Australian Medical Council

# SUBMISSION TO NATIONAL BOARDS CONSULTATION ON THE DEFINITION OF "PRACTICE"

## INTRODUCTI0N

The public consultation paper on the definition of "practice" correctly notes that the current broad definition of "practice" has inadvertently restricted the ability of members of the medical profession to continue to contribute to the Australian community after they have ceased to be involved in active clinical practice. This is contrary to public interest and is having a negative impact on the capacity of some authorities to continue to provide education and other services to the community.

A fundamental limitation of the current consultation paper is the inconsistency between its consideration of safe and effective health care and its proposed (alternative) definition of practice which is presented in terms of "health services" rather than patient care. As a consequence neither of the two options offered address the fundamental concerns raised by the medical profession regarding the current unnecessarily broad definition of "practice". In addition, as the submission from Dr Kerry Breen AM to the current consultation paper points out, there are inconsistencies between the current broad definition of "practice" and other publicized statements and standards issued by the Medical Board of Australia, such as the Professional Indemnity Insurance standard.

A related issue with the consultation paper, and indeed with the roll out of the National Accreditation and Registration Scheme, is the principle of achieving a uniform approach to standards, codes and guidelines across all the health professions captured by the National Law. Whilst this may in one sense be a commendable aspiration, it does not take into account the differences amongst health professional groups, such as the capacity to compromise patient safety and also in terms of the community's investment of time and resources in the training and acquisition of expertise. While the current broad definition of "practice" may address some specific, if unstated workforce considerations for one or other professional group, in relation to medicine it limits access to a valuable and expensive resource in the accumulated expertise of health professionals who wish to continue to contribute to the community in various non-clinical capacities.

The AMC, in keeping with the stated objectives of the *Health Practitioner Regulation National Law,* strongly advocates a patient safety-centred approach to the definition of "practice" rather than the current health service/health system focussed approach.

## RESPONSES TO SPECIFIC ISSUES RAISED

***Question 1: Impact on Safe, Effective Delivery of Health Services***

The consultation paper, in this section, deals with the proposal to link "practice" to the potential impact on safe, effective delivery ***of health services***. While the discussion identifies the need to link registration with direct clinical care, it is focussed on the delivery of health services rather than on the provision of patient care. The AMC would support the criteria listed as a basis for registration in a "non-practising" category. The only additional factors that should be considered in determining an appropriate category of registration should be the extent to which the individual practitioner concerned is legally responsible for the provision of clinical care or treatment to a patient.

***Question 2: Direct Clinical Roles / Patient or Client Health Care***

The AMC submits that any medical practitioner who has direct legal responsibility for the care of a patient should be registered in a category that ensures that the individual has the necessary medical qualifications, recency of practice /CPD and appropriate professional indemnity to provide the level of patient care involved. This includes practitioners who are supervising other medical practitioners in the provision of health care to patients, as well as prescribing and referral.

Medical knowledge and practice is a rapidly developing field and it is essential that those involved in providing clinical care to the community maintain the level of expertise and medical knowledge necessary to provide safe and appropriate patient care. This is the principle on which the registration of medical practitioners was first established in Australia in the mid-nineteenth century and should remain the basis of the regulation of the medical profession.

***Question 3: Indirect Roles in Relation to Care of Individuals***

The AMC would support the proposal that medical practitioners who direct, supervise or advise (via referral or clinical opinion) other practitioners in providing direct health care to patients should have the appropriate category of practising registration, with the required recency of practice/CPD and professional indemnity insurance. However, the test for this category should be the legal responsibility for the clinical outcome. That is, if the supervising practitioner could be held legally liable for the treatment or clinical outcome of the patient, then that practitioner should hold the appropriate practising category of registration. This would apply in the case of senior hospital staff supervising or directing junior staff in the treatment of patients, or in the case of a specialist providing a clinical opinion to another practitioner regarding an individual patient.

The AMC also notes that the specific role of medical administrators has been acknowledged by their recognition as a medical specialty. High quality medical management is crucial to the overall safety and quality of medical service provision, particularly in acute hospitals.

If there is no legal liability for the patient care, then it would appear that the practitioner providing advice would not be required to hold a practising category of registration, since the practitioner responsible for the direct clinical care would be expected to be appropriately registered.

***Question 4: Non-clinical Roles/Non-patient Care Roles***

This question goes to the core of the issue with the current definition of “practice”. The AMC considers that it is not appropriate, nor practical to require medically qualified individuals to maintain a practising category of registration, which includes CPD and professional indemnity insurance, if they are not engaged in any form of clinical practice.

It has long been recognised and widely understood that “non-practising” means that an individual does not provide any health care or clinical advice in relation to the treatment, management or care of a member of the public and does not prescribe, refer or undertake any clinical assessment of a member of the public. This interpretation of practice is reflected in a number of the documents issued by the MBA under the provisions of the National Law. It would reasonably follow that individuals who do not provide clinical care or have any patient responsibilities, and who do not prescribe or refer patients, would fall within the generally understood class of “non-practising”. This would be consistent with the responsibility of the MBA to protect the public by ensuring that general or specialist registration was only granted to those individuals who were engaged in active clinical practice and who were qualified to do so under the terms of the National Law.

The AMC considers that medically qualified individuals undertaking the following activities should be considered as "non-practising":

*Medically qualified individuals who have no active clinical practice or patient care responsibility/ no prescribing / no referral, including those engaged in:*

- *Teaching and Assessing*
- *Research (non-clinical)*
- *Policy development / advice*
- *Committee membership*
- *Management and related activities*

The AMC is aware that a number of organisations, including medical schools and specialist medical colleges, have come to depend heavily on individual medical practitioners who are no longer in active clinical practice to support many of their activities. Discussions with representatives of these bodies have confirmed that the broader definition of "practising" that has now been adopted by the Medical Board of Australia has had a significant impact on the ability of these organisations to continue attract these practitioners to support their programs. This is related not only to the added complexity of the "general registration" category, but also to the need for a "voluntary restriction" to be placed on their general registration. For many of these individuals who have provided long and distinguished service to the Australian community as medical practitioners the imposition of such restrictions and conditions is insensitive at very least, especially when a simple "non-practising" registration category would achieve the same effect without the negative connotations.

The AMC is also aware that the Medical Deans of Australia and New Zealand and the Specialist Colleges have also expressed concern at the negative impact of the current policy for the ongoing support of retired medical practitioners for teaching programs. This is likely to have longer term implications for the capacity of medical schools to sustain their training programs.

The ongoing contributions by medical practitioners who are no longer involved in active clinical practice has been a longstanding characteristic of medicine as a profession. Individuals who have acquired extensive expertise over a life time of practice have continued to make valuable contributions to the Australian community, not merely in the provision of clinical care. To restrict these individuals by an unnecessarily broad definition of "practice" undermines a fundamental tenant of professionalism.

The submission by Dr Kerry Breen also raises the issue of mandatory CPD for individuals who under the current broad definition of practice are required to have a practising category of registration if they are engaged in any activity that draws on their professional medical knowledge. This is likely to include medically qualified individuals who serve on non-medical boards and tribunals, hold public office or contribute to the community in a non-clinical capacity. Breen points out that the current CPD programs available to such individuals do not realistically cover their activities.

***Question 5: Education and Training***

The wording of this question again highlights the limitations of the current consultation paper with the focus on ***health services delivery*** and ***settings*** rather than the patient. There is no argument with the proposition that medical professionals engaged in education, including those who are no longer in active clinical practice, have an impact on the effective delivery of ***health services***. Where a clinical teacher has a direct patient care responsibility, a category of practising registration would be appropriate. However, where there is no direct or legal responsibility for patient care, the AMC does

not believe that the requirement to have a category of practising registration (as required under the current definition of practice) is warranted.

Professionals who are not (medical) doctors, including those with qualifications in management, law, finance, IT and non-clinical education, also contribute to the safe and effective delivery of health services. These individuals are not required to maintain their CPD or professional indemnity insurance in order to participate in health services delivery. The fact that such conditions are imposed on medically qualified individuals who are not involved in direct patient care suggest that the regulations are being used inappropriately to single out a particular group of professionals and to impose conditions that do not apply to other professionals working in the same field and under similar circumstances.

## SCOPE OF THE NATIONAL LAW

The AMC notes that "practice" has not been defined in the National Law and that the current broad definition of "practice" with its unintended consequences, appears to be a policy decision associated with the implementation of the national registration and accreditation scheme.

The AMC is not aware of any other regulatory process for a profession that imposes conditions on the activities of members of the profession to the extent of the current definition of "practice" for health professionals. By way of example, the AMC understands that members of the legal profession who are no longer engaged in active legal practice serve on boards of directors, councils of various types, tribunals and instrumentalities. These individuals are not required to maintain a current practising certificate in order to undertake these activities.

## OPTIONS FOR CONSIDERATION

Given that the consultation paper already acknowledges the negative consequences of the current broad definition of "practice", it is difficult to understand why the current definition is included in the paper under Option 1.

Option 2 refers to a definition based on the safe and effective delivery of health care. The AMC would have supported this option, if not for the final wording that refers to "…safe, effective delivery of health services." Again, the emphasis is on services rather than patient care and is inconsistent with the heading of this option. The AMC would not support Option 2, as currently worded.

## PROPOSED DEFINITION

The AMC notes that the stated objective of the National Law is:

> *to provide for the protection of the public by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered.* [Sect 3 (2) (a)]

In keeping with this objective, the AMC would strongly advocate that for the medical profession the definition of "practice" should be patient and health care-centred and should relate to the provision of clinical care where the legal liability for care rests with the medical practitioner concerned. However, the AMC notes that because of their potential to influence health care outcomes, there may be circumstances where medical administrators and public health doctors, while not being involved in direct patient care, should have a practising category of registration.

The AMC would propose that for the purposes of registration the following definition for "practice" be applied together with the MBA's existing definition of health care drawn from the current published standard for Professional Indemnity Insurance:

For practising categories of registration:

> ***Practice*** *means the provision of clinical care and includes any role in which the individual uses his professional knowledge and skills to provide safe, effective health care.*
>
> ***Health care*** *means any care, treatment, advice, service or goods provided in respect of the physical or mental health of a person.*

For the non-practising category of registration:

> ***Non-practising*** *means that the individual in this category of registration does not provide any health care or clinical advice in relation to the treatment, management or care of a member of the public and does not prescribe, refer or undertake any clinical assessment of a member of the public.*

## CONCLUSION

The AMC, and a number of other bodies that have expressed concern about the negative impact of the current broad definition of "practice", have been at a loss to understand why it is proving so difficult to resolve this issue.

The AMC understands that the current definition of "practice" was developed in response to a particular health workforce issue that had arisen in another profession relating to individuals moving out of clinical practice. The two options presented in the current consultation paper, which do not appear to advance the issue, lend support to this view. While it might be entirely appropriate for a broad definition of practice to be used for a particular profession, it is continuing to have a negative impact on the medical profession. If this is the background to current definition, the AMC would be particularly concerned that access to expertise in medicine is being impeded due to challenges presented by another profession. This would be an unfortunate consequence of an otherwise positive national regulatory system.