Australian Register of Naturopaths and Herbalists

Submission to consultation on options for regulation of unregistered health practitioners 2011

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The Australian Register of Naturopaths and Herbalists

The Australian Register of Naturopaths and Herbalists (ARONAH) was established in 2009 to provide minimum standards of education and practice for naturopathy and herbal medicine. The Board will develop a registration and accreditation authority (independent of the profession and representing the public's interests) which aims to mirror government requirements for the regulation of health practitioners.

ARONAH has been set up to mirror the statutorily regulated Boards administered by the *Australian Health Practitioner Regulation Authority* of the *National Registration and Accreditation Scheme*. Naturopathy and Western herbal medicine are not regulated professions in Australia and do not currently fall under this scheme. The Constitution of ARONAH is based on the legislation of the National Law.

More information on ARONAH can be found on its website at www.aronah.org

Summary

ARONAH supports the expansion of a statutory Code of Conduct based on the New South Wales Code of Conduct for Unregistered Practitioners. ARONAH believes that this should be administered nationally, and should include the same processes as exist for unregistered practitioners where appropriate (for example by including elements of the National Law, and by sharing infrastructure with AHPRA).

Although ARONAH believes that the development of a national Code of Conduct for unregistered practitioners is a vast improvement on current arrangements for unregistered professions, ARONAH believes that these arrangements do not sufficiently address the risks associated with some professions, including naturopathy and Western herbal medicine.

For this reason ARONAH believes that any examination of arrangements for unregistered practitioners needs to include a formal process evaluating currently unregistered professions that may need to be considered for inclusion in the National Registration scheme.

1. Number of practitioners in naturopathy and Western herbal medicine

The number of naturopathic and Western herbal medicine practitioners is estimated to be anywhere between 3000 and 15000. Accurate estimation is made difficult by the unregulated and fragmented nature of the professions, and by co-option of the terms naturopath and herbalist by other unregistered and registered professions. It is highly unlikely that accurate numbers can be determined unless a single mandatory register is enacted. Although workforce size is difficult to ascertain, there have been several studies showing significant utilisation of naturopaths and Western herbalists in Australia

The fragmented and unregulated nature of naturopathy and Western herbal medicine make determination of numbers in the profession difficult to ascertain. However, there is general consensus that naturopaths are the largest complementary medicine workforce in Australia. Estimates range between 3000-15000 practitioners. The Australian Bureau of Statistics estimated that there were 2982 naturopaths in Australia 2006 (not including Western herbalists – or even some naturopaths – included in the 16 354 'complementary therapists' or 2632 'natural remedy consultants')[1]. However, these numbers are likely to be significantly underestimated. For example, the *Chinese Medicine Registration Board of Victoria* alone has nearly 40% more registrants in Chinese medicine than the ABS estimates to exist in the whole of Australia[2].

In 2004 a naturopathic workforce study sent a survey to 3540 naturopaths and Western herbalists that comprised a list for one health insurance company alone[3]. Additionally, investigation of the naturopathic education sector suggests that there are over 1800 students currently training in naturopathy courses, and that this number has been over 1000 for most of the past decade[i]. Based solely on professional membership there are over 15000 naturopaths and Western herbalists in Australia. However, this is not an ideal measure as this figure includes significant duplication as many practitioners are members of more than one association. However, this may be defrayed by the fact that there may be a significant number of practitioners who are not a member of any Australian association. Unlike registered professions, or professions with one strong self-regulatory authority (such as dieticians or speech pathologists), it is not currently possible to determine the numbers of practitioners practising in these professions.

Most attempts to identify naturopath or Western herbal medicine practitioner numbers have been based on professional association memberships or health fund listing, and no comprehensive audit has yet been conducted for these professions. One study has conducted a comprehensive study of all practising naturopaths 'on the ground' in a region of Australia[4]. However, this audit was limited to rural *New South Wales Divisions of General Practice* only. This audit found over 550 naturopaths in rural New South Wales alone (excluding Sydney,

[i] From previous reports (such as Lin et al 2005) in addition to currently unpublished University of Queensland research

Newcastle, Wollongong, and regions of Gold Coast and Canberra metropolitan areas in NSW) – see figure below. This study was initially planned to encompass all rural Divisions of General Practice in Australia, but the intensive resources required to identify unregistered practitioners – particularly naturopaths – meant that this study was limited to rural New South Wales alone. However, preliminary – though incomplete – analysis of rural Australia suggested that there were over 2000 naturopaths in practise in rural regions of Australia.

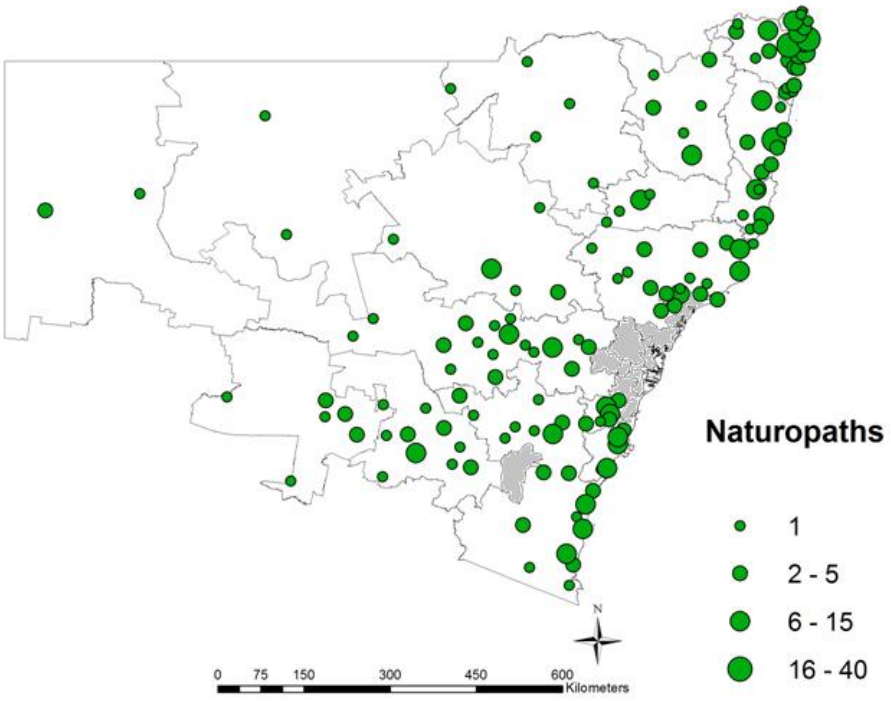

Figure 1: Naturopaths in rural and regional Divisions of General Practice[4]

1.1 Difficulties in estimating naturopathic and Western herbal medicine workforce size

There are many factors which make accurate estimation of the naturopathic and Western herbal medicine workforce difficult

1.1.2 Proliferation of professional associations

Most associations have regional power bases – often based on colleges – which mean that without exhaustive consensus and co-operation – which has historically been very difficult to achieve – an accurate representation has been difficult to achieve. Although nominally national, and required to be so to fulfil legislative requirements as recognised professional associations, the professional associations may represent regional power bases rather than being truly national in focus. [ii]This means that unless *all* associations are included, accurate national

[ii] For example, online practitioner database searches in April 2010 reveal that ATMS draws most of its naturopathic members from New South Wales (916 versus Queensland, the next highest, with 381), ANTA

numbers are difficult to obtain. Of course, as unregulated professions, many naturopaths and herbalists will not maintain membership of any association.

1.1.3 Co-option of the term 'naturopath' by other professionals

Estimations of naturopathic and Western herbal medicine practitioner numbers are further made difficult by fact that lack of protection of title has led to the co-option of the established and recognised naturopathic title[iii] by other practitioners. This co-option may be done for promotional reasons[iv] or to gain privileges restricted to recognised naturopaths. One such privilege is sales tax exemption on naturopathic and Western herbal medicine consultations. When naturopaths were accorded GST-free status for their consultations in accordance with Section 38-10 of the *A New Tax System (Goods and Services Tax) Act 1999*, a number of other therapists who had not been afforded such status (such as massage therapists or homoeopaths[v]) re-identified or re-branded themselves as naturopaths.

There are many non-naturopathic practitioners that more accurately fall within the broader 'natural medicine' field that identify as naturopaths. However, exact numbers would be incredibly difficult to ascertain. This is consistent with workforce survey data – the Bensoussan workforce survey of naturopaths and Western herbalists conducted in 2004 found that 10% of respondents that identified as one of these professions had no formal training or qualification specific to these professions[3].

A recent exercise undertaken by ARONAH in an attempt to contact all naturopaths listed in the Lismore region telephone directory revealed doctors, nutritionists, health retreats and gymnasiums listed under the entry "naturopath" but did not have a naturopath employed in their business.

1.1.4 Recognition of non-naturopathic practitioners as 'naturopaths'

Again this co-option is further complicated by the few accreditation pathways that do exist in these professions. For example, eligibility for rebates for naturopathic services for some health funds is extended to practitioners with non-naturopathic qualifications. For example, *Medibank Private* recognises graduates of both naturopathic diplomas and Ayurvedic medicine diplomas for eligibility for naturopathic service rebates. This is thought to be due more to administrative convenience (for example, by not requiring separate rebate codes) rather than being representative of minimum levels of naturopathic training.

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from Queensland and Victoria (492 and 495 respectively versus Western Australia, the next highest, with 295) and Australian Naturopathic Practitioners Association (ANPA) from Victoria (195 versus Queensland, the next highest, with 51). These power bases may also influence where practitioners choose to register, for example, in New South Wales the 'second' choice of association (ANTA) garners only 22% of the members of the first choice ATMS. In Western Australia the second choice ATMS garners only 34% of the member numbers of the first choice ANTA. In fact, only in the small state of Tasmania and the Australian Capital Territory is there no significantly dominant professional association.

[iii] Naturopaths are now considered a 'mainstream' by many persons in Australia; profession by many Australians. As an example, regular health columns by naturopaths can be found in most newspapers in Australia and naturopaths are regularly consulted as health experts in the media.

[iv] For example, practitioners from 'lesser-known' professions using the 'established brand' of naturopathy to draw in customers

[v] Bensoussan's 2004 workforce survey found that 22% of self-identified naturopaths also self-identified and promoted themselves as homoeopaths and 35% identified themselves as massage therapists.

Government recognition (for example for GST purposes or by the TGA) is dependent on being a member of a *recognised professional organisation* which requires only that any standards are nationally consistent (and do not vary from state to state) rather than setting minimum benchmarks for these professions. Many colleges that train naturopaths and herbalists under vocational education packages do not in fact meet World Health Organization benchmarks for training in these professions[6].

1.1.5 Scope of the profession in the Australian healthcare setting may be a better indicator

Due to these difficulties in measuring actual practitioner numbers, it may be more appropriate to gauge the impact of the naturopathic and Western herbal medicine workforce by its impact in the Australian healthcare sector.

Extrapolation of naturopathic and Western herbal medicine workforce survey suggested that these practitioners conduct over 1.9 million consultations in Australia each year[3]. More recent analysis suggests naturopaths and Western herbalists conduct around 8.7 million consultations[5]

However, although these have been the only national naturopathic and Western herbal medicine workforce survey conducted in Australia, the low response rate of this survey (less than 28%) may not be completely representative. Other studies – although not national in scope – have explored the role that naturopathic and Western herbal medicine practitioners play in the Australian health care system. One study of Australian naturopathic practice in 2006 estimated that these practitioners act as primary care providers for approximately one-third of their patients[6], a finding consistent with a previous study in 2000 exploring the general complementary medicine workforce[7]. Qualitative exploration of the naturopathic workforce in Queensland has also identified as significant primary care role amongst these professions[8].

High utilisation of naturopathic and Western herbal medicine use is also confirmed by patient data. Australian Bureau of Statistics data suggests that 190 300 Australians had seen a naturopath or Western herbalist in the last two weeks of the survey in 2004-5[1]. Analysis from the *Australian Longitudinal Study on Women's* Health suggests that over 10% of the Australian female population regularly consult a naturopath[9, 10]. Unpublished analysis[vi] suggests that this use is increasing, particularly amongst younger women. Moreover, this use seems to increase in more complex conditions. For example, over 16% of women with cancer[11] and over 24% of women with clinically significant anxiety[vii] regularly consult a naturopath or Western herbalist.

Notwithstanding ARONAH support for further regulation of all unregistered practitioners through generic 'catch-all' legislation, ARONAH believes that many of the difficulties mentioned are further reasons why in order to protect public safety and for these professions to have proper accountability profession-specific statutory regulation is required for the professions of naturopathy and Western herbal medicine. I understand the Victorian health department has investigated these professions and has also identified the need for the professions of naturopathy and Western herbal medicine to be statutorily regulated[2]. It is unlikely that

[vi] The author is an adjunct researcher on the Complementary Medicine subsection of the Australian Longitudinal Study of Women's Health.

[vii] Completed but currently unpublished data from the Australian Longitudinal Study of Women's Health.

accurate numbers of practitioners in the professions of naturopathy and Western herbal medicine will ever be ascertained until there is a mandated single national register.

2. What are the risks associated with the provision of health services by unregistered health practitioners?

There are a number of indirect and direct risks associated with the practice of naturopaths and Western herbalists. These are exacerbated by the significant size and scope of the professions, and the fact . The risks associated with the practice of naturopathy and Western herbal medicine have already been assessed according to AHMAC/IGA criteria as significant enough to warrant statutory regulation of these professions. ARONAH understands that naturopaths and Western herbalists are the only professions that have been formally assessed according to these criteria and identified by an as requiring statutory regulation that are not currently included in the National Registration and Accreditation Scheme.

As ARONAH's jurisdiction extends only to naturopaths and Western herbalists these will form the focus of this submission. The potential for harm is real and have been covered extensively in detail by a number of reports previously[12-14]. Most of these risks have also been covered in the consultation paper.

Most unregistered and registered practitioners share risks associated with the provision of health services. These may include, amongst others:

- Direct risks caused by deliberate harm caused by mistreatment or financial exploitation
- Inappropriate use of therapies
- Opportunity costs due to delayed treatments or monopolisation of care.
- Lack of barriers to the professions and variability of training and self-regulatory standards resulting in inconsistencies in practice and competence
- Inability for patients to make informed choices on their practitioners due to failure of self-regulation
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ARONAH concurs with the AHMAC consideration of risks for general unregistered practitioners. Specific risks will be discussed throughout the submission.

2.1 To what extent have the risks been realised in practice?

It is highly likely that any exploration as to the risks being realised in practice is greatly underestimated. This could be for a number of reasons:

2.1.1 Difficulty in gaining complaints data

Additionally, with over 90 professional associations claiming to represent naturopaths and herbalists reporting regimes and complaints handling for these professions is variable. Not all associations document complaints, or communicate these with health authorities. Most associations will not share this information. This may even occur in the largest associations. For example, in 2005 the New South Wales parliament discussed the failure of Australia's largest association representing naturopaths to act on complaints against a practitioner with fraudulent qualifications and a history of fraud and violent crime that had been financially exploiting and verbally threatening a number of patients in his area. The association refused to

take action against this practitioner for fear that they would be sued[1]. It should be noted that this was before the introduction of the New South Wales Unregistered Practitioners Code of Conduct (and was in fact a factor in getting this legislation enacted).

2.1.2 Confusing or non-existing reporting regimes

Difficulty in ascertaining the scope of risk of the professions of naturopathy and Western herbal medicine practitioners is compounded by confusing or difficult reporting regimes. Much of this has had to do with the failure of self-regulation in promoting independence, transparency, accountability and consumer input into complaints mechanisms.

For example, in relation to professional associations, ARONAH has been made aware of:

- Refusal to provide complaints data to members or non-members.
- Consumers who have been advised not to make complaints to health care complaints authorities, as they are told complaints are professional association matters
- Members of the public who have attempted to follow up on complaints are not able to ascertain outcomes
- Members of the public who are not contacted for further information in relation to complaints and are not automatically informed of outcomes. In many cases the consumer can see no difference in the practitioners' activities after making a complaint, even in cases of a serious nature.

2.1.3 Problems with current reporting systems

ARONAH has spoken with representatives from every State and Territory healthcare complaints authority in Australia and all have discussed the difficulty they have in estimating numbers of complaints against these practitioners. They have highlighted that this could be for a number of reasons. Including that many patients simply aren't aware that they can make such complaints, or that the large number of professional associations in these professions makes for a confusing reporting regime and many complaints are 'lost in the system'.

Many agencies actually acknowledged that it was impossible to retrieve such detailed data from their systems and in most cases the capacity to analyse such complaints simply did not exist or because of difficulties due to coding issues (for example, types of complaints by sub-types of professions – as most states include naturopaths and Western herbalists into the broader 'others' category or could be classed as 'alternative therapists' or other generic label).

Additionally, the all-encompassing nature of the title 'naturopath' means that complaints or instances are often documented as 'natural therapists', 'complementary medicine practitioner' or other generic label and it is therefore incredibly difficult to compile data specific to these practitioner groups[viii].
The notable exceptions were Victoria (since 2006 only), New South Wales and Western Australia. Other states, such as Queensland and Tasmania, told ARONAH that they have renewed

[viii] For example, Mackay natural therapist Jillian Margaret Newlands had been previously marketing herself as a naturopath before whilst selling and administering a concoction of citric acid and sodium chloride claiming it could cure cancer. In addition to misleading and deceptive behaviour and financial exploitation, Ms Newlands administered this concoction via injection in unsanitary conditions, resulting in at least one patient conducting serious infection. She had also advised at least one patient to cease chemotherapy as part of her treatment.

their systems so that such information will be more available in the future, though is not currently available (or at least was not able to be made available when I requested it).

2.2 Number of complaints to Health Care Complaints Authorities

Complaints over 5 years (10 years for WA data) for the states that had information included:

	New South Wales	Victoria	Western Australia
Naturopath	10	11	15
Herbalist	0	2	3
Alternative Therapists (non-specified)	48	36	43

2.3 Do you know of instances of actual harm or injury?

ARONAH is aware of several instances of actual harm or injury relating to naturopaths and Western herbalists. The Victorian *Department of Human Services* highlighted several instances of harm or injury in its report entitled *"The practice and regulatory requirements of naturopathy and western herbal medicine"*[12], some of which have also been documented in the Consultation paper.

Since the publication of this report there have been several documented cases of harm or injury caused by naturopaths and Western herbalists that have not been covered in the consultation paper.

2.3.1 Sexual misconduct

A Melbourne naturopath was able to continue practising even when charged with 11 counts of rape and 16 counts of indecent exposure as there was no legislation or regulatory body to suspend him until the case was heard by a court[15]. The naturopath – eventually found guilty of 22 counts of sexual assault, 11 counts of rape and one count each of sexually penetrating a child under 16 and committing an indecent act with a child under 16[16] – admitted that he was still freely practising naturopathy and massage while his case was being heard.

2.3.2 Advising to cease medical treatment

The directors of Melbourne's Royal Children Hospital's Neurology and Haematology and Oncology departments called for regulation of CAM practitioners after a Melbourne child given a 60% chance of survival died after his parent's ceased chemotherapy and focused on unconventional therapies based solely on their naturopath's advice[17]. This had followed incidents whereby an epileptic infant under the age of one and a child with an aggressive brain tumour at the same hospital were also denied medical treatment on the advice of their family naturopath.

2.3.3 Failure to refer in red flag situations

A Cairns naturopath treated a man with a head injury as a result of falling off a horse. For six weeks she ineffectively treated the patient with a herbal poultice and dietary recommendations and failed to refer the patient even when the injury had progressed to a massive erosive lesion measuring 11x10 cm. At the behest of his wife, the patient finally sought medical treatment, where it was found that the lesion had eroded through the skull, soft tissue and down to the

meninges of the brain. Careful observation showed a pulsatile area through which was percolating frank blood[18].

2.3.4. Monopolisation of care

A recent published study of surveillance study of an Australian Paediatric Surveillance Unit (APSU) between 2001 and 2003 reported a number of cases of harm specifically related to naturopaths[19]. These included the fatality of an eight month old infant admitted with malnutrition and septic shock following naturopathic treatment with a rice milk diet from the age of 3 months for 'congestion'; hyperglycaemia, polyuria and polydipsia in a child when treated by naturopathy for diabetes and reduction in insulin dose; and delayed management of severe cerebral palsy in a child treated with naturopathy, craniospinal therapy and hyperbaric oxygen.

2.3.5 Most cases likely to go unreported

However, given the largely undocumented, unregulated and informal nature of the professions currently there is a general consensus that most cases of harm go unreported. ARONAH has heard of several cases where families and patients caused harm by unregistered practitioners have been encouraged to report unregistered practitioners by medical providers once the patient's harm has been resolved refusing to take further action. Most commonly the reason given is that patients and their family wish to 'move on' from what has been a negative and sometimes traumatic experience.

This is often exacerbated by the lack of legal recourse against such practitioners, where unless a complainant is willing to undergo a lengthy, drawn out civil case there are few mechanisms by which to hold unregistered practitioners accountable. For example, in the *NSW Supreme Court* case *R v O'Brien* (2003), although the mother was convicted of manslaughter, the judge suspected that the child had died as the result of a naturopath advising against hospital treatment when the child had presented "malnourished, thin, bones visible, jaundiced, uninquisitive". However, the judge also suggested that the naturopath's unregistered status left little recourse to hold her accountable without formal charge.

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

Given the undocumented and often informal nature of the naturopathic and Western herbal medicine workforce 'evidence' is often difficult to come by. With respect to the professions of naturopathy and Western herbal medicine, these risks have been made evident in previous reports of the South Australian and Victorian governments[12, 14]. Few reports are made on unprofessional conduct of naturopaths and herbalists, for reasons discussed previously in this section. However, provisional University of Queensland research[ix] found that most GPs in rural NSW have at least one anecdotal experience of a patient caused harm by a naturopath or Western herbalist.

[ix] "Exploring the interface between CAM and rural primary practice" School of Population Health, University of Queensland (Jon Adams, David Sibbritt and Jon Wardle)

2.5 What factors exacerbate or ameliorate the risk?

2.5.1 Scope of Care

The scope of practitioners is one factor that will exacerbate or ameliorate the risk of unregistered practitioner groups. For example, practitioner groups with a greater primary care role such as naturopaths and Western herbalists will have increased risk via acts of omission (for example failure to appropriately refer serious cases) than practitioner groups that generally play and adjunct or specialist role in care, and are therefore more likely to be working in conjunction with, or under the guidance of, a primary care practitioner[x]. Naturopaths and Western herbalists are one such group that have an increased scope of practice, and in many cases play a primary care role for many patients in the Australian context[20].

2.5.2 Caring for vulnerable groups

The use of naturopaths and Western herbalists increases in patients with more complex and chronic conditions. As mentioned previously, over 16% of women with cancer[11] and over 24% of women with clinically significant anxiety[xi] regularly consult a naturopath or Western herbalist. Increased vulnerability of patients will exacerbate risks associated with the use of both registered and unregistered practitioners. Patients with serious illness may be more open to persuasion and financial exploitation by unscrupulous practitioners. Risks associated with delayed or monopolised treatment also become more pronounced.

2.5.3 Power differential between practitioner and client

The power differential between practitioner and client can exacerbate risk. Information asymmetry means that naturopathic and Western herbal medicine practitioners can 'uncover' or diagnose a health condition, and then provide relief with a cure. This can be open to abuse for financial gain by unscrupulous practitioners given the practice model of naturopathic and Western herbal medicine practitioners (it is estimated that 78% of naturopaths sell pre-prepared products directly to patients, mostly in the form of herbal tinctures or preparations, and up to 98% of naturopaths have an in-clinic dispensary, and is seen as central to the individuation of practice [21]). This risk can be exacerbated by the fact that naturopaths and Western herbalists are often at the end of the treatment chain, when patients have tried all other options and are more vulnerable to suggestion and offers of hope than in general circumstances. Although this power differential can be managed ethically, it requires appropriate regulatory mechanisms to protect patients against exploitation posed by this power differential[22].

2.5.4 Poor mechanisms supporting informed choice – practitioner variability

Some professions are self-regulated by one association which ensures high standards across all members of the profession – the *Dieticians Association of Australia* in the profession of dietetics. However, even in these cases the unregistered nature of many professions mean that the ability

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[x] For example, some unregistered practitioners such massage therapists may focus on musculoskeletal conditions rather than treating the broad range of conditions that naturopaths or Western herbalists may treat, and other unregistered practitioners such as dieticians or speech pathologists have practice models focused on working as adjunctive therapists in broader healthcare teams. Although these practitioners may exhibit other risks, risks associated with acts of omission or failure to recognise limitations of practice may be greater in practitioner groups such as naturopaths and Western herbalists with established significant primary care roles.

[xi] Completed but currently unpublished data from the Australian Longitudinal Study of Women's Health.

for patients to make an informed choice is blurred. For example, the emerging profession of clinical nutrition – which currently has no representative body promoting standards in that profession and no minimum standards for practise – may be confused by many patients with the more qualified and accountable dietician profession. Although individual clinical nutritionists may present, lack of barrier to entry to certain professions may mean that the principle of *caveat emptor* when using the services of unregistered practitioners unfairly transfers an unacceptable level of risk to the consumer.

A South Australian government report identified the lack of ability for patient's to make an informed choice in identifying qualified naturopathic practitioners as significantly increasing the risk when patient consider using this practitioners[14].

The majority of Australians already believe that some complementary medicine professions are more regulated than they currently are[23]. This may lead to 'false legitimacy', where patients believe that practitioners are more qualified or accountable than they really are. This may lead to increased levels of trust which can be open for abuse by unscrupulous practitioners.

2.6 Development of a statutory code may not be sufficient for some professions

For these reasons, the development of a statutory code alone may not be sufficient for the protection of public health and safety for all currently unregistered professions. ARONAH believes that this includes naturopaths and Western herbalists and supported by the Victorian Department of Human Services assessment of these professions. ARONAH therefore recommends that the development of a statutory code for unregistered professions is complemented by a formal stage assessing currently unregistered professions for inclusion in the National Scheme.

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

The objectives of government in relation to unregistered practitioners should focus on the same areas as registered practitioners, namely the protection of public safety.

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

Yes, ARONAH believes that there is a strong case for further regulatory action by governments in this area. However, in order to fully protect the public ARONAH believes that the government needs to encourage the inclusion of naturopaths and Western herbalists, as recommended by the Victorian government report investigating the regulatory requirements for naturopathy and Western herbal medicine[12], ARONAH fully supports and recognises the need for the introduction of the development of regulatory arrangements for unregistered practitioners.

ARONAH is aware that several 'naturopathic'[xii] professional associations under the *Inter-Association Regulatory Forum* are currently attempting to develop a 'new' profession of *natural medicine*. Though ARONAH fully supports patient choice of healthcare providers – including the choice between a registered and unregistered complementary medicine practitioner – ARONAH is concerned that given the historical connections this could become a 'dumping ground' for deregistered practitioners should naturopaths and Western herbalists be included in this scheme at a later date.

Additionally, ARONAH is aware of several practitioners calling themselves naturopaths who have co-opted the term to continue practising after being deregistered in their original professions (or voluntarily removing themselves from the register before action could commence)[xiii]. ARONAH believes that the implementation of an unregistered practitioner's code of conduct will help to ameliorate the risks posed by these practitioners and finally remove those who are unfit to practise.

4. What is thought of the various options?

4.1 Option 1: No change – rely on existing regulatory and non-regulatory mechanisms

ARONAH believes that the need for implementation of laws in New South Wales and South Australia, in addition to the need for this consultation, should serve as evidence enough that 'no change' is not a viable option. Existing methods have been clearly demonstrated to have failed in protection of the public.

Increased protection of the public may occur as more states initiate their own arrangements for unregistered practitioners, such as the recent developments in South Australia. However, ARONAH believes that relying on existing regulatory and non-regulatory mechanisms fails to appropriately address public health and safety concerns.

4.1.1 Failure of self-regulatory models in the professions of naturopathy and Western herbal medicine

For self-regulation to be fully successful for an unregistered profession it would require one professional body to represent all practitioners, or one workable governing body representing a handful of associations. This simply does not exist in the current environment.
There are various reasons for the proliferation of professional associations in the professions of naturopathy and Western herbal medicine.

1) Varying practitioner standards – if a practitioner cannot obtain entry to their preferred association, they may simply apply to other associations until someone will accept them.

[xii] Although their multi-disciplinary nature makes them one of the largest complementary medicine associations in Australia, naturopaths and Western herbalists form only a small part of their membership.
[xiii] ARONAH has been made aware of former chiropractors, medical practitioners, nurses, osteopaths and pharmacists who have practised in the profession of naturopathy and Western herbal medicine after leaving their profession in negative circumstances. More commonly, international graduates who are unable to meet Australian standards for registration in the registered professions begin supplying naturopathic or Western herbal medicine services as it is a 'recognised brand' in the Australian healthcare system.

Some associations have been formed specifically to recognise practitioners who are unable to be recognised elsewhere.

2) Some professional associations have been formed for the specific purpose of providing recognition of graduates of certain courses, often because no major association will recognise their graduates.
3) Some professional associations have been formed to provide social networking and continuing education for practitioners with similar cultural backgrounds[xiv]
4) Disagreements on ideological and philosophical grounds have created divisions in professional associations. Parent associations have split into two associations due to irreconcilable differences on a number of occasions.[24][xv]
5) Varying standards for course approval. Ideological differences in what should be included in education has led to the development of multiple associations to accredit colleges.

[xiv] For example, the *International Christian Association of Natural Therapists*

[xv] For example, the *Australian Traditional Medicine Society* 'split' from the *Australian Natural Therapists Association* in 1984 due to rejection by college owners of increased biomedical and science training required for accreditation

4.1.1.1 Lack of barriers to entry and ability to identify competent and trained practitioners

The current situation has resulted in considerable variability in training for naturopaths and herbalists. This is made even more difficult for consumers to identify practitioners by the fact that there are also significant differences in which colleges are accredited by professional associations. For example, automatic accreditation of gradates by the five major professional associations for naturopaths and Western herbalists is listed in the table below:

Education provider	*Highest qualification offered*	*Professional Associations who list as an accredited provider (Australia's five largest)*				
		ATMS	***ANTA***	***ANPA***	***NHAA***	***CMA***
Academy of Safe Therapies (Qld)	Adv Dip		X			
Adelaide Training Centre of Complementary Medicine (SA)	Adv Dip	X				
Australian Academy of Natural Therapies (WA)	Adv Dip		X			
Australian College of Natural Therapies (NSW, Qld)	Adv Dip	X			X	
Australian Institute of Applied Science (Qld, ACT)	Adv Dip	X	X		X	
Australian Institute of Holistic Medicine (WA)	Adv Dip		X		X	
Canberra Institute of Technology (ACT)	Adv Dip		X			
Charles Sturt University (NSW)	Upgrade		X			
Endeavour College of Natural Health (Qld, Vic, SA, WA)	Bachelor	X	X	X		X
Gracegrove College (NSW)	Adv Dip	X				
Health Schools Australia (Qld)	Adv Dip	X			X	X
National College of Traditional Medicine (Vic)	Adv Dip	X				
Nature Care College (NSW)	Adv Dip	X	X	X	X	X
New South Wales School of Natural Medicine (NSW)	Adv Dip	X	X			
Paramount College of Natural Therapies (WA)	Adv Dip		X			
Robynn Morro's College of Natural Medicine (Qld)	Adv Dip		X			
South Australian Health Education Centre (SA)	Adv Dip		X			
Southern Cross University (NSW)	Bachelor		X	X	X	X
Southern School of Natural Therapies	Bachelor		X	X	X	X
TAFE - Mt Lawley (WA)	Adv Dip		X			
TAFE Gold Coast - Academy of Natural Therapies (Qld)	Adv Dip		X			
University of New England (NSW)	Upgrade		X		X	
University of South Australia (SA)	Upgrade		X			
University of Western Sydney (NSW)	Bachelor	X	X	X	X	X
WEA Hunter (NSW)	Adv Dip	X	X		X	

This should not be considered an exhaustive list, as professional associations may allow memberships from non-recognised courses, though such recognition is not automatic. The proliferation of associations usually means high levels of competition for new members. This may allow colleges to dictate accreditation processes, as refusal to approve accreditation would dry up significant sources of new members – and subsequent revenue – for professional associations in an over-crowded market.

The South Australian Social Development Committee's report into bogus, unregistered and deregistered practitioners is the most recent governmental report to highlight this issue as a failure of self-regulation in some of the larger unregistered professions, finding that 'the weakness of the current self-regulatory system that allows anyone to establish themselves as, for example, a naturopath or counsellor is no longer acceptable.'[14]

4.1.1.2 Inherent conflict of interests in self-regulation

Also of concern is that some of the professional associations are controlled by boards consisting of the private educational institutions themselves – leading to a clear conflict of interest[12]. For example, Australia's largest professional association's[xvi] – the *Australian Traditional Medicine Society* – Constitution does not in fact allow practitioners to represent on its board, and is instead made up of up to 22 owners of 'Recognised Colleges'. These college owners are then charged with accrediting their own courses for approval

Some professional associations take this further, for example the *Alumni Association of Natural Medicine practitioners* appears to be affiliated with eight colleges for the primary purposes of recognising their graduates, who may not be recognised by other professional associations. Such close relationships between accrediting agencies and education providers also pose a serious potential for conflict of interest in self-regulation.

4.1.1.3 Failure of self-regulation of naturopathy and Western herbal medicine with respect to Sylvan's recommendations

The consultation paper makes mention of Sylvan's report of the Australian Consumer Association's assessment of four important self-regulatory schemes[25]. Sylvan concludes that self-regulation should not be used where the market is characterised by information asymmetries, where the consumers are dealing with non-experiential goods or services, where public health and safety is an issue, or in situations of limited competition. Three of these factors are factors specific to naturopathy and Western herbal medicine and may have contributed to making self-regulation a failure with respect to these professions.

1) Information asymmetries.
   Naturopaths and Western herbalists are placed in a position of trust by patients with an information asymmetry occurring during the consultation (for example, with relation to the recommendation and sale of therapeutic products to the patient when the point of sale is the same as the point of prescription). This information and power differential can be open to abuse by unscrupulous practitioners[22].

[xvi] The *Australian Traditional Medicine Society*. Available at: http://www.atms.com.au/PDFS/2010%20ATMS%20Constitution.pdf

2) Public health and safety is an issue
   The practise of naturopathy or Western herbal medicine have been formally assessed for risk in accordance with Intergovernmental Agreement guidelines[12] and have been found to exhibit a level of risk requiring statutory regulation.
3) Situations of limited competition
   Some pieces of government legislation compel practitioners to join a 'recognised professional organisation', for example to be afforded sales tax exemption on consultations or to be eligible for a Schedule 1 certificate of exemption under the *Therapeutic Goods Administration* allowing them access to 'practitioner-only' products. However, such legislation does not proscribe minimum standards for associations, merely that any standards they do have be 'nationally consistent'. This essentially means that government legislation actively 'pushes' naturopathic and Western herbal medicine practitioners to join a professional association. Although there are a number of professional associations, there are limitations to freedom of movement between associations. Once practitioners join one of these 'recognised professional associations', it is often very difficult to change without disadvantaging the practitioner[xvii]. This has created a situation where professional associations in naturopathy and Western herbal medicine enjoy a guaranteed 'captive market' of practitioner members and do not have to promote the profession or develop increased standards to compete for members. ARONAH believes that many professional associations have taken advantage of this 'captive marketplace' to protect and promote their own interests, rather than those of their members or the public at large.

4.1.2 Development of new regulatory mechanisms should not exclude the use of existing mechanisms

However, existing mechanisms should also be used as appropriate. The Code of Conduct should not be used as an alternative to considering currently unregistered practitioners in the National Scheme. The consultation paper lists the possible inclusion of new professions in the National Scheme.

4.1.3 A formal stage of considering which unregistered professions should be included in the National Scheme should be part of development of regulatory arrangements for unregistered practitioners

However, ARONAH does also express concern that the current process requires professions to 'apply' for consideration in the scheme. ARONAH believes that this approach may encourage 'aspirant' professions who may attempt to use regulation as a tool for professional development rather than to protect public safety[26]. Additionally, it may also fail to protect public safety by not considering professions that shun the extra accountability and higher standards regulation may incur for their reasons in their own interest. For example, opposition of some complementary medicine practitioners to statutory regulation may be in relation to protecting the profession's own interests over those of the public[12]. For this reason ARONAH believes that removing the 'self-selecting' aspect of consideration for inclusion in the National Scheme can ensure professions are independently assessed in accordance with the public's interests.

[xvii] For example, health fund rebates and insurance are tied directly to professional association membership numbers. Practitioners wishing to move from one association to another may have to face a period of up to three months without access to health fund rebates, or access to professional indemnity insurance.

In many instances not only has a 'no change' self regulation scenario not adequately protected patients, but in many instances leadership (for example some professional associations) of some unregistered professions have actively demonstrated a lack of commitment to the raison d'être of self-regulation - the protection of patient. For these reasons, ARONAH would highly recommend that a formal stage is implemented as part of this process which considers which currently unregistered practitioners should be included in the scheme[xviii].

4.2 Option 2: Strengthen existing self-regulation (a voluntary code of practice for unregistered practitioners)

ARONAH is also concerned that the resources made available under this option (as per page 25 of the Consultation paper) will incur significant costs, but with little public benefit. Consultation is expensive and based on previous experience in the unregistered professions is unlikely to result in a voluntary code that represents the public's interests. The 'community education' aspect of this option seems to offer benefit only to established professional associations by promoting their existence to patients, with little obligation for these professional associations to improve standards in the unregistered professions. Several government bodies already offered advice and support to professional associations, and ARONAH has been utilising these resources where available. It is unlikely that professional associations who have not already made use of these resources will do so under this voluntary model. None of the measures listed under this option are cheap, and therefore Option 2 is unlikely to offer significant savings over a statutory model and is unlikely to offer significant benefit over the no-change option.

Although ARONAH itself would most likely benefit from the promotion of a co-regulatory model with respect to naturopathy and Western herbal medicine (as part of its promotion for all unregistered practitioners), it does not believe this is fully in the public's interests.
Reasons for the failure of self-regulation have already been outlined and are relevant to criticisms of this option. Therefore this section will focus criticisms on what has been termed co-regulation, which is a form of self-regulation pursued by many stakeholders in the unregistered professions and was also explored as an option in the South Australian government's report into bogus, unregistered and deregistered practitioners[14].

4.2.1 Co-regulation ('formalised' self-regulation)

In fact ARONAH believes that there will in fact be very little benefit in strengthening self-regulation as the costs involved in 'regulating the regulators' are likely to be substantial and not necessarily significantly less than taking a more proactive approach. For this practical reason ARONAH is generally opposed to several of the 'co-regulatory' models that have previously been espoused by professional associations in naturopathy and Western herbal medicine[xix].
Further, ARONAH believes that opposition to further government involvement in regulatory arrangements for unregistered practitioners – or the promotion of co-regulatory models – has been done in the protection of the self-regulators interests (to protect or even increase

[xviii] ARONAH had been previously informed by a number of individuals involved in the National Registration and Accreditation Scheme roll-out that there would in fact be a formal 'third stage' considering unregistered professions for inclusion, to complement the primary and secondary stages of including regulated and partially regulated professions into the scheme.

[xix] For example, "Meta Regulation" by the *Australian Natural Therapists Association* or the "Government Monitored Self Regulation" under the "Inter-Association Regulatory Forum" led by the *Australian Traditional Medicine Society*.

professional association influence over practitioners), rather than protecting the public's interests. In fact, ARONAH believes that 'formalising' self-regulation through a co-regulatory approach could in fact entrench some of the problems of self-regulation.

Although in principle co-regulation is similar to the system for identifying a *recognised professional* who is eligible for supply of GST-free naturopathy and Western herbal medicine services, this should not be taken as an indicator of government support for this model. This system is used by the Australian Tax Office only in the absence of statutory regulation of a health profession and was meant to be only a temporary measure, with the Federal government granting $500 000 to professional associations in the professions of acupuncture, naturopathy and herbal medicine to create a uniform national register. It is not an alternative federal mechanism to regulate health professions and has been criticised in relation to the professions of naturopathy and Western herbal medicine in a number of reports[12, 13].

It should also be noted that such a formalised model would not separate protection of the public's interests and professional promotion, separate governance and management from fitness to practice decisions (i.e. personal relationships could affect this), or separate investigation from adjudication.

4.2.1.1 Need for consensus in development of a voluntary code

If standards are to be introduced under a co-regulatory model, then a consultation of various stakeholders such as professional associations would be required for the development of a voluntary code of conduct. This would require professional associations and stakeholders that have historically been unable to reach consensus or even work together on issues due to underlying ideological and philosophical approaches and wide differences in views on professional standards to reach consensus on standards. The likely outcome of such an endeavour would be a 'lowest common denominator' which would not serve the public's interest.

Even in the event that government somehow 'forces' professional associations to work together such a process may still be unworkable. This can be observed from previous experience in the naturopathic and Western herbal medicine professions. As part of the inclusion of naturopathic and Western herbal medicines as GST exempt health services in Section 38-10 of the *A New Tax System (Goods and Services Tax) Act 1999* the federal government requested the professional associations work together to develop an independent regulatory authority for complementary medicines under the title *'Complementary Therapies Funding Program for the Establishment of Uniform National Registration Systems for Suitably Qualified Practitioners in Acupuncture, Herbal Medicine and Naturopathy'* and provided an initial grant of $500 000 for this purpose[27].

Ideological and philosophical differences and historical hostility between associations meant that these associations were unable to work together and instead and eventually provided with separate grants[xx]. Unsurprisingly this ultimately resulted in no development of appropriate

[xx] These associations were the *Australian Acupuncture and Chinese Medicine Association*, *Australian Natural Therapists Association*, *Australian Traditional Medicine Society*, *Federation of Natural and Traditional Therapists* and *National Herbalists Association of Australia* who were provided with $100 000 each

regulatory infrastructure or policies. For these reasons ARONAH believes that the public and stakeholder consultations espoused under this model will be costly and unlikely to develop a voluntary code of significant benefit to the public.

4.2.1.2 Lack of transparency in disciplinary systems administered by professional associations

Co-regulation would not resolve the issue of lack of transparency in a disciplinary system administered by a professional association, even if accredited. This would seem to be supported by the fact that professional associations have failed to develop transparent and open disciplinary systems to date, even when directed and supported to do so. This shortcoming may may be partly resolved by increased auditing and monitoring of 'accredited' professional associations by the government, however this would most likely incur significant costs and therefore remove the only real tangible benefit a co-regulatory model has (reduced costs of regulation as compared to statutory regulatory arrangements).

4.2.1.3 Increased costs associated with co-regulation

A formalised co-regulatory model would increase costs for both practitioners and government. For example formalised co-regulation would force practitioners to join a professional association which would increase costs for that practitioner. If there is little demonstrable benefit to the public such action may be construed as anti-competitive, favouring 'established' professional associations, associations with the most resources to liaise with and lobby government bodies, or focus choice of professional association solely on price rather than those that are most committed to higher standards of training and practise, or even activities within the profession[xxi]. This may lead to poorer representation of practitioners by their professional associations, particularly in professions with multiple professional associations.

However, there would also be significant government costs. The government would incur costs in establishing and maintaining an accreditation system for professional associations. The untested nature of such a model also raises the likelihood that significant costs will be associated with integrating a new model of regulation into existing frameworks. Additionally, the shared responsibilities of government bodies such as health care and complaints authorities and the professional associations may result in unnecessary duplication, which would not only increase costs but also risk delaying complaints processes and confusing health complainants[14]. Whilst ARONAH believes that such costs may be appropriate in the event that a co-regulatory model offered significant benefit, any benefit would be relatively minor and outweighed by the considerable disadvantages of such a system.

4.2.1.4 Increased legal risk for professional associations under a co-regulatory model

A formal co-regulatory model places the legal responsibility on professional associations or accrediting organisations (such as ARONAH) to act as gate-keepers without the statutory protection or legal powers afforded to statutory boards to carry out their responsibilities. This would result in professional associations or accrediting organisations (such as ARONAH)

[xxi] ARONAH would suggest that such a situation already exists in the professions of naturopathy and Western herbal medicine where at least two pieces of legislation (the Goods and Services Tax and Therapeutic Goods Act) compel practitioners to join 'recognised' professional associations but offer no further protection to the public by requiring minimum standards in either disciplinary procedures, codes of conduct or entry requirements.

suffering a substantial increase in exposure and risk of litigation by practitioners who are either disciplined or initially refused membership due to poor standards or character.

4.2.1.5 No legal accountability for unregistered practitioners

Most state and territory health care complaints authorities do not have statutory power to prosecute unregistered practitioners. This is unlikely to change under this option and it will be difficult for most complaints to go beyond conciliation.

4.2.1.6 No likely improvement in practitioner standards

There is unlikely to be any greater power afforded to professional associations (even with accreditation) to administer set minimum standards under a co-regulatory model than occurs at present. Professional associations would continue to only have power over their own members and no-one else. Additionally, without statutory requirement of minimum standards it is unlikely that professional associations will improve standards in the unregistered professions. Therefore, ARONAH does not in any way support Option 3 or any variant of 'improved self-regulatory' arrangements.

4.3 Option 3: Strengthen health complaints mechanisms (a statutory code of conduct for unregistered health practitioners)

This is ARONAH's preferred option. Based on the failures of self-regulation ARONAH believes that only a statutory code of conduct for unregistered is fully in the public's interests.

4.4 What is the preferred option?

ARONAH's preferred option is Option 3: strengthening health complaints mechanisms by developing a statutory code of conduct for unregistered health practitioners. ARONAH also recommends that this is complemented by a formal process considering what currently unregistered professions should be included in the National Scheme.

4.5 What are the advantages and disadvantages benefits of the three options?

Option	Costs	Benefits
Option 1: No change – rely on existing regulatory and non-regulatory mechanisms	- Administrative costs likely to increase as unregistered practitioners have larger role in Australian healthcare - Costs unfairly shifted to victims of unscrupulous practitioners when seeking disciplinary action against practitioners (i.e. through civil law suits) as no legal recourse for health violations. - Costs transferred to public and profession. For example, lack of ability to make informed choice on qualified practitioners may mean patients waste resources 'finding' a trained practitioner through successive visits. - Significant duplication of effort, many professional associations will be duplicating disciplinary and accreditation procedures, which will be passed on to practitioners	- Professions and practitioners able to set own standards
Option 2: Strengthen existing self-regulation (a voluntary code of practice for unregistered practitioners)	- Administrative costs to governments of developing and implementing the code of practice, including considerable costs for stakeholder consultation, which are likely to be higher than expected due to philosophical and ideological differences between stakeholder groups. - No cost benefit over current self-regulatory model in relation to prosecuting repeat offenders who choose not to comply with a voluntary code - Practitioners who are forced to join an association incur extra costs (*mandatory co-regulation only*).	- Regulatory responsibility shared between government and professional associations. - Provides *slightly* better assurances that practitioners are competent to practise, but this will be variable in each specific profession
Option 3: Strengthen health complaints mechanisms (a statutory code of conduct for unregistered health practitioners)	- Costs involved in developing Code and implementing into legislation - Ongoing administrative costs - Legal costs to government and practitioners - Additional costs for practitioners who may not currently have indemnity insurance or First Aid arrangements	- Provides independence from professional interests - Provides statutory authority when required

4.6 What additional costs may be incurred for practitioners from the introduction of a statutory code?

As the introduction of a statutory code is retrospective in nature and does not compel practitioners to join a regulatory or licensing authority or mandate obligations to practise it is unlikely that practitioners will see increased costs as a result. However, some naturopaths and Western herbalists (and other unregistered practitioners) may incur costs from loss of employment should action be taken against them for breaching the code of conduct. However, this would only be a risk for practitioners who are deemed unfit to practise in the interests of public health and safety.

5. National uniformity and diversity

5.1 Should there be a nationally uniform code of conduct for unregistered health practitioners or are different codes in each State and Territory acceptable?

ARONAH believes that any regulation needs to through a national body. Different standards are unacceptable and are not in the spirit of the National Registration and Accreditation Scheme.

5.2 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 each implement their own arrangements?

ARONAH believes that any regulation needs to through a national body. Different standards are unacceptable and are not in the spirit of the National Registration and Accreditation Scheme.

5.3 Should there be a centralised administrative body that administers the regulatory scheme, or should it be administered by each State and Territory government?

ARONAH would suggest that the Australian Health Practitioner Regulation Agency administer the scheme, whilst relevant individual State and Territory complaints commissions are contracted to hear individual cases. ARONAH believes that these arrangements are already in place in the broader National Scheme.

6. Scope of the regulatory scheme

6.1 If a statutory code of conduct were to be enacted, to whom should it apply?

ARONAH believes that a statutory code should apply to all practitioners and organisations that directly and indirectly provide health services.

6.2 Which practitioners, professions or occupations should be included?

ARONAH believes that all practitioners, professions, occupations and organisations that provide health services should be included. It should apply to registered practitioners who provide health services that are unrelated to their registration, unregistered practitioners who directly deliver services, those who deliver health services through the agency of another person or organisations that have activities related to health (for example in relation to naturopaths and Western herbalists this could include training colleges, health food stores etc.)

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

The definition of a health service should be consistent with that recommended by the *Australian Law Reform Commission* in Report-108 Section 62 of the Privacy Act and Health Information, that is:

a) an activity performed in relation to an individual that is intended or claimed (expressly or otherwise) by the individual or the service provider to:
    (i) assess, predict, maintain or improve the individual's physical, mental or psychological health or status;
    (ii) diagnose the individual's illness, injury or disability; or
    (iii) prevent or treat the individual's illness, injury or disability or suspected illness, injury or disability;
b). a health-related disability, palliative care or aged care service;
c). a surgical or related service; or
d). the dispensing on prescription of a drug or medicinal preparation by a pharmacist.

6.4 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?

ARONAH believes that any code of conduct should apply to anyone providing unregistered health services. In the event that it is a registered practitioner providing 'unregistered' health services unrelated to their registration, the code of conduct should apply. In the example given, ARONAH believes it would be highly inappropriate for the Nursing and Midwifery Board to make judgements on appropriate naturopathic or massage practice where it does not relate directly to nursing.

6.5 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, for example the owners or operators of businesses that provide health services?

ARONAH believes the code of conduct should also apply to the owners or operators of businesses that provide health services. ARONAH is aware of several instances, particularly in pharmacy and health food store environments, where untrained an untrained staff member has been in breach of professional codes of conduct when dispensing advice to the public on matters relating to herbal medicine or naturopathic medicine. In some instances these behaviours have been mandated by employers rather than individual employees.

6.5.1 Practitioner Training Organisations

Training organisations are directly responsible for the quality of practitioners entering employment and should also be held to any statutory code. ARONAH is aware of many instances of colleges offering misleading or deceptive practices.

For example, many colleges have informed students entering 'Clinical Nutrition' degrees that they would be recognised by nutrition and dietetics organisations upon graduation, which many students do not find to be false until rejected by such organisations. Additionally, some colleges falsify even their own credentials to deceive students training to be practitioners. For example, Health Schools Australia maintains that it is accredited by the *International Accreditation and Recognition Council*, recognised as an 'accreditation mill' by several US states[28]. It also offers naturopathy and Western herbal medicine students Degree, Masters and even PhD pathways through *Warnborough University*, an unaccredited British college that is not authorised in either Britain or Ireland to grant degrees, has no Australian recognition, is on several US state lists of unapproved education providers and has been described as 'a diploma mill that has managed to move back and forth between Britain and Ireland for decades without either government being able to put an end to it'[29].

Despite being held to few educational standards, ARONAH understands that many naturopathic and Western herbal medicine colleges shirk even these. For example, ARONAH has been made aware of instances where naturopathic and herbal medicine colleges[xxii] have allowed student's shifts in health food stores to count towards the 'clinic practice hours' requirement of their course, despite having no clinical consultation interaction. This not only clearly redefines such coursework in this case as 'provision of health services', and is most likely to have a negative impact on the clinical skills of the graduate. As practitioner training organisations are responsible for the quality of practitioners entering the marketplace, they should also be held to any statutory code in relation to provision of health services. ARONAH would note that this would be consistent with provisions for student training regulatory arrangements under the National Scheme.

6.5.2 Persons involved in retail consultations

ARONAH believes that the 'false legitimacy' enjoyed by such individuals in the eyes of the public – whereby they may appear qualified by virtue of their place of employment – should qualify such individuals to be held under the code of conduct as they do provide input on health service delivery. ARONAH believes that such 'false legitimacy' can result in the same information asymmetry or power differential as is associated with practitioner-patient interactions.

6.5.3 Professional associations

ARONAH believes that professional associations are a pertinent example of those who deliver health services through the agency of another that should be held accountable by regulatory arrangements for unregistered practitioners. The development of regulatory arrangements for unregistered practitioners should encourage independence, transparency, accountability and

[xxii] For example, ARONAH has been made aware of a Gold Coast student studying an Advanced Diploma of Naturopathy who was using her health food store shifts for all her clinical practice training component at a local distance-only naturopathic and herbal medicine college, and had been advised to do so by her education provider. She had graduated without any face-to-face clinic hours, despite the college claiming that over 400 'face-to-face' hours are needed for graduation.

consumer input into the way that professional associations handle and deal with complaints about their members, and prosecute professional associations that place the public at harm by not performing these duties appropriately.

This recommendation stems from previous failure of professional associations to appropriately regulate many unregistered professions. For example, one association (the *Australian Traditional Medicine Society*) has been documented to not have taken action against a rogue practitioner (Paul Perret) or remove them their association despite multiple complaints from the public and politicians for fear the practitioner may sue[30]. This was despite the fact that the practitioner had been in clear and documented breach of at least 12 sections of that association's Code of Practice and had fraudulently obtained membership by falsifying his qualifications and failing to declare his previous criminal history of fraud and armed robbery. Although this practitioner was later removed from practice through negative licensing legislation (in fact, this incident was the reason the NSW HCCC Code of Conduct was enacted) the professional association in failing to discharge its duties should be considered as much in breach as the practitioner.

Additionally, as accrediting agencies of education providers professional associations are directly responsible for the quality of graduates in the unregistered professions. Sometimes this relationship extends further. For example, the executive of *Australian Traditional Medicine Society* is comprised of college owners, one of which is *Health Schools Australia* mentioned in the previous section. This suggests implicit *ATMS* approval of the actions of *Health Schools Australia* that may be in breach of several sections of the code. By virtue of their role as self-regulators, professional associations should be held accountable when their actions run counter to public health and safety.

6.5.4 Product companies

Product companies that promote practitioner behaviour that breaches the code of conduct should also be held responsible under a statutory arrangement. Product manufacturers – particularly in the complementary medicine sector - aggressively pursue health professionals of all persuasions and often market their products as ideal ways to supplement clinic income. One manufacturer was audacious enough to suggest on an advertising brochure aimed at practitioners was that one of the benefits of attendance of its educational seminar targeted at medical and CAM practitioners was that it would teach attendees how to ensure "an ongoing flow of supplement sales, creating an income stream that requires little or none of your time to generate"[31].

Additionally, many complementary medicine manufacturers employ a multi-level marketing model, which is easily open to abuse by unscrupulous practitioners. Manufacturers dominate the continuing professional education sector in naturopathy and Western herbal medicine providing up to 90% of all continuing education in these professions[12, 13] – and are therefore able to directly and significantly influence practitioner behaviour.

Many unregistered practitioners – including naturopaths and Western herbalists – are entitled to a *Schedule 1 Certificate of Exemption* from the *Therapeutic Goods Administration*. The issuing of these Certificates is an initiative by healthcare practitioner associations to assist in identifying their members who are able to receive advertising material that is exempt from

complying with the advertising requirements in the *Therapeutic Goods Act 1989 and Regulations*. ARONAH believes that given that these companies have a significant role in educating unregistered health practitioners through advertising (such as product literature, conferences and monographs), and that advertising material directed to these professionals is not subject to the same scrutiny as that directed to the public, product companies should be subject to the Code.

6.6 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?

ARONAH prefers option 3B – a single nationally administered scheme – in relation to the administrative arrangements for a statutory code of conduct.

6.7 What are your reasons?

6.7.1 Consistency of approaches for registered and unregistered practitioners

ARONAH believes that there should be minimal difference between administrative arrangements for registered and unregistered practitioners and would assure a nationally consistent application of standards. This would also be in line with the spirit of Australian principles of regulation, for example the COAG Agreement for a Seamless National Economy.

6.7.2 Shortcomings of state or territory based approaches

ARONAH is also concerned that the limitations of mutual recognition arrangements and past failure of state and territory based mechanisms on this issue of practitioner regulation does not adequately protect against practitioners who move jurisdictions to avoid regulatory scrutiny or ignore prohibition orders. In fact, these failures were a large reason for the development of the National Registration and Accreditation Scheme. Although the consultation paper proffers suggestions to limit these shortcomings, the development of separate state and territory arrangements may lead to increasing variability as states and territories individually amend their arrangements over time.

6.7.3 A unified approach means that all valid complaints are received

ARONAH also believes that a unified approach to receiving and investigating complaints will ameliorate much of the confusion the public currently has when considering making a complaint to authorities. ARONAH has consulted with each of the state and territory health care complaints authorities, and all have suggested that this confusion means that complaints against naturopaths and Western herbalists are significantly underestimated. This is compounded by the fact that, in the professions of naturopathy and Western herbal medicine alone, over 90 organisations exist that currently purport to take complaints for these practitioners[12].

ARONAH believes that a national approach to complaints receiving and handling can ensure that all valid complaints are heard. As an example, when the *Chinese Medicine Registration Board of Victoria* started receiving complaints against those practitioners in 2002-3 the number of complaints against these practitioners rose nearly ten-fold (see Figure 2). This was thought not be due to 'new' complaints, but rather the fact that a clear reporting regime and 'one-stop-shop' approach meant that previously 'lost' complaints were properly received.

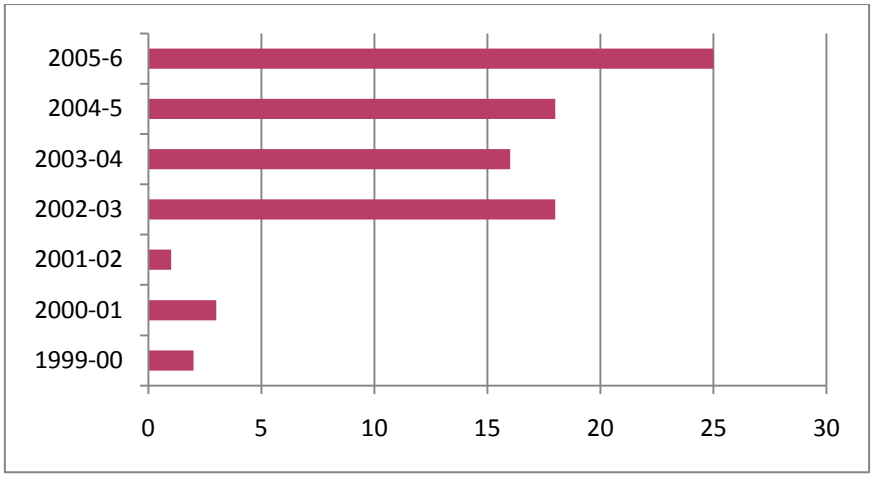

Figure 3: Complaints against Chinese medicine practitioners in Victoria (source: CMRBV)

ARONAH believes that the problems with such an approach highlighted by the consultation document (the requirement of a separate funding stream) are more than outweighed by the benefits of a unified approach to practitioner regulation. As a minimum least patients and the general public need to be able to make complaints against unregistered practitioners at the same place as they can make complaints against regulated practitioners.

7. Content of Code of Conduct

7.1 What do you think should be included in a statutory code of conduct?

ARONAH believes that the NSW Code is a good model to follow, though would require several additions (for example probity checking). Suggested additions are discussed in the section on weaknesses of the NSW Code.

Membership of a professional association should not be included in the Code without mechanisms that hold these professional associations to account, as this could intensify and entrench the current failures of self-regulation in some professions (including naturopathy and Western herbal medicine). Where independent self-regulatory bodies do exist for professions membership of these organisations could be a consideration for inclusion in the Code.

7.2 Do you have any comments on the NSW Code of Conduct for Unregistered Health Practitioners?

ARONAH supports the adoption of the NSW Code of Conduct as the minimum standard. There seems to be broad support for national adoption of the NSW Code – ARONAH has received submissions from the New South Wales, South Australian and Western Australian health complaints authorities[xxiii] recommending that it adopt the New South Wales Code of Conduct as a minimum standard for members of its register.

However, national adoption of the Code of Conduct should not be intended to be a substitution for statutory registration of a currently unregistered profession where that would be in the public's interests. Whereas the negative licensing system espoused by the NSW Code may be appropriate for professions that do not in-and-of themselves promote a significant risk to practitioners by for the first time making these practitioners accountable, it is not suitable for

[xxiii] These submissions can be found on the ARONAH website http://www.aronah.org/consultations/

professions whose therapeutic interventions and practices have a higher risk profile and need to be appropriately regulated. For this reason ARONAH supports the adoption of the NSW Code of Conduct as the minimum standard for unregistered practitioners, but also supports that naturopaths and Western herbalists ultimately be included in the National Scheme as previously recommended[12].

7.3 What do you think are the strengths and weaknesses of the NSW Code?

ARONAH believes that the NSW Code is desirable and a significant improvement over current arrangements for unregistered practitioners, but it does have some limitations. Specific strengths and limitations are listed below.

7.3.1 Strengths

7.3.1.1 Code provides a generic 'catch-all' safety net

One of the strengths of the development of generic or 'catch-all' legislation as enacted by the Code of Conduct is that it is applicable to all persons delivering health services. This can help close previous regulatory black holes – particularly in relation to persons that have already been demonstrated to be unfit for practise. This would include those who had been deregistered from professions regulated by the National Scheme from continuing to practise under a different professional title.

7.3.2 Weaknesses

7.3.2.1 Code offers only retrospective action and little prospective protection

The Code of Conduct can only be used retrospectively and does not offer prospective protection to the public. This is because the legal framework underpinning the Code of Conduct does not authorise the establishment of minimum standards of education and training for health practitioners falling within its scope. The Code of Conduct is based predominantly on negative licensing and therefore places no barriers to entry to practise for people who may be unsuitable for certain professions due to inadequate training or poor character. The Code of Conduct can only remove unsuitable persons from practise once harm has occurred. In some professions this is tantamount to 'shutting the gate after the horse has already bolted'.

7.3.2.2 Code fails to promote informed choice for patients

In this sense (lack of barriers to entry to practise) the Code of Conduct cannot serve to promote informed choice and does little to allow the public to be able to identify properly skilled and qualified practitioners. These concerns have been raised in relation to a number of unregistered practitioners, including naturopaths and Western herbalists[12-14]. In a profession like naturopathy or Western herbal medicine – where the risks are exacerbated by the extraordinary variability in training – this still poses risk to the public by not allowing them to make an informed choice when selecting a practitioner. The ability to identify properly qualified practitioners is especially important when a profession has been 'legitimised' through how public use and visibility. Whilst it is appropriate that some professions aren't unduly burdened with inappropriate barriers to entry for practitioners, ARONAH believes that lack of barriers to entry in naturopathy and Western herbal medicine is a significant factor in the risks associated with professions.

7.3.2.3 No framework for different needs of various professions.

As a 'one-size-fits-all' approach the NSW Code does not take into account some of the specific practice standards for individual professions as registration may provide. Although robust self-regulation would provide a theoretical solution to this problem, in practice this is unrealistic as many unregistered professions, including naturopathy and Western herbal medicine, are significantly fragmented resulting in a failed of self-regulatory system.

7.3.2.4 Only deals with 'significant' issues

In the Sydney session of this consultation several limitations of the NSW Code were offered by the NSW Health Commissioner Mr Kieran Pehm. ARONAH believes that several of these limitations are weaknesses in a relation to a health profession like naturopathy or Western herbal medicine. Although the Code in theory offers several levels of action (from conciliation onwards) it is usually seen as an option of last resort. Many complaints are received only after the therapeutic relationship has broken down and the patient is 'out for vengeance'. ARONAH believes that an appropriate regulatory system requires sufficient consumer education and profession involvement to ensure that complaints can be resolved before this occurs.

There is also a lack of attention to 'minor' offences, such as those relating to false, misleading or deceptive advertising, as these may not be deemed a 'significant' risk by the NSW HCCC. It has been suggested that such breaches are not within the remit of the NSW HCCC, as although there was a general risk to public health, this was more appropriately dealt with by other mechanisms such as the *Fair Trading* or *Trade Practices Act* legislation. ARONAH believes that this is a significant shortcoming of the NSW model. It is also inconsistent with the National Registration scheme legislation, which does in fact allow jurisdiction over advertising claims by regulated health practitioners.

7.3.2.5 Jurisdictional confusion in specific cases

Jurisdictional issues also exist where NSW HCCC and criminal action is taken simultaneously. There have been some instances where NSW HCCC disciplinary action has been rescinded when the practitioner has been acquitted of criminal charges. However, there can be instances where ethical breaches have occurred without criminal activity occurring, particularly in relation to competence of practice. ARONAH believes this is another weakness of the NSW HCCC model.

7.3.2.6 No probity checks

In addition to lack of barriers to entry to the profession, there is no mechanism for probity checking under the NSW model (including identification checks). As an example of where such checks could be useful, the practitioner (naturopath Paul Perret) that the NSW Code was developed to remove from practice would not have been allowed t practice had appropriate probity checks for health practitioners been in place. Mr Perret had falsified some of his qualifications, and had gained others whilst in jail for fraud and armed robbery, and should not have been allowed to enter the profession in the first place.

Some professional associations have suggested that professional association membership could serve as a form of probity checking. However, it should be pointed out that Mr Perret had in fact been able to gain membership of the Australian Traditional Medicine Society, and ARONAH has been made aware of other circumstances where people unfit to practice have been able to gain

professional association membership. Failure of self-regulation to ensure adequate probity checking suggests that fitness to practice should be a statutory requirement.

7.3.3 Weaknesses should not discourage adoption of NSW Code, but should encourage consideration for additional professions in the National Registration scheme

These weaknesses would have to be addressed in any national expansion of the scheme. In some cases an enhanced statutory code would not be enough for some professions, and inclusion in the National Registration scheme should be considered for some currently unregistered practitioners.

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

Yes, ARONAH does believe that the NSW Code serves as a suitable model for other jurisdictions or for a national code. ARONAH has received submissions from the New South Wales, South Australian and Western Australian health complaints authorities[xxiv] recommending that it adopt the New South Wales Code of Conduct as a minimum standard for members of its register. Such cross-jurisdictional support for this code of conduct would suggest that it provides a suitable model for other jurisdictions or for a national code.

8. Prosecutions and hearings

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

ARONAH's preferred option is that the separation of powers that exists in the National Scheme is replicated in the regulatory arrangements for unregistered practitioners. That is that the Australian Health Practitioner Regulation Agency or equivalent body investigates and prosecutes breaches whilst State or Territory tribunal hears and adjudicates these matters. ARONAH believes that this is essential to ensure procedural fairness.

8.2 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 of breaches from the hearing of breaches, with the latter undertaken by a tribunal or court?

There should be a separation of the investigation and prosecution of breaches from the hearing of breaches, with the latter undertaken by a tribunal or court. Where possible, any tribunal should contain representation from the practitioner's peer profession to ensure the tribunal is appropriately informed of matters relating to the practise of that profession. For example, if a naturopath or Western herbalist is being prosecuted, the tribunal should contain naturopathic or Western herbal medicine peer representation.

8.2.1 What are your reasons?

ARONAH believes that there should be minimal difference between prosecution and hearing arrangements for registered and unregistered practitioners.

[xxiv] These submissions can be found on the ARONAH website http://www.aronah.org/consultations/

8.3 Grounds for issuing a prohibition order

ARONAH believes that grounds for issuing a prohibition order the potential for demonstrable and deliberate harm to the patient needs to have occurred.

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

Relevant offences should be based on harm, rather than risk to public health and safety. This would encompass 'non-health' breaches such as those associated with indirect risks such as financial exploitation. ARONAH believes the NSW Code serves as a good model.

8.3.2 What other grounds should apply before a prohibition order should be made?

ARONAH believes that practitioners practising outside their areas of competence should be observed as grounds for issuing a prohibition order. However, in saying this ARONAH believes that scope should be defined by training, rather than specific restriction of acts to specific professions. Naturopathy is a system of medicine defined by a core philosophy and principles, rather than defined by the tools of its trade.

For this reason the therapies used by naturopathic practitioners vary widely. Restricting the use of specific therapies to trained practitioners by virtue of their title (as exists in 'licensing' legislation in North America) or increasing what qualifies as a 'restricted act' would place unnecessary and unfair restrictions on both the practitioner and patient. However, to practice ethically practitioners should be appropriately trained in any therapies they are using.

9. Financing of the scheme

9.1 How do you think a regulatory scheme to investigate and prosecute breaches of a national statutory code of conduct for unregistered practitioners should be funded?

ARONAH believes that the operations of the regulatory system should be funded by government. This is line with current arrangements in New South Wales.

9.2 What are your reasons?

Due to the fragmented and largely undocumented nature of unregistered professions, the principle of user pays is unlikely to be practicable in the development of a statutory code for unregistered practitioners.

Although some costs can be defrayed via cost-recovery penalties imposed on practitioners found to be in serious breach, this is unlikely to provide a source of funding significant enough to fully fund a regulatory scheme for unregistered practitioners.

9.3 Extending statutory regulation of professions where appropriate may reduce costs of unregistered practitioner regulatory arrangements

For this reason, the implementation of 'catch-all' legislation for unregistered practitioners should not be seen as an alternative to statutory regulation of professions where appropriate. Formal consideration of currently unregulated practitioners for inclusion in the National

Scheme may help to defray the costs of unregistered practitioner regulation, by including appropriate professions in the National Scheme, which is entirely self-funding.

ARONAH would like to reiterate that naturopaths and Western herbalists have already been formally assessed in accordance with the AHMAC Criteria for Regulation of Health Professions as requiring statutory regulatory arrangements[12] and should therefore be considered for inclusion in the National Scheme. The inclusion of naturopaths and Western herbalists in this scheme, for example, would allow for regulation of these professions on a cost recovery basis[xxv], as opposed to being funded from external government sources.

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