



Submission
to
Victorian Department of Human Services

Regarding the La Trobe University Report
on

***The Practice and Regulatory Requirements of
Naturopathy and Western Herbal Medicine***

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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 considers that the existing mechanisms of regulation do not offer consumers or the profession any protection from the unscrupulous misuse of titles of Western Herbalist or Naturopath by inadequately trained persons.
- Self-regulation of unregistered practitioners has not worked. The large number of associations purporting to regulate the practice of Herbalism and Naturopathy leads to a wide diversity of standards for practice and training leaving the public confused as to who is qualified to meet their needs.
- The multiplicity of associations means that when a practitioner is disciplined by an association they can choose to ignore the disciplinary procedure, leave that association, join another association and continue to practice without any changes being implemented. The Privacy Acts prevent associations from sharing information about disciplinary action taken against a member.
- The NHAA believes that regulation of the professions offers the public and the profession the best protection and will provide orthodox practitioners a benchmark for referral, discussion and cooperation between the professions.
- For these reasons the NHAA strongly supports and endorses the recommendations made in the report entitled *The Practice and Regulatory Requirements of Naturopathy and Western Herbal Medicine (the La Trobe report)*.
- The NHAA believes the report should be disseminated widely through the auspices of the Australian Health Minister's Conference (AHMC), the Australian Health Minister's Advisory Council (AHMAC) and the Council of Australian Government (COAG) to ensure a coordinated and standard national approach to regulation.



Introduction and Background to the National Herbalists Association of Australia

The NHAA is the key 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 850 (our total membership is 1300 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). Details of the Constitution and the Code of Ethics and Standards of Practice of the Association are detailed in Attachments 1 & 2.

The primary aims of the NHAA include 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 Full Membership of the Association elects the Board of Directors of the NHAA, with each 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 Medicine sufficient to meet the educational standards as determined by the Examiners of the Board in consultation with tertiary education institutions (standards based on 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 (see attachments 2, 3 & 4).

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 regulation of the profession. Attachment 5 is a copy of our Course Accreditation Guidelines.

Membership is mainly practitioners of Western Herbal Medicine including Naturopaths who choose to use herbal medicine as their major modality of practise.



Discussion

Whilst the NHAA agrees with and endorses the recommendations outlined in the report we note that this report is to the Department of Human Services of the Victorian Government.

As a national body representing Herbalists and Naturopaths in all states of Australia the NHAA strongly believes this report needs to be disseminated more widely. For this reason we recommend the report be tabled at the Australian Health Minister's Conference, AHMAC and COAG.

Once tabled, a coordinated and common approach to the regulation of the professions is implemented in accordance with the recommendations of the Australian Government 2005 Productivity Commission Report on *Australia's Health Workforce*.¹

In this way, a national standard, applicable in all jurisdictions, can be developed for the professions.

The NHAA also believes that the standards must be developed in consultation with all stakeholders and that Herbalists and Naturopaths are represented by leading members of the professions at all stages in the development of the standards and implementation of any registration board.

The NHAA has identified several issues, which must be addressed in any regulatory framework. These are discussed below.

Issue 1 Protection of Title

Protection of title is the NHAA's preferred method of registration. Protection of title will identify those practitioners who have agreed to abide by a Code of Ethics, a Standards of Practice and have obtained a suitable level of education. Protection of title will still allow other practitioners to use non-protected titles. The NHAA agrees that the titles listed in the La Trobe report be reserved for use of suitably qualified practitioners.

Issue 2 Scheduled Herbs

Presently substances are scheduled in a hierarchy of Prescription only, Pharmacist only, Pharmacy only and general sale, depending on the National Drugs and Poisons Scheduling Committee's (NDPSC) assessment of the criteria set out in S.57E of the Therapeutic Goods Act. The orthodox medical and pharmacy professions are heavily over-represented on the NDPSC. No herbal practitioner or expert nominated by the profession is a member of this Committee. Decisions regarding herbal medicines, our tools of trade, should involve clear and significant input from herbal clinicians and experts in the field of herbal medicine.

The NHAA notes that Victoria is developing a special Schedule for Chinese herbal medicines and we consider a similar schedule for western herbal medicines



to be appropriate, either in the current regulatory environment for drugs and poisons, or in any future regulatory system which is developed for the joint Australian and New Zealand regulation of therapeutic products.

The NHAA believes that this new Schedule should allow suitably qualified and registered practitioners of herbal medicine to dispense herbal medicines listed in the Schedule. These would be herbal medicines that require a level of knowledge for safe ingestion that could not be reasonably expected of the general public; in other words use of these herbs will require the specialist knowledge of an appropriately trained Herbalist.

Issue 3 Dispensing Herbal Medicines

Herbalists should continue to be able to lawfully to manufacture, prescribe, dispense and administer herbal substances. This right should be subject to whatever detailed access regulations might be settled in the process of drawing up a Herbal Medicines Schedule within the Standard for the Uniform Scheduling of Drugs & Poisons (SUSDP) or similar replacement drugs and poisons regulation in the joint Australia New Zealand therapeutic products regulatory environment.

Issue 4 Register of Adverse Reactions

The NHAA believes that the existing system of reporting adverse reactions to drugs should be modified or refined to more adequately facilitate the reporting and appropriate investigation of adverse reactions to herbal and other complementary medicines.

Issue 5 First Aid Qualifications for Practitioners

The NHAA requires members to hold such qualifications as a condition of their continued membership of the Association. NHAA would see it as appropriate for any statute-based regulatory scheme to require a similar level of expertise. The NHAA has made this stipulation, even though our modality does not involve either manipulative techniques or skin penetration, both of which are part of the practice of TCM.

Such a qualification is designed for consumer protection and thereby to enhance consumer confidence.

Issue 6 - Use of Herbal Medicines by other Health Care Practitioners

The NHAA considers that any health care practitioner wanting to use a protected title must meet the education standards determined by a herbal medicine registration board or those who intend to prescribe herbal medicines have suitable training in the use of these products.



Issue 7 - Funding the Regulatory System

The NHAA expects that practitioners will largely fund the registration board through annual fees. However some contribution from the government should be forthcoming as there is clearly an element of public interest in a regulatory system designed to protect the health and safety of the general public.

The Mechanism for regulation

The Current State of Affairs

There are currently 12 registered health care professions. Each state has its own registration board for each of the professions and although governments have agreed to portability mechanisms, differences in various state based legislation hampers this process. This led to a 2005 Productivity Commission enquiry² into health care provision in Australia. The report from this enquiry recommends the States look at ways to eliminate the differences and create a seamless portability provisions. In some of the jurisdictions, occupational therapists, TCM practitioners, optical dispensers and speech therapists are registered but in other jurisdictions they are not. This leads to disparity across state lines and hampers portability of skills.

To avoid a similar situation with Western Herbalists and Naturopaths a single registration board with common standards across the commonwealth has many advantages including:

- One national standard for all practitioners of any registered modality
- Less expense in the establishment, administration and operation of such a board
- Less expense for registered practitioners
- A single entity to which complaints may be addressed
- No duplication of services across Australia

There is, at this time, an opportunity to create a single national registration board of naturopaths and herbal medicine practitioners initially and complementary practitioners eventually.

This can be achieved by creating a single Complementary Medicines Registration Board (CMedRB) to register all complementary practitioners across Australia instead of setting up separate registration boards in each state. A Complementary Medicine Council (CMC) appointed by each state and territory could be created to advise governments on all aspects of the board's operation. The CMC would be the controlling body of the registration board.



The CMedRB would have the power to maintain multiple registers for a variety of professions including, but not limited to:

- Traditional Chinese Herbal Medicine
- Acupuncture
- Chinese Dispenser
- Western Herbal Medicine
- Naturopathy
- Other titles as considered necessary

NHAA believes there are two ways in which this can be achieved:

1. Referral of power to the Commonwealth by the States and Territories; or,
2. Creation of mirror legislation in all States and Territories with an intergovernmental agreement and oversight by a single committee appointed by agreement between the governments.

Referral of power

This is the preferred option but we recognise that in the current political climate, it is unlikely that the States and Territories will refer power to the Federal Government.

Creation of Mirror Legislation

An acceptable option is for each State and Territory may be to adopt a single legislative template to register complementary practitioners. With the implementation of an intergovernmental agreement on the application of the legislation, a single national standard could be set for all practitioners registered in each jurisdiction.

The co-creation of a single Complementary Medicines Council to advise each government and oversee the implementation of the legislation nationally would see the legislation harmonised throughout the Commonwealth. The model for such a Council is addressed in attachment 6, Promoting our Future: A Proposal for the Establishment of Australian Council of Complementary Medicine.

There is precedent for this in Australia.

The Professional Standards Acts of New South Wales, Victoria and Western Australia are mirror legislation. A Professional Standards Council is constituted in each state. Each state's Professional Standards Council consists of the same people, reporting to each jurisdiction and in this way the Acts remain harmonised. We believe that other states are in the process of aligning with this system.



Powers of a Registration Board

The NHAA considers the registration board should have primary powers over the registration of practitioners, their qualification standards and professional conduct. The board should also have functions concerning practitioner identification, scheduling of and technical advice on herbs, and advice on regulatory standards. In specific terms the powers of the board should be to:

- 1) Register suitably qualified practitioners meeting approved competency standards;
- 2) Establish minimum practitioner education qualifications and oversee continuing professional development through a continuing practitioner education program;
- 3) Investigate complaints about, and inquire into the conduct of registered practitioners; and
- 4) Confer appropriate titles and other forms of recognition on registered practitioners.

The Registration Board should also have the capacity to co-opt experts in the fields of TCM, Western Herbal Medicine and Naturopathy to assist with technical advice in establishing appropriate qualification standards and standards of practice.

The NHAA is most willing to discuss with governments and others within the herbal medicine community how these standards should be further developed and how they should be enforced. We envisage that any statutory registration scheme would have the establishment and maintenance of high professional standards and protection of consumers at its heart.

We also consider that an appropriate level of involvement of health consumers in this process is to their and our advantage.

Summary

The NHAA has argued over many years for statutory registration of title for Western Herbalists and Naturopaths. Our argument is based on the following points:

- i. Risks associated with primary care practice
- ii. Risks associated with the ingestion of herbal medicines
- iii. The lack of co-operation between the many professional associations
- iv. Numerous interpretations of educational standards
- v. Unnecessary restriction of availability to herbalists of plant-based medicines which are part of traditional practice
- vi. Need for increased co-operation between healthcare practitioners



Our experience of the Commonwealth GST registration process has clearly shown that it is pointless to rely on professional associations to ensure appropriate mechanisms are in place to protect the public in their dealings with all or any who claim to be practitioners of these disciplines. It is perhaps unreasonable to expect organisations whose primary role is to protect the interests of their members to also protect the interests of consumers. It is our belief that the only way for adequate consumer protection is through robust legislation similar to that of Chinese medicine practitioners in Victoria.

Co-regulation, self-regulation or no regulation will not protect consumers satisfactorily. The present situation, no regulation, relies on twenty associations purporting to represent practitioners, interpreting educational standards, setting practice standards and dealing with complaints and disciplinary matters in an effective manner. This presents a potential conflict for associations to sanction members guilty of wrongdoing when the primary role of the association is to protect the interest of the members. If a practitioner is suspended or expelled from one professional association there is nothing to prevent that practitioner attempting to join another professional association. Given the wide range of standards of associations it is quite likely such a practitioner would be successful in obtaining membership of another association.

Co-regulation would rely on government accreditation of professional associations. The GST registration process highlighted the disparate views of the professional associations, with some proposing self-regulation or co-regulation, with the aim of trying to avoid the necessary scrutiny to ensure that the highest educational and professional standards are met in the interests of public safety. This placed government agencies in a very difficult position of trying to negotiate a clear path through regulation. The NHAA has consistently supported a national system of statutory registration

It is important to Western Herbalists and Naturopaths they continue as independent practitioners within a primary care context. It is the profession's responsibility to ensure our practitioners are well-educated, ethical, safe and effective. The NHAA believes the best way to achieve this is with statutory registration.

References:

1. Australian Government Productivity Commission, 2005, *Australia's Health Workforce: Productivity Research Report*
2. Australian Government Productivity Commission, 2005, *Australia's Health Workforce: Productivity Research Report*



List of Attachments

1. Constitution of NHAA
2. Code of Ethics and Standards of Practice of NHAA
3. NHAA Continuing Professional Education Guide
4. NHAA Continuing Professional Education Diary
5. NHAA course accreditation guidelines
6. Promoting our Future: A Proposal for the Establishment of an Australian Council of Complementary Medicine; a Regulatory Model