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# CHIROPRACTORS REGISTRATION BOARD OF WESTERN AUSTRALIA

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## **National Registration & Accreditation Scheme for the Health Professions**

### **Consultation Paper on Proposed arrangements for handling complaints, and dealing with performance, health and conduct matters**

#### **Submission by the Chiropractors Registration Board of WA (CRBWA)**

## **2. Proposed terminology**

CRBWA believes that as the profession and consumers have been used to the term “complaint” for approximately 70 years, the change in terminology would, in fact, be confusing.

CRBWA believes that the term “complaint” is preferable to “notification” and as such considers the term “complaints assessment committee” should be used. CRBWA also believes that there should be a notification assessment committee in each state to enable timely consideration of all matters.

### **2.1.5 Performance management committee**

CRBWA considers the term “competence” to be preferable to “performance” as it believes a person could be considered to perform, without being competent.

### **2.1.6 Performance assessment**

CRBWA considers the term “competence” to be preferable to “performance” as it believes a person could be considered to perform, without being competent.

### **2.1.7 Performance panel**

CRBWA considers the term “competence” to be preferable to “performance” as it believes a person could be considered to perform, without being competent.

### **2.1.19 Professional misconduct**

CRBWA supports this term. The differentiation (2.1.17 – 2.1.19) between unsatisfactory professional performance/conduct and professional misconduct seems unnecessary. It isn't a differentiation disciplinary legislation in WA generally makes, in that at present the conduct to which the ability to discipline applies is professional misconduct. The differentiation that is made is with the appropriate sanction to be applied to that misconduct; that is if the sanction is limited to a certain level it can be dealt with by the Board and if a higher sanction is considered appropriate the SAT must be involved. Given that, the definition of the unsatisfactory professional performance/conduct is based on whether the effect of it will be suspension or deregistration, I would have thought it would be sufficient to say that professional misconduct where the likely sanction is not suspension or deregistration may be dealt with by the Board's relevant committee and where that is the likely sanction the committee must refer it to the SAT (or other appropriate body).

### **3.3 Proposed definitions for what constitutes a departure from professional standards**

CRBWA supports the definitions included in Attachment 1 with the addition of “but is not limited to;” as part of the definitions i.e.

‘**unsatisfactory professional conduct**’ includes **but is not limited to.....;**

‘**professional misconduct**’ includes **but is not limited to.....;**

CRBWA recommend that the respective codes of conduct/ standards of practice to be developed for each profession be referred to in the legislation. It is recommended that breaches of the codes of conduct would provide grounds for the national Boards to consider it as a notifiable event.

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

CRBWA believes that if a practitioner has a penalty imposed while not registered, that should be the basis of refusing registration or imposing a condition (which could be the equivalent of the penalty). CRBWA doesn’t believe that the Board would want to be limited to imposing just what was imposed while the practitioner was not registered (where you couldn’t impose conditions for obvious reasons).

### **4.4 Mandatory reporting obligations**

CRBWA supports Option 1b provided there are adequate safeguards to prevent frivolous notifications. CRBWA believes that notification shouldn’t be limited to only situations of a treating relationship and should include situations that may include sexual misconduct.

#### ***Student registrants and mandatory reporting***

CRBWA recommend that the same requirements for general registrants apply to students/interns.

In the previous Consultation paper on Registration, CRBWA recommended that option 2 proposal 7.4.1 be adopted for student registration “ ...for students undertaking practical training where they are interacting with members of the public”. It would follow that it is from this time that such Mandatory reporting should be in effect. In this circumstance the reporting entity may be another registrant, another student, or an employee of an institution

CRBWA also recommends that that the same requirements for general registrants apply to all persons who are registered under the legislation.

### **4.7 Immediate suspension powers**

CRBWA supports suspension for a period of three months as well as the power to impose a condition immediately and to also to give an order to desist from carrying on an activity.

CRBWA endorses proposal 4.7.3 with insertion of “ (s) or other conditions” as follows....

It is proposed that the legislation include provisions that empower a responsible board (or a notifications assessment committee) to accept an undertaking(s) or other conditions from a practitioner as an alternative to immediate suspension of the practitioner’s registration..

### **5.6 Notifiers’ rights of review of preliminary assessment decisions**

CRBWA supports Option 1. Whilst the arguments for a review process are understood, history would show that notifiers who feel aggrieved with a Board’s decision will never be satisfied with the decision of the Board unless the decision provides the outcome they are seeking.

#### **6.4 Performance panel hearings**

CRBWA questions whether limiting the number of registrants from the profession concerned to 50% is appropriate. As this panel is charged with the responsibility of assessing the performance of the practitioner it is not clear how panel members from outside the profession can make an assessment of the practitioners' performance. CRBWA does support inclusion of members who are not and have never been a registrant in a regulated health profession, but considers that there needs to be more members from the profession on any panel. In addition CRBWA believes that the Chairperson should be a registrant from the profession concerned.

#### **7.1 Overview of management of health related matters**

CRBWA supports Option 2 on the basis that the health programs should be on a user pays basis. The practitioner would meet their own personal health costs if they were not imposed by the Board.

#### **8.5 Conduct panel hearings**

CRBWA questions whether limiting the number of registrants from the profession concerned to 50% is appropriate. As this panel is charged with the responsibility of assessing the performance of the practitioner it is not clear how panel members from outside the profession can make an assessment of the practitioners' performance. CRBWA does support inclusion of members who are not and have never been a registrant in a regulated health profession, but considers that there needs to be more members from the profession on any panel. In addition CRBWA believes that the Chairperson should be a registrant from the profession concerned.

#### **9.1 Achieving separation of functions**

CRBWA supports Option 1. Whilst the arguments in Option 2 & 3 are acknowledged, the costs of implementing such a system for smaller boards would be cost prohibitive.

#### **9.3 Legal representation for registrants at panel hearings**

CRBWA considers that all registrants should have the right to be legally represented at a Board hearing. History would show that where hearings are conducted and the Board has legal representation, either by appointment for that hearing, or through representation on the Board, the practitioner can feel intimidated. As such the Board support Option 2.

#### **9.7 Notice of decisions of hearing panels**

CRBWA questions whether notification should be given to an employer. This exposes the registrant to a penalty imposed by the Board as well as by the employer. CRBWA does acknowledge, however, that in some cases, such as a finding of sexual misconduct, that these findings should be reported to an employer.

#### **10.3 Original jurisdiction of tribunal**

CRBWA supports 10.3.1. and the alternative which seems to be additional rather than an alternative.

#### **11.4 Practice offences**

CRBWA support 11.4.1. and supports that offences would apply to the restricted practice of spinal ( and extremity) manipulation in two parts

- a. those registered practitioners who do not have the qualifications to allow them to use a restricted practice, or
- b. those persons who are not a registered practitioner under the act who have allegedly performed a restricted practice.

#### **11.5 Direct or incite offences**

CRBWA considers that any person who directs a registered practitioner to act in a manner that might constitute unsatisfactory professional conduct or professional misconduct should be subject to the offence provisions.

## **11.6 Regulation of advertising**

CRBWA supports Option 3 in that broadly framed advertising better protects the public.