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3 November 2008

Attention : Practitioner Regulation Sub-Committee
NRAIP@dhs.vic.gov.au

Submission : Proposed Registration Arrangements

Thank you for providing the Chiropractors' Association of Australia (Qld) [CAAQ] with the opportunity to present a submission in relation to the Proposed Registration Arrangements Consultation Paper. The CAAQ, while not directly involved with registration, certainly understands the importance of a National Registration and Accreditation Scheme and would like to put forward the following in relation to the questions contained within the Consultation Paper.

If you have any queries regarding this submission, please feel free to contact us. Our contact details are contained at the top of this document.

Yours sincerely

Debby Ramsay
Executive Officer

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.

As you are aware, the chiropractic profession in Australia is by no means large and therefore the CAAQ would certainly welcome any scheme that enables its members to more easily move around the country and therefore supports this Proposal.

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.

CAAQ is aware that registration fees around the country vary greatly and it trusts that this will be taken into consideration when fee setting is undertaken by the responsible board to ensure that the fee that is set is sufficient to cover <u>all</u> operations of the responsible board.

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.

CAAQ is of the opinion that establishing an applicant's command of the English language should be undertaken at the "application" stage of the process by the provision of a relevant competency certificate, e.g. IELTS certificate or similar, for applicants from non-English speaking countries.

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.

CAAQ feels strongly that the responsible board should undertake criminal history checks on all new applicants for registration and also impose self-declaration. Therefore CAAQ's preferred position is Option 3.

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.

Allowing boards to determine the combination of qualifications, experience and examination required for registration reflects existing differences in registration requirements across professions. For some professions, supervised clinical practice is built into a course of study (eg psychology Masters programs), some require an internship following completion of an approved course of study (eg medicine), and others still require applicants to sit an additional board examination following completion of both an approved course of study and internship year (eg pharmacy).

CAAQ is of the opinion that responsible boards should be given the responsibility of determining the combination of qualifications, experience and examination required for registration however that such decisions are undertaken after consultation with the responsible profession's accrediting body.

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.

CAAQ agrees with this Proposal however again stresses that responsible boards would need to consult with the responsible profession's accreditation body.

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.

CAAQ agrees with this Proposal.

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.

CAAQ is of the opinion that the above steps would provide greater assurances for the public and also assist with maintaining the chiropractic profession's reputation and therefore agrees with this Proposal.

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.

CAAQ agrees with this Proposal.

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

CAAQ agrees with the proposed composition of the committee however strongly suggests that the chair be a current or former registrant in good standing.

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.

CAAQ agrees with parts b and c of this Proposal.

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).

CAAQ agrees with this Proposal.

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.

CAAQ ensures that its members carry current PII and therefore applauds the sentiment of this Proposal given that PII is not currently mandatory for registration in Queensland. CAAQ however suggests that registrants maintain an adequate "run off" insurance as in some instances, e.g. children, practitioners may need to be covered for considerable time after resignation of their registration..

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.

CAAQ agrees with this Proposal however suggests that national boards consult with the responsible profession regarding acceptable levels for PII.

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.

CAAQ agrees with this Proposal.

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.

CAAQ agrees with this Proposal however would strongly suggest that a timeframe be included by which the Tribunal must hear the matter to ensure a practitioner natural justice. CAAQ has witnessed in Queensland delays of unacceptable length, e.g. over 12 months, for a Tribunal to hear a case.

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.

CAAQ agrees with this Proposal.

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).

CAAQ agrees with this Proposal.

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.

CAAQ agrees with this Proposal however suggests that, as in Proposal 6.4.2 above, a timeframe be included by which the Tribunal must hear the matter to ensure a practitioner natural justice.

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.

CAAQ agrees with this Proposal.

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.

CCEA agrees with this Proposal. CCEA recommends that a definition for "non-practicing" be developed. A suggestion would be that the registrant in this category not be engaged in clinical practice.

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

CAAQ does not agree with this alternative option as there may be other professions where the inclusion of a non-practising category may cause difficulty.

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 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.

CAAQ agrees with this Proposal.

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.

CAAQ is aware of instances where students have been accepted into programs with no hope of being registered once they have completed their training due to physical disabilities. CAAQ is strongly of the opinion that all students need to be registered preferred position is Option C.

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

CAAQ agrees with this Proposal.

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.

CAAQ agrees with the professional titles listed against the chiropractic profession in this Proposal.

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.

CAAQ strongly supports this Proposal.

Use of the courtesy title "Dr" has, for many years, been at the forefront of CAAQ's mission. Historically, chiropractors in Queensland used the courtesy title in conjunction with a clarifier such as "chiropractor" and remained unchallenged. This also allowed for practitioners coming from States and Countries where use of the title was permitted within their legislation to continue its use.

Both CAAQ and the Chiropractors Board of Queensland have continued to lobby to have chiropractors recognized as a profession entitled to use the courtesy title.

Proposal 8.3.1: With respect to protection of the practice of dentistry, it is proposed that there be defined in legislation a number of restricted acts relating to dentistry and that there be an offence for a person who carries out a restricted act and is not a registered dental care practitioner or a person who falls into a class of exempted persons (for example a registered medical practitioner). It is proposed that the restricted acts with respect to the practice of dentistry be along the following lines:

a. the performance of any operation on the human teeth or jaws or associated structures
b. the correction of malpositions of the human teeth or jaws or associated structures
c. fitting or intra-oral adjustment for a person of artificial teeth or corrective or restorative dental appliances, and
d. the performance of any operation on, or the giving of any treatment or advice to, any person that is preparatory to or for the purpose of the fitting, insertion, adjusting, fixing, constructing, repairing or renewing of artificial dentures or restorative dental appliances.

CAAQ has no objection with this Proposal.

Proposal 8.4.1 With respect to protection of the practice of optometry, it is proposed that the legislation prohibit unregistered or unauthorised persons from prescribing optical appliances. It is proposed that an optical appliance would be defined as: 'contact lenses, spectacle lenses, or any other appliance designed to correct, remedy or relieve any refractive abnormality or defect of sight'.

Stakeholders are invited to address in their submissions whether the definition of optical appliance should be framed broadly to include all contact lenses (whether for therapeutic or cosmetic purposes), or narrowly, to exclude 'plano' or cosmetic contact lenses.

If cosmetic contact lenses are included in the definition of a restricted optometry act, the effect would be to make it illegal to supply cosmetic contact lenses to a person, except in accordance with a prescription issued by a registered optometrist or other authorised person.

CAAQ has no objection with this Proposal.

Proposal 8.4.2: If the prescribing of optical appliances is to be a restricted act under the legislation, then it is proposed that an orthoptist who is listed with the Australian Orthoptic Board (not a statutory board in this scheme) be exempted from committing an offence for prescribing spectacle lenses in the normal course of their practice.

CAAQ has no objection with this Proposal.

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).

CAAQ advises that the practice of spinal manipulation MUST only be undertaken by those persons who have undertaken appropriate, accredited training.

Chiropractors are required to complete a 5 year University degree in order to be deemed competent to undertake spinal manipulation. CAAQ feels the other professions mentioned as being eligible to perform spinal manipulations, with the exception of osteopathy, need to have completed appropriate, accredited post-graduate training before being deemed competent to practice spinal manipulation.

CAAQ would like to suggest that the NRAIP undertakes detailed discussions with the following bodies in relation to this issue, e.g. CAA National and Branches, Council on Chiropractic Education Australasia and State/Territory Registration Boards, to ensure that a complete picture of concerns regarding "non-qualified" persons practicing spinal manipulation is obtained.

However to provide information regarding this issue, please refer to Attachment 1 which is information obtained from the Council on Chiropractic Education Australasia in respect of evidence of injury between practice restriction and non-restriction of spinal manipulation.

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.

CAAQ requires all members to maintain an adequate level of continuing competence (24 hours over a two year period) in order to remain a member therefore CAAQ applauds this Proposal.

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.

CAAQ agrees with this Proposal.

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.

CAAQ agrees with this Proposal.

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.

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.

CAAQ agrees with this Proposal however would suggest that responsible boards seek input from and consult with the responsible profession's professional association.

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.

CAAQ agrees with this Proposal.

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.

CAAQ agrees with this Proposal.

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.

CAAQ has no objection with this Proposal.

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.

CAAQ has no objection with this Proposal.

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).

The distinction between an endorsement with respect to an 'approved area of practice' and an endorsement as a 'specialist' would be the level and complexity of the training required, and whether this is or may in the future be part of an undergraduate qualification (an approved area of practice), or is only available to post-graduates (specialties).

The endorsement function would serve as a means of identifying practitioners with particular qualifications who are then authorised to undertake practices or provide certain kinds of services that are otherwise restricted under the Act or under other legislative or administrative schemes, such as Medicare, PBS.

CAAQ agrees with this Proposal.

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.

It is not proposed that there be a standard registration period in legislation that applies to all practitioners, for example a calendar year or a financial year. Rather, it is proposed that the legislation enable, for example, renewals to be staggered throughout the year, with the renewal date for each practitioner falling due 12 months after they first registered or renewed their registration.

While CAAQ can see the benefit of introducing staggered renewal dates, it may initially cause some confusion with registrants who have their registration renewal period ingrained. It may also cause some degree of administrative concern for professional associations which rely upon members holding current registration at all times they are members.

At present CAAQ is aware that each member's registration expires on 30 June and it is therefore able to undertake a membership search of the Registration Board's database on 1 July each year. If each member's registration moves to an "anniversary" date, this will cause more administrative strain and expense on the professional association.

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.

CAAQ agrees with this Proposal.

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).

CAAQ agrees with this Proposal.

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.

CAAQ agrees with this Proposal.

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.

CAAQ agrees with this Proposal.

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

CAAQ does not agree with this alternative option.

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.

CAAQ agrees with this Proposal however advises that such reporting, especially in relation to locum practitioners, could become quite insurmountable.

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

CAAQ does not see an issue with this alternative option.

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.

CAAQ does not agree with this Proposal as it allows a practitioner to continue working for a period of up to 3 months without paying their associated renewal fee and then finishing practice.

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.

CAAQ does not agree with this alternative option.

CAAQ is of the opinion that a period of 1 month's "grace", with a financial penalty, be granted to a practitioner who fails to renew their registration on time, before their name is removed immediately from the register. CAAQ is also of the opinion that any practitioner who practices during the "grace" period may be considered to be committing an offence.

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.

CAAQ agrees with this Proposal.

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.

CAAQ does not agree with this alternative option.

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.

CAAQ agrees with this Proposal.

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.

CAAQ agrees with this Proposal.

Attachment 1

Restrictions on spinal manipulation
The Consultation Paper "Proposed Registration Arrangements" Section 8.5 asks a series of questions;-

1. Is there any evidence to suggest that the community is more vulnerable in those jurisdictions where no restrictions apply, compared with those where restrictions apply?
2. Should the restricted act if included be narrowly framed eg manipulation to the cervical spine?
3. The need, if any, for inclusion in the national legislation of a restricted act with respect to spinal manipulation? If so, how broad or narrow framed?
4. What definition should be adopted?

Evidence of injury between practice restriction and non-restriction of spinal manipulation is unavailable in Australia. There are no known studies which have addressed or compared this question directly. From a research perspective the answer is unknown. Similarly there is no known data to determine how widespread or rare is the practice of spinal manipulation by non-regulated persons in non-practice-restricted jurisdictions.

CCEA is aware that there are a number of reports or incidences related to the evidence of injury between practice restriction and non-restriction of spinal manipulation however there is no comparative trail data from which to glean statistics.

Again, if injuries have occurred by non-regulated persons, we have no access to that information from any source. As a profession we indeed have continued to monitor and research complications and adverse event in relation to spinal manipulation as reported and alleged to have occurred following spinal manipulations.

The over-arching objective of the national scheme as set out in Section 5.3(a) in the Intergovernmental Agreement is to "provide for the protection of the public by ensuring that only practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered.

The principle in 5.4(c) sets out; "…… that restrictions on a practice of a profession should only occur where the benefits of the restriction to the community as a whole outweigh the costs". The practice of spinal manipulation in our view needs to be restricted primarily for public safety and protection purposes where its practice is permitted by practitioners who are suitably trained and qualified to do so. We would further argue that the practice restriction should also extend to extremity joint manipulation.

The World Health Organization "Guidelines on basic training and safety in Chiropractic" (www.who.it/medicines/areas/traditional/Chiro-Guidelines.pdf) encourages and supports the proper use of the practice of SMT including the understanding of the significance and detection of contraindications for such care. WHO discusses the need to facilitate safe and qualified practice as well as protect the public and patients by;-

- Providing minimum requirements for education
- Reviewing contraindications; minimizing the risk of accidents; advise on the management of complications arising during treatment; and to promote safe practice.

Spinal manipulation (SMT) involves the forceful passive movement of the joint beyond its active limit of motion and as such practitioners providing this care must identify the risk factors that contraindicate this modality. (1.)

Contraindications

Contraindications to SMT range from a non-indication for such an intervention, where SMT may do no good, but should not cause any harm, to an absolute contra-indication, where SMT is life-threatening and/or catastrophic. The haphazard application of SMT by non-regulated individuals and untrained is dangerous.

There are a number of contraindications to joint manipulation (especially spinal), which have been reviewed in practice guidelines developed by the chiropractic profession and in the general chiropractic literature (1.-8).

An extensive list of absolute and relative contraindications can be found in the WHO document “Guidelines on basic training and safety in Chiropractic” (9).

Complications

A discussion of contraindications, accidents and adverse reactions is found in the WHO document as detailed above. (9.) According to Henderson et al (10) causes of complications and adverse reactions are;-

- Lack of knowledge
- Lack of skill
- Lack of rational attitude and technique

Henderson gives examples of inappropriate practices and a description of serious adverse outcomes to all spinal regions (11-23). SMT is generally regarded as safe, effective and conservative, however although rare, accidents have been reported. As with all therapeutic interventions, complications can arise. Serious neurological and vascular complications have been reported and in some instances catastrophic. Examples of reported incidences are as follows;-

Cervical Region

- Vertebrobasilar accidents (2-5, 7-8, 11, 15, 23-26)
- Horner’s syndrome (12)
- Diaphragmatic paralysis (13)
- Myelopathy (14)
- Cervical disc lesions (20)
- Pathalogical fractures (15,16)

Thoracic Region

- Rib fracture and costochondral separation (17)

Lumbar Region

- Lumbar disc rupture (21)
- Lumbar artery aneurysm (22)
- Cauda equine syndrome

Miscellaneous Neuro Conditions Reported to have occurred following SMT. (27)

- Upper brachial plexus paralysis
- Axillary nerve lesion
- Long thoracic nerve lesion
- Spinal accessory neuropathy

- Diaphragmatic paralysis – phrenic N.
- Femoral neuropathy
- Spinal Haemotoma (27)

Reports of neurological complications following SMT fall into four major categories;-

1. Cerebrovascular accidents or incidents as a consequence of arterial dissections resulting in specific stroke syndromes.
2. Lumbar disc syndromes including radiculopathy and cauda equine syndrome.
3. Cervical disc syndromes including radiculopathy and myelopathy
4. Miscellaneous and often unexplained post-manipulation symptoms. (27)

Cerebrovascular Accidents (CVA)

Estimates of the incidence of serious cerebrovascular syndromes following cervical SMT based on clinical surveys range from 1 in 400,000 to 1 in 2 million dependant upon various authorities. In the example of arterial dissection, there are no highly reliable clinical tests to determine this possibility, however, practitioners are on the "look-out" for various initial symptoms which may or may not be present; eg "thunder-clap" headaches and any brain-stem related signs and symptoms – dizziness, drop attacks, visual problems, speech difficulties, coordination difficulties, one-sided numbness, etc. The lay-person does not have the knowledge and clinical skills to assess the patient properly. In such instances, if SMT was utilized the underlying arterial dissection could be further aggravated leading to a significant condition.

Disc Syndromes

In the case of a presenting cervical or lumbar disc injury, the trained professional understands the underlying disc and nerve anatomy, understands the pathology, can clinically assess the patient for signs and symptoms of a nerve root lesion (muscle strength, sensory loss, reflexes and nerve tension tests) and therefore in appropriate cases would desist from treatment and refer for appropriate imaging versus aggravating the pathology with the possible need of urgent surgery.

Prevention of Complications from manipulation

Complications that can arise from SMT can often-times be prevented by careful appraisal of the patient's history and examination findings. Information must be sought about coexisting diseases and the use of medications, including long term steroid and anticoagulant therapy. A detailed and meticulous examination must be carried out. The use of appropriate technique is essential and the practitioner must avoid techniques known to be potentially hazardous. (28)

Trained professionals are required to obtain Informed Consent which includes a discussion and explanation of both positive and negative outcomes, a list of options, and the knowledgeable ability to answer and explain any questions the patient might have. How can the layperson be able to provide this requirement without sufficient formal training and expertise.

Regulated trained professionals are required to have adequate public indemnity insurance when performing SMT. This allows patients access to funds in the event of an injury. How can laypersons using SMT receive this form of insurance from insurers without adequate tertiary training.
It would be unsatisfactory to allow uninsured laypersons to perform a therapeutic method which can have serious/lethal consequences, without the injured person having access to financial aid which may be required for daily living.

Furthermore regulated practitioners expertly educated and trained in these procedures are taught courses in first aid as well as instructions for those occasions where adverse incidents occur. There are further professional expectations and requirements for Continuing Professional

Development program which include regular risk management re-education including the need for continual first aid updates.

The above discussion details the recommendation that practice restriction should be based upon;-

- public safety
- the need for practitioners with demonstrated practical and cognitive skill in the application of spinal manipulative therapy.
- the need for formal education with minimum standards and requirements as detailed within the WHO document (9) (only the chiropractic and osteopathic professions meet this requirement within the entry-level programs. The WHO document recommends that other health practitioners would need a further 12 months instruction in SMT. This is achieved with the medical and physiotherapy post-graduate programs.)
- a professional code of practice should be formulated to include (a) the need for health professionals to administer and provide interventions of demonstrated competence, and (b) the minimum educational standard necessary for the provision of SMT.
- the need to recognise and understand the significance of contraindications, the ability to minimize risk, the ability to administer first and provide appropriate advice and management in the event of a serious complication.
- the ability to provide genuine Informed Consent
- the availability and regulated requirement of public indemnity and malpractice insurance.
- continuing professional education and development.

SUGGESTED DEFINITIONS

Options for a definition are as follows;-

1. No Definition.
2. Spinal Manipulation is a procedure that is only performed by a person registered to perform such restricted practice.
3. As per the NSW Public Health Act.

"the rapid application of a force (whether by manual or mechanical means) to any part of a person's body that affects a joint or segment of the vertebral column"

4. A manual manoeuvre utilizing a high velocity, low amplitude thrust that affects the vertebral column.

Our recommendations would be option 4.

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