



**Submission to NSW Health**  
by  
**National Herbalist's Association**  
**of Australia**  
**Regarding the**  
**Unregistered Health Practitioner**  
**Code of Conduct**

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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 Herbalists Medicine (WHM) practitioners and Naturopaths in Australia since 1920.
- The NHAA gives qualified support to the Public Health (General ) Amendment Regulation 2008.
- The NHAA considers that the changes to the Public Health Act (1991) by the Public Health (General ) Amendment Regulation 2008 do not offer consumers the best protection from the unscrupulous misuse of titles of Western Herbal Medicine Practitioner or Naturopath or from inadequately trained or incompetent practitioners.
- The amendment to the act gives the Health Care Complaints Commission powers to deal with individual practitioners who act outside of the best interests of their clients but does nothing to prevent the untrained or incompetent from practising in the first place.
- The NHAA believes the best protection for the public lies within a form of statutory regulation setting minimum education, practice standards, code of conduct and code of ethics for Herbalists and Naturopaths. This is in alignment with the recommendations of the La Trobe University report *The Practice and Regulatory Requirements of Naturopathy and Western Herbal Medicine* authored by Vivian Lin et al.
- Regulation of the professions is the best protection for the public at large.

## **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 936 (our total membership is 1461 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.

## Qualified Support To The Public Health (General) Amendment Regulation 2008

Whilst the NHAA supports the introduction of a code of Conduct for Unregistered Health Practitioners we believe that this affords a minimum of protection for the public from the untrained and unscrupulous.

This amendment to legislation still allows for any person to declare him or herself a practitioner, set up practice whilst holding out to be a practitioner without any check or balance to the person's level of training and/or competence to practice.

There is no protection 'before-the-fact' in this legislation and will only give recourse to the public once an injury or offence has occurred and thereby offers no real protection from fraudulent practitioners.

The NHAA believes the best protection for the public lies within a form of statutory regulation setting minimum education, practice standards, code of conduct and code of ethics for practitioners. This position is in alignment with the recommendations of the La Trobe University report *The Practice and Regulatory Requirements of Naturopathy and Western Herbal Medicine* authored by Vivian Lin et al<sup>1</sup>.

In the report summary item 3.12 recommends, "... an independent regulatory body be established to determine uniform minimum professional and educational standards and to provide effective complaints handling mechanisms and sanctions related to misconduct."

An opportunity now exists for such a national register to be established. Under the Commonwealth Heads of Government agreement to create a national register of health practitioners under the auspices of the Council of Health Ministers by July 2008 and will include all professions currently regulated in all states and territories. After that date the Council of Health Ministers' working party is to consider the national regulation of partly regulated and unregulated professions.

The NHAA strongly urges the NSW Health Minister to put a priority on the regulation of Herbalists and Naturopaths as a means to truly effect public safety and confidence in these professions.

The NHAA considers the regulation of the professions as the best protection for the public at large.

## **Do These Professions Fall Into Health Minister's Responsibilities?**

Further the NHAA believes that regulation of these professions falls under the auspices of a Health Minister's Responsibilities.

Professions that need to be regulated by States and Territories must meet the six criteria set down by the Australian Health Minister's Advisory Council (AHMAC) 'Criteria for Health Occupations'.

These criteria are:

- Is it appropriate for Health Ministers to exercise responsibility for regulating the occupation in question, or does the occupation more appropriately fall within the domain of another ministry?
- Do the activities of the occupation pose a significant risk of harm to the health and safety of the public?
- Do existing regulatory or other mechanisms fail to address health and safety issues?
- Is regulation possible to implement for the occupation in question?
- Is regulation practical to implement for the occupation in question?
- Do the benefits to the public of regulation clearly outweigh the potential negative impact of such regulation?

The NHAA believes the professions do meet these criteria and have provided an assessment against the criteria below.

### **Assessment against the Criteria**

#### **1. Is it appropriate for Health Ministers to exercise responsibility for regulating the occupation in question, or does the occupation more appropriately fall within the domain of another ministry?**

WHM Practitioners and Naturopaths are primary contact healthcare practitioners with up to 50% of the community consulting these professionals each year. These professions provide healthcare services and medicines over extended periods to assist with chronic diseases and to help clients deal with the effects of medical treatments for serious illnesses. In addition complementary healthcare products prescribed by these professions are regulated as therapeutic products by several acts including the Therapeutic Goods Act. It makes sense that a person prescribing a regulated product, should in turn, also be regulated.

### **1. Do the activities of the occupation pose a significant risk of harm to the health and safety of the public?**

The NHAA and Federation of Natural and Traditional Therapies (FNNT) jointly commissioned a workforce survey<sup>5</sup> (attachment 6) as part of the GST enquiry in 2003.

This workforce study identified a significant number of adverse reactions from the ingestion of herbal medicine prescribed by WHM practitioners and Naturopaths. The number of adverse reactions was similar to that reported for TCM as reported in Towards a Safer Choice<sup>2</sup>.

In addition there is a risk involved in our role as primary care practitioners. There have been two deaths linked to naturopathic practice, which have been investigated by the coroner in recent years<sup>3</sup>. In both these cases the practitioner concerned was not a member of any of the associations and neither were suitably qualified to practice as naturopaths.

More recently there is an allegation of an unqualified practitioner offering treatments for cancer patients. It has been reported in the press that this individual forged documents related to his training to gain membership of one association to add credibility to his claims of cure.<sup>4</sup>

Therefore regulation is warranted based on:

- adverse event associated with herbal and nutritional medicines
- potential toxicity of some herbal medicines
- potential for interactions between herbal medicines and pharmaceutical drugs
- acts in practice that can be injurious to the public
- acts of malpractice and fraud resulting in complaints

### **3. Do existing regulatory or other mechanisms fail to address health and safety issues?**

The current situation is one of non-regulation. Efforts at self-regulation by the various professional associations have failed due to disagreements on standards and regulatory models. The NHAA strongly supports statutory registration, where other associations do not support this position. These associations are suggesting co-regulatory or self-regulatory arrangements. There are serious weaknesses with these alternatives.

Success of co-regulation or self-regulation is contingent upon a single national professional association. This is not the current situation for WHM or Naturopathy and is unlikely to ever be so. There are up to twenty associations that purport to represent the professions. The NHAA believes unity on critical issues of regulation is highly unlikely for WHM and Naturopathy and therefore self-regulation is impossible.

In the case of co-regulation, each of the state and territory governments would be required to regulate each of the twenty associations purporting to represent WHM and Naturopaths. This is an unreasonable expectation of any government and realistically unmanageable.

We believe the reasons for some associations rejecting statutory registration are:

- 1 Conflict of interest – some associations have boards appointed from owners or principals of educational institutes. These boards accredit courses of member institutions. Statutory regulation will separate the setting of standards from associations.
- 2 Fear of becoming irrelevant - members may choose registration over membership of a professional association.

In *Towards a Safer Choice*<sup>5</sup>, the Australian Traditional Medicine Society (ATMS) argued against statutory registration. However its members, surveyed separately, In *A Profile of Naturopathic and Western Herbal Medicine Practitioner in Australia* supported statutory registration for TCM practitioners.

Given the large number of professional associations and the divisions between them a self-regulatory or co regulatory model is unworkable therefore a form of statutory regulation is necessary to inform standards of education, practice and safety for the public.

#### Education Standards

Under the current arrangements educational standards for practitioners vary significantly between educational institutions. The NHAHA has a procedure for accrediting training courses to allow entry to the NHAHA as a full member. In the processing of applications for accreditation we have noticed a vast difference in the length, depth and quality of training provided by various education providers. Courses vary in length from approximately 1500 contact hours to 2250 contact hours and the content and depth of tutoring varies consistent with the number of contact hours. Many of the professional associations accredit courses as a de facto method of maintaining standards yet on the other hand many just accept graduates of any course as being suitable for membership and therefore ready for practice.

Under a statutory registration system education standards will be determined at arms length from professional associations thus setting a common benchmark for all practitioners and ensuring appropriate levels of safety for the public when consulting these professionals. This will also prevent any conflict of interest that arises where associations accredit courses offered by members of the board.

### Materia Medica

Of importance to the profession is protection of and access to the materia medica, the tools of trade, required to practise our profession. Statutory registration could ensure this through a schedule in the SUSDP as being instituted in Victoria, as part of the role of the Chinese Medicine Registration Board.

### Inter-profession Referrals

We also believe statutory registration will build stronger working relationships between Herbalists, naturopaths and other health care professions. Other health care professionals will be able to confidently refer to Herbalists knowing registration standards are consistent with other registered health professionals.

#### **4. Is regulation possible to implement for the occupation in question?**

WHM and naturopathy are defined professions, with easily distinguishable modalities, for which it is possible to implement regulation. The Victorian experience of regulating TCM practitioners demonstrates the viability of this approach.

#### **5. Is regulation practical to implement for the occupation in question?**

Regulation of these professions is possible although not without some difficulties. The Victorian experience of regulating TCM shows that it is possible to overcome such obstacles and obtain a satisfactory outcome for the public and the professions..

#### **6. Do the benefits to the public of regulation clearly outweigh the potential negative impact of such regulation?**

The benefits of regulation are wide with good social outcomes and include:

- Improved and consistent standards of education for practitioners
- Increased community confidence in the professions and enhanced status of practitioners
- Better information and protection for consumers
- Exclusion of unqualified and unethical practitioners
- Greater focus of professional associations on improving professional development and benefits for members
- Incorporation of complementary medicines into the main stream health system
- Improve quality and safety in healthcare as a result of better communication and referrals among practitioners
- Better access to tools of trade for the profession with improved therapeutic outcomes for the public
- Decrease in administrative costs for health funds and insurers
- Compulsory professional indemnity insurance to protect clients
- Access to a fair, equitable and transparent complaints mechanism for the public

The potential negative effects of regulation are limited generally to the professions and include the following:

- Potential increase in fees for practitioners
- Increase in restrictions to entry to the professions
- Loss of livelihood to some practitioners who may be refused registration
- Increase in costs to educational institutes to upgrade course to comply with new standards. These may be passed on to students.
- Loss of GST free status if registration is refused to a practitioner
- Need for some practitioners to upgrade their qualifications incurring extra costs

On balance, the advantages of regulation far outweigh remaining with the status quo as the benefits of public protection and higher standards within the profession outweigh for the benefits to public health in Australia.

### Further Consultation

**The NHAA recognises that further consideration of the issues canvassed in this submission will be needed. The matter cannot be closed off without consultation between governments, the professions involved and the consumers of natural health care. We stand ready to discuss with all parties involved how these issues could be resolved.**

### References:

1. 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](http://www.health.vic.gov.au/workforce/pracreg/naturopathy)
2. Bensoussan A., Myers S.P, 1996; *Towards a Safer Choice; The Practice of Traditional Chinese Medicine in Australia*; University of Western Sydney, Macarthur
3. Davies L.; 2005, *An Unnatural Death*; Daily Telegraph, Sydney
4. Sixty Minutes, *Bad Medicine*, broadcast November, 2005
5. Bensoussan A., Myers S.P, 1996; *Towards a Safer Choice; The Practice of Traditional Chinese Medicine in Australia*; University of Western Sydney, Macarthur

### 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. A Profile of Naturopathic and Western Herbal Medicine Practitioner in Australia
7. Promoting our Future: A Proposal for the Establishment of an Australian Council of Complementary Medicine; a Regulatory Model