

# **The case for full registration of occupational therapists within Australia**

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## INTRODUCTION

The Council of Occupational Therapists Registration Boards (COTRB) is an incorporated body representing the registration authorities for occupational therapy in Australia and New Zealand. The Council also has devolved authority from the Commonwealth to conduct assessment of overseas trained therapist's seeking to migrate and work in Australia.

The Council believes there are compelling reasons to support full regulation of occupational therapists within Australia. Registration is required in South Australia, Queensland, Western Australia and the Northern Territory only. The primary consideration should be that of minimising public risk. Additionally, it should be noted that other comparative countries in the world, including NZ, all seek to manage this risk by registration.

## REGISTRATION AND OCCUPATIONAL THERAPY

Registration of occupational therapists minimises the risk to public health and safety by:

- ensuring that the public can identify those practitioners who are appropriately trained and skilled to provide occupational therapy services
- providing an effective means to respond to incompetent or unprofessional practice.
- The practice of trained occupational therapists is identifiably different from the practice of other rehabilitation providers. Their training equips occupational therapists with a unique combination of knowledge and skills including:
  - assessing the impact of illness and disability on individuals' current and potential occupational performance
  - analysing the component demands of different activities and occupations
  - prescribing activities and occupations to achieve rehabilitation goals
  - applying specialised techniques, including the fabrication of splints, therapeutic counselling and psychotherapy, neurological facilitation techniques, physical and electrical modalities
  - assessing the need for environmental modifications to enhance occupational performance, including prescribing assistive equipment and architectural modifications, or modifying work practices
  - evaluating and modifying clients' rehabilitation in response to progress or changing needs.

*Application of skills to diverse clients and practice contexts*

Their training further equips occupational therapists to apply these core skills and knowledge to respond to the diverse issues encountered by their clients, including:

- problems arising from physical disorders such as cardiac, respiratory, vascular, neurological, and endocrine diseases, and after surgery or accident
- problems arising from emotional and mental health disorders
- problems arising from developmental and intellectual disabilities
- the special needs of people who are vulnerable or disadvantaged due to illness, disability or socio-economic factors.

Further, the training of occupational therapists prepares them to work with clients in diverse practice settings. These include hospitals and other health or aged care facilities, schools, clients' homes, non-government organisations, community centres, private practice, industry and with isolated and disadvantaged communities.

***Registration does not limit the practise of other providers of rehabilitation services***

Registration would not limit the provision of services by other providers or rehabilitation services. For example, S.A. WorkCover's Rehabilitation and Return to Work Services Manual specifies services such as job analysis or worksite assessments which can be carried out by occupational therapists, or other suitably skilled providers.

Further, the registration of occupational therapists has not prevented the development of other service providers such as rehabilitation coordinators/ counsellors, developmental educators and diversional therapists. Nor has registration of occupational therapists restricted the roles of other workers such as handicraft instructors, activity supervisors or paramedical aides – all having specific but limited responsibilities.

***Benefit to the public of protecting the title "occupational therapist"***

The unique combination of knowledge and skills possessed by trained occupational therapists, and their capacity to apply them to meet the needs of a diversity of clients and practice settings distinguishes them from other providers of rehabilitation services.

The use of the title "occupational therapist" should be restricted to those who have relevant training and expertise. The benefit that protection of title in legislation affords the public is, firstly, ensuring that they can identify practitioners who are trained and competent to provide occupational therapy services, and secondly, ensuring that proper standards of practice are maintained and enforced.

## **ASSESSING THE MERITS OF REGISTRATION OF OCCUPATIONAL THERAPISTS: RISK TO PUBLIC HEALTH AND SAFETY**

The provision of occupational therapy services which are tailored to the needs and environments of individual clients, is not a matter of adhering to rigid protocols and procedures. Rather, it requires the interpretation of professional knowledge and the application of complex judgments. If occupational therapy services are not provided in a competent and professional manner, significant risks can be posed to the health and safety of clients.

*Sources of risk* If occupational therapy services are provided in a manner that is incompetent, negligent or unprofessional, clients are at risk of physical and/or emotional injury, and poor outcomes.

Further potential for harm arises from the vulnerability of many of the clients of occupational therapists. Vulnerable clients include those who are isolated, people whose capacity for communication or decision making is diminished (eg. people suffering from acquired brain injury, developmental disorders or Alzheimer's Disease) and people whose limited knowledge about occupational therapy care makes it difficult for them to judge the appropriateness or effectiveness of the services they receive. The nature of some clients' disabilities can also make it difficult for them to respond to incompetent or unprofessional practice.

Additionally, the financial resources of the client, or other purchaser of services, would not be used effectively.

*Categories of risk* Three broad categories of risk can be identified as potentially arising from occupational therapy practice.

### ***Risk of physical harm***

The risk of physical harm arises from the incompetent or negligent:

- conduct of assessments
- application of therapeutic techniques
- use of therapy equipment
- prescription of activities or occupations
- prescription of equipment or architectural modifications
- modification of work practices or environments.

Examples of the types of harm that may be experienced by clients include heart attacks, falls, burns, soft tissue damage, scarring, deformity of joints, and exacerbation of illness or injuries. In extreme cases, incompetent or negligent practice could result in the death of a client.

*Risk of emotional harm*

The risk of emotional harm arises from the incompetent or negligent:

- assessment of a client's risk to themselves or others
- application of therapeutic techniques such as counselling, group work or specialised therapy techniques
- monitoring of changing health status
- maintenance of a physically safe therapy environment.

Examples of the types of harm that may be experienced by clients include causing harm to themselves or others, deteriorating behaviour or diminished wellbeing.

*Risk of exploitation*

There can also be a risk of harm caused to people by an occupational therapist whose practice is incompetent or unprofessional. The people at greatest risk are those who have diminished capacity. The exploitation could be physical, sexual, emotional or financial.

Significant potential exists for these risks to arise as a direct consequence of occupational therapy practice if:

- an occupational therapist's expertise is less than the expected standard
- the expertise is applied in an incompetent or negligent manner
- appropriate standards of conduct are not recognised and maintained.

The nature of the risks to clients will depend upon the client's illness or disability, as well as his or her individual circumstances.

The following table sets forth examples of potential risk to the public in certain areas of occupational therapy practice:

<b>Occupational Therapy Area or Intervention</b>	<b>Nature of Potential Risk</b>
<p><u>Functional capacity evaluation</u></p> <p>- taking clients through increasing lifting and other physical demands to identify maximum functional capacity. The therapist needs to identify safe lifting limits and have knowledge of the pathology to avoid serious damage.</p>	<p>Injury – serious damage to vertebral discs and consequent pain Loss of earning capacity</p>

<p><u>Upper limb rehabilitation following stroke</u></p> <ul style="list-style-type: none"> <li>- correct handling and techniques need to be applied</li> </ul>	<p>Damage to a paralysed shoulder can lead to subluxation which, once it occurs, is mostly untreatable. Subluxation is caused by poor handling of the upper limb post-stroke. The condition causes considerable pain on movement and consequently leads to reduced function of the upper limb.</p>
<p><u>Hand therapy</u></p> <ul style="list-style-type: none"> <li>- splinting (dynamic and static) (after surgical repair eg. nerve or tendon repair)</li> <li>- prescription of program to mobilise using passive or active techniques to avoid tissue damage</li> <li>- identification of infection and appropriate infection control</li> </ul>	<p>Causing damage to the surgical repair either by mobilising too early, not protecting the graft by adequate positioning, inadequate mobilisation, not dealing with the scarring or deformity. There is a fine line between mobilisation and splinting with a fine margin for error. Damage to the nerve repair can lead to permanent loss of sensation, reduced function and/or increased risk of further injury</p> <p>Hand infection is generally regarded as a serious risk, often with hospitalisation required. Inadequate identification of signs of infection can lead to serious consequences including restricted movement, scarring and even, potentially, amputation.</p>
<p><u>Equipment prescription</u></p> <ul style="list-style-type: none"> <li>- assessment of needs/limitations</li> <li>- selection of appropriate equipment</li> <li>- training and assessment of safety</li> </ul>	<p>Injury (eg. falls) or injury to carer A less than optimal outcome may occur Increased need for assistance/ services Excessive cost for inappropriate equipment recommended and then abandoned</p>

<p><u>Environmental modifications/ergonomics</u></p> <ul style="list-style-type: none"> <li>- design, placement and prescription of ramps, rails etc.</li> <li>- house modifications eg bathroom, kitchen to enhance safety and function</li> <li>- assessment of needs, recommendation of appropriate and cost effective options</li> <li>- worksite modifications or work redesign</li> </ul>	<p>Restriction of function/risk of injury resulting from poor choice of equipment  Cost of ineffective or overly expensive modifications  Damage to plant/equipment/homes</p> <p>Exacerbation of work injury or occurrence of overuse injury by inadequate modification</p>
<p><u>Manual handling</u></p> <ul style="list-style-type: none"> <li>- training and undertaking manual handling of clients, and training of clients</li> </ul>	<p>Poor technique may cause falls and/or injury to client and/or carer</p>
<p><u>Mental health</u></p> <ul style="list-style-type: none"> <li>- increasingly services are provided to clients at home or in community. A large number of people with mental illness are emotionally and financially vulnerable with diminished capacity</li> <li>- monitoring medication compliance</li> <li>- monitoring status and early signs of need for changed management (including medication review)</li> <li>- monitoring, and reporting of abuse</li> <li>- managing clients and public in acute crisis (eg. suicidal) and in volatile living circumstances</li> <li>- supervision of untrained/unregulated support staff to ensure accountability of practise</li> <li>- critical incident de-briefing</li> </ul>	<p>High risk of harm to client (eg. suicide, overdose, exploitation)  Potential for emotional, physical or financial abuse</p> <p>Failure to obtain timely and appropriate management of changing health status – exacerbation of illness  Risk of harm to workers/carers/public</p>

<p><u>Working with children (developmental delay)</u></p> <ul style="list-style-type: none"> <li>- appropriate application of specialised techniques (eg. sensory integration)</li> <li>- preventative programs eg. literacy, developmental programs, social skills training, school programs</li> <li>- feeding programs – recommendations for techniques to assist children who have significant difficulties with normal feeding patterns, involving positioning, food texture, facilitation of oro-motor function</li> </ul>	<p>Hyperexcitability, deterioration of behaviour/function, seizures</p> <p>Poor outcomes in education, functional areas</p> <p>Poor behavioural and learning outcomes</p> <p>Poor nutrition, aspiration and choking</p>
<p><u>Acute post-surgical management</u></p> <ul style="list-style-type: none"> <li>- supervised resumption of daily activities</li> <li>- discharge planning – establishing equipment and level of support required on discharge</li> <li>- equipment prescription</li> <li>- education on precautions post-surgery and positioning</li> <li>- splinting</li> <li>- wound protection/management</li> </ul>	<ul style="list-style-type: none"> <li>- damage to surgical repair resulting in extended hospitalisation</li> <li>- return to hospital due to inappropriate discharge plans</li> <li>- falls</li> <li>- contracture</li> <li>- less than optimal functional outcomes</li> <li>- damaged wound site/infection</li> </ul>
<p><u>Cardiac rehabilitation</u></p> <ul style="list-style-type: none"> <li>- prescription of graded activities</li> <li>- education about self-monitoring and precautions</li> <li>- early mobilisation following heart attack</li> <li>testing the cardiovascular response and tolerance to activity</li> </ul>	<ul style="list-style-type: none"> <li>- further cardiac event (eg. heart attack, angina) if inappropriate mobilisation program or precautions are given</li> <li>- alternatively, inadequate early mobilisation can lead to deterioration of the heart muscle and invalidism</li> </ul>

<p><u>Driving assessment &amp; rehabilitation</u></p> <ul style="list-style-type: none"> <li>- assessing capacity to drive on and off the road</li> <li>- prescription of vehicle modifications</li> <li>- prescribing training programs</li> </ul>	<ul style="list-style-type: none"> <li>- inappropriate assessment leading to unsafe drivers on the road or safe drivers taken off the road.</li> <li>Significant cost to community in either situation.</li> <li>Risk to drivers and other road users.</li> </ul>
<p><u>Use of physical modalities</u></p> <ul style="list-style-type: none"> <li>- modalities including electro-myography, functional electrical stimulation, biofeedback, thermal agents such as ultrasound, contrast baths, paraffin wax, ice</li> </ul>	<ul style="list-style-type: none"> <li>Burns – electrical or thermal</li> <li>Pain from misuse of the techniques</li> <li>Operation of cardiac pacemakers can be affected by inappropriate use of electrical modalities</li> <li>Circulatory problems</li> </ul>
<p><u>Burns</u></p> <p>Prescription and fitting of pressure garments and splints to healing or burned skin</p>	<p>Poorly fitted or fabricated splints or pressure garments can result in scarring or contractures which can cause permanent deformity and limited function</p>
<p><u>Brain injury</u></p> <p>Assessment and management of reduced cognitive capacity. Accurately determining and responding to the safety risks a client may encounter in his or her environment</p> <p>Management of unconscious clients</p> <p>Positioning and treatment of consequent motor damage and spasticity</p>	<p>Failure to anticipate likely safety risks may result in client sustaining an injury eg. burns, accidents at home, crossing roads unsafely</p> <p>Risk of physical, sexual and financial abuse</p> <p>Inappropriate management can result in long term deformity and pain</p>

Registration of occupational therapists minimises the risk to public health and safety by:

- ensuring the public can identify those practitioners who are appropriately trained and skilled to provide occupational therapy services

- providing an affordable and accessible means, through the Board, for the public to seek a response to concerns about services they have received from occupational therapists
- providing an effective means to respond to instances of incompetent or unprofessional practice.

## **WORK SETTINGS OF OCCUPATIONAL THERAPISTS**

Increasingly, occupational therapists work with a high degree of autonomy, and in more isolated practice settings. These include clients' homes, non-government health services, schools, private practice, in industry and with isolated and disadvantaged communities. This trend has resulted in reduced scrutiny of the work of occupational therapists by colleagues, and reduced potential for organisational quality systems to check the maintenance of standards of occupational therapy practice.

Further, the public can now self refer and consumers therefore need to be able to make informed decisions regarding the practitioner consulted and the services offered; or alternatively assured that a system exists which ensures that a quality of practice and expertise is maintained.

A survey conducted by the Board in 1996 of South Australian registered occupational therapists revealed that 48% of registered occupational therapists worked outside government health services.

Opportunities for employment of occupational therapists in the private sector continue to increase while opportunities for employment in the public sector are expected to remain static or further decline.

It is also expected that additional innovative opportunities for occupational therapists working individually outside the public sector will continue to arise.

## **CAPACITY FOR SELF-REGULATION**

### *Regulation by The Board*

Before addressing the capacity for or appropriateness of self-regulation, we think it is useful to note the history of complaints to the Boards that comprise the Council. They have related to issues of competence and fitness to practice and the Board has counselled therapists about appropriate standards of practice, worked with individual occupational therapists to identify how to improve their skills in relevant areas, set conditions on the practice of therapists and cancelled registration of therapists.

The Board considers that it has been demonstrated that registration of occupational therapists provides an effective mechanism for protecting the public by acting to ensure the maintenance of standards.

***Potential  
limitations for  
regulation by the  
professional  
association***

Self-regulation of practice by professional associations has been identified as one possible alternative to registration. OT Australia (the Australian Association of Occupational Therapists) is the national professional association and has branches in each State and Territory. A 1996 survey conducted by the South Australian Board, revealed that 47% of South Australian registered occupational therapists were members of OT Australia. The Council understands that the current ratio is about the same.

OT Australia has no power to act against incompetent, negligent or unprofessional therapists except by reprimand or expulsion from the Association. This action does not prevent the occupational therapist from continuing to practise and there is no requirement to disclose such an outcome. The Association does not now make such enquiry or take such action.

Membership of OT Australia is not a pre-requisite to employment.

Regulation by the professional association would not in these circumstances provide adequate protection to the public. It is important also to note in this regard that OT Australia supports registration in all States and Territories. It is understood that the Review Committee has information about OT complaints and disciplinary processes in non-registered States.

***Health  
complaints  
authorities***

Health complaints authorities and advocates have also been promoted as options for protecting the public. Examples of such bodies exist, but their jurisdiction is generally limited to government funded and operated services. Accordingly, they are not able to respond to problems arising in relation to services provided in non-government organisations or private practice. This is significant in view of the growing proportion of occupational therapists practising outside the public sector.

Although these health complaints authorities have extensive experience in health areas, the composition of the Board provides specific expertise in occupational therapy, which, it is submitted, makes the Board better placed to make judgments about the standards of practice of occupational therapists.

***Legislation  
regarding  
misrepresentation***

It may be argued that a further alternative to registration is access to the common law regarding misrepresentation. Pursuing a claim of misrepresentation through the legal system can be complex, contentious and confusing; and can be an extremely long process, involving potentially very substantial costs.

Further, it is submitted that a person who wishes to find out his legal rights and obligations should be able to do so simply, and obtain objective information.

By looking at the Registration Act, and obtaining information from the Board (eg. a copy of the Guidelines on Standards of Professional Conduct) a person can clearly see the legal requirements, duties and obligations of occupational therapists.

In addition to the cost of litigation, one needs to remember the categories of clients serviced by the profession, and their potential difficulty in pursuing the matter through legal channels.

It is also submitted that a registration Board has the greater expertise to confirm appropriate conduct and standards, and provides an accessible mechanism for the public to pursue complaints about services received from occupational therapists.

## **CONCLUSION**

In conclusion, it is submitted:

- (1) that the protection of the title “occupational therapist” is justified on the basis of reducing public risk;
- (2) the reservation of the title enables the public to identify those people who possess the knowledge, skills and competence to provide appropriate services of an appropriate standard;
- (3) registration does not unduly restrict the provision of other rehabilitation services by other providers to the community;
- (4) there are significant risks to the public if occupational therapists practise in a manner which is incompetent, negligent or unprofessional;
- (5) the alternatives to registration could not effectively provide the level of public protection required, and the protection afforded to the public by registration outweighs any minimal restriction to competition.

Criterion 1 Is it appropriate for health ministers to exercise responsibility for regulating the occupation in question, or does the occupation more appropriately fall within the domain of another ministry?

Criterion 2 Do the activities of the occupation pose a significant risk of harm to the health and safety of the public?

Criterion 3 Do existing regulatory or other mechanisms fail to address health and safety issues?

Criterion 4 Is regulation possible to implement for the occupation in question?

Criterion 5 Is regulation practical to implement for the occupation in question?

Criterion 6 Do the benefits to the public of regulation clearly outweigh the potential negative impact of such regulation?

[AHMAC Working Group on Nationally Consistent Medical Registration Arrangements](#)