10 October 2014

Mr Kim Snowball  
Independent Reviewer  
AHMAC NRAS Review  
nras.review@health.vic.gov.au

Dear Mr Snowball

Re: Consultation in the Review of the National Registration and Accreditation Scheme for the health professions

Thank you for providing the opportunity to lodge a submission on the review.

This document is a summary of the key points of our submission to enable the issues to be identified for inclusion in the summary report to Health Ministers. A more substantial submission, with supporting evidence, will be lodged no later than 17 October 2014.

About AACMA

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.

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 supported.

**TITLE PROTECTION FAILS TO PROTECT THE PUBLIC**

Title Protection fails to facilitate the provision of high quality education and training of health practitioners;
Alternate titles 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.

Title protection 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 now offers courses to the public under the term ‘dry needling’ instead. The provision for an endorsement standard for acupuncture under Section 97 of the National Law seems to be intended to maintain standards of education and training for registered practitioners practising acupuncture via an accreditation standard for courses which meet that endorsement standard. However, the practice of acupuncture by registered practitioners under the label ‘dry needling’ means that an endorsement standard is largely irrelevant and acupuncture is being practised by unendorsed registered health practitioners without reference to either an accreditation or an education standard.

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.

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.

As with 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.

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. 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.
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 ‘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 the practice as being:
- similar to acupuncture
- acupuncture dry needling
- based on western medical aetiology and therefore different to acupuncture
- totally different from acupuncture, the difference being in the process by which the practitioner decides what points should be needled.

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, chiropractors and osteopaths, 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.

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. A typical course of training in ‘dry needling’ is one or two days or as much as 60 hours.

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 this term 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.

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.

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.

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.

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

**The practices of Point Injection Therapy and Biomesotherapy**

Point injection therapy in 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 are also a relatively small number of registered health providers (mainly physiotherapists 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 or
weekend course. Some education providers include it as part of a subject (less than 50 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 that 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 homeopathic 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 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.

**Recommendation**

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, are encouraged to work together on generic infection control and safety standards.
SECTION 116(1)(b)(ii) OF THE NATIONAL LAW
Is advertising a service or claiming to be qualified to provide a service not holding out to be qualified to practise in the related profession?

Section 116(1) of the National Law reads:

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.

It appears that AHPRA has taken the view that a practitioner advertising that they provide acupuncture is not a ‘title, name, initial, symbol, word or description that … indicates or could be reasonably understood to indicate … the person is authorised or qualified to practise in a health profession’, namely as an acupuncturist.

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 the practitioner can claim to be qualified to provide acupuncture so long as they do not use the protected title ‘acupuncturist’.

Under 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 be 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 if 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.

If advertising a service is not a breach of the protection of title provision of the National Law, and the public are misled to believe the practitioner is qualified in relation to that service, then the system has failed to protect them.

We believe it is also not appropriate for AHPRA to be apparently condoning this type of conduct that undermines the purpose and intent of the National Law.

In our view, any legal advice that supports this interpretation of the National Law is fundamentally flawed and should be revisited.

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.

SECTION 117 OF THE NATIONAL LAW
Is advertising a service or claiming to be qualified to provide a service not holding out to be qualified to practise in the related profession?

Section 117 of the National Law reads:

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.

It appears that AHPRA has taken the view that a registered health practitioner advertising that they provide acupuncture or that they are qualified to provide acupuncture is not a breach of Section 117(1) if they are not actually registered as a Chinese medicine practitioner in the Division of Acupuncture or endorsed in accordance with Section 97 of the National Law.

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 the practitioner can claim to be qualified to provide acupuncture so long as they do not use the protected title ‘acupuncturist’.

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

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.

Members of the public are misled to believe the practitioner is qualified in relation to that service and the system has failed to protect them.

We believe it is also not appropriate for AHPRA or any national board to be apparently condoning this type of conduct.

The same law applies equally to all registered practitioners and all national boards. It is not appropriate to selectively interpret the law differently for different professions nor to single out acupuncture as being different from other services such as physiotherapy, chiropractic or midwifery that are provided by registered practitioners.

The existence of Section 97 of the National indicates that Parliament did not intend registered health practitioners to use the title ‘acupuncture’ 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.

In our view, any legal advice that supports this interpretation of the National Law is fundamentally flawed and should be revisited.

**Recommendations regarding Section 117**

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. Sections 97 and 114 would continue to apply. 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.
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.

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 referred to AHPRA for action 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.

Please contact the Acting AACMA CEO, Judy James, at the AACMA national office if you have any questions about this submission.

Yours faithfully

Prof Hong Xu
AACMA President