Submission

Australian Health Ministers' Advisory Council (AHMAC) by National Herbalists Association of Australia (NHAA) regarding the options for regulation of unregistered health practitioners

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Executive Summary

- 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 has a total Membership of approximately 1200 western herbalists and naturopaths who have met strict entry criteria before admittance
- NHAA estimates there are approximately 3,000-4,000 practising herbalists and naturopaths in Australia
- The NHAA considers the lack of regulation of western herbal medicine and naturopathic practitioners a public safety concern. This concern holds true for other unregister health practitioners.
- There is currently a lack of consistency in the way health care complaints about unregistered health practitioners can be submitted, investigated and most importantly, have appropriate outcomes delivered. This leaves the public vulnerable to exploitation by poorly trained practitioners, untrained people also calling themselves naturopaths or western herbalists or outright charlatans claiming to be practitioners in an effort to exploit the public
- Further regulatory action by Governments is indicated due to the proliferation of unregulated health practitioners
- Any implemented regulation of unregulated health practitioners must focus on protecting the public
- It is well established that there are risks associated with the practice of unregulated healthcare but not all practitioners demonstrate the same level of risk. It is the NHAA's opinion that western herbalists and naturopaths who, in the course of their practice prescribe and dispense therapeutic agents, pose a higher risk to public safety than other unregulated healthcare providers who do not engage in such practices. It is also the NHAA's opinion that as primary healthcare providers, risks are associated with clinical judgement, further distinguishing western herbalists and naturopaths from other unregulated healthcare providers who do not play this role.

- The NHAA believes that for the majority of unregulated health practitioners the best approach is to combine options 2 & 3 outlined in the discussion paper. The NHAA believes that strengthening self regulatory mechanisms (i.e. through recognition of professional associations) and providing a statutory code of conduct to enable the health complaint commissions to have the power to deal with problem practitioners is crucial for the success of these changes.
- It is the NHAA's opinion that statutory regulation of western herbalists and naturopaths is the best protection for the public. This opinion is based on the risk assessment undertaken and reported in the Lin report: *The Practice and Regulatory Requirements of Naturopathy and Western Herbal Medicine*.

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. The NHAA 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 associations Constitution and the Code of Ethics (including standards of practice).

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,
- Maintain the integrity of the profession,
- Continue to promote the standards and quality of education, of the profession.
- Create career opportunities and research pathways for herbalists and naturopaths, and
- Continue the integration of traditional medicine and evolving science

The Full Membership of the Association elects the Board of Directors of the NHAA, with each board member serving a two-year voluntary (unpaid) term after which they may stand for re-election.

Full members of the NHAA have completed training in Western Herbal and nutritional medicine sufficient to meet the educational 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 must adhere to a comprehensive Code of Ethics and Continuing Professional Education (CPE) program.

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. Membership consists of practitioners of western herbal medicine including naturopaths who choose to use herbal medicine as their major modality of practice.

Responses to Questions posed in the AHMAC discussion paper

1. What do you think are the risks associated with the provision of health services by unregulated health practitioners?

The risks associated with unregulated practitioners fall into two categories; (1) clinical judgement of the practitioner; and (2) prescribing and dispensing of therapeutic goods, such as herbal and nutritional medicines.

Clinical judgement

Safe practice requires sound clinical judgement. Sound clinical judgement is based on appropriate education, training and experience and informed by practice guidelines. Public safety is at risk when sound clinical judgement is not practiced and can be further divided into two subcategories; acts of commission and acts of omission.

Acts of commission refer to direct and inappropriate actions taken by a practitioner during the prescribing and dispensing of treatments. Examples include: recommendations that effective treatments be discontinued or application of inappropriate or potentially unsafe treatments. The outcome of such acts can have significant effects on public health and lead to poorer health outcomes due to the loss of benefits afforded by the discontinued therapy, increased morbidity and at worst, loss of life.

Acts of omission refer to misdiagnosis, failure to identify serious disease, failure to refer to another healthcare provider or service when indicated and failure to explain precautions associated with treatment and obtain informed consent. Acts of omission are most likely to occur when a practitioner has inadequate or no relevant training and education and is unaware of the limits of their practice or have inadequate clinical skills.

Currently, the public has little guarantee that all unregulated healthcare practitioners will display sound clinical judgement and that acts of omission and commission adversely affecting their heath will not occur.

Consumption of herbal and nutritional medicines require special attention

Practitioners who prescribe herbal and nutritional medicines (herbalists and naturopaths) present an additional public safety risk directly related to the prescribing and dispensing of these therapeutic agents. These risks to the public fall into three categories:

1. Predictable adverse reactions due to :
    - Inappropriate or incorrect prescribing of medicines
    - Inappropriate dosing schedules and administration forms Interactions between medicines
    - Interactions with pharmaceutical treatment
    - Long term use of medicines intended for acute treatment
2. Unpredictable reactions
    - Allergic or anaphylactic reactions
    - Idiosyncratic reactions
3. Failure in handling and manufacture of medicines
    - Misidentified plant parts or species of plants
    - Wilful or inadvertent contamination of medicines
    - Wilful or inadvertent substitution of plants or plant parts
    - Use of substandard ingredients or commercially manufactured therapeutic preparations which do not come from TGA licensed manufacturing facilities

Well-trained western herbalists and naturopaths are cognisant of these potential dangers. During their training, herbalists and naturopaths receive education about potential adverse reactions and interactions between their prescribed treatments and other substances such as pharmaceutical medicines. This is intended to reduce the incidence of predictable adverse reactions, improve handling and dispensing of therapeutic medicines and ultimately improve patient safety and promote patient wellbeing. Cautious and well trained practitioners will take a detailed medicine and medical history to identify potential allergies to specific constituents within herbal medicines or other substances before dispensing their prescription. Whether unregulated health practitioners are sufficiently motivated to receive sufficient training to minimise the risks and improve patient outcomes is debatable. As such, these individuals are at greatest risk for causing harm with these products.

2. To what extent have the risks associated with these activities been realised in practice?

Appendix 7 of AHMAC's discussion paper outlines 10 cases of practitioners investigated for activities that have caused harm to members of the public.

Cases 2, 3 & 6 listed in the discussion paper are all cases occurring in NSW and are recognised as having had dire consequences for the clients, (death in two cases and eventual death of the other case from cancer). In each case, the 'practitioner' was

untrained and claimed to be a naturopath. They provided unproven treatments for disorders that required medical intervention. It is the NHAA's opinion that these particular instances are a direct result of the lack of regulatory standards that could prevent someone claiming recognition as a naturopath when they have no education or training to support this claim.

3. Do you know of instances of actual harm or injury?

The NHAA is aware of the instances of actual harm/injury as outline in the AHMAC discussion paper.

4. What evidence is available on the nature, frequency and severity of risks?

The New South Wales Health Care Complaints Commission received 106 complaints concerning unregistered health practitioners in 2009-2010 compared with 68 in the previous year (increase of greater than 45%). 47% of the complaints received in 2009-2010 concerned professional conduct.

5. What factors exacerbate or ameliorate the risk that individuals will suffer harm as a result of the activities of unregistered health practitioners?

With a few exceptions, the single biggest factor that exacerbates the risk of harm from unregistered health practitioners is the lack of any control of persons claiming to be a practitioner. Specifically with western herbalists and naturopaths, no law prevents any one, regardless of training or character, from calling themselves a herbalist or naturopath.

The ameliorating factor is the presence of professional associations willing to set standards and to foster accountability. This does not, however, prevent individuals from avoiding membership to associations or even forming their own associations to accredit graduates from their own training institutes where the educational standards do not meet the requirements of the larger associations.

6. What do you think should be the objectives of government action in this area?

Government action in this area should be aimed at promoting public safety by protecting the public from harm from unregulated practitioners. The government's role is to set standards concerning the education, training and character of all persons wishing to act as health practitioners. The NHAA supports any action taken

by the government that would enhance public safety and confidence in unregulated health practitioners that potentially pose a public safety risk such as Western herbalists and naturopaths.

7. Do you think there is a case for further regulatory action by governments in this area?

The NHAA believes there is a need for further regulatory action by governments of unregulated health practitioners. Given the breadth of practice by unregulated health practitioners, the NHAA considers that a model to 'fit' all practitioners may be difficult to ascertain or achieve.

8. What do you think of the various options?

Option 1: No Change

The NHAA does not believe this is a viable option and will not promote public safety. Given the increase in the use of unregulated practitioners by the Australian public, continuing the current approach leaves the public open to risk of harm and exploitation by untrained and unscrupulous practitioners.

Option 2: Strengthen existing self regulation - A voluntary code of practice for unregistered health practitioners

The NHAA believes this is not in the best interests of the Australian public as it effectively asks professional associations to investigate complaints made by the public against their members whilst they are charged with upholding their members best interests. The conflict of interest inherent in this situation is apparent and means the public will not be adequately protected. From a practical perspective, it means that a practitioner found guilty of misconduct and asked to leave an association is free to join another and keep practising, thereby continuing to put the public at risk. The large number of associations claiming to represent the various modalities make this response relatively easy for an unscrupulous person. The NHAA feels that this position will leave consumers unclear and undirected to ascertain which association's membership is more trustworthy or appropriate.

Option 3: Strengthen health complaint options – A statutory code of conduct for unregistered health practitioners

Whilst the NHAA supports the introduction of a code of conduct for unregistered health practitioners, we believe that this only provides minimum protection for the public. Such a code of conduct would still allow any person to declare themselves a practitioner and treat the public without any assessment of their competence or skill. Option 3 does not protect the public in a preparatory manner and will only give

recourse to the public once an injury or offence has occurred. As such, it offers no real protection from fraudulent practitioners.

9. On balance do you have a preferred option? What are your reasons

The NHAA believes the best protection for the public, given the options available, lies within a combination of options 2 &3.

Option 3 would provide the statutory code of conduct as the basis for practitioner conduct with recourse to the health complaints mechanism provided by state governments. Option 2 would be beneficial if governments reinforced the recognition and role of peak associations. This would require an agreed standard for association functioning to prevent recognition of associations that would not meet minimum practice standards. Additionally, it would be essential to enforce mandatory association membership for practitioner status to assist in the elimination of poorly trained and/or bogus practitioners.

10. What do you think of the costs and benefits of the three options

Options 1 & 2 have little financial cost for governments or associations but provide minimal public protection.

Option 3 will incur costs associated with amending and enacting laws to provide the code of conduct. Additionally, there will be some cost associated with maintaining a national register of defaulters. Option 3 is a lower cost to the government than regulating any profession; however, it does not protect the public from unscrupulous practitioners until an offence has occurred.

11. If you are a practitioner, can you advise of what additional costs you think you might incur with the introduction of a statutory code? Are there some aspects of a statutory code that are likely to be more costly than others?

The NHAA is an association for our members who are western herbal medicine and naturopathic practitioners. The experience of the introduction of the compulsory code of conduct in NSW presented no significant costs to practitioners. Minor costs were incurred from changes within practices regarding the display of materials relevant to the statutory code.

12. Do you think there should be a nationally uniform code of conduct for unregistered health practitioners or are different codes in each state and territory acceptable?

The NHAA believes a uniform national code is the best option as it enables a mobile workforce without undue disruption to practice or the need to comply with different laws within each state and territory. It also minimises any confusion about acceptable codes of conduct for practitioners and for the public.

13. Should there be nationally uniform or nationally consistent arrangements for investigating breaches of the code and issuing of prohibition orders, or should states and territories implement their own arrangements?

The NHAA believes a nationally consistent arrangement for investigating breaches is essential.

14. Should there be a centralised administrative body that administers the regulatory scheme, or should it be administered by each state and territory?

The NHAA believes a combination of the options mentioned is preferable. This would allow for state based organisations to investigate complaints and allow for a national register of defaulters to be maintained and distributed amongst all states and territories.

15. If a statutory code were to be enacted, to whom should it apply?

Such a statutory code should apply to:

- Health practitioners not registered under the national law
- Registered practitioners who practice outside the scope of their practice

16. Which practitioners, professions or occupations should be included?

All practitioners, professions or occupations offering health services should be included.

17. Should it apply only to practitioners who deliver health services? If so, what should be the definition of a health service?

The code of conduct should apply only to providers of health services. Health services can be defined as provision of a service interpreted to be a service intended to enhance, cure or otherwise affect the health of a person.

18. Should it apply to registered practitioners who provide health services that are unrelated to their registration, for example, a registered nurse who is working as a naturopath or massage therapist?

As stated above, the NHAA believes this should apply to registered practitioners who practice outside the scope of their registration

19. Should it only apply to practitioners who directly deliver services, or should it also apply to those who deliver health services through the agency of another person, for example the owners or operators of a business that provides health services?

The NHAA believes the code should apply only to those persons directly delivering the health service. Business owners and operators are regulated under corporation's law and therefore are already significantly regulated.

20. Do you have a preferred option for the administrative arrangements through which a code of conduct for unregistered health practitioners is administered and complaints about breaches of the code are investigated and prosecuted? What are your reasons?

The NHAA would prefer a national approach with local investigative processes to administer the code of conduct. The will enable the public to have a local organisation to lodge complaints and a national body to disseminate information through all jurisdictions to avoid suspended or banned practitioners crossing state borders and continuing to practice.

21. What do you think should be included in a statutory code of conduct? Do you have any comments on the NSW code of conduct for unregistered health practitioners?

The NSW code of conduct is a good model for the development of a national code of conduct. The code was developed in consultation with associations representing unregistered health practitioners and has combined the best aspects of their codes of ethics and codes of conduct.

22. What do think the strengths and weaknesses of the NSW code?

The strength of the NSW code is that it gives the public an avenue to address the complaints about unregistered health practitioners and gives the health complaints commission powers to discipline and ban practitioners if required.

The weakness is that the code does not provide any barrier for untrained, poorly trained or unscrupulous practitioners from entering practice and preying on the sick and vulnerable.

23. Do you think it provides a suitable model for other jurisdictions or for a national code? What are your reasons?

The NSW code is a suitable model to use in other jurisdictions or as a national code. This code provides a mechanism for dealing with health practitioners who do not pose a significant risk to the public and if necessary removing them from practice.

24. Do you have a preferred option for the mechanism through which prohibition orders should be issued?

25. Should a Commissioner be empowered to investigate, prosecute and determine breaches of a code and impose sanctions (prohibition orders) or should there be separation of the investigation/prosecution from the hearing of breaches, with the latter undertaken by a tribunal or court?

26. What are your reasons?

The preferred option for the issue of prohibition orders is though an investigation by the Health Care Complaints Commission (or equivalent body in each state or territory) and a hearing by an appropriate tribunal to determine an appropriate order for the offending practitioner should the complaint be upheld. The reasons for this preference are to ensure fairness and an opportunity for the defendant practitioner to state their case in a neutral environment.

27. What 'relevant offences' (if any) should provide grounds for a prohibition order to be issued?

Any breach of the compulsory code of conduct should provide grounds for a prohibition order provided the complaint has been thoroughly investigated and the defendant practitioner is given every opportunity to mount a defence.

28. What other grounds should apply before a prohibition order may be issued?

The NHAA believes any mercenary or predatory activities by a practitioner that threatens the financial wellbeing of a client may be grounds for a prohibition order under a compulsory code of conduct. Such behaviours bring any profession into disrepute and undermine the public's confidence in otherwise conscientious and professional practitioners.

29. How do you think a regulatory scheme to investigate and prosecute breaches of a national statutory code of conduct for unregistered health practitioners should be funded? What are your reasons?

The cost of operating a system to investigate and prosecute these practitioners would fall to the State, Territory and Federal governments. Existing state based complaints mechanisms could be expanded to incorporate this function with a centralised reporting body operating on a federal level.

Further comment

The NHAA believes that a national compulsory code of conduct with available sanctions for offending practitioners is a valuable and commendable ideal. We believe that in conjunction with a compulsory code of conduct, is the need for probity checks on persons entering any health professions to ensure appropriate education and training standards, and character values.

Should the combining of options 2 & 3 become plausible, further consultation will be required to develop appropriate mechanisms for determining and recognising associations that are able to complete the necessary assessments of practitioners entering the workforce.

References

1. Australian Health Ministers' Advisory Council, 2011, Consultation paper: Options for regulation of unregistered health practitioners
2. Lin V et al. 2005. *The Practice and Regulatory Requirements of Naturopathy and Western Herbal Medicine*. School of Public Health, La Trobe University, Bundoora. Available at www.health.vic.gov.au/workforce/pracreg/naturopathy