

Submission to Health Workforce Principal Committee

Practitioner Regulation Subcommittee

National Registration and Accreditation
Scheme for the Health Professions

4 November 2008



Introduction

Physiotherapy commends the Health Workforce Principal Committee on the development of the consultation paper related to registration arrangements for the National Registration and Accreditation Scheme for the Health Professions. The Physiotherapy Registration Boards, the Australian Physiotherapy Association and the Council of Physiotherapy Deans, Australia and New Zealand thank the Committee for the opportunity to comment on aspects of the registration arrangements which are to be included in Bill B.

The Australian Physiotherapy Council and the Australian Physiotherapy Association (APA) are pleased to submit comments that reflect the consensus position for physiotherapy on these matters. These comments are based on input from the eight physiotherapy registration boards, the universities that offer entry level physiotherapy education programs and the APA.

This submission responds to the proposals explicitly included in the consultation paper. The profession has considered the content of the consultation paper and herewith submits its position on the issues. For ease of translation by the Project Implementation Team, the responses are set out using the same numbering system as the Consultation Paper and relevant text from the Consultation Paper is included in italics. Physiotherapy would be pleased to provide further background and justification for the recommendations within this response.

Physiotherapy looks forward to further discussion regarding restriction of spinal manipulation. The practice of spinal manipulation is contentious because there is documented evidence of the risk of death and significant injury arising from manipulation of the upper cervical spine. On one hand, it may be argued by some that this risk is best managed by appropriate education and restriction of practice to those who are clinically competent to undertake manipulation of the upper cervical spine. On the other hand, it may be argued that the same clinical results can be achieved using different manual techniques with lower levels of risk and that the clinical outcomes of spinal manipulation do not justify placing members of the community at risk of death and significant injury. Physiotherapy contends that further work must be done before a decision regarding the restriction of spinal manipulation can be made. Physiotherapy would be pleased to contribute, along with other stakeholders, to this further work.

If the intent of restriction on practices is to regulate practices that place members of the community at risk of significant injury and death, physiotherapy contends that the legislation should extend to restrict all such practices. Physiotherapy recommends that a risk assessment of practices other than spinal manipulation is undertaken in order to determine a list of practices associated with risk of significant injury and death. These practices should then be restricted to the professions that have relevant education demonstrated by the accreditation and professional standards and to other registrants who have demonstrated individual competence through an accredited process of evaluation.

Please contact the Australian Physiotherapy Council Chief Executive Officer, Margaret Grant, margaret.grant@physiocouncil.com.au for further information or clarification of any aspect of this submission.

GENERAL COMMENTS

1.1 Physiotherapy notes that the wording of many of the proposals appears to be based on the *Medical Practice Act 1992* (NSW). Physiotherapy recommends that the project team ensures the registration arrangements reflect contemporary good practice principles such as those found several Acts passed within the last four years such as the *Health Professions Act 2004* (ACT).

2. Principles and approach

Proposal 2.1: It is proposed that the registration provisions be framed in a way that:

- a. reflects the wording and intent of the IGA*
- b. builds on the best aspects of State and Territory schemes, rather than the lowest common denominator or replicating one existing registration scheme, and facilitates a smooth transition to the national arrangements*
- c. enables a robust system that is designed to protect the public*
- d. is the least restrictive law necessary to achieve the policy objectives, and includes legislated restrictions on practice only where the benefits to the community as a whole outweigh the costs, and there is no other more responsive method of achieving these benefits, and*
- e. facilitates the transparent, accountable, efficient, effective and fair operation of the scheme.*

Physiotherapy:

- i) supports Proposal 2.1 but is concerned that (d) may form a rationale for 'lowest common denominator' legislative approach.
- ii) Recommends that (d) is reworded to base restrictions on practice on risk management and harm minimisation principles rather than a cost:benefit approach.

4. Initial registration

4.1 Applications for registration

Proposal 4.1.1: It is proposed that the legislation require applications for registration to be made to the responsible board, and that an application must be:

- in a form approved by the responsible board*
- accompanied by the fee fixed for that profession, and*
- accompanied by any information reasonably required by the responsible board.*

It is not intended that the forms for registration be prescribed by regulation. It is expected that the national scheme will include a facility for registrants to make applications on line, as well as paper based applications.

Physiotherapy:

- i) supports Proposal 4.1.1 but notes that an online application system must include robust mechanisms to verify the applicants' identity and documents are genuine.

4.2 Information required on initial application

Proposal 4.2.1: *It is proposed that the national boards have the power to require the following information to accompany an initial application for registration:*

- a. evidence of the applicant's qualifications and supervised practice experience that they believe qualifies them for registration*
- b. evidence of successful completion of an examination (if required) set by or on behalf of the responsible board*
- c. evidence of previous registrations and registration status, ie disciplinary history (where the applicant has been registered under another law)*
- d. information on any complaints made against the applicant to bodies such as health complaints commissioners, Commonwealth, State or Territory bodies*
- e. evidence of recency of practice (except for new graduates) (see section 9 of this paper)*
- f. workforce data required for national workforce analysis (further discussion of this will be provided in the information-sharing paper), and*
- g. any other information reasonably required by the responsible board.*

Physiotherapy:

- i) supports the intent of Proposal 4.2.1 but recommends that information that is required reflects the matters listed in Proposal 6.4.1 including continuing competence and criminal offences.

4.3 Criminal history checks

Proposal 4.3.1: *There are a number of options available on or relating to requirements for criminal history checking of applicants for registration and renewal of registration:*

- Option 1:** *That the legislation require criminal history checks be applied to all new applicants for registration from 1 July 2010, but not to existing registrants renewing their registration.*
- Option 2:** *That the legislation require criminal history checks on all new applicants and at renewal of registration, but these requirements be phased in over time from 1 July 2010.*
- Option 3:** *The legislation require criminal history checks on all new applicants for registration, with a discretionary power for boards to require checks at annual renewal, and self-declaration obligations imposed on registrants both at annual renewal and during the registration period.*
- Option 4:** *That the legislation provide the power to require criminal history checks on applicants at the discretion of the relevant board, while not making checks mandatory for all applicants.*

Physiotherapy:

- i) supports the discretionary powers of the national board in Options 3 and 4 of Proposal 4.3.1.

5. Qualifications for registration

Proposal 5.1: *It is proposed that the legislation define the qualifications for general registration to mean one or a combination of the following:*

- *an approved course of study*
- *an approved period of supervised practice (if any) (ie an internship), and*
- *an examination (if any) set by or on behalf of the responsible board.*

Physiotherapy:

- i) supports Proposal 5.1.

Proposal 5.2: *It is proposed that, in addition to the powers above relating to the IGA clause 1.25(c) to register those with approved qualifications, boards have the power to register persons who have training and experience the responsible board considers to be substantially equivalent to an approved course of study and supervised practice. This will allow a national board to recognise substantially equivalent qualifications recognised by registration authorities in another country.*

Physiotherapy:

- i) supports the intent of Proposal 5.2.
- ii) suggests that the power is limited to substantially equivalent qualifications that are recognised by the registration authorities in another country.
- iii) notes the term “substantially equivalent to an approved course of study and supervised practice” must be better defined. Is it the academic level, course content, or the practice of the profession that is to be considered and what constitutes ‘substantial’ equivalence?
- iv) suggests that the relevant professional standards are the benchmark for equivalence.

Proposal 5.3: *It is proposed that qualifications that are ‘approved’ by a responsible board for the purposes of registration are not ‘prescribed in regulation’, but rather that the legislation enables boards to publish a list of approved qualifications on a website.*

Physiotherapy:

- i) supports Proposal 5.3.

6. Registration decisions

6.1 Powers of boards before deciding applications for registration

Proposal 6.1.1: *It is proposed that the legislation provide for a responsible board at its discretion to exercise the following powers before deciding an application for registration:*

- a. *investigate the applicant*
- b. *require the applicant to attend before the board to answer questions about their application*
- c. *require the applicant to provide further information or any documents considered necessary by the board to decide the application*

- d. require the applicant to undergo a written, oral or practical examination to assess the applicant's competence to practise, and
- e. require the applicant to undergo a health assessment (eg a medical examination or psychological assessment) to assess the applicant's capacity to practise.

Physiotherapy:

- i) supports Proposal 6.1.1.

Proposal 6.1.2: *With respect to terminology, it is proposed that the term 'health assessment' be used in the legislation rather than 'medical examination' because it allows a broader range of assessments to be conducted.*

Physiotherapy:

- i) supports Proposal 6.1.2.

6.2 Who makes registration decisions?

Proposal 6.2.1: *It is proposed that when a committee makes registration decisions the responsible board would otherwise be empowered to make, it is constituted appropriately. In order to achieve this, the legislation would require provisions that:*

- a. require a committee, when exercising registration functions, to comprise at least the following:
 - i. a chair appointed by the responsible board who may be a registrant (from the profession regulated by the responsible board), or a non-registrant
 - ii. at least two members who are registrants from the profession concerned
 - iii. at least one lawyer
 - iv. at least one community member who is not and has never been a registered practitioner in that profession, and
 - v. no more than two thirds of members being registrants from the profession concerned
- b. allow a committee to regulate its own proceedings, while requiring it to observe the principles of natural justice and procedural fairness, and
- c. allow members appointed to committees to be paid the sitting fees and allowances approved by the Ministerial Council.

Physiotherapy:

- ii) supports the intent of Proposal 6.2.1.
- iii) considers that Proposal 6.2.1(a) needs to permit greater discretion in the membership of the committee making registration decisions. The stated membership does not reflect the composition of the national boards in Bill A, yet the committee would be performing a function delegated by the national board.
- iv) recommends that the membership of the committee making registration decisions stated in the legislation reflects the composition of the national board in Bill A.

Proposal 6.2.2: *It is proposed that the legislation include powers for a responsible board to delegate, in writing, to a member of the responsible board or a member of a committee, a person employed by the National Agency, or a person engaged by the National Agency to provide services to the board, its registration powers and functions under the legislation, other than its powers to:*

- a. refuse to grant, or refuse to renew a registration or an endorsement of registration*
- b. impose conditions on a registration or endorsement of registration*
- c. impose conditions on a registration renewal or endorsement renewal*
- d. amend, vary or revoke conditions on a registration or endorsement, and*
- e. remove a person's name from the register where the person no longer meets the requirements for registration (see section '12.5 Removal from the register' of this paper).*

Physiotherapy:

- i) supports Proposal 6.2.2.

6.3 Professional indemnity insurance

Proposal 6.3.1: *It is proposed that the legislation require registrants (except for non-practising registrants if any) to be covered by PII arrangements at all times during the registration period, as a condition of registration, and to require registrants demonstrate coverage to the satisfaction of the responsible board, at the time registration is granted for the first time, and annually on renewal of registration.*

The legislation concerning PII must allow registrants to meet the requirements if they are covered by an employer's PII, their university's PII, or the PII of a health facility where they are a student, as well as when a registrant purchases their own PII cover.

Physiotherapy:

- i) supports Proposal 6.3.1.
- ii) recommends that the legislation concerning PII should include a reference to the need for personal PII cover for practice that is not covered by an employer's PII such as continuing professional development (CPD) activities and volunteer work that is unrelated to the employer. Physiotherapists engage in practical classes as part of CPD and also work at community events such as the City to Surf. It is in the public interest to ensure physiotherapists have PII that covers these activities. This is an area that is not well understood by many health professionals and the legislation should ensure there is no ambiguity about the need for registrants to be covered by PII arrangements at all times and for all types of practice during the registration period.

Proposal 6.3.2: *It is proposed that each national board have the power to issue a guideline about what constitutes acceptable arrangements for PII for registrants.*

Physiotherapy:

- i) supports Proposal 6.3.2.

6.4 Powers to refuse to grant registration

Proposal 6.4.1: *It is proposed that the legislation provide powers for a responsible board to refuse to grant registration on a number of grounds, including but not limited to the following:*

- a. *the applicant has not satisfied the board of their **competence to practise** in the regulated profession and this cannot be satisfactorily addressed by the imposition of conditions*
- b. *the applicant's **character** is such that it would not be in the public interest to allow the applicant to practise in the regulated profession*
- c. *the applicant is considered by the board to be unfit to practise because of **drug or alcohol dependency** or **physical or mental impairment***
- d. *the applicant has been **convicted** of or made the subject of a criminal finding for an offence in any participating jurisdiction or an offence under a foreign law, and the circumstances of the offence are such as to render the applicant unfit in the public interest to practise in the regulated profession*
- e. *the applicant has previously been registered under this Act or a corresponding previous enactment of a participating jurisdiction, and that registration has been suspended or cancelled, or during the course of that registration, the practitioner has had proceedings brought against him or her and those **proceedings have never been finalised***
- f. *the applicant has been **deregistered or suspended** under a foreign law, for any reason relating to conduct that would constitute professional misconduct under this Act, or during the course of that registration, the practitioner has had proceedings brought against him or her and those **proceedings have never been finalised***
- g. *the applicant has had **insufficient recent practice** experience in the relevant profession (with the time period within which an applicant must demonstrate they have practised to be determined by the responsible board, eg two years is preferred in some professions, five years in others)*
- h. *the applicant's **English language proficiency** is not considered sufficient by the board for the applicant to practise in the relevant profession*
- i. *the applicant does not have arrangements for **professional indemnity insurance** that the responsible board considers sufficient, or*
- j. *the applicant is **disqualified from applying** for registration under this Act or a previous enactment of a participating jurisdiction.*

Physiotherapy:

- i) supports Proposal 6.4.1.
- ii) recommends the addition of (k) reasonable suspicion of fraudulent documentation.

Proposal 6.4.2: *It is proposed that the legislation provide for boards to deal with possible fraudulent registration applications. Failure to disclose relevant matters to a board (such as those listed above) might constitute a fraudulent application under the legislation. In such circumstances, the responsible board might refer the matter to the relevant State or Territory police force. In addition, it is proposed that the legislation set out a process for a responsible board to deal with a registrant whom it has reasonable grounds to believe has obtained, or is attempting to obtain registration by fraud. In such circumstances, the responsible board should be empowered to immediately suspend registration (if already granted), investigate the matter, and refer it, if necessary, for hearing by the relevant State or Territory tribunal. The tribunal would be empowered under the legislation to find that the*

practitioner's registration has or has not been obtained by fraud, and, if appropriate, order that the practitioner's registration be cancelled. The standard of proof that would apply in such proceedings would be on the balance of probabilities.

Physiotherapy:

- i) supports the intent of Proposal 6.4.2 but notes that the .
- ii) recommends that situations where the responsible board has a high level of suspicion that the registrant has submitted non-genuine documents such as professional references or amended results transcripts must be captured in the legislation. The legislation should set out a process for a responsible board to deal with a registrant whom it has reasonable grounds to believe has used non-genuine documents to obtain, or to attempt to obtain registration. In many circumstances, there is insufficient evidence for the board to have a belief that the documents are false or misleading *beyond reasonable doubt*. It is in the public interest for the legislation to place the onus on the applicant to prove that the documents are genuine rather than the board being required to prove that the registrant has engaged in fraudulent conduct.

6.5 Refusal process

***Proposal 6.5.1:** It is proposed that the legislation provide that in the event that a board is proposing to refuse an application for registration, or to attach conditions to a practitioner's registration, the board would be required to give the applicant notice of its proposal and provide the applicant with an opportunity to make a submission to the board. It is proposed that the legislation include timeframes for this process before a board makes such a decision.*

Physiotherapy:

- i) supports Proposal 6.5.1.

***Proposal 6.5.2:** It is proposed that the legislation require a board to notify an applicant of its decision, within a specified period, eg 28 days after determining an application for registration or renewal of registration, and if the application has been refused, or conditions have been imposed, to provide reasons for the decision. The legislation should also require a board to inform the applicant of their right to seek a review of the board's decision and advise of the appropriate review body (the relevant State or Territory tribunal). It is proposed that the same entitlements and obligations would apply with respect to an endorsement of registration (see section 10 of this paper).*

Physiotherapy:

- i) supports Proposal 6.5.2.

6.6 Rights of review of registration decisions

***Proposal 6.6.1:** It is proposed that the legislation include provision for registrants or persons refused registration to have a right of review to the relevant State or Territory tribunal. It is proposed that this would be a merits review (rather than a review on points of law). The legislation would specify the following decisions as reviewable:*

- a. A decision to refuse a person’s application for registration or renewal of registration.
- b. A decision to refuse a person’s application for endorsement of registration or renewal of endorsement (see sections 10 and 11 of this paper).
- c. A decision to impose a condition on a person’s registration or endorsement of registration otherwise than by agreement.
- d. A decision to withdraw registration on the basis that a requirement for registration is no longer met.

Physiotherapy:

- i) supports Proposal 6.6.1.

7. Types of registration granted

Proposal 7.1: It is proposed that the legislation enable a national board to grant any one of a number of different types of registration, depending on the circumstances of the applicant, and to impose conditions on a grant of registration. The proposed types and sub-types of registration are set out in Table 2 below.

While the labels vary, most jurisdictions provide in some legislative form for the sub-types of registration listed under specific registration.

Physiotherapy:

- i) supports the intent of Proposal 7.1.
- ii) recommends that there is a category of registration to cover the period between approval by staff of the agency and ratification by the board. This is currently referred to as interim registration in some States and Territories.
- iii) Recommends that the words “Full” and “Restricted” replace “General” and “Specific” respectively to accurately describe the type of registration.
- iv) Recommends that the legislation does not list sub-types of specific registration. Although the intention is that these would be optional, there is a risk that if they exist in legislation, boards will feel it is necessary to make them available.
- v) Recommends that “Restricted registration” is broadly described as Applicants who do not qualify for full registration. This type of registration would entitle a registrant to practice, subject to a specified form of restriction including appropriate supervision.

TABLE 2: PROPOSED TYPES AND SUB-TYPES OF REGISTRATION

Type of registration	Eligibility
General	Applicants who hold approved qualifications (and have met any other requirements set by the responsible board). This category would include practitioners who hold approved specialist qualifications in addition to their approved general qualifications, and therefore hold a specialist endorsement on their general registration.

Specific	<p>Applicants who do not qualify for general registration. This type of registration would entitle a registrant to practice, subject to a specified form of restriction. The following sub-types of specific registration would apply:</p> <ol style="list-style-type: none"> a. Provisional – to allow an applicant to undertake an internship or other period of supervised clinical practice, following graduation from an approved course of study. b. Area of need – to allow an applicant to work in an area of unmet need. c. Post-graduate supervised practice or training – to allow an applicant to be registered on a temporary basis to undertake a period of post-graduate training approved by the responsible board. d. Examination candidates – to allow an applicant to undertake training in preparation for an examination approved by the responsible board. e. Teaching or research – to allow an applicant to fill a teaching or research position approved by the responsible board. f. Recognised specialist qualifications and experience – to allow an applicant with approved specialist qualifications to practise in the specialty. g. Internationally trained specialists – to allow an applicant with “specialist” qualifications that are not approved to undergo further training in that specialty. h. Temporary registration in the public interest – to allow an applicant without approved qualifications to be registered for a limited period if the responsible board considers it is in the public interest.
Non-practising	<p>Applicants who would otherwise be eligible for registration but who do not intend to practise during the registration period.</p>
Student	<p>Applicants who are enrolled in an approved course of study or undertaking approved supervised clinical training in preparation for an examination for registration.</p>

7.1 General registration

Registrants granted general registration hold approved qualifications (either because they have graduated from an approved course of study or because their qualifications are judged equivalent under a mutual recognition (competent authority) arrangement.

However, general registration does not necessarily mean ‘unconditional’ registration. A grant of general registration may be subject to conditions imposed by the responsible board, either at the time of registration, at registration renewal or via a disciplinary, performance or impairment process. Further details on these matters will be available in later consultation papers.

The term ‘general’ is suggested to describe the type of registration granted to those with approved general (usually undergraduate) qualifications, because it is the most commonly used term across jurisdictions.

General registration will also include the ability to have specialist endorsement notated against a registrant's name in the register to recognise practitioners who hold approved specialist qualifications in addition to their approved general qualifications, and therefore hold a specialist endorsement on their general registration (refer to section 10.1 – Specialist endorsement).

7.2 Specific registration

The term 'specific' is suggested as a way of identifying in legislation the type of registration granted to practitioners who do not hold approved qualifications and therefore are subject to various forms of restriction on their practice, either geographic, scope of practice, or duration of registration. While the term 'specific' is not ideal, there are also disadvantages with the various alternative terms. The term 'conditional' is problematic because a practitioner with 'general' registration may also have conditions placed on their registration, and the term 'special purpose' can have negative connotations to some.

7.3 Non-practising registration

Proposal 7.3.1: *It is proposed to include in legislation the capacity for boards to adopt a non-practising category of registration if they wish, in order to:*

- *make more transparent the distinction between those registrants who are and are not in active practice*
- *better target competency requirements, and*
- *provide more accurate data for workforce planning purposes.*

It may also mean some non-practising registrants maintain a connection with their profession that may facilitate their return to active practice.

ALTERNATIVE OPTION: *Boards be required to have a non-practising category of registration.*

Physiotherapy:

- i) supports the discretionary nature of Proposal 7.3.1 but not the alternative option.
- ii) Recommends a registrant who wants to transfer from non-practising to practising must satisfy continuing competence requirements.

Proposal 7.3.2: *If a non-practising registration is to be provided under the legislation, then it is proposed that those granted this type of registration registrants would be required, as a condition of their registration, not to practise at all. This means that such registrants would be acting unprofessionally (and possibly also committing an offence), if they were to breach the conditions attached to their registration. For example, if a non-practising medical practitioner were to write a prescription this would constitute active practise in breach of their non-practising registration.*

Physiotherapy:

- i) supports Proposal 7.3.2.
- ii) recommends that this category is a restricted registration with an absolute restriction on the practice of the relevant profession (eg physiotherapy).

7.4 Student registration

Proposal 7.4.1: It is proposed that the legislative provisions with respect to student registration would be framed to:

- *require only those students who are undertaking clinical training that involves contact with patients/clients to be registered*
- *empower boards to deal with students whose ability to undertake clinical training is affected by physical or mental impairment, drug or alcohol dependency, and*
- *give boards the discretion to include or not include a student category of registration.*

Alternative options are as follows:

Option 1: *The legislation include powers to register and regulate students, but only for specified professions and boards, for example, the medical and dental professions.*

Option 2: *The legislation include powers for all boards to register and regulate students, and student registration be mandatory, but only for those students who are undertaking clinical training, that is, those who are at the point in their course where they are in direct contact with patients.*

Option 3: *The legislation include powers for all boards to register and regulate students, and student registration be mandatory for students in all regulated professions, at the point of enrolment and for the duration of their course.*

Physiotherapy:

- i) supports Option 3 of Proposal 7.4.1.
- ii) recommends that student registration is for a period of up to five years.
- iii) recommends that the university must advise the responsible board within 30 days of the withdrawal of a student from enrolment in a course.

7.5 Corporate registration

Proposal 7.5: It is not proposed that the legislation make provision for registration of corporations.

Physiotherapy:

- i) supports Proposal 7.5.

8. Authorities conferred by registration

8.1 Title protection

Clause 1.28 of Attachment A of the IGA states that the primary basis for regulation is to be 'protection of professional title', with statutory offences to prevent unregistered or unauthorised persons using professional titles. Table 2 in Attachment A of the IGA sets out the professional titles that are proposed to be restricted under the legislation, with a role for the Ministerial Council in determining any further titles to be restricted.

TABLE 2. PROFESSIONAL TITLES PROPOSED TO BE RESTRICTED UNDER THE NATIONAL SCHEME

<i>Profession</i>	<i>Titles to be protected</i>
<i>Physiotherapy</i>	<ul style="list-style-type: none"> • ‘physiotherapist’ • ‘physical therapist’ • catchall provision along the lines of ‘any other title, name, symbol, description, etc, which given the circumstances could be reasonably understood to indicate the person is a registered physiotherapist’

Rather than protecting multiple titles for a profession (or sub-profession), the approach is to protect only those key titles commonly used by the profession, and to include a catchall provision that allows a board to prosecute a person who might be ‘holding themselves out’ as a registered practitioner in a regulated profession.

Physiotherapy:

- i) notes that the experience of several physiotherapy registration boards is that action to prosecute a person for “holding themselves out” as a registered practitioner is rarely successful.
- ii) recommends that it is in the public interest to amend the catchall provision along the lines of ‘any other title, name, symbol, description, claim, reference or use of words etc, which given the circumstances could be reasonably understood to indicate the person is a registered physiotherapist’

Proposal 8.1.1: *With respect to the use of courtesy titles, such as the title ‘doctor’ or ‘professor’, it is proposed that these not be legislated as protected titles, nor reserved for use only by members of one or a number of regulated health professions.*

Therefore, unregistered persons using such titles would risk prosecution only where use of a courtesy title could, in the circumstances, lead others into believing the person is qualified and registered under the Act in a regulated health profession when they are not.

Physiotherapy:

- iii) supports Proposal 8.1.1.

8.5 Restrictions on spinal manipulation

Current arrangements with respect to regulation of spinal manipulation vary across States and Territories, with some jurisdictions restricting its practice to registered practitioners (such as chiropractors, osteopaths, physiotherapists and medical practitioners), and in others, there is no legislative restriction on its practice.

The key question is whether there is any evidence to suggest that the community is more vulnerable in those jurisdictions where no restrictions apply, compared with those where restrictions apply. It may be that the more serious risks associated with spinal manipulation relate mainly to manipulation of

the cervical spine, and that if a restricted act is to be included in the legislation, it should be narrowly framed.

Clause 1.28(c)(ii) of the IGA (Attachment A) states that 'elements of the practice of spinal manipulation may also require legislative protection, and further work will be undertaken to define these for this purpose'.

Proposal 8.5.1: *With respect to protection of the practice of spinal manipulation, it is proposed that further consideration be given to practice restrictions as detailed in the IGA at 1.28(c)(ii).*

Stakeholders from the registered and unregistered professions, as well as consumers are invited to include in their submissions on this paper comments on the need, if any, for inclusion in the national legislation of a restricted act with respect to spinal manipulation, and if so, how broadly or narrowly this restricted act should be framed and what definition should be adopted.

Physiotherapy:

- i) supports the intent of Proposal 8.5.1 and recommends that further consideration be given to the need for inclusion in the national legislation of a restricted act with respect to spinal manipulation, and if so, how broadly or narrowly this restricted act should be framed and what definition should be adopted.
- ii) recommends that a detailed review of peer-reviewed and grey literature is completed to identify:
 - a. the risks of adverse events associated with spinal manipulation;
 - b. the likelihood of adverse events associated with spinal manipulation;
 - c. the severity of the adverse events associated with spinal manipulation;
 - d. the most appropriate strategy to mitigate the risk of adverse events associated with spinal manipulation.Physiotherapy would be pleased to contribute to the recommended detailed review.
- iii) recommends that risk management and harm minimisation principles must be reflected in any legislated restriction of practices.

9. Renewal of registration and continuing competence

9.1 Continuing competence requirements

Proposal 9.2.1: *With respect to ensuring continuing practitioner competence, it is proposed that the legislation require the boards to establish requirements within each profession for registrants to demonstrate continuing competence at the time of annual renewal, with the scheme to be implemented for each profession on 1 July 2010. Since continuing competence would be a condition of registration renewal, requirements would apply to all registered health professionals, regardless of whether they work in public or private settings, and are employees or self-employed.*

Physiotherapy:

- i) supports the intent of Proposal 9.2.1.
- ii) recommends that requirements for registrants to demonstrate continuing competence reflect good practice and research in this area. For example,

continuing professional development (CPD) requirements must include maintenance of a personal continuing competence portfolio that demonstrates the registrant has engaged in self-reflection and identification of learning needs followed by reflection on learning gained through participation in CPD activities.

Proposal 9.2.2: *It is proposed that the legislation enable the national boards to:*

- a. *develop and publish minimum standards (approved by the Ministerial Council) for:*
 - i. *the continuing competence requirements that registrants must meet in order to renew their registration in a regulated profession, and*
 - ii. *the requirements that any accreditation/certification/performance appraisal scheme must meet in order for registrants who participate to be able to satisfy the board's continuing competence requirements*
- b. *oversee a system of approval of various accreditation/certification/performance appraisal providers or schemes, or approve an external body or bodies to ensure these schemes meet the board's standards*
- c. *refuse to renew the registration of a practitioner on any ground on which the board might refuse to grant registration (see section 6.4 of this paper), and on grounds that the registrant has not met the responsible board's continuing competence requirements and therefore has not demonstrated, to the satisfaction of the board, that they are competent to practise in the regulated profession, and*
- d. *impose conditions on registration at renewal in the same way conditions may be imposed at first registration, including with respect to those registrants who have not met the continuing competence requirements of the board.*

Physiotherapy:

- i) supports the intent of Proposal 9.2.2.
- ii) recommends that requirements for registrants to demonstrate continuing competence reflect good practice and research in this area. For example, continuing professional development (CPD) requirements must include maintenance of a personal continuing competence portfolio that demonstrates the registrant has engaged in self-reflection and identification of learning needs followed by reflection on learning gained through participation in CPD activities.

9.2 Annual reporting obligations on registrants

Proposal 9.3.1: *It is proposed that the legislation require registrants to submit to their respective boards at the time of annual renewal various items of information required by the board in order to determine whether the practitioner is fit to practise. As part of such an annual return, the legislation might require reporting on a range of matters including:*

- a. *how the board's continuing competence requirements have been met*
- b. *if charged with or convicted/subject of a finding of guilt for an offence punishable by 12 months imprisonment or more*
- c. *any medical negligence claims*
- d. *if any clinical privileges or credentials have been withdrawn or restricted by a health service body or third party payer, and*
- e. *any data required to be provided to the Ministerial Council for workforce planning purposes.*

Physiotherapy:

- i) supports the intent of Proposal 9.3.1.
- ii) recommends that the wording of 9.3.1(b) and 6.4.1 should be consistent.
- iii) Recommends that 9.3.1(c) is deleted.

9.4 Monitoring the professional competence of registrants

Proposal 9.4.1: In addition to the proposed continuing competence arrangements outlined above, it is proposed that the legislation include a range of provisions which empower boards to effectively monitor practitioners whose competence or fitness to practice may be in question. Some of these powers will be addressed in more detail in the consultation paper on complaints and discipline. However, in general terms, it is proposed that the legislation confer on boards the following powers.

Physiotherapy:

- i) supports the intent of Proposal 9.4.1.

Powers to issue guidelines about professional standards

Proposal 9.4.2: It is proposed that the national boards have a general power to issue guidelines for registrants about standards recommended by the responsible board with respect to professional practice.

While the legislation would not make compliance with board issued guidelines mandatory, a registrant's compliance or otherwise with any guidelines issued may be taken into account by internal or external disciplinary or performance panels when making findings and determinations with respect to unprofessional conduct or professional misconduct.

Physiotherapy:

- i) supports the intent of Proposal 9.4.2.

Reporting obligations on registrants – during the registration period

Proposal 9.4.3: It is proposed that the legislation require registrants to report to boards, at any time during the registration period, and within 30 days, on the following matters:

- a. *if charged with or convicted/subject of a finding of guilt for an offence punishable by 12 months imprisonment or more*
- b. *any medical negligence claims*
- c. *any withdrawal or limitation of clinical privileges or credentials by a health service body, and*
- d. *any other matter set down from time to time by the Ministerial Council.*

Physiotherapy:

- i) supports the intent of Proposal 9.4.3 except (d).
- ii) recommends that (d) is limited to require registrants to report to boards on matters set down by the Ministerial Council only as part of such the annual return and not at any time during the registration period.

10. Endorsement of registration

10.1 Specialist endorsement

Proposal 10.1.1: *Given the framework set out in the IGA, it is proposed that the legislation include the following provisions:*

- a. *A general power (in the part of the legislation which sets out the broad powers and functions of the national boards) for the national boards to recommend to the Ministerial Council specialties that should be recognised for their profession, and the qualifications that the responsible board considers should apply for the purposes of endorsement of registration in each recognised specialty. This would be in addition to the role of the national boards in recommending to the Ministerial Council approved qualifications for registration purposes.*
- b. *Powers for the Ministerial Council, following recommendation from a national board to:*
 - i. *approve those professions for which specialist recognition will operate under the national scheme*
 - ii. *approve the list of specialties against which those boards referred to above will approve suitably qualified registrants for endorsement of their registration*
 - iii. *approve the qualifications required for endorsement in each approved specialty, and*
 - iv. *approve changes, from time to time, to the list of recognised specialties for a regulated profession and the qualification requirements for specialist endorsement within an approved specialty.*
- c. *For those boards with a specialist endorsement function, the same powers as when dealing with an application for registration or renewal of registration, that is, powers to receive an application for endorsement of registration, require further information, require attendance at the board, refuse an endorsement or attach conditions to an endorsement, etc. Review rights would also apply.*
- d. *Offences for registered or unregistered persons who:*
 - i. *Use restricted titles listed in the legislation (for example, the titles of ‘medical specialist’, ‘surgeon’ or ‘dental specialist’) when they are not entitled to; or*
 - ii. *Hold themselves out as being registered and endorsed as a specialist under the legislation when they are not.*

NOTE: *Details of the exact offences and the protected titles, and exemptions from offences proposed for each profession will be set out in the consultation paper on complaints and discipline.*

It is expected that recognition of specialties and specialists will be required under the scheme, for at least the medical profession. The Australian Medical Council currently carries out the function of assessing applications for recognition of new specialties for the medical profession, and makes recommendations to the Federal Health Minister on these matters for purposes such as Medicare. Under the new arrangements, it is expected that the AMC (at least for the first three years of the scheme) would continue to carry out these functions, but might make its recommendations to the Medical Board of Australia, which would then seek Ministerial Council approval of specialties for the purposes of the registration scheme. Further details on the current and proposed roles of these respective bodies will be set out in the consultation paper on the accreditation function.

Proposal 10.1.3: *With respect to protection of specialist titles, it is proposed that:*

- *for registered medical practitioners:*

- those with specialist endorsement from the Medical Board of Australia be authorised to use the title 'medical specialist', and
- there be an offence for a person who is not a registered medical practitioner with endorsement as a specialist to hold themselves out as a medical specialist
- for registered dentists:
 - those endorsed as dental specialists by the Dental Care Practitioners Board of Australia be authorised to use the title 'dental specialist', and
 - there be an offence for a person who is not a registered dentist with endorsement as a specialist to hold themselves out as a dental specialist
- for registered podiatrists:
 - there be an offence for a person who is not a registered podiatrist with endorsement as a podiatric surgeon to hold themselves out as a podiatric specialist.

Physiotherapy:

- i) does not support the current content of Proposal 10.1.3 being limited to Medical Practitioners, Dentists and Podiatrists. There is currently provision for registration of physiotherapy specialists in several State Acts and it is consistent with the IGA that these provisions are reflected in the national law.
- ii) recommends that the proposal is amended to read:

With respect to protection of specialist titles, it is proposed that for all registrants:

- a. those with specialist endorsement from the responsible board be authorised to use the title '<name of the profession> specialist', and
- b. there be an offence for a person who is not a registrant with endorsement as a specialist to hold themselves out as a specialist practitioner.

10.2 Endorsement as qualified to prescribe scheduled medicines

Proposal 10.2.1: To give effect to this, it is proposed that the national legislation make provision for a prescribing endorsement for those boards that regulate the nursing and allied health professions. This will link to various authorities conferred on identified practitioners under State and Territory drugs and poisons legislation.

Physiotherapy:

- i) supports Proposal 10.2.1.

10.3 Other endorsements on registration

Proposal 10.3.1: It is proposed that the national legislation make provision for a mechanism through which a board may identify a sub-group of practitioners within the profession who have specific training and are considered qualified to deliver a particular type of service that they would otherwise be prevented by law from delivering.

In order to give effect to this, it is proposed that the legislation include provisions that:

- a. empower a responsible board to endorse a registrant whom it considers qualified to practice in an 'approved area of practice', and to impose any conditions on an endorsement

- b. *empower the Ministerial Council, on application from a responsible board, to approve an 'area of practice' for the purposes of endorsement of registration and, at any time, to amend, vary or revoke a notice approving an area of practice*
- c. *require the responsible board to publish a list of 'approved areas of practice' on its website and in a publication circulated to registrants regulated by the board, and*
- d. *set out the powers of boards with respect to applications for endorsement qualifications required for endorsement and powers to refuse an endorsement (in a similar manner to those provisions relating to applications, qualifications for and refusal of registration).*

Physiotherapy:

- ii) supports Proposal 10.3.1.
- iii) recommends that the responsible board be required to notify other national boards when an application is made to the Ministerial Council to approve an 'area of practice' for the purposes of endorsement of registration.

11. Other matters

11.1 Duration of registration

***Proposal 11.1.1:** It is proposed that the legislation provide for the national boards to grant registration for a period of up to 12 months and that a grant of registration be subject to annual renewal.*

Physiotherapy:

- i) supports Proposal 11.1.1.
- ii) recommends that there is a common registration renewal date for all registrants in any one profession. The dates for each profession could be the first day of different months to spread the workload of the agency in processing renewals.

11.2 Registration certificates

***Proposal 11.2.1:** It is proposed that the legislation provide powers for the national boards to issue certificates of registration or renewal of registration to those persons who have met the registration or renewal requirements specified by the responsible board.*

Physiotherapy:

- i) supports Proposal 11.2.1.

***Proposal 11.2.2:** It is proposed that the legislation provide for these certificates/renewals to be in a form approved by the responsible board (subject to the operational framework established by the National Agency in consultation with the national boards). It is not proposed that there be a separate 'practising certificate' in addition to the certificate of registration or renewal of registration. It is proposed that if practitioners are required, by their employers or agents for example, to demonstrate their right to practise, then they should show their current registration or renewal certificate. There should be flexibility under these arrangements to allow a responsible board to issue either electronically or otherwise, on first registration, an attractive certificate suitable for display, and to issue a renewal in different form (for example a wallet sized card).*

Physiotherapy:

- i) supports Proposal 11.2.2.

Proposal 11.2.3: It is proposed that the legislation require a practitioner whose registration has been suspended or cancelled to return their certificate of registration to the responsible board. It is proposed that the legislation also provide that, for the purposes of legal certainty, in the absence of evidence to the contrary, a certificate of registration is evidence that the person to whom the certificate is issued is registered.

Physiotherapy:

- i) does not support Proposal 11.2.3.
- ii) recommends that the requirement to return certificates is at the discretion of the responsible board.
- iii) recommends that the evidence of registration is verified online rather than on the basis of a certificate of registration.

Proposal 11.2.4: It is proposed that the legislation impose an obligation on registered practitioners to notify the responsible board of a change of contact address, within 28 days and that a penalty apply for failure to comply.

ALTERNATIVE OPTION: There be no penalty for failure to notify of change of address.

Physiotherapy:

- i) supports Proposal 11.2.4 rather than the alternative option. Although the penalty is often waived by the responsible board, it needs to be legislated to encourage compliance.

Proposal 11.2.5: It is proposed that the legislation provide a power for boards to require registrants provide details of each practice address from which they offer regulated health services. Special arrangements would be required so that the reporting obligations are manageable for locum practitioners whose practice address changes regularly.

ALTERNATIVE OPTION: There be no requirement to provide a practice address.

Physiotherapy:

- i) supports the intent of Proposal 11.2.5.
- ii) recommends that the responsible board has discretion as to whether the requirement applies to that profession.

11.3 Failure to renew

Proposal 11.3.1: It is proposed that the legislation include provision for a 'grace' period of three months following expiry of registration, during which a practitioner is 'deemed' to be registered, but that if they fail to renew by the end of this period, then the board removes their name from the relevant register.

ALTERNATIVE OPTION: *That there is no 'grace' period and that if a practitioner fails to renew their registration on time, their name is removed immediately from the register and they may be committing an offence if they continue to practise.*

Physiotherapy:

- i) supports Proposal 11.3.1 and not the alternative option but suggests that the grace period should be less than three months.
- ii) recommends that the responsible board has the power to apply a significant late fee to renewals received during the grace period.

11.4 Reinstatement to the register

Proposal 11.4.1: *It is proposed that the legislation include provisions that allow a practitioner's name to be restored to the register, if they re-apply within a period of two years following a lapse of registration (under this Act, or a previous enactment of a participating jurisdiction), and they meet any continuing competence requirements set by the responsible board.*

ALTERNATIVE OPTION: *There be no provision for restoration to the register, and practitioners who hold outdated qualifications and let their registration lapse be required to meet current registration requirements in the event that they reapply for registration, that is, they complete either an approved course of study and supervised practice, or an approved re-entry or refresher course.*

Physiotherapy:

- i) supports Proposal 11.4.1 not the alternative option.

11.5 Removal from the register

Proposal 11.5.1: *It is proposed that the legislation include provision for a responsible board to remove a person's name from the register for a range of specified reasons, including where they no longer meet the mandatory requirements for registration, removal in cases of death, failure to renew, cancellation by agreement or via a tribunal decision.*

12. Transition arrangements

Proposal 12.1: *With respect to transition arrangements, it is proposed that transitional provisions provide for:*

- a. *all persons who are registered on 30 June 2010 in one or more of the ten regulated health professions be automatically deemed to be registered under the new national scheme on 1 July 2010, on the register or division of the register specified in the transition provisions, and for the term specified in their registration renewal*
- b. *all persons who have endorsements on their registration of a type available under the national scheme on 30 June 2010 be deemed to have endorsement of that type under the national scheme from 1 July 2010*
- c. *all persons who have conditions imposed on their registration or endorsement of registration on 30 June 2010 in one jurisdiction be automatically deemed to have the same conditions imposed on their registration or endorsement of registration from 1 July 2010*
- d. *where there are disparities between the types of registration or endorsements available under the national scheme and those conferred by existing State and Territory legislation, wherever possible*

registrants be migrated across to the national scheme with the widest possible scope of practice that is consistent with public safety. They would then be expected to practice within their competence, with conditions imposed only if it is considered necessary to limit their practice in order to protect the public

- e. where a practitioner is registered in more than one jurisdiction and these registrations expire at different dates, then they be automatically deemed to be registered through until the latest date of registration that applies, unless they have conditions placed on their registration, in which case, they will be deemed to be registered through until the first expiration date that applies, and*
- f. if a practitioner holds or has held multiple registrations and has been either deregistered in one jurisdiction, or has not renewed in a jurisdiction where an investigation or disciplinary process was not finalised, then they not be automatically 'deemed' to be registered from 1 July 2010 and will be required to make a fresh application for registration with an expeditious process required.*

Physiotherapy:

- i) supports Proposal 12.1.