



30 April 2009

The Secretary
Senate Community Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Secretary,

We are writing on behalf of the Australian Physiotherapy Association and the Australian Physiotherapy Council in response to the Senate Inquiry into the National Registration and Accreditation Scheme for the Health Professions. This submission addresses specific aspects of the scheme that are relevant to the terms of reference of the inquiry. The comments in this joint submission reflect input from the eight State and Territory Physiotherapy Registration Boards, the Australian Physiotherapy Association and the Council of Physiotherapy Deans, Australia and New Zealand.

The Australian Physiotherapy Association and the Australian Physiotherapy Council strongly support the principles underlying the development and implementation the National Registration and Accreditation Scheme for the Health Professions.

The Australian Physiotherapy Association and the Australian Physiotherapy Council are committed to the implementation of a national registration and accreditation scheme by 1 July 2010. Physiotherapists in Australia are currently subject to regulation under eight different statutory frameworks. The national scheme will create a consistent approach to regulation that will address many of the barriers to mobility and risks to public safety that arise from the current frameworks.

The Australian Physiotherapy Association and the Australian Physiotherapy Council, seek an opportunity to appear at the public hearing conducted by the Senate Community Affairs Committee regarding the scheme.

Please contact the Australian Physiotherapy Council Chief Executive Officer, Margaret Grant, [margaret.grant\[at\]physiocouncil.com.au](mailto:margaret.grant[at]physiocouncil.com.au) or the Australian Physiotherapy Association Chief Executive Officer, Ian Mayer, [Ian.Mayer\[at\]physiotherapy.asn.au](mailto:Ian.Mayer[at]physiotherapy.asn.au), for further information or clarification of any aspect of this submission, and to confirm appearance as witnesses at the public hearing.

Yours sincerely

A handwritten signature in black ink that reads "Tony Wright". The signature is written in a cursive style with a large, looped 'T' and 'W'.

Professor Tony Wright
Chair, Australian Physiotherapy Council

A handwritten signature in black ink that reads "Patrick Maher". The signature is written in a cursive style with a large, looped 'P' and 'M'.

Mr Patrick Maher
President, Australian Physiotherapy Association

Submission to Senate Community Affairs Committee

Inquiry into the National Registration and
Accreditation Scheme for the Health Professions

April 2009



INTRODUCTION

The Australian Physiotherapy Council and the Australian Physiotherapy Association (APA) are pleased to submit a joint response to the Senate Inquiry into the National Registration and Accreditation Scheme for the Health Professions. The comments in this submission reflect input from the eight State and Territory Physiotherapy Registration Boards, the Australian Physiotherapy Association and the Council of Physiotherapy Deans, Australia and New Zealand.

The Australian Physiotherapy Association and the Australian Physiotherapy Council note the clear responsiveness to comments provided in submissions and at meetings with the National Registration and Accreditation Implementation Project team. The Australian Physiotherapy Association and the Australian Physiotherapy Council have had many opportunities to participate in meetings and to engage with members of the implementation team at various forums.

GENERAL COMMENTS

The literature demonstrates that regulation is a complex concept that exists at a number of levels within any society. Formal regulatory regimes will often depend upon culturally-embedded factors including social ordering and forms of authority.¹ In order to be effective, any regulatory system must accommodate or address the economic, political and cultural elements of the particular context in which the system is to be implemented. A key challenge for regulators in all contexts is designing a regulatory regime that best fits the regulatory circumstances.

Because patient care is at the heart of regulation in the context of health, one of the key challenges for regulators is designing a sustainable regulatory framework that can adapt within a dynamic environment without compromising either patient safety or effective health care. As in many areas of professional regulation, a tension is created between the measures introduced in regulation that protect the community interest and the distinguishing features

¹ Fiona Haines Regulatory character and Regulatory Reform: exploring the nexus between globalization and safety standards. *Working Paper 4 for the National Research Centre for OHS Regulation*. July 2002.

of the profession which must be retained.² In many cases this tension is moderated by protecting use of the title of the profession and by establishing standards of education, professional performance, professional conduct and professional competence as part of the regulatory framework. These standards, together with contemporary mechanisms to maintain graduates outcomes and to monitor and foster standards of practitioner performance and conduct provide the tools by which regulators ensure the community interest is protected. An effective and responsive interaction between statutory regulation and professional self-regulation can moderate the tension between the community interest and practice/recognition of a profession. Such a model has been achieved by the legal profession.

Although the current regulatory models for the health professions vary within and between jurisdictions, the purposes/objects of the various Acts are reasonably consistent and include:

1. to protect the public by providing for the registration of health professions and investigations into the professional misconduct and fitness to practise of registered physiotherapists;
2. to protect the public by ensuring health care is delivered by registrants in a professional, safe and competent way
3. to protect the health and safety of members of the public by providing mechanisms to ensure that health professionals are fit to practise
4. to establish the registration board
5. to uphold standards of practice and ethics within the profession

These fundamental purposes and objects reflect a reasonable balance between government and self regulation and should not be changed by the national registration and accreditation scheme.

The Australian Physiotherapy Council and the Australian Physiotherapy Association are broadly in agreement with the proposed national registration and accreditation scheme. The Australian Physiotherapy Association and the Australian Physiotherapy Council consider that some aspects of the design of the scheme could be refined but that it is not necessary to

² The distinguishing features of a profession are identified in the literature as a clear definition of the scope of that profession; a core body of knowledge and an ethical framework.

completely revise the design of the scheme. The content of this submission addresses some of the Inquiry's Terms of reference.

1. THE IMPACT OF THE SCHEME ON STATE AND TERRITORY HEALTH SERVICES

The Australian Physiotherapy Council and the Australian Physiotherapy Association consider that the national scheme is likely to have a positive impact on state and territory health services. The scheme is likely to benefit state and territory health services by improving practitioner mobility and establishing more consistent national standards both within health professions and between the health professions.

2. THE IMPACT OF THE SCHEME ON PATIENT CARE AND SAFETY

Restriction on practice

Section 5.4(c) of the IGA provides that one of the principles of the scheme will be that: *"restrictions on the practice of a profession should only occur where the benefits of the restriction to the community as a whole outweigh the costs."*

The Australian Physiotherapy Association and the Australian Physiotherapy Council suggest that a simple cost:benefit basis for restriction of some practices should be replaced with a risk assessment methodology – that is, how likely is the event and what are the consequences of the event. The reason for this approach is that the scheme must regulate practices that place members of the community at risk of significant injury and death.

The Australian Physiotherapy Association and the Australian Physiotherapy Council 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.

The practice of spinal manipulation is currently restricted by statutes in many States and Territories because there is documented evidence of the risk of death and significant injury arising from manipulation of the upper cervical spine. The statutory restriction of spinal

manipulation under the national scheme has not been confirmed and appears contentious. 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.

The Australian Physiotherapy Association and the Australian Physiotherapy Council contend that further work must be done before a decision regarding the restriction of spinal manipulation can be made. The Australian Physiotherapy Association and the Australian Physiotherapy Council would be pleased to contribute, along with other stakeholders, to this further work.

3. THE EFFECT OF THE SCHEME ON STANDARDS OF TRAINING AND QUALIFICATION OF RELEVANT HEALTH PROFESSIONALS

Accreditation functions

The activities of the Australian Physiotherapy Council include accreditation of programs of education of physiotherapists in Australian universities and assessment of overseas qualified physiotherapists for the purposes of migration and registration to practice in Australia. Councils such as the Australian Physiotherapy Councils exist in many registered professions including architecture and law. A common feature across these professions (not only in health) is that standards for education and accreditation are established and implemented by a Council that includes representatives from registration authorities, universities, professional bodies and the community.³ This common feature is an important element because it is not the professional body that is establishing and implementing standards and accreditation processes. The composition of the Councils ensures that the community interest, the professional interest and the education interest are appropriately balanced. This balance ensures programs of education of practitioners in a variety of professions, and the universities

³ Professions Australia *Standards for Professional Accreditation Processes* June 2008 at www.professions.com.au/Files/Standards_for_Professional_Accreditation_Processes.pdf

that offer them, achieve and maintain quality processes that ensure graduates meet registration requirements.

The World Health Organisation/World Federation of Medical Education Guidelines for Accreditation of Basic Medical Education (2005) document states in section 2 on page 4: "The legal framework must secure the autonomy of the accreditation system and ensure the independence of its quality assessment from government, the medical schools and the profession. The legal framework must authorize the accrediting body to set standards,..."

The current arrangements for the accreditation of physiotherapy education programs and the assessment of overseas qualified practitioners provide for the protection of the public. The current arrangements are also consistent with international standards of best practice. The proposed requirement for direct Ministerial approval of standards and processes described in the current IGA is analogous to the Attorneys-General approving the standards and processes to be implemented by the Law Admissions Consultative Council.

International evidence demonstrates the deleterious effect of workforce policy lowering standards of education and practice, and the consequent impediments to workforce mobility due to lack of broad clinical competence of graduates.⁴ Therefore, the power to set practice standards for each profession must be through the relevant National Professional Board and the power to set accreditation standards for each profession must remain independent to the Boards and the Agency. Physiotherapy is strongly of the view that the Ministerial Council must not have the power to set or amend the practice and accreditation standards for each profession.

The Australian Physiotherapy Association and the Australian Physiotherapy Council recommend that parts 7.5(g); 7.5(h) and 7.7 of the IGA and parts 1.34; 1.37; and 1.40 of Attachment A of the IGA are amended to ensure the accreditation function and its

⁴ Based on the numbers and performance of graduates from England in the Australian Physiotherapy Council Clinical examinations in the period 2006 – 2008, the standard of competence of the graduates from England has decreased markedly because the government decreased the length of programs and physiotherapists are being trained to work in specific areas in the NHS rather than educated in depth and breadth of physiotherapy practice required for safe and effective practice in Australia.

corresponding standards and processes continue to be developed and implemented by an accreditation body that may be funded through, but is independent from, the National Professional Board and the Ministerial Council.

Registration of Specialist Practitioners

The provision of professional services is often done in an environment of 'information asymmetry' between providers and consumers. Consumers often will judge a professional's ability to provide a professional service on the basis of 'manner and presentation'. In the presence of such information asymmetry, judicious preservation of title is important, enabling members of the public to distinguish with confidence between specialist and non-specialist providers of specific health services.

The Australian Physiotherapy Association and the Australian Physiotherapy Council note that specific legislative provisions related to recognition of specialist physiotherapists and protection of specialist titles currently exist in Western Australia. There is provision for use of the title *specialist physiotherapist* in other jurisdictions including New South Wales. There is a net public benefit in ensuring that the use of specialist titles and a register of specialist physiotherapists are retained in the national scheme.

4. HOW THE SCHEME WILL AFFECT COMPLAINTS MANAGEMENT AND DISCIPLINARY PROCESSES WITHIN PARTICULAR PROFESSIONAL STREAMS

There are a number of aspects of the proposed arrangements for complaints, performance, health and conduct matters that should be further refined and reworked to enhance the accountability and transparency of the processes and to assist in the maintenance of appropriate standards of health care practice.

Roles of the National Professional Boards in decision making

Implementation of the national scheme will require the National Board to delegate certain responsibilities. The Australian Physiotherapy Association and the Australian Physiotherapy Council recommend that the framework of delegation of powers to manage complaints, performance, health and conduct matters, retains formal involvement of the National Board in the decision making processes to promote consistency in the implementation of approaches to

health, performance and disciplinary matters. Such involvement will enhance the Board's existing expertise and better protect the public interest.

Modifications to the three stream approach

The Australian Physiotherapy Association and the Australian Physiotherapy Council recognise that, in some circumstances, health issues may be identified through notification of a conduct or performance matter. Nevertheless, the rehabilitative approach taken by the National Board in relation to a practitioner's health issue should be distinguished from the approach the Board may take to concurrent conduct or performance matters in relation to the same practitioner. There is a recognised public interest in rehabilitation of practitioners so that they can return to practice. A health program should provide a clear framework for the practitioner to engage them in the rehabilitative process and monitor their progress. Where the practitioner does not comply with the health program then the public may be placed at risk. A countervailing public interest may require disciplinary action to be taken by the National Board; such as suspension of registration, deregistration, or placing conditions of practice.

The Australian Physiotherapy Association and the Australian Physiotherapy Council suggest that handling of notifications in relation to performance and conduct matters have a common preliminary (initial) assessment. The preliminary assessment (triage) would identify the seriousness of the matter and its consequences including any potential for harm to the public. The primary determinant for further management of the notification would be the seriousness of the matter and its consequences including any potential for harm to the public. In some circumstances, this may lead to immediate suspension of registration or the placing of conditions on registration pending further investigation. This approach would ensure timely and appropriate responses to managing risk to the public and in doing so protect the public interest. All serious matters would be immediately referred to an appropriate agency external to the national registration and accreditation scheme. The external agency would have powers and expertise in the investigation of serious matters.

The further investigations of notifications that are determined on preliminary assessment to be related to a serious matter are best handled by an agency that is separate to the National Board and/or its committees and panels. Agencies such as the existing Health Complaints Commission in NSW have the necessary expertise, systems and processes to undertake such investigations. Replicating this type of expertise, systems and processes within the national registration and accreditation scheme would add unnecessary costs to the scheme. If existing agencies with investigative powers are used for serious matters only, unnecessary costs should be avoided.

Alternative dispute resolution

It is noted that alternative dispute resolution in the proposed arrangements within is limited to 'conciliation'. Contemporary complaint mechanisms extend beyond 'command and control' or punitive approaches to include facilitative alternative dispute resolution methods such as mediation. There is potential for further integration of advisory and determinative alternative dispute resolution processes such as conciliation, dispute counselling and expert referral into the mechanisms in the national scheme.

5. THE APPROPRIATE ROLE, IF ANY, IN THE SCHEME FOR STATE AND TERRITORY REGISTRATION BOARDS

The Australian Physiotherapy Council and the Australian Physiotherapy Association do not consider there is any role for jurisdiction based registration boards in the national scheme. Retaining state and territory registration boards has the potential to undermine national consistency and perpetuates the risks that have been created by the current decision-making capacity of jurisdiction-based boards.

6. ALTERNATIVE MODELS FOR IMPLEMENTATION OF THE SCHEME

Other than the recommendations for refinement stated in this submission, The Australian Physiotherapy Council and the Australian Physiotherapy Association do not propose any alternative models for implementation of the scheme.