

**APS Response to the
Consultation Paper on
Proposed Registration
Arrangements**

**from the Practitioner Regulation Subcommittee,
Health Workforce Principal Committee,
Australian Health Ministers' Advisory Council**

October 2008

APS Contacts:

Professor Lyn Littlefield
l.littlefield@psychology.org.au

Mr David Stokes
d.stokes@psychology.org.au

Mr Bo Li
b.li@psychology.org.au

Response to Consultation Paper: Proposed Registration Arrangements

The Australian Psychological Society (APS) appreciates the opportunity to comment on this important Act and specifically this consultation paper. The Society appreciates that this is the beginning of a complex, comprehensive and far-reaching piece of work which is engaging considerable resources and efforts from a wide range of bodies and organisations. Its implications for psychology as a profession are significant and not all of its ramifications will be clear at this stage. However, the following endorsements, contributions, qualifications or additions to the proposals set out in the Response to the Consultation Paper are offered in the spirit of collaboration.

Item 3: Regulated Professions

In view of the proposals being discussed at a number of levels for workforce development, there should be consideration given to a proposal that there be a classification for 'Psychology Assistants' as a Division of the Register. This is discussed more fully later in the paper (8.2)

Item 4: Initial Registration

APS endorses Proposals 4.1.1 and 4.2.1 (Applications for membership of a board). It does, nonetheless, seek assurances that 'complaints' be confined to formal complaints, that natural justice procedures around spent convictions, presumption of innocence and a right to appeal be acknowledged.

It notes, also, that the notion of Recency of Practice (4.2 (e)) is considered impracticable. See discussion at 9.1

4.3.1 Criminal History Checks

The APS strongly supports the practice of criminal history checks for practitioners working with the most vulnerable members of the community. However, there are two issues deserving of consideration: the appropriateness of a blanket ruling for all health professionals when there is significant variation, and therefore risks, in clients, service settings and professional processes. Secondly, there is the issue of how the information gathered from a police check is managed and the rights of an individual respected and natural justice achieved.

The position endorsed by the Society is that renewing registrants should have to sign a declaration that they have no criminal history or provide information that specifies that history. Only new registrants should undergo a criminal history check.

Recommendation:

- Prefer Option 3 requiring a criminal history check for new registrants but a declaration only for each registration renewal.

Protection of Rights. The notion of criminal checks raises the issue of the appropriate management of the information collected. There must be a transparent process of how such records are kept, maintained, retrieved, transmitted, archived and destroyed.

Other issues for consideration

- Spent convictions and how the rights of the individual in these circumstances are protected
- Unrelated crime and how the record of this is managed carefully and appropriately.

Despite the reservation expressed above, it is vital for Boards to act swiftly and clearly with regard to the suspension of registrants while a claim is being assessed where 'serious' offences are involved. This may well be dealt with in a later Consultation Paper.

Item 5: Qualifications for Registration

Proposal 5.1 needs revising as it could be interpreted in its current form to suggest that one of the three could be sufficient in itself, i.e. 'an approved period of supervised practice' could qualify a person for registration. This would be a serious departure from accreditation processes for all professions. The minimum adjustment would need to be a 'combination of Dot Point 1 and 2 or Dot Point 1 and 3'. This revised Proposal would be endorsed as long as it infers/assumes the existence of separate registration and accreditation committees below the national boards.

APS endorses Proposals 5.2 and 5.3 (Board powers and approved courses of study) and have commented elsewhere about the committee size and balance of participants.

Item 6: Registration Decisions

APS endorses Proposals 6.1.1 and 6.1.2 (Processes available to Boards regarding applications)

Proposal 6.2.1: Who Makes Registration Decisions

In principle, the devolvement of powers to the State Committees makes good sense and is necessary, but leaves a significant footprint for each profession in each State that hardly seems to suggest reduced costs or savings from centralisation that nationalisation was mooted to bring. This recurring issue of cost (and the potential for limitations on processes that it poses) will undoubtedly persist until Government commits to meeting a substantial percentage of the budget.

The structure of State Committees seems fair but may overly stress the role of legal opinion and may better balance the community and health perspective by allowing 'no more than one lawyer', and leave the community representative as 'at least one'.

Recommended sitting fees and allowances should emanate from the national boards before receiving Ministerial Council approval.

APS endorses Proposal 6.2.2 (Delegation of Powers)

APS endorses Proposals 6.3.1 and 6.3.2 (Professional Indemnity Insurance)

Proposal 6.4.1: Powers to Refuse to Grant Registration

While it is accepted that this proposal identifies *possible* grounds for not granting and not *required* grounds of Board processes, they do require some consideration.

- There will need to be some very carefully considered guidelines necessary for operationalising (b), (c), (f) and (g).
- The operationalisation of 'character' (6.4.1 c) will need some standardised definitions, examples, guidelines and safeguards against discrimination.
- Item (d) seems confused by the clause 'or made the subject of a criminal finding for an offence in a participating jurisdiction or'. Why is 'convicted of an offence' not sufficient?
- Point (f) also needs clarification as well as some containment and guidelines.
- Since all points constitute the 'grounds' for not granting registration, it is necessary to add '(k) absence of qualifications'.

Costs will be an issue for (d) and (f) as such costs may not only be significant but are certainly not the responsibility of the other registrants to bear. Once again the obligations of Government to share this burden are clear and justified.

APS endorses Proposals 6.4.2, 6.5.1 and 6.5.2 (Grounds and processes for refusing registration)

Proposal 6.6.1 Rights of Review of Registration Decisions

It is not clear what the nature of the Tribunals will be. Are they the equivalent of VCAT in Victoria or the HCCC in NSW? There needs to be a commitment to standard approaches and procedures across States/Territories/bodies and the broad outline of these should be made explicit. Current processes have not always gained best outcomes in the current scene and they have proved very costly to the professionals where they bear the cost (e.g. Victoria). Repeated assurances by departmental officers and the Minister in Victoria that the changes introduced in the new health professions legislation prompting referrals to VCAT would be cost neutral were not borne out in practice and precipitated a rise in charges to registrants for one Board at least.

We consider that there should be a right of, and avenue for, *appeal*, not just *review*, and such appeal should not be constrained to 'merits, but must also accommodate 'points of law'. The problems of legal definitions regarding whether the terms 'health professional', 'health services', etc. (within the 'health template' legislation being developed) adequately embrace non-health psychologists, will invariably raise points of law in appeals down the track that must be recognised and resolved. For example it is entirely possible that a qualified organisational psychologist might be refused registration on the grounds that s/he has no training or experience in health service delivery and cannot be classed as a 'health professional'. Such a refusal would raise important points of law about the fundamental shape and scope of the legislation for psychologists.

Item 7: Types of Registration Granted

Proposal 7.1: Proposed Types

In general the APS agrees with the four types, however, the 'specific' carries concepts that may mislead the public to view this as 'specialist' rather than limited title. Although conditional may misrepresent the issues, certainly 'restricted' or 'limited' more accurately convey the circumstances. 'Limited' seems best.

In addition, the APS finds the 8 sub-categories inappropriate to some professions and it should be made clear that each Board is empowered to appropriate those categories that are meaningful to its own profession and even add others when necessary. It may even be better to leave the four types (general, 'limited', non-practising and student) as the higher level categories and allow the Boards to specify their own subcategories but to provide them with these eight options and others as a guide.

Proposal 7.3.1 Non-practising Registration

The APS endorses this proposal but the more flexible version rather than the Alternative Option.

Proposal 7.3.2: Breach of Non-practising

The APS agrees with this proposal but feel it is important to be more explicit about the meaning and definition of non-practising. Does it hinge on there being a client, upon payment for services or the utilisation of professional interventions or techniques? For example, if a university lecturer (who chose not to register or registered as non-practising) working in a professional training program demonstrated a psychological technique, appropriate to a clinical case but with an actor or via video with an actor, is that 'practising'?

Suggested that 'practising' be defined as *a professional engaged in the application of psychological knowledge to provide psychological services to a client (individual, group or organisation).*

Proposal 7.4.1: Student registration

The use of some terms needs to be revised: 'clients' rather than 'patients' and 'professional' rather than 'clinical' (Dot Points 1 and 2 and Option 2); 'professionals' rather than 'clinicians'.

APS prefers Option 2 (Option 1 is too exclusive and Option 3 is too broad).

APS endorses Proposals 7.5 (Registration of corporations). However, the South Australian Act, while not registering corporations or employers, allows for complaints against them. This deserves consideration as it protects the public from group practice managers (who may not be health professionals) violating codes and standards without being able to be called to account.

Item 8: Title Protection

Proposal 8.1 Table of Restricted Titles

It is of concern to the APS that a range of titles are endorsed for many of the professions yet none of those previously put before the Government by the APS for similar endorsement have been adopted for psychology. The APS made joint submissions in November 2006 and again in

February 2007 in collaboration with the Australian Psychology Accreditation Council and the Council of Psychologists Registration Boards 2006 and put on record the following:

“The title ‘psychologist’ (and all adjectival derivatives, such as ‘psychological’ in ‘psychological services’) should be protected and reserved for use by registered psychologists, whether they work in health or other fields of psychology, and whether or not they provide direct services to individual clients. Similarly, the term ‘psychological assessment and treatment’ should be seen as a subset of ‘psychological services’ not as its synonym. Furthermore the provision of ‘psychological services’ should be seen as something that includes services to groups and organisations as well as to individuals.”

The support for the catchall provision is very important. If there was some doubt that the ‘catchall’ provisions would cover ‘psychological’ and therefore ‘psychological services’, the APS would be seeking that such terms would be included under ‘restricted titles’.

“Psychology Assistants” should be added to the list of protected titles.

APS endorses Proposals 8.1.1: Titles of Dr and Professor. The APS requests that the use of ‘Dr’ as a courtesy title be denied and the use of ‘Dr’ be confined to medical practitioners and graduates with doctoral degrees. However, where doctoral degrees are not in the field of Psychology (or the area for which a professional is registered), this should be made clear to the public.

Proposal 8.2: Practice Protection

While the APS endorses the notion that there are certain professional practices that so seriously place the public at risk they should be protected, the examples given of dentistry and optometry seriously question whether other professional practices deserve the same consideration. The issue of spinal manipulation probably deserves protection to the specified small range of professions (certainly not one or the other) but others would be better positioned to judge this. What once again seems undervalued is the issue of mental vulnerability in comparison to physical risk. In this context, the inappropriate use of psychological tests and the risk of serious harm in which their misuse places members of the public is a considerable concern.

In this connection then, it is suggested that a clause that enables all national boards to be empowered to introduce practice restrictions where it can be shown that it is in the public interest to do so, provided that there are a set of hurdle uniform requirements that the Board must meet set by the Ministerial Council.

There also needs to be a specific clause allowing each regulated profession to be able to introduce ‘assistants’ as profession-specific so as to strengthen the protection of the public. The consequence would be that any Assistant roles - either currently or in future identified (such as Psychology Assistants) - will have their practice regulated under a profession Board. This should act to prevent exposing the public to unnecessary risks arising from vague, inappropriate and unoperationalisable nomenclature. This needs to be considered for other health professions where appropriate.

Item 9: Renewal of registration and continuing competence

It is the view of the APS that ensuring the quality of the registrant and demonstrating his or her capacity to function as a professional is a very important objective of the registration process. What limits the capacity of the registration boards in their current capacity, and therefore the future national boards, is the operationalisation of competency, recency of practice and suitable professionalism. As the APS has argued on previous occasions, the concepts of recency of practice are extremely difficult to put into an operational form with a profession that has such a wide range of professional activities. This means that what may not be classified as “recency of practice” for a clinician (e.g. management) would in fact constitute appropriate reasonable practice for an organisational psychologist.

In addition, the notion of “competence” implies an assessment process of a continuing nature. It has been discussed already by contributors to the national registration debate that an examination option for holders of a 4-year undergraduate degree completing 2 years of supervised supervision is a serious option for an initial registration measure of competency. However, this may not be a useful process for continuing assessment of competency and certainly not for professional post-graduates.

Not surprisingly, the APS feels that the most practical procedure that can be adopted for postgraduate registrants by a national agency is the continuation of the current dual requirements: appropriate qualifications from an accredited training course and continuing professional development recorded and randomly audited as a means of establishing competence and recency of practice. It may well be necessary to cease to use the term ‘competencies’ in terms of the national board’s measurables, and rather set requirements around qualifications and CPD that are the best achievable goals.

It is in this context that we endorse proposals 9.2.1 and 9.2.2.

Proposal 9.2.2: Creation of Minimum Standards

There is a real danger here that the national boards will be interfering with the well established professional roles and with the relationships with practitioners in regard to CPD that have been achieved by professional bodies. It may well be that the national boards would want to develop ways of building professional competence into the registration expectations, but they should be prepared to work with the professional bodies and societies and be prepared to endorse already established arrangements. Similarly with accreditation, national boards need to respect already developed and successful systems.

In addition, while the APS endorses the intention of this proposal, and it realises that the powers and responsibilities of the national boards will be focused on the individual professional, there may be, nonetheless, some overlap with the work of the Australian Commission on Safety and Quality in Healthcare which is focused on the setting of standards and accreditation of the practice or the service. The possibility exists that some integration, or acknowledgement at least of the other, will be necessary.

The APS supports Proposal 9.3.1 (Annual reporting).

Point 3c specifies medical; needs expansion. Point (d) needs to change ‘clinical’ to ‘professional’.

Item 9.4 Monitoring the Professional Competence of Registrants

Although the APS has some sympathy for Proposal 9.4.1 and 9.4.2, as noted for 9.2.2, the national boards need to be careful they do not encroach on profession driven standards. Professional and ethical standards have been the domain of the professional societies. The national boards should rightly show concern but should nonetheless work collaboratively with the professional bodies as has happened for many Registration Boards in the past.

Proposal 9.4.3 (a): Reporting Obligations

Change 'medical' to 'professional' and 'clinical' to 'professional'.

Point (b): abandon the reporting of negligence claims; too tenuous and invasive.

Point (d): too loose. Set limits on the Ministerial Council via guidelines and examples of likely areas and concerns.

Item 10: Endorsement of Registration

Proposal 10.1.1, 10.1.3 and 10.3 Specialist Endorsement

There is some continuing lack of clarity over the benefits of protected specialist titles (10.1.1) against the other endorsements (10.3) However, the APS at this point in time is seeking endorsement under 10.3 for its specialists. These will follow the specialist colleges of the APS for which there are well established and accredited training courses.

Recommendation

That the endorsed specialities for psychology would be:

- clinical neuropsychologist
- clinical psychologist
- community psychologist
- counselling psychologist
- educational and developmental psychologist
- forensic psychologist
- health psychologist
- organisational psychologist
- sport psychologist

The APS supports Proposal 10.2.1 (prescribing endorsement)

Item 11: Registration Certificates

The APS supports Proposal 11.1.1 but suggests that as an economic and rational option (and in view of the rigorous protections outlined above) the committees consider a two-year registration period. This might well provide a more flexible time period during which meeting standards of CPD might be achieved, i.e. a two-year registration period along side a two-year CDP cycle. While the APS would prefer the whole renewal and CPD process to be on 2-year cycle, it would agree to payment be on a 2-year basis and a requirement for a refreshment of registrant details each year.

The APS supports Proposal 11.2.1, 11.2.2 and 11.2.3 (Registration certificates)
The APS supports Proposal 11.2.4: (Change of address notification and penalty)

The APS supports Proposal 11.2.5: (Practice address be provided to the Board). The only qualification to this is the acknowledgment that many services are provided by practitioners in a 'mobile' way in settings that do not constitute a permanent practice address.

The APS supports Proposal 11.3.1: (Allowing for a grace period following renewal date).

The APS supports Proposal 11.3.1. "Retirement" needs to be defined as "no longer practising or wishing to exercise the usage of the limited category of non-practising"

The APS supports Proposal 11.4.1: APS endorses the First Option but suggests allowing for a three-year lapse period.

The APS supports Proposal 11.5.1: Removal from the register.

Item 12: Transition Arrangements.

In general, the APS endorses 12.1 for all the transitional arrangements. It will need to facilitate discussions with the WA Board which is the only one with specialist registration to ensure a fair transition of specialist endorsed practitioners in that State.