

The Australian Psychological Society Ltd

Submission to the Psychology Board of Australia

Response to Consultation Paper 6: Proposed Registration Standard – Limited
Registration for Teaching or Research

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PREAMBLE

The Australian Psychological Society (APS) welcomes the opportunity to provide comment on the Psychology Board of Australia's (PBA's) *Consultation Paper 6. Proposed registration standard – Limited Registration for Teaching or Research* (the Paper).

In considering the Paper, the APS has taken advice from a number of sources including its Science and Research Advisory Group (SARAG), which is composed of academic and research scholars in the discipline of psychology around Australia. The consultations have highlighted a number of significant concerns regarding the proposals put forward in the Paper. These concerns are detailed in the submission which follows, and lead inevitably to the conclusion that the limited registration standard proposed by the PBA in the Paper is not viable.

For maximum clarity and readability, this submission is divided into three parts. The first contains an analysis of the likely consequences of the introduction of mandatory limited registration for those engaged in teaching and research in psychology but who have no desire to register as a health practitioner under the Health Practitioner Regulation National Law Act 2009 (National Law). The second deals with more fundamental legal problems which arise from the faulty premises on which the proposals in the Paper are based, and the third contains a summary of the points made and a recommendation.

PART 1: CONSEQUENCES OF MANDATORY LIMITED REGISTRATION FOR TEACHING AND RESEARCH IN THE ACADEMIC SECTOR

Notwithstanding the questionable assumption in the Paper that the PBA has powers under the National Law to require those teaching psychology and conducting psychological research to hold limited registration under Section 69 of the National Law (see Part 2), there would be the following numerous adverse consequences as a result of the introduction of such a Standard.

Academics in other disciplines would withdraw from involvement in psychology

One of the most challenging problems would be how academics in cognate disciplines, mostly based in other departments and faculties and currently teaching into accredited psychology programs, would be dealt with. Many accredited psychology courses benefit from specialized teaching delivered by academics with expertise in related disciplines such as statistics, biology, anatomy, social work and so on, who would be not meet the requirements for limited registration under the proposed Standard or wish to do so. The withdrawal of teaching by academic colleagues in related disciplines which would be likely to follow from a mandatory approach would not only leave accredited psychology programs with significant staffing and related cost problems, but also significantly reduce the richness and breadth of the education of Australian psychologists. Similarly, many academics who do hold the appropriate qualifications to meet such a Standard as that proposed, but do not consider registration appropriate to their teaching or research role, would likely simply withdraw their expertise from psychology programs in the face of the additional cost and compliance burdens.

Cost and administrative burden would be unsustainable

Costs would also be a burden to higher education providers. Schools and Departments of psychology in Australia are already withdrawing accredited psychology postgraduate professional courses and places in the face of the chronic underfunding of Commonwealth Supported Places¹ and could not afford to subsidize the limited registration fees of their academic staff.

Imposition of such cost and administrative burdens would be in direct contradiction to one of the objectives of the Council of Australian Governments (COAG) Intergovernmental Agreement² upon which the establishment of the National Registration and Accreditation Scheme for the Health Professions (the Scheme) was based, that is, to “reduce red tape for practitioners...” (Principle 5.3(b)).

Few if any benefits would accrue in the research sphere

Where psychology researchers, especially higher research degree candidates such as PhD students are concerned, it is difficult to see much benefit to the proposal at all, considering the fact that their conduct as researchers is already supervised and monitored by research ethics committees who are required to ensure that their research practices conform to the National Health and Medical Research Council’s *Australian Code for the Responsible Conduct of Research*³. Further, the research activities of many psychology researchers (especially in the case of those with no training in psychology) are not health-related or conducted in the health sector, and mandatory registration would only serve to act as a disincentive to their participation in the psychology research workforce.

Australia would be out of step with major international jurisdictions

These concerns are no doubt the reason why mandatory registration for those teaching into accredited psychology courses and for psychology researchers is not a requirement in any other major international jurisdiction. In the United States and Canada, the Association of State and Provincial Psychology Boards (ASPPB) recently revised *the Model Act for Licensure of Psychologists*, and do not require registration for academics undertaking teaching and research. The ASPPB recognizes that those engaged in teaching and research do not need to be registered, unless they are delivering practice supervision. Mandatory registration for academics and researchers who do not use the title psychologist would mean that Australia is out of step with the approach taken by regulators in other countries.

¹ Voudouris, N.J. & Mrowinski, V. (2010). Alarming drop in availability of postgraduate psychology training. *InPsych*, April 2010, p. 20-23.

² Council of Australian Governments (2008). *Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions* (accessed from <http://www.ahwo.gov.au/natreg.asp> on 10/05/2010).

³ National Health and Medical Research Council (2007). *Australian Code for the Responsible Conduct of Research* (accessed from <http://www.nhmrc.gov.au/publications/synopses/r39syn.htm> on 04/12/2010).

Visiting academics would be deterred from choosing Australia

The PBA's Paper requests feedback regarding the possibility of requiring limited registration for academics visiting from overseas. The APS believes that such a requirement will place an unnecessary burden on psychology Schools and Departments, and significantly affect the current research landscape in Australia by deterring visiting academics. In addition to the burden of the fee, the administrative requirement posed by introducing a mandatory short term registration in addition to existing university and visa requirements would be seen as excessive and yet another deterrent to choosing Australia as a destination for visiting scholars. Many overseas-trained psychologists who arrange to tour in Australia offering their own independent CPD workshops could also be captured by this requirement and would have difficulty becoming informed of it at the planning stage. The APS has long established risk management practices in place for such practitioners, for example requiring sponsored overseas presenters to avoid using the title 'psychologist' but to instead include their post nominals when advertising their events, demonstrating that there are alternatives to temporary registration.

Monitoring of compliance by visiting academics under such a Standard would be highly problematic. It is unlikely that the PBA could effectively monitor every academic and tutor, guest lecturer, or visiting academic from overseas so as to ensure that registration requirements are met in a timely fashion. Even if detected, by the time a breach came to the attention of the PBA the overseas visitor would usually have left Australia and would be beyond the Board's jurisdiction. This highlights the potential waste of resources which could ensue from the attempted enforcement of such a Standard, and which would be better spent on registration matters in Australia. A consequence of non-compliance could be that a higher education provider which has invested substantially in sponsoring a visiting scholar/researcher to come to Australia would incur significant losses.

Satisfactory performance for limited registration renewal is unrealistic

The PBA has specifically requested feedback on the possibility of making renewal of limited registration under this Standard contingent on satisfactory performance in employment or further study. The APS believes that even under a revised limited registration standard which was viable this requirement would be very difficult to implement and that such a cumbersome and unnecessary impost will simply have the effect of discouraging academics from considering taking up limited registration. Academics and the higher education providers who employ them are very unlikely to comply with performance reporting requirements, with higher education providers likely to find the reporting of performance problematic both from an employment contract perspective as well as an administrative one. Such a performance reporting requirement would constitute extraordinary interference with the operational functions of higher education providers and, from a risk perspective, could raise issues related to the liability of the PBA for professional misconduct should any arise.

PART 2: LEGAL ISSUES

Purpose of registration

It is worthwhile at the outset of this analysis to recount the purpose of the Health Practitioner Regulation National Law Act 2009 (National Law), so as to reinforce the context in which the Paper must be considered. The purpose of the National Law is to create a National Scheme for the

registration of health practitioners (National Scheme). The primary objectives in creating a National Scheme are set out in Section 3 of the National Law and include firstly, the protection of the public, and secondly the facilitation of workforce mobility. The focus of the legislation itself is on the provision of health services to the members of the community, rather than any broader aspects of the named professions. The function of the legislation, other than creating a National Scheme, is to create protected titles in the area of the provision of health services.

Assumption that registration is mandatory for anyone teaching psychology or conducting psychology research and implications

Crucial to consideration of the proposal is the very broad definition of the practice of psychology adopted by the PBA and approved by the Ministerial Council. The PBA's definition is stated in the Paper as follows:

"Any role, whether remunerated or not, in which the individual uses their skills and knowledge as a psychologist in their profession. For the purposes of this registration standard, practice is not restricted to the provision of direct clinical care. It also includes using professional knowledge in a direct nonclinical relationship with clients, working in management, administration, education, research, advisory, regulatory or policy development roles, and any other roles that impact on safe, effective delivery of services in the profession" (p.4).

Having set down this definition, it is unfortunate that the Paper then goes on to confound the issues of who can practise psychology with or without registration, with the creation of a standard for Limited Registration under Section 69 of the National Law. In the first section of the Paper, *Definition of Practice*, the following statement is made:

"Previously individuals who used their psychological skills and knowledge working in areas such as education and research were not considered to be engaging in the practice of psychology and therefore were not required to be registered, but under the new scheme they are required to be registered" (p.4).

This statement implies that the National Law makes registration mandatory for any person practising psychology within the scope of the broad definition set down by the PBA. This premise is incorrect and is inconsistent with the PBA's definition of practice given in the preceding paragraph, which adds a requirement for the skills and knowledge to be used "as a psychologist in their (*sic*) profession". This anomaly between the two statements gives rise to two possible interpretations of the intention of the Standard.

The first is that the proposed limited registration Standard would be mandatory for all "individuals who used their psychological skills and knowledge working in areas such as education and research" regardless of whether they desire to use the title psychologist or not.

Currently, occupational therapists, social workers, psychotherapists and a myriad of other individuals, some at large in the Australian workplace without any professional credentials at all, use psychological skills and knowledge in a direct nonclinical (and sometimes even a clinical) relationship with clients. Some of the skills and knowledge employed by such people in their daily work includes psychological expertise, such as in the case of a counsellor offering training in how to use cognitive behaviour therapy. Since such individuals regrettably are not currently required to meet the registration requirements as a psychologist under the National Registration and Accreditation

Scheme, the argument that others employing similarly expert psychological skills and knowledge in management, administration, education, research, and other non-clinical roles should be required to register is untenable and may be contrary to guiding principle 3(3)(c) in Part 1 of the Health Practitioner Regulation National Law Act 2009 (the Act). This principle states that restrictions on the practice of a health profession are to be imposed under the Scheme only if it is necessary to ensure health services are provided safely and are of an appropriate quality. Practice restrictions under the National Law are dealt with in Sections 121, 122 and 123 and are limited only to a handful of activities, of which the practice of psychology is not one.

Further, even if the National Law granted powers to the PBA to require all persons practising psychological skills and knowledge to hold a form of registration as a psychologist, the proposal for introduction of a limited registration requirement for only one particular subset of such persons (for example those involved in teaching psychology and in conducting psychological research) is untenable and is highly likely to be open to challenge.

The second interpretation is that the definition applies only to those practitioners who intend to use the title psychologist (that is “uses their skills and knowledge as a psychologist in their profession”), and implies that only those academics and researchers who wished to use the title psychologist would be required to register under such a Standard. While the APS strongly supports the position that no person should be permitted to use the title psychologist without an appropriate form of registration, unfortunately the National Law does not protect the use of this title in all circumstances. According to section 113, a person must not knowingly or recklessly use a protected title in such a way as to suggest that he/she is a health practitioner registered pursuant to the National Law. There is nothing in the legislation to suggest that a person who has obtained academic qualifications in a health profession and who does not practise as a health practitioner should be prohibited from using the title to which their education entitles them, nor does the legislation suggest that those persons must be registered. It is noteworthy that the Standards of Registration adopted by the PBA are stated to apply only to applicants for registration, and not others. This reflects a fundamental difference between the National Law and the laws under which State and Territory Psychologist Registration Boards operated prior to 1 July 2010 and requires a shift in the understanding of how registration systems can now operate.

PART 3: SUMMARY AND RECOMMENDATION

In summary, the APS believes that the proposal to introduce a mandatory limited registration standard for individuals engaged in teaching and/or research in psychology as set out in the Paper would be:

- likely to result in the withdrawal of teaching input from accredited psychology courses by experts who do not wish to and/or cannot meet the Standard, with significant and in some cases critical staffing and cost implications for APAC accredited higher education providers;
- likely to result in low levels of compliance by academics and researchers who will see it as an unnecessary and costly additional administrative burden;

- likely to impose cost and administrative burdens on researchers and higher degree research candidates with no additional protections for members of the public participating in research and creation of a disincentive for participation in the psychology research workforce;
- out of step with the approach adopted in other major international jurisdictions;
- very cumbersome to implement (and almost impossible to police) in the case of international visiting academics, who would see the required processes as a real disincentive to choose Australia as a destination for scholarly visits or exchange programs.
- inconsistent with the principles of the COAG Agreement and the National Law;
- unlikely to deliver benefits in terms of the purpose of the National Law, namely the, protection of the public or the facilitation of workforce mobility;
- based on false assumptions regarding the National Law and in particular the powers of the PBA and would likely be open to challenge;

The APS therefore strongly recommends that the PBA does not attempt to introduce any limited registration standard for those engaged in teaching and/or research in the discipline of psychology.