

## **Review of the National Registration and Accreditation Scheme**

**Presented to Mr Kim Snowball, NRAS  
Independent Reviewer**

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**Authorised by:**

Marcus Dripps  
President  
Australian Physiotherapy Association  
Level 1, 1175 Toorak Rd  
Camberwell VIC 3124  
Phone: (03) 9092 0888  
Fax: (03) 9092 0899  
[www.physiotherapy.asn.au](http://www.physiotherapy.asn.au)

## About the APA

The Australian Physiotherapy Association (APA) is the peak body representing the interests of over 16,000 physiotherapists and their patients. APA members are registered with the Physiotherapy Board of Australia, have undertaken to meet the APA Code of Conduct and are expected to use the latest research in practice. APA members often have further and/or specialist qualifications.

The APA sets a high standard for professional competence and behaviour and advocates best practice care for clients. It is our belief that all Australians should have access to quality physiotherapy, when and where required, to optimise health and wellbeing.

## Vision

To be a focus of excellence for the global physiotherapy community

## Belief

All Australians should have access to quality physiotherapy, when and where required, to optimise health and wellbeing.

## Mission

To evolve into a more member-centric organisation that gives value to members and to support our belief.

## Review of the National Registration and Accreditation Scheme for Health Professionals

### Background

The Australian Physiotherapy Association (APA) has been a vocal supporter of the National Registration and Accreditation Scheme (NRAS) for health professionals, and its intent of increasing workforce portability, streamlining the registration process for physiotherapists and improving safety for consumers. The APA continues to support the scheme as an important part of the health landscape, with acknowledgement that there is room for improvement in particular areas. The APA firmly believes that a return to state based registration boards would be a retrograde step for the Australian health system.

In writing this submission, the APA has borne in mind that the purpose of introducing a national registration and accreditation scheme was to establish six key objectives:

- protection of public safety
- facilitation of workforce mobility
- facilitation of high-quality education and training
- facilitation of assessment of overseas-trained health practitioners
- promotion of access to health services
- development of a flexible, responsive and sustainable workforce

The APA believes that the scheme has made varying degrees of progress towards achieving these objectives.

While the NRAS has had a focus on its critical roles of protecting the public, workforce mobility and facilitation of high-quality education and training, this review is a valuable opportunity to reflect on those aspects that the scheme could place more emphasis on. Promotion of access to health services and the development of a flexible, responsive and sustainable workforce are particularly important now that Australia no longer has a dedicated government body to focus on these matters.

The APA believes that it is important to deliver a cost effective service to the public and to health professional, but the APA cautions that an over emphasis on cost reductions risks a reduction in the ability of the scheme to deliver on its objectives and could stifle the scheme's ability to improve its service delivery for both to consumers and health professionals. A well functioning scheme must help to facilitate access for consumers, and must be responsive to the changing healthcare environment. It must assist and encourage health professionals to maintain the highest possible standards of practice, and facilitate a career pathway that can include extension of scope to benefit consumers and the workforce as a whole.

### Consultation questions

1. *Should the Australian Health Workforce Advisory Council be reconstituted to provide independent reporting on the operation of the National Scheme?*

While the proposal to reconstitute the Australian Health Workforce Advisory Council (AHWAC) has merit to provide structural advice to the Australian Health Workforce Ministerial Council, the APA is concerned this would place an additional layer of bureaucracy at the top of an already complex system.

A significant portion of the review looks at opportunities to reduce costs, and the APA supports that the registration and accreditation system is revised to streamline the scheme to improve its cost efficacy, however feels that some of the functions proposed for the AHWAC could be incorporated into the AHPRA. Data is available through current arrangements and rather than implementing a new level of bureaucracy, the APA would support the implementation of robust reporting requirements to ensure that corporate performance reporting is carried out without bias.

The APA would strongly support the implementation of key performance indicators as proposed in the consultation paper.

- 2. Should the Health Workforce Advisory Council be the vehicle through which any unresolved cross professional issues are addressed?*

The APA believes that there is potential for existing entities could be strengthened to provide advice on cross professional issues.

- 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*

The APA does not support the establishment of a single health professions board for the nine low regulatory workload professions. The consultation paper recommends the adoption of this UK model here in Australia. The APA acknowledges that the Health and Care Professions Council (HCPC) is working well in its own unique health environment, however the APA would point to the significant differences between the health landscape between Australia and the UK. Aside from the obvious difference in the public/private mix in Australia when contrasted with the dominance of publicly funded health care in the UK, the Health and Care Professions Council (HCPC) does not have the same objectives as the Australian Boards.

While our scheme features principles around facilitating public access to health professionals and providing for the flexibility, responsiveness and sustainability of the nation's health workforce, the HCPC does not, and this vital difference between the two schemes has not been fully considered.

The APA believes that a single health professions board modelled on the HCPC is unlikely to have the capacity to be responsive to the changing roles of individual health professions within the health system. Physiotherapy in particular has significant potential to safely and effectively expand its scope of practice in a number of areas.

The APA believes that the Physiotherapy Board of Australia is best placed to fulfil the National Law's workforce objectives, and to take into consideration the changing roles of the physiotherapy workforce. This is particularly important now that Australia no longer has Health Workforce Australia (HWA) to champion the cause of health workforce innovation and flexibility.

### **Prescribing rights for physiotherapists**

Before its closure on 1 July, HWA published the Health Practitioners Prescribing Pathway (HPPP)<sup>1</sup>. The HPPP was approved by the Standing Council on Health on 8 November 2013. This document establishes the need for an extension of prescribing rights beyond current boundaries, and provides a pathway to ensure the highest possible standards of education and safety are met before rights are granted to additional health professions. HWA's report shows that an extension of prescribing rights has the potential to improve consumer access to medications, whilst saving the health system money and reducing the burden on overstretched GP services.

The physiotherapy profession has already taken significant steps in following the pathway, however has grave concerns about the future of this important program of work should the Physiotherapy Board of Australia be disbanded to make way for a new combined entity. With its general focus across all of the nine professions, such an entity would necessarily have limited resources to work

with the physiotherapy profession to progress the pathway to safe and effective prescribing of medications within the community.

### **Risk profile**

The APA expects that the HPPP will guide the physiotherapy profession to a safe and effective implementation of prescribing rights. However increased scope of practice may also lead to an increased risk profile and this must be considered when making decisions about future regulatory policy.

It is worth noting that regulatory cost of both optometrists and podiatry professions remains low despite their ability to prescribe medications to their patients.

### **Other profession specific workforce issues**

Since the inception of the National Registration and Accreditation Scheme, the APA has been advocating for the national implementation of a specialist register for physiotherapists. The profession's application for specialist registration was deferred by the Australian Health Workforce Ministerial Council (AHWMC) in 2010, pending the development of guidance around the approval of specialties.

In August 2014 the APA was notified that the COAG Health Council has published such guidance, and it is likely that the physiotherapy profession will apply for eligibility to be included on a specialist register. The APA believes that such professional issues should be handled by a board with specific knowledge of the profession in question, rather than a general health board.

The APA questions whether a combined board would have sufficient knowledge and capacity to assess the capability of individual professions to contribute to the scheme objectives. Of particular concern are those objectives about the promotion of access to health services and the development of a flexible, responsive and sustainable workforce. Such a combined board would need to have the capacity to undertake in-depth analysis of each of the professions it regulates, to sufficiently assess and understand a profession's capacity to improve consumer access to health services. To do this effectively, a combined board would need to establish profession specific panels, creating a kind of de facto profession specific registration board.

### **Cost savings**

A single health professions board would have significant hidden costs, including the formation of profession specific panels to guide specific registration and notifications processes. These additional costs would impact on the savings outlined.

In addition to these concerns, the APA believes that cost savings to AHPRA may come at the expense of increased costs within the health system if the regulatory board were to be less responsive in its role to facilitate workforce flexibility and sustainability.

### **Composition and equity**

The APA is also concerned about the composition of such a national board. As the profession with the largest number of registrants of the nine professions proposed to be included in the single health registration board, it is possible that physiotherapists would be well represented on such a board. However the APA believes that the registrant members of health regulation boards should consist primarily of members of the profession that they are regulating. This would not be possible in a combined board.

The APA is also concerned that given the size and relatively low cost of registration fees for physiotherapists in Australia, economies of scale that are already being achieved may be in jeopardy. The APA believes that the creation of a combined health practitioners board could actually increase costs for registered physiotherapists in Australia.

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 pa.*

The APA supports that costs be minimised through shared registrations and notifications functions, provided such changes do not impact on the improved processing times and communications proposed in the consultation document.

5. *Should the savings achieved through shared regulation under options 1 or 2 be returned to registrants through lower fees?*

As the scheme is funded by registrant fees, the APA firmly believes that savings achieved should be returned to the registrants through lower fees.

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?*

The APA supports the notion that future proposals to join the NRAS should continue to require achievement of a threshold risk assessment. However the key indicators and methodology to conduct such an assessment should be clarified.

7. *Should the National Law be amended to recognise those professions that provide adequate public protection through other regulatory means?*

The APA contends that the national law should not be extended other than on a risk basis. Complaints about any unregistered health professional are covered by Health Complaints Entities in each state and territory, and inclusion in the national law may serve to confuse consumers as to the correct entity to receive a complaint.

8. *Should a reconstituted 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 APA believes that AHPRA would be well qualified to provide guidance to the Australian Health Workforce Ministerial Council on threshold measures for entry to the scheme.

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

The APA believes that the national scheme could be improved by giving further consideration to the principles of natural justice in the design of a scheme. Such principles would require that notifiers are properly informed of their role in the system. This is problematic in the current scheme, with many consumers reported as being unhappy with the procedures and the outcomes of their case.

The National Professional Standards Panel of the APA is increasingly being approached by members of the public who are dissatisfied with their outcome from AHPRA. The APA attributes this to a number of factors:

- The lack of clear explanation of a notifier's role in the process.
- The length of time of the notifications process
- The lack of understanding about the possible outcomes of the process
- No communication around the reasons for outcomes
- The lack of ability to appeal a decision or at least be provided with the basis for action taken by AHPRA.

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

As a matter of principle, the APA supports the notion of a single entry point for health complaints; however we are concerned that the Queensland co-regulatory model has only been in operation for a very short time.

The APA would therefore recommend that AHPRA revisit this question in July 2016 after the scheme has been in operation for 2 years, and data has been collected on the process.

*11. Should there be a single entry point for complaints and notifications in each State and Territory?*

The APA believes that there should be a single entry point for health complaints and notifications in each state and territory.

*12. Should performance measures and prescribed timeframes for dealing with complaints and notifications be adopted nationally?*

The APA would support the national implementation of performance measures and prescribed timeframes for dealing with complaints and notifications.

*13. Is there sufficient transparency for the public and for notifiers about the process and outcomes of disciplinary processes? If not, how can this be improved?*

The APA does not believe that there is sufficient transparency to meet the requirements of natural justice for notifiers. We believe the notifier should be entitled to receive more information than is held on the public register because of their unique position in the investigation.

Depriving the notifier of any information on the progress of the investigation is not only frustrating for the notifier but can lead the notifier to look for alternative methods of progressing their complaint – such as a professional association's complaints management system. While in some instances seeking this avenue of complaint resolution may be entirely appropriate, in other instances it may have been able to have been avoided where appropriate information was shared with the notifier.

*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, the practitioner and the notifier?*

In some instances the opportunity to participate in an alternative dispute resolution process can not only be an opportunity to avoid an expensive and extremely stressful legal dispute, it can be an important learning tool for health practitioners.

It has been the APA's experience that many complaints about physiotherapists revolve around record keeping and communication, and independent arbitration of a complaint may help a health practitioner to recognise a legitimate concern raised by a consumer, and amend their practice into the future.

*15. At what point should an adverse finding and the associated intervention recorded against a practitioner be removed?*

The APA believes that the timing of removal of an adverse finding against a health practitioner may depend on the seriousness of the finding.

However in general, it is the APA's position that physiotherapists who are no longer deemed a risk to the public should not have an adverse finding listed against their name on the public register.

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

The APA does not believe the legislative provisions on advertising are working effectively. It has been our experience that they are causing consternation and confusion amongst physiotherapists, rather than clarifying what they are or are not able to say in advertising. This has resulted in many private physiotherapy practitioners being needlessly fearful of censure from AHPRA over their advertising.

Furthermore AHPRA does not have the capacity to systematically audit physiotherapy practices about their compliance to the advertising requirements, and therefore is reliant on notifications. It is the APA's experience that it is usually competitors who make complaints about health practitioners whose advertising may not be compliant with AHPRA's requirements.

### Testimonials

The APA acknowledges that AHPRA and the Physiotherapy Board of Australia have made every attempt to clarify the use of testimonials for physiotherapists. However there is still considerable concern from the profession about the use of testimonials.

The Boards have now defined the word testimonial as referring only to clinical testimonials, rather than the broadly accepted term that encompasses the general performance of a professional.

However physiotherapists are still having issues in translating this requirement into practice.

Take for example a physiotherapist 'Cris' who has a Facebook page as a marketing tool. Cris allows people to make comments on her page but has a disclaimer saying that anything that could be defined as a clinical testimonial will be removed.

One of Cris' patients has recovered from an Anterior Cruciate Ligament (knee) reconstruction and posts a thank you message on the page.

*Cris' patient's Facebook post says: Played my first basketball match on the weekend with my new knee. Thanks so much for all your help after the op Cris, couldn't have done it without you!*

As the post doesn't directly refer to her clinical skills, Cris may be tempted to leave the post up. However as it indirectly refers to the quality of Cris' clinical post-operative treatment of the patient, AHPRA could find that the comment is a clinical testimonial, and instigate an investigation into Cris' advertising.

Even more frustrating for Cris, if a similar message was posted after treatment with an unregulated health practitioner, there would be no concern of a breach of law.

It is not just private practitioners who use patient stories. Public sector reviews often use such stories to assess the quality of the care they provide. The ban on testimonials means that positive patient stories involving the care they have received from a registered health practitioner could risk putting the practitioner in breach of advertising requirements.

The APA strongly recommends that legislation be reviewed to remove the ban on testimonials. The provisions are not current and do not encompass today's use of social media as a legitimate advertising tool for small business. Legislative instruments are not suited to this area of advertising, and the APA recommends that AHPRA work with the ACCC to implement the appropriate guidelines for health professionals, as an alternative to the current arrangements.

### **Time-limited advertising**

Physiotherapists are also extremely confused by the ban on time-limited advertising and the statement that time-limited advertising may lead to the unnecessary consumption of health services.

The APA does not agree that time-limited advertisements will necessarily do this, as physiotherapy practices can often now have a focus on wellness and prevention activities.

For example a practitioner may advertise 50% off pilates classes that can only be taken at off peak times. This would attract clients who were more price sensitive, and better utilise the time of the practitioner by filling up empty class space. Once again it is a source of significant frustration to physiotherapists, that an unregistered pilates instructor could advertise as such, but a physiotherapist may not, despite the additional level of expertise that would be bought to the consumer.

### **Use of specialist title**

The ban on use of specialist title is particularly frustrating for physiotherapists, who have a recognised pathway to specialisation but do not yet have a pathway to registration as a specialist physiotherapist.

Specialisation as awarded by the Australian College of Physiotherapists (ACP) is a title conferred to physiotherapists who have attained the highest level of expertise in their particular field of physiotherapy.

Having demonstrated this expertise by completing a rigorous training and examination process, these expert physiotherapists become Fellows by Specialisation of the College. Fellows of the College contribute to the professional education of colleagues, actively engage in their own professional development, and have had involvement in research activities.

Currently Fellows of the APC face restricted use of title in their advertising, despite the clarity that the use of such titles would impart on members of the public wishing to select an appropriate physiotherapist for their needs.

In addition to the impact on Fellows of the ACP, other physiotherapists are at risk of being investigated by AHPRA for so called breaches of the advertising guidelines. Several physiotherapists in WA have been contacted by AHPRA's state office requiring that they remove legitimate and recognised qualifications from their advertising due to accusations of holding out to be registered as a specialist physiotherapist when no such registration category currently exists.

Practitioners *must* be able to describe to the public what they do. It does not benefit the public that practitioners feel stifled by red tape to the extent that they cannot advertise the area in which they practice, and their post qualification accreditations that support their clinical area of practice.

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

NRAS primarily regulates title rather than practice, and the APA does not support additional regulation of physiotherapy. We therefore do not support that NRAS should be extended to include state based restriction of practice.

The APA recommends that AHPRA work with the states and territories to standardize and minimise the regulation of health practices nationally.

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

The APA recommends the introduction of a legislative framework to ensure that the National Code of Conduct for unregistered health practitioners hold these practitioners to standards equivalent to those of registered professionals.

However it is not clear to the APA that the national law should be the legislative instrument that does so, as this may prove to be a type of de facto registration for unregistered health practitioners, and seem to make AHPRA responsible for complaints against unregistered health professions.

*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 APA supports the proposal that a registered health practitioner who is treating another registered health practitioner be exempted from the mandatory notification requirements. The National Law should not discourage impaired practitioners from seeking treatment.

*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?*

The APA feels that AHPRA and the Australian Health Workforce Ministerial Council (AHWMC) generally take the position that protection of the public is the only relevant factor in making decisions. The APA particularly notes that the AHPRA website does not make any mention of the principles of facilitating access to services, the development of a flexible, responsive and sustainable health workforce, or innovation in education and service delivery. To find these objectives listed, a searcher needs to look at the Health Practitioner Regulation National Law 2009.

The APA would argue that the Physiotherapy Board of Australia has a history of advocating for changes that will improve access to physiotherapists and allow for better retention of physiotherapists in the Australian health workforce. However decisions made at AHWMC may not necessarily support such objectives.

This is illustrated in the example of the registration of specialist physiotherapists.

When the Physiotherapy Board of Australia came into being in 2010, it recommended that specialist physiotherapists, as per the previous Western Australian registration system and as recognised by the Australian College of Physiotherapy, be recognised under the National Registration and Accreditation Scheme. However some state and territory governments were reluctant to lend their support to the proposal, therefore specialist physiotherapists were not registered under the scheme.

This has meant that suitably qualified and recognised physiotherapists are prevented from using the term specialist, creating considerable obstacles for members of the public identifying the varying levels of expertise within the profession.

As physiotherapists are prevented from using specialist titles, the register of physiotherapists doesn't provide consumers with information about area of specialisation. This means that consumers with complex conditions could easily choose to attend a physiotherapist who is not an expert in the necessary area. The physiotherapist would inform a consumer if the complex condition was outside of his or her sphere of expertise and refer on to a more appropriate practitioner. This is not the best use of health resources, and would likely lead to a negative experience of physiotherapy for the consumer.

The inability to register and advertise as a specialist physiotherapist denies consumers and other health practitioners the capacity to locate physiotherapists with up to a decade's extra study, training

and experience in a particular field. It also has a negative impact on attrition in the physiotherapy workforce, and has influence private health insurer's rebates for certain levels of practitioners due to the lack of an externally accredited way to identify specialist physiotherapists.

The APA is also concerned that there appears to be a move to stop physiotherapists from displaying their educational and professional development achievements. The APA believes that displaying titles that are not regulated (for example APA Sports Physiotherapist) does not equate to "holding out" as a specialist, and reduces the public's choice in choosing a physiotherapist appropriate to their needs.

The issue of time limited advertising is also of relevance to this question. As discussed under section 16 of this paper, the APA feels that the advertising restrictions requirements are not providing protection for consumers and are placing necessary restriction on competition between health providers. This is out of step with COAG's best practice regulation principle four which states that:

In accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:-

- a. The benefits of the restrictions to the community as a whole outweigh the costs, and
- b. The objectives of the regulation can only be achieved by restricting competition.<sup>2</sup>

The APA recommends that AHPRA work with the ACCC to implement the appropriate guidelines for health professionals, as an alternative to the current arrangements.

*21. Should the proposed reconstituted AHWAC carry responsibility for informing regulators about health workforce reform priorities and key health service access gaps?*

In the past much work in this area was done by HWA, and the APA believes that the section of the Department of Health that has taken over HWA's work should be explicitly resourced to carry out this work.

*22. To what extent are Accrediting Authorities accommodating multidisciplinary education and training environments with coordinated accreditation processes or considering future health practitioner skills and competencies to address changes in technology, models of care and changing health needs?*

The Australian Physiotherapy Council (APC) is demonstrating its concerns with the development of the physiotherapy profession to address the changing health needs of the community by working with the profession to look at a multidisciplinary way to accredit courses for endorsement as a prescribing physiotherapist. This is in line with changing models of care and innovative practice.

*23. What relationship, if any, is required between regulators and educational institutions to ensure the minimum qualification for entry to professions remains available?*

The APA believes that there needs to be a relationship between the APC the Physiotherapy Board of Australia and heads of University departments, both at a physiotherapy level, and an allied health level.

The APA notes that there is a move towards the introduction of physiotherapy doctoral degrees, but feels that the profession is not in danger of becoming a post-graduate entry level only profession.

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

The APA does not have any evidence that there are problems with the current processes with respect to the assessment and supervision of overseas trained physiotherapists, however would recommend the implementation of a transparent appeals process for these decisions.

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

The APA believes that the chair of the Physiotherapy Board of Australia should be a physiotherapist that is appointed on the basis of a transparent and unbiased nomination process.

*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?*

The APA believes that there is an effective division of roles and functions in the physiotherapy profession.

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

The APA does not have any evidence that there is insufficient oversight for decisions made by accrediting authorities in the physiotherapy profession, however would recommend the implementation of a transparent appeals process for these decisions.

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

The APA supports the changes to the national law as proposed in the consultation document.

## References

<sup>1</sup> The Health Practitioners Prescribing Pathway 2013 can be accessed at <http://www.hwa.gov.au/our-work/boost-productivity/health-professionals-prescribing-pathway-program>

<sup>2</sup> Council of Australian Governments, (2007), Best Practice Regulation, A guide for Ministerial Councils and National Standard Setting Bodies