

FAQ – 2021 virtual roadshow – Chinese medicine regulation in Australia

16 December 2021

Roadshow questions

1. Why aren't Chinese medicine practitioners given the same legal status as an 'allied health practitioner' as other practitioners, when Chinese medicine practitioners have to meet the same standard and requirements from the Board as those in other regulated professions?
2. Chinese medicine was not recognized as Allied Health profession at all state levels, although Chinese Medicine is recognised at Commonwealth level. Should the Board do something about this?

As we mentioned in the roadshow presentation, there is no one agreed definition of what comprises 'allied health'. Often it is described as what it is not; allied health is not western medicine or nursing. Often what is defined as 'allied health' will depend on the need or use for the definition.

It is not appropriate for the Chinese Medicine Board to define allied health for the Australian government or for the state and territory government.

This year, where the public health orders together with the definition of allied health by state or territory governments caused confusion for the Chinese medicine profession, the Board sought clarification from the Chief Allied Health Officer in the respective state or territory when restrictions were announced and this information was provided to your professional associations for distribution to their members.

The Board has met with professional associations this year and discussed this issue. The Board will provide information about our role as the regulator of Chinese medicine practitioners in support of the association's submissions to government. Remember that inclusion in the National Scheme does mean that Chinese medicine is regarded as an important health profession, and this includes reputational and financial (such as through insurers and funders) benefits.

For more information about allied health status see slides 11-16 in the presentation.

3. Why can't the Board help Chinese medicine practitioners to be included in the Medicare chronic disease program? Isn't it a matter of public safety that the public can access Chinese medicine more easily?

The Board know how important this issue is to the profession, but the Board has no authority in the area of public health/Medicare funding. The functions and powers under the National Law relate to public safety only insofar as the Board regulates individual practitioners to ensure that those practitioners are safe to practice. In the presentation the Board explained that the Board worked with the Australian government CAHO this year and provided information about the regulation of Chinese medicine and the profession is recognised by the CAHO. Hopefully this is seen as a step in the right direction for Chinese medicine on this issue.

4. What are the Board doing about the public safety risk posed by unqualified people who are doing acupuncture or dry needling? If anyone can do acupuncture and the only problem is if they use the title 'acupuncturist' isn't this a risk to the public?

It is correct that the National Law is based on title protection, rather than scope of practice. This means that under the National Law people can be prosecuted for using a title acupuncturist; but most scope of practice, with the exception of a few protected acts, are not regulated by the National Law.

This was a decision by Australian governments at the time the National Law was drafted. There are several reasons for this, and one major one is the difficulty in defining scope of practice and keeping this definition up to date. Health care evolves quickly and amending legislation is a slow process.

The other reason was that an approach that seeks to regulate scope of practice can lead to unintended consequences in terms of marketplace competition, and can sometimes mean that a profession cannot quickly adopt new and improved ways of practising if they are confined to an outdated definition of the scope of practise for that profession.

It's also important to remember that there are a number of other protections available to the public against unsafe practices by unregistered health care workers and that the National Law is not limited to protected title.

There are Health Complaints Entities in each state and territory, and these entities have powers to act about complaints regarding unregistered health care workers. The health complaint entities have prohibition powers, which means they can order an individual they deem to be a risk to the public, to stop doing a certain thing.

The National Law has provisions other than protected title, which make it an offence not just to use the title 'acupuncturist' but to by an act or other claim to even infer that you are an acupuncturist if you are not registered.

There have been a number of successful prosecutions by Ahpra of people who have breached these provisions.

This area also demonstrates the importance for the profession to educate the public about the benefits and quality of acupuncture provided by a Chinese medicine acupuncturist.

5. I'm about to be a new graduate, but with the pandemic continuing to impact on my studies this year, I'm not sure when I will graduate. Can you help with information on when I can apply for registration and what information and assistance is available for me?

We know everyone is keen to get registered so they can start work. There's information on the Board's [website](#) and also on the Ahpra website about [graduate applications](#) and you can always contact the Ahpra Registration team, whose details appear on the website – if they can't answer your query straight away, leave a message and they will get back to you.

In terms of a timeframe for application, you can apply online up to 12 weeks before the date you are due to complete your studies. You do not need to have your results before you apply, you can commence your application, and the education provider will send us your results as they become available.

All new graduates are encouraged to get in and apply early, as this means if there is any more information that may be required to assess your application, there is sufficient time to get this back before the education provider sends us the information.

Finally, the Board's Accreditation Committee, which works to ensure quality education for Chinese medicine students, has been working with education providers accredited with the Board during the pandemic on flexible strategies to support students to progress and for final year students to complete their studies. The strategies were implemented at program and institutional level and any students should seek advice also from their program leaders.

6. Why are there no representatives from the Northern Territory on the National Board?

Members of the National Board are appointed by the Health Council, which is comprised of the ministers for health in the state and territory governments along with the federal government. The Health Council also appoint the Board Chair, who must be a registered practitioner.

Membership of the Board is established under the National Law and membership must include at least half registered practitioners and at least two community members.

The membership must also include a number of members from large participating jurisdictions (such as NSW, Qld, SA, Vic and WA) as well a number of members from small participating jurisdictions (such as

ACT and Tasmania), but the National Law does not require a representative from each jurisdiction be appointed.

See slide 7 in the 2021 presentation for information about the membership of the Chinese Medicine Board or visit the Board's [website](#).

7. Chinese supermarkets sell Chinese medicine without consultation – how does the Board explain that as safety for the public?

The regulator for medicines and where they are sold in Australia is the Therapeutic Goods Administration. If there are concerns about the possession or sale of medicines by non-registered individuals, these concerns should be raised with the Therapeutic Goods Administration. If the concerns relate to the provision of health services by non-registered individuals, these concerns should be raised with the local health complaints organisation in your state or territory. Information on how to contact these [health complaint entities](#) is available on the Ahpra website.

If the concerns relate to registered practitioners who are dispensing or otherwise providing Chinese medicine in a manner that is not in accordance with the Board's standards and/or guidelines, these concerns should be reported to the Board by a [notification](#).

8. Apart from the Board's regulation of the profession, what other ways can the Board assist the profession for its betterment. Many practitioners wonder what the point of registering with the Board without any foreseeable benefit is.

The role of the Board is to protect the public. The role of the professional associations is to advocate for the profession.

The Board protects the public by ensuring that only suitably qualified people can use the title 'Chinese medicine practitioner', 'acupuncturist', 'Chinese herbal medicine practitioner', 'Chinese herbal dispenser' and 'Oriental medicine practitioner'. along with the other titles protected by the law. By ensuring that the people using these titles are suitably qualified the public can be assured when seeking treatment from a registered practitioner that the profession that registered the practitioner has a defined, agreed and transparent set of professional standards. This supports safe and effective health care.

Registration as a profession provides status and credibility for registered Chinese medicine practitioners, who are then part of the same National Scheme as fifteen other health professions. There are competitive and reputational advantages to being a registered practitioner, including access to private health rebates and increasing integration into the broader health system over time. Chinese medicine is included under the National Scheme due it being regarded as an important form of health care in Australia. Chinese medicine regulation in Australia is regarded as one of the best regulatory systems for Chinese medicine practitioners in the Western world. We should work towards meeting the public expectations from Chinese medicine practices with regards to quality, safety, and efficacy of Chinese medicine interventions. It is also very important for the profession to educate the public about the benefits of using a registered health practitioner.

9. There is a degree of dissatisfaction among the Chinese medicine profession in respect of the perceived role and actions of the Board and some practitioners are choosing to deregister and continue to practice under protected titles. What is the Board doing about this? It effectively undermines the primary function of the Board to protect the public.

Practitioners who are choosing not to renew their registration should be aware that, upon the lapse of their registration, they are not permitted to use any protected title under the National Law and it is a criminal offence under the National Law to take or use any protected title for a health profession in a way that could be reasonably expected to induce a belief that the person is registered under the National Law. It is also a criminal offence under the National law to take or use a title, name, initial, symbol, word or description that could be reasonably understood to indicate a person is a registered health practitioner or is authorised or qualified to practise in a health profession.

Individuals who are unregistered but continue to use a protected title or hold themselves out to still be registered may be prosecuted by Ahpra. Ahpra and the National Board take complaints about possible

criminal offences seriously, as we are responsible for making sure that only practitioners who have the skills and qualifications to provide care are registered to practice. There have been a number of successful prosecutions by Ahpra of people for breaches of the title protection provisions of the National Law and also sanctions have been placed on unregistered health workers by the State and Territory Health Complaints Entities. Information on Ahpra prosecutions is available on Ahpra's [courts and tribunals page](#).

Penalties for criminal offences vary and include a fine of up to \$60,000 per offence for an individual, or \$120,000 for a corporation and/or a maximum three-year imprisonment per offence.

Any concerns regarding criminal offences under the National Law should be reported to Ahpra. We cannot act if we do not know the offence is being committed. For more information see the '[reporting a criminal offence](#)' page on the Ahpra website.

All health workers come under some form of regulation whether it be the negative licensing provisions of each State or Territory or the requirements of the National Registration and Accreditation Scheme (NRAS). For unregistered individuals who continue to provide healthcare, including services such as massage and similar health complaints entities have a Code of Conduct that unregistered health practitioners are expected to comply with, such as the Health Care Complaints Commission in NSW *Code of Conduct for Unregistered Health Practitioners* or the Health Complaints Commissioner in Victoria's *Code of conduct for general health services*.

Finally, practitioners who let their registration lapse and who then wish to re-apply for registration in the future will need to lodge a new application for registration and will be required to demonstrate they meet the requirements of the Board's registration standards at the time of this application and pay the relevant fee for a new application for registration.

10. I often receive clients who got 5 sessions of free treatment of physio from the Medicare system, but it turns out the physiotherapist delivered dry needling instead. What is the Board's point of view on this?
11. I have seen physiotherapist practices providing dry needling and above the bed they have acupuncture charts implying that they do acupuncture. Are they in breach of any regulations?

Anyone with concerns that a registered practitioner's behaviour is putting the public at risk, or that a practitioner is practising their profession in an unsafe way, or that a registered practitioner is in breach of the National Law should make a notification to the relevant National Board using the [online notifications form](#).

12. If you want to take maternity leave for 1 year. can you apply for non-practising registration and if so, what requirements are there when you wish to return back to full time practice?

Non-practising registration may be suitable for practitioners who will be overseas for some time and not practising in Australia or for practitioners who are temporarily not practising (for example on maternity leave). Chinese medicine practitioners with non-practising registration are not permitted to treat, prescribe or refer, regardless of whether they are being remunerated.

There is a reduced fee for non-practising registration. Practitioners who have been granted non-practising registration do not need to comply with the continuing professional development standard, the professional indemnity insurance standard or the recency of practice standard for the duration of their non-practising registration. These practitioners do continue to receive the Board's publications.

If you hold non-practising registration and wish to start practising again, you must apply to the Board to have your registration switched back to general registration. The form to switch from non-practising back to general registration is available on the Board's [website](#) and the standard registration fee for general registration will apply for this application.

13. Why has registration been so slow through Ahpra. I have heard of qualified international practitioners to take over two years to register. What is the recourse for an applicant?

The Board has been planning for some time to transition to new regulatory examinations for Chinese medicine practitioners who do not possess a Board approved qualification (ie: those who are internationally qualified). The regulatory examinations allow applicants to demonstrate that they have the skill and knowledge to practise safely in Australia. It was initially expected that the examination would be

available in 2020. However, because of the significant impact of the COVID-19 pandemic, and particularly the closure of the examination centres due to the pandemic, the examinations were not completed until this year.

We know that the substantial delay in examination impacted on some applicants, and this is regrettable. In light of this delay, and with Australia's international borders closed until recently, the Board made the difficult decision in 2020 to stop accepting applications from internationally qualified practitioners. The Board recognised that the application for registration for overseas applicants is costly and considered it inappropriate to accept applications from a cohort of applicants who would likely be delayed in being able to undertake the exam.

Information on complaints about Ahpra or the National Boards is available on the Ahpra [complaints](#) page and complaints may be escalated to the National Health Practitioner Ombudsman.

The Board is now accepting applications from internationally qualified practitioners, with the first regulatory examination taking place in 2021. Information on how to apply as an overseas qualified practitioners is on the Board's [registration](#) pages. Information about the regulatory examinations appeared in the presentation. More information, including the next scheduled examination can be found on the [regulatory examinations](#) page on the Board's website.

14. Is it possible the Medicare may pay for free sessions of acupuncture?

The Board has no authority in the area of public health/Medicare financing. We are aware that the Associations are developing a submission to the Commonwealth health department to request that Chinese medicine is recognised as an allied health profession for the purposes of accessing the Medicare items and the Board has provided some guidance to the Associations.