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**Submission to the Senate Standing Committee on Community Affairs**

**in relation to its reference on**

**THE NATIONAL REGISTRATION AND ACCREDITATION SCHEME FOR  
HEALTH PROFESSIONALS**

**by the**

**Australian Osteopathic Association**

**April 2009**

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## Executive Summary

- The Australian Osteopathic Association, which represents the interests of osteopaths in Australia, supports the idea of a National Registration Scheme for health professionals.
- However, the scheme must ensure Ministerial responsibility to the Parliament; and must include the full range of administrative law guarantees of people's rights (including transparency, Parliamentary disallowance of subordinate legislation, and access to merits and judicial review.
- Ministerial meddling in accreditation standards cannot be accepted and the legislation must guarantee that this cannot happen.
- All States and Territories should sign up to a fully national scheme. There is no place for some kind of residual State agencies.

## **1. THIS SUBMISSION**

The Australian Osteopathic Association (AOA) appreciates the opportunity to make this submission to the Senate Community Affairs Committee.

Osteopathy is one of the health professions proposed to be regulated under the National Registration and Accreditation Scheme (NRAS). AOA has been involved, to this point, in all the consultations and briefings that officials have arranged and we appreciate their helpful advice and ready provision of information.

## **2. OSTEOPATHY IN AUSTRALIA**

### **2.1 Size and economics of the profession**

Attachment 1 is an economic study AOA commissioned recently. It describes the size, scope and contribution to the economy of Australian osteopaths. In brief:

- There are about 1500 osteopaths practising in Australia.
- Most are under 35 and over half are women.
- Entry to the profession requires a five-year Master's degree, much of the curriculum for which mirrors most undergraduate health and medical training.
- Educational entry standards are very high and Australian-qualified osteopaths are equal to the best in the world.
- Albeit from a small base, osteopathy is the fastest growing healthcare profession in Australia.

Attachment 1 also shows that osteopaths earned gross fees of about \$200m in 2007. Of this, no more than \$25m was reimbursed to patients from Medicare, private health insurance or Workcover. It is quite clear that people freely choose our services and are prepared to pay for them. Over 85% of our patients come to us unreferral and many pay a number of return visits.

AOA submits that osteopathy is a significant and growing healthcare service available to Australians. It is in the public interest, as well as of the profession, that our members practise to the highest standards, whether they be clinical or ethical standards.

### **2.2 The clinical practice of osteopathy**

Attachment 2 is an extract from a submission AOA made last year to the Department of Health and Ageing. It describes, in general terms, the scientific and clinical basis for the practice of osteopathy. AOA would be happy to brief the Committee further on these issues, if desired.

Osteopathy and chiropractic are often equated in the lay mind. While some treatment modalities may appear similar, osteopathic treatments are not based on an external theory, but rather on an intimate knowledge of how the

musculo-skeletal system works and how, if it works less than well, the whole person is affected.

### 3. THE NRAS

#### 3.1 AOA supports a national scheme

In Australia, osteopaths have been subject to State-based registration schemes for over 30 years. In our view, these have worked well. Standards have been kept high, but with minor variations due to inconsistencies in state based legislation, rulings or practice.

With the relatively small numbers in our profession, however, the workload of the Boards in some States does not justify the necessary sunk costs. In more than one state, no complaint has been lodged in over half a decade. A national scheme is expected to be more efficient, more cost-effective, provide a platform for nationally consistent standards and to allow a better degree of inter-State mobility. The NRAS has been proposed as a cost saving and efficiency model and to be paid for by the fees of registrants. Any proposed model that does not deliver such cost saving or efficiencies should be additionally funded through state or federal contribution.

**AOA thus supports the NRAS idea and submits that the Committee should support its continued development.**

**However, our continued support is subject to effective solutions being found and legislated by the States and the Commonwealth to remedy a range of administrative law deficiencies, as identified in 3.3 below.**

#### 3.2 Accreditation

AOA understands the concerns of some of the larger professions about accreditation and the maintenance of independence from political interference on education or operating standards, particularly where it may risk current international accreditation standards. We support their concerns, even though, historically, the osteopathic profession has operated under a similar model as that proposed under the NRAS. Prior to the incorporation of the Australian Osteopathic Council, accreditation was conducted by subcommittees of relevant state registration boards. We believe these were not open to political interference.

The difficulty which AOA and others apprehend with the national scheme is that the “Ministerial Council” can set standards. There is no confidence within the professions that Ministers will not be tempted to interfere with draft standards for what they may regard as workforce planning reasons.

As explained below, the “Ministerial Council” is responsible to no Parliament. Nor are its decisions reviewable, either judicially or on the merits.

AOA, and we believe other professions, cannot accept the notion that it is enough for individual State Ministers to be responsible to their individual Parliament, without the full range of administrative law measures to ensure transparency, accountability and access to external appeal processes.

### 3.3 Administrative law guarantees are essential

The issue of accreditation – and the need for independence from Ministerial meddling – is not the only issue where the lack of any system of administrative law is a serious flaw in the scheme.

For example, the rights, reputations and even livelihoods of professional people are at issue. Without access to judicial and merits review, officials cannot be held accountable, not to speak of Ministers.

As well, the various standards to be recommended to, or made by, Ministers are clearly legislative instruments, as that term is understood in the context of the Legislative Instruments Act (C'wth). **If those instruments are not disallowable by Parliament, the Parliament would be, we respectfully suggest, remiss in its duty to safeguard the rights of citizens** in all the ways the Senate Regulations and Ordinances Committee has done so admirably for so many years.

We cannot see that “the Parliament” can mean other than the Parliament of Australia.

We understand the Committee has been informed of the process which has resulted in the passage of “Bill A” in the Queensland Parliament. “Bill B” is expected to be presented to the new Queensland Parliament soon. AOA and others have been advised they will be given access to an exposure draft of “Bill B” prior to its introduction to the Queensland Parliament.

**AOA submits that the Committee recommend that the NRAS legislation contain a proper scheme of administrative law.**

AOA is keen to see national registration and accreditation scheme go ahead. For reasons set out below, we are dismayed at recent moves in WA to torpedo the scheme. We are concerned, however, that, without a proper scheme of administrative law, it will torpedo itself.

### 3.4 A national scheme

The Committee’s TOR (e) requires it to consider “the appropriate role, if any, in the scheme for state and territory registration boards”.

AOA submits there should be no role. The Boards should be abolished and their functions subsumed into a truly national agency.

Australia is one nation. The practice of osteopathy is the same in Perth or Hobart, or anywhere else in the country. We are unaware of any so-called “local” situations that would justify a “federated” model. In fact, the whole initial move towards an NRAS was to avoid the complications of the current situation.

In our view, those who desire to alter the scheme to maintain state and territory boards will have designed a scheme which would be top-heavy in bureaucracy by leaving State-based entities intact, or half-intact, inside an apparently national scheme. Even if particular states were willing to fund the costs of additional layers of state or territory bureaucracy, rather than relying on health registrants to fund their local political desires, this would lead to unnecessary confusion. That would be so not only in the state concerned but

in other parts of the Commonwealth. It is not possible to have a half-national scheme.

It is entirely possible for a national agency to decentralise its administrative operations, on the basis of State divisions or smaller regional units. Many Commonwealth Departments and agencies do so and discharge their duties without accusations of Canberra centralisation.

We urge the Committee to look critically at any NRAS model with multi-layered bureaucracies, with a view to streamlining and rationalising the model.

In our view this national scheme should be created by national legislation. That is, by means of a single law passed by the Commonwealth Parliament. Such a law, if the States were to consent, would also extend the full range of administrative law processes and rights with which Senators are very familiar. It would also enable streamlining of administrative processes and thus cut costs of managing the scheme.

#### 4. RECOMMENDATIONS

The AOA recommends that the Committee:

- **find** in favour of a National Registration and Accreditation Scheme for health professionals;
- **recommend** that the legislation to establish the scheme must include the full range of administrative law guarantees, including
  - Ministerial responsibility
  - judicial and merits review
  - transparency of administrative processes;
- **recommend** that the legislation must ensure that setting professional standards must be free of Ministerial interference, and seen to be so
- **recommend** that the scheme must be truly national in scope, with all states and territories taking part.

## Attachment 1



## Attachment 2

In October 2008, AOA made a submission to the Departments of Finance and Health, in relation to the Government's review of Medicare funding for diagnostic imaging and pathology services. AOA set out, in parts 3 and 4, some important information about the practice of osteopathy.

To assist the Senate Committee, attached are parts 3 and 4 of that submission (pages 16-24).

AOA is happy to provide further advice to the Committee on these matters, if desired.