

**NATIONAL REGISTRATION AND ACCREDITATION SCHEME
FOR THE HEALTH PROFESSIONS**



SUBMISSION PAPER

**Proposed arrangements for handling complaints,
and dealing with performance, health and conduct matters**

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This submission

This submission is made in relation to the Practitioner Regulation Sub-Committees paper, dated 7 October 2008. It sets out the particulars of the proposed arrangements for handling complaints, and dealing with performance, health and conduct matters

Australian Osteopathic Association

The Australian Osteopathic Association (**AOA**) represents the interests of osteopaths who practice in the various States of Australia, in accordance with the State-based legislation which the National Accreditation Scheme is intended to replace.

The AOA has been consulted by those involved in development of the Scheme. We appreciate the efforts made by officials to keep all interested parties informed as the proposal develops.

The Scheme and proposed registration arrangements are supported

The AOA supports the objectives of a national scheme. In particular, we support the intention that practitioners will be able to practice under consistent standards and scope across Australia, once national registration and accreditation are in place and in operation. We support the schemes objectives in ensuring safety for the public and that only suitably qualified and professional practitioners will be able to practice.

This submission will only address points in which the AOA see relevant to comment and numbering is based on the consultation paper numbering. Where we support the proposed model, put forward by Practitioner Regulation Subcommittee we will indicate.

1. Principles

Proposal 1.5.1: The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

2. Proposed terminology

Proposal 2.1: All the proposed terminology is supported by the AOA; however some additional comments have been added below.

2.1.1 Notification – The AOA supports this section as proposed by the Practitioner Regulation Subcommittee, particularly as ‘Notification’ is a good generic term which encompasses complaints but includes other matters which may come before the Board.

2.1.2 Preliminary assessment – The proposed terminology is supported by the AOA as the use of the term preliminary assessment is preferred as the primary purpose of this stage is to determine if an investigation is warranted.

2.1.15 Not of good character – The AOA believes that this term needs some form of definition or clarification before being placed in legislation.

3. Overview of proposed system

The AOA supports all the proposals in section 3.1 – 3.3. The AOA supports the need for better consultation and communication with the HCC or their equivalents. Registration Boards are not experienced, qualified or appropriately placed to deal with conciliation matters or dealing with the support needs of the notifiers; these issues should be addressed by such mediation agencies such as the HCC or their equivalents.

4. Notifications

4.1 Who may make a notification

Proposal 4.1.1: The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

4.2 In what form may a notification be made

Proposal 4.2.1 The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

Proposal 4.2.2: The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

4.3 What sort of matter may be the subject of a notification

Proposal 4.3.1: The AOA supports this proposal; however suggests:

- That the list is not limited and allows for notifications based on other allegations
- The term “habitual misuse” should be replaced with “substance abuse”
- That the following is added “The Registrant has breached professional practice standards issued or approved by the Board.”
- That the following is added “The Registrant has not duly informed the Board of a criminal conviction.”

Proposal 4.3.2: The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

4.4 Mandatory reporting obligations

The AOA supports the combination of Option 1b & 2b and it being applied to all registered health practitioners; however, for the system of mandatory reporting to work effectively it must be framed in supportive and non-punitive fashion to assist practitioner in returning to work or seeking assistance and support to work through these issues. Obviously serious conduct matters would require punitive approaches.

The AOA does have some concerns in regards to defining the thresholds for mandatory reporting requirements. Such requirements should come into force when another practitioner is of the belief that such impairment or conduct may place the public at risk.

The AOA strongly believes that along with mandatory reporting practitioner support programs will need to be developed to assist in the management process of impaired practitioners, along with guidance from experts on best practice for performance management.

4.5 Protection for notifiers and registrants

Proposal 4.5.1: The AOA strongly supports the need to enshrine protection of notifiers in legislation and further that malicious action by the reported practitioner or other practitioners becomes an additional section under 4.3.1.

4.6 Own motion powers

The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

4.7 Immediate suspension powers

Proposal 4.7.1: The AOA supports the alternative proposal of specifying no term at all and leave it to the board’s discretion, providing there is an appeal process.

Proposal 4.7.2: The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

Proposal 4.7.3: The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

5. Preliminary assessment of notifications

Proposal 5.1.1; 5.2.1; 5.3.1; 5.4.1; 5.5.1; 5.5.2; 5.5.3: The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

5.6 Notifiers' rights of review of preliminary assessment decisions

The AOA supports option 2; however, the right to seek a review should be restricted to a decision to take no further action. To allow review of other decisions is to invite the notifier to become involved in the work of the board.

6. Performance matters

Proposal 6.1.1; 6.2.1; 6.2.2; 6.3.1; 6.3.2; 6.3.3; 6.5.1; 6.5.2; 6.5.3: The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

Proposal 6.4.1: The AOA supports the proposal; however, a legal (or alternative dispute resolution) representative should be included as a member of the panel. Without a legal (or alternative dispute resolution) representative being present on the panel, the principles of natural justice and the complainants and practitioners rights may be reduced. This will be negated if common standards and procedures are in place for handling all such matters.

7. Health or impairment matters

7.1 Overview of management of health related matters

Proposal 7.1.1: The AOA strong supports the need to allow the boards the flexibility to make arrangements by agreement with the registrant, to suspend or limit the registrant's practise if necessary, and to work cooperatively with them to assist their return to unrestricted practice, without the need for a formal hearing or tribunal process.

The AOA does; however, question if the Board has the skills to case manage these individual practitioners or if it would be better practice to entrust such case management to qualified professionals who further advise the Board on the practitioner's progress.

Proposal 7.1.2: The AOA supports Option 2; however with conditions, the AOA considers that the use of a component of all registration fees is inappropriate and any charges for the registrant receiving health programs should be on a cost recover basis, through that registrant.

Proposal 7.2.1; 7.2.2 & 7.3.1; 7.3.2; 7.3.3; 7.3.4; 7.4.1; 7.5.1; 7.5.2; 7.5.3: The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

8. Conduct matters

Proposal 8.1.1; 8.2.1; 8.2.2; 8.3.1; 8.3.2; 8.3.3; 8.3.4; 8.3.5; 8.4.1; 8.4.2; 8.5.1; 8.6.1; 8.6.2: The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

Proposal 8.6.3: It is proposed that the legislation make provision for a panel to be required to give reasons for its decision to the practitioner and the notifier, within 28 days; however again; without a legal representative or experienced registrar on the panel there may be a lack of expertise to write the decision

9. Ensuring accountability, transparency and procedural fairness

9.1 Achieving separation of functions

Proposal 9.1.1: The AOA supports Option 2, as the level of independent review and consistency in decisions will increase, therefore offering a greater level of accountability, transparency and procedural fairness.

Proposal 9.1.2: The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

Proposal 9.2.1: The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

9.3 Legal representation for registrants at panel hearings

The AOA supports Option 2, where the legislation specifies that the registrant has the right to be legally represented at a board hearing. Although it is intended that panel hearings be low key and informal (and many registrants would not require a legal representative) our members often provide feedback that they feel intimidated during a panel hearing, particularly as the Board may have previously sought legal advice or the community representative is also a lawyer.

Arguably if the Board wants the ability to seek external advice (legal or otherwise) such options should be available to the registrant, otherwise the principles of natural justice have been compromised and registrants are placed before a tribunal with a significant power imbalance.

9.4 Confidentiality of panel hearings

Proposal 9.4.1: The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

9.5 Status of notifiers at panel hearings

Proposal 9.5.1: The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

9.6 Review rights for registrants

Proposal 9.6.1: The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

9.7 Notice of decisions of hearing panels

Proposal 9.7.1: The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

9.8 Role of Commonwealth, State and Territory ombudsmen

The AOA supports **Option 1:** Apply the Commonwealth *Ombudsman Act 1976* to the national registration scheme.

10. Tribunal hearings

The AOA supports all proposals under Section 10; except in relation to clauses below.

10.9 Powers in relation to deregistered practitioners

The AOA supports the proposal that a responsible tribunal would have the power to issue a prohibition order at the time that it cancels the registration of a practitioner; however, due consideration on the impact of preventing the practitioner from owning or operating a business that provides health services is needed. The impact of such prohibition may be greater than the practitioner's right to practice and consideration would be needed to the extreme financial impact this could place on the practitioner, their family, staff within the practice or the business itself.

10.11 Reasons for decisions

Proposal 10.11.1 & 10.12.1: The AOA supports this section as proposed by the Practitioner Regulation Subcommittee; however, care needs to be taken in relation to hearings that are closed to the public and protecting the identity of the complainant or practitioner, particularly in cases where there is no case to answer.

11. Offences and regulated conduct

11.3 Holding out offences

Proposal 11.3.1: The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

11.4 Practice offences

Proposal 11.4.1: The AOA strongly calls for there to be statutory restrictions on the practice of spinal manipulation to which offences might apply; particularly, if the underlying basis of the national registration scheme is the protection of the public.

11.5 Direct or incite offences

Proposal 11.5.1: The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

11.7 Offences related to enforcement activities

Proposal 11.7.1: The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

11.8 Other offences

Proposal 11.8.1: The AOA supports this; however, the time frame should be made more reasonable to allow for delays in delivery etc. suggest 28 days.

Proposal 11.8.2: The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

Proposal 11.8.3: The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

11.9 Prosecution of offences

Proposal 11.9.1: The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

11.10 Monitoring of registrants

Proposal 11.10.1 The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

12. Transition arrangements

Proposal 12.1: The AOA supports this section as proposed by the Practitioner Regulation Subcommittee.

Further consultation

We ask that the sub-Committee consider these issues and respond as appropriate. The AOA will continue to take advantage of the consultation opportunities as they arise and we thank the Committee for those opportunities.