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Proposal to regulate Traditional Chinese Medicine Practitioners

Thank you for the opportunity to comment on the proposal that traditional Chinese medicine becomes a regulated profession under the Health Practitioners Competence Assurance Act 2003 (the HPCA).

Traditional Chinese medicine covers a range of therapeutic interventions including acupuncture, Chinese herbal medicine, and contemporary practice developments such as electro-stimulation and point injection therapy. Both the New Zealand School of Acupuncture and Traditional Chinese Medicine and the New Zealand College of Chinese Medicine offer NZQA-approved degrees in Chinese medicine.

Role of the Health and Disability Commissioner

My role under the Health and Disability Commissioner Act 1994 (the Act) is to promote and protect the rights of health and disability services consumers. Pursuant to section 14(1)(d) of the Act, one of my functions is to make public statements in relation to any matter affecting the rights of health and disability consumers. In my view, the regulation of practitioners of Chinese medicine under the HPCA is a matter affecting the rights of health and disability consumers.

Regulation of Chinese medicine in Australia

Chinese medicine has been regulated in Victoria, Australia since December 2000 by the Chinese Medicine Registration Board of Victoria (CMRB). The CMRB operates under the same model as other health profession registration boards. It registers Chinese herbal medicine practitioners, acupuncturists, and dispensers of Chinese herbs, and conducts investigations into notifications about registrants' professional conduct and/or fitness to practise.

In March 2008 the Council of Australian Governments signed an Intergovernmental Agreement to create a single national registration and accreditation system. The scheme, regulated by the Health Practitioner Regulation National Law Act 2009 and overseen by the Australian Health Practitioner Regulation Agency, came into force on 1 July 2010. Similar to the New Zealand scheme under the HPCA, a profession must meet certain criteria before it meets the threshold for national regulation. Chinese medicine has been found to meet this

threshold in Australia, and is due to be included in the Australian national scheme from 1 July 2012 with the establishment of the Chinese Medical Board of Australia.

New Zealand proposal to regulate Chinese medicine

I support the regulation of traditional Chinese medicine in New Zealand under the HPCA. As recognised in Australia, it is advantageous for there to be authoritative systems in place to address competence, fitness to practice, and learning initiatives for this growing profession. I would specifically like to address three of the nine questions in the invitation for submissions.

- 1. Is there a risk of harm to the public from the practice of traditional Chinese medicine?*
- 2. What is the nature, frequency, severity and potential impact of risks to the public, and the likelihood of harm occurring?*

The primary and overriding objective of the regulation of health professionals is to protect public health and safety. In my view there is a risk of harm to the public from the practice of traditional Chinese medicine.

As noted by the CMRB in its submission on the inclusion of Chinese medicine in the Australian national scheme for registration of health professions,¹ Chinese medicine is growing in popularity and consumer usage is increasing. Most practitioners of Chinese medicine practice as primary contact practitioners, and treat a wide range of health conditions. Risks associated with the consumption of Chinese herbal medicines and the effects of acupuncture needling include unpredictable reactions, predictable reactions, issues relating to the clinical judgment and/or conduct of practitioners,² infection control, and the parallel use of complementary and mainstream treatments.

The risks identified by the CMRB are echoed in complaints to my Office about practitioners of Chinese medicine. Complaints to my Office demonstrate that therapeutic procedures performed by practitioners of Chinese medicine often involve invasive interventions that can result in significant harm to patients. For example, in one complaint investigated by this Office, acupuncture treatment resulted in a pneumothorax to the patient, who then required admission to hospital and emergency surgery.³ Two other recent complaints to this Office have highlighted concerns with the preparation of herbal remedies, and the quality of imported products, which had serious outcomes for the consumers involved.⁴

¹<http://www.ahwo.gov.au/documents/National%20Registration%20and%20Accreditation/Partially%20Regulate%20Professions/Chinese%20Medicine%20Registration%20Board%20of%20Victoria.pdf>.

² For example: removal of appropriate therapy; incorrect diagnosis; incorrect prescribing; inappropriate duration of therapy; failure to refer on where appropriate; failure to explain risks and precautions associated with treatment options; inappropriate dosage, and failure to observe contraindications and interactions with pharmaceuticals.

³ Complaint 07HDC12714.

⁴ While the Natural Health Products Bill, when enacted, will address concerns about quality of imported remedies used in natural health, there is the outstanding issue of the competency of the preparation of medicines by practitioners of Chinese medicine. In one complaint to my Office a consumer consulted a practitioner of Chinese medicine for treatment of a form of arthritis. The consumer complained that the practitioner instructed her to stop taking all medications prescribed by her general practitioner, and gave her an herbal remedy instead. After taking the medication for 3 months, the consumer said she became extremely unwell, delirious, and experienced pain. The practitioner again prescribed herbal treatment. The consumer was eventually admitted to Middlemore Hospital, and required emergency surgery. In another complaint, the consumer complained that she began to feel ill after taking an herbal treatment for five weeks. There were concerns about the way the practitioner responded to the consumer's deteriorating condition. The consumer advised that she discovered the herbal remedy contained aconite, which can be very poisonous if not prepared carefully.

Other themes in complaints to my Office about practitioners of Chinese medicine have been inappropriate touching, acupuncture needles left in too long, provision of treatment without adequate examination or assessment, inadequate response to side-effects of treatment, poor communication, and the inappropriate advertising of acupuncturists as “doctors”.

The complaints received show that the risk to consumers from traditional Chinese medicine can be significant. Despite the increasing role of Chinese medicine in primary health care, and the level of risk associated with Chinese medicine, there are highly varied standards for the education of practitioners of Chinese medicine. Regulation and clearly defined scopes of practice provide benchmarking for qualifications, standards, and competency. With regulation, the public can easily identify practitioners with adequate training and competence, and can make better informed choices about their care and treatment.

In Australia, the CMRB has noted that registration has contributed to reducing or managing risks associated with unqualified practice and varying standards.⁵ As at October 2008, the CMRB had processed 1566 applicants for registration. The CMRB refused more than 170 of those applications and imposed conditions on registration in more than 30 other cases. The most common reason for refusal was inadequate qualifications and training, or lack of evidence of competence.⁶ As at June 2010, the number of applications for registration with the CMRB from the time of its inception was 1717.⁷ While the number of applicants in New Zealand is likely to be lower, the safety and competence issues are still of significance.

3. *Does your organization accord any standing or status to the profession of traditional Chinese medicine, or to those who practise as traditional Chinese medicine practitioners?*

The Code of Health and Disability Services Consumers’ Rights (the Code) sets out the rights of health and disability services consumers, and places corresponding obligations on the providers of those services. All health and disability services providers must comply with the rights and duties in the Code.

“Health care provider” is broadly defined in section 3 of the Act. It includes health practitioners, as defined in section 5(1) of the HPCA, and also any person who provides or holds him or her self out as providing health services to the public or a section of the public, whether or not any charge is made for those services. In this respect, practitioners of traditional Chinese medicine are health care providers for the purposes of the Act, and must comply with the rights and obligations set out in the Code.

Currently, if a practitioner of Chinese medicine seriously breaches the Code, the Commissioner can refer the matter to the Director of Proceedings to consider laying charges against the provider involved.⁸ Because practitioners of Chinese medicine are currently unregistered, proceedings can only be brought against them before the Human Rights Review

⁵ See footnote one.

⁶ See footnote one.

⁷ CMRB 2009/2010 Annual Report. Available at: <http://www.cmr.vic.gov.au/about/annualreport.html>.

⁸ The Director of Proceedings is a lawyer appointed under the Health and Disability Commissioner Act. On referral of a breach finding by the Commissioner, the Director of Proceedings makes an independent decision whether to lay a disciplinary charge before the Health Practitioners Disciplinary Tribunal, issue proceedings before the Human Rights Review Tribunal, or both.

Tribunal (HRRT). The remedies available in the HRRT are a declaration that there has been a breach of the Code, an order restraining the practitioner from continuing to engage in conduct that was the subject of the breach, and damages. Following complaints to my Office, two providers of Chinese medicine have been referred to the Director of Proceedings and successful charges were laid against those practitioners in the Human Rights Review Tribunal.⁹

The focus of the HRRT is the rights of the individual, rather than issues of public safety. The HRRT has no power to impose conditions on the practice of a practitioner to protect patients, and there is no remedy in the HRRT for responding to issues of public safety posed by practitioners who are not competent to practise.

If practitioners of Chinese medicine are brought under the scheme of the HPCA, proceedings against practitioners of Chinese medicine who seriously breach the Code will be able to be brought in the Health Practitioners Disciplinary Tribunal (HPDT). The HPDT has much greater powers to impose conditions on practice, suspend a practitioner from practice, or even remove a practitioner from practice altogether. In addition, I would be able to refer practitioners of Chinese medicine to their responsible authority for competence reviews, should complaints to my Office raise serious concerns about a practitioner's competence to practice.

These mechanisms provide positive measures to protect the health and safety of members of the public, and would be a benefit of regulating Chinese medicine under the HPCA.

⁹ See: *Director of Proceedings (Health & Disability) v A* [2003] NZHRRT 35 (1 December 2003); *Director of Health and Disability Proceedings v DG* [2005] NZHRRT 2 (25 February 2005); *Director of Health and Disability Proceedings v DG* [2005] NZHRRT 3 (25 February 2005).