



SENATE COMMUNITY AFFAIRS COMMITTEE

ENQUIRY REGARDING

**NATIONAL HEALTH AND HOSPITALS NETWORK BILL
2010**

SUBMISSION BY THE

AUSTRALIAN OSTEOPATHIC ASSOCIATION

JULY 2010

EXECUTIVE SUMMARY

- The Australian Osteopathic Association represents the interests of Australian osteopaths.
- As such, the AOA is vitally interested in how the proposed health reforms are given effect.
- The present Bill's title belies its purpose. The National Hospital and Health Network is **not** the subject of the Bill.
- Details of what the NHHN is, how it will work, and governance arrangements, remain unknown. Australian osteopaths are keen to cooperate in a professional way with whatever emerges.
- The Bill does establish by statute the already existing Australian Commission on Safety and Quality in Health Care (ACSQHC).
- We consider that allied health professionals (one of whom osteopaths are) should be explicitly represented in the governance arrangements for the ACSQHC. We propose appropriate amendments to the Bill for this purpose.
- Osteopaths will be pleased to cooperate with the Commission. We point out that our profession has an excellent safety record. It seems, however, that the Commission will have no powers to enforce its standards. Everything it does must go to the individual State Governments.
- AOA remains very concerned that spinal manipulation, other than of the cervical spine, can be lawfully performed by unqualified persons. This is a matter for urgent consideration by the ACSQHC.

THIS SUBMISSION

The Australian Osteopathic Association (AOA) appreciates this opportunity to inform the Community Affairs Committee of our views on the *National Health and Hospitals Network Bill 2010*.

WHAT THE BILL DOES

The Bill has nothing to say about the National Health and Hospitals Network. In fact, all it does is to establish by statute the Australian Commission on Safety and Quality in Health Care (ACSQHC). That Commission already exists, doing, it seems, precisely the same kind of work that is envisaged for the new agency.

Many commentators have remarked on the lack of detail about how the Network will operate, under what legislation and with what powers and functions. As well, the relationship with “Medicare Locals” is unclear.

WHAT THE BILL DOESN'T DO

The Bill simply picks up on the COAG Agreement of last April. Thus it belies its title. It provides no detail on the way the NHHN will operate, and in what statutory relationship with existing institutions.

As discussed below, the Bill confers very little, if any, power on the proposed ACSQHC. It, and the Commonwealth Minister, have little room to move unless each and every State agrees.

The Commission is given a long list of “functions” in s. 9. Among them is the power to issue standards, guidelines and indicators. These, however, are deemed not to be legislative instruments. In any case, they appear not to be enforceable. The Bill provides for no sanctions in the event of non-compliance.

SAFETY AND QUALITY OF OSTEOPATHIC PROCEDURES

The osteopathic profession has a record of safety and quality second to none. Professional indemnity insurance premiums are, we believe, significantly lower than for other healthcare professionals. Osteopaths' professional training is rigorously directed to clinical quality and safety.

Osteopathy is one of the professions to be regulated under the National Registration and Accreditation Scheme, which took effect on 1 July 2010. This Scheme will enforce high clinical and ethical standards on osteopaths, as much as on other regulated groups.

Nevertheless, we are always seeking to improve our clinical performance, and we believe the ACSQHC may well do useful work of relevance to osteopathic practice in Australia. We note, of course, that it would embark on such work only after State and Commonwealth Governments have agreed.

The ACSQHC

AOA believes that the governance structures and personnel of the Commission should explicitly ensure that the clinical practices of **all** healthcare professionals are evaluated. Osteopathy is one such profession.

To this end, **we propose some amendments to the Bill**. These are set out in Attachment 1.

We also submit that **the Minister should be asked to indicate that, in making appointments under s. 20, she will ensure that allied health professionals are appropriately represented**.

AOA and our members will be happy to cooperate fully with the Commission. We trust that its work will encompass an examination of the relative safety and quality of

various treatment modalities, that is, across different disciplines. There is already an impressive body of evidence that osteopathic treatments for certain conditions are likely to be safer and more efficacious than other approaches that are commonly taken.¹

SPINAL MANIPULATION

AOA has previously addressed the Senate Committee on this issue.²

We remain gravely concerned that serious harm may befall someone, at the hands of an unqualified practitioner.

At Attachment 2 are copies of AOA's recent correspondence to the Osteopathic Board of Australia about this matter.

We consider that the ACSQHC should be given an urgent reference to examine this matter. In our view, it is urgent because it is only a matter of time before someone will suffer or die, as a result of spinal manipulation by an unskilled person.

Should the Committee wish, AOA is prepared to provide expert clinician evidence to establish the validity of our concerns.

RECOMMENDATIONS

We recommend that the Committee:

- support passage of the legislation;
- recommend amendments of the kind proposed in Attachment 1;
- support our proposal that the Minister ensure allied health professionals are involved in governance and operations of the ACSQHC;

¹ AOA will be happy to provide, in confidence, details of this evidence if desired.

² See Senate Standing Committee on Community Affairs; Inquiry on National registration and accreditation scheme for doctors and other health workers; *Hansard*, 7 May 2009, pp. CA 24-25.

- note professional osteopaths' continuing concern that unqualified people may now manipulate the spine, other than the cervical spine; and
- support AOA's proposal that the ACSQHC investigate the above matter urgently.

AOA PROPOSED AMENDMENTS

s.5 – include new definition of “health care services”. The definition might include these elements:

- health care services include services provided by health care professionals, including professionals known as allied health professionals.
- health care services include services provided in public or private hospitals or clinics, by private practices or in ambulance or other emergency situations.

Sub-s. 20 (3) - para (d) amend to read

“provision of professional health care services, including allied health professional services”.

Attachment 2

1 July 2010

Dr Robert Fendall
Chair
Osteopathy Board of Australia
GPO Box 9958
MELBOURNE VIC 3001

By email: chair@osteopathyboard.gov.au

Dear Dr Fendall

The AOA wishes to bring to your Board's notice a serious issue in public health and safety. We request that the Board act to have this matter rectified, as set out below.

In the NRAS legislation, s. 123 provides that only four practitioner groups (medical practitioners, physiotherapists, chiropractors and osteopaths) may manipulate the cervical spine. This contrasts with the situation before national registration, at least in some States, where the entire spine was subject to this kind of prohibition.

I attach copies of correspondence between AOA and Ministers. You will see that State Ministers have asserted that the relaxation was decided on by the Ministerial Council only after consideration of evidence which we understand was contained in a consultant's report. They also state, however, that Ministers in effect agreed on a compromise.

In AOA's view, that compromise is not in the interests of public health and safety. In our estimation, it must only be a matter of time before someone suffers severe harm – or worse – as a result of unskilled and unqualified manipulation of the unprotected parts of the spine.

In pursuing this matter with Ministers, AOA has pointed out that, to our knowledge no osteopath was invited to contribute, or did contribute, to the evidence referred to above. Therefore we sought access to the report on which Ministers relied. Subsequent correspondence on AOA's behalf has established, however, that there never was any report. Thus we remain in the dark as to the evidentiary base for the Ministers' decision

AOA views this matter very seriously. We believe we would be failing our professional responsibilities if we did not continue to pursue this issue. We will do this in any fora available to us.

In addition, we ask OBA to consider this matter and to ask the Ministerial Council to recommend to their respective Governments that the National Law be amended, so that spinal manipulation of any part of the spine is prohibited other than when performed by one of the four professional groups listed above.

Yours sincerely

Antony Nicholas
Executive Director

4 November 2009

Hon Dr Kim Hames MLA
Minister for Health
28th Floor Governor Stirling Tower
197 St Georges Terrace
PERTH WA 6000

Dear Minister

I am writing to you about the *Health Practitioner Regulation National Law Bill 2009*. This bill has either been, or soon will be introduced into your Parliament.

The Australian Osteopathic Association is very keen to see the National Registration Scheme for Health Professionals passed into law. Our Association has taken part in all the relevant consultations. With the exception of one matter, we are happy with the Bill.

Our concern, however, relates to a most important issue of public health and safety. It relates to the regulation of spinal manipulation and is to be found in clause 123. That clause reads:

"123 Restriction on spinal manipulation

- (1) A person must not perform manipulation of the cervical spine unless the person—
- (a) is registered in an appropriate health profession; or
 - (b) is a student who performs manipulation of the cervical spine in the course of activities undertaken as part of—
 - (i) an approved program of study in an appropriate health profession; or
 - (ii) clinical training in an appropriate health profession; or
 - (c) is a person, or a member of a class of persons, prescribed under a regulation being authorised to perform manipulation of the cervical spine.

Maximum penalty— \$30,000.

(2) In this section—

appropriate health profession means any of the following health professions—

- (a) chiropractic;
- (b) osteopathy;
- (c) medical;

(d) physiotherapy.

manipulation of the cervical spine means moving the joints of the cervical spine beyond a person's usual physiological range of motion using a high velocity, low amplitude thrust."

The AOA strongly disagrees with the apparent intention of the Bill to allow **anyone at all** (whether registered under the Act or practising outside it) to manipulate the lumbar and thoracic spine. Such manipulation can be just as hazardous, if done by untrained practitioners, as unprofessional manipulation of the cervical spine.

AOA does not accept the reasoning offered in the *Regulatory Impact Statement*, at pages 25 and 60-63, for the exemption of lower back manipulation from the controls set out in s. 123.

The AOA was not consulted on this specific issue. In all the general consultations we have attended, we have made known our grave concerns. However, the consultancy reports referred to in the RIS have not been seen or reviewed by us. No osteopath was among the consultants briefed to advise on this matter. Consequently, **we must warn Parliamentarians of the grave risks they are being asked to place on the unsuspecting public.**

It is argumentation of the most specious kind to say that there is no history of serious adverse events in the one State (Victoria) where there is open slather on manipulating people's lower backs. In point of truth, good practice in the other States has kept the national occurrence rate down.

Of all the four professions listed in s. 123, osteopaths have the best safety record. This can be confirmed by our indemnity insurers. Our five-year clinical training is rigorous and great care and attention are paid to safe and effective skeletal manipulation, and especially of the thoracic, cervical and lumbar spine. And it is not unknown for patients to present to us needing remediation of back conditions that have not been helped by the ministrations of practitioners trying out their limited skills on these same patients.

Before it is too late, we urge all Parliamentarians to amend s. 123 so that it relates to the whole spine. All that is required is the deletion of the word "cervical".

We have written to all State and Territory Ministers as above, and also to all Shadow Ministers. If you would like any further advice on this matter we would welcome the opportunity to meet you and/or your staff.

Yours sincerely

Dr BJ Field
President