

osteoboardconsultation@ahpra.gov.au



Submission to the Osteopathy Board of Australia

Consultation on registration standards:

- Professional indemnity insurance
- Recency of practice
- Continuing professional development

Contact:

Samuel Dettmann, Policy Advisor

02 9410 0099

policyadvisor@osteopathy.org.au

Submission: Consultation on registration standards

This submission

Osteopathy Australia appreciates this opportunity to comment on the consultation paper.

The Australian Osteopathic Association

Osteopathy Australia is the national professional body representing over 85% of osteopaths across Australia. This gives us a unique voice for representing the profession and lobbying to ensure high industry standards are established and maintained. Our core work is liaising with state and federal governments, regulatory or other statutory bodies, and key stakeholders throughout the healthcare landscape. We always welcome opportunities for input or collaboration, such as this.

Background

Osteopathy Australia provides this feedback on behalf of our members with a spirit of cooperation. This reflects our desire for high professional standards that maintain and improve the quality of osteopathy in Australia.

Feedback

Osteopathy Australia has general and specific concerns about the registration standards. We are grateful for the careful consideration of our previous feedback, which is in evidence in many parts of the consultation document.

As a preliminary matter, we are aware that the Board has just (on July 7) published consultation documents for a public consultation on a review of the Continuing Professional Development guidelines.

We are mystified by the willingness of Boards to consult on guidelines to standards that are not yet finalised. Absent pressing and particular circumstances, we strongly advocate the settling of standards before tinkering with guidelines—either that, or totally concurrent consultation.

Osteopathy Professional Indemnity Insurance Registration Standard

Osteopathy Australia appreciates many of the alternations to the confidential draft that was shared with us for preliminary consultation.

Overall, we agree with the Board that Option 2, a proposed revised standard, should replace the current standard.

However, significant concerns remain and we respectfully make the following observations and suggestions.

1. Structure.

Brevity is virtuous. So is clarity. The proposed standard is more than twice as long (1151 words) as the current standard (533 words), but no clearer. Indeed, some uncertainty arises precisely because of the additional detail present in the proposed revised standard.

2. Sequence

The sequence of the proposed standard is sub-optimal. The current standard proceeds on a neat, logical, concise basis, using easily understood nouns as headings:

- Authority
- Summary
- Scope of application
- Requirements [the core of the standard]
- Definitions
- Review

The proposed standard, using a mixture of headings, sub-headings, and questions, proceeds on this basis:

- Summary
- Does this standard apply to me?
- What must I do?
- Amount of Cover
- Are there exemptions to this standard?
- When you apply for registration
- When you apply for renewal
- During the registration period
- Evidence
- What happens if I don't meet this standard?
- Authority
- Definitions
- Review

Using questions as headings has conceivable merit when used judiciously, but even so, this sequence is sub-optimal. It does not flow logically, and it requires the reader to refer backwards and forwards while reading.

Some headings are in blue, and some apparent sub-headings are in black, but the relative importance of these is difficult to discern.

Most importantly, there is no core, crux, heart, or central aspect of the standard. To the extent that there is such a component, it is in the part labelled “What must I do?” But that’s a poor title for such an integral aspect. It is certainly no improvement on the current standard’s simple heading “Requirements”—of which there, clearly enumerated, 8.

3. **Consistent numbering.**

One virtue of the current standard wholly lacking in the proposed standard is easy navigation within the document. Consistent numbering, of one system (not a blend of letters, numbers, and dot points) is desirable.

Also desirable is having the crux of the requirements specified as Requirements 1 through 8 (or however many there are). This allows registrants to identify and understand their obligations easily, and it allows registrants to correspond and negotiate in a simple and straightforward way with prospective insurers about the standard, and about how various policies on the market meet it. (It also would make submissions in response to consultations such as this simpler to produce, and simpler to analyse.)

4. **Substantive remarks.**

These remarks pertain to the elements of the proposed standard, in the sequence in which they appear.

- **Summary.**

“This registration standard explains the Board’s requirements for professional indemnity insurance (PII) under the National Law.” This is not a summary of the standard. It’s merely a restatement of the document’s title (and a longer one at that).

Osteopathy Australia is of the position that registration standards should not have summaries. (If a summary is possible without omitting relevant information, that statement should itself be the standard.)

- **Does this standard apply to me?**

This section contains a partial list of people covered by the standard (“all registered osteopaths applying for general, limited, or provisional registration of to renew their registration.”)

But this list is incomplete in an obvious and important way. The standard applies to registered osteopaths, even if they're not applying or intending to apply for renewal. A better statement of this nature appears in the current standard under "Scope of Application": "[t]his standard applies to all applicants and registered practitioners, except registrants holding student or non-practising registration."

Additionally, according to the definition of "practice" in the Definitions section, a registrant who is not engaged in anything that constitutes practice (for example, an osteopath on maternity leave) **does not** have to meet the standard.

If you must be covered (according to (1)(a)) "for all aspects of your practice" and you have no such aspects, you therefore do not need PII. This should be specified in the section titled "Does this standard apply to me?"

- **What must I do?**

This is a poor heading for a list of circumstances that trigger the application of the standard.

If the Board prefers a question, "What must my policy include?" is preferable to "What must I do?"

The fact that "practice" has a specific definition, which is included as part of the standard, should be mentioned at the relevant point, which is at (1)(a).

The proposed standard says at (2)(c) that [your PII cover must include] "automatic reinstatement." This presumably has a different meaning from the current iteration, which (at Requirement 8) says that one's policy must include "at least one automatic reinstatement during the period of cover."

Osteopathy Australia submits that the current version may be superior to the proposed version. "At least one automatic reinstatement" means a policy must, at most, cover an osteopath for twice the minimum liability, or \$40 million. "Automatic reinstatement" (without qualification) may be interpreted as "unlimited automatic reinstatement" which has the potential to drive up premiums, and also to make PII cover more difficult to acquire in a commercial marketplace.

The proposed standard refers at (2)(d) to "run-off cover for retirement or death." This is narrower than the definition of run-off cover given in the definition section and should not be so limited. The need for run-off cover exists per se, whether its trigger is death or retirement or something else.

This requirement should be broader in that run off cover should pertain to any cessation of practice, including cancellation of registration or inability to obtain renewed insurance at an affordable price, not just cover for retirement or death. It would be better if, instead of qualifying what “run-off cover” is with examples, the Board just required run-off cover.

For example, run-off cover for people no longer allowed to practice because of misconduct or malpractice is clearly an essential part of PII, yet would not be required by the proposed (2)(d). This underlines the importance of careful policy-making as well as careful drafting: unamended, the proposed standard could result in the highly undesirable situation of civil liability cover not being available to a practitioner when it is needed most.

(In such a situation, obviously the harshest consequence of this policy oversight would affect a potential plaintiff who might win a suit but only against an uninsured and penniless defendant—and the PII standard exists primarily to protect the public.)

The second dot point at (3) (on page 8), which replicates the current standard’s Requirement 6, should not be restrained by the context of (3), which is PII coverage provided by a third party. The prohibition of exclusions that relate to the insured’s areas of practice ought to apply regardless of whether the coverage is obtained personally, via a third party, or by a combination.

The final sentence of (3) could be clarified. Does the Board equate an insurer being regulated by APRA with being a reputable insurer? If just the former is the requirement, it should be stated. If reputation is separate from being APRA-regulated, the Board should say how reputation is important and how an osteopath should assess reputability.

The standard should make it clear that, if a broker is used, it’s the insurer whose reputation counts, not the broker’s. This may require some osteopaths conducting rather more detailed analysis of their policies that has hitherto been customary.

Why does the requirement to evaluate the reputation of the insurer, and that the insurer be APRA-regulated, apply only to PII policies obtained by osteopaths in their own names?

In other words, why is it OK for employer-provided insurance to be from a disreputable insurer?

- **Amount of Cover**

Osteopathy Australia is disappointed that our views on this matter, previously expressed confidentially, appear not been taken into account.

Osteopathy Australia firmly believes that the current and proposed minimum amount of cover bears no relation to the risk, or the perception of risk, of practice as an osteopath.

There is no evidence why the amount of professional indemnity insurance cover should be higher for osteopaths than other regulated health professions.

Here is a table of the minimum amounts of cover that the various AHPRA boards require:

Profession	Standard	Guideline
ATSI	Not specified	
Chinese Medicine	\$5 million	
Chiropractic	\$10 million	
Dental	Not specified	
Medical	Not specified	
Medical Radiation	\$10 million	
Nursing/Midwifery	Not specified	
Occupational Therapy	Not specified	
Optometry	See guideline	\$10 million
Osteopathy	\$20 million	
Pharmacy	\$20 million	
Physiotherapy	Not specified	
Podiatry	\$5 million	
Psychology	\$2 million	

Osteopathy Australia respectfully seeks feedback from the National Boards in relation to these specific questions:

- (a) What is the rationale behind these 14 amounts?
- (b) What is the OBA's evidence of the riskiness of osteopathic practice?
- (c) On what basis has the decision to specify an amount, or not specify an amount, been taken?
- (d) Given that practitioners must obtain cover in excess of the minimum if they require it, why do some professions not have minimums?

- (e) Why is it not even standard among the professions that specify an amount that this amount be specified in a standard? (One profession specifies it in a guideline.)

The AOA fears that requiring osteopaths to obtain the highest minimum amount of PII cover of any regulated profession is not in accordance with the demonstrated historical risk of the profession, and therefore constitutes an unjustified and ill-informed regulatory and cost burden.

Consistency among professions, when warranted and prudent, is desirable. This is such an occasion.

Osteopathy Australia is concerned that requiring osteopaths to obtain the highest minimum amount of PII of any profession conveys a message to the public that osteopathy is an unsafe profession that carries a greater than actual risk, especially in comparison to other professions. This message is false. No successful claim for more than a small fraction of the mandatory minimum has ever succeeded.

- **Are there exemptions to this standard?**

This section would more logically follow the section titled “Does this standard apply to me?”

The Board should make it clear that while there are no exceptions to the standard, not all registrants require professional indemnity insurance.

Osteopathy Australia seeks confirmation from the Board that osteopaths who temporarily suspend practice (for example for the purpose of maternity leave) but who do not change their registration status (due to the cost and bother of doing so) do not violate the PII standard by putting their insurance on hold for the duration of their temporary absence.

Such temporary suspensions are very common in a profession with more young women practitioners than most.

- **When you apply for registration**
- **When you apply for renewal**

Osteopathy Australia has no comments on these sections, except to note that these are really requirements that the National Law imposes on registrants, separate from and independent of the nature of the PII that registrants must possess.

- **During the registration period**

This requirement could be improved by noting that, while s 130 requires notification within 7 days, an osteopath who ceases to have appropriate PII arrangements in place must cease practice (until new PII cover is acquired).

- **Evidence**

It is odd that only osteopaths holding PII policies in their own name, as opposed to osteopaths covered by a third party insurance arrangement, are required to retain (as opposed to obtain upon request) documentary evidence of this insurance.

It would be good for consistency, for auditing purposes, and for encouraging compliance with the standard, if all registrants requiring PII had to retain evidence of possessing it.

- **What happens if I don't meet this standard?**

In addition to the content of this section, this may be a suitable time to mention that if a registrant's insurance arrangements do not meet this standard, that registrant cannot practice.

- **Authority**

Osteopathy Australia has no comments on this sections

- **Definitions**

The definition of practice, which seems non-negotiable, could beneficially be communicated to registrants by the OBA. It would be desirable from the Board's perspective as well as from the profession's perspective that any registrants currently unaware of their status as practicing be made aware of it. This is particularly relevant for registrants who do not provide direct clinical care but must nevertheless be insured with a policy that meets this standard.

While ignorance of a standard is no excuse for failing to meet it, educating registrants about their responsibilities falls to the Board to a greater degree than it has previously shown a willingness to accept. Previous Senate inquiries have been critical of the Boards' shirking of this responsibility, which flows directly from the Boards' purpose, which is to protect the public.

Osteopathy Australia believes the Board needs to do a better job in educating registrants of the standards.

Osteopaths deserve a better quality standard, more clearly expressed, with less ambiguity. They simultaneously are owed improved communication and education by the board about the improved standard.

- **Review**

OA has no comments on this section.

5. **Observation.**

Osteopathy Australia commends the board for considering options in developing the proposal.

- Option 1 consists of the status quo.
- Option 2 itself contains two alternatives:
 - “not specifying a level or cover,” or
 - “specifying a lower level of cover and require practitioners to self-assess [et cetera].”

The Board says it prefers Option 2, which is consistent with a commendable desire, long advocated by Osteopathy Australia, for consistency across AHPRA professions.

Yet the proposed standard contains neither of the two alternatives specified in Option 2.

In fact, the single most troublesome aspect of Option 1—the requirement to have \$20 million of cover—appears in what is ostensibly a standard written in accordance with Option 2.

Osteopathy Australia finds this unsatisfactory.

Osteopathy Australia believes cover of between \$5 million and \$10 million is necessary and sufficient. The OBA has failed to provide any evidence to the contrary. The Board’s unwillingness to provide consistency with other professions—or to provide evidence of the necessity of inconsistency—is a shortcoming that affects and irritates registrants, and causes them to resent their regulator. This is not conducive to the ongoing harmony with the Board that registrants desire.

We urge the production and publication of an additional proposed standard that really is in accordance with Option 2 (and which takes into account the aforementioned suggestions.)

Finally, we note that the transitional arrangements that will need to accompany either the proposed standard or an improved version of it are not straightforward.

Consulting insurers currently active in this market is highly desirable. Their views should be actively solicited.

6. Conclusion

Thank you for the opportunity to comment. We would welcome the opportunity to amplify or elaborate on this submission

Osteopathy Continuing Professional Development Registration Standard

Osteopathy Australia appreciates the opportunity to comment on the proposed CPD standard.

Osteopathy Australia has concerns that the suggested CPD standard is at odds with best practice as identified in the National Boards' own literature review.

In general OA does not support the revised format and sequence of the proposed standard. Our comments about this matter in relation to PII (above, at 3) pertain here too. The format of the proposed standard is inferior to the current version, and the sequence is deficient too.

Abandoning clear and sequential numbering is unwise, and should be corrected even if the Board persists with the retrograde format and sequence.

Overall, we agree with the Board that Option 2, a proposed revised standard, should replace the current standard.

However, significant concerns remain and we respectfully make the following observations and suggestions.

1. Option 2 is not as it is described.

The Board says it prefers Option 2, which "would involve submitting a revised registration standard to the Ministerial Council for approval. The registration standard would continue to establish the Board's requirements for CPD, *without changes to requirements.*" (Our emphasis.)

But the proposed standard in accordance with Option 2 *does* contain changed requirements. Some of them are good; some of them are not. Regardless, it is unhelpful to pretend that the requirements are unchanged.

For purposes of comparison here is core of the current standard:

1. To maintain their competence to practice, all registered osteopaths (except those with nonpractising registration) must:
 - a) undertake 25 hours of CPD annually, which includes a mandatory CPD activity approved by the Board; and
 - b) maintain a current first aid certificate at the minimum standard of a Senior First Aid (level 2) certificate or equivalent.

Here is the core of the proposed standard:

To meet this registration standard, you must:

1. complete a minimum of 25 hours per annum, which includes four hours of mandatory topics approved by the Board, and
2. hold a current senior first aid certificate at the minimum standard of a Senior First Aid (level 2) certificate or equivalent.

We support replacing the requirement to “undertake” CPD with the requirement to “complete” it.

We support the amended language about mandatory topics.

We do not support changing “25 hours of CPD” to “*a minimum* of 25 hours of CPD.” The word “minimum” adds nothing of meaning to the clause.

We do not support replacing “annually” with “per annum.”

We support replacing “*maintain* a current senior first aid certificate” with “*hold*” such a certificate.

The difficulties of codifying the type of certificate that is required has been the subject of correspondence between Osteopathy Australia and the Board. We are still desirous of clarity about the precise requirements, given that the names of certificates (e.g. “Level 2”) changes from time to time and different providers have different categories of certificates. Nor can Australian standards be readily relied upon, as they too are updated periodically. It would be preferable if the Board decided just what first aid competencies are required, and specified them.

(Saying “or equivalent” does not dispose of the issue, since the standard to which an equivalent is required must still be clear.)

We do not support a requirement to do, maintain, refresh, or update a CPR component separate from the first aid requirement.

Such a requirement is seen by osteopaths as arbitrary, frustrating, costly, pointless, and unconnected with the potentially valuable other aspects of CPD.

If the OBA insists on a CPR requirement, it should be in the CPD standard (not external to it—for example, in a Guideline or Fact Sheet as it currently is).

Osteopathy Australia has had to deal with false information and wrong advice given to members by AHPRA staff (by telephone and email) on several occasions. If AHPRA staff cannot correctly decipher the standard, what hope have busy clinicians?

Overall, Osteopathy Australia cannot support detailed, particular, troublesome requirements that apply to our members but not to registrants of other boards.

What evidence does the Board have that indicates any benefit of first aid knowledge by osteopaths, but not by pharmacists or physiotherapists (among other professions)?

Podiatrists must meet a CPR requirement, be able to manage anaphylaxis, and use an Automatic External Defibrillator.

The anaphylaxis consideration has plausible relevance to a profession that dispenses potential allergens, like pharmacy, but there is little nexus between anaphylaxis and podiatry. Similarly, there is little nexus between CPR and osteopathy.

The Board says (at paragraph 31 on page 11):

As the available evidence does not provide definitive answers to issues such as the most effective amount and types of continuing professional development, the Board has also considered its experience with the standard over the past three years in its review of the registration standard.

Can the Board cite a single case, matter, or notification in the period of national registration in which CPR, or indeed first aid, has been in any way a vital component of a misconduct or performance complaint?

The Board says (at paragraph 32 on page 11):

The National Boards and AHPRA will continue to monitor developments in this area to inform the Board's standard.

Osteopathy Australia suggests more than this. Osteopathy Australia recommends an undertaking by the National Boards to specify consistent first aid requirements where they are warranted, and specify particular components of first aid where

professionally indicated, instead of the current arbitrary, haphazard, jumble of requirements that bears no sign of rhyme nor reason. The current and proposed requirements simply imposes a regulatory burden that is confused, confusing, and costly.

The information under “More information,” which is actually about how a registrant can satisfy an audit, and the two separate sections of information each labelled “Evidence” (one on page 15; one on page 16) should be combined. This information should not be dispersed so widely within the standard.

2. Literature Review.

The proposed standard shows disappointingly little influence from the specially commissioned literature review and analysis. Evidence-informed regulation is to be commended. Sadly, the proposed standard shows signs of being made notwithstanding the lessons of the literature review and analysis.

The literature review acknowledges a major limitation, which is that the research is “heavily focussed on medical practitioners” and that “for some of the healthcare professions regulated by the National Boards, little or no evidence was identified.” (p. 8)

The review found that the greatest effect of CPD has is on knowledge, and the least effect it has is on patient outcomes. Increasing knowledge is desirable, but it is the role of the Board to protect the public, which is in this respect very close to synonymous with improving patient outcomes. The fact that the literature review found only very weak suggestions that CPD affects patient outcomes may lead some to believe that the benefits of CPD have been overstated, or at least that regulatory confidence in CPD improving patient outcomes is misplaced.

The literature review also indicates that “prescribed content for any CPD activity is desirable.” (p. 9) This suggests that developing the “mandatory topics approved by the board” will require significant care, resources, and the specialized professional input of educationalists and people with pedagogical experience, not just regulators. This also accords with the review’s finding that “[a] practitioner’s perception of CPD needs may differ from the actual needs.” (p 31) More tailored, specified, targeted requirements would be of benefit.

The tension between permitting registrants to select the CPD that interests them and actually improving registrants’ knowledge, skills, and patient outcomes is obvious. Ordinarily Osteopathy Australia advocates for policy settings that maximize practitioner autonomy, but in this case we advocate policy settings that most improve knowledge and patient outcomes, when this can be achieved and demonstrated.

On this subject, the literature review reveals self-assessment, “although a cornerstone” of CPD, not to be backed by research or evidence. In fact external assessment as part of “multi-source feedback” is superior to self-assessment—which may, in any case, be “least accurate in the least skilled [practitioners] and in those displaying the most confidence.” (p. 61).

In light of this, the Board may wish to make more use of its literature review than it has to this point, particularly as the current standard appears almost at odds with other key evidence or best practice presented.

The current and proposed OBA CPD standards allow an osteopath fully to comply with their obligations merely by reading a book and doing one CPR refresher annually, despite the literature review indicating this would have virtually no effect on either patient outcome or clinical competence.

Osteopathy Recency of Practice Registration Standard

Osteopathy Australia appreciates the opportunity to consider the proposed Recency registration standard.

The same remarks about structure, sequence, and numbering made above apply here as well.

OA supports the Board’s preference for Option 2, with the following provisos and observations:

- What is a “domain of practice?” How many domains are there? It is not in the definition section, and it is not a term used in the National Law. There are currently no specialties, no divisions, and only one endorsement (with three endorsed registrants).
- If there are only two domains (we assume, due to lack of other clarification)—“practising” and “non-practising”—how do these square with the multiple “Registration Types” (general, non-practising, and student—plus other permutations caused by endorsements, restrictions, et cetera)?
- The standard must logically cover, at least, the following classes of people:
 - a) Recently qualified graduates (per the definition in the proposed standard)
 - b) Qualified graduates seeking registration for the first time more than six months after graduation
 - c) Registrants seeking renewal

- d) Registrants not seeking renewal (e.g. those planning retirement, who are nevertheless subject to audit for evidence of recency)
- e) Former registrants seeking re-registration (including those barred from practice for a period of time)
- f) Overseas-trained osteopaths seeking registration
- g) Non-practising registrants seeking to practise (for example, registrant seeking to do clinical work for the first time)

Osteopathy Australia has concerns that the proposed standard has insufficiently considered members of classes (b), (d), (f), and (g).

- Recency is not the same as currency. Practising with up-to-date knowledge and skills suitable for maintaining competency is currency. Recency is defined by the Board as meaning “that a health practitioner has maintained an adequate connection with, and recent practice in the profession since qualifying for, or obtaining registration.” More simply, recency is having practised a certain amount in a specified period, and therefore may have no bearing on competency or patient safety.
- Recency can be demonstrated by having met a threshold of practice. Currency, however, can only be demonstrated by examination or assessment. This seems lacking from the regulatory regime (except for overseas trained osteopaths). See, for example, the literature review’s finding that “periodic re-examination is also warranted,” along with the General Osteopathic Council’s proposed “framework for a continuing fitness to practise scheme,” or revalidation.
- The literature review clearly demonstrates that those who practice in isolation, particularly with extended time in practice, are most susceptible to competency losses which recency requirements are, in theory, designed to mitigate. Yet the proposed standard seems devoid of specific measures to address this.
- Osteopathy Australia strongly supports equalising (with other Boards) the amount of practice in a specified period necessary to satisfy the Recency standard. We therefore strongly support the increased number of hours, 450 within three years, in the proposed standard, if that is the number of hours for professions.
- Osteopathy Australia would like to know the basis for the selection of 450 hours as the amount of practice in three years that demonstrates “adequate connection with” and “recent practice in” the profession. Why 450 rather than 400? Why 450 rather than 500? Osteopathy Australia would like to know of any evidence suggesting this has any affect on public safety or practitioner competence.
- Does the Board possess information or data suggesting that the more an osteopath practices, the safer his or her practice? If so, this would be relevant to the consultation.
- We note the danger highlighted by the literature review (at p. 11), that arbitrary and burdensome recency requirements can give an incentive to registrants to “dabble” —

that is, practice in a half-hearted or casual manner merely for the purpose of maintaining compliance with an arbitrarily set recency standard.

- The Board could benefit from remembering that as important as recency requirements are, the crux of the matter is not what the standard is so much as what do to with people who fail to meet it. Re-entry into the profession must be evaluated in a fair, effective, and speedy way—in accordance with the demands of public protection as well as the demands of workforce planning, and of equitable access to healthcare.
- On this subject, can the Board please publish (or supply) anonymised information about the number and types of activities required by sections (f) through (i) in the section titled “What happens if I don’t meet this standard?” for the first three years of national registration?

Osteopathy Australia thanks the Board for incorporating much of our previous commentary and advice on this subject, and would be pleased to assist the Board (and Boards) in providing additional assistance, clarification, or suggestions. For further information, please contact Samuel Dettmann, Policy Advisor, on 02 9410 0099.

