



## **Independent Review of the National Registration and Accreditation Scheme for Health Professions**

### **NHAA Response**

Submitted by the National Herbalists Association of Australia (NHAA)

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## Executive Summary

### Background and scope

The purpose of this submission is to evaluate and comment on the Independent Review of the National Registration and Accreditation Scheme (NRAS) for Health Professions conducted by Mr Kim Snowball. The NHAA welcomes this review as a first step of improving the function, sustainability and accessibility of the NRAS.

This document has been prepared by the National Herbalists Association of Australia (NHAA), which has represented the interests of professional western herbal medicine (WHM) practitioners and naturopaths in Australia since 1920.

The NHAA is not a member of the NRAS, but has been seeking registration for western herbal medicine practitioners and naturopaths almost since its inception, and more actively in the last 10 years. As a non-member lacking in knowledge of internal functioning of the NRAS, the NHAA comments will be limited to questions in areas of most relevance to the NHAA and its members, including;

- Accountability and governance
- Future regulation of health practitioners
- Complaints mechanisms
- Public protection

## About the NHAA

The NHAA is a peak professional association representing appropriately qualified Western herbalists and naturopaths using herbal medicines as their primary treatment modality. It is the oldest professional association of complementary therapists, founded in 1920 with a current full membership of approximately 850 (our total membership is around 1200 including student and companion members). This represents approximately one third of practising Herbalists and Naturopaths in Australia. The NHAA is the only national professional association specifically concerned with the practice and education of Western herbal medicine (WHM) in Australia. Members are required to adhere to the Association's Constitution and the Code of Ethics (including standards of practice). Details of the Constitution and the Code of Ethics and Standards of Practice of the Association are detailed in Appendices 1 & 2.

The primary aims of the NHAA are to:

- Promote, protect and encourage the study, practice and knowledge of medical herbalism.
- Disseminate such knowledge by talks, seminars and publications.
- Encourage the highest ideals of professional and ethical standards.
- Promote herbal medicine within the community as a safe and effective treatment option.

The vision held by the NHAA for the professional practice of herbal medicine is summarised in the following statements.

- Practitioners and the practice of herbal and naturopathic medicine are fully integrated into the primary healthcare system in Australia.
- The NHAA is recognised as the peak body for herbal and naturopathic medicine.
- Herbal and naturopathic medicine is accessible to all.
- The integrity of the profession of Western herbal medicine and naturopathy is maintained.
- The standards and quality of education of the profession continue to be promoted.
- Career opportunities and research pathways for herbalists and naturopaths are created.
- The integration of traditional medicine and evolving science is continued.

The NHAA is governed by a voluntary Board of Directors. Full members of the Association elect the Board of Directors, with each board member serving a two-year term after which they may stand for re-election.

Full members of the NHAA have completed training in Western Herbal medicine and nutritional medicine sufficient to meet the education standards as determined by the Examiners of the Board. These standards are set in consultation with tertiary educational institutions (standards in line with but exceeding the requirements of the NSW Health Training Package), and all members must adhere to a comprehensive Code of Ethics and Continuing Professional Education (CPE) program (see



Appendices 2 & 3). Membership consists of practitioners of Western herbal medicine who choose to use herbal medicine as their major modality of practice including Naturopaths, GPs, Pharmacists and Registered Nurses.

The NHAA publishes the quarterly *Australian Journal of Herbal Medicine*, a peer reviewed subscription journal covering all aspects of Western herbal medicine, and holds annual seminars on herbal medicine throughout Australia. An *International Conference on Herbal Medicine* has been held every 2-3 years since 1992.

Since its inception, the NHAA and its members have been at the forefront of herbal medicine and have been influential in areas ranging from education and practice standards, to government regulation and industry standards. The NHAA has a strong commitment to achieving high educational standards in herbal medicine practice and supports the regulation of the profession.

## **NHAA Response to Review Questions**

- 1. Should the Australian Health Workforce Advisory Council be reconstituted to provide Independent reporting on the operation of the National Scheme?**
- 2. Should the Health Workforce Advisory Council be the vehicle through which unresolved cross professional issues are addressed?**

The NHAA agrees that any entity with the complexity of function of the NRAS requires independent oversight, and is happy to support recommendations made by the reviewer in this area.

Similarly, such an entity being involved in inter-profession dispute resolution, if suitably resourced, may prevent more costly legal inter-profession dispute actions. Whilst our knowledge of the volume and seriousness of such disputes is limited we agree in principle with the suggestions outlined in the consultation paper.

3. **Should a single Health Professions Australia Board be established to manage the regulatory functions that oversee the nine low regulatory workload professions? Estimated cost saving \$11m per annum.**
4. **Alternatively, should the nine National Boards overseeing the low regulatory workload professions be required to share regulatory functions of notifications and registration through a single service? Estimated cost saving \$7.4m per annum.**
5. **Should savings achieved through shared regulation under options 1 or 2 be returned to registrants through lower fees?**

Establishing a single Health Professions Australia Board looks like a sensible recommendation based on;

- Cost sustainability,
- Lower registrant costs,
- More favourable cost-benefit analysis for new professions seeking registration.

However, it is possible that this option would not be viewed favourably by the nine professions involved due to;

- Fear of loss of specific professional knowledge and advice on education workforce issues
- A philosophical reduction in professional identity
- Potential reduction of resources
- Perceived loss of status.
- Loss of functional stability with the potential of additional professions being added to the Health Board intermittently.

In view of this, the second option of separate boards with shared resources may be a more palatable interim measure, perhaps with the goal of moving to a single health board at a later date.

Any savings achieved through such changes should benefit registrants of the amalgamated boards, as this is likely the main reason the boards would consider such a move, and in line with the COAG best practice regulation requirement of lowest possible regulatory cost to professional practitioners (COAG 2007).

6. **Should future proposals for professions to be included in the National Scheme continue to require achievement of a threshold based on risk to the public and an associated cost benefit analysis?**
7. **Should the National Law be amended to recognise those professions that provide adequate public protection through other regulatory means?**
8. **Should a re-constituted Australian Health Workforce Advisory Council be the vehicle to provide expert advice on threshold measures for entry to the National Scheme to the Health Workforce Ministerial Council?**

The current threshold based on risk and a cost benefit analysis disregards the complexity some health professionals face in the self-regulatory environment. Unregulated professions are challenged with a multitude of professional stakeholders with differing education requirements, continuing professional development standards, and complaints handling mechanisms (Lin et al 2005). Additional pseudo-regulatory requirements imposed by industry groups (e.g. skills councils, VETAB), health funds, the Therapeutic Goods Administration (TGA), and various health complaints entities (HCE), also contribute to an excess of regulatory costs to associations and their members.

A less obvious problem is the fractured nature of some professions which impacts on their development, and exerts an indirect risk to public safety. Using Western Herbal Medicine and Naturopathy as an example;

There are seven major associations, but upwards of fourteen at any one time. These associations have differing entry requirements, education standards, and continuing professional education standards. Some support the professional goal of establishing Bachelor level minimum education standards and registration, seeing this as vital in the promotion of evidence based practice and professional development, while some would like to maintain the status quo of a self-regulatory model and Advanced Diploma level education.

The lack of professional cohesion impacts on work force development, with allied health professionals reluctant to cross refer due the difficulty in identifying suitably qualified practitioners.

Additionally other health stake-holder actions have adverse effects on self-regulated health professionals. There are two recent events that illustrate this, the first is the TGA review, Regulating the Advertising of Therapeutic Goods to the Public (TGA 2013), with the potential unforeseen consequences to herbalists and naturopaths as unregulated practitioners, potentially being barred from advertising information regarding tools of trade (goods) regulated by the TGA (this remains unresolved). The second event is the Government Review of the Private Health Insurance Rebate for Natural Therapies (final report pending), which may result in private rebate status being lost for herbalists and naturopaths, due to a perceived lack of evidence for therapies, and if removed, will likely result in a contraction in the number of practicing herbalists and naturopaths.



The above scenario illustrates how self-regulation (in some cases) can delay professional and work force development.

In view of this experience, the NHAA recommends the threshold for registration of health professionals should be expanded to include;

- Demonstrates self-regulation has delayed professional development in such a way as impacts public safety.
- Demonstrates self-regulation is a greater financial burden to professional health practitioners than potential costs of regulation.
- Demonstrates self-regulation limits work force opportunities to professional practitioners.
- Demonstrates self-regulation is inadequate for ensuring appropriate professional education standards.

The NHAA supports the recommendation that the National Law be modified to recognise professions that provide adequate public safety through other regulatory measures, where it does not contradict recommendations outlined for an expanded threshold for regulation. The NHAA recognises there are many professions for whom the self-regulatory model is very successful, but have suffered unforeseen consequences of lost employment and status due to the NRAS. We are however concerned that the outlined change may provide another obstacle for those seeking registration, regardless of whether they have a genuine case or not. Any change to the National Law, as outlined, must be accompanied by strict criteria to support both recognised self-regulation versus regulation with NRAS.

The NHAA support the reconstitution of AHWAC to provide advice on threshold measures for entry to the National Scheme. The NHAA has experienced the difficulties in accessing information and providing evidence to support the registration of Western herbalists and naturopaths for over a decade. Particularly since the Victorian government commissioned the La Trobe Report (Lin et al 2005), which recommended the registration of herbalists and naturopaths. This was somewhat overtaken by the proposed National Scheme and put on hold till the then current regulated practitioners and partially regulated practitioners were embedded in the National Scheme. Since then the NHAA has written to health ministers, COAG ministerial council, and other parliamentarians to no avail, due to the lack of a clear pathway for review (Baxter 2007, 2011).

The NHAA recommends an easily accessed, transparent pathway to threshold assessment maintained by a reconstituted AHWAC, or similarly empowered body.

**9. What changes are required to improve the existing complaints and notifications system under the National Scheme?**

**10. Should the co-regulatory approach in Queensland, where complaints are managed by an independent commissioner, be adopted in all States and Territories?**

The NHAA does not operate within the current National Scheme and thus can only make recommendations based on the Independent Review and the associated forum discussions. Based on this there seems to be strong recognition that the current system is not sufficient, particularly in meeting the public's needs and expectations. Therefore we support Option 2, particularly as it includes;

- Single point of notification to reduce public confusion.
- Triaging of complaints and notifications to appropriate HCE.
- Infrastructure to support public expectation and resolve their dispute separately to any notification referral to a health board.
- Infrastructure likely to be able to support complaints generated through breaches of the new National Code of Conduct.
- Financial sustainability measures.

11. Should there be single entry point for complaints notifications in each State and Territory?
12. Should performance measures and prescribed timeframes for dealing with complaints and notifications be adopted nationally?
13. Is their sufficient transparency for the public and notifiers about the process and outcomes of disciplinary processes? If not, how can this be improved?
14. Should there be more flexible powers for National Boards to adopt alternative dispute resolution, for instance to settle matters by consent between the Board, practitioner, and the notifier?
15. At what point should an adverse finding and the associated intervention recorded against a practitioner be removed?

As stated on the previous question a single point of entry for each State and Territory is likely ideal. Additionally in view of the trauma suffered by those involved, where practicable, prescribed timeframes for dealing with complaints should be adopted nationally, providing there are options for extensions of timeframes for particularly complex cases. Perhaps a framework of complaint complexity with requisite timeframes could be adopted to avoid aggravating extensions and delays. The Queensland framework outlined in the review seems reasonable and could be adopted nationally.

Quality audits of complaints could inform both efficiency of dealing with complaints and allow for assessment of time required for types of complaints that could in turn initiate the adoption of new timeframes for each classification.

The NHAA is unable to respond to questions 13 or 14, due to lack of experience with the current dispute management system.

The removal of published findings recorded against a practitioner on the register should relate to;

- Severity of initial transgression
- Compliance with intervention measures
- Any additional remedial action undertaken voluntarily by the practitioner
- For more serious offences, after a professional review, suitable time to assess rehabilitation.
- Minor transgressions may require probationary cautions or intervention measures only, and should not be recorded at all.
- More serious transgressions requiring suspension of practice are likely to correlate to criminal sentencing etc.
- Depending on severity of transgression where practitioner is able to continue practice, 2-5 years is comparable with other countries.

**16. Are the legislative provisions on advertising working effectively or do they require change?**

**17. How should the National Scheme respond to differences in States and Territories protected practices?**

**18. In the context of the expected introduction of the NCC for unregistered health practitioners, are other mechanisms or provisions in the National Law required to effectively protect the public from demonstrated harm?**

The advent of social media and testimonials is a double edged sword for both registered and unregistered practitioners. The public, in general enjoy them and see them in part as health service references. In a sector where services are delivered largely on trust, it's not surprising they've become popular. In the technological age banning testimonials, particularly on social media is a war that cannot be won. Therefore it is probably not a reasonable expectation to demand health professionals police their social media sites and accounts to monitor testimonials. Legislators therefore need to decide what is reasonable? This might include;

- The practitioner clearly discourages testimonials on social media platforms
- That the practitioner clearly places disclaimers with regards to placing testimonials on social media platforms.
- That the practitioner be allowed to display messages on social media platforms about the availability of service references upon application to the practice.
- That limited testimonials may make general claims about services (e.g. professionalism, reasonable pricing, punctuality....), but not claims related to specific services and products.

The NHAHA can add nothing to what has already been discussed in the review regarding protected practice and the introduction of the NCC, beyond what has already been mentioned in the context of complaints and notifications.

**19. Should the mandatory notification provisions be revised to reflect the exemptions included in the Western Australian and Queensland legislation covering health practitioners under active treatment?**

The NHAA sees no reasonable argument to extend mandatory notification exemptions. There is currently no evidence in Northern Territory or Queensland to support this change. The main arguments outlined in the review beyond consistency of regulation are theoretical only. The main focus of legislation under National Law is public safety, which should be supported. There is also a potential for increased ethical dilemmas faced by practitioners about whether to report or not in the most serious cases of patients being unfit to practice.

- 20. To what extent are National Boards and Accrediting Authorities meeting the statutory objectives and guiding principles of the National Law, particularly with respect to facilitating access to services, the development of a flexible, responsive, and sustainable health workforce, and innovation in education and service delivery?**
- 21. Should a reconstituted AHWAC carry responsibility for informing regulators about health workforce reform priorities and key health service access gaps?**
- 22. To What extent are Accrediting Authorities accommodating multi-disciplinary education and training environments with coordinated accreditation processes or considering future health practitioner skills and competencies to address change in technology, models of care and changing health needs?**
- 23. What relationship, if any, is required between regulators and educational institutions to ensure the minimum qualification for entry to professions remains available?**

The NHAA has little knowledge in this area, and supports the recommendations of the reviewer of reconstituting AHWAC to identify and inform regulators of key health workforce reform and priorities.

The NHAA supports an oversight relationship between regulators and educational institutions to ensure entry to health professions remains accessible, without compromising minimum education requirements for safe practice. There are already notable professions where this has not been achieved e.g. Psychology.



**24. How effective are the current processes with respect to assessment and supervision of overseas trained practitioners?**

The NHAA has no experience in this area, and therefore has nothing to add.

**25. Should the appointment of a Chairperson of a National Board be on the basis of merit?**

The NHAA believes that the Chairperson of any board should be appointed based on merit, in particular displaying good communication skills and a working knowledge of board governance. More specific professional knowledge can be mined and utilised from other board members.



**26. Is there an effective division of roles and functions between National Boards and accrediting authorities to meet the objectives of the National Law? If not, what changes are required?**

**27. Is there sufficient oversight for decisions made by accrediting authorities? If not, what changes are required?**

The NHAA has no specific knowledge regarding issues raised in questions 26 and 27, beyond what has been discussed in the review.





**28. The Review seeks comment on the proposed amendments to the National Law.**

The NHAA lacks the legal expertise to make specific comments on the proposed amendments to the National Law. We do, however welcome the proposed statutory protection for health practitioners reporting serious offences to the authorities.

## References

Baxter, J. (2011) Australian Health Ministers' Advisory Council (AHMAC) by National Herbalists Association of Australia: *Regarding the options for regulation of unregistered health practitioners*, NHAA.

Baxter, J. (2007) Briefing for the Health Minister's Advisory Council by National Herbalist's Association of Australia: *Regarding the regulation of Western Herbal Medicine practitioners and Naturopaths*, NHAA.

Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies (2007), Council of Australian Governments.

Lin, V., Bensoussan, A., Myers, S. P., McCabe, P., Cohen, M., Hill, S., Howse, G. (2005) *The Practice and Regulatory Requirements of Naturopathy and Western Herbal Medicine*. La Trobe University, Victoria



## Appendices

### Appendix 1 - NHAA constitution

<http://www.nhaa.org.au/about/code-of-ethics-constitution>

### Appendix 2 - NHAA Code of Ethics and Standards of Practice

<http://www.nhaa.org.au/about/code-of-ethics-constitution>

### Appendix 3 - NHAA Continuing Professional Education Guide

<http://www.nhaa.org.au/join-us/extra-information/continuing-professional-education-cpe>