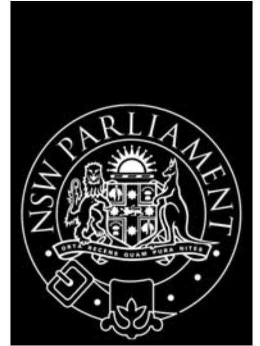

PARLIAMENT OF NEW SOUTH WALES

Health Care Complaints Committee

REVIEW OF THE 1998 REPORT INTO 'UNREGISTERED HEALTH PRACTITIONERS: THE ADEQUACY AND APPROPRIATENESS OF CURRENT MECHANISMS FOR RESOLVING COMPLAINTS'

Report No. 13/53 – September 2006

New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Joint Committee on the Health Care Complaints Commission.
Review of the 1998 report into 'unregistered health practitioners: the adequacy and appropriateness of current mechanisms for resolving complaints' / Parliament of New South Wales, Committee on the Health Care Complaints Commission. [Sydney, N.S.W.] : the Committee, 2006. - 109p.; 30 cm.
(Report ; no. 13/53)

Chair: Jeff Hunter.
"September 2006".

ISBN 1921012374

1. New South Wales. Parliament. Joint Committee on the Health Care Complaints Commission. Unregistered health practitioners.
2. Patient satisfaction—New South Wales.
3. Medical personnel—Malpractice—New South Wales.
4. Alternative medicine—New South Wales.

I. Title.
II. Hunter, Jeff.
III. Series: New South Wales Parliament. Joint Committee on the Health Care Complaints Commission. Report ; no. 53/13

DDC 610

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Membership & Staff

Chairman	Jeff Hunter MP, Member for Lake Macquarie
Members	Tanya Gadiel MP, Member for Parramatta
	Alan Shearan MP, Member for Londonderry
	Russell W Turner MP, Member for Orange
	Hon David Clarke MLC
	Hon Christine Robertson MLC, (Deputy Chair)
	Hon Dr Peter Wong MLC
Staff	Catherine Watson, Committee Manager
	Samantha Ngui, Senior Committee Officer
	Belinda Groves, Committee Officer
	Glendora Magno, Assistant Committee Officer
Contact Details	Committee on the Health Care Complaints Commission Legislative Assembly Parliament House Macquarie Street Sydney NSW 2000
Telephone	02 9230- 3011
Facsimile	02 9230- 3309
E-mail	awatson@parliament.nsw.gov.au
URL	www.parliament.nsw.gov.au

Terms of Reference

The Joint Parliamentary Committee on the Health Care Complaints Commission is to review its December 1998 Report, *"Unregistered Health Practitioners: The Adequacy and Appropriateness of Current Mechanisms for Resolving Complaints"*, in light of developments in other jurisdictions.

The Terms of Reference for the previous inquiry were:

> That the Committee examine the experience of consumers in dealing with unregistered health practitioners (including those practising in alternative health care fields) with a view to establishing:
>
> (a) what complaint mechanisms exist for consumers;
>
> (b) whether these complaint mechanisms are effective;
>
> (c) whether there is scope for strengthening voluntary codes of behaviour or conduct;
>
> (d) whether the provisions in the Health Care Complaints Act 1993, relating to unregistered health practitioners are appropriate or whether they need strengthening;
>
> (e) any other related matters.

Chairman's Foreword

The current Committee decided to review the former Committee's 1998 Report into *'Unregistered Health Practitioners: The Adequacy and Appropriateness of Current Mechanisms for Resolving Complaints'* as a direct result of concerns raised during our 2005 investigation into Traditional Chinese Medicine. These concerns centred around alleged unethical conduct by some unregistered practitioners in other health fields.

The Committee's *Report into Traditional Chinese Medicine (November 2005)* recommended the registration of practitioners of Traditional Chinese Medicine in three divisions: acupuncturist, Chinese herbal practitioner and Chinese herbal dispenser. In reviewing the 1998 Report, the Committee again reiterates its view that the possible dangers of wrongly applied acupuncture and the potential toxicity of Chinese herbal medicine pose an unacceptable level of danger to members of the public and, as has already occurred in Victoria, registration of these professions is required in NSW.

The Committee also confirms its support for the recommendations of the previous Committee report in 1998.

In light of recently released research findings by the Victorian Department of Human Services, the Committee will also be closely monitoring progress made toward registering practitioners of naturopathy and Western Herbal Medicine in Victoria, with a view to further exploring the need for registration of these practitioners in NSW.

The Committee was pleased that in April 2006, during the course of the review, the NSW Minister for Health, the Hon John Hatzistergos MLC, announced that the Health Care Complaints Commission was to be given a range of powers to crack down on corrupt unregistered health practitioners. This negative licensing scheme has been detailed in the recently introduced *Health Legislation Amendment (Unregistered Health Practitioners) Bill 2006*. The Committee is pleased with the range of reforms contained in this legislation, and thanks NSW Health for the opportunity to be involved in the consultation process during the drafting of the *Bill*.

The Committee believes that the legislative amendments will effectively provide the Health Care Complaints Commission with the powers needed to deal with dishonest or incompetent providers in the absence of a registration system. However, the Committee plans to review the adequacy and impact of the legislative reforms after two years of their operation.

In the past, the Committee has been concerned that consumers may not be aware of where to complain about the conduct of an unregistered health practitioner. This has been reflected in the small number of complaints received by complaints bodies in NSW. In considering the *Health Legislation Amendment (Unregistered Health Practitioners) Bill 2006,* the Committee anticipates that the effectiveness of the reforms will largely depend on the receipt of consumer complaints to enable the identification of inappropriate health care practice.

The Committee identified referrals from professional associations and receipt of complaints directly from consumers as the two major avenues from which information about inappropriate practice will be received. The Committee has therefore proposed measures to strengthen both these sources of information.

In considering ways to better facilitate complaints directly from consumers, the Committee concluded that information provided at the point of service would work most efficiently. The Committee has therefore recommended that unregistered health practitioners be required to display clear details on avenues for complaint in their workplace.

The Committee also believes that a formal referral process should be established to enable direct referrals and the regular exchange of information between health professional associations and the Health Care Complaints Commission.

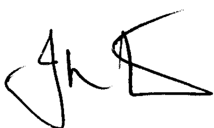
In the process of gathering evidence for the 1998 Inquiry and for the current review, the Committee heard from a number of health consumers who had been the victims of unscrupulous health care providers. The Committee would like to take this opportunity to thank all those who openly shared their experiences, in particular Mrs Marilyn Christie who attended a Public Hearing in the Hunter region in April 2006.

In reviewing all evidence provided to the Committee, it became apparent that consumers are often unaware that health practitioners are subject to differing levels of regulation, tending to trust that all persons advertising or providing a health service have been subject to Government scrutiny. The Committee strongly believes that members of the public have a right to accurate and accessible information that enables them to make informed choices about their own health care.

Information about practitioner qualifications (if any) should be made readily available to consumers, and consumers should also be clear as to the standard of conduct they can expect from their health practitioner. The Committee has therefore recommended that, where an unregistered practitioner has completed a relevant qualification, this qualification be displayed in their primary place of work. Moreover, a copy of the Code of Conduct prescribed in the regulations of the *Public Health Act 1991* should be accessible to the consumer at all times.

The Committee supports the right of consumers to access a wide range of health care services and to select services that best suit their needs. At the same time of paramount importance to the Committee is the protection of consumers and of public safety in the health care field. The Committee is pleased that progress is being made in NSW towards an appropriate balance of these objectives.

I would like to thank all the witnesses who provided evidence to the inquiry. Members of the Committee greatly appreciated their participation. I would also like to thank my fellow Committee Members for their contribution, as well as the secretariat for their assistance in the preparation of this report.



JEFF HUNTER MP
Chairman

List of Recommendations

RECOMMENDATION 1: That a future Committee review the adequacy of the *Health Legislation Amendment (Unregistered Health Practitioners) Bill 2006* two years after the date of implementation

RECOMMENDATION 2: That the Health Care Complaints Commission and the relevant health registration board list on their websites all tribunal decisions resulting in practitioner de-registration or restrictions on practice

RECOMMENDATION 3: That legislation be passed in New South Wales to register practitioners of Traditional Chinese Medicine in the divisions of acupuncturist, Chinese herbal practitioner and Chinese herbal dispenser, as recommended in the Committee's November 2005 Report

RECOMMENDATION 4: That the progress of Victoria in relation to the registration of practitioners of naturopathy and Western Herbal Medicine be monitored, with a view to further exploring the possible registration of these practitioners in New South Wales

RECOMMENDATION 5: That NSW Health revisit the recommendations contained in the 1998 report '*Unregistered Health Practitioners: The Adequacy and Appropriateness of Current Mechanisms for Resolving Complaints*'

RECOMMENDATION 6: That the Code of Conduct for unregistered health practitioners be developed in consultation with the Health Care Complaints Commission, health registration boards and health professional associations

RECOMMENDATION 7: That the Code of Conduct cover, as a minimum, standards relating to: sexual misconduct, fraud, informed consent, record-keeping, privacy and the provision of accurate information to the consumer

RECOMMENDATION 8: That unregistered health practitioners be required to make the Code of Conduct accessible to consumers at all times

RECOMMENDATION 9: That all unregistered health practitioners be required to display qualifications, if any, at their primary place of work at all times

RECOMMENDATION 10 That display of information on both internal complaints procedures and contact details for the Health Care Complaints Commission be a requirement of all practices and clinics of unregistered health practitioners

RECOMMENDATION 11: That the Health Care Complaints Commission develop a formal referral procedure to facilitate complaints referrals between health professional associations and the Commission

RECOMMENDATION 12: That the Health Care Complaints Commission undertake a campaign to ensure widespread awareness and knowledge of the implications of the Code of Conduct and other associated reforms, utilising existing networks such as health professional associations

RECOMMENDATION 13: That the Health Care Complaints Commission establish relationships with the professional associations representing unregistered health professions, focusing initially on the peak representative bodies

RECOMMENDATION 14: That the Health Care Complaints Commission host an annual meeting of regulatory bodies for the unregistered professions with representation from each of the major modalities

RECOMMENDATION 15: That the Australian Department of Health and Ageing introduce uniform guidelines for health funds with specifications regarding modalities eligible for cover as well as acceptable minimum qualifications

RECOMMENDATION 16: That the issue of the determination of eligibility for health fund rebates be revisited as part of the review of the NSW Health Minister's legislative reforms in approximately two years time

RECOMMENDATION 17: That the Health Conciliation Registry consider the issue of consumer refunds as part of conciliation processes, particularly those involving unregistered practitioners

RECOMMENDATION 18: That NSW Health include on its website clear information about the current regulation of the health professions in NSW, including the difference between registered and unregistered professionals

RECOMMENDATION 19: That this website also include links to accurate information on the main types of therapies available

Chapter One - Background

Defining a Health Service

1.1 The *Health Care Complaints Act 1993* defines a health service for the purpose of the *Act* in the following way:

"**health service** includes the following services, whether provided as public or private services:

(a) medical, hospital and nursing services,

(b) dental services,

(c) mental health services,

(d) pharmaceutical services,

(e) ambulance services,

(f) community health services,

(g) health education services,

(h) welfare services necessary to implement any services referred to in paragraphs (a)–(g),

(i) services provided by podiatrists, chiropractors, osteopaths, optometrists, physiotherapists, psychologists and optical dispensers,

(j) services provided by dietitians, masseurs, naturopaths, acupuncturists, occupational therapists, speech therapists, audiologists, audiometrists and radiographers,

(k) services provided in other alternative health care fields,

(k1) forensic pathology services,

(l) a service prescribed by the regulations as a health service for the purposes of this Act."

1.2 Whilst some services have been clearly identified as belonging to the health field, there is some debate as to whether particular categories of professionals are/should be incorporated in this definition of health service provision.

1.3 For example, some professional occupations provide services resembling that of the health professions in the course of performing their core duties that, in and of themselves, lay outside the direct provision of health advice or therapy.

1.4 Pastoral care and social work are two such examples.

1.5 For the purposes of the current Review, health services will be defined according to the *Health Care Complaints Act 1993*.

Current Regulatory Environment in NSW

1.6 Under Australian law (and NSW state law), anyone is entitled to provide health treatment to a member of the public as long as statutory law is not contravened.[1]

[1] Bolton, S. P. (2001), Controlling Unregistered Practitioners, Chiropractic Journal of Australia, 31 (1).

1.7 In NSW, statutory law restricts practice in some instances (such as the performance of invasive medical procedures, restricted only to medical doctors), and title in others.

Registered Professions

1.8 NSW employs a system of statutory registration for a number of health professionals, including medical practitioners, pharmacists, psychologists, chiropractors, dentists, dental technicians, nurses, optical dispensers, optometrists, osteopaths, physiotherapists and podiatrists.

1.9 The Committee has previously recommended,[2] and the NSW Minister for Health is currently considering, the need for registration of practitioners of Traditional Chinese Medicine.

1.10 Each registered profession is governed by an individual registration board, established by statute, that regulates membership of the profession on the basis of suitable qualification, appropriate indemnity and malpractice insurance and adherence to established codes of conduct.

1.11 Many registration boards impose additional criteria, such as participating in continuing professional development.

1.12 In a briefing to the Committee, Dr Louise Newman (Director, Australia and New Zealand College of Psychiatrists [NSW Branch]) outlined the most common components of health practitioner codes of conduct:

> "The essential elements of most of the existing codes are:
>
> - A responsibility for maintaining up-to-date knowledge
> - Practicing in an evidence-based way
> - Continuing professional development requirements
> - A duty to refer
> - Confidentiality and adherence to boundary guidelines"

1.13 Registration boards act as disciplinary bodies for their respective practitioners and provide an avenue for consumer complaints against their members.

1.14 Boards can also bring injunctions against persons practising under the guise of a registered professional but who have not met the criteria for registration with the relevant board.

Unregistered Professions

1.15 A number of health-related occupations do not currently sit under a system of statutory registration in NSW.

1.16 Practitioners such as dietitians, orthoptists, prosthetists, speech pathologists, massage therapists, social workers, complementary and alternative therapists, counsellors and psychotherapists, to name a few, are not governed by professional legislation and its associated codes of conduct and disciplinary procedures.

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[2] Committee on the Health Care Complaints Commission. (2005). *Inquiry into the Possible Regulation or Registration of the Practice of Traditional Chinese Medicine*. NSW Parliament.

1.17 Occupational therapists are also unregistered in NSW, despite being a registered profession in several other Australian states and territories, including Queensland, Northern Territory, Western Australia and South Australia.

1.18 These professions are generally widely recognized and accessed by health consumers in NSW (and Australia-wide).

1.19 In addition to the more widely recognised unregistered professions such as those outlined above, there are numerous professions that are not so well known. Despite this, these practices still have the potential to provide some therapeutic benefit to selected health consumers.

1.20 Lastly, there are those health care practitioners who cannot be identified as belonging to any recognisable health care profession.

1.21 More than offering health care services outside the realm of mainstream service provision, a small number of the most fringe practitioners purport to be able to provide services that no other health service provider (registered or otherwise) can offer- cures from incurable diseases through untried and untested methods that, more often than not, have no therapeutic basis.

1.22 All of these unregistered health care practitioners, although subject to the same statutory laws against criminal conduct, are not required by law to meet minimum standards of qualification or professional conduct, and no recognised disciplinary boards exist to process consumer complaints when they arise.

1.23 Consequently, such practitioners need to be motivated by something other than legislation to maintain high standards of practice.

1.24 It has been suggested that personal and professional integrity, as well as loss of income, professional status and restrictions on professional practice, are enough to provide incentives for many practitioners to do the right thing professionally.[3]

Self-Regulation

1.25 In the absence of professional registration, many groups of unregistered health practitioners have put steps in place to improve the regulation of their profession.

1.26 Known as self-regulation, this process usually involves the set up of professional associations with voluntary professional membership and an internal disciplinary board.

1.27 Professional associations generally establish minimum standards for both qualifications and conduct, which must be met by practitioners wishing to initiate or maintain membership of the association.

1.28 Incentives to join a professional association include discounts on professional indemnity and public liability insurance, eligibility for rebates with health insurance funds, professional recognition, access to professional development and training and professional representation to decision-making bodies.

1.29 Membership of a professional association may also potentially increase a practitioner's attractiveness to consumers.

1.30 An additional incentive for many health providers has been the ability to offer GST-free services to consumers.

---

[3] Submission Number 29 from the Psychotherapy and Counselling Federation of Australia

1.31 From 1 July 2003, a health practitioner must be a 'recognised professional' to supply services GST-free. A 'recognised professional' is defined as a "practitioner registered under State or Territory law, or where there is no such law, a practitioner who is a member of a professional association with uniform national registration requirements".[4]

1.32 Generally, it has been argued that membership of a professional association enhances the likelihood that the member professional will practice ethically and responsibly:

> "… where the individual practitioner is a member of a reputable professional Association, and as part of that membership accepts the ethical standards agreed to by that body, this increases the likelihood of competent and effective practice."[5]

1.33 However, there are significant variations in the size, quality and external recognition of associations, both between and within health professions. There is also a broad spectrum of qualifications accepted, disciplinary mechanisms in place, standards of behaviour and experience recognised by the various associations.

1.34 At one end of the spectrum there exists newly formed associations with small membership bases and no established standards of conduct and practice. At the other end of the spectrum, however, are well-established and widely representative associations with strict guidelines for behaviour and stringent membership criteria.

1.35 The impact of this variation is discussed further in Chapter Four.

1.36 Overall, the nature of self-regulation relies on the establishment of quality associations with rigorous guidelines and the willingness of practitioners to submit themselves to the rules, guidelines and sanctions imposed:

> "…we recognise that voluntary or self-regulation relies on the goodwill and responsibility of the individual practitioner to adopt collectively agreed codes of ethics and behaviour and agree to be subject to complaints handling processes as well as sanctions that emanate from these."[6]

1.37 Deighton-Smith, Harris and Pearson (2001) identified that the effectiveness of self-regulatory disciplinary arrangements is largely dependent on the professional group being highly cohesive.[7]

No Regulation

1.38 For those practitioners not covered by statutory registration and who choose not to belong to an established professional association, their practice remains almost completely unregulated.

1.39 In some instances, practitioners do not belong to professional associations because associations for that particular professional group have not yet been established.

1.40 However, as self-regulation is a voluntary process, numerous unregistered health practitioners legitimately choose not to be governed by even this level of regulation:

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[4] Expert Committee on Complementary Medicines in the Health System. (September 2003). *Complementary Medicine in the Australian Health System: Report to the Parliamentary Secretary to the Minister for health and Ageing*.

[5] Submission Number 29 from the Psychotherapy and Counselling Federation of Australia

[6] Submission Number 29 from the Psychotherapy and Counselling Association of Australia

[7] Deighton-Smith, R., Harris, B., & Pearson, K. (2001). *Reforming the regulation of the professions: National Competition Council staff discussion paper*, Ausinfo, Canberra.

> "…competition rules do not allow for compulsory membership to an industry association"[8]

1.41 Fringe practitioners are often those most likely to belong to this category.

1.42 It is extremely difficult to determine the number or types of persons belonging to the unregistered field who practice independently of professional associations.

1.43 Consequently, the extent of practice that is being conducted completely unregulated is difficult to ascertain.

1.44 Overall, the concept of unregistered practice is a broad one, encompassing many theories, therapies and practices that cannot be pinpointed under the current system.

1.45 The submission of the Australian Medical Association (NSW) [Submission 27] reiterates this:

> "There is also difficulty in the very broad and nebulous nature of the "unregistered health practitioners" category which is, by definition, a category of exclusion rather than inclusion. In short, nobody really knows who is "out there"."

Overlap of Practice Between Registered and Unregistered Professional Practice

1.46 A further group of health professionals currently practicing in NSW is the increasing number of already registered health professionals providing the services of unregistered therapists as a regular part of their practice.

1.47 General practitioners comprise the largest part of this group of mainstream health professionals who are increasingly offering unregistered therapies (predominantly acupuncture and lifestyle advice), in conjunction with conventional health services.[9]

1.48 The services of the various professions within the welfare sector also overlap considerably.

1.49 The submission of the Australian Institute of Welfare and Community Workers highlights this overlap:

> "… the tasks and duties usually performed by [welfare workers] are also performed by many others, some of whom belong to already registered professions such as psychologists and nurses…"[10]

1.50 Currently, such practitioners must adhere to the requirements of the profession with which they are registered, however they, like the remainder of the unregistered professions, are not subject to any specific requirements regarding their unregulated secondary services.

1.51 Given that registered health professionals are generally subject to criminal background checks, quality and safety standards and are also qualified in a health-related field, some of the risks to consumers associated with accessing an unregistered practitioner are averted.

1.52 However, some researchers have suggested that registered medical professionals who are not providing alternative techniques as primary services may be more likely to cause injury to patients:

[8] Submission Number 4 from the Association of Massage Therapists Ltd
[9] Bensoussan, A., & Myers, S. P. (1996), *Towards a Safer Choice: The Practice of Traditional Chinese Medicine in Australia*, Faculty of Health, University of Western Sydney.
[10] Submission Number 22 from the Australian Institute of Welfare and Community Workers

> "…there is a significant difference between the adverse event rate per year of full-time TCM practice for medical and non-medical practitioners. Medical practitioners report a higher rate of adverse incidents. This may reflect shorter TCM training programs or an increased willingness to report adverse events. However, there is no evidence to support the latter."[11]

1.53 This risk is compounded by consumers failing to inform their general practitioner of the alternative medications they are taking. Studies show that 57.2% of alternative medicine users do not tell their GP of this use.[12]

1.54 On the other hand, Professor Alastair MacLennan (Department of Obstetrics and Gynaecology, University of Adelaide) explained that alternative practitioners may be treating ailments they are not qualified to treat, and GPs and other registered medical professionals would be better placed to identify and respond in these situations.[13]

1.55 These and other risks associated with accessing unregistered services are further explored in Chapter Two.

Consequences of the Current Regulatory Environment

1.56 The current regulatory environment in NSW enables consumers to access a diverse range of health services and therapies not only from mainstream registered practitioners but also from unregistered practitioners who provide numerous services that are generally inaccessible from mainstream health providers.

1.57 Members of the public are consequently able to choose a therapist whose philosophy best meets their needs.

1.58 It also enables thousands of health practitioners to derive income and make a living from providing services that are in steady demand by the public.

1.59 Nevertheless, the unregulated nature of the unregistered health field means that the services available to consumers vary significantly on factors such as cost, efficacy, evidence-base, intensity of treatment, philosophical grounding and clinical testing.

1.60 Practitioners themselves also vary in terms of their length of experience and the standard of their qualifications.

1.61 While many possess appropriate skills and experience, some have little or no qualifications or experience, or even false qualifications.[14]

1.62 At present, consumers who access the services of unregistered professionals in NSW are provided with little protection against inappropriate treatment or behaviour, as such practitioners do not fall within the legislative jurisdiction of a registered profession:

> "There is no mechanism to deal with cases where a practitioner who is not required to be registered engages in misconduct or is not competent or is no longer fit to practise.

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[11] Bensoussan, A., & Myers, S. P. (1996), *Towards a Safer Choice: The Practice of Traditional Chinese Medicine in Australia*, Faculty of Health, University of Western Sydney.

[12] MacLennan, A. H., Wilson, D. H., & Taylor, A. W. (2002). *The escalating cost and prevalence of alternative medicine*. Preventive Medicine, 35, 166-173.

[13] Briefing with Professor Alastair MacLennan, Department of Obstetrics and Gynaecology, University of Adelaide. 10 August 2006.

[14] Evidence provided to the Committee by Dr Louise Newman, Director, Australian and New Zealand Institute of Psychiatry

There is no capacity to exclude that person from practising or to place conditions on their practise. Where a matter is referred to the DPP, the criminal courts have no express power to restrict the manner in which a practitioner conducts her or his practice."[15]

1.63 With no required minimum qualification, documented proof of experience, codes of professional conduct or criminal background checks, the risk to the public when accessing the services of unregistered professionals is heightened.

1.64 The Submission of the Australasian Podiatry Council described the potential impact of the absence of accountability mechanisms for this group of practitioners:

> "A lack of accountability to educational standards translates into health care practitioners who may have had insufficient preparation to enable safe clinical practice."[16]

1.65 Furthermore, the absence of appropriate complaints and disciplinary mechanisms and mandatory professional indemnity insurance leaves consumers who have received inappropriate treatment from an unregistered practitioner without the avenues for correction offered by the disciplinary boards of registered professions:

> "Clearly, the limitations of this system are self-evident in that it cannot and does not provide the public with a comprehensive process of accountability for ethical and professional conduct… Ultimately, the system fails to give a means of redress for professional misconduct."[17]

1.66 Of particular note, the current regulatory environment previously enabled practitioners who had been deregistered from a registered health profession to continue to provide health services under unregulated titles:

> "The capacity for deregistered practitioners to continue practicing in an unregulated health area has the potential to undermine public confidence in the integrity, competence and suitability of health practitioners generally.
>
> This anomaly also tends to discredit the registration system where practitioners who comply with their obligations see unsuitable persons continuing to carry on a health practice."[18]

1.67 Until recently (see Chapter Ten), practitioners who had been deemed unfit to practice by a professional registration board are currently free to provide often very similar health services so long as they do not practice under another title regulated by statute.

1.68 The Psychotherapy and Counselling Federation of Australia highlighted this issue in its submission to the Review [Submission 29], which is particularly prevalent in the professions of counselling and psychotherapy:

> "A number of persons who have been struck off from a statutory register, for example, psychiatrists and psychologists, have set up practice using the term Counsellor, Therapist or Psychotherapist and virtually conduct the same practice as before…"

1.69 Consequently, the current regulatory environment is such that various freedoms are granted to both practitioner and consumer.

---

[15] Submission Number 8 from the NSW Health Care Complaints Commission
[16] Submission Number 16 from the Australasian Podiatry Council
[17] Submission Number 24 from the Australian Association of Social Workers- NSW Branch
[18] Submission Number 8 from the NSW Health Care Complaints Commission

1.70 Nevertheless, a lack of clear guidelines and accessible information for consumers and the absence of enforceable expectations of practitioners results in much of the responsibility for ensuring appropriate treatment being transferred to the consumer:

> "A carte blanche 'free market' approach places a greater burden on consumers than is reasonable, where services are poorly understood."[19]

1.71 Factors affecting consumer choice may have little to do with the level of regulation offered for that practitioner, of which, it has been argued, many consumers are simply unaware:

> "Many consumers are unaware of the differences between the services of registered and unregistered health professionals. Unless they specifically research it, consumers are largely unaware of the different types of therapies around."[20]

1.72 The cost of accessing the services of these various professionals may be a factor influencing consumer selection. It could be that consumers choose the services of an unregistered or an unqualified professional who is cheaper over a registered or more qualified practitioner whose charges are greater.

1.73 Stigma may also play a role in the selection of a health service provider, in that people may be more likely to access the services of a 'life coach' than those of a psychiatrist simply because of the perception of psychiatrists in the community.[21]

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[19] Submission Number 26 from Gestalt Australia & New Zealand Inc.
[20] Evidence provided to the Committee by Dr Louise Newman, Director (Australian and New Zealand Institute of Psychiatry).
[21] Evidence provided to the Committee by Dr Louise Newman, Director (Australian and New Zealand Institute of Psychiatry).

Chapter Two - Potential Risks of Unregistered Healthcare Practice

Complementary and Alternative Therapies

2.1 In '*Towards a Safer Choice: The Practice of Traditional Chinese Medicine in Australia'*, researchers Professor Alan Bensoussan and Dr Stephen Myers identified numerous risks associated with accessing the services of unregistered health practitioners in the fields of complementary and alternative medicine, particularly Traditional Chinese Medicine.

2.2 These risks have been classified as either risks of commission or risks of omission, and whilst they are discussed in relation to complementary and alternative health fields in this instance, many of these risks apply generally to all unregistered health services.

Risks of Commission

2.3 Risks of commission relate to direct and inappropriate acts undertaken by practitioners during treatment, and include the following:

Removal of Appropriate Medical Treatment

2.4 There is a risk that persons accessing therapy from an unregistered professional may discontinue taking their conventional medication, either at the direction of the professional or voluntarily.

Incorrect Prescribing

2.5 There are several ways in which practitioners may inappropriately prescribe medication to consumers, including: prescribing preparations not suitable for the consumer's condition; failing to consider contraindications; prescribing medication in inappropriate dosages or for an inappropriate length of time; and failing to consider and avoid known interactions with pharmaceuticals.

Risks of Omission

2.6 Risks of omission arise when practitioners have inadequate skills or are unaware of their own limits of practice. These risks include:

Misdiagnosis

2.7 As many unregistered health practitioners are not medically qualified, the risk stands that a significant underlying pathology may not be detected, resulting in a delay in the consumer receiving appropriate treatment.

Failure to Refer

2.8 The practitioner may also fail to recognise the limits of their own practice, refraining from referring a patient to a more appropriate health professional when more specialised or specific treatment is needed.

2.9 Failure to refer differs to misdiagnosis, in that in this instance the practitioner may diagnose correctly, but falsely assumes that the treatment he or she offers is appropriate or effective.

Failure to Explain Precautions

2.10 Some herbal preparations must be prepared in a specific way to reduce toxicity. If these requirements are not specified to the consumer clearly it can result in a severe toxic reaction.

2.11 Similarly, practitioners may not inform consumers of the potential adverse side effects of treatment.

Other Unregistered Therapists

2.12 In an article written for the Sydney Morning Herald in September 2005,[22] Dr Louise Newman (Director of the NSW Institute of Psychiatry and the Australian and New Zealand Institute of Psychiatry) outlines a number of adverse consequences potentially arising as a result of the unregulated nature of the counselling and psychotherapy professions. These include:

- Details of practitioner qualifications are not readily available, and consumers aren't easily able to determine a practitioner's level of experience in particular therapies;
- Many people seeking help are vulnerable to inappropriate or inept therapies, due to the complex nature of their problems;
- Many therapies involve the recollection and discussion of traumatic issues and experiences, evoking often distressing emotions that require experienced and qualified support;
- Some unqualified practitioners may be offering unproven and/or potentially harmful treatments.

2.13 In a follow-up briefing with the Committee, Dr Newman expanded on these issues, and explained that there is a tendency for some of the most vulnerable members of society, including survivors of child sexual abuse, to end up with service providers providing fringe health services.

2.14 The submission of the NSW Branch of the Australian Association of Social Workers [Submission 24] reiterated the vulnerability of many consumers accessing unregistered health services- in this instance the services of social workers:

> "Many individuals who access social work services are the most vulnerable and disadvantaged members of the community, some due to permanent intellectual disability or mental illness, others temporarily, due to physical and/or emotional trauma, life events or stress".

2.15 Submissions to the current Review identified numerous other risks associated with particular professions. Some examples of these are outlined below. Once again, whilst the examples given are in relation to particular professions, many could apply to a number of health professions, or to unregistered health practice in general.

[22] Newman, Dr Louise. (21 September 2005). *Stricter therapy rules needed, for the sake of community health*. Sydney Morning Herald.

Failure to Identify Limits of Practice

2.16 The NSW Branch of the Australian Association of Social Workers identified the potential risk of social workers not recognising a situation as being beyond their capabilities as a practitioner:

> "Another area of potential risk to the individual and community is that social workers may not identify limitations in the context of their own practice. For instance, this may involve a failure to refer service users for medical and/or psychiatric care, especially in those cases when an individual is threatening harm to him or herself, or others.
>
> In the same way, social work assessment is an essential practice tool for the social worker; inadequate assessment, or the failure to correctly assess the situation, may have dangerous outcomes."[23]

Lack of Skills/Experience in the Delivery of Specific Health Services

2.17 In the field of welfare/counselling, the therapeutic relationship requires the consumer to devolve sensitive and highly emotional information about themselves and their experiences. If these emotions are not managed correctly, the consumer can be left in a dangerously vulnerable state, feeling more confused and discouraged at the end of a therapy session than before it began.

2.18 The Australian and New Zealand Association of Psychotherapy raised serious concerns about mental health practitioners providing services they are not qualified to provide, which often has the effect of worsening the condition of the client to the point where the consumer becomes seriously ill.[24]

2.19 The Australian Association of Social Workers- NSW Branch, identified several therapeutic techniques as requiring specialised training and skills to perform responsibly, including Eye Movement Desensitisation and Reprocessing, Hypnosis, Guided Visual Imagery and Psychodrama.

2.20 The NSW Branch of the Australian and New Zealand College of Psychiatry frequently sees individuals who have been damaged as a result of accessing the services of persons who are inadequately experienced and trained in the therapy they provide.[25]

2.21 Submissions to the Committee's Review provided additional evidence that many unregistered health services require highly specific skills to deliver safely and effectively.

2.22 The Australasian Podiatry Council outlined the serious risks to consumers presented by foot carers who are poorly trained or inexperienced:

> "There are many potentially dangerous situations associated with providing foot care, primarily due to the use of sharp instrumentation, which have the potential for serious or life-threatening damage to patients. A thorough understanding and strict adherence to infection control standards is essential in preventing the transmission of infectious diseases such as Hepatitis B & C and the HIV virus. Patients receiving foot care often have complex medical and pharmacological needs, all which must be fully appreciated by any practitioner attending to their health care.

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[23] Submission Number 24, Australian Association of Social Workers- NSW Branch
[24] Submission Number 18 from the Australian & New Zealand Association of Psychotherapy
[25] Briefing from Dr Louise Newman, Director, Australian and New Zealand College of Psychiatry- NSW Branch, 5 April 2006.

People with diabetes, for example, face the loss of a limb or death if foot complications are inadequately detected or poorly managed. Therefore, adequate and accurate patient assessment must be conducted by suitably qualified practitioners, in order to determine those at risk."[26]

2.23 The Australian Association of Occupational Therapists [NSW Branch] cited the potential for serious injury to consumers as a result of inappropriate skills in the following areas of occupational therapy practice:[27]

- Functional capacity evaluation: The therapist needs to be able to identify safe limits and have knowledge of the pathology. Can cause serious damage to the vertebral discs.
- Upper limb rehabilitation following a stroke: Potential to cause subluxation to a paralysed limb through poor handling post-stroke.
- Hand therapy: Potential to cause damage to surgical repair either by mobilising too early, not protecting the graft or inadequate mobilisation.
- Equipment prescription: Prescription of unsafe or inappropriate equipment (such as wheelchairs etc).
- Environmental modifications/ergonomics
- Manual handling
- Post-surgical management
- Cardiac rehabilitation: Potential for a further cardia event if an inappropriate mobilisation program is given, or deterioration of the heart muscle if early mobilisation is inadequate.
- Treatment of burns: Poorly fitted or fabricated splints can result in contractures that can cause permanent deformity and limited function.

Financial Exploitation

2.24 Financial exploitation has been recognised as a significant potential risk factor by several major reviews of the regulation of unregistered health professions, including the NSW Health review in 2002: *'Regulation of Complementary Health Practitioners'*, and the Commonwealth review in 2003: '*Complementary Medicines in the Australian Health System'*.

2.25 Likewise, several submissions to the current review raised the issue of financial exploitation as a potential risk factor with the current unregulated environment.[28]

Sexual Exploitation

2.26 Several industry groups cited the potential for sexual exploitation of vulnerable health consumers as an ongoing risk with the unregistered professions, a risk closely associated with the absence of accountability mechanisms for this group of professionals.

[26] Submission Number 16 from the Australasian Podiatry Council.
[27] Submission Number 33 from the Australian Association of Occupational Therapists- NSW Branch
[28] The submissions of OT Australia [Submission 34} and the Australian Homeopathic Association [Submission 23}

Consumer Awareness

2.27 Given the complexity of the current regulatory environment for the health professions, many consumers appear to be unaware of where to go to access professional health services.

2.28 Two main areas where this lack of awareness has been identified are:

- Determining the difference between registered and unregistered practitioners
- Understanding the differences between the various forms of therapies

Distinction between Registered and Unregistered Professionals

2.29 A number of submissions have suggested that, for the most part, consumers may be unaware of the difference between registered and unregistered professionals.

2.30 The submission of the Adverse Medicine Events Line [Submission 11] reported that, throughout the interactions of their staff with health consumers, it became apparent that members of the public often assumed that all persons providing a health service came under some (if not the same) form of regulation:

> "It has been our impression that many consumers assume that all "health practitioners" are automatically regulated by registration. Thus they may trust and pay for even the most spurious of practices; and when they discover that the practice is questionable, they wish to complain." [29]

2.31 Consumers may also be unsure as to the difference between the services provided by practitioners in similar professions, such as psychologists, counsellors, psychotherapists and psychiatrists, despite the fact that these services can differ highly in terms of practitioner training, speciality and experience.[30]

2.32 It has become apparent through the receipt of submissions by the Committee that many health professionals and industry bodies themselves use the terms 'registration' and 'accreditation' interchangeably.

2.33 Too often, membership of a professional association was referred to by service providers as 'registration', serving to further complicate matters for consumers who are expected to make a distinction.

2.34 Given the lack of clarity surrounding the differences between the services available through different providers, it is possible that (as discussed in Chapter One) consumers may be relying more heavily on other factors such as cost and public perception when selecting a health practitioner.

Distinction between Different Forms of Therapies

2.35 Consumers may also be unaware of the differences between therapies.

2.36 In her briefing with the Committee, Dr Louise Newman (Director of the Australian and New Zealand Institute of Psychiatry) stressed that, unless they specifically research it, consumers are largely unaware of the different types of therapies around, and, once identified, may find it difficult to differentiate between the therapies on offer.

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[29] Submission Number 11 from the Adverse Events Medicine Line, Mater Pharmacy Services

[30] Information provided to the Committee by Dr Louise Newman, Director (Australian and New Zealand Institute of Psychiatry)

2.37 Dr Newman explained that the NSW Institute of Psychology receives calls on a daily basis from members of the public enquiring about where to locate appropriate treatment.[31]

2.38 The experience of the Psychotherapy and Counselling Federation of Australia (PACFA) is similar, receiving 4-5 requests per week from consumers asking for a referral.[32]

2.39 Dr Newman believed it was essential that adequate information on treatment choices be made available to consumers.

2.40 Professor Alastair MacLennan from the department of Obstetrics and Gynaecology, University of Adelaide, has also called for more thorough education of the public regarding treatment options available, including their efficacy.

2.41 Professor MacLennan stressed that consumers are constantly presented with advertisements, but few sources of reliable information are available.

2.42 Consequently, he emphasised the need for consumers to be informed about complementary and alternative products, as there is steady demand from the public for information to enable them to make informed choices about their own health care.

2.43 Overall, there is the additional risk that a small number of persons with no interest in providing an effective health service are simply exploiting the current system by deliberately misleading consumers for personal gain. Examples of such individuals are provided in the following chapter.

[31] Briefing with Dr Louise Newman, Director, Australian and New Zealand Institute of Psychiatry. 5 April 2006.
[32] Briefing with Mr Milan Poropat, Director, Psychotherapy and Counselling Federation of Australia. 9 August 2006.

Chapter Three - Consumer Experiences

3.1 Over the past few years considerable media attention has been given to the exploitation of health consumers by practitioners who take advantage of the freedoms within the health system to profit personally at the expense of others:

> " In recent times there has been considerable publicity given to problems that can arise in respect of health practitioners who are not required to be registered in NSW. Alternative practitioners who purport to treat people with terminal illnesses for considerable sums of money and de-registered psychiatrists who set up practice as a counsellor or psychotherapist, have come under scrutiny in the media and parliament."[33]

3.2 The adverse experiences of several consumers with unregistered health professionals have been brought to the attention of the Committee both in the lead up to the current review and during the course of obtaining evidence.

3.3 These experiences highlight the risks associated with the current level of regulation of many health professions and the inability of current complaints mechanisms to respond adequately to many consumer complaints.

Case Study One

At a Public Hearing held on 27 April 2006, the Committee heard evidence from Mrs Marilyn Christie, wife of the late Mr Allan Christie who was diagnosed with lung, liver and bone cancer in August 2004.

Mrs Christie provided the Committee with details of the experiences of herself and her husband whilst accessing the services of Mr Paul Perrett, an unregistered practitioner promoting himself as a 'biochemist' in the Hunter region of NSW.

Mr Christie had attended the clinic of Mr Perrett upon advice from a friend when Mr Christie had completed conventional treatment and doctors advised that no more treatment could be offered. That friend had also been visiting alternative health practitioner Mr Perrett at the Rutherford Health Clinic.

"Dr _______ examined Allan and advised chemotherapy and radiotherapy for 3 months treatment, which he did, finished at the end of November. There was no more treatment offered, so that was what happened. Just after that we were told about a friend at Maitland, _______, who was going to a biochemist at Rutherford, who really believed in him, and he was taking his so-called treatment and advised Allan to go and see him, which we did."

Mr Perrett offered Mr Christie six months worth of treatment for his condition, explaining to the Christie's that whilst he could not specifically cure Mr Christie of cancer, the treatment he offered would work towards retarding the cancer cells. By using convoluted sentences and recounting personal 'testimonies', Mr Perrett's presentation gave the Christie's no reason to suspect him of dishonesty.

"We made the appointment, we saw him straight away in December. He said there is no cure for cancer, which we all realized that was so, but he said he would give him six months treatment with these capsules which were to retard cancer cells and a lot of other words that he used that we didn't really understand but he said when he was twelve, an old Chinese doctor cured his leukaemia with this treatment and various other treatments."

[33] Submission Number 8 from the NSW Health Care Complaints Commission

Mr Perrett requested nearly four thousand dollars in fees for his medication, which he demanded upfront. With no other avenues for treating Mr Christie available, the Christie's agreed to the fee, and paid Mr Perrett in advance.

"He said he wanted the money upfront - $3,778.00, which we decided to go ahead with that because it was the only hope of Allan getting any help. And he strictly gave us the impression that, although it could not be cured as such, that all this would help him and that's the way it would be."

Mrs Christie explained to the Committee that Mr Perrett used various names for the medication given to Mr Christie which they had not heard of at the time and have since learned were fictitious. Medical students who regularly visited Mr Christie uncovered the scheme:

"The subject of the treatment of Perrett came up and [the medical students] were very interested and wanted to know what was in these capsules so we thought they were sending them away for analysis, but as it turned out it was a computer test done on them and the results came back that one was a placebo, and the other one- he was taking these two at the time, was, they had properties in but they had no idea what properties they were in the other capsules."

The treatment offered to Mr Christie failed to have any positive effects. Mr Christie subsequently died in May 2005.

At this time, Mrs Christie contacted Mr Perrett to report that the products had failed to deliver any of the outcomes he had promised. Mr Perrett replied that he could not be held responsible for the outcomes of treatment if Mr Christie had not taken the medication as instructed. He then requested that Mrs Christie return the unused capsules.

Speech to the House of Representatives- Federal Member for Shortland, Ms Jill Hall MP

3.4 In response to growing concerns regarding the practices of Mr Paul Perrett, the Federal Member for Shortland, Ms Jill Hall MP, addressed the House of Representatives in October 2005 with regards to the regulation of the alternative health industry:.

> "Paul Perrett was a serial offender and had a very dubious, dark history with questionable qualifications. Two of the most outlandish treatments he employed were the injection of urine into the veins of those unsuspecting, trusting people who sought his help and the use of peroxide drips. He portrayed himself as a person born in China, cured of childhood leukaemia by a Chinese herbalist, highly educated in the area of naturopathic medicine, widely travelled and a recipient of research grants. The fact is that he was born in Maitland, had a history of fraud and larceny and has spent two stints in jail for his fraudulent actions. He is hardly the type of person in whose hands you would be prepared to place your life."

3.5 When appearing before the Committee at a Public Hearing in Lake Macquarie (27 April 2006) Ms Jill Hall MP reported that she had recently written to the House of Representatives Standing Committee on Health and Ageing to request that the Committee conduct an inquiry into the regulation of the natural health and alternative health industry.

3.6 At this time, no decision regarding this request has been made.

Private Members Statement- Member for Charlestown, Mr Matthew Morris MP

3.7 Similarly, the NSW Member for Charlestown Mr Matthew Morris MP publicly condemned Mr Perrett's activities in both a Private Members Statement made in NSW Parliament in November 2005, and when appearing before the Committee at a Public Hearing in April 2006.

3.8 As part of this statement, Mr Matthew Morris MP expressed his anger at the treatment received by a number of NSW residents at the hands of Mr Perrett, and called on the Australian Traditional Medicine Society, the NSW Health Care Complaints Commission and the NSW Minister for Health to investigate and curtail the business of Mr Perrett.

> "Mr Perrett offers consumers treatment for a variety of cancers and claims not to cure cancer, but happily tells patients that he can rid their body of bad cells.
>
> How is a patient to interpret this statement? Of course, people would be led to believe that their cancer will be eliminated. Mr Perrett is a con man in the strongest form and has ripped off hundreds of cancer sufferers, charging some of them up to $3,800 for an array of medications. Mr Perrett's medications have been shown through analysis to contain no active ingredients; rather, they are mute substances that offer nothing to treat forms of cancer."

3.9 Following this Private Members Statement, Mr Matthew Morris MP issued a Question Without Notice to the Minister for Fair Trading, Ms Dianne Beamer MP, on 1 December 2005, requesting information on the status of the investigation by the Office of Fair Trading into Mr Perrett.

3.10 In response, Ms Dianne Beamer MP reported that the Office of Fair Trading investigation was well underway, and subsequently issued a public warning notice in relation to Mr Paul Perrett.

> "I can inform the House that Fair Trading investigators raided Mr Perrett's home at 1.20p.m. today after obtaining a search warrant and seized a number of items. Today I am issuing an official ministerial warning against Paul Perrett under section 86A of the Fair Trading Act. As Minister for Fair Trading I am warning consumers against having anything to do with Paul Perrett or any of his activities. Additionally, I have directed the Office of Fair Trading to take whatever measures are necessary to prevent Mr Perrett making false statements or indulging in misleading and deceptive conduct. This may well include seeking an interim order from the Supreme Court to shut down Mr Perrett's operations pending further prosecution under the Fair Trading Act."

3.11 In May 2006 the NSW Minister for Fair Trading announced that she would be asking the Supreme Court to impose a lifetime ban on Mr Paul Perrett.

3.12 The HCCC investigation into Mr Perrett has also been completed, resulting in a referral to the Director of Public Prosecutions for possible criminal charges.

Case Study Two

Another high-profile case is that of Mr Jeffrey Dummett, a self-titled 'naturopath' who operated out of the 'Research Institute of Diet Disease and Prevention' in Oatley. He has recently been charged with manslaughter over the death of Mr Krsteski, who attended Mr Dummett's clinic after his sister found one of his flyers in a shopping trolley.

Mr Krsteski suffered from chronic renal failure, high blood pressure and hepatitis B, and had visited Mr Dummett in hope of finding a cure.

Mr Krsteski's sister alleges that Mr Dummett advised Mr Krsteski to undertake an eleven-day detoxification program that involved a combination of vitamins and fasting and cost him approximately $5000.

It has also been alleged that Mr Dummett instructed Mr Krsteski to discontinue his dialysis treatment for the duration of the program.

Mr Krsteski's sister was under the false impression that Mr Dummett was a doctor, and he successfully avoided specific questions about his qualifications:

> "... when Mr Dummett was asked to specify details of his alleged qualification, he could only say he had completed "modalities" of a course."[34]

Mr Krsteski died of a heart attack and renal failure in the care of Jeffrey Dummett in February 2002.

3.13 Mr Dummett's case has been adjourned by the Supreme Court until 6 October 2006, when Mr Dummett may be required to enter a plea to the charges.

3.14 The Committee received several submissions from consumers, their relatives and other members of the public regarding adverse experiences with unregistered health practitioners.

3.15 Broadly, these submissions covered issues ranging from allegations of child sexual abuse after treatment by unqualified counsellors to false advertisements, promotion of illegitimate diagnostic tools and bogus health products.

3.16 Consumers were unaware that minimum qualifications were not a Government requirement for certain health professions, and were of the view that a minimum standard should be prescribed.

3.17 Consumers also reported finding the process of determining appropriate avenues for complaint very confusing.

3.18 Overall, consumers expressed frustration at the lack of information available to them both in selecting a qualified practitioner and in pursuing a complaint.

[34] Daily Telegraph. (22 July 2005). *Without regulation the alternatives can be fatal*.

Chapter Four - Current Regulatory Mechanisms

NSW Health Care Complaints Commission

4.1 At present, the Health Care Complaints Commission is able to receive and investigate complaints against all health practitioners in NSW, registered or otherwise.

4.2 Division 1, Section 7 of the *Health Care Complaints Act 1993* asserts that:

(1) A complaint may be made under this Act concerning:

(a) the professional conduct of a health practitioner, or

(b) a health service which affects the clinical management or care of an individual client.

(2) a health service provider

(3) a complaint may be made against a health service provider even though, at the time the complaint is made, the health service provider is not qualified or entitled to provide the health service concerned.

4.3 Where a complaint is made to the Commission against a registered health professional, the Act requires the Commission to notify the relevant registration board.

4.4 The Commission must also supply any reasonable information about the complaint to the board on request.

4.5 The registration body is prevented from taking any action in response to the complaint whilst the Commission investigation is underway.

4.6 Once the Commission has formally investigated a complaint, the options available to it are as follows:

(a) Refer the complaint to the Director of Proceedings,

(b) Refer the complaint to the appropriate registration authority (if any) for the consideration of the taking of action under the relevant health registration Act, such as the referral of the health practitioner for performance assessment or impairment assessment,

(c) Refer the complaint to another agency or unit (such as the Office of Fair Trading)

(d) Make comments to the health practitioner on the matter of the subject of the complaint,

(e) Terminate the matter,

(f) Refer the subject of the complaint to the Director of Public Prosecutions.

4.7 The Commission must consult with the appropriate registration authority before deciding what action to take.

4.8 In general, disciplinary action not warranting referral for criminal proceedings is determined and enforced under the relevant professional registration legislation, in collaboration with the relevant disciplinary board.

4.9 Consequently, given that the majority of disciplinary sanctions available to the Commission at the conclusion of an investigation largely depend on the existence of a registration authority, the Health Care Complaints Commission is faced with restricted options for disciplining an unregistered health professional, for whom such an authority does not exist.

4.10 In the event that an investigation into a complaint against an unregistered health practitioner results in the Commission substantiating a basis for non-criminal disciplinary action, it may, at present, only make comments to the health practitioner on the subject of the complaint.

4.11 This problem was raised by the Commission during the previous Committee inquiry in 1998:

> "The only relevant action for the Commission in substantiated complaints against unregistered health practitioners is to make adverse comments to the respondent. The Commission is not able to make these findings public nor is it able to take any enforcement action in relation to its recommendations to the practitioner."

Submission to the Committee, 9 July 1998

4.12 The Commission further expanded on this problem in its submission to the current review:

> "There is no mechanism to deal with cases where a practitioner who is not required to be registered engages in misconduct or is not competent or no longer fit to practise. There is no capacity to exclude the person from practising or to place conditions on their practice. Where a matter is referred to the DPP, the criminal courts have no express power to restrict the manner in which a practitioner conducts his or her practice."[35]

NSW Health Professional Registration Boards

4.13 NSW health professional registration boards also have a role to play in the regulation of unregistered healthcare professionals in NSW.

4.14 Registration boards receive complaints in accordance with Section 7 of the *Health Care Complaints Act 1993* (outlined above).

4.15 There are currently nine health registration boards in NSW. With the exception of three (medical, pharmacy and dentists), these boards are staffed by the Health Professionals Registration Boards (HPRB) Corporation.

4.16 Complaints about unregistered practitioners to registration boards can generally take one of two forms; either a practitioner is holding themselves out to be a registered professional but is not registered with the board or a de-registered health professional is continuing to practice despite having their registration terminated.

4.17 The individual health professional registration Acts require registration boards to notify the Commission of any complaint received.

4.18 The Commission will also consult with the relevant registration board to determine whether a complaint should be investigated or referred to the registration board for action.

[35] Submission Number 8 from the NSW Health Care Complaints Commission

4.19 Registration boards cannot issue sanctions against professionals who are not a member of their profession, with the exception of those holding him or herself out to be a member or those who have been deregistered.

NSW Medical Board

4.20 The NSW Medical Board can investigate complaints against unregistered practitioners in the same manner as other NSW health registration boards. That is, the Board may investigate allegations that a practitioner is holding him or herself out to be registered with the Board when they are not.

4.21 This includes claims to be a registered medical professional, doctor of medicine, physician or surgeon, or to be entitled, qualified, able or willing to practise medicine or surgery in any of its branches or to give or perform any medical or surgical advice, service attendance or operation.

4.22 The Board is able to receive complaints about doctors from anyone in the community. The Board reviews each complaint and makes an assessment of the best method of addressing the issues raised in it. This assessment is undertaken by a delegate of the Medical Board in conjunction with the HCCC.

4.23 Unlike other registration boards, however, the Medical Board- not the HCCC- must take responsibility for initiating any proceedings for offences under the *Medical Practice Act 1992*.

NSW Department of Health

4.24 The NSW Department of Health is responsible for several Acts that regulate at least some aspects of the practice of unregistered health professionals.

4.25 *Public Health Act 1991*

Section 10A of the *Public Health Act 1991* places restrictions on the way practitioners promote and provide services, including who may provide them.

> "10AB Advertisement or promotion of health services
>
> (1) A person must not advertise or otherwise promote a health service in a manner that:
>
> (a) is false, misleading or deceptive, or
>
> (b) creates an unjustified expectation of beneficial treatment."

4.26 Section 10AH restricts performance of particular foot care procedures by unregistered practitioners.

4.27 Spinal manipulation, electrophysical treatments, prescription of spectacles and other lenses and certain dental practices are also expressly restricted to particular classes of registered health professionals.

4.28 *Health Records and Information Privacy Act 2002*

Section 25 of the *Health Records and Information Privacy Act 2002* governs the retention of appropriate health records by health practitioners in private practice:

“25 Retention of health information: health service providers

(1) A private sector person who is a health service provider must retain health information relating to an individual as follows:

(a) in the case of health information collected while the individual was an adult—for 7 years from the last occasion on which a health service was provided to the individual by the health service provider,

(b) in the case of health information collected while the individual was under the age of 18 years—until the individual has attained the age of 25 years.

(2) A health service provider who deletes or disposes of health information must keep a record of the name of the individual to whom the health information related, the period covered by it and the date on which it was deleted or disposed of.

(3) A health service provider who transfers health information to another organisation and does not continue to hold a record of that information must keep a record of the name and address of the organisation to whom or to which it was transferred.

(4) A record referred to in subsection (2) or (3) may be kept in electronic form, but only if it is capable of being printed on paper.

(5) Nothing in this section authorises a health service provider to delete, dispose of or transfer health information in contravention of an Act (including an Act of the Commonwealth) or any other law.”

4.29 Accordingly, unregistered health practitioners are bound by the provisions of this Act.

4.30 *Poisons and Therapeutic Goods Act 1966*

The *Poisons and Therapeutic Goods Act 1966* regulates the possession, sale or prescription of poisons in NSW.

Section 10 of the *Act* restricts the supply of poisons (other than the wholesale supply, which requires a wholesaler’s licence) to practitioners of certain professions, all of which are registered professions:

10 Prohibition on supply of certain substances otherwise than by wholesale

(1) A person who supplies otherwise than by wholesale any substance specified in Schedule 1, 2 or 3 of the Poisons List except under, and in accordance with the conditions of, a general supplier’s licence or a general supplier’s authority issued under the regulations is guilty of an offence.

Maximum penalty: 15 penalty units or imprisonment for 6 months, or both.

(2) Subsection (1) does not apply to a supply:

(a) by a medical practitioner, dentist, veterinary surgeon or pharmacist in the lawful practice of his or her profession, or

(a1) by a nurse practitioner, who is authorised under section 17A to supply the substance, in the lawful practice of his or her profession as such, or

(a2) by an optometrist, who is authorised under section 17B to supply the substance, in the lawful practice of his or her profession as such, or

(a3) by a midwife practitioner who is authorised under section 17A to supply the substance in the lawful practice of his or her profession as such, or

(b) by any other person, or person of a class, licensed or authorised by or under this Act to supply the substance.

4.31 This legislation impacts the work of unregistered practitioners, who are prohibited from accessing or dispensing substances listed in Schedules 1, 2 and 3 of the Poisons List.

Health Professional Associations

4.32 Health professional associations are currently involved in the handling of complaints against unregistered health practitioners who are members of their particular association.

4.33 Associations for the unregistered professions generally have established disciplinary boards that investigate and sanction members who have been found to breach the Code of Ethics or Conduct.

4.34 Consequently, members of the public are able to complain about the conduct of a member professional to the appropriate professional association.

4.35 Whilst these associations provide some degree of governance for health professionals, many associations agree that their powers to monitor and discipline their members are limited.

4.36 At the outset, it has been argued that many professional associations lack the resources to effectively administer a system for complaints resolution:

> "The majority of professional associations do not have the legal understanding or the resources to implement a fair, effective, accountable and equitable complaints resolution mechanism."[36]

4.37 Moreover, associations have no jurisdiction to specify minimum standards of practice for their profession as a whole, or to investigate or discipline practitioners outside of the association.

4.38 Sanctions against members of the association who have been found to breach the association's Code of Conduct are usually little more than the revocation of their membership, as Associations have no statutory authority to enforce disciplinary action of any kind.

4.39 Members are also free to leave the association at will, with no impact on their right to practice:

[36] Submission Number 6 from the Australian Traditional Medicine Society

> "…professional association disciplinary action against a member is of limited effect, in that the practitioners can practise without belonging to an association or can readily join another professional association."[37]

4.40 Curbing professional misconduct is further complicated by privacy laws, which prevent one professional association from sharing information on a practitioner's behaviour with another:

> "In the event that one association takes disciplinary action against a member, the member may resign, join another association and continue to practice without modifying their behaviour. Privacy considerations prevent the sharing of information regarding disciplinary matters between associations."[38]

4.41 In the absence of a statutory basis for the establishment of professional associations, even those associations representing the same profession can vary widely in the standards they impose and the qualifications they recognise.

4.42 The submission of the National Herbalists Association of Australia [Submission 25] illustrates this point for the professions of herbalists and naturopaths:

> "The high numbers of associations claiming to represent herbalists and naturopaths leads to a wide variety of standards for each profession…"

4.43 In many cases, such disparity stems directly from the variety inherent to the professions themselves.

4.44 Varying philosophical standpoints, views on accreditation and therapeutic technique means that associations have usually been developed with a particular membership base in mind. As a consequence, the standards expected from members have been tailored accordingly.

4.45 However, some practitioners who have been rejected from mainstream professional associations or whose membership has been terminated by an existing association have been known to establish separate professional associations purposefully based on far lenient criteria.

4.46 The nature of professional associations, being established by practitioners for the promotion of a professional practice and entirely dependent on membership fees to operate, means that the reliance on such associations to protect the interests of consumers is often questionable:

> "There is an underlying conflict of interest as the role of the professional association is to promote and serve the interests of its members."[39]

NSW Office of Fair Trading

4.47 The NSW Office of Fair Trading receives complaints from consumers regarding issues and problems they experience with traders.

4.48 As part of this, the NSW Office of Fair Trading also receives complaints regarding healthcare products and services provided by both registered and unregistered health practitioners.

[37] Submission Number 6 from the Australian Traditional Medicine Society
[38] Submission Number 25 from the National Herbalists Association of Australia
[39] Submission Number 33 from Occupational Therapy Australia

4.49 When a complaint is received by the Office of Fair Trading, it makes a determination as to whether or not the complaint represents a breach of the *Fair Trading Act 1987*, or whether it would be better handled by another regulatory organisation that has the specific capacity to deal with the issues involved, such as the Health Care Complaints Commission. Referrals are then made accordingly.

4.50 The Office of Fair Trading works closely with the Australian Competition and Consumer Commission, the HCCC and NSW Health when making these referrals.

4.51 Where the Office of Fair Trading decides to pursue a health-related complaint internally, they are able to investigate the complaint and either:

- Mediate the complaint;
- Issue a Public Warning Notice;
- Prosecute the complaint, with penalties ranging from fines to injunctions and payment of damages.

4.52 Many of the matters received by the Office of Fair Trading regarding unregistered practitioners relate to allegations of misleading or deceptive conduct and false representations contrary to Sections 42 and 44 of the *Fair Trading Act 1987*.

4.53 Issues of clinical misconduct by health professionals are outside the jurisdiction of the NSW Office of Fair Trading.

Director of Public Prosecutions

4.54 At the end of an investigation by the HCCC, if a health complaint is deemed serious enough to warrant criminal charges the complaint is referred to the Director of Public Prosecutions for examination.

4.55 The functions of the Director of Public Prosecutions (DPP) are specified in the *Director of Public Prosecutions Act 1986* and include:

- Prosecution of all committal proceedings and some summary proceedings before the Local Courts;
- Prosecution of indictable offences in the District and Supreme Courts.
- Conduct of District Court, Court of Criminal Appeal and High Court appeals on behalf of the Crown; and
- Conduct of related proceedings in the Supreme Court and Court of Appeal.

4.56 Sanctions are issued by the DPP in relation to offences of a criminal nature only (e.g. sexual assault or fraud).

4.57 Consequently, prosecution through the DPP requires a substantially more serious complaint and establishment of the criminal burden of proof, making it an unsuitable option for the majority of health complainants:

> "Another limitation in referring matters to the Director is that the standards of evidentiary proof must be beyond reasonable doubt, whereas Registration Boards and professional associations require the lower standard of proof on the balance of probabilities. In many cases involving health professionals, the higher standard of beyond reasonable doubt is very difficult to meet."[40]

[40] Submission Number 6 from the Australian Traditional Medicine Society

Therapeutic Goods Administration

4.58 The Therapeutic Goods Administration (TGA) plays a key role in the regulation of the complementary and alternative medicine market in Australia through it's administration of the national system of regulatory controls for the safety, quality, efficacy and availability of therapeutic goods either used in or exported from Australia.

4.59 The responsibility of the TGA covers both prescription and non-prescription medicines, including complementary medicines.

4.60 The TGA has established the Office of Complementary Medicine, which consists of three main sections: the PreMarket Assessment Section, the Listed Medicines and Communications Section, and the Post Market Review Section.

4.61 The PreMarket Assessment section is responsible for:

- Evaluating the quality and safety of new substances for use in Listable medicines;
- Reviewing the safety and efficacy of products for Registration;
- Reviewing evidence to support indications and claims for complementary medicines in response to complaints, or where there are safety concerns or the indications/claims appear to be wilfully misleading; and
- Reviewing the safety of Listable substances or Listed or Registered complementary medicines where adverse reactions or other problems arise.

4.62 The Listed Medicines and Communications Section is responsible for:

- Provision of advice and assistance to sponsors, consultants and the general public regarding the Listing of complementary medicines;
- Management of other projects specific to complementary medicines, for example, the Australian Regulatory Guidelines for Complementary Medicines (ARGCM).

4.63 The Post Market Review Section is responsible for:

- Monitoring of medicines Listed on the Australian Register of Therapeutic Goods through the Electronic Listing Facility;
- Investigation of complementary medicines where a potential problem has been identified, for example suspected adverse reactions;
- Targeted and random reviews of the safety and efficacy of complementary medicines; and
- Regulatory action in relation to complementary medicines.

4.64 Regulation of medicines supplied in Australia by the TGA differs according to the risk associated with each medicine. High-risk medications are evaluated individually for quality, safety and efficacy, and are included on the Australian Register of Therapeutic Goods.

4.65 Low-risk medications, on the other hand, are not individually evaluated to verify efficacy.

4.66 Sponsors of low risk medication are required by law to possess information to substantiate all of their products' claims, however this evidence is usually only accessed by the TGA should a concern arise.[41]

4.67 There is some evidence to suggest that the availability of complementary and alternative medicines for purchase and dispensing appears to be a source of confusion for many health consumers.

4.68 Research conducted in South Australia in 2004 into the use, cost, beliefs and quality of life of users of complementary and alternative medicine discovered that almost 50% of the survey respondents believed (incorrectly) that all complementary and alternative medicines approved for sale had been independently tested by a Government body such as the TGA.[42]

4.69 Of those who reported this belief, 74.8% thought that these products were tested for quality/safety/side effects; 21.8% thought that these products were tested for what they claimed to do, and 17.9% for efficacy/strength/effect.

Health Insurance Funds

4.70 At present, many consumers accessing the services of health practitioners are entitled to private health care rebates. These rebates are available for a large number of treatments provided by unregistered therapists.

4.71 Information available on the Australian Traditional Medicine Society website indicates the types of complementary or alternative therapies meriting cover by Australian private health care funds.[43]

4.72 Cover is available for widely used complementary or alternative therapies such as acupuncture, homeopathy and naturopathy, as well as a number of lesser-known therapies including the Alexander technique, the myofascial technique and 'touch for health'.

4.73 Health care rebates are also commonly provided for consultations with unregistered practitioners operating within the Western system of medicine, such as counsellors, dietitians and occupational therapists.

4.74 Information received by the Committee from Dr Frances Cunningham (then Director, Australian Health Insurance Association) suggests that all health funds in NSW provide coverage in their ancillary products for at least some natural therapies, with the exception of the Doctors' Health Fund (formerly the AMA Health Fund).

4.75 She reported that the therapies that appear to be most often covered in NSW by a majority of the health funds are naturopathy, acupuncture and remedial massage.

4.76 Health funds establish their own criteria to be met by practitioners wishing to be an eligible provider under the rebate scheme.

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[41] Expert Committee on Complementary Medicines in the Australian Health System. September 2003. *Complementary Medicines in the Australian Health System: Report to the Parliamentary Secretary.*

[42] MacLennan, A. H., Myers, S. P., & Taylor, A. W., (2006), The Continuing Use of Complementary and Alternative Medicine in South Australia: costs and beliefs in 2004, MJA, 184 (1), 27-31.

[43] Australian Traditional Medicine Society. *Health Funds Update June 2006*. www.atms.com.au

4.77 Generally, these criteria include proof of qualifications and experience, however additional criteria are often imposed including minimum lengths of practice, completion of recognised First Aid courses, or membership of a recognised professional association:

> "In the absence of government Registration Boards for the modality, in the first instance, a fund will determine whether they will pay rebates for a particular service and then determine the minimum criteria for a practitioner to be recognised with that fund.
>
> Recognition criteria may include the following:
>
> - Registration of provider; or the holding of a licence under relevant state or territory legislation to render treatment for which recognition is sought;
> - Professional qualifications;
> - Membership of a professional body recognised by the fund;
> - Practising in private practice;
> - Indemnity insurance;
> - Senior first aid certification;
> - Continuing education;
> - The provision of appropriate consulting rooms / facilities that meet the health fund standards; and
> - Other criteria.
>
> Some funds require a practitioner to meet the same or similar criteria as for the relevant Professional Association for the practitioner's modality. Some funds also engage the services of independent referees to assist with the development of recognition criteria in particular modalities."[44]

4.78 The Australian Traditional Medicine Society expressed some criticism of the arbitrary nature of the selection of practitioners for health rebate eligibility in its submission to the current review:

> "While National Competition Policy has been the reason given by about 16 health funds deciding to do their own assessment of complementary medicine practitioners to determine eligibility for provider status, about 30 other health funds are still using [our] membership as their criteria."[45]

4.79 Several complications have arisen from the availability of health care rebates for selected services. In the case of rebate provisions for the services of unregistered health care practitioners, these complications are three-fold: perception of treatment efficacy, perception of provider confidence and perception of complaints responsibility.

Perception of Treatment Efficacy

4.80 In the first instance, the availability of rebates by private health funds can often be mistaken by consumers as providing endorsement for the therapeutic effectiveness of the practice.

[44] Dr Frances Cunningham, Director (Australian Health Insurance Association). Briefing to the Committee on 24 March 2006.

[45] Submission Number 8 from the Australian Traditional Medicine Society

4.81 Consumers may mistakenly believe that if a service warrants reimbursement from a recognised health fund, the treatment itself must have met an established standard of efficacy.

4.82 Alternatively, consumers may be under the impression that, because the services of one practitioner are not eligible for a rebate, those services are somehow less effective than others.

4.83 The Association of Massage Therapists highlights this problem:

> "Massage Therapists can achieve provider status with Health Care Funds either through membership to associations that have an agreement with the health fund(s) or by private application. The effect of this is that Health Funds become the perceived arbiters of qualification to practice despite having no knowledge of the massage profession. This also means that commercial decisions made by Health Funds can affect the public perception of the skill and benefit of massage therapy and massage therapists."[46]

Perception of Provider Competence

4.84 Secondly, in making an assessment about a practitioner's eligibility to provide services under the rebate scheme, health funds are effectively seen to be given responsibility for determining a practitioner's fitness to practice.

4.85 Members of the public can mistakenly believe that a practitioner eligible for a rebate has been stringently assessed and independently accredited before their eligibility is granted. Consequently, as pointed out in numerous submissions to the current review, consumers can rely too heavily on the availability of a rebate as an indicator of practitioner competence.

4.86 This particular point is illustrated in the following excerpt from a submission that speaks particularly about the profession of massage therapy:

> "… there is a public perception that the provision of a provider number by any of the commercial health funds is valid accreditation [of a massage therapist]"

Perception of Complaints Responsibility

4.87 As a result of their role in determining practitioner eligibility for a provider number, health funds are often mistakenly viewed as responsible for practitioner behaviour and are increasingly approached to mediate consumer complaints against unregistered health practitioners eligible for rebates through the fund.

4.88 The submission to the Review by the Association of Massage Therapists Ltd [Submission 5] raised misdirected consumer complaints as a potential issue stemming from the allocation of provider numbers to selected massage therapists by health insurance funds:

> "[The provision of a provider number] leads to an unwise inclusion of Health Funds in the validation of Massage Therapy skills and, potentially, the incorrect assumption that Health Funds are responsible for complaints".

De-facto Regulation by Health Funds

4.89 As a result of their authority to select some individuals for rebate eligibility over others, health funds are inevitably placed in the position of becoming partial regulators of a market where no clear-cut minimum standards exist.

[46] Submission Number 5 from the Association of Massage Therapists Ltd.

> "While different Health Funds continue to follow different standards of recognition they put themselves in the position of bearing some responsibility for the quality of the practitioner. This is, certainly, not a legal position, but may well be a perception of the public."[47]

4.90 As private sector bodies, this responsibility is not appropriate.

4.91 This can also lead to significant variation in the standards of practice recognised by different health insurers and therefore rebated for health consumers.

Proposed Changes to Health Insurance Legislation

4.92 In April 2006 the Federal Minister for Health and Ageing, The Hon Tony Abbott MHR, announced a series of proposed changes to private health insurance products, some of which impact on the provision of rebates to providers of unregistered health services.

4.93 To ensure that all privately insured services are provided by accredited facilities and/or suitably qualified service providers, it is proposed that legislation will be introduced to require uniform safety and quality standards for facilities and providers offering privately insured services from July 2008.[48]

4.94 Details of the accreditation requirements will be developed in consultation with industry, and align with the work of the Australian Commission on Safety and Quality in Health Care.

4.95 Legislation facilitating the introduction of industry-wide uniform private health insurance safety and quality standards is to be in place by April 2007, with the privately insured health services required to comply as of 1 July 2008.

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[47] Submission Number 5 from the Association of Massage Therapists Ltd.
[48] Commonwealth Department of Health, April 2006, *'Fact Sheet: Greater Choice in Private Health Insurance Products'*

Chapter Five - Policy Framework

5.1 Several policy directions influence the regulation of the health professions in NSW, including the Mutual Recognition Agreement, National Competition Policy and the Australian Health Minister's Advisory Council criteria for the regulation of health professions.

5.2 These principles will influence any decision to further regulate health care practice in NSW.

Mutual Recognition

5.3 The *Mutual Recognition Agreement* was reached between all State and Territory Governments and the Commonwealth at a special Heads of Governments meeting in May 1992.

5.4 The Agreement was designed to promote freedom of movement of goods and services, including service providers, in an integrated Australian market. It reflects the view that if requirements in one jurisdiction meet community expectations, then they should be acceptable in any other Australian jurisdiction.[49]

5.5 The *Mutual Recognition Act 1992* (Commonwealth) details the requirements of mutual recognition. Each Australian State and Territory has now passed legislation to adopt the principles of that *Act.*

5.6 Under the *Act*, health practitioners registered in one Australian State or Territory are automatically eligible for registration in any other Australian jurisdiction in which that profession is registered.

5.7 Applications for registration of a health profession or group of practitioners must address the principles of National Competition Policy and meet the Australian Health Ministers Advisory Council (AHMAC) criteria for occupational regulation.

National Competition Policy

5.8 The provision of services (including health services) in the Australian market is affected by National Competition Policy (NCP).

5.9 In 1993 the National Competition Policy Review was commissioned, which established that the greatest barrier to improved competition in many sectors of the economy was regulatory measures imposed by Governments.

5.10 The report identified that regulation that restricts entry to a market and regulation that restricts competitive conduct have the largest impact on competition.

5.11 At the same time, the report acknowledged that promoting the benefits of competition may not always have the most favourable impact on health and social outcomes.

5.12 Consequently, the report recommended that Governments that decide to restrict consumers' ability to choose among rival suppliers should demonstrate why this is necessary in the public interest.

[49] NSW Health. (September 2002). *Regulation of Complementary Health Practitioners- Discussion Paper*.

5.13 All States and Territories signed the Competition Principles Agreement in 1995. Clause 5(1) of the Competition Principles Agreement states that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:

- The benefits to the community as a whole outweigh the costs; and
- The objectives of the legislation can only be achieved by restricting competition.

5.14 Proposals to register health occupations that in some way limit the number of persons engaged in the occupation are deemed to be restrictions on competition unless proved otherwise.

Australian Health Minister's Advisory Council (AHMAC) Criteria

5.15 Following reviews of occupation regulation in Queensland, Victoria and Western Australia, AHMAC established a working party to consider the issue of occupational regulation nationally.

5.16 In 1995, six criteria for assessing the regulatory requirements of unregulated health occupations were adopted by AHMAC.

5.17 These criteria must now be applied by Governments when determining the need for regulation of various health professions:

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

5.18 The Committee is aware that COAG has recently agreed to a national registration scheme for health professions that are currently registered in all Australian states and territories.

Chapter Six - Unregistered Healthcare Practice in New South Wales

Extent of Unregistered Practice in NSW

Unregistered Health Service Providers

6.1 Exact figures on the number of unregistered health professionals practising in NSW or the incidence of consumers accessing these services are difficult to obtain.

6.2 Estimates of these figures are generally derived through a combination of methods, including focussed empirical research, statistical data collected by the Australian Bureau of Statistics (ABS) and other reporting bodies and information received through health funds demonstrating the number of rebates issued for services provided by unregistered professionals.

6.3 The latest comprehensive survey data available on the number of unregistered health professionals is derived from the 2001 Census.[50]

6.4 The Census required a response to two questions that provide some information about the practice of unregistered professions:

> 34. In the main job held last week, what was the person's occupation?
>
> 35. What are the main tasks that the person himself or herself usually performs in that occupation?

6.5 Responses were then categorised by an Automatic Coding system, with responses unable to be coded in this manner categorised manually by staff of the ABS.

6.6 The following table shows the number of persons in NSW categorised into unregistered professions as a result of this process:[51]

Occupation	Number
Counsellors	4397
Dietitians	781
Massage Therapists	1705
Ministers of Religion	4892
Natural Therapy Professionals	1248
Occupational Therapists	1726
Social Welfare Professionals	323
Social Workers	2460

[50] Australian Bureau of Statistics, 2001 Census Classification Count for Occupations- NSW
[51] Australian Bureau of Statistics, 2001 Census Classification Count for Occupations- NSW

Speech Pathologists	896
Welfare and Community Workers	8758
Other Health Professionals	2399
Total	**29,585**

Note: This data only captures persons residing in NSW on the night of the Census count who reported practicing in the recorded profession in the week prior to the Census.

6.7 Based on Census data, in 2001 there were approximately 30,000 persons in NSW whose primary occupation was in an unregistered health profession.

Access of Unregistered Health Services

6.8 The National Health Survey (2001) also collected data on health-related actions taken by consumers in response to a health problem.

6.9 One of the options available for selection by respondents is accessing treatment from a category of practitioners defined as 'other health professionals'.

6.10 This class of practitioners is predominantly comprised of unregistered professions, but also includes access of registered professionals such as physiotherapists, chiropractors, nurses and optometrists.

6.11 The NHS required respondents to report accessing an 'other health professional' in the two weeks prior to the survey. Just over 12% of NSW respondents (approximately 793,000 persons) reported having done so.

6.12 The following Table shows the number of these 793,000 consultations that were had with an unregistered health practitioner:[52]

Professional Consultation	Number
Naturopath	38,500
Social Worker	21,300
Speech Therapist/Pathologist	19,200
Other*	154,400
Total	**233,400**

* Includes Aboriginal health worker, accredited counsellor, acupuncturist, alcohol/drug worker, audiologist, dietitian, herbalist, hypnotherapist, osteopath and occupational therapist.

6.13 Overall, the NHS results demonstrate that, at a minimum, 233,400 consultations were held with unregistered health professionals in NSW within a two-week period in 2001.

[52] Australian Bureau of Statistics, 2001, National Health Survey- Summary of Results (NSW)

6.14 In 2004/05 the National Health Survey reported that overall consultations with an 'other health professional' within a two-week period totalled 337,600, an increase of 104,200 since 2001.

6.15 The National Health Survey (2004/05) did not report health consultations for the professions of naturopathy, social work and speech therapy separately.

6.16 Results of research conducted in South Australia in 2004 also show a steady increase in the number of persons accessing complementary and alternative medicine therapists since 1994.

6.17 In this survey, the most frequently visited class of unregistered practitioners in South Australia were naturopaths.

6.18 Several possible reasons for this increase have been identified. These include:

- Increasing public dissatisfaction with conventional medicine;
- An increased interest in individualised care;
- A growing preference for natural alternatives;
- The lack of success conventional medicine has had in curing many diseases and conditions.

Cost of Unregistered Health Services

6.19 Figures relating to the overall cost of accessing unregistered health services and medicines in NSW specifically are not available at this time.

6.20 Nevertheless, national figures show that in 1993, expenditure by the Australian population on alternative therapists (excluding medications) was approximately $309 million.[53]

6.21 In 2004, consumers spent approximately $494 million on the services of complementary and alternative therapists Australia-wide.[54] This figure does not include expenditure on complementary medicines themselves, nor does it represent expenditure on the services of other unregistered health practitioners outside the alternative and complementary health fields.

6.22 Overall costs in Australia (complementary and alternative therapies and medications combined) in 2004 have been estimated at $1.8 billion, a decrease from $2.3 billion in 2000.[55]

6.23 Information provided to the Committee by the Australian Health Insurance Association showed that in 2005, 752,688 natural therapy services were reimbursed in NSW, at a total benefit cost of $16,549,348.

6.24 This is approximately 2% of all benefits paid for health services, equal to the national proportion.[56]

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[53] MacLennan, A., Wilson, D., & Taylor, A. (1996). *Prevalence and **cost** of **alternative medicine** in Australia*. Lancet; 347, 569-573

[54] MacLennan, A. H., Myers, S. P., & Taylor, A. W., (2006), The Continuing Use of Complementary and Alternative Medicine in South Australia: costs and beliefs in 2004, MJA, 184 (1), 27-31.

[55] MacLennan, A. H., Myers, S. P., & Taylor, A. W., (2006), The Continuing Use of Complementary and Alternative Medicine in South Australia: costs and beliefs in 2004, MJA, 184 (1), 27-31.

[56] PHIAC Data, 2005, Australian Health Insurance Association

Prevalence of Complaints Against Unregistered Health Practitioners

6.25 Preliminary complaints data suggests that consumers are accessing several complaints mechanisms to report concerns about unregistered health practitioners in NSW.

Health Care Complaints Commission

6.26 The Annual Report of the Health Care Complaints Commission reveals that, in the years 2002-2005, 194 complaints were received regarding members of unregistered professions.

6.27 The breakdown of these complaints are as follows:

Description	2002/2003	2003/2004	2004/2005	Total
Unregistered Counsellor/Therapist	11	5	4	**20**
Social Worker	7	10	4	**21**
Natural Therapist	0	2	8	**10**
Other*	49	52	42	**145**
Total	**67**	**69**	**58**	**194**

*Other: radiographer, naturopath, psychotherapist, residential care worker, Traditional Chinese Medicine practitioner, acupuncturist, ambulance personnel, dietitian/nutritionist, health education officer, speech pathologist, occupational therapist, optometrical dispenser, welfare officer, no code available.

6.28 Only ten of the above-mentioned complaints proceeded to investigation.

6.29 In 2002-2003 the Health Care Complaints Commission finalised two investigations against de-registered health care practitioners specifically.

6.30 As at 31 July 2005, no complaints against de-registered health practitioners had been finalised since, although two had been received.

Professional Associations

6.31 Some data is available from professional associations on the number of complaints against practitioners reported directly to them. Once again, these figures are not comprehensive but provide an indication of where complaints are being directed.

6.32 The Australian Association of Social Workers reported having received 149 inquiries relating to complaints nationally between 30 April 2003 and 24 December 2003.[57]

6.33 The Association believes that these figures grossly under-represent the number of existing potential complaints.

6.34 The Australian Traditional Medicine Society, one of the largest professional associations for the alternative and complementary health fields with 10,800 members Australia-wide, received a total of 115 complaints in the period 1996-2005. That is approximately twelve complaints per year, or one a month.[58]

[57] Submission Number 24 from the Australian Association of Social Workers- NSW Branch
[58] Submission Number 6 from the Australian Traditional Medicine Society.

6.35 In it's submission to the current review, the Australian Traditional Medicine Society has argued that consumers may be more likely to complain to a professional association than to the HCCC for a number of reasons:

"
- Consumers see the practitioner's professional association as being a less bureaucratic body to complain to than the HCCC
- Consumers see the practitioner's professional association as having more impact, and possible causing the practitioner greater professional embarrassment than the HCCC
- Consumers find the professional association complaint making process easier than the HCCC."[59]

NSW Office of Fair Trading

6.36 The NSW Office of Fair Trading also receives complaints from members of the public about the practice of many health care professionals, some of whom are unregistered practitioners.

6.37 Data received from the Office of Fair Trading shows that 97 complaints were received about unregistered health practitioners that were not appropriate for forwarding to the Health Care Complaints Commission in 2004/05.[60]

Health Fund Providers

6.38 It has also been suggested that health funds, as the providers of health care rebates for a number of services provided by unregistered professionals, are inappropriately receiving complaints about practitioner conduct and treatment received.[61]

6.39 However Dr Frances Cunningham, then Director of the Australian Health Insurance Association, informed the Committee at a briefing in March 2006 that the numbers of complaints received by health funds regarding unregistered practitioners themselves are small:

"A small proportion of complaints received by health funds relate to practitioners – less than one per cent."

Adverse Medicine Events (AME) Line

6.40 The Adverse Medicine Events Line (AME) is a project that was originally set up to determine the value of consumers reporting adverse medicine events, including adverse drug reactions, medication errors and near-misses (errors where injury was averted).

6.41 The AME Line is an initiative of the Australian Council for Safety and Quality in Health Care and Mater Misericordiae Health Services in South Brisbane.[ϒ]

6.42 The submission of the AME Line to the Review reported that, since its launch in October 2003, the service has received many complaints about unregistered health practitioners.

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[59] Submission Number 6 from the Australian Traditional Medicine Society
[60] Correspondence received by the Committee from the NSW Office of Fair Trading, 19 May 2006.
[61] Submission Number 5 from the Association of Massage Therapists Ltd.
[ϒ] Note: The Adverse Events Medical Line will cease receiving funding from 30 June 2006. After this time, this avenue for reporting will no longer be available.

6.43 Although anecdotal, the submission reports having received complaints against naturopaths, iridologists, herbalists, homeopaths, shop assistants in health food stores, pharmacy assistants and beauty therapists.[62]

6.44 Overall, the number of complaints received by many of these bodies in regards to unregistered practice is minimal. This reflects the findings of the previous report released by the Committee in 1998.

Why are so Few Complaints Being Received?

6.45 During the previous Committee Inquiry in 1998, then Commissioner Ms Marilyn Walton offered the following possible explanations for why the number of complaints received against unregistered health practitioners by the HCCC is relatively small:

> “ - The HCCC has not focussed on education of unregistered health practitioners nor targeted its clients with relevant information about the HCCC's role in complaint handling;
>
> - Consumers accessing the services of unregistered health practitioners may be unaware of the HCCC's jurisdiction in this area; and
>
> - Consumers who have found orthodox medicine unsuccessful in treating a terminal or chronic illness might consult unregistered practitioners with a full understanding and acceptance of the risks involved. “[63]

6.46 The submission from the Australian Medical Acupuncture College to the current review [Submission 28] supports the suggestion that consumers may not understand that complaints against unregistered health practitioners are able to be made to the Commission:

> “... individuals remain largely ignorant of the role of the HCCC in dealing with complaints relating to unregistered health practitioners.”

6.47 This view was supported by a submission from Ms Cheryl Freeman, an activist and former nurse, who stressed that consumers generally do not know that they can approach the Commission with a complaint against alternative health practitioners, and can often be fearful to do so

> “People did not know years ago, and still do not know, that they can come to the Health Care Complaints Commission.”[64]

6.48 Several other explanations for the significantly smaller number of complaints against unregistered professionals overall compared to registered practitioners have been offered, including:

- That the practices undertaken by unregistered professionals are generally lower-risk;
- That consumers who access the services of unregistered professionals tend to be those who have found mainstream medicine unhelpful and are therefore more likely to accept the failures of alternative treatment;

62 Submission Number 11 from the Adverse Medicine Events Line
[63] Committee on the Health Care Complaints Commission. (December 1998). *Unregistered Health Practitioners: The Adequacy and Appropriateness of Current Mechanisms for Resolving Complaints*: Parliament of NSW.
[64] Submission Number 37 from Ms Cheryl Freeman

- That consumers have an established belief in the efficacy of a treatment prior to accessing it;
- That few consumers are aware of appropriate avenues for complaints;
- That few effective avenues for complaint currently exist;
- That consumers are generally more satisfied with the services of unregistered health practitioners:

> "The figures quoted by the HCCC concerning the very small numbers of complaints related to complementary modalities, as a percentage of the whole, would seem to indicate customer satisfaction with services"[65]

6.49 An additional possibility has been posed by the Australian Association of Social Workers [Submission 24] which suggested that, as some consumers who access the services of unregistered practitioners (in this case, social workers) are disadvantaged, it is unlikely that they are in a position to complain:

> "…it is important to consider the fact that many social work users are simply not in a position to lodge complaints."

6.50 Lastly, it has been suggested that consumers who have been significantly deceived or cheated may be reluctant to complain because they feel embarrassed or believe that they should have been more alert:

> "…it is not socially acceptable at this point in time in our society for victims to freely complain to the authorities or to the media, particularly about industry-registered therapists. They live in fear of harsh criticism from others- "how could you be so foolish and gullible"… they feel ashamed, foolish, humiliated and embarrassed".[66]

Conclusion

6.51 The above data shows that there are currently numerous avenues for complaints against unregistered health practitioners, many of which are being accessed (however slightly) but few of which are equipped to adequately respond to the complaints received.

6.52 The fact that so many avenues exist could itself be a source of confusion for consumers, thus contributing to the small number of complaints being received overall:

> "The multiple avenues of complaint available to complainants demonstrate a needlessly complex and fragmented complaint pathway that is not in the public interest."[67]

[65] Submission Number 3 from the Australian Society of Clinical Hypnotherapists
[66] Submission Number 36 from Ms Cheryl Freeman
[67] Submission Number 33 from Occupational Therapy Australia

Chapter Seven - Overview of Regulation of Health Practitioners in Other Jurisdictions

Australian States and Territories

Victoria

7.1 Considerable work has been and continues to be done by the Victorian Government into the regulation of currently unregistered health practitioners.

7.2 Victoria is currently the only Australian jurisdiction to formally regulate Traditional Chinese Medicine practitioners, through the *Chinese Medicine Registration Act 2000*.

7.3 The Chinese Medicine Registration Board was established and Traditional Chinese Medicine registration commenced in Victoria in January 2002.

7.4 A report on the risks, benefits and regulatory requirements for the professions of Western Herbal Medicine and naturopathy has recently been released (discussed in Chapter Eight).

7.5 In addition, an options paper released for public comment in April 2005 by the Department of Human Services addressed the issue of registered practitioners who choose or wish to incorporate complementary health into their standard practice.[68]

7.6 The paper recommended that the use of complementary therapies by practitioners registered in other professions be regulated by guidelines and codes rather than by legislation.

7.7 To date, no formal decision has been made regarding this.

7.8 Victoria has also commissioned research by PACFA into best-practice models of self-regulation for other currently unregistered professions, including psychotherapy and counselling.

7.9 The PACFA discussion paper, released in 2004, reports that the Victorian government is proposing to introduce legislation to prohibit professionals who are de-registered from one Board, practising under a different title such as counsellor or psychotherapist.[69] The Final Report from PACFA is yet to be publicly released.

7.10 In October 2005, Victoria passed the *Health Professions Registration Act 2005*, which repeals the 11 separate registration Acts and replaces them with provisions for registration under the one Act.

7.11 Specifications under the *Health Professions Registration Act 2005* have been made for separate categories of registration, including student registration, interim registration, non-practising registration and specialist registration.

7.12 The Act also outlines the criteria for the distribution of responsibilities between the Health Services Commissioner and the relevant registration boards.

[68] Department of Human Services, Victoria. (April 2005). Review of Regulation of the Health Professions in Victoria.

[69] Psychotherapy and Counselling Federation of Australia, January 2004. Best Practice Self-Regulatory Model for Psychotherapy and Counselling in Australia: Discussion Paper.

Queensland

7.13 In 1996, the Queensland Government partly funded a study into Traditional Chinese Medicine that resulted in the report titled '*Towards a Safer Choice: The Practice of Traditional Chinese Medicine in Australia*'. To date, no changes have been made in Queensland to regulate this profession as a result of this investigation. It is reported that the Queensland Government have no plans to regulate complementary or alternative practitioners in the immediate future.[70]

7.14 Occupational therapy is currently a registered profession in Queensland. No formal provisions currently exist for the regulation of psychotherapists and other counsellors.

7.15 Queensland is also the only Australian state or territory to register Speech Pathologists.

7.16 All registered professions in Queensland have their own Registration Board that determines professional standards, assessment of applications for registration and investigation of complaints.

7.17 The boards may institute proceedings against practitioners for unsatisfactory professional conduct.

7.18 The Office of Health Practitioner Registration Boards has been established by the Queensland Government, and provides secretariat services to each of the registration boards (with the exception of nursing).

South Australia

7.19 Occupational Therapy is currently a registered profession in South Australia.

7.20 The *Chiropractic and Osteopathy Practice Act 2005* provides for the registration of chiropractic and osteopathy practitioners and students. It is reported that SA has no immediate plans to regulate additional complementary health practitioners.[71]

7.21 In 2002, the issue of unregistered psychotherapists and counsellors was discussed at the Trans Tasman Conference of Psychologist Regulation Boards. The South Australian Psychology Board reports that no action has resulted from these discussions.

7.22 As such, counsellors and psychotherapists remain unregistered in South Australia.

Western Australia

7.23 Occupational Therapy is a registered profession in Western Australia.

7.24 Presently, from the field of complementary and alternative health, only chiropractic and osteopathy are registered professions.

7.25 However, the Western Australian Department of Health has begun to explore the possibility of regulating practitioners of Chinese herbal medicine.

[70] Department of Health, Western Australia. June 2005. Regulation of Practitioners of Chinese Medicine in Western Australia, Discussion Paper.
[71] Department of Health, Western Australia. June 2005. Regulation of Practitioners of Chinese Medicine in Western Australia, Discussion Paper.

7.26 Their discussion paper, *'Regulation of Practitioners of Chinese Medicine in Western Australia'* was released in June 2005, presenting self-regulation, co-regulation, and statutory regulation as options for consideration. Submissions closed on 2 September 2005.

7.27 From this, a draft Chinese Medicine Registration Bill is expected to be drafted, and will be subject to further consultation.

7.28 Psychotherapists and counsellors are currently not required to register in Western Australia.

Australian Capital Territory

7.29 Following a review of health professional legislation, the ACT Government has consolidated the ten individual health professional Acts that regulated the practice of health professionals in the ACT into a single piece of legislation (*The Health Professionals Act 2004*).

7.30 This Act provides for the registration of chiropractors and osteopaths (amongst others).

7.31 It is reported that the ACT has no immediate plans to further regulate other complementary health practitioners.[72]

7.32 Neither counselling nor psychotherapy are currently registered professions in the ACT.

Tasmania

7.33 At present, psychotherapy and counselling are unregistered professions in Tasmania.

7.34 Tasmania currently registers chiropractors and osteopaths, but none of the remaining complementary or alternative health practitioners. It is reported that they have no immediate plans to do so.[73]

Northern Territory

7.35 The Health Professions Licensing Authority oversees each of the professional registration Boards in the Northern Territory.

7.36 Presently, occupational therapy is a registered profession in the Northern Territory.

7.37 Chiropractors and osteopaths are also required by law to register in the Northern Territory, which has no immediate plans to regulate complementary health beyond this.[74]

7.38 Psychotherapists and counsellors are also currently unregistered professions, however Aboriginal Health Care Workers must formally register in the Northern Territory.

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[72] Department of Health, Western Australia. June 2005. Regulation of Practitioners of Chinese Medicine in Western Australia, Discussion Paper.

[73] Department of Health, Western Australia. June 2005. Regulation of Practitioners of Chinese Medicine in Western Australia, Discussion Paper.

[74] Department of Health, Western Australia. June 2005. Regulation of Practitioners of Chinese Medicine in Western Australia, Discussion Paper.

Ontario, Canada

7.39 A number of complementary and alternative health professions are currently registered in Ontario, including chiropractic, massage therapy, naturopathy and Traditional Chinese Medicine.

7.40 Occupational therapists and dietitians are also registered in Ontario.

7.41 Following a request to the Health Professions Regulatory Advisory Council (HPRAC) by the Minister of Health and Long-Term Care in February this year, the state of Ontario is in the process of conducting a series of investigations into the possible regulation of a number of currently unregulated health professions as part of it's review of the *Regulated Health Professions Act 1991*.

7.42 Those relevant to the current paper include psychotherapy, homeopathy and kinesiology.

7.43 Issues for consideration included whether these occupations should be regulated under the *Regulated Health Professions Act 1991*, what their scope of practice should be, what controlled acts they should be authorised to perform, what, if any, titles should be protected, and whether it is appropriate that psychotherapists be regulated under an existing profession specific Act.

7.44 A final report titled *'Regulation of the Health Professions in Ontario: Future Directions'* was released in May 2006.

7.45 This report recommended full registration of practitioners of homeopathy, and that the regulation of naturopathy be transferred from the *Drugless Practitioners Act* to the *Regulated Health Professions Act* under a joint registration body with homeopathy:

> "HPRAC sees clear links between the principles and practices of naturopathy and homeopathy. Accordingly, the Advisory Council recommends the co-regulation of homeopathy and naturopathy in a joint college under the *RHPA*. It is HPRAC's view that the two professions should be regulated through a single Act and be governed by a single college council that provides opportunities for profession-specific activities and representation of each profession along with members appointed by the Lieutenant Governor in Council."

7.46 HPRAC also recommended the profession of kinesiology be registered:

> "After investigating the work of kinesiologists as primary care providers in the prevention, treatment and rehabilitation of musculoskeletal conditions, HPRAC's central recommendation is that kinesiology should be regulated in Ontario under the *RHPA*."

7.47 Lastly, HPRAC deemed the profession of psychotherapy to present a serious enough danger to the community to warrant statutory registration through protection of both title and practice:

> "HPRAC is convinced that the *RHPA* is the preferable regulatory model, and that psychotherapy should be regulated under the Act through a new College of Psychotherapists.
>
> HPRAC proposes that both the practice of psychotherapy and its practitioners be regulated by way of title protection and an enforceable scope of practice within the *RHPA*."

7.48 The Minister for Health has invited comments from the public on the recommendations of the HPRAC final report.

Colorado, United States

7.49 Currently the professions of clinical social work, professional counselling psychotherapy, and marriage and family therapy are registered professions in Colorado, and are governed by their own registration Board.

7.50 An additional category of unlicensed psychotherapists has been established, which allows practitioners who do not meet the criteria for a licensed profession to continue to practice.

7.51 Members of the unlicensed psychotherapy profession are required by law to register their credentials with the State Mental Health Grievance Board.

7.52 As the authority of the State Grievance Board has been established by statute, unlicensed psychotherapists can be formally investigated and issued with an injunction if found to have acted improperly.

7.53 An umbrella agency, the Department of Regulatory Agencies (DORA), oversees the work of each of the professional boards, and administers the State Mental Health Grievance Board for unlicensed psychotherapists.

7.54 Addiction counsellors are co-regulated with the Department of Health and Human Services and domestic violence counsellors and sex offender treatment providers are co-regulated with the Department of Public Safety, Division of Criminal Justice.

7.55 Currently, the profession of Occupational Therapy is unregistered in Colorado. However, the American Occupational Therapy Association, together with the Occupational Therapy Association of Colorado, have submitted a request for formal licensure to the Department of Regulatory Agencies.

7.56 A response to this request is expected by October 2006.

7.57 The professions of acupuncture, chiropractic and osteopathy are also registered in Colorado.

Massachusetts, United States

7.58 The Division of Professional Licensure (DPL) has been established in Massachusetts under the Office of Consumer Affairs and Business Regulation.

7.59 The DPL regulates, amongst others, the professional licensing boards of Allied Health Professionals (including occupational therapists), Allied Mental Health Professionals (including mental health counsellors, marriage and family therapists, rehabilitation counsellors and educational psychologists) and social workers.

7.60 Despite this, generalist titles such as ‘counsellor’ and ‘psychotherapist’ are still unregulated in Massachusetts.

7.61 Acupuncturists became a licensed profession in Massachusetts in 1988, and are regulated by the Board of Registration in Medicine. Chiropractors are also formally registered in Massachusetts.

7.62 Aside from these, no other complementary or alternative health professions have been granted formal registration.

7.63 In January 2002, a Special Commission on Complementary and Alternative Medical Practitioners was established to conduct a study of the use and need for licensing complementary and alternative medical practitioners, specifically naturopathic doctors.

7.64 The initial report recommended that registration of naturopaths be progressed,[75] however a subsequent report was issued recommending that licensure was not appropriate.[76] Justification for this view was on the basis of the quality of educational experience, efficacy of treatment, accuracy of diagnoses, and the rational basis of practitioner beliefs.

7.65 Consequently, no regulation of naturopaths or any other complementary or alternative health practitioners has occurred as a result of the Special Commission.

7.66 The Board of Registration of Dietitians/Nutritionists grants licenses to qualified Dietitians and nutritionists, and monitors licensees to insure that the services provided are in accordance with established rules and regulations.

7.67 Licensees are required by the Board to meet continuing professional education requirements prior to renewing their license.

7.68 Speech pathologists and audiologists are also registered professionals in Massachusetts.

7.69 In December 2004 Chapter 450 of the Acts of 2004 was passed, increasing the penalties for practicing without a license and granting regulatory Boards the ability to investigate and prosecute those who practice:

- without ever getting the required license;
- while their license is expired;
- after their license is suspended or revoked.

7.70 Additionally, boards were granted the authority to assess fines for professional misconduct by licensees.

7.71 This Act became effective as of March 2005.

Washington, United States

7.72 The state of Washington (USA) has established the Health Professions Quality Assurance (HPQA), an Office located within the Washington Department of Health responsible for regulating the competency and quality of practitioners in 57 health care professions.

7.73 Professionals are regulated through registration, certification and licensure:

- Registration: The state maintains an official roster of names and addresses of the practitioners in a given profession and, if required, the location and nature of the health care activity practiced. Currently, hypnotherapists and counsellors who do not meet the requirements to practice as a licensed counsellor are registered in the state of Washington.

[75] Majority Report of the Special Commission on Complementary and Alternative Medical Practitioners- A Report to the Legislature. January 2002.
[76] Minority Report of the Special Commission on Complementary and Alternative Medical Practitioners- A Report to the Legislature. January 2002.

- Certification: The state grants recognition to an individual who has met certain qualifications required by law. A non-certified practitioner may perform the same tasks, but may not use *certified* in their title. Dietitians are certified practitioners in Washington.
- Licensure: The state grants permission to persons who meet specific qualifications to practice a specific health care profession. The qualifications for licensure are set by law and the practice of the specific health profession without a licence is prohibited. The license protects both the scope of practice and the health care practitioner's title. Acupuncture, chiropractic, marriage and family therapy, mental health counselling, social work, massage therapy, naturopathy, occupational therapy and osteopathy are all licensed professions in Washington.

7.74 The responsibilities of the Health Professions Quality Insurance include:

- Setting standards for credentialing;
- Reviewing applicant qualifications and background;
- Receiving and processing complaints against health care providers, including the issuing and monitoring of sanctions.

7.75 Part of the service offered by the Health Professions Quality Assurance is a HPQA provider search, whereby consumers can enter the name or credential number of a member practitioner into the online database located on the HPQA website.

7.76 In this way, consumers are able to access details about the practitioner's credentials including practicing restrictions and disciplinary actions.

7.77 Washington has also set up the Washington Health Professionals Service, which provides a service to health practitioners who are affected by alcohol and/or drug use issues.

7.78 By law, practitioners cannot practice in a registered or certified profession if they are suffering from the habitual abuse of or addiction to alcohol or harmful drugs.

7.79 The Washington Health Professionals Service aims to balance risk to the public with the practitioner's right to practice by identifying, assessing and monitoring health care professionals who are experiencing problems with chemical impairment.

Federal Government, United States

7.80 The White House Commission on Complementary and Alternative Medicine Policy (WHCCAMP) was established in March 2000.

7.81 The aim of the White House Commission was to address issues related to access and delivery of complementary and alternative medicines, priorities for research, and the need for better education of consumers and health care professionals.

7.82 One of the recommendations of the Commission was that states require all persons providing complementary and alternative medicine services to disclose information regarding their level and scope of training and to make it easily accessible to consumers.

United Kingdom

7.83 Currently, osteopathy and chiropractic are the only complementary or alternative therapies to be regulated by statute in the United Kingdom, however other complementary and alternative therapies are currently being considered for regulation.

7.84 In November 2000, the House of Lords Select Committee on Science and Technology recommended, in its report on complementary and alternative medicine,[77] that herbal medicine and acupuncture be regulated by statute. The UK Government endorsed the concept of statutory regulation.

7.85 In February 2005, the Department of Health published an analysis of responses to a consultation on proposals to regulate herbal medicine and acupuncture practitioners. A report on the findings of the consultation has been prepared,[78] and draft legislation has been flagged for release in coming months.

7.86 While other complementary and alternative therapies such as homeopathy, aromatherapy and reflexology were not included in the scope of consultation for the new proposals, in December 2004 the UK Health Minister announced the allocation of £900,000 in funding to assist the Prince of Wales Foundation for Integrated Health develop voluntary regulation schemes for these practitioners.

7.87 Therapies currently working towards establishing voluntary self-regulation include the Alexander Technique, aromatherapy, Bowen Therapy, cranio-sacral therapy, homeopathy, massage therapy, naturopathy, nutritional therapy, reflexology, reiki, shiatsu, spiritual healing, and yoga therapy.

7.88 Additionally, a new Herbal Medicines Advisory Committee is to be set up by the Medicines and Healthcare products Regulatory Agency (MHRA) to provide expert advice to Ministers and the MHRA on the safety and quality of herbal medicines.

7.89 The Committee will look at both unlicensed medicines and those registered from October 2005 onwards under the new European Union Directive on Traditional Herbal Medicines (described below- *European Directive on Herbal Medicines*).

7.90 At present, neither counsellors nor psychotherapists have mandatory registration in the UK. As in Australia, voluntary associations do exist with whom many such practitioners have registered, however they are not obligated by law to do so.

7.91 Occupational Therapists, dietitians, orthoptists, prosthetists and speech and language therapists are also registered professionals in the UK, governed by the Health Professions Council which, in turn, is regulated by the Council for Healthcare Regulatory Excellence (CHRE).

7.92 CHRE is an umbrella organisation responsible for governing all nine regulatory bodies that provide registration to various occupations covered by legisation.

7.93 CHRE is funded by the UK Department of Health and is responsible to the UK Government, but operates separate from Government.

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[77] House of Lords Select Committee on Science and Technology 6th Report, November 2000. Complementary and Alternative Medicine.

[78] UK Department of Health, February 2005. Statutory Regulation of Herbal Medicine and Acupuncture: Report on the Consultation.

7.94 Recently, the Secretary of State for Health requested a review of non-medical professional regulation in the UK. The Review was expected to consider and advise the Secretary of State about the measures needed to:

- Strengthen procedures for ensuring that the performance or conduct of non-medical health professionals and other health care staff does not pose a threat to patient safety or the effective functioning of services;
- Ensure the operation of effective systems of continuing professional development and appraisal for non-medical health care staff and make progress towards regular revalidation where this is appropriate;
- Ensure the effective regulation of health care staff working in new roles within the healthcare sector and of other staff in regular contact with patients.

7.95 Furthermore, the Review was to consider and recommend any changes needed to the role, structure, functions and number of regulators of non-medical healthcare professional staff.

7.96 A report containing conclusions and recommendations was received by the Secretary of State for Health on 6 March 2006 (the Foster Report). The Secretary of State for Health is expected to make a statement as soon as a decision is made regarding the recommendations.

European Union Directive on Herbal Medicine

7.97 The European Union Directive on Traditional Herbal Medicinal Products (agreed in April 2004) came into force on 30th October 2005.

7.98 The Directive requires that traditional, over-the-counter herbal remedies be made to assured standards of safety and quality and for regulations to be standardised across Europe.

7.99 A transitional period of seven years will be provided for products legally on the market as at 30 April 2004, giving them protection until 2011.

7.100 After this time, only those products which can be shown to have been in use for 30 years in the European Union (or at least 15 years in the EU and 15 years elsewhere) will be licensed and obtainable over the counter.

Ireland

7.101 At present, there are no statutory registration requirements for practitioners of complementary and alternative medicine in Ireland.

7.102 The Minister for Health and Children convened a forum in June 2001 to explore practical issues involved in the regulation of these professions. From this, the Minister requested the Institute of Public Administration prepare a report proposing a way forward, and established a National Working Group to further investigate the issues.

7.103 The 'Report on the Regulation of Practitioners of Complementary and Alternative Medicine in Ireland' was released in 2002, recommending self-regulation be developed rapidly as an initial step in the regulatory process.

7.104 Concurrently, the Department of Health and Children is developing legislation to introduce a system of statutory regulation for professional health and social care practitioners in Ireland.

7.105 The umbrella legislation will cover identified occupations already registered under individual legislation, and allows the Minister to designate other occupations for registration within the health and social care category of professions. A health or social care profession is defined by Section 4(3) of the *Bill* as:

> "…any profession in which a person exercises skill or judment relating to any of the following health or social care activities:
>
> (a) the preservation or improvement of the health or well-being of others;
>
> (b) the diagnosis, treatment or care of those who are injured, sick, disabled or infirm;
>
> (c) the resolution, through guidance, counselling or otherwise of personal social or psychological problems;
>
> (d) the care of those in need of protection, guidance or support."

7.106 Amongst the specific practitioners covered by the *Bill* are:

- Dietitians;
- Occupational therapists;
- Orthoptists;
- Speech and language therapists; and
- Social Workers.

7.107 The *Health and Social Care Professionals Act* was passed on 30 November 2005.

New Zealand

7.108 In 2003, the New Zealand Ministry of Health passed the Health Practitioners Competence Assurance Act, which now regulates all occupations that were previously registered individually. These occupations include chiropractic, osteopathy, and occupational therapy.

7.109 Specific provisions have been made for new professions to be registered under the Act, provided that their registration aligns with the purpose of the Act, being to 'protect the health and safety of members of the public by providing for mechanisms to ensure that health practitioners are competent and fit to practise their professions'.

7.110 In June 2001, a Ministerial Advisory Committee on Complementary and Alternative Health (MACCAH) was established to provide advice to the New Zealand Minister for Health on areas such as regulation, consumer information needs, research and integration with biomedicine. The Committee's term ended on 30 June 2004.

7.111 The MACCAH released a report at the end of their term titled '*Complementary and Alternative Health Care in New Zealand: Advice to the Minister of Health*'.

7.112 A ministerial response to this advice has been issued, with the Minister supporting the recommendation that practitioners of complementary and alternative health be regulated according to the level of inherent risk involved in the modalities they practice.

7.113 The two recommendations for implementing this advice, however, have to-date only been noted by the Minister, namely:

- The process of regulating practitioners of high-risk complementary and alternative modalities should continue under the *'Health Practitioners Competence Assurance Act 2003'*;
- Practitioners of lower-risk complementary and alternative modalities should be encouraged to self-regulate through a relevant professional body.

7.114 It should be noted that the MACCAH report did not include a breakdown of complementary and alternative therapies into high and low risk groups, suggesting that these groupings may not be clear-cut or that there is not sufficient evidence about risk to make a judgement.

7.115 Consequently, adoption of this system by New Zealand would inevitably involve conducting an analysis of the evidence associated with each profession, which is inherently complex for some of the lesser practiced or more recently formed therapies, whose empirical basis is less established.

7.116 The professions of counselling and psychotherapy are not currently registered in New Zealand. However, as with the other unregistered health professions in New Zealand, the provisions of the Health Professionals Competence Assurance Act have created a means by which the professions may apply to be regulated.

7.117 At present, there is no immediate indication that this path is being considered for psychotherapists or counsellors.

7.118 A table summarising the regulation of health professions in these jurisdictions is provided on the following page.

Regulation of Health Professions In Other Jurisdictions *Denotes regulation being considered.

	New Zealand	Ireland	Canada- Ontario	USA- Colorado	USA- Massachusetts	USA-Washington	United Kingdom
Registration	OT	-OT* -Dietitian* -Orthoptist* -Social Work* -Speech and language therapist*	-Massage -Naturopathy -OT -Dietitian -TCM -Kinesiology* -Homeopathy* -Psychotherapy*				-Herbal Medicine -Acupuncture -OT -Dietitian -Orthoptist -Prosthetists -Speech and language therapist
Licensing				-Clinical Social Work -Counselling -Psychotherapy -Marriage and Family Therapy -Acupuncture -Addiction counselling	-Acupuncture -OT -Mental Health Counselling -Marriage and Family Therapy -Rehabilitation Counselling -Educational Psychologist -Dietitian -Speech Pathology -Audiology	-Acupuncture -Marriage and Family Therapy -Mental Health Counselling -Social Work -Massage -Naturopathy -OT	
Certification				-Addiction counselling (levels I to III)		-Dietitian	
Listing				-Unlicensed Psychotherapy -Domestic Violence Management -Sex Offender Management		-Hypnotherapy -Counselling	

Chapter Eight - Unregistered Health Practitioners: The Adequacy and Appropriateness of Current Mechanisms for Resolving Complaints (1998)

8.1 In 1998, the Committee on the Health Care Complaints Commission inquired into existing mechanisms for resolving patient complaints against unregistered health practitioners.

8.2 The Inquiry was conducted in response to repeated comments by the NSW Health Care Complaints Commissioner that the Commission's powers to intervene in consumer complaints against unregistered health practitioners were inadequate.

8.3 Within the existing legislative environment, consumer protection against unsatisfactory conduct or treatment by unregistered health professionals was largely limited to avenues provided through the Department of Fair Trading and the Director of Public Prosecutions.

8.4 Additional protection was provided through registration boards such as the NSW Medical Board etc, insofar as the practice of the unregistered practitioner breached the requirements of their governing legislation.

8.5 The Inquiry found that many consumers were unaware of role of the HCCC in relation to complaints regarding unregistered health practitioners.

8.6 Additionally, current systems were largely powerless to respond to complaints when they were received, with the authority of the Health Care Complaints Commission being constrained by the need for a professional disciplinary board to enforce penalties.

> "The only relevant action for the Commission in substantiated complaints against unregistered health practitioners is to make adverse comments to the respondent. The Commission is not able to make these findings public nor is it able to take any enforcement action in relation to its recommendations to the practitioner."
>
> HCCC Submission to the Committee, 1998

8.7 Several recommendations were made as a result of the Inquiry. These recommendations, their rationale and their progress are reported below.

Recommendation One: Production and Dissemination of Consumer Information

That the Health Care Complaints Commission take a greater role in educating consumers about the Commission's ability to investigate complaints about unregistered health practitioners through the production and dissemination of pamphlets and other information

8.8 During the process of the inquiry, the Committee found that a relatively small number of complaints were being received by the Health Care Complaints Commission about unregistered practitioners.

8.9 A number of explanations for this were offered, one of which was that consumers may often be unaware of the jurisdiction of the Health Care Complaints Commission in handling concerns with unregistered health practitioners. This explanation was supported by the Health Care Complaints Commission and various professional health associations.

8.10 An associated problem identified was the possibility that many consumers may also be unaware of their rights in regards to treatment by unregistered health professionals, particularly as many unregistered professions lacked recognisable standards or codes of conduct.

8.11 Consequently, the Committee recommended a targeted campaign comprising the collation and dissemination of brochures and accompanying education strategies be undertaken by the Health Care Complaints Commission, in collaboration with the Department of Health and NSW Area Health Services.

8.12 This recommendation had the expressed support of a number of witnesses and submissions throughout the Inquiry.

8.13 At a Public Hearing in August 2006, the current Health Care Complaints Commissioner Mr Kieran Pehm reported that no educational material had been developed by the Commission, nor can he find record of material having been developed before his appointment:

> "I do know that when I started, we reviewed all of our publications, and there are no pamphlets on dealing with unregistered practitioners. There may have been some produced earlier than that, but they certainly were not in circulation; I could not find them. I would doubt very much that they would be disseminated through the Area Health Services either."[79]

Recommendation Two: Dissemination of Information in Hospitals and Area Health Services

That the Department of Health and the Colleges support this initiative by encouraging the dissemination of pamphlets of such information through hospitals and Area Health Services

8.14 The basis of this recommendation was to support the initiative proposed in Recommendation One. Given that Recommendation One has not been implemented, Recommendation Two has also not been implemented.

Recommendation Three: Referrals to the Director-General of Health

That the Minister for Health consider providing the Health Care Complaints Commission with legislative power to refer matters which concern possible breaches of the Minister's Acts to the Director General of Health

8.15 The Committee identified that, on many occasions, the NSW Department of Health itself investigated and took action against breaches of various Acts for which it has responsibility (e.g. the *Food Act 1998* and the *Public Health Act 1966*).

8.16 The then Health Care Complaints Commissioner, Ms Merrilyn Walton, argued that establishing a similar process for direct referrals from the Commission to the Director-General (Department of Health) for health-related complaints would enhance the investigation of complaints that fell outside the jurisdiction of the Commission but lay within the responsibility of the Department.

8.17 This authority was granted to the Commission from March 2005 when amendments to the *Health Care Complaints Act 1993* came into force.

[79] Transcript from Public Hearing, 31 August 2006

8.18 From this time, the Commission has been able to refer a matter to the Director-General of Health, with the Director-General's consent, where the Commission believes that the complaints or part of the complaint could be the subject of an inquiry under the *Public Health Act 1991* or the *Health Services Act 1997*.

8.19 In instances where this referral is made, the Commission must discontinue dealing with the complaint unless it concerns the professional conduct of a health practitioner or a health service as it affects the clinical management or care of an individual client.[80]

Recommendation Four: Uniform Complaints Handling and Disciplinary Mechanisms

That the Health Care Complaints Act be amended to create a power which allows the Health Care Complaints Commission to require health professional associations to establish uniform complaints handling and disciplinary mechanisms and grants the Commission power to monitor the functioning of these

8.20 Evidence provided to the Committee throughout the Inquiry strongly emphasised the deficiency of accountability mechanisms governing the practice of unregistered professionals and the impact this had on avenues for redress available to consumers.

8.21 Professional standards varied widely, even between associations within the same profession, with many individual associations themselves reporting an inability to respond adequately to improper conduct by their members.

8.22 Additionally, privacy and confidentiality provisions under the *Privacy Act 1988* and the *Health Care Complaints Act 1993* restricted the reciprocal exchange of complaints information between associations and the Commission.

8.23 These factors, combined with the voluntary nature of professional associations, led the Committee to conclude that self-regulation as it currently existed provided insufficient protection to consumers against unregistered health practitioners who behaved improperly.

8.24 Given that many professional associations were well established yet lacked systematic complaints handling procedures, the Health Care Complaints Commission recommended to the Committee that building on the strengths of existing regulatory mechanisms may be the best option, in the interim, for providing additional protection of consumer rights.

8.25 The Committee agreed with the proposal, subsequently recommending that the existing health care complaints legislation be amended to require professional associations to develop uniform procedures for complaints handling and disciplinary mechanisms, and that the Health Care Complaints Commission be given responsibility for monitoring the functioning of the changes.

8.26 No such changes have been implemented to date.

[80] Health Care Complaints Commission, 2005, *Annual Report of the Health Care Complaints Commission 2004/05*.

Recommendation Five: Umbrella Legislation

That the Minister for Health examine the feasibility of establishing umbrella legislation to cover unregistered health care practitioners which establishes a generic form of registration, generic complaint and disciplinary mechanisms, a uniform code of conduct, entry criteria agreed amongst the relevant professions and an Advisory Board to the Minister

8.27 An examination by the Committee of the evidence presented throughout the Inquiry revealed trends towards supporting some system of registration for currently unregistered health practitioners.

8.28 The Health Care Complaints Commission's view was for the development of umbrella legislation covering all health practitioners, including those currently registered. They advocated for the establishment of a generic Health Practitioners Board, operating with a common registry which appointed appropriate panels determined by the profession of the practitioner being investigated.

8.29 The option of enabling currently registered professions to retain their existing disciplinary boards was raised.

8.30 The Committee agreed in part with the proposal of the Health Care Complaints Commission, in that it, too, supported the development of a generic form of registration for unregistered health practitioners. However, the Committee's view was that only those professions currently not covered by individual health practitioner legislation should be incorporated under umbrella legislation.

8.31 The proposed legislation would require the development of a complaints committee and uniform professional standards, with a generic disciplinary board established similar to that proposed by the Health Care Complaints Commission.

8.32 Additionally the Committee believed, in line with Health Care Complaints Commission propositions, that the establishment of an advisory body for unregistered professions to the Minister for Health would not only give unregistered professions a voice but also provide a forum for obtaining information about treatment efficacy.

8.33 As a consequence, the final report of the Committee proposed that the feasibility of developing generic legislation for unregistered health practitioners be conducted, taking into consideration the features of the legislation outlined above and with consideration of the practical and financial resources required to develop and implement such legislation.

8.34 Since this time, no exploration of these issues has been formally conducted.

Recommendation Six: Naming Powers

That the Minister for Health consider providing the Health Care Complaints Commission with a naming power similar to the one available to the Department of Fair Trading by s86A of the *Fair Trading Act 1987*

8.35 Given the time required to investigate the feasibility of legislative options for unregistered practitioners, the Committee recommended that measures be taken in the interim to provide the Health Care Complaints Commission with naming powers similar to those contained in the *Fair Trading Act 1987*.

8.36 The provisions of the *Fair Trading Act* enable the following:

86A Public Warning Statements

(1) The Minister or the Director-General may make or issue a public statement identifying and giving warnings or information about any of the following:

(a) goods that are unsatisfactory or dangerous and persons who supply those goods,

(b) services supplied in an unsatisfactory manner and persons who supply those services,

(c) unfair business practices and persons who engage in those practices,

(d) any other matter that adversely affects or may adversely affect the interests of persons in connection with the acquisition by them of goods or services from suppliers.

(2) Such a statement can identify particular goods, services, business practices and persons.

(3) The Minister or the Director-General is not to make or issue a statement under this section unless satisfied that it is in the public interest to do so.

8.37 Further, the Committee recommended that this power be extended to include the power to name treatments, equipment or practices that are deemed to pose a risk to public health and safety.

8.38 When applied to the role of the Health Care Complaints Commission, such powers would enable the Commission or the Minister for Health to publicly name (through listing on their website, Journal, Annual Report, through media releases or other means) a practitioner when a complaint against him or her has been substantiated.

8.39 The recently introduced *Health Legislation Amendment (Unregistered Health Practitioners) Bill 2006* provides for naming powers to be granted to the Health Care Complaints Commission (see Chapter Ten).

Recommendation Seven: Court-Enforceable Orders for Consumer Refunds

That the Minister for Health consider either establishing or nominating a body with the power to issue court-enforceable orders to allow health consumers to obtain refunds through the Small Claims Tribunal from unregistered practitioners in circumstances where this body deems it appropriate after receiving recommendations from the Health Care Complaints Commission

8.40 On many occasions when clients received unsatisfactory treatment from an unregistered health care provider, few avenues were available to the consumer through which they could recover funds paid to the practitioner for that treatment.

8.41 In their submission to the 1998 Inquiry, the Health Care Complaints Commission supported the establishment of a means through which consumers could obtain this refund.

8.42 The Commission proposed that a body be established by the Minister for Health, or an existing body utilised, that was granted the authority to order the return of costs associated with the health care treatment provided by an unregistered practitioner for treatment that was deemed to be of an unsatisfactory professional standard as a result of a Health Care Complaints Commission investigation.

8.43 The Committee agreed with this suggestion, and subsequently put forward the recommendation in the final report that refunds be ordered to consumers, based on the recommendation of the Health Care Complaints Commission and enforceable through the Small Claims Tribunal.

8.44 To date, no new body had been established nor an existing body equipped with the authority to order refunds for consumers.

8.45 In this report, the Committee will make the recommendation that the Health Conciliation Registry consider the issue of consumer refunds as part of the conciliation process (see Chapter Eleven)

Support for the Recommendations of the 1998 Report

8.46 The following table shows the number of submissions to the Committee's current review of the 1998 Report into unregistered health practitioners.

8.47 A number of submissions did not specifically refer to the previous recommendations. A separate column (titled 'No Comment') has been included to capture these.

Table 1: Support for and Opposition to the Recommendations of the 1998 Report into Unregistered Health Practitioners

Recommendation	Support	Oppose	No Comment
One: That the HCCC take a greater role in educating consumers about unregistered health practitioners	11	1	25
Two: That the Department of Health and Colleges help to disseminate this information	9	1	27
Three: That the HCCC be permitted to refer possible breaches of Minister's Acts to the Director-General of Health	7	0	30
Four: That professional associations be required to establish uniform complaints and disciplinary mechanisms, monitored by the HCCC	11	2	24
Five: That the Minister for Health examine the feasibility of establishing umbrella registration for unregistered health care practitioners	11	9	17
Six: That the HCCC potentially be given a naming power similar to that under the Fair Trading Act	9	1	27
Seven: That the possibility of nominating a body with the power to issue court-enforceable orders for consumer refunds be considered	5	0	32

8.48 Of the twelve submissions that addressed the role of the Health Care Complaints Commission in further educating the public about unregistered health practitioners, eleven were in support of the initiative.

8.49 The same proportion were in favour of the Department of Health and Colleges assisting to disseminate this educational material.

8.50 Most submissions that addressed Recommendation Four (9/10) were also in favour of professional associations being required to standardise their complaints and disciplinary mechanisms, so long as this was done in consultation with all relevant professional associations.

8.51 The most contentious of recommendations was the proposal to establish umbrella registration for all unregistered health practitioners.

8.52 Arguments in favour of the proposal cited a need to provide statutory support for disciplinary methods, to ensure that consumers are receiving treatment from appropriately qualified and experienced practitioners, and to establish a means by which practitioners who have been deregistered from a registered profession can be prevented from practicing in an allied field.

8.53 Arguments against the proposal focussed on the diversity of practice that currently exists (which, it was argued, could not possibly be adequately represented by an umbrella form of regulation), the likelihood of conferring false credibility on often untested methods and the anti-competitive nature of registration.

8.54 In total, eleven submissions supported the development of umbrella registration for all unregistered health practitioners, whilst nine were opposed to the recommendation.

8.55 All but one of the submissions that commented on the potential granting of naming powers to the Health Care Complaints Commission offered support for the plan.

8.56 The one objection received still favoured the use of such powers, but believed that the Office of Fair Trading (through the *Fair Trading Act 1987)* was already equipped to administer this responsibility.

8.57 Lastly, only five of the submissions received addressed the potential nomination of a body to be granted legislative authority to issue court-enforceable refunds to consumers in instances where an investigation by the Health Care Complaints Commission deemed it justified.

8.58 All five were in support of the recommendation.

8.59 Commonly, submissions only addressed issues relating to a particular profession or group of professions.

8.60 In these instances, attitudes towards the regulation of those professions were not regarded as general views towards unregistered professions as a whole.

Committee Support for the Recommendations of the 1998 Report

8.61 In this 2006 Report, the current Committee confirms its support for the principles behind the recommendations of the 1998 Report.

8.62 Considering developments since this time, however, the Committee now believes that some revision of the original recommendations is required.

8.63 The Committee recommends that NSW Health revisit the recommendations of the 1998 report

Chapter Nine - Previous Inquiries

9.1 Many unregistered occupations, including complementary and alternative therapy (which incorporates Traditional Chinese Medicine), psychotherapy and counselling, have previously been investigated by various Australian jurisdictions for the appropriateness of their unregulated status.

NSW Department of Health- Regulation of Complementary Health Practitioners

9.2 In 2002 the NSW Department of Health released a discussion paper titled *'Regulation of Complementary Health Practitioners'*.

9.3 This paper identified three groups currently providing complementary health services in NSW:

1. Registered health professionals working within the Western clinical model of medicine who have a formal qualification and a registration mechanism (e.g. medical practitioners, pharmacists and physiotherapists);
2. Unregistered health professionals working within the Western clinical model of medicine who have a formal qualification but no formal registration mechanism (e.g. occupational therapists, dietitians and psychotherapists);
3. Practitioners working outside the Western clinical model of medicine (e.g. alternative or complementary health practitioners).

9.4 Complementary health practitioners were further defined as practicing in the following occupations:

- Traditional Chinese Medicine;
- Acupuncture;
- Naturopathy;
- Homeopathy;
- Western Herbal Medicine;
- Ayurvedic Medicine;
- Massage Therapy;
- Shiatsu;
- Reiki;
- Chelation Therapy;
- Chiropractic;
- Osteopathy.

9.5 Of these, only chiropractic and osteopathy are currently registered professions in NSW.

9.6 An analysis of the evidence and of submissions received by NSW Health led the Department to conclude that practitioners of Traditional Chinese Medicine should be a priority for registration. In November 2005, the Committee on the Health Care Complaints Commission made this recommendation in its Report into Traditional Chinese Medicine (discussed below).

9.7 In the interim, NSW Health has focussed efforts on investigating naturopathy and western herbal medicine, which it believes serve the next greatest risk, after Traditional Chinese Medicine, to public health and safety.

9.8 Additionally, a separate advisory committee has been established within NSW Health to provide specific advice to the Minister on complementary and alternative medicine practice in NSW.

9.9 Recently, the NSW Minister for Health introduced substantial legislative changes to improve the regulation of all unregistered health practitioners, including those in the field of complementary and alternative medicine. These are discussed in detail in Chapter Ten.

Victorian Department of Human Services- Registration of Traditional Chinese Medicine Practitioners

9.10 In response to concerns expressed by consumers, practitioners and professional groups, the Victorian Department of Human Services (then the Victorian Department of Health and Community Services) commenced a review of Traditional Chinese Medicine on behalf of all States and Territories in August 2005.

9.11 As part of this, Southern Cross University and the University of Western Sydney undertook a major national research project on the practice of TCM, jointly funded by New South Wales, Victoria and Queensland.

9.12 The project collected information on the risks and benefits of Traditional Chinese Medicine and the nature of the Traditional Chinese Medicine workforce, as well as examining the need for registration of Traditional Chinese Medicine practitioners and for better regulation of Chinese herbal medicines.

9.13 A discussion paper titled *"Review of Traditional Chinese Medicine: Occupational Options for Regulation of the Profession of Traditional Chinese Medicine"* was released for public comment in September 1997.

9.14 The final report, "Traditional Chinese Medicine- Report on Options for Regulation of Practitioners" was released in July 1998, recommending, amongst other things:

- That statutory based occupational regulation of the profession of TCM be adopted as the most suitable method of setting educational standards, accrediting training courses and protecting the public from untrained or poorly trained practitioners.
- That statutory registration via State–and Territory–based registration boards be implemented.
- That a representative group from the profession be encouraged to develop consensus guidelines for an appropriate minimum standard of education in both acupuncture and Chinese herbal medicine.
- That the modalities of acupuncture and Chinese herbal medicine be regulated via statutory registration.
- That a model of health practitioner registration based on protection of title be adopted as the minimum requirement for regulation of the TCM profession.
- That the TCM registration board(s) have the power to register suitably qualified dispensers in order to regulate dispensing of scheduled herbal medicines.

- That a representative body from the TCM profession further develop options for consideration by the TCM Registration Board(s) on grandparenting of existing practitioners with the introduction of registration requirements.
- That further work be done to establish whether there is a need for statutory registration of practitioners of Western Herbal Medicine and that this include examination of mechanisms to allow prescribing and dispensing of scheduled Western herbal medicines by suitably qualified practitioners.

9.15 Victoria has since become the first Australian jurisdiction to formally register practitioners of Chinese herbal medicine, acupuncturists, and Chinese herbal dispensers, passing the *Chinese Medicine Registration Act* in 2000.

NSW Committee on the Health Care Complaints Commission- Inquiry into Traditional Chinese Medicine

9.16 In June 2005, the Committee on the Health Care Complaints Commission announced its inquiry into the possible regulation or registration of Traditional Chinese Medicine practitioners.

9.17 This followed the passing of the *Chinese Medicine Registration Act* in Victoria in 2000, and the subsequent establishment of the Chinese Medicine Registration Board of Victoria.

9.18 Of the submissions to the NSW inquiry, all except three were in support of either regulation or registration of Traditional Chinese Medicine. Statutory registration was the preferred model by most.

9.19 The final report, released in November 2005, recommended the registration (by enactment of legislation) of Traditional Chinese Medicine Practitioners in three distinct divisions: acupuncturist, Chinese herbal medicine practitioner and Chinese herbal dispenser, and that practitioners be regulated by a Traditional Chinese Medicine Registration Board.

9.20 To date, these practitioners remain unregistered in NSW.

Western Australian Department of Health- Registration of Traditional Chinese Medicine Practitioners

9.21 In response to the findings of Victorian research into the regulation of Traditional Chinese Medicine practitioners, the Western Australian Department of Health released its own consultation paper to seek comment on a proposed registration framework for practitioners of Traditional Chinese Medicine in the state of Western Australia.

9.22 The registration framework was based on that introduced by the Victorian *Chinese Medicine Registration Act 2000*, which initially sought to register practitioners of Chinese herbal medicine, acupuncturists and herbal medicine dispensers.

9.23 Submissions to the review closed in September 2005. To date, no report on the results of the consultation has been published.

9.24 Western Australia reports that it is currently in the process of finalising a draft bill regarding the registration of Chinese medicine practitioners, which is expected to be released in the coming months.

Victorian Department of Human Services- Review of Health Professionals Registration

9.25 In October 2002 the Victorian Department of Human Services undertook a review of the framework governing registered health professions in Victoria.

9.26 The decision to develop umbrella legislation covering all existing registration boards was made as a result of the review process.

9.27 Whilst this review predominantly focussed on registered health professions, issues relating to the unregistered professions were also explored.

9.28 Throughout the review, five studies of particular issues relating to professional practice and regulation were commissioned.

9.29 Three of those related to the practices of unregistered professionals. These included:

- Self-Regulation Models: A study of best-practice models of self-regulation.
- Naturopathy and Western Herbal Medicine: A study of the risks, benefits and regulatory requirements for the professions of naturopathy and Western Herbal Medicine.
- Recovered Memory Therapy: A study of the practice of 'recovered memory therapy', also known as false memory or repressed memory therapy.

Self-Regulation Models

9.30 As previously reported, the Department of Human Services has commissioned an investigation into models of self-regulation for the psychotherapy and counselling professions, as well as other unregistered health professions.

9.31 The investigation will include:

- A review of models of best practice in self-regulation.
- Focused consultation with PACFA member associations.
- Broader consultation with peak bodies that represent other unregistered health professions and other experts in the field.

9.32 The Department intends to implement the recommended model once the key features of a preferred self-regulatory model for psychotherapy and counselling are identified and agreed by relevant parties.

9.33 This process is still underway.

Naturopathy and Western Herbal Medicine

9.34 A research project on the practice of naturopathy and Western herbal medicine was funded by the Department of Human Services, with the aim of:

- Identifying the risks associated with the practice of these complementary medicine professions;
- Identifying the benefits of practice;
- Assessing the need, if any, for further regulation of practitioners and/or the prescribing and dispensing of herbal medicines.

9.35 The aims of the study were to:

- Develop profiles of both risks and benefits of naturopathy and Western herbal medicine;
- Develop a profile of practitioners, including educational pathways and other forms of preparation for practice;
- Investigate the degree to which these modalities have been incorporated within other professions, such as medicine;
- Identify the factors that influence consumers to choose these treatment modalities.

9.36 A report on this study was released by the Department in August 2006.[81]

9.37 In this report, the research group considered the professions of naturopathy and Western Herbal Medicine against the Australian Health Minister's Advisory Council (AHMAC) criteria, and came to the following conclusions:

- It is appropriate for Health Ministers to exercise responsibility for regulating naturopathy and Western Herbal Medicine, as they are professions that offer health services to the general public.
- The activities, the scope of practice, and the practice context of naturopathy and Western Herbal Medicine pose a significant risk of harm to the health and safety of the public. Minimisation of the risks should be a priority of both government and the professions.
- Existing regulatory mechanisms- by government and the professions- are inadequate in safeguarding and protecting the public as consumers of naturopathy and Western Herbal Medicine. Statutory regulation would provide a higher standard of complaints process with regard to access, transparency, and equity; moreover, disciplinary actions would be given the force of statute, and an appeals process would be provided.
- Naturopathy and Western Herbal Medicine are defined professions, with defined modalities and established educational provision, for which regulation is possible to implement. There are complexities in relation to naturopathy because of the diversity of practices adopted by the profession and the fact that some practitioners specialise in only some modalities and do not practise others. However, similar complexities have been addressed successfully in Victoria in designing the registration scheme for the Chinese medicine profession.
- Occupational regulation is not without some practical difficulties, but there are models in other jurisdictions in Australia and experience in relation to registration of Chinese medicine practitioners that can be drawn upon to design and implement a suitable regulatory scheme.
- The benefits of promoting public safety outweigh the potential negative impacts of occupational regulation.

[81] Victorian Department of Human Services. (November 2005). *The Practice and Regulatory Requirements of Naturopathy and Western Herbal Medicine: Final Report*.

9.38 The research group found that statutory regulation is warranted because:

- There is a level of risk comparable to other regulated professions;
- There is a particular risk related to interaction of herbal medicines and pharmaceutical drugs, and the need for appropriate clinical guidelines;
- There is no legally enforceable regulatory framework governing the prescribing of drugs and poisons by naturopaths and Western Herbal Medicine practitioners;
- There are significant variations in standards for professional education and membership among professional associations, and the professional associations have been unable to agree upon a common arrangement for self-regulation;
- There are significant variations in standards among education and training institutions and no evidence of movement towards common standards, including the failure of current regulatory frameworks for education to ensure minimum standards; and
- Existing regulatory frameworks provide insufficient protection for consumers against professional misconduct.

9.39 Consequently, the final report recommended that protection of title be adopted for the professions of:

- Herbal medicine practitioner;
- Western herbal medicine practitioner;
- Herbalist;
- Western herbalist;
- Medical herbalist;
- Phytotherapist;
- Phytotherapy practitioner;
- Naturopath;
- Naturopathic physician;
- Naturopathic medicine practitioner; and
- ND (naturopathic doctor/doctorate, naturopathic diploma).

9.40 The report also found that, at this time, there is insufficient evidence of risk to warrant protection of some related titles. As a result, it was recommended that the following titles *not* be protected by legislation:

- Nutritional medicine practitioner;
- Homeopath;
- Massage therapist;
- Body work therapist;
- Relaxation therapist;
- Natural therapist; and
- Complementary therapist.

9.41 Several recommendations were also made around adverse events reporting, guidelines for professional practice, continuing professional development, minimum educational standards for medical practitioners providing naturopathy and Western Herbal Medicine therapies and community education.

9.42 Comments on the final report and its recommendations have been invited from all interested parties, with submissions closing at the end of October 2006.

Recovered Memory Therapy

9.43 Following the conclusion of the inquiry into recovered memory therapy commissioned by the Department of Human Services, a Final Report was released in September 2005.

9.44 This report noted that the evidence-base for the validity of recovered memory therapy is inconclusive, and that few guidelines on the practice of the technique exist. The inquiry was unable to ascertain the extent of the practice of recovered memory therapy in Victoria.

9.45 The Health Services Commissioner made five recommendations as a result of the inquiry. These were:

- Recommendation One: Collaboration between universities, professional bodies and accredited teaching organisations to review the adequacy of training regarding trauma, with a view to ensuring practitioners are being adequately trained.
- Recommendation Two: Professional bodies (including those for registered and unregistered practitioners) and registration boards which have not established best practice guidelines relating to recovered memories do so.
- Recommendation Three: All unregistered providers of trauma counselling, psychotherapy and hypnotherapy services become members of a suitable professional organisation within their profession.
- Recommendation Four: The Department of Human Services take a leadership role with professional bodies, registration boards and advocacy groups to conduct a community education campaign aimed at ensuring members of the public have the information needed to choose appropriately qualified practitioners.
- Recommendation Five: The Office of the Health Services Commission will continue to monitor concerns expressed by all interested parties about Recovered Memory Therapy.

9.46 The Minister has begun the process of requesting advice from the various registration boards and professional bodies about the Commissioner’s recommendations and the potential role they could play in implementation.

Australian Government Expert Committee on Complementary Medicines in the Health System- Alternative and Complementary Therapies

9.47 In May 2003 the Australian Government established the Expert Committee on Complementary Medicines in the Health System, in response to community concerns about the quality and safety of alternative medicines.

9.48 The Committee was to provide advice to the Australian Government on:

- Regulatory controls covering standards of quality, safety and efficacy for complementary medicines;
- Consumer information;
- Education and training of healthcare practitioners;
- Interactions between complementary and prescribed medicines;
- Restrictions on advertising;
- Activities to promote an innovative, responsible and viable complementary medicines industry.

9.49 Amongst other things, the Expert Committee found that consumers are currently less than adequately informed when it comes to considering and selecting complementary medicines, and believed that Governments need to take a more active role in ensuring that consumers are adequately equipped (in terms of both information and skills) to make decisions appropriate for their needs.

9.50 The Expert Committee also believed that Governments needed to move more quickly to develop nationally consistent statutory regulation for complementary professions (where appropriate), that effective self-regulation should be more actively encouraged and that the education and training of practitioners who advise on or prescribe the use of complementary medicines should be strengthened.

9.51 In response to these findings, the Expert Committee recommended that the Department of Health and Ageing commission a study to determine the information and skills needs of healthcare professionals and consumers in relation to complementary medicines.

9.52 Furthermore, the study should identify options for conveying this information to consumers and ascertain the costs and other resources required to initiate the study and respond to its findings.

9.53 The Expert Committee also made several recommendations around the regulation of complementary practices (Recommendations 27-32).

9.54 In summary, these recommended that:

- All jurisdictions develop legislation similar to that introduced in Victoria to register practitioners of Traditional Chinese Medicine
- Giving consideration to the NSW and Victorian reviews, Health Ministers should move quickly to introduce statutory regulation where appropriate
- All jurisdictions should adopt effective, transparent and accountable self-regulatory structures for complementary health practitioners. Broadly speaking, such a system should involve certification, a Code of Ethics, complaints procedures, disciplinary procedures, incentives for compliance and sanctions for non-compliance with the Code of Ethics and a mechanism for external scrutiny

9.55 The Australian Government released its response to the Report of the Select Committee on Complementary Medicines in the Health System in March 2005.

9.56 In this response, the Australian Government agreed with recommendation that the government take a more active role in ensuring that consumers have access to reliable information about complementary medicines, and the skills to interpret this information to be able to make informed decisions.

9.57 All other recommendations outlined above were noted by the Australian Government.

9.58 In February 2006 the Australian Government released a progress report on the recommendations of the Select Committee on Complementary Medicines in the Health System.

9.59 The Report explained that Department of Health and Ageing is currently in the process of refining the scope of the study of information and skills needs for consumers and health professionals (Recommendation 25).

9.60 With regards to Recommendations 27 to 32, the Report stated that:

> "The recommendations relating to the regulation and self-regulatory arrangements for complementary healthcare practitioners have been referred to the Australian Health Workforce Officials' Committee, a sub-committee of the Australian Health Ministers Advisory Council.
>
> The Committee recently established a Regulation sub-Committee to examine 'inter alia' mechanisms for the nationally consistent regulation of Traditional Chinese Medicine Practitioners."

Commonwealth Government Productivity Commission- Australia's Health Workforce (2005)

9.61 On 25 June 2004, the Council on Australian Governments (COAG) commissioned a paper on health workforce issues, including the pressures relating to the demand for and supply of health services in Australia over the next ten years.

9.62 Part of the review looked at appropriate regulatory and practice models for the health professions, including the consistency of accreditation and regulatory controls.

9.63 Problems with the current system identified in the Final Report, released in December 2005, included the inconsistent approach to education and training nation-wide and a dependence on profession-specific training that places unnecessary and unconstructive constraints on workplace innovation and job design.

9.64 In responding to these problems, the Productivity Commission proposed the establishment of a consolidated national accreditation scheme to integrate the current profession-based system.

9.65 The scheme would involve the development of a national accreditation board for all health professions, which would be responsible for setting educational and training standards across occupations. Such as scheme would promote multidisciplinary and interdisciplinary learning and potentially facilitate the development of uniform national registration standards for health professionals.

9.66 The new national board would also be responsible for developing a national approach for the assessment of the education and training qualifications of overseas trained health practitioners.

9.67 In addition to a review of training and accreditation, the Productivity Commission Report also addressed systems of regulation for health professionals.

9.68 Whilst much of the review focussed on registered professions, some attention was given to appropriate models of regulation for unregistered practitioners. The views of the Productivity Commission around the regulation of these two categories of professions are outlined below.

Registered Professions

9.69 Part of this paper focussed on the role of the registration process insofar as it impacts the efficiency and effectiveness of health workforce deployment.

9.70 In reviewing the current system of registration, the Final Report made several recommendations that focussed primarily on national consistency.

9.71 Firstly, the Productivity Commission recommended that all health professionals (including overseas trained professionals) who are required by legislation to register be assessed against uniform national standards for that profession.

9.72 One option suggested for overseas trained practitioners who do not meet the standards required for unconditional registration was to permit the registration authority to allow the practitioner to work under specified terms and conditions, if appropriate.

9.73 The Productivity Commission proposed the establishment of a single national registration board for all currently registered health professions, with profession-specific disciplinary panels created to handle matters as needed.

9.74 Specifically, it suggests that functions such as monitoring codes of practice and discipline might best continue to be handled on a profession specific basis.

9.75 This could be done through the establishment of profession specific panels nationally (and sub-nationally as appropriate), and delegation to them of appropriate functions and powers. Such panels would operate under the authority of the national board.

9.76 In addition, the report stated that membership of the new national registration board ought to reflect the broader public interest, rather than the interests of particular stakeholder groups.

9.77 Amongst other things, the model recommended by the Productivity Report is intended to overcome the disadvantages associated with mutual recognition as it presently operates, promote a more consistent approach to issues such as the regulation of title and recognition of specialties, and reduce administration and compliance costs.

Unregistered Professions

9.78 The review paper also addressed the status of currently unregistered professions and professions yet to be developed.

9.79 Given the costs and administrative burdens tied to implementing new registration procedures, the Productivity Commission identified several alternatives to registration for tightening regulatory boundaries for the unregistered professions.

9.80 The first alternative recognised was credentialing, defined in the Report as:

> "... a formal process used by employers to verify the qualifications experience, professional standing and other relevant professional attributes of health practitioners, for the purpose of forming a view about their competence, performance and professional suitability to provide safe, high quality health care services within specific organisational environments".[82]

9.81 Credentialing would enable employees to distribute tasks based on a formal assessment of qualification and competency, in effect shouldering some of the responsibility for determining limits of practice as part of clinical risk management processes.

9.82 The Australian Council for Safety and Quality in Health Care has already developed a national standard for credentialing and defining the scope of practice of medical practitioners

9.83 The other option proposed by the Productivity Commission is the possibility of delegation:

> "Delegation of tasks occurs when practitioners authorise another health care worker to provide treatment or care on their behalf. In making the decision to delegate, practitioners make the judgment that the person to whom they are delegating tasks is competent to carry out the procedure or provide the therapy involved." [83]

9.84 Delegation procedures are relatively informal, with guidance for practitioners often contained within registration boards' guidelines or codes. More often than not, they are without formal legal backing.

9.85 Overall, the Productivity Commission recommended that the status of unregistered professions be considered on a case-by-case basis, taking into account alternatives such as those discussed above.

9.86 The view of the Productivity Commission is that health care professions should be registered in all Australian states and territories or none at all.

9.87 Recommendations of the report in regards to the accreditation and regulation of the health professions were as follows:

> "Recommendation 6.2
>
> The Australian Health Ministers' Conference should establish a single national accreditation board for health professional education and training.
>
> - The board would assume statutory responsibility for the range of accreditation functions currently carried out by existing entities.
> - VET should be included as soon as feasible, although there are grounds for excluding it until the new arrangement is implemented and operating successfully in other areas.
> - Collectively, board membership should provide for the necessary health and education knowledge and experience, while being structured to reflect the public interest generally rather than represent the interests of particular stakeholders.

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[82] Australian Government Productivity Commission, 2005, *Australia's Health Workforce: Productivity Commission Research Report*

[83] Australian Government Productivity Commission, 2005, *Australia's Health Workforce: Productivity Commission Research Report*

- Initially, at least, the board could delegate responsibility for functions to appropriate existing entities, on terms and conditions set by the board. Such entities should be selected on the basis of their capacity to contribute to the overall objectives of the new accreditation regime.
- The new national accreditation board should assume statutory responsibility for the range of accreditation functions in relation to overseas trained health professionals currently carried out by existing profession based entities."

"Recommendation 7.1

When a health professional is required to be registered to practise, that should be on the basis of uniform national standards for that profession.

- Education and training qualifications recognised by the national accreditation board should provide the basis for these national registration standards.
- Any additional registration requirements should also be standardised nationally.
- Flexibility to cater for areas of special need, or to extend scopes of practice in particular workplaces, could be met through such means as placing conditions on registration, and by delegation and credentialing.

Recommendation 7.2

The Australian Health Ministers' Conference should establish a single national registration board for health professionals.

- Pending the development and adoption of national registration standards by the new board, the board should subsume the operations of all existing registration boards and entities, including the authority to impose conditions on registration as appropriate.
- The new board should be given authority to determine which professions to register and which specialties to recognise.
- Initially, however, the new board should cover, at a minimum, all professions which currently require registration across the eight jurisdictions.
- Membership of the board should contain an appropriate mix of people with the necessary qualifications and experience, and be constituted to reflect the broader public interest rather than represent the interests of particular stakeholders.
- Profession specific panels should be constituted within the board to handle matters such as the monitoring of codes of practice and those disciplinary functions best handled on a profession specific basis.

The new national registration board should consider and determine the circumstances in which more explicit specification of practitioner delegation arrangements would be appropriate."

Council of Australian Governments 2006

9.88 In July 2006, the Council on Australian Governments (COAG) agreed that a national registration scheme would be established for all currently registered health professionals.

9.89 Health professions that are currently unregistered, including those registered in only some Australian jurisdictions, may be added to the scheme in the future:

> "In order to facilitate workforce mobility, improve safety and quality, and reduce red tape, COAG has agreed to establish by July 2008 a single national registration scheme for health professionals, beginning with the nine professions currently registered in all jurisdictions. COAG has agreed to undertake consultation with stakeholders on its preferred model of a national cross-professional registration body which would also involve health professions participating in the scheme's governance through profession-specific panels and committees. COAG noted that this is the first tranche of national registration and that other professional groups (including Aboriginal health Workers) may be added over time."[84]

9.90 Through this, COAG expects to facilitate workforce mobility, improve safety and quality and reduce red tape.

9.91 COAG also determined that the accreditation of health practitioners would be administered nationally to improve the consistency of health practitioner education and training:

> "COAG further agreed to establish by July 2008 a single national accreditation scheme for health education and training, in order to simplify and improve the consistency of current arrangements."[85]

9.92 Both schemes will be self-funding, with set-up costs shared across the Commonwealth, states and territories.

[84] Communiqué, Council of Australian Governments Meeting. 14 July 2006.
[85] Communiqué, Council of Australian Governments Meeting. 14 July 2006

Chapter Ten - Health Legislation Amendment (Unregistered Health Practitioners) Bill 2006

10.1 On 3 April 2006, the NSW Minister for Health, The Hon. John Hatzistergos MLC, proposed substantial changes to health legislation to enable regulatory bodies in NSW to more effectively respond to complaints against unregistered health practitioners.

10.2 The announcement was made that the Health Care Complaints Commission was to be given a range of powers through changes to the *Health Care Complaints Act 1993*:

> "Under changes to the Health Care Complaints Act, the HCCC will have the authority to:
>
> - Black-ban unregistered practitioners
> - Publicly name and shame unregistered practitioners
> - Carry out tougher, wide-sweeping investigations of unregistered health practitioners
> - Enforce its own disciplinary action against unregistered practitioners"[86]

10.3 A meeting was held with representatives from NSW Health in June 2006 to discuss the proposed reforms.

10.4 On Thursday 21 September 2006 the *Health Legislation Amendment (Unregistered Health Practitioners) Bill 2006* was tabled in NSW Parliament.

10.5 The amendments contained in this *Bill* relate to the practice of:

- People who provide services in areas that are not currently registered;
- People who have been de-registered for disciplinary reasons or whose registration has lapsed; and
- Practitioners who are registered in one profession but who practice in an area wholly unrelated to the profession for which they are registered.

10.6 Amendments will be made to the *Public Health Act 1991*, the *Health Care Complaints Act 1993* and to the individual health registration Acts.

Amendments to the *Public Health Act 1991*

10.7 Under the *Health Legislation Amendment (Unregistered Health Practitioners) Bill 2006*, several sections of the *Public Health Act 1991* are to be amended.

10.8 Firstly, the timeframe within which complaints proceedings must commence is to be increased from six months to two years.

10.9 A de-registered health practitioner will also be required to inform both his or her employer and the person to whom he or she intends to provide a health service that he or she has been deregistered from a particular profession. A practitioner will also be required to inform the employer and client if he or she is subject to a prohibition order.

10.10 It will be an offence for a practitioner to provide a health service in contravention of a prohibition order.

[86] NSW Health, Media Release: *"Getting tough on unregistered health practitioners"*, 3 April 2006.

10.11 Any advertisement for services to be provided by either a de-registered health practitioner or a practitioner who is subject to a prohibition order will be required to include the fact that the practitioner has been de-registered or subject to the order.

10.12 Amendments to the *Public Health Act 1991* will also allow for the regulations to prescribe a code of conduct for the provision of health services by:

- Health practitioners who are not required to be registered under a health registration Act (which includes de-registered health practitioners);
- Health practitioners who are registered under a health registration Act who provide health services that are unrelated to their registration.

10.13 It will also be an offence for a health practitioner to advertise a health service in a manner that is false or misleading.

Amendments to the *Health Care Complaints Act 1993*

10.14 Under the amendments to the *Health Care Complaints Act 1993*, the Health Care Complaints Commission will be given the power to determine that a health practitioner has breached the code of conduct provided for under the *Public Health Act 1991*.

10.15 The Commission can then make a determination as to whether or not this practitioner poses a substantial risk to the health of members of the public, and can either:

- Make a prohibition order (restricting all or certain aspects of their practice permanently or for a specified amount of time);
- Cause a public warning statement to be issued regarding the practitioner or health service.

10.16 The Commission will be required to provide a statement of decision to the practitioner, the complainant and any relevant professional body or association.

10.17 An avenue for appealing a determination that a practitioner has breached the code of conduct will be made available to the practitioner concerned through the Administrative Decisions Tribunal.

10.18 The Commission will be required to make public all statements of decisions made by the tribunals of health registration boards relating to complaints either proven or admitted (in whole or part).

10.19 A prohibition order or public warning statement will be permitted to be made for conduct that occurred prior to the commencement of the legislation.

Amendments to the Health Registration Acts

10.20 Each of the health registration Acts will be amended to permit the respective disciplinary tribunals to issue a prohibition order upon suspension of a practitioner's registration if the tribunal is satisfied that the practitioner poses a substantial risk to members of the public. A health practitioner who is subject to a prohibition order will have the right to have the order reviewed.

10.21 A prohibition order will be permitted to be made against persons already deregistered at the time of implementation of the legislation.

10.22 Registration boards will be required to make publicly available all names of practitioners deregistered on disciplinary grounds, as well as all Tribunal or Board decisions where a complaint is proven.

10.23 The requirement to make publicly available the name of any health practitioner whose registration has been cancelled as a result of disciplinary proceedings will also extend to persons already deregistered at the time of implementation of the legislation.

Background to Negative Licensing

10.24 Essentially, the amendments to the *Public Health Act 1991*, the *Health Care Complaints Act 1993* and the various health registrations Acts establish a system of negative licensing for practitioners whose professions are unregistered, those who have been deregistered from a registered profession and those who are registered but who practice in an area wholly unrelated to the profession in which they are registered.

10.25 Negative licensing involves the preclusion of persons deemed incompetent or irresponsible from operating in a particular industry upon establishment of this incompetence.

10.26 In light of National Competition Policy requirements, negative licensing has been identified as a suitable first step in regulating unregistered professions, as it imposes few restrictions on the health market whilst enabling practitioners who do pose a risk to consumers to be prevented from practicing.

10.27 No other Australian jurisdiction currently employs a system of negative licensing for health professions.

10.28 Queensland gave consideration to negative licensing as a regulatory option for the profession of occupational therapy in 2002, but determined instead that statutory registration would be a more appropriate form of governance given the risks associated with the practice of occupational therapy.

10.29 South Australia has implemented a negative licensing system for several trade professions, including hairdressers, real estate sales representatives and land valuers.

Hairdressers

10.30 To practice hairdressing for a fee or reward in South Australia, practitioners must possess qualifications as set out in the *Hairdressers Act 1988*.

10.31 There is no register of hairdressers in South Australia, nor must persons wanting to provide hairdressing services notify any Government body. However those found to have practiced without minimum qualifications are guilty of an offence.

10.32 Under the system, employers are also given responsibility for ensuring employees comply with the requirements of the *Act*. Employers can be penalised for employing an unqualified person.

Real Estate Sales Representatives

10.33 Although previously a positively licensed occupation in South Australia, regulation of real estate sales representatives was transferred to a negative licensing system in 1995 as a result of a National Competition Policy review.

10.34 Although the requirement to register was removed, sales representatives must meet prescribed standards that include no prior convictions for a dishonesty offence and the completion of minimum qualifications.

10.35 Once again, employers were given some responsibility for ensuring that employees meet the minimum standard.

10.36 Recently, however, the Real Estate Working Party reviewed the adequacy of a negative licensing system for sales representatives

10.37 One of the major findings of the Working Party report was that there was considerable evidence that the system currently enabled the substitution of sales representatives with unqualified trainees and personal assistants, and that this was happening on a significant scale.

10.38 A potential consequence of this was that members of the public could have interactions with someone they thought was a sales representative but was in fact a secretary or someone else not qualified in the industry.

10.39 This carried the risk that the unqualified individual would be making statements about the property or about people's rights that were misleading or inaccurate.

10.40 It was recommended that it was in the public interest for sales representatives to return to a system of positive registration, and that all sales representatives be required to wear photo identification.

10.41 The South Australian *Real Estate Reform Bill 2004* has been drafted to reflect these recommendations, and is expected to be passed later this year.

Land Valuers

10.42 Land valuers were also registered professionals in South Australia prior to the National Competition Policy review in 1994, whereafter they moved to a system of negative licensing.

10.43 Land valuers must still hold the qualifications prescribed in the regulation and incorporated valuers must ensure that their business is properly managed and supervised by a person who holds the prescribed qualifications.

10.44 Several disciplinary options are available under the *Land Valuers Act 1994:*

> 11. (1) On the hearing of a complaint, the Court may, if it is satisfied on the balance of probabilities that there is proper cause for taking disciplinary action against the person to whom the complaint relates, by an order or orders do one or more of the following:
>
> *(a)* reprimand the person;
>
> *(b)* impose a fine not exceeding $20 000 on the person;
>
> *(c)* prohibit the person from carrying on the business of a land valuer;
>
> *(d)* prohibit the person from being employed or otherwise engaged in the business of a land valuer;
>
> *(e)* prohibit the person from being a director of a body corporate that is a land valuer.

(2) The Court may—

(a) stipulate that a prohibition is to apply—

(i) permanently; or

(ii) for a specified period; or

(iii) until the fulfilment of stipulated conditions; or

(iv) until further order;

(b) stipulate that an order relating to a person is to have effect at a specified future time and impose conditions as to the conduct of the person or the person's business until that time.

10.45 The South Australian Commissioner for Consumer Affairs can also require 'assurances' from persons whose behaviour warrants concern to ensure proper practices are observed. These assurances are published on the website of the Office of Consumer and Business Affairs and in its Annual Report.

Support for Negative Licensing

10.46 At a public hearing on 31 August 2006 Mr Kieran Pehm, Commissioner, Health Care Complaints Commission, expressed his satisfaction with the proposed legislative reforms granting additional responsibilities to the Commission to enable it to investigate, prosecute and publicly name unregistered health practitioners who have breached minimum standards of conduct and practice.

10.47 Several submissions of key health professional bodies also offered strong support for the introduction of negative licensing for their professions:

> "PACFA supports the concept of negative licensing and sees it as a particularly useful way to prevent practitioners who have been deregistered from other professions such as medicine or psychology from setting up practice as a counsellor or psychotherapist."[87]

10.48 The Committee is satisfied that NSW Health undertook a process of consultation on the legislative reforms with representatives from a range of health areas, and was pleased to be a part of this process.

10.49 The Committee is of the view that the range of measures contained in the *Health Legislation Amendment (Unregistered Health Practitioners) Bill* 2006 will effectively allow the Commission to deal with dishonest or incompetent providers in the absence of a registration system.

10.50 The Committee therefore supports the *Health Legislation Amendment (Unregistered Health Practitioners) Bill 2006.* The Committee intends, however, to review the impact and adequacy of the reforms after two years of implementation.

RECOMMENDATION 1: That a future Committee review the adequacy of the *Health Legislation Amendment (Unregistered Health Practitioners) Bill 2006* two years after the date of implementation

[87] Submission Number 29 from the Psychotherapy and Counselling Federation of Australia (PACFA)

Chapter Eleven - Future Directions

De-Registered Health Practitioners

11.1 The Committee expects that the legislative reforms introduced by the NSW Minister for Health will be sufficient to address the problem of practitioners who have been deregistered from one health profession relocating to a similar profession not regulated by legislation and providing essentially the same services.

11.2 The Committee is aware that these reforms also make provisions for the public availability of details of practitioner de-registration and restrictions on practice.

11.3 For many years the Committee has been involved in discussions with the Health Care Complaints Commission regarding the possible publication of practitioner deregistrations on the Commission's website.

11.4 The Committee still believes that a centralised, up-to-date system for consumers to access information about convicted health practitioners is necessary.

11.5 Consequently, it is the Committee's preference that publication of practitioner de-registrations and details of prohibition orders be published on the website of the HCCC and the relevant registration board(s), as opposed to publication in annual reports or any other method that does not allow for regular monitoring and revision.

RECOMMENDATION 2: That the Health Care Complaints Commission and the relevant health registration board list on their websites all tribunal decisions resulting in practitioner de-registration or restrictions on practice

Practitioners of Traditional Chinese Medicine, Naturopathy and Western Herbal Medicine

11.6 In 2005 the Committee inquired into the practice of Traditional Chinese Medicine.

11.7 The final report identified TCM as a practice requiring stricter regulation, particularly because of the potential risk of harm associated with acupuncture and herbal medicine interactions.

11.8 The report recommended the registration of practitioners of Traditional Chinese Medicine in the divisions of acupuncturist, herbal medicine practitioner and herbal medicine dispenser.

11.9 Practitioners of Traditional Chinese Medicine remain unregistered at this time.

11.10 The Committee reiterates it's view that legislation be passed in NSW to register practitioners of Traditional Chinese Medicine.

RECOMMENDATION 3: That legislation be passed in NSW to register practitioners of Traditional Chinese Medicine in the divisions of acupuncturist, Chinese herbal practitioner and Chinese herbal dispenser, as recommended in the Committee's November 2005 Report

11.11 More recently, research conducted by the Department of Human Services, Victoria, has raised serious concerns about the safety of the unregulated practice of naturopathy and Western Herbal Medicine.

11.12 In addition to the generic risks associated with other unregistered professions, the professions of naturopathy and Western Herbal Medicine were also found to carry the added risk of potential adverse medicine reactions:

> "Herbal and nutritional medicines produce both predictable and unpredictable effects. These include toxicity related to overdose, interaction with Western pharmaceuticals, allergic and anaphylactic reactions, and idiosyncratic reactions. The practice of herbal medicine is a greater risk in this regard than other modalities of naturopathy.
>
> The official reporting of adverse events is likely to be an underestimation of the real number of adverse events—given that the Therapeutic Goods Administration (TGA) Adverse Drug Reactions Advisory Committee (ADRAC) database cannot be analysed in terms of component ingredients (Expert Committee 2003). However, the literature does identify a wide range of adverse reactions associated with herbs and nutrients. Interaction between herbal medicines and Western pharmaceuticals is increasingly reported in the literature."[88]

11.13 These risks were deemed serious enough to warrant a recommendation of statutory registration in Victoria.

11.14 The same risks associated with the practice of naturopathy and Western Herbal Medicine in Victoria can be assumed to be present in NSW.

11.15 Moreover, a review of the evidence considered in the Victorian research shows that many of the same issues identified with practitioners of Traditional Chinese Medicine in NSW are emerging with practitioners of naturopathy and Western Herbal Medicine.

11.16 The implementation of amendments contained in the *Health Legislation Amendment (Unregistered Health Practitioners) Bill 2006* will go a considerable way to addressing many of these issues.

11.17 Nevertheless, given the findings of the Victorian research, as well as developments in registration and licensing for these professions in other jurisdictions, the Committee anticipates that a more rigorous system of registration for these practitioners may eventually be required.

11.18 Consequently, the Committee intends to review the progress of Victoria with regards to the regulation of practitioners of naturopathy and Western Herbal Medicine, with a view to exploring the need for registration of these practitioners in NSW.

RECOMMENDATION 4: That the progress of Victoria in relation to the regulation of practitioners of naturopathy and Western Herbal Medicine be monitored, with a view to further exploring the possible registration of these practitioners in NSW

11.19 Given developments towards a system of registration for many currently unregistered professions in Victoria and internationally, the Committee again expresses its continued support for the recommendations of the 1998 Report, including the introduction of an umbrella system of registration for the unregistered professions.

11.20 The Committee recommends that NSW Health reconsider the recommendations of the 1998 report of the previous Committee.

[88] Victorian Department of Human Services. (November 2005). *The Practice and Regulatory Requirements of Naturopathy and Western Herbal Medicine: Final Report*.

RECOMMENDATION 5: That NSW Health revisit the recommendations contained in the 1998 report 'Unregistered Health Practitioners: The Adequacy and Appropriateness of Current Mechanisms for Resolving Complaints '

Practitioner Code of Conduct

11.21 The Committee supports the proposal of the NSW Minister for Health for a generic Code of Conduct for unregistered health practitioners.

11.22 Giving consideration to the principles underpinning the National Competition Agreement, the Committee is in favour of a Code of Conduct that does not place unnecessary restrictions on the practice of unregistered professionals.

11.23 Nevertheless, the code of conduct must establish a standard of practice that minimises the risk of harm to the consumer.

11.24 The Committee believes that thorough consultation with the health professions involved is needed to develop the Code of Conduct.

11.25 It is the Committee's view that a generic Code of Conduct should include, as a minimum, requirements regarding:

- Sexual misconduct;
- Financial exploitation;
- Privacy/Confidentiality;
- Informed Consent;
- Record-keeping;
- The provision of accurate information to the consumer.

RECOMMENDATION 6: That the Code of Conduct for unregistered health practitioners be developed in consultation with the Health Care Complaints Commission, health registration boards and health professional associations

RECOMMENDATION 7: That the Code of Conduct cover, as a minimum, standards relating to: sexual misconduct, fraud, informed consent, record-keeping, privacy and the provision of accurate information to the consumer

11.26 It is the view of the Committee that practitioners not only have a responsibility to behave ethically and competently, but should also be accountable to the consumer for their behaviour.

11.27 The Committee therefore recommends that practitioners be required to make the Code of Conduct available to consumers at all times.

RECOMMENDATION 8: That unregistered health practitioners be required to make the Code of Conduct accessible to consumers at all times

11.28 The Committee also believes that specifications requiring display of qualifications and display of avenues for complaint be mandated in the Code of Conduct. These are discussed in further detail below.

11.29 The Committee requests that consideration also be given to requiring practitioners not to discourage consumers from continuing to take medication prescribed by a conventional medical practitioner.

Practitioner Qualifications

11.30 The Committee strongly believes that members of the public should be provided with enough information to enable them to make informed choices about their health practitioner, including their level of qualification.

11.31 Without a registration board or mandatory membership of a reputable professional association, consumers can only make assumptions about practitioner qualifications and experience.

11.32 Consequently, the Committee recommends that unregistered health practitioners be required to display their qualifications, if any, at their primary place of practice.

RECOMMENDATION 9: That all unregistered health practitioners be required to display qualifications, if any, at their primary place of work at all times

Clear Avenues for Consumer Complaints

11.33 Evidence collected by the Committee during both the original Inquiry and the current review of the 1998 report strongly suggested that consumers are largely unaware of where to lodge a complaint against an unregistered health practitioner.

11.34 The small number of complaints that were lodged led to the suggestion that complaints against unregistered health practitioners could be under-represented.

11.35 These factors have significant implications for a system of negative licensing, which depends on the receipt of complaints to be effective.

11.36 If the Commission is to ensure that practitioners who are incompetent and/or unethical are identified and managed appropriately, it will need to ensure that consumers are aware of its role in complaints investigation.

11.37 The Committee believes that making information on complaints processes readily available to consumers is essential, and that the best way for this to occur is for the information to be available to the consumer directly at the point of service.

11.38 The Committee therefore recommends that it be a requirement for practitioners to display information on internal complaints procedures as well as contact details for the HCCC in their primary work place.

RECOMMENDATION 10: That display of information on both internal complaints procedures and contact details for the Health Care Complaints Commission be a requirement for all practices and clinics of unregistered health practitioners

11.39 The Commission will also need to ensure that a simple process exists for other bodies currently receiving complaints to refer them to the Commission.

11.40 The Committee is of the view that professional associations will be in a prime position to refer consumer complaints to the Commission once enhanced powers to investigate, discipline and prosecute unregistered health practitioners are granted under the reforms introduced by the NSW Minister for Health.

11.41 Health funds and the NSW Office of Fair Trading will also be likely to increase referrals to the Commission.

11.42 Effective complaints management will depend on the Commission ensuring that clear avenues for referral are available to professional associations, health funds and other bodies currently receiving complaints against unregistered health professionals.

11.43 Consequently, the Committee recommends that a formal referral procedure be developed by the Commission for this purpose.

RECOMMENDATION 11: That the Health Care Complaints Commission develop a formal referral procedure to facilitate complaints referrals between health professional associations and the Commission

Practitioner Education

11.44 The Committee is of the view that the Commission has a responsibility to inform unregistered health practitioners about their responsibilities under the new negative licensing scheme.

11.45 Practitioners need to be made aware that minimum standards of conduct and practice exist, and that penalties for breaching these standards are enforceable.

11.46 The Committee recommends the Commission undertake a campaign to ensure widespread awareness and knowledge of the implications of the Code of Conduct and other associated reforms.

11.47 It is recommended that existing practitioner networks be utilised, including health professional associations, to facilitate this promotion.

RECOMMENDATION 12: That the Health Care Complaints Commission undertake a campaign to ensure widespread awareness and knowledge of the implications of the Code of Conduct and other associated reforms, utilising existing networks such as health professional associations

Strengthened Relationship Between the HCCC and Professional Associations

11.48 The Committee believes that the reforms introduced by the NSW Minister for Health will rely heavily on effective relationships between the HCCC and health professional associations.

11.49 Professional associations represent a significant proportion of the unregistered health practitioner market. They are also a significant mediator of complaints against unregistered practitioners.

11.50 Evidence received by the Committee to date suggests that there is little, if any, established relationship between the HCCC and the various professional associations.

11.51 Representatives from health professional associations have repeatedly expressed frustration at the lack of communication currently had with the Commission, and would enthusiastically welcome an avenue to enable the regular transfer of information:

> "The associations, we're so frustrated Mr Chairman, we have no communication, we have no gateway to the Commission. Now, we would dearly welcome even an informal arrangement whereby we could communicate with the Commission. The Commission has so much knowledge and so much resources and we deeply need that knowledge and those resources."[89]

11.52 The networks covered by professional associations will prove vital to the Commission in educating practitioners and about their responsibilities under the amended *Health Care Complaints Act 1973* and consumers about avenues of complaint available to them.

11.53 At a Public Hearing in August 2006, NSW Health Care Complaints Commissioner Kieran Pehm acknowledged that relationships between the Commission and professional associations would need to improve:

> "I think it will require increased liaison with them…I expect to have very good relations and interactions with them. We have not really embarked on a big program of that yet, but from what I read, I think they will all be responsive."

11.54 Mr Pehm further added that he envisaged these relationships would be formed and maintained through the usual processes of establishing contact, timely meetings and ongoing communication.

11.55 The Committee recommends that the HCCC actively establish and maintain relationships with health professional associations, focusing initially on the peak associations representing unregistered health professionals.

11.56 The Committee is also in favour of a regular forum in which the associations of unregistered professionals can meet with the Commission to discuss any issues they have encountered and to facilitate two-way feedback between the complaints bodies.

RECOMMENDATION 13: That the Health Care Complaints Commission establish relationships with the professional associations representing unregistered health professions, focusing initially on the peak representative bodies

RECOMMENDATION 14: That the Health Care Complaints Commission host an annual meeting of regulatory bodies for the unregistered professions with representation from each of the major modalities

Determination of Eligibility for Health Fund Rebates

11.57 The Committee is concerned about current inconsistencies in the provision of health fund rebates for services provided by unregistered health practitioners. Rebates can be seen to endorse a practitioner, therapy or service, and can also influence a consumer's selection of a health service provider.

11.58 The Australian Health Insurance Association highlighted to the Committee the frustration felt by many health funds that are perceived as partial regulators of the health services market, despite the fact that there are no minimum standards of practice for many professions eligible for the rebate.[90]

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[89] Public Hearing, 27 April 2006. Evidence obtained from Mr Raymond Khoury, Policy Advisor to the Australian Traditional Medicine Society.

[90] Briefing from Dr Frances Cunningham, then Director, Australian Health Insurance Association

11.59 The Committee is aware that the Australian Department of Health and Ageing has also identified variations in the quality and safety of rebated health services as an issue requiring investigation.

11.60 The Department has committed to implementing an industry-wide safety and quality standard for facilities and providers offering privately insured health care services from 1 July 2008:

> "The minimum standards will recognise existing accreditation, licensing and registration requirements and will address gaps where no recognition arrangements currently exist. The safety and quality requirements for privately insured services will align with the work of the Australian commission on Safety and Quality in Health Care (ACSQHC).
>
> ...Following consultation with industry and in collaboration with the ACSQHC, the Department of Health and Ageing is preparing a paper for circulation to industry that considers in more detail the actual recognition requirements, including identifying any gaps in current arrangements and how they might best be addressed."[91]

11.61 As this paper is yet to be released, the Committee is unsure how far the reforms will go to solving the problems facing health funds in NSW.

11.62 It is the Committee's view that the reforms include uniform guidelines for health funds with specifications regarding modalities eligible for cover as well as acceptable minimum qualifications.

11.63 In reviewing the impact of the NSW Health Minister's legislative reforms in approximately two years time, the Committee will also revisit the issue of the determination of eligibility for health fund rebates, to assess how effectively the Federal reforms have addressed the issues for health fund providers in NSW.

RECOMMENDATION 15: That the Australian Department of Health and Ageing introduce uniform guidelines for health funds with specifications regarding modalities eligible for cover as well as acceptable minimum qualifications

RECOMMENDATION 16: That the issue of the determination of eligibility for health fund rebates be revisited as part of the review of the NSW Health Minister's legislative reforms in approximately two years time

Consumer Refunds through the Health Conciliation Registry

11.64 The Committee foresees the Health Conciliation Registry having a substantial role to play in the mediation of complaints against unregistered health practitioners when the reforms introduced by the NSW Minister for Health are implemented.

11.65 The Committee recommends that the Registry give greater consideration to facilitating consumer refunds through this process. The Committee views this as especially important in instances concerning unregistered health professionals, given the largely unrestricted nature of many services involved.

RECOMMENDATION 17: That the Health Conciliation Registry consider the issue of consumer refunds as part of conciliation processes, particularly those involving unregistered practitioners

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[91] Information provided to the Committee by the Private Health Insurance Branch, Department of Health and Ageing

Consumer Information/Education

11.66 The Committee regards consumer education as one of the most important tools available to enhance consumer protection.

11.67 Evidence provided to the Committee suggests that many consumers would like to take responsibility for much of their own health care, and simply require sufficient information to enable them to make an informed choice.[92]

11.68 Main sources of confusion for the consumer that have been identified to date include the distinction between the services of a registered and unregistered health professional, how to locate an appropriately qualified professional and distinguishing between types of therapies available.

11.69 Many consumers also appear to be under the impression that all persons providing a health service have been subject to some form of Government scrutiny:

> "Consumers generally assume that practitioners using a professional title have been objectively assessed as competent and fit to practise, and are subject to discipline by an appropriate regulatory body."[93]

11.70 The Committee recommends that clear information be provided on the website of NSW Health explaining how the regulation of health professions is conducted in NSW, including an explanation of the difference between registered and unregistered health professionals.

11.71 The website should also contain links to accurate information on the main types of therapies available.

11.72 Several submissions from professional associations have already offered to support an education campaign initiated by the HCCC or by NSW Health by publishing information and links on their respective websites and disseminating information through their networks.

RECOMMENDATION 18: That NSW Health include on its website clear information about the current regulation of the health professions in NSW, including the difference between registered and unregistered professionals

RECOMMENDATION 19: That this website also include links to accurate information on the main types of therapies available

[92] Briefing from Professor Alastair MacLennan, Department of Obstetrics and Gynaecology, University of Adelaide

[93] National Competition Council Assessment 2002, Health and Pharmaceutical Services

APPENDIX ONE- MINUTES

MINUTES OF PROCEEDINGS
COMMITTEE ON THE HEALTH CARE COMPLAINTS COMMISSION

Meeting
Wednesday 30 November 2005
10:15am, Room 1108, Parliament House

1. Members Present
Mr Jeff Hunter MP (Chair), The Hon. David Clarke MLC, The Hon. Christine Robertson MLC, Mr Allan Shearan MP, Mr Russell Turner MP, The Hon. Dr Peter Wong MLC.

2. In Attendance
Ms Catherine Watson (Committee Manager),
Ms Samantha Ngui (Sr Committee Officer),
Ms Belinda Groves (Committee Officer)

3. Apologies
Ms Tanya Gadiel MP

4. Unregistered Health Practitioners- Draft Terms of Reference
Resolved on the motion of Mr Turner, seconded by The Hon. Ms Robertson that the draft Terms of Reference for the Review be accepted as follows:

> The Joint Parliamentary Committee on the Health Care Complaints Commission is to review its December 1998 Report, *"Unregistered Health Practitioners: The Adequacy and Appropriateness of Current Mechanisms for Resolving Complaints"*, in light of developments in other jurisdictions.
>
> The Terms of Reference for the previous inquiry were:
> That the Committee examine the experience of consumers in dealing with unregistered health practitioners (including those practising in alternative health care fields) with a view to establishing:
>
> - what complaint mechanisms exist for consumers;
> - whether these complaint mechanisms are effective;
> - whether there is scope for strengthening voluntary codes of behaviour or conduct;
> - whether the provisions in the Health Care Complaints Act 1993, relating to unregistered health practitioners are appropriate or whether they need strengthening;
> - any other related matters.

Resolved on the motion of The Hon. Ms Robertson, seconded by Mr Turner, that the Committee place an advertisement in The Australian, The Sydney Morning Herald, The Daily Telegraph and the Newcastle Herald calling for submissions.

There being no further business, the meeting was closed at 11:25am.

Meeting between Chair (Health Care Complaints Committee), the Australian Health Insurance Association, NSW Health and NSW Counselling Association

Friday 24 March 2006
10:00am, Room 1108, Parliament House

1. Members Present

Mr Jeff Hunter MP (Chair)

2. In Attendance

Ms Catherine Watson (Committee Manager),
Ms Samantha Ngui (Sr Committee Officer),

Briefing from:

Dr Frances Cunningham (Director, Australian Health Insurance Association)
Mr Ron Dwyer (Acting Director, NSW Health Registration Boards)
Ms Kerry Costello (Special Projects Officer, NSW Health Registration Boards)
Mr Michael Cleary (Executive Director, Nurses and Midwives Board, NSW Health)
Mr Ian Martin (Legislation and Policy Division, NSW Health)
Ms Kerry Cole (NSW Counselling Association)

4. Review of Unregistered Health Practitioners- Briefing with Dr Frances Cunningham (Director, Australian Health Insurance Association)

Members received a briefing about the current problems facing health insurance funds when it comes to offering rebates for the services of unregistered health practitioners, including the resulting view of many consumers that health funds are also responsible for the handling of complaints.

5. Review of Unregistered Health Practitioners- Briefing with:

- **Mr Ron Dwyer (Director, NSW Health Registration Boards),**
- **Ms Kerry Costello (Special Projects Officer, NSW Health Registration Boards),**
- **Mr Michael Cleary (Executive Director, Nurses and Midwives Board, NSW Health) and**
- **Mr Ian Martin (Legislation and Policy Division, NSW Health)**

Representatives from NSW Health Registration Boards provided the Committee with information on the current set-up of Registration Boards for the health professions, and their relationship with the Health Care Complaints Commission and professional associations.

6. Review of Unregistered Health Practitioners- Briefing with Ms Kerry Cole (NSW Counselling Association)

Ms Cole provided the Committee with details of the number of complaints received by the Association, the demographics, qualifications and training of their members and the advertisement of complaints handling mechanisms to consumers.

Meeting
Wednesday 5th April 2006
3:30pm, Room 1254, Parliament House

1. Members Present
Mr Jeff Hunter MP (Chair), The Hon. David Clarke MLC, Ms Tanya Gadiel MP,
The Hon. Christine Robertson MLC, Mr Allan Shearan MP, Mr Russell Turner MP,
The Hon. Dr Peter Wong MLC

2. In Attendance
Ms Catherine Watson (Committee Manager),
Ms Samantha Ngui (Sr Committee Officer),
Ms Belinda Groves (Committee Officer)
Dr Louise Newman (Director, NSW Institute of Psychiatry)

3. Apologies
Nil.

4. Review of Unregistered Health Practitioners- Briefing with Dr Louise Newman (Director, NSW Institute of Psychiatry)
Dr Louise Newman provided Committee Members with information on the unregulated nature of the psychotherapy, counselling and related professions, as well as the current issues consumers face when selecting an appropriate practitioner.

5. General Business
There being no further business, the meeting was closed at 5:00pm.

Public Hearing
1:30pm, Thursday 27 April 2006
Lake Macquarie Council Chambers

1. Members Present
Mr Jeff Hunter MP (Chairman) Mr Russell Turner MP, Mr Allan Shearan MP,
The Hon Christine Robertson MLC and The Hon David Clarke MLC

2. In Attendance
Ms Catherine Watson, Committee Manager
Ms Samantha Ngui, Senior Committee Officer
Ms Belinda Groves, Committee Officer

3. Apologies
Ms Tanya Gadiel MP and The Hon Dr Peter Wong MLC

The Chairman opened the public hearing at 1:30pm

The Committee heard evidence from:

Mr Matthew Morris MP, Member for Charlestown, affirmed and examined.

Ms Marilyn Christie and The Hon Richard Face, former Member of Parliament, sworn and examined.

Ms Jill Hall, Federal Member for Shortland, affirmed and examined

Mr Raymond Khoury, practicing herbalist and policy adviser to the Australian Traditional Medicine Society, sworn and examined

Evidence concluded, witnesses withdrew.

Hearing closed at 4:15pm.

Meeting
Wednesday 7 June 2006
10:15am, Room 1108, Parliament House

1. Members Present
Mr Jeff Hunter MP (Chair), Ms Tanya Gadiel MP, Mr Allan Shearan MP,
Mr Russell Turner MP, and The Hon. Dr Peter Wong MLC

2. In Attendance
Ms Catherine Watson (Committee Manager),
Ms Samantha Ngui (Sr Committee Officer),
Ms Belinda Groves (Committee Officer)
Mr Andrew Wilson (Director, Compliance and Standards Division, NSW Office of Fair Trading)
Mr Brian Given (Assistant Commissioner, NSW Office of Fair Trading)

3. Apologies
The Hon. Christine Robertson MLC and The Hon. David Clarke MLC

4. Unregistered Health Practitioners
Briefing from NSW Office of Fair Trading

Mr Andrew Wilson (Director, Compliance and Standards Division) and Mr Brian Given (Assistant Commissioner) briefed the Committee on the work of the Office of Fair Trading in relation to unregistered health practitioners. Particularly, the Committee was updated on the progress of the case against Mr Paul Perrett.

There being no further business, the meeting was closed at 11:30am.

Public Hearing
Thursday 31 August 2006
10:00am, Room 1108, Parliament House

1. Members Present
Mr Jeff Hunter MP (Chair), The Hon. David Clarke MLC, Ms Tanya Gadiel MP, The Hon. Christine Robertson MLC and Mr Allan Shearan MP, Mr Russell Turner MP, and The Hon. Dr Peter Wong MLC

2. In Attendance
Mr Kieran Pehm, Health Care Complaints Commissioner
Ms Catherine Watson (Committee Manager),
Ms Samantha Ngui (Sr Committee Officer),
Ms Belinda Groves (Committee Officer)

3. Apologies
Nil.

4. Review of the 1998 Report into 'Unregistered Health Practitioners: The Adequacy and Appropriateness of Current Mechanisms for Resolving Complaints'- Public Hearing.

Mr Kieran Pehm, Health Care Complaints Commissioner, sworn and examined

Evidence concluded, the witness withdrew.

The Public Hearing was declared closed at 10:45am.

Meeting
Wednesday 27 September 2006
10:00am, Room 1034, Parliament House

1. Members Present
Mr Jeff Hunter MP (Chair), The Hon. David Clarke MLC, The Hon. Christine Robertson MLC, and Mr Russell Turner MP

2. In Attendance
Ms Catherine Watson (Committee Manager),
Ms Samantha Ngui (Senior Committee Officer),
Ms Belinda Groves (Committee Officer)

3. Apologies
Ms Tanya Gadiel MP, Mr Allan Shearan MP, and The Hon. Dr Peter Wong MLC

4. Review of the 1998 Report into Unregistered Health Practitioners: The Adequacy and Appropriateness of Current Mechanisms for Resolving Complaints

Consideration and acceptance of submissions to the review

Resolved on the motion of The Hon. Christine Robertson MLC and seconded by The Hon. David Clarke MLC that the Committee accept the submissions received as part of the inquiry 'Review of the 1998 Report into Unregistered Health Practitioners: The Adequacy and Appropriateness of Current Mechanisms for Resolving Complaints'.

Resolved on the motion of The Hon. Christine Robertson MLC, seconded by Mr Russell Turner MP:

That the following additional recommendation: "That NSW Health re-visit the recommendations contained in the 1998 report: *Unregistered Health Practitioners: The Adequacy and Appropriateness of Current Mechanisms for Resolving Complaints*" be added to the draft report.

Resolved on the motion of Mr Russell Turner MP, seconded by The Hon. David Clarke MLC:

That the draft report: "Review of the 1998 Report into Unregistered Health Practitioners: The Adequacy and Appropriateness of Current Mechanisms for Resolving Complaints." be accepted as a report of the Committee on the Health Care Complaints Commission, and that it be signed by the Chairman and presented to the House.

On the motion of The Hon. Christine Robertson MLC, seconded by Mr Russell Turner MP:

That the Chairman and Committee Manager be permitted to correct any stylistic, typographical and grammatical errors in the report.

Passed unanimously.

There being no further business, the meeting was closed at 10.35am

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APPENDIX TWO- LIST OF SUBMISSIONS

1	Mr Brian Magrath	International Institute of Psychosomatic Medicine
2	Mr Jon Gamble	The Australian Register of Homeopaths
3	Mr Brian Magrath	The Australian Society of Clinical Hypnotherapists
4	Mr John Bobbin	John Bobbin Natural Medicine
5	Mr Geoffrey Naughton	Association of Massage Therapists Ltd
6	Ms Marie Fawcett	Australian Traditional Medicine Society
7	Confidential	
8	Mr Kieran Pehm	Health Care Complaints Commission
9	Ms Marie Atherton	The Speech Pathology Association of Australia
10	Mr Martin Hunter-Jones	New South Wales Counselling Association
11	Dr Geraldine Moses	Adverse Medicine Events Line
12	Confidential	
13	Confidential	
14	Ms Tricia Hughes	Australian Association of Massage Therapists Ltd
15	Mr Geoff Conlon	Free Radical Analytical Systems
16		The Australasian Podiatry Council
17	Dr Louise Newman	The Royal Australian and New Zealand College of Psychiatrists
18	Dr Joan Haliburn	Australian & New Zealand Association of Psychotherapy
19	Dr Yolande Lucire	Forensic & Medico-Legal Psychiatry, UNSW
20	Leslie Bullock	Hypnotherapist
21	Mr Gary Moore	Council of Social Services of New South Wales
22	Mr Ian Murray	The Australian Institute of Welfare and Community Workers
23	Mr Peter Torokfalvy	Australian Homeopathic Association
24	Ms Julie Robinson	Australian Association of Social Workers, NSW Branch
25	Mr John Baxter	National Herbalists Association of Australia
26	Mr Alan Meara	Gestalt Australia & New Zealand Inc
27	A/Prof John A Gullotta	Australian Medical Association (NSW) Limited
28	Dr Kit Sun Lau	The Australian Medical Acupuncture College
29	Mr Milan Poropat	Psychotherapy and Counselling Federation of Australia
30	Mr Peter Martin	Council of Occupational Therapists Registration Boards (Aust & NZ)
31	Ms Sue Hardman	NSW Physiotherapists Registration Board
32	Ms Jennifer Caldwell	Osteopaths Registration Board
33	Ms Lynnette Ford	OT Australia- NSW
34	Ms Sharron Mackison	National Reiki Reference Group
35	Mr Darryl McMillan	Australasian Society of Cardio-Vascular Perfusionists Incorporated
36	Ms Cheryl Freeman	
37	Professor Lyn Littlefield	Australian Psychological Society