SUBMISSION TO THE SENATE COMMUNITY AFFAIRS COMMITTEE INQUIRY INTO THE NATIONAL REGISTRATION AND ACCREDITATION SCHEME FOR DOCTORS AND OTHER HEALTH WORKERS

RESPONSE TO THE EXPOSURE DRAFT OF THE HEALTH PRACTITIONER REGULATION NATIONAL LAW 2009

Introduction

The Royal Australasian College of Surgeons considers the communiqué of 8 May 2009, issued by the Australian Health Workforce Ministerial Council, to represent a considerable improvement on the initial design for a National Registration and Accreditation Scheme for the health professions. The College also views the communiqué as a public commitment from Ministers regarding the future form of the legislation.

The new design, as outlined in the communiqué, reflected the concerns of this College (and many others involved in the consultation process) over the past 12 months. Importantly, it incorporated many of the improvements suggested by the College.

The exposure draft of the *Health Practitioner Regulation National Law 2009* (hereafter referred to as Bill B), while reflecting many of these improvements, does not enshrine all of the commitments contained in the ministerial communiqué.

Accordingly, the College considers Bill B to be an important, but incomplete step towards a world class system of national registration and accreditation.

Accreditation

Part 2 of the Bill empowers the Ministerial Council to give directions to the National Agency and the National Board with regard to policies and administrative processes.

This power is supposedly diluted with regard to matters of accreditation in Part 2, Section 10, Subsection 4 which states that "the Ministerial Council may give a National Board a direction … only if, in the Council's opinion, the accreditation standard will have a substantive and negative impact on the recruitment or supply of health practitioners to the workforce".

It is the College's contention that this means that the Ministerial Council will therefore be able to issue instructions to National Agencies and National Boards at all times and on all matters, except in the case of accreditation matters when they will do so only if the recruitment of health practitioners is a consideration. Technically, the "recruitment or supply of health practitioners to the workforce" is always an issue, so this clause could be invoked at any time.

Significantly, this is at odds with an undertaking given in the ministerial communiqué of 8 May whereby "The Ministerial Council agreed today that the accreditation function will be independent of governments".

Rather than honouring this commitment, the arrangements as proposed leave open the possibility that policy will be set without any practitioner involvement at all. This is a radical departure from existing arrangements whereby Ministers can issue directions to public servants administering state and territory boards but cannot issue directions to board members on issues of policy.

The College believes that where an accrediting authority does not already exist, one should be established by the National Board. The College can see no good reason for the Ministerial Council

to be involved in this process, as Section 60 currently proposes. In the case of medical practice, the College takes this opportunity to endorse again the role of the Australian Medical Council, and believes its proven commitment to medical excellence should serve the Australian people into the future.

We do not support the involvement of the Ministerial Council in the appointment of accreditation authorities. We do not support the intervention of the Ministerial Council in accreditation standards linked to health workforce supply. Workforce supply is a continuous issue and it would be reasonable and preferable if any intervention by the Ministerial Council was only "**in exceptional circumstances in the public interest**".

National Boards

Part 5, Section 45 outlines membership of the National Boards. This represents a sensible mix of practitioner and community members and is to be commended.

Despite the requirement that practitioners outnumber non-practitioners, and that a practitioner be appointed Chairperson, the fact that these appointments are made by the Ministerial Council leaves open the possibility of politically motivated appointments and a compliant National Board.

Registration

Section 77 entitles the National Board to ask an accreditation authority to conduct an examination or assessment to assess the ability of an individual or class of individuals to competently and safely practise the profession.

This suggests that accreditation authorities will do more than accredit training courses; they will examine or assess those people undertaking these courses. In the case of specialist medical practice, this role is currently and very effectively done by the specialist medical colleges – an arrangement which has ensured world class medical care for generations of Australians. It is central to continuing medical excellence that the legislation allow for the accrediting authority to delegate this task.

Section 59 makes no mention of an accrediting authority's role, if any, in the recognition of specialties within a health profession. In the case of medical practice, this function is currently the responsibility of the existing accrediting authority, namely the Australian Medical Council, an arrangement which the College believes should be maintained.

Area of Need

Section 86, Subsection 5 gives the Minister authority to declare an area of need. There is no requirement to consult with the profession. Given that recent tragedies have resulted from precisely such an arrangement, it is imperative that, at the very least, Ministers be required by law to consult with the relevant profession before declaring an area of need.

Protection of titles

Section 130 protects the title 'medical practitioner', and even the title 'podiatrist', but not the title 'surgeon'.

The College believes the titles 'surgeon' and 'specialist surgeon' should be protected.

Section 133 (2) allows area of need practitioners who have limited registration to hold themselves out as a 'specialist health practitioner', while Section 134 (1) (c) (ii) enables a practitioner with limited registration to use the title 'medical specialist'. While limited registration in fact denotes *limited* expertise, the use of these titles can be construed to imply *additional* expertise. The

College therefore believes that it is quite misleading, and potentially very dangerous, for a practitioner with limited registration to be termed a 'specialist health practitioner' or 'medical specialist'.

Mandatory reporting

While the mandatory reporting provisions of the legislation, contained in Sections 161 and 162, are supported, the College believes there should in addition be an exemption for those health practitioners who become aware of reportable conduct outside the workplace as the result of therapeutic or personal relationships.

The College maintains its view that arrangements should not be such as to discourage a health practitioner from seeking assistance and opting instead to continue practising in an impaired state for fear that his or her treating practitioner would be obliged to report them.

Indemnification of contracted bodies

The College believes that Section 280 should include provision for bodies contracted to act on behalf of National Boards, such as specialist medical colleges, to be indemnified. Such indemnity is currently and quite reasonably the case in most jurisdictions and should be included in this important legislation.

Conclusion

The Royal Australasian College of Surgeons acknowledges the marked improvement in proposed arrangements for national registration and accreditation represented by the provisions of Bill B.

However, as the Bill currently stands it offers only the possibility, rather than a guarantee, of improvement. Notwithstanding occasional references to "wide ranging consultation" and the capacity of entities to publish dissenting views, the power of the Ministerial Council is rendered absolute by this Bill. At its extreme, it could be argued that the reason for this is made clear in Part 2, Section 10, Subsection 4 – the determination of politicians, and perhaps the public service, to increase the number of health professionals by lowering the standards required to become a health professional.

While pledging to separate the registration and accreditation functions, the subsequent legislation ensures that the extent of this separation is at the discretion of the National Board. Moreover, all members of the National Board are appointed by government. Significantly, the Ministerial Council can overrule both a National Board and an accrediting authority if it considers there might be a "substantive and negative impact" on health professional workforce numbers.

The College also notes the possibility that the legislation as it stands could result in the exclusion of specialist medical colleges from any role in respect of the registration, assessment, training or continuing competence of medical practitioners.

It is significant that the ministerial communiqué of 8 May made specific mention of specialist medical colleges and the Australian Medical Council. It is to be hoped that the legislation which ultimately passes through Australian parliaments does not preclude or undermine the ongoing work of these institutions.

The College believes that by incorporating the proposed amendments outlined in this submission, the *Health Practitioner Regulation National Law 2009* could mark a genuine improvement in arrangements for the registration of health practitioners and the accreditation of training courses.

The improvements outlined in Bill B, with the College's suggested modifications, will go a significant way to supporting practising standards in the health professions and will help protect against the inappropriate registration of clinicians who put patients at risk.