Australian Physiotherapy Association
Submission

Regulation of Australia's health professions: keeping the National Law up to date and fit for purpose.

Submission by the
Australian Physiotherapy Association

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1 Executive Summary

The Australian Physiotherapy Association (APA) welcomes the opportunity to make a submission in response to the consultation paper, *Regulation of Australia's health professions: keeping the National Law up to date and fit for purpose*, on behalf of the physiotherapy profession. We are pleased to inform the next stage of the reforms.

The APA and physiotherapy profession take seriously their roles in regulation – recognising that self-regulation is an important aspect of the regulatory environment that protects the Australian public and physiotherapists.

We recognise the valuable and essential role of the National Registration and Accreditation Scheme for health professionals (the 'National Scheme) aims to maintain a productive working relationship with the Physiotherapy Board of Australia (PhysioBA).

We recognise the critical role of government in regulation of Australia's health practitioners. We are committed to continuously working toward a health workforce that systematically safeguards against harm and learns from and addresses failures that impact on the safety of the people involved in those services.

We support amendment of the objectives of the National Law to incorporate a new objective that specifically refers to addressing the health disparities between Indigenous and non-Indigenous Australians. We affirm that Aboriginal and Torres Strait Islander peoples have the right to live a healthy, safe and empowered life with strong connections to culture and country.

Our members are committed to reconciliation and are passionate about equality and equity for Aboriginal and Torres Strait Islander peoples. Our goal is to advance this passion throughout the physiotherapy profession as a whole.

The APA calls for greater transparency between the PhysioBA and the APA. In particular, a transparent process that triggers an exchange of information regarding a notification to ensure protection of the public.

We acknowledge the intersection of professional member associations in the regulatory setting is complex and often under-valued. We acknowledge regulation of health professionals in Australia is a shared responsibility among regulators, health professionals, agencies, professional bodies and health services. This results in inevitable overlap and ambiguity about authority and reporting obligations. Poorly defined linkages impact our collective capacity to detect underperforming practitioners and environments early and minimise risk to the public. In this context, we suggest an exploration of limited data synchronization with employers.

We support amendment of the National Law to require reporting of professional negligence settlements and judgements to the National Boards. In particular we support amendment of the definition of 'relevant event' in s. 130(3) of the National Law to impose an obligation on all registered practitioners to report to the responsible National Board details (including amounts) of any professional negligence settlements or judgements against them (Option 3).

The APA supports amendment of the National Law to clarify the mandatory reporting obligations of employers to notify the Australian Health Practitioner Regulation Agency (AHPRA) when a practitioner's right to practise is withdrawn or restricted due to patient safety concerns associated with their conduct, professional performance or health.

We are calling on governments to have the contraction, 'physio', included in the table of protected titles in section 113 of the National Law.

Our members consistently raise illustrations of non-physiotherapists using the term 'physio'. It is the view of the APA that the use of the term is increasingly a deliberate attempt to circumvent the protections intended by the National Law, in part, by positioning the term as a description of the profession and/or positioning the contraction as treatment that a number of health practitioners can undertake rather than of the professional when it can be used as any of these.

As such persons representing themselves as a 'physio' mislead the public by trading on the implied value of physiotherapy services. This presents safety and quality risks to the public, and reputational risks to the physiotherapy profession.

The APA supports an amendment to the National Law to limit the scope of the prohibition on using testimonials in advertising to apply only to advertising undertaken by the registered health practitioner or their employer. We support removal of the prohibition on sites not under the control of the practitioner, such as service directories, personal social media pages.

Our members also raise the increasing challenge of boundary violations in the physiotherapy profession. We are planning a dedicated series of education strategies to reduce the likelihood of 'unintended' boundary violations. We will be drawing upon the PhysioBA Code of Conduct (sec.8.2) to demonstrate the principles of ethical conduct.

We recommend that a public register of student health practitioners be established. In the interests of public safety, we believe it is unacceptable that student practitioners are not searchable on the public register. There is no clear mechanism by which the National Boards can share with the public information regarding students who pose a serious safety concern.

We also raise the issue of increasing incivility and disruptive behaviour, specifically in the online environment. There is a relationship between incivility/disruptive behaviour by healthcare professionals and poor patient satisfaction and reduced patient safety. We will continue to support our members through provision of education strategies that incorporate setting specific safeguarding.

2 Governance of the National Scheme

2.1 Objectives and guiding principles – inclusion of reference to cultural safety for Aboriginal and Torres Strait Islander Peoples

Should the guiding principles of the National Law be amended to require the consideration of cultural safety for Aboriginal and Torres Strait Islander Peoples in the regulatory work of National Boards, AHPRA, Accreditation Authorities and all entities operating under the National Law?

Should the objectives of the National Law be amended to require that an objective of the National Scheme is to address health disparities between Indigenous and non-Indigenous Australians?

The APA supports amendment of the objectives of the National Law to incorporate a new objective that specifically refers to addressing the health disparities between Indigenous and non-Indigenous Australians.

We affirm our position that Aboriginal and Torres Strait Islander peoples have the right to live a healthy, safe and empowered life with strong connections to culture and country.

Although Aboriginal and Torres Strait Islander Australians are more likely to seek access to health care and achieve better health outcomes when they are able to access services that are respectful and culturally safe, we are aware that existing health safety and quality standards are insufficient to ensure culturally safe care for Indigenous patients.[1] There is recognition that a misalignment of the mainstream health system with Aboriginal and Torres Strait Islander people and cultures has contributed to the many barriers Aboriginal and Torres Strait Islander people face when accessing health care.[2]

Peak Indigenous health bodies suggest that boosting the likelihood of culturally safe clinical care may substantial contribute to Indigenous health improvement.[3]

The Council of Aboriginal and Torres Strait Islander Nurses and Midwives reports that under-representation of the Aboriginal and Torres Strait Islander peoples in the health workforce is a contributing factor to the lower rates of Aboriginal and Torres Strait Islander peoples accessing health services comparative to need. In addition, a systemic approach toward building the cultural capacity of the non-Indigenous physiotherapy workforce is equally important if improvements in health outcomes are to be achieved.[4] Workforce development and training is identified as a key domain that underpins culturally respectful service delivery. This includes a focus on a culturally responsive health workforce and the Aboriginal and Torres Strait Islander health workforce.

The AHMAC 2016-2026 Cultural Respect Framework reinforces the value of a whole of health sector approach to improving the health of Aboriginal and Torres Strait Islander peoples.

Amendment of the National Law to ensure due consideration is given the cultural safety of Aboriginal and Torres Strait Islander peoples within the Australian regulatory framework supports a systemic approach. It supports peak professional bodies to comprehensively embed cultural competency in their education and ongoing professional development programs.

2.2 System linkages

Are the current linkages between National Boards, AHPRA and other regulators working effectively?

In line with contemporary models of regulation, including those adopted by the Council of Australian Governments (COAG), the APA takes the view that regulation has four cornerstones:

- Self-regulation
- Peer-regulation
- Market regulation, and
- State/governmental regulation.[5]

We understand the regulation of health professionals in Australia to be a shared responsibility among health professionals, agencies, professional bodies, health services, the 'market' and governmental agencies.

Through a diversity of educational and other activities, the APA actively encourages an informed, self-auditing culture in the physiotherapy profession. We take the view that this role builds the confidence of the profession's clients, the public, third party insurers and regulators in our ability to continuously deliver safe, high value physiotherapy.

The complementary roles of the parties to regulation results in some overlap and ambiguity around authority and reporting obligations. For example, in physiotherapy, a patient might complain to a state health complaints body, to AHPRA, and to the APA. A physiotherapist's professional and contractual obligations may result in them reporting an adverse event to their workplace, a state health complaints body, to AHPRA, and to their professional indemnity insurer. These overlapping roles are at the heart of the suggestion that negligence settlements and judgements need to be reported to National Boards.

In this context, we support an exploration of models of reciprocity in data sharing. For example, the National Law imposes obligations on employers to make mandatory notifications. Arguably, there is reciprocal value in a level of data synchronization for employers – overcoming the impracticality of timely and consistent monitoring of the NRAS public register. Arguably, this would deliver a public benefit in employers becoming aware of notations, conditions and undertakings in a timely manner. Our members have reported instances where an employee has not provided this information to their employer and has, as a result, continued to work outside their approved conditions. An exploration of data synchronization with specific parameters would address this lapse and risk to the public.

We appreciate the informal relationship that we have with the PhysioBA and AHPRA. We suggest that, when 'regulators' are the subject of discussion, that the role and value-add of professional bodies be considered.

For example, later in our submission we canvass issues related to 'boundary violation'. We take the view that the current linkages between the APA and PhysioBA would be a valuable way for AHPRA to provide information about what is known about the trajectory of events prior to 'boundary violation', as we are in an excellent position to use this information in professional education activities and the development of tools for physiotherapy clinics.

3 Registration functions

3.1 Reporting of professional negligence settlements and judgements

The APA supports amendment of the National Law to require reporting of professional negligence settlements and judgements to the National Boards.

In particular we support amendment of the definition of 'relevant event' in s. 130(3) of the National Law to impose an obligation on all registered practitioners to report to the responsible National Board details (including amounts) of any professional negligence settlements or judgements against them (Option 3). We support the position that this occur during the registration period and within seven days of the settlement or judgement.

The prevailing notification process relies on responsible credentialing of practitioners and existing monitoring powers, including the annual return completed at registration renewal, mandatory reporting and obligations to report relevant events during the registration period. Fundamental regulatory failures such as those that lead to the catastrophic events at Djerriwarrh Health Services in Victoria coupled with calls for stronger disclosure obligations[6] demonstrates the need for greater transparency and information sharing with the public.

It is acknowledged that a professional negligence settlement or judgement is not, on its own, an indication of poor practice. However a practitioner's professional negligence record, when considered with other sources of information can assist to identify a pattern of behaviour that may warrant further investigation. The research suggests that a large number of complaints are concentrated among a small group of practitioners. Past complaints may be a predictor of future complaints. If malpractice risk is related to factors such as patient dissatisfaction and interpersonal behaviours, surveillance systems that monitor and alert practitioners to their risk of practice could be a valuable tool.[7]

Clearer system linkages and earlier detection of impaired, poorly performing or 'at risk' practitioners would better protect the public.

It is our view that, in keeping with the underpinning tenant of the National Law, reporting obligations rest with the individual practitioner. This includes resting the obligation to disclose with the individual. We recognise the reporting of professional negligence and judgements is a balance between protecting the public and maintenance of practitioner right to privacy. It is clear that in order to fairly protect the public there needs to be better regulatory tools to detect practitioners who pose a risk to the public.

4 Health, performance and conduct

4.1 Mandatory notifications by employers

The APA support amendment of the National Law to clarify the mandatory reporting obligations of employers to notify AHPRA when a practitioner's right to practice is withdrawn or restricted due to patient safety concerns associated with their conduct, professional performance or health.

Under the National Law, employers and practitioners are required to notify AHPRA if they reasonably believe a registered health practitioner has behaved in a way that constitutes "notifiable conduct". Notifiable conduct means that the practitioner has:

(a) practiced the practitioner's profession while intoxicated by alcohol or drugs; or

(b) engaged in sexual misconduct in connection with the practice of the practitioner's profession; or
(c) placed the public at risk of substantial harm in the practitioner's practice of the profession because the practitioner has an impairment; or
(d) placed the public at risk of harm because the practitioner has practiced the profession in a way that constitutes a significant departure from accepted professional standards.

In a previous response to a consultation on mandatory reporting reform in the National Law (2017) the APA supported removal of mandatory reporting obligations for past occurrences of practice whilst intoxicated, impaired or where the public was placed at risk of harm. The timeframe for mandatory reporting of sexual misconduct included past, current and future, based on the recognition that sexual misconduct in the past is a strong indicator for future misconduct behaviours.

5 Offences and penalties

5.1 Title protection: Physiotherapist

In addition to the proposals made in the Consultation Paper, the APA is seeking to have the contraction, 'physio', included in the table of protected titles in section 113 of the National Law. Under section 113 of the National Law the titles 'physiotherapist' and 'physical therapist' are protected. The aim of these constraints is to protect the public.

A person must not knowingly or recklessly take or use the title physiotherapist or physical therapist, in a way that could be reasonably expected to induce a belief the person is registered under the National Law in the profession of physiotherapy, unless the person is registered in the profession of physiotherapy.

Additionally, a person must not take or use the title physiotherapist or physical therapist in relation to another person, in a way that could be reasonably expected to induce a belief that that person is registered under the National Law in the profession of physiotherapy, unless that person is registered in the profession.

The offences occurs whether or not the title physiotherapist is taken or used with or without any other words. The offence also occurs whether the use is in English or any other language, when symbols or language that may lead a reasonable person to believe that a person is registered as a physiotherapist when they are not, are used.

The World Confederation for Physical Therapy (WCPT) asserts that the professional titles 'physical therapist' and 'physiotherapist' and all abbreviations referring to these titles (eg, "PT", "FT", "physio') are the sole preserve of persons who hold qualifications approved by WCPT's member organisations.[8,9] The Australian Physiotherapy Association is a WCPT member organisation.

The WCPT believes it is in the public interest to protect the professional names and titles as part of national legislation/regulation/recognition.[10] In fact they assert that "*failure to restrict use of…professional titles and their abbreviations may result in a failure to protect the public interest because practitioners who are not licensed/registered/ recognised could use the non-restricted title/abbreviation*".[11]

As such persons representing themselves as a 'physio' mislead the public by trading on the implied value of physiotherapy services. This presents safety and quality risks to the public, and reputational risks to the physiotherapy profession.

5.1.1 To the public, the word 'physio' means physiotherapy

It is common for Australians to truncate words used commonly. For example, Australian's might say, 'Macca's' for McDonalds. Despite the contraction, the meaning is shared and clear. This is also true for the contraction 'physio'.

A 2016 market research study into the Australian public's experience and perceptions of physiotherapy, commissioned by the APA, demonstrated when consumers talk about their physiotherapist:

- 58% use the term physio
- 29% use both terms (physio and physiotherapist), and
- 12% use physiotherapist.

Thus, 87% of Australians mean 'physiotherapist when they use the term 'physio'.

This study also showed that when consumers talk about their physiotherapy treatment:

- 12% use the term physiotherapy
- 59% refer to 'physio' treatment, and
- 28% using both terms.

Indeed, the term 'physio' is so embedded in Australian national parlance that the Collins Dictionary recognises it as a legitimate contraction of the word physiotherapy and physiotherapist.

This powerfully demonstrates that the term 'physio' is so deeply ingrained in the Australian lexicon that the 'therapy' component has become linguistically redundant in everyday speech. This 'clipping' creates a shorter word but does not change its meaning. The complete word is no longer necessary to convey the same information. This implies a deep community understanding of the term.

5.1.2 Other jurisdictions protect the title 'physio'

The regulatory regimes of other jurisdictions protect the title 'physio' as well as the titles 'physiotherapist' and 'physical therapist'.

New Zealand, for example, protects the titles: 'Physiotherapist', 'Physical Therapist'; and 'Physio', along with associated abbreviations and descriptions of physiotherapy (under the Health Practitioners Competence Assurance (HPCA) Act (2003)).[12]

In Ontario, Canada, the Regulated Health Professions Act 1991 and associated Physiotherapy Act 1991 protects the titles "physiotherapist" or "physical therapist", and *variations* or *abbreviations* of titles.[13]

The World Confederation for Physical Therapy (WCPT) asserts that the professional titles 'physical therapist' and 'physiotherapist' and all abbreviations referring to these titles (eg, "PT", "FT", "physio') are the sole preserve of persons who hold qualifications approved by WCPT's member organisations.[14,15]The Australian Physiotherapy Association is a WCPT member organisation.

5.1.3 Use of the word 'physio' is a work-around

Unlike other similar jurisdictions, the National Law does not protect the contraction 'physio'.

Members of APA consistently raise illustrations of non-physiotherapists (both registered health care providers such as chiropractors and osteopaths, and non-registered providers including exercise physiologists, myotherapists and personal trainers) using the term

'physio'. Our members report this occurring in hospitals, where staff say things like, 'I am the exercise physio.'

The contraction can be both a description of the profession practised and the professional.

It is the view of the APA that the use of the term is increasingly a deliberate attempt to circumvent the protections intended by the National Law, in part, by positioning the term as a description of the profession, rather than of the professional when it can be used as both.

As such persons representing themselves as a 'physio' mislead the public by trading on the implied value of physiotherapy services. This presents safety and quality risks to the public, and reputational risks to the physiotherapy profession.

Illustrations of the use of the term 'physio' are included in Appendix 1.

5.2 Prohibiting testimonials in advertising

Is the prohibition on testimonials still needed in the context of the internet and social media?

Consumers of health services are increasingly using social media sites, service directories and consumer-driven blogs to find, rate and compare health practitioners. As we shift toward a model of the 'engaged consumer', consumers will increasingly use online platforms to make informed choice about providers and their journey of care. Search engines like TripAdvisor demonstrate both the advantages and disadvantages of consumer-generated content.

Physiotherapy practices are increasingly leveraging social media platforms to build their business brand, connect with users and build their customer base. Given the dominance of user-generated content, managing the flow of testimonials has emerged as a considerable challenge to regulated health practitioners.

The current prohibition on the use of testimonials in advertising is confusing and unachievable. There is confusion about what constitutes a testimonial.

The proposition that a testimonial "includes recommendations, or statements about the **clinical aspects** of a regulated health service" is ambiguous. It suggests that recommendations or statements about 'non-clinical' aspects of a regulated health service are permissible. However, this begs the question of defining aspects of a health service that are 'non-clinical'.

Many physiotherapists would agree that communication styles, and other 'soft skills' are central to the trust, clinical safety and quality. The current approach of the NRAS to advertising appears to suggest that communication skills, for example, are 'non-clinical'. This is in contrast to the research literature which supports the view that there is a relationship between so-called disruptive behaviours and patient safety.[16]

It is unclear what defines and separates a clinical testimonial from a non-clinical testimonial. This lack of clarity makes it almost impossible to satisfactorily regulate the current law.

This suggests that it is problematic to make distinctions between aspects of the service encounter (eg, outcomes and experience) on the basis that some relate to patient safety and others do not.

Increasingly, our members suggest that it is both patronizing and unrealistic to contain consumers' public expression of their experiences and perceived clinical care. There is now community-wide recognition of the strengths and weakness of consumer reviews. We

appreciate that there is a need to support increased health literacy amongst consumers. However, a broadening of the ability to post information might support momentum to increase health literacy.

The APA supports an amendment that enables regulated practitioners and consumers to learn from one another's mutual expertise and experiences. Consumers commenting on their experience and outcomes, otherwise known as Patient Reported Experience Measures (PREMs), could be a valuable tool to support practitioners in improving their competencies and in modifying clinical pathways.

The APA supports an amendment to the National Law to limit the scope of the prohibition on using testimonials in advertising to apply only to advertising undertaken by the registered health practitioner or their employer. We support removal of the prohibition on sites not under the control of the practitioner, such as service directories, personal social media pages.

We also propose an additional amendment to the National Law that reflects a more contemporary consumer centric approach to the use of testimonials. The APA proposes a two-tier system whereby any testimonial that is posted on a health service directory site needs to be provided to the health practitioner prior to their release. This offers, but does not oblige, the health practitioner opportunity to provide supplementary clinical information on any comment posted. In this model, the registered practitioner would be able to provide additional contextually relevant information, but not able to alter the consumer testimonial.

It is our view that clinically accurate information helps consumers make decisions about who provides them with care and has a safety justification. Where consumers rely purely on consumer-generated content with no clinical accountability there is concern they are making decisions without the important contextual information.

6 Information and privacy

6.1 Use of aliases by registered practitioners

> *Should the National Law be amended to provide AHPRA with the power to record on the public register's additional names or aliases under which a practitioner offers regulated health services to the public?*
>
> *Should the National Law be amended to require a practitioner to advise AHPRA of any aliases that they use?*
>
> *If aliases are to be recorded on the register, should there be provision for a practitioner to request the removal or suppression of an alias from the public register? If so, what reasons could the board consider for an alias to be removed from or suppressed on the public register?*

The APA supports amendment of the National Law to require a practitioner to advise AHPRA of any aliases they use, however we do not support recording of an alias on the public register without a practitioner's consent.

We acknowledge the delicate balance of protecting the public, the right to access information about a practitioner and the practitioner's right to privacy – particularly as that right relates to the privacy of sensitive information. We are concerned, in situations such as family violence, that release of an alias could pose serious safety concerns for the practitioner or other third party.

Some practitioners legitimately practice under a name different to that on the public register. This includes practitioners with safety and/or privacy concerns and those where the practitioner has adopted an anglicized name in their practice.

The APA supports amendment of the National Law to provide AHPRA with the power to link all names, abbreviations and aliases adopted by a practitioner however we do not agree that public registers should provide linkage between an alias and other names.

Consideration might be given to a specific request for protection of aliases, with a small range of reasons for the request (eg, 'personal safety'). This would assist the practitioner and assist AHPRA to understand the basis on which practitioners make the request.

Recently, a member of the public made a complaint to us about a physiotherapist whom the member of the public believed was not registered. After some investigation using information about the physiotherapist held by the APA because the physiotherapist was a member, the APA was able to determine that the physiotherapist was registered. The problem lay in the fact that the register held by AHPRA found only the first part of a joint name when the physiotherapist used the second part of their name in all public information about their practice. After discussion with our member, we were able to reassure the complainant that the physiotherapist was registered and how to check this online.

This case illustrates a failure of the current public registers – that the information architecture is insufficient to offer predictive search functionality and no ability to search via a previous name (eg, married name). It is insufficient that the background infrastructure of the register is unable to link AHPRA registered name and practicing name.

We propose the infrastructure of public registers is modified to link registered name with alias name. For example, a search for the name 'Karen Jones' would link in the back-end to any alias adopted by 'Karen Jones'. The intention is to ensure the public can find a practitioner but does not reveal an alias.

6.2 Pre-entry students and overseas graduates

Under the National Law, all students enrolled in an approved program of study, or who are undertaking clinical training, must be registered as a student with their respective National Board.

The National Law requires that students must be registered in the interests of protecting the public's safety in much the same way that health practitioners must be registered. This enables National Boards to act on student impairment matters or when there is a conviction of a serious nature that may impact the public.

Recently, a member of the public sought to confirm that a student who had treated them was, in fact, registered. The complainant was unable to do this because students are not searchable on the pubic register. There is no clear mechanism by which the National Boards can share with the public information regarding students who pose a serious safety concern.

We propose the establishment of a student public register. In the interests of public safety, we believe it is unacceptable that student practitioners are not searchable on the public register. Students are privy to sensitive client information and have a code of conduct to uphold, even prior to registration. The current inability to search for a student on the public register makes it difficult for the public to make a notification or lodge a complaint.

Our members have also expressed the view that the public should be able to access the complete details of the supervised practice being undertaken by an overseas graduate with limited registration to practice.

7 Supplementary Issues

7.1 Incivility and disruptive behaviour

Our members see incivility or disruptive behaviour, specifically in the online environment, as an emerging concern. Incivility involves acting rudely or discourteously, without regard for others, in violation of norms for respect in social interactions. We are concerned about the impact of incivility on the safety and wellbeing of both clients and practitioners.

It has been suggested that a number of changes in society are resulting in increasing rates of incivility/disruptive behavior. These changes are thought to include the use of more impersonal modes of communication (eg, social media) and the pace of communication.

As a professional association, we are increasing hearing of incidents of incivility and disruptive behaviour. These are reported as occurring between physiotherapists and their clients, and between physiotherapists (a form of 'horizontal violence'). There is a relationship between incivility/disruptive behaviour by healthcare professionals and poor patient satisfaction and reduced patient safety. Incivility/disruptive behaviour is also associated with higher rates of litigation.

Research suggests that almost everyone admits to behaving disrespectfully at work occasionally.[17] Although these interactions have negative impacts, what distinguishes them is that they are obviously 'out of character' for the individual.

Research also suggests that, although the risks of recurrence vary widely according to specialty, physicians' risk of future paid claims increased monotonically with their number of previous paid claims.[18] If this sort of pattern applies to incidents of incivility/disruptive behaviour, then it is important for early incidents to be identified and addressed as such events will recur and increase in number.

Incivility/disruptive behaviour is thought to escalate (in severity and/or frequency) where seemingly small and isolated incidents are not addressed.[19] In these contexts, 'low-level' incivility occurs, is tolerated and escalates. In some cases, the fact that the behaviour is not addressed is used as justification for repetition ("No-one said I'd done the wrong thing").

It has been suggested that the rate at which professionals say they have the ability to handle issues such as incivility/disruptive behaviour is highest when the perpetrator is within the same profession, drops when the perpetrator comes from a different profession and drops further when the concern is about a colleague outside the same organisation.[20] The same research suggests that physiotherapists are least likely (compared with other professionals) to report having taken action (eg, speaking with the perpetrator).

That incivility/disruptive behaviour is a factor in notifications and in litigation by patients suggests that the 'market' of consumers seeks to regulate incivility/disruptive behaviour and sanction physiotherapists who display this behaviour in ways that the market can (eg, persuading other clients not to see the physiotherapist). It has been suggested that people who are uncivil/disruptive tend to be well known for this by subordinates and colleagues. Qualitative studies suggest that the instigators tend to be passed around like 'organisational hot potatoes'.[21]

Instigators of incivility and other disruptive behaviour have been described as 'nomads'. The suggestion is that they have relatively short tenure as a result of employers finding ways to end their employment (or because they become dissatisfied with the environment and leave). The consequence is that they move from employment to employment (like nomads) or establish themselves as solo practitioners.

7.1.1 Causes and facilitators

Incivility/disruptive behaviour is caused or facilitated by 'internal' factors such as:

- poor communication and influencing skills
- poor conflict resolution skills
- compulsive behaviour
- psychiatric disorders
- alcohol and drug dependence, and
- (male) gender.

Incivility/disruptive behaviour is caused or facilitated by external factors such as:

- high system demands where there is low support
- positive feedback for achievement from others above the need to be civil ('the means justify the ends')
- poor system response to genuine concerns
- life cycle events (eg, in the perpetrator's family)
- the absence of clear guidelines for collegial behaviour
- authoritarian leadership styles, and
- (high) status. [22] [23]

The PRONE (Predicted Risk of New Event) score, which indicates a doctor's future complaint risk is based on four variables – their specialty and sex, the number of previous complaints and the time since the last complaint. The PRONE scoring system performs well in predicting subsequent complaints.[24]

7.1.2 Prevention and Remedial Actions

It has been suggested that tackling incivility/disruptive behaviour needs to occur simultaneously at three levels – the organization, the team and the individual. It has been suggested that feedback to the instigator, alone, (except where the event is one-off and clearly 'out of character') is largely ineffective in part because the instigator is not aware of the impact of their actions, and it has been suggested that it is particularly difficult to give feedback about incivility to highly renowned professionals.[25]

It may be useful to apply principles of situational crime prevention to the prevention and remediation of incivility/disruptive behaviour.[26] Situational crime prevention provides some insights into the precipitators of incivility/disruptive behaviour and seek to address them.

Because of the suggestion that perpetrators of incivility/disruptive behaviour are few in number and diverge in their approach, it may be useful to distinguish between the groups.

This distinction between types of offender has important implications for regulatory mechanisms, as the anti-social predator referred to in the literature is unlikely to be swayed by peer-mediated regulation.

Arguably, this mode of remaining within the profession is a substantial risk for patients, peers and the profession and it signals an important role for a national regulator which has at least passive monitoring of changes in employment over time and complaints over time.

Arguably, this ability to move through the profession suggests a role for notification to external regulators which have the capacity to monitor individuals over time and different employers.

7.1.3 The role of the National Registration and Accreditation Scheme

One way of thinking about incivility/disruptive behaviour is that it represents a failure of the professional self-regulation of an individual physiotherapist. Because the number of perpetrators of incivility/disruptive behaviour which is 'in character' is small, it is possible that such incivility is an indication of the individual's comparative inability to be affected by peer-regulation. If this is the case, then there is an increased need to consider notification to external regulators such as AHPRA.

It has been suggested by members of the APA that reports of incivility and disruptive behaviour do not meet the threshold at which AHPRA would investigate, despite suggestions in the research that such complaints can signal a pattern of professional practice which is problematic and which needs to be addressed in order to prevent harm to patients or peers.

As a result, we take the view that AHPRA and its National Boards need to clarify their position with respect to incivility and particularly reporting incivility to external regulators.

In the Australian context, the National Law provides for the ability of National Board to investigate complaints related to the health, performance or conduct (behaviour) of registered practitioners. As a result, should incivility/disruptive behaviour meet the threshold required in the National Law, sanctions can be made under the National Law.

7.2 Boundary Violations

The reporting of boundary violations in the physiotherapy profession appears to be increasing, with a recent increase in notifications to the APA. It is unclear whether this indicates an increase in actual violations or an increase in willingness to (or ability to) report.

It has been suggested that there are two distinct groups of perpetrators with regard to boundary transgressions.

One cohort have gone into 'automatic' mode and are operating with the 'lights turned off'. Violations by this cohort are important and harmful, but largely unintended. Potentially this group are amenable and may respond positively to an educational strategy that presents simple strategies to reduce a boundary breach (eg, externalising internal dialogue to a client). It is our view this cohort of 'mundane' offenders need to better understand the pathway that leads to boundary violation and implement setting-based safeguards to minimum future harms.

The second cohort carefully test limits and deliberately violate boundaries. It has been suggested that this is a group of anti-social predators who seek out opportunity to systematically offend when the circumstances are 'right'. [27] Although comparatively small in number, this group are not likely to be amenable to professional signals and educational strategies.

The APA is planning a dedicated series of education strategies to reduce the likelihood of 'unintended' boundary violations. We will be drawing upon the PhysioBA Code of Conduct (sec.8.2) to demonstrate the principles of ethical conduct.

We would value the opportunity to work more closely with the PhysioBA to jointly address the growing concern around boundary violation. In particular, we would be keen to understand what the role of the PhysioBA has informed it about:

- prompts (controlling triggers, providing reminders of appropriate behaviour, reducing inappropriate imitation and setting positive expectations)

- pressures (reducing inappropriate conformity, reducing inappropriate obedience, encouraging compliance to positive standards, reducing anonymity)
- permissibility (setting rules, clarifying responsibility, clarifying consequences, personalizing victims), and
- provocations (reducing frustration, reducing crowding, respecting territory and controlling environmental irritants).[28]

8 Conclusion

We welcome the opportunity to make this submission and remain keen to work with the relevant stakeholders to ensure that Australia's National Law is up to date and fit for purpose.

Australian Physiotherapy Association

The APA is the peak body representing the interests of Australian physiotherapists and their people they support and assist. The APA vision is that all Australians will have access to quality physiotherapy, when and where required, to optimise health and wellbeing.

It is a national organisation with state and territory branches and specialty subgroups. The APA represents more than 26,000 members who conduct more than 23 million consultations each year.

The APA corporate structure is one of a company limited by guarantee. The APA is governed by a Board of Directors elected by representatives of all stakeholder groups within the Association.

The APA gives permission to publish this submission on the COAG Health Council website

Appendix 1 – Protection of Title

There are a range of arenas in which the term 'physio' is used in the Australian community. These include:

- Professional sporting codes
- Private health insurers
- Online search engines and job advertisements, and
- Business naming.

Professional sporting codes

There are numerous examples where professional sporting codes use the term physio in their social media, advertising campaigns, and on the sporting field.

1. The National Rugby League have the twitter handle '@nrlphysio'. The feed describes injuries to NRL players and is an example of community knowledge and familiarity with physiotherapists. Public understanding of the term physio is so established there is no need to use the complete word.

2. Physiotherapists are now commonly seen on field wearing their title 'physio'. There is clear community expectation that the person wearing the 'physio' uniform is in fact a qualified physiotherapist and not that of another profession.

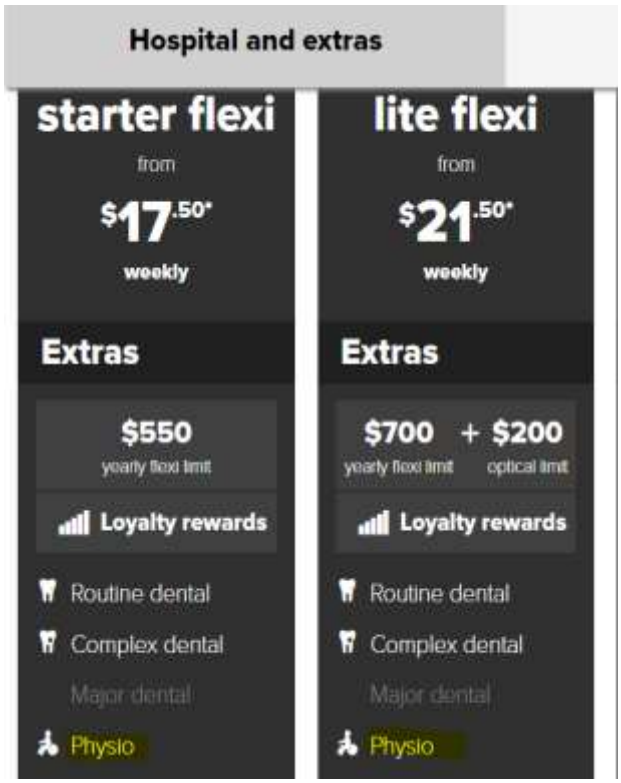
3. Sporting leagues use the term physio throughout their advertising and media campaigns. In the example below, the job advertisement uses the term 'physio'. There is an implicit understanding that the sporting team is recruiting a registered physiotherapist and not providers of other professions.

Private Health Insurers

Similarly, private health insurers use the term ‘physio’ rather than physiotherapist in their consumer-facing marketing material, particularly when promoting general cover. This strategy taps into the community ‘norm’ of how and when the term is applied.

Private health insurers have strict rules that the service of physiotherapy must be provided by a physiotherapist (not by a physiotherapy assistant, for example). Although, in this case, the reference is focused more on the service than the professional, this use of the term ‘physio’ suggests that ‘physio’ is provided by a ‘physio’.

Source - GMHBA Health Insurance



Source – ahm Health Insurance

Source – Medibank Private

This use of the term 'physio' by high-profile and credible sources increases the likelihood that consumers will associate the term 'physio' with physiotherapist and be misled should a non-physiotherapist use the term.

Professional Titles

Professional titles are an important mechanism for conveying qualifications and suitability to work in a health profession. Titles readily convey a scope of practice and speak into the agreed community understanding of a profession. There is community agreement that the title of 'physio' means the same thing as 'physiotherapist'. Inclusion of the word 'physio' in all or part of a title misleads the public by inducing a reasonable belief the person is a registered physiotherapist.

In the example below (Table 1), both organisations and players understood the person to be a qualified and AHPRA registered physiotherapist. The individual was employed as a physiotherapist to provide services to a state sporting team competing at the Australian Masters Games. This individual was not a physiotherapist. The actions of this person were reported to the Australian Health Practitioners Regulation Agency (AHPRA) because players were concerned about the protection of their safety. AHPRA subsequently advised that the person was on notice that should any further similar complaint come to light, it would be viewed seriously, and legal action may result.

Example 1.

Mr Smith is employed as a physiotherapist to provide physiotherapy services to a state sporting team.

His professional title is as follows:

- Mr Smith - MA.A.Sc, BA.S.Sc
- Professional Sports Trainer/Sports Physio
- Professional High-Performance Coach

Example 2.

Joan was a little perplexed by the discussion she had with her local physiotherapist, Sylvia.

Sylvia was helping Joan learn a set of exercises she could do at home, as Joan had become concerned that she may end up in a residential facility when she wanted to remain living at home.

When Joan mentioned her hospital physio, Jeff – the hospital staff member who helped her exercise when she was in the hospital, she was confused when Sylvia said he wasn't a physio.

In the following discussion, it turned out that when Jeff had first introduced himself at the hospital, he had said he was her 'exercise physio'.

Joan had assumed he was also a physiotherapist.

In fact he was an exercise physiologist.

Example 3.

A soccer team employed a chiropractor as their on-field team therapist.

This person was often referred to as a 'physio' without the players or parent's knowledge that the person referenced was a chiropractor.

This person did not make any attempt to correct the use of the term.

This example illustrates the way in which the term 'physio' has an embedded meaning; but there is little incentive to use the correct terminology unless the term is protected.

Online Search Engines

Increasingly consumers are using online search engines and social media tools such as Facebook, microblogs, and user-generated review sites to find physiotherapists in their local area. In this online environment, there is evidence that the terms physiotherapist and physio are considered and treated interchangeably.

For example, search terms entered into Google for '*physiotherapy jobs in Melbourne'* and '*physio jobs in Melbourne'* yield identical listings. Search engines are now designed to consider physiotherapy and its contraction as equivalent.

Equally, when using a job seeker site such as *Seek.com* or *Indeed.com* the two terms are treated interchangeably. Job seekers can search using the term 'physio' or 'physiotherapy' to view listings.

Job seeker companies are now using the term physio in their business titles.

However, non-physiotherapists are adding the term 'physio' to their service descriptions to raise their online profile. A review of **www.yelp.com.au**, a search engine that locates and rates health professionals, demonstrates how easy it is to mislead consumers searching for a physiotherapist.

The search term: *'Top 10 physiotherapy near St Kilda 3192'* reveals a listing of physiotherapy services. Number five on the list describes their services as '*massage, acupuncture and physio*'. The health practitioner however is a sports therapist and myotherapist, with no physiotherapy qualifications. On face value, it could be reasonably understood to induce a belief that the practitioner is a registered physiotherapist. This scenario is common across search engines and misleads the public when choosing a health provider.

Service Directories and Customer Review Sites

Whitecoat, a health care directory and customer review website, also generates a mixed listing of health providers. The search engine encourages health care providers to select multiple service descriptors to raise their profile.

A search in Whitecoat for a '*Personal trainer in Melbourne'* reveals the level of confusion that occurs when health providers portray themselves as a personal trainer and a physio.

The consumer quotes below refer to personal trainers with no physiotherapy qualifications:

> "*Ms X was a great physio. Listened to me really well and took into account what the doctor had told me and started to give me ways to cope with the problem as I work towards a solution" (accessed 13/11/2015).*
>
> *"Excellent physiotherapist. Highly recommended" (accessed 31/08/2015).*
>
> *"Great Physio and overall fantastic person with a wealth of knowledge" (accessed 6/6/2017).*

Business Naming and Service Descriptions

Business owners often use the term 'physio' in their business name or in the description of services. Given the established tie between the word 'physio' and physiotherapist, its use in a business name induces a reasonable belief the practitioners are registered physiotherapists.

'The Hair Physio' (see below) offers services by a person holding a certificate in trichology, with no physiotherapy qualification. This information is only found on closer investigation of their website.

It this case, it may not be reasonable to expect that the person providing the service is registered as a physiotherapist.

This is not so in the following situations, where the use of the term 'physio' could be reasonably expected to induce a belief that the provider of the service will be a physiotherapist.

Business naming becomes even more complex to navigate when overlapping terms are used:

Domain names can also be misleading. The domain name **www.fitphysio.com.au** belongs to an exercise physiology company with no registered physiotherapist on staff. With no title protection, there is little to deter health professionals from owning domain names incorporating the term physio and thus promoting a view that their service is provided by a physiotherapist.

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