



OPTOMETRISTS  
ASSOCIATION AUSTRALIA

Comments on  
draft  
*Health Practitioner Regulation National Law (Bill B)*  
for the Senate Community Affairs Committee  
from  
Optometrists Association Australia  
July 2009

## Introduction

Optometrists Association Australia continues to support in principle a national scheme for the registration and accreditation of health professionals. The draft National Law released since our first submission to the Committee contains sensible changes to the design of the scheme but also an unsound proposal to allow an unregistered allied health profession to practice in part of the restricted practice of optometry.

This submission addresses the design problems identified previously as well as optometry specific issues we mentioned briefly in evidence before the Committee. It repeats largely our submission already lodged with the Australian Health Workforce Ministerial Council.

## Design Problems

Previous submissions have raised concerns about inadequate guarantees of the independence of accreditation of health professionals' education and the ability of National Boards to perform their duties if they did not have some control over the resources needed to perform their duties.

The Ministerial Council communiqué of 8 May 2009 and the draft *Health Practitioner Regulation National Law* (Bill B) released on 12 June 2009 contained substantial changes in both areas, but further refinements are still needed in respect of accreditation.

## Accreditation

The decisions announced in the Ministerial Council communiqué largely removed governments from inappropriate involvements in the accreditation function in favour of the National Boards but we do not believe it can be claimed that accreditation of health education will now be independent of governments. The current proposal is certainly better than what was previously proposed but the following extra refinements would improve the scheme further.

In S 10 (4) the justification for the Ministerial Council being able to issue a policy direction to a Board in respect of an accreditation standard should be a public interest test as well as recruitment or supply of health practitioners to the workforce. Quality, best practice and safety should be considered as well as workforce shortage before issuing a policy direction in respect of a standard.

Any policy directions should be made public when they are issued together with the reasons for the direction. A direction in respect of standards should only be made by consensus which we understand will mean that all members of the Ministerial Council must agree.

Lastly, Ministerial Council alone should not appoint external accreditation authorities. Further consideration should be given to a more arms length process of appointing the external accreditation authorities which ensures they are and are seen to be independent of governments, professions and educators.

Optometrists Association believe these refinements would make the system of accreditation truly independent and ensure that Australian accreditation arrangements will continue to be accepted internationally.

## *Resources*

Earlier submissions have raised concerns about the ability of the National Boards to perform their statutory duties if they had no control over resources needed to implement their decisions.

This concern reflected optometry's experience with state boards which were unable to implement change that was in the public interest because they did not control funds they collected from practitioners.

Bill B states in S 24 (1) that each National Board will negotiate with the National Agency a Health Profession Agreement which will include, inter alia, the annual budget for planned activities of the Board including accreditation and its contribution to the Agency's budget to enable the Agency to provide agreed services for the Board.

Officials have confirmed that S 256 (3) means that should a Board decide to approve activities which it wishes to undertake for which it has the necessary funds and which for whatever reason fall outside the budget agreed with the Agency, it may decide to undertake those activities without seeking the approval of the Agency. This being the case, as we said in evidence, we now accept National Boards should have sufficient power over resources to enable them to perform their duties.

## **Optometry Issues**

As we foreshadowed to the Committee, Optometrists Association has serious concerns with the proposed exemption of orthoptists from the optometry practice restrictions at S 136 (1) (b). There is also potential for differing arrangements in States and Territories where the National Law interacts with local legislation which could cause problems for patients and practitioners.

## *Exemption of Orthoptists*

The exposure draft of the *Health Practitioner Regulation National Law Bill 2009* (Bill B) includes at S 136 (1) (b) a proposed expansion of the scope of practice of an unregistered allied health profession, orthoptists, into part of the practice that is restricted for public health reasons to an independent registered profession, optometry.

If implemented S 136 would:

- reduce the protection presently provided to the public by current regulation of optometric practice.
- impose deregulation on jurisdictions which have previously decided against deregulation.
- be contrary to Australian Government policy as well as the Intergovernmental Agreement which established the national registration and accreditation scheme.
- allow orthoptists to operate in an area of restricted practice without the obligations required of registered professions such as independent accreditation, mandatory insurance and continuing education or government supervised registration.

Optometrists Association believes the proposal to exempt orthoptists from the optometry practice restrictions has been made without adequate consideration of the policy and public health implications.

The proposed S 136 (1) (d) could enable the new Optometry Board of Australia to allow restricted prescribing by orthoptists if after proper consideration of the issue it concludes that such exemption is justified.

The Board will have responsibility for ensuring safe standards of practice as well as the expertise to assess the qualifications of persons to practice safely and to decide how they might practice. It is the appropriate body to assess exclusions from the practice restrictions affecting optometry.

### *Background*

Optometry is one of the 10 independent health professions to be included initially in the national registration and accreditation scheme. Optometrists conduct eye and vision assessments, prescribe spectacles and contact lenses and treat eye disorders. Optometrists may use medicines to treat eye diseases everywhere but WA (which has announced it too will enable optometrists to prescribe medicines).

Optometrists have had direct access to the Medical Benefits Schedule (MBS) since 1975. About 5.5 million optometry services are provided each year and 97% are bulk billed. The MBS allows patients to have a full ocular health examination every two years because after the age of 40 years vision deteriorates. This may simply be due to ageing or caused by underlying disease. Only optometrists and ophthalmologists are trained to detect eye disease through ocular health examinations. Since 2008 medicines prescribed by optometrists have been subsidized through the Pharmaceutical Benefits Scheme (PBS).

Orthoptists are allied health professionals who generally assist ophthalmologists. They perform some tasks which are similar to those of optometrists, except they generally provide these services on behalf of and under the supervision of ophthalmologists. Most orthoptists work in hospitals and in ophthalmologists' practices.

Only three States have legislated to allow orthoptists to prescribe spectacles, namely Victoria, SA and NSW. All three impose limitations on such prescription.

Broadly, Victoria (and SA) requires that orthoptists prescribe at the request of or on referral of an optometrist or ophthalmologist within six months (12 months in SA) of that request or referral, or be employed in a public health facility or employed by an ophthalmologist.

It is implicit in Victorian (and SA) legislation that an optometrist or ophthalmologist would only request or refer to an orthoptist after having themselves conducted an ocular health examination. It would be naïve to expect that this always happens and that advantage would not be taken of any looseness in legislation.

NSW mandates ocular health examinations. NSW legislation states that an orthoptist may only prescribe within six months of an ocular health examination by an optometrist or ophthalmologist and then only on written referral by the examining optometrist or ophthalmologist. The requirement for a recent full ocular health examination is there to ensure that vision loss is not caused by underlying disease.

Queensland, WA, Tasmania, ACT and NT do not allow orthoptists to prescribe spectacles at all.

## *Issues*

It is possible to prescribe spectacles after only measuring vision loss. Incorrectly prescribed spectacles will not cause blindness or eye injury.

States and Territory governments restrict prescribing of optical appliances to optometrists and medical practitioners to ensure that disease is excluded as a cause of vision loss. To illustrate, diabetes can cause shortsightedness and an inadequately trained person may successfully prescribe to solve the shortsightedness without recognising that diabetes is present.

As noted above, even the three States which allow orthoptists to prescribe do so with the implicit or explicit requirement that full ocular examinations by optometrists or ophthalmologists will have first excluded eye disease as a possible cause of vision loss.

S 136 as presently worded would impose the weaker of the protections for patients now in place in the three States which permit orthoptists to prescribe upon the five States and Territories which have not previously allowed orthoptists to prescribe at all. If orthoptists are to be allowed to prescribe spectacles it should be under the more protective NSW not the Victorian arrangements.

Further, Australian Government policy as evident in the MBS support for regular ocular health examination and in more recent initiatives such as the *Optical health – support* component of the *Australian Better Health Initiative* program encourages early detection and prevention of disease.

The *Australian Better Health Initiative* was established by the previous Government and maintained by the current Government. At its launch the then Minister for Health and Ageing said ‘Much vision loss is potentially avoidable through prevention activities, early detection and intervention. However, many Australians with treatable eye diseases may not seek help until it is too late to be preserved’.

Early detection and prevention are best served by encouraging regular ocular health examinations rather than facilitating ways by which such examinations will be avoided.

Finally, the Intergovernmental Agreement signed by the Australian Government and all States and Territories last year specified that the practice of optometry would be restricted in the National Law to prevent practice by unregistered or unauthorized persons. S 136 as it is now undermines that clear intention.

Consequently, Optometrists Association recommends that S 136 (1) (b) should be deleted.

The removal of the exemption for orthoptists will not prevent orthoptists from performing any of the other tasks and functions that they currently perform and will have a little effect on the work that orthoptists currently do.

## **Uniformity of State & Territory Laws**

The National Law will provide uniformity across the country, but it will also interact with State and Territory laws in areas which will not be covered by it. For optometry there are two areas of potential concern namely, drugs and poisons legislation and the supply of optical appliances. Optometrists Association urges States and Territories to seek to enact changes to their existing laws to secure as uniform an approach as is possible.

### *Drugs and Poisons*

Who may prescribe medicines and which medicines may be prescribed are covered by drugs and poisons legislation which will remain outside the National Law.

If there are differences between how States and Territories legislate here there could be potential problems for practitioners and the National Boards. It is possible that practitioners who work across jurisdictions could inadvertently breach differing requirements. Similarly, the Boards could be involved in disciplinary actions which involve conduct which might be allowed in one jurisdiction but not another.

While we recognize States and Territories have evolved differing drugs and poisons legislation until now, we urge them to seek to harmonise their legislation insofar as is possible to coincide with introduction of the National Law.

### *Supply of Optical Appliances*

Similarly, while S 136 restricts the prescribing of optical appliances, the supply of such appliances is not covered by the National Law.

The supply of contact lenses in particular by unqualified people is a health risk in that contact lenses can damage vision and even cause blindness. SA and Tasmania presently restrict the supply of contact lenses to registered persons. Optometrists Association urges all States and Territories to consider uniform legislation which requires that a valid prescription from a registered practitioner with an expiry date should be required before spectacles and contact lenses can be supplied.