

**SUBMISSION**

**To The Australian Health Ministers' Advisory Council**

**From The Australian False Memory Association (AFMA)**

**On the Consultation Paper:**

***OPTIONS FOR THE REGULATION OF UNREGISTERED  
HEALTH PRACTITIONERS February 2011***

**Submitted 15 April 2011**

**AFMA is a not for profit voluntary association formed to provide support to families affected by false accusations based on so called recovered or repressed memories.**

## QUICK RESPONSE FORM

This submission is presented in the context of a Consumer Advocate and in relation to unregulated health practitioners in the mental health field.

### Section 2 – SCOPE

- If you are a professional association, can you provide an estimate of the number of unregistered health practitioners you believe to be practising in your profession or field.

### Section 4 – THE PROBLEM

#### Risks

- What do you think are the risks associated with the provision of health services by unregistered health practitioners?

**Response:** The use of therapies which are not evidence based and which can cause harm to the public. Unregistered practitioners in the field of mental health may employ therapies which are known to cause harm. There are many theories practised by counsellors and therapists known to have inflicted irreparable harm on clients and in some cases to have contributed to suicide. Peer review journals for many years have listed theories such as dream interpretation, guided imagery, 'feeling work', art therapy, group therapy, journaling, inner child belief, hypnosis, repressed/recovered memory theory, to name a few, are well known to have the potential to *create* rather than reveal a memory in poorly conducted therapy sessions. In the case of a false memory of child sexual abuse, the consequences of such a false memory not only seriously harm the client (in some cases leading to mental illness and/or the inability to participate in family life or hold down employment), but also seriously damage and in some cases destroy families impacting even on the grandchildren. Unregistered mental health practitioners may have no training at all in mental health issues or have undertaken very short non accredited courses.

- To what extent have the risks associated with these activities been realised in practice?

#### **Response:**

(i) The tragic experiences of AFMA members provide evidence of the realisation in practice of the risks of therapies such as those cited above when used on members of their own families. In many cases the lives of the clients as well as their families have been seriously affected or destroyed including instances of suicide. The families as well as the client become victims of the harmful therapy. It is estimated that up to 18 people are directly adversely affected by an accusation of abuse based on a case of false memory. (This was a finding from a Family Survey undertaken in 1996/97 amongst members of AFMA. See *Accusations of Childhood Sexual Abuse Based on Recovered Memories* by Merle Elson, Psychologist, Victoria, published by AFMA).

There is a familiar pattern that emerges when clients are subjected to therapies such as those cited, for the 'recovery' of memories. This pattern includes deterioration in the

client's well being and escalated accusations, usually of childhood sexual abuse, as the therapy progresses. Another aspect of the therapy is that clients are advised by the therapist to avoid contact with their families, thus removing an important support system, making the client more reliant on the therapist and removing the opportunity for an alternative view to be provided to the client. More than 20 years can elapse before a client is reconciled with their family and in some cases it may never happen. The nature of false memory is that it is usually held as true by the client. AFMA members have also experienced therapists who suggested to clients that they may have been sexually abused as a child – unprofessional and damaging behaviour.

There have also been numerous cases where police have prosecuted therapy clients' family members accused of sexual crimes because the client had false memories.

(ii) There is similar experience overseas and there are well established false memory associations in countries such as Britain, France, Canada, North America, Holland and New Zealand

(iii) Recently a prominent researcher in the area of false memory in the USA, Professor, Dr, Elizabeth Loftus received the 2010 *Scientific Freedom and Responsibility Award* from the *American Association for the Advancement of Science*. Specifically she was honoured "for the profound impact her pioneering research on human memory has had on the administration of justice in the United States and abroad." Her discovery that memories can be implanted or manipulated led her to identify what has been called "False Memory Syndrome" in which people in psychotherapy "remember" or "recover" so called "repressed" memories such as sexual abuse.

- Do you know of instances of actual harm or injury?

**Response:** Yes, many.

- What evidence is available on the nature, frequency and severity of risks?

**Response: Nature:** There is an abundance of literature on the risks associated with the creation of false memories. For example:

(i) Articles such as:

- *Implications for Clinical Practice* by Brandon, Brooks, Glasser and Green, Royal College of Psychiatrists;
- *Guidance on Memory and the Law*, British Psychology Society, Report from the Research Board, June 2008;
- *Memory Recovery Techniques in Psychotherapy*, Lynn, Loftus, Lilienfeld, Lock; in *The Sceptical Inquirer*, July/August, 2003;
- *Allegations of Childhood Abuse, Repressed Memories or False Memories*, Professor Don Thompson in *Psychiatry, Psychology and the Law*, Vol.2, No1, April 1995, pp 97-105

(ii) Books such as *Lost Daughters Recovered Memory Therapy and the People it Hurts* (Reinder van Til, Erdmans Publishing Co; 1997); *Remembering Trauma* (Richard McNally, Harvard University Press; 2003)

(iii) Professional studies such as:

- the work of Professor Elizabeth Loftus referred to above
- the research of Dr Stefanie Shermann of Deakin University in Australia  
Into the ways in which false memories are created
- *Why do I Still Hurt?*, Dr Grant Devilly, Griffith University, Queensland.
- the work of Dr. Maryanne Garry into real-life memory distortions especially as they apply to legal settings, Victoria University, Wellington, New Zealand
- *Psychology Treatments that Cause Harm*, Scott O Lilienfeld, Emory University, Atlanta, USA . The reference list for this article alone indicates the nature of the dangers of using suggestive techniques.

(iv) The AFMA website lists innumerable articles and studies

**Frequency:** a current survey is needed but AFMA suggests their membership is only the tip of the iceberg. The agony, horror, disbelief and devastation that families encounter when confronted with false accusations of abuse causes many of them to avoid identifying or publicising their situation.

**Severity:** destruction of normal life for clients and families and in some cases death.

- What factors increase or reduce the risk that individuals will suffer harm as a result of the activities of unregistered health practitioners?

**Response:** Government regulation and intervention. Mandatory training from government recognised and accredited institutions in evidence based studies including the scientific research of memory (how false memories are created) should be a minimum for *all* mental health practitioners. Ideally all mental health practitioners should be included in the National Registration and Accreditation Scheme. Mental health is just as critical as physical health to a person and to a society and nation at large.

As a minimum a regulatory statutory code of practice such as in NSW should apply to unregulated mental health practitioners until they can be brought into the National Scheme. While the NSW Statutory Code of Conduct should assist to reduce the number of victims of therapy abuse, it has limitations in that it does not "require" particular recognised or accredited qualifications nor continuing professional education and will only operate in relation to a mental health practitioner after harm has been caused. Prevention of the harm due to strict regulation, oversight and intervention would be better. When vulnerable clients and their families become victims as a result of the practice of inappropriate therapy techniques, in addition to the personal harm suffered in each case, there is an additional financial burden imposed on the community, government and taxpayers as those affected can succumb to ill health, financial ruin, enter institutions or are put on government pensions.

As mentioned previously, there have also been numerous cases where Police have prosecuted therapy clients' family members accused of sexual crimes because the clients had false memories. These have resulted in much wasted time and money by the Police, prosecution teams, courts and juries. In some cases, the accused have been

convicted with the costs of imprisonment for several years included in the financial burden on the community. These costs would not have occurred if the accusers had not had false memories prompted by incompetent therapists.

#### **Section 5 – THE OBJECTIVES OF GOVERNMENT ACTION**

- What do you think should be the objectives of government action in this area?

**Response:**

(i) To prevent harm to mental health clients, their families and the community through regulation, supervision and intervention. Ideally unregulated mental health practitioners should be regulated as part of the National Scheme. See the points made in section 4 above. A statutory code of conduct such as regulated in NSW is a good starting point. The code should mandate appropriate recognised qualifications and ongoing professional development and education – practitioners must have compulsory evidence based training in mental health issues prior to treating clients. The statutory code of practice needs to be monitored by an independent government body. Regular audits of health practitioners should be undertaken to ensure they are following the code of conduct.

(ii) To establish an effective complaints authority with effective prosecuting and sanction powers. Publicly name those who do not follow the code of practice to assist consumer knowledge.

#### **Section 6 – THE OPTIONS**

- Do you think there is a case for further regulatory action by governments in this area?

**Response: Yes**

- What do you think of the various options?  
Option 1: No change

**Response:** Further government regulation is required

Option 2: A voluntary code of practice for unregistered health practitioners

**Response:** There are many associations and societies relevant to the practice of therapy and counselling who have developed self-regulatory guidelines of various content. However membership does not guarantee the consumer effectiveness in practice. Ongoing education is essential to keep up to date with scientific research for the protection of the mental health consumer, particularly in the case of recovered memories. Membership of an association is generally voluntary. This leaves a significant number of “therapists” unregulated and free to base their practice on any theory they choose regardless of its efficacy. Membership of an association does not necessarily ensure a consistent standard of practice.

Option 3: A national statutory code of conduct for unregistered health practitioners

**Response:** The NSW Code of conduct has some very good aspects such as the statements in sections 2(1) and (2), particularly 2(a) and (b), and in sections 5 and 11. An "adequate clinical basis" needs to be well defined and to include evidence based research and knowledge. The code would be stronger if recognised qualifications and appropriate experience were specified and mandated in order for practitioners to "maintain the necessary competence in his or her field of practice". A degree or diploma from a recognised and accredited institution could be a minimum requirement. Protection of title is an important issue also. There should be standards attached to a title such as "counsellor" or "psychotherapist" and only those meeting the standards should be able to use the title. Using the title without meeting the standards should be considered a prohibition offence.

- On balance, do you have a preferred option? What are your reasons?

**Response:** Option 3 is the preferred option. However AFMA would recommend that all unregulated mental health practitioners eventually be regulated under the National Registration and Accreditation Scheme. We note that in 1988, the NSW Council of Social Services (NCOSS) recommended the regulation of all health practitioners as "the most appropriate way to protect consumers and address complaints". (page 5 of their submission to the Committee on Health Care Complaints Commission – *Review of the Unregistered Health Practitioners: the Adequacy and Appropriateness of Current Mechanisms for Resolving Complaints Report*).

- What do you think are the costs and benefits of the three options?

**Response:** Regulation of unregistered therapists engaged in mental health will certainly contribute to lowering the incidence of victims of therapists who operate outside of their expertise. This in itself will contribute to lowering the cost of mental health care in our community.

- If you are a practitioner, can you advise of what additional costs you think you would incur with the introduction of a statutory code? Are there some aspects of a statutory code that are likely to be more costly than others.

**Response:** n/a

#### **Extent to which national uniformity is desirable (section 6.3.1)**

- Do you think there should be a nationally uniform code of conduct for unregistered health practitioners or are different codes in each State and Territory acceptable?

**Response:** There should be a nationally uniform code of conduct, not different codes in each state and territory.

- Should there be nationally uniform or nationally consistent arrangements for investigating breaches of the code and issuing of prohibition orders, or should States and Territories each implement their own arrangements?

**Response:** There should be a nationally uniform or nationally consistent arrangements for investigating breaches of the code and issuing of prohibition orders

- Should there be a centralised administrative body that administers the regulatory scheme, or should it be administered by each State and Territory government?

**Response:** Yes a centralised body.

#### **Scope of scheme (section 6.3.2)**

- If a statutory code of conduct were to be enacted, to whom should it apply?

**Response:** To all health practitioners. The code of conduct needs to be widely published so the public as well as all health practitioners are aware of its operation and powers.

- Which practitioners, professions or occupations should be included?

**Response:** All practitioners who claim to offer a health related service

- Should it apply only to practitioners who deliver health services? If so, what should be the definition of a health service?

**Response:** The definition should refer to the importance of mental health as being of equal importance in the well being of people and society. Most of the unregulated health practitioners offer services related to physical well being.

- Should it apply to registered practitioners who provide health services that are unrelated to their registration, for example, a registered nurse who is working as a naturopath or massage therapist?

**Response:** Yes

- Should it only apply to practitioners who directly deliver services, or should it also apply to those who deliver health services through the agency of another person, for example, the owners or operators of businesses that provide health services?

**Response:** Practitioners, also business owners operating a therapy clinic must be qualified to identify the efficacy of therapy techniques practised. Such is the case when false memories, particularly of sexual abuse, are created as a result of poorly conducted sessions and suggestive therapy techniques. This usually leads to the permanent destruction of whole families creating further demand on already stressed government resources in mental health issues.

### **Administrative arrangements (section 6.3.3)**

- Do you have a preferred option for the legislative and administrative arrangements through which a code of conduct for unregistered health practitioners is administered and complaints about breaches of the code are investigated and prosecuted?

**Response:** It should all be handled at the national level.

- What are your reasons?

### **Content of a national code of conduct (section 6.3.4)**

- What do you think should be included in a national statutory code of conduct?

**Response:** Provision for complaints must be available in all states and territories and able to be acted upon for impacted third party complaints. The code needs to include provision for family members and "others falsely accused" to be involved in the solution when false accusations of abuse are made, and inappropriate therapy techniques are evident. In the past complaints from traumatised third parties have usually been disregarded by authority bodies and not considered mental health consumer related.

The code should include provision for protection of title with standards applying to the title and disciplinary action if abused. The code essentially needs to be able to enforce standards of qualification, practice and regular professional development with strong disciplinary measures for those who don't comply. Prevention of harm to the public is the main aim.

- Do you have any comments on the NSW Code of Conduct for Unregistered Health Practitioners?

**Response:** It provides a good base for stronger government regulation

- What do you think are the strengths and weaknesses of the NSW Code?

**Response:** It emphasises the importance of ethical behaviour on the part of practitioners and the importance of protecting consumers from harm. It is not strong enough in the area of *prevention* of harm. Mandatory minimum qualifications and expertise should be required of all health practitioners prior to any practice. The code of conduct needs to be widely publicised so the public is aware of its existence, operation and powers.

- Do you think it provides a good model? What are your reasons?

**Response:** See above

### **Prosecutions and hearings (section 6.3.5)**

- Do you have a preferred option for the mechanism through which prohibition orders should be issued, that is, via an administrative order decided by a Commissioner, or via a tribunal or court hearing?

**Response:** Possibly a Commissioner – a system that enables the prohibition orders to be enforced effectively nationally.

- What are your reasons?

**Response:** See above

#### **Grounds for issuing a prohibition order (section 6.3.6)**

- What 'relevant offences' (if any) should provide grounds for a prohibition order to be issued?

**Response:** The use of practices that cause serious harm to clients and their families. Not complying with the standards set for the particular health practice.

- What other grounds should apply before a prohibition order may be issued?

#### **Financing of scheme (section 6.3.7)**

- How do you think a regulatory scheme to investigate and prosecute breaches of a national statutory code of conduct for unregistered health practitioners should be funded?

**Response:** Principally through government funds.

- What are your reasons?

#### **Response:**

It is the responsibility of government to ensure the standard of health care including mental health care for the Australian consumer is based on evidence based knowledge and procedures to reduce the need for future expensive treatment, institutionalisation or government funded support as a result of damaging therapy. The public expects all health practitioners to be "up to date, knowledgeable and skilful" as Professor Merrilyn Walton said in her address to the NSW Forum on 11<sup>th</sup> April. Vulnerable clients trust the practitioner and can't distinguish harmful therapy practices.

Money spent now to reduce and prevent the harm caused by some mental health practitioners will save money in the long run as less government money will need to be spent to remediate or care for those damaged by harmful practices.

#### **Any other comments**

Do you have any other comments to make about these proposals?

We commend the AHMAC for the initiative in addressing the issues of unregulated health practitioners who have the potential to cause harm to clients. It is concerning that this options paper is necessary to address unregistered health practitioners.

It is the experience of AFMA that the issue of mental health providers who cause harm to the public includes a wide range of therapists. We look forward to the time when unqualified therapists and those with limited qualifications who offer mental health services to clients are under government review. It is of serious concern that any one can legally practise what they call counselling or psychotherapy and charge a fee, with

no qualifications what so ever. See the most recent case of therapy abuse "Over the Edge" ABC Four Corners 5/4/10

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Are you a:

- Consumer of health services – Consumer advocate
- Unregistered health practitioner
- Registered health practitioner
- Employer of health practitioners
- Professional association
- Regulator
- Other – Please state: A support group for people affected by damaging therapy.

**Would you like to be informed of the outcome of the consultation?**

**Yes**