainant and clarification of the difference between notifications and complaints and who does what.

10. Should the co-regulatory approach in Queensland, where complaints are managed by an independent commissioner, be adopted across all States and Territories?
    Too early to know the implications

11. Should there be a single entry point for complaints and notifications in each State and Territory?
    Yes

12. Should performance measures and prescribed timeframes for dealing with complaints and notifications be adopted nationally?
    Yes
13. Is there sufficient transparency for the public and for notifiers about the process and outcomes of disciplinary processes? If not, how can this be improved?

Unable to comment

14. Should there be more flexible powers for National Boards to adopt alternative dispute resolution, for instance to settle matters by consent between the Board, the practitioner and the notifier?

Yes

15. At what point should an adverse finding and the associated intervention recorded against a practitioner be removed?

Depends on the level of seriousness of the conduct – this could be determined as part of the decision and be appealable.

16. Are the legislative provisions on advertising working effectively or do they require change?

Overall they are effective, with the exception advertising ‘acupuncture’ services by practitioners who are not registered or endorsed acupuncturists. This goes to the heart of a practitioner’s ethics and professionalism.

17. How should the National Scheme respond to differences in States and Territories in protected practices?

Work should be done to harmonise wherever possible.

18. In the context of the expected introduction of a National Code of Conduct for unregistered health practitioners, are other mechanisms or provisions in the National Law required to effectively protect the public from demonstrated harm?

Yes. The practice of invasive therapies should be restricted to registered health practitioners, with exceptions as outlined elsewhere in this submission.

19. Should the mandatory notification provisions be revised to reflect the exemptions included in the Western Australian and Queensland legislation covering health practitioners under active treatment?

Yes

20. To what extent are National Boards and Accrediting Authorities meeting the statutory objectives and guiding principles of the National Law, particularly with respect to facilitating access to services, the development of a flexible, responsive and sustainable health workforce, and innovation in education and service delivery?

Flexibility and innovation should not take precedence over maintaining standards, quality and protection of the public

21. Should the proposed reconstituted AHWAC carry responsibility for informing regulators about health workforce reform priorities and key health service access gaps?

Yes, but they should be more consultative of the professions in that process.
22. To what extent are Accrediting Authorities accommodating multidisciplinary education and training environments with coordinated accreditation processes or considering future health practitioner skills and competencies to address changes in technology, models of care and changing health needs?

Unable to comment at this stage

23. What relationship, if any, is required between regulators and educational institutions to ensure the minimum qualification for entry to professions remains available?

Consultative processes, so long as the tail is not wagging the dog. More consultation with the professions are needed to ensure that programs are able to produce graduates with the knowledge, skills and attributes and necessary for unsupervised clinical practice. The accreditation authorities have the power to close down programs that are consistently underperforming.

24. How effective are the current processes with respect to assessment and supervision of overseas trained practitioners?

Unable to comment

25. Should the appointment of Chairperson of a National Board be on the basis of merit?

Yes, but they must be from the profession being regulated.

26. Is there an effective division of roles and functions between National Boards and accrediting authorities to meet the objectives of the National Law? If not, what changes are required?

Unable to comment at this stage – it is early days for Chinese medicine.

27. Is there sufficient oversight for decisions made by accrediting authorities? If not, what changes are required?

Unable to comment at this stage – it is early days for Chinese medicine.

28. The Review seeks comment on the proposed amendments to the National Law.

AACMA seeks additional changes to the National Law to:

- Restriction of the practice of invasive therapies to registered health practitioners
- Add ‘acupuncture’ as a protected title of the Chinese medicine profession in the Table under Section 113.
- Amend section 117(1)(c) and 117(3)(c) to more closely reflect the wording of Section 116(1)(b).
REFERENCES


28 The Chiropractic and Osteopathic College of Australia. Practice Alert: Negligence Claims for Pneumothorax. 1 April 2014.