



Submission to the
Health Workforce Principal Committee
Practitioner Regulation Subcommittee on
Proposed Arrangements for information sharing and privacy
December 2008
from
Optometrists Association Australia

Introduction

Optometrists Association Australia is pleased to submit comments on behalf of the optometry profession on the matters raised in the consultation paper *Proposed arrangements for information sharing and privacy*. This submission comments wherever relevant on the proposals in the Consultation Paper from the perspective of optometry.

Optometrists Association continues to support the concept of national registration and accreditation. We reaffirm our support for what we regard as good public policy which is long over-due.

While there remain some aspects of the new scheme which we believe are not yet as they should be, we accept it will be better than what exists and we will continue to work with Australian Governments on remaining matters of concern.

Optometrists Association supports generally the approach proposed in the information sharing consultation paper. Specifically we note that the paper brings into sharper focus three philosophical issues.

Firstly, it reinforces the central role the national professional boards will play. While the boards have always been important parts of the new scheme, it is becoming clear just how much decision-making will and should rest with them. This is consistent with the emerging concept of 'meta-regulation'. This term describes the combining of the statutory powers of government regulation with the professional engagement and responsiveness of self-regulation. Typically, 'meta-regulation' seeks to protect the public interest through high-level statutory rules to ensure practitioner competence decided by governments combined with operation and oversight of these rules through professions or agencies led by professions.

Secondly, as details of the new scheme continue to evolve, the reality that professions alone will fund it (after transition) reinforces the case for professions to control how the resources funded by their members are used. To illustrate, in the context of this paper if governments require statistical data over and above that which professions would otherwise capture for the purpose of registration then professions should decide whether they will accept the additional costs involved. It may be that governments collectively will have to accept that the costs of any creeping 'additionality' will have to be agreed with professions via boards.

Thirdly, proposals in the paper continue to alternate between the prescriptive and the enabling i.e. between 'must' and 'may'. Optometrists Association supports the intention expressed earlier that enabling legislation should avoid prescriptive detail wherever possible. We believe the legislation should empower the national professional boards supported by the national agency to manage as much of the operation of the new scheme as is practical. This should minimize the risk of imposing on all professions requirements that might only be relevant to one profession and maximize the ability of each profession to meet the requirements of the scheme effectively in the context of their own circumstances.

It is also worth noting that the information sharing paper, like the other papers, reminds us again that the primary purpose of the new scheme is protection of the public health. Other worthwhile purposes such as encouraging workforce flexibility should be secondary.

1.5 Principles

The Association endorses these principles.

2 Overview of information required to operate the scheme

Optometrists Association notes the paper confirms the boards will collect and use personal information provided by registrants. The paper also proposes, inter alia, that arrangements will be made to provide de-identified health workforce data to governments as a public resource.

These proposals beg a fundamental question, namely who will own the data so collected?

Optometrists Association believes that data collected from professions by an organization funded by professionals' fees should belong to the professions. The national board is the appropriate agent to own the data on behalf of the profession and to make decisions about how it may be used. It is not clear in the paper that this is intended.

If the board must be a legal entity for it to be able to own data then this possibility should be considered. Optometrists Association does not agree the national agency should own the data and that it necessarily need be the only legal entity in the scheme.

3 Information to be collected

Proposals 3.1.1, 3.1.2 and 3.2.1

Optometrists Association supports the proposed categories of information to be collected.

In respect of employer details, we believe Option 1 is simply impractical and so prefer Option 2. As a general principle, Optometrists Association believes the legislation should as far as practical enable boards to act but avoid prescription. Not all professions are the same and to require all to conform with standard templates might be neither necessary nor practical. Empowering boards to act according to their understanding of the circumstances of their own profession is preferred.

Proposal 3.3.2

We support in principle NEHTA and Medicare Australia being able to use the unique identifier allocated to practitioner in the public interest. We understand here that the privacy of practitioners would be protected and that proposed information sharing would be cleared with relevant boards in advance.

Proposal 3.4.1

Optometrists Association supports identity checks on new registrants and Option 1.

Proposals 3.8.1, 3.8.3 and 3.8.5

Optometrists Association agrees there is public benefit in capturing workforce data for policy and public debate purposes and that such an evidence base should be a public resource. Furthermore, we have no objections to the Ministerial Council requesting boards to gather such data as part of the registration process.

We oppose strongly Proposal 3.8.1 which would give the Ministerial Council powers to specify data which 'must be collected as part of as part of the registration and renewal or registration processes'. We note the assurance that any such compelled data collection would not be 'too burdensome' but regard registration as a measure by which the public can be protected from practitioners who are not competent not about enforcing data gathering.

To the extent that governments might wish professions to gather data additional to that needed for registration they should do so with the professions' cooperation and if necessary, bear some or all of the additional costs of doing so.

Similarly, we do not accept Proposal 3.8.3 which suggests that some of the data collected for workforce planning would by legislation not be available to boards. Data will be gathered from practitioners by boards financed by practitioners' fees. As we said in the introduction, Optometrists Association regards the data so collected as belonging to the professions. The only way in which we would accept boards not being able to access data they collect would be where that data was collected specifically for a government purpose and paid for by government.

Again, Proposals 3.8.4 and 3.8.5 presume the data collected from practitioners at practitioners' expense should be disposed of by the Ministerial Council. Optometrists Association expects that generally participants in the new scheme will behave in a co-operative and public-spirited manner and further that requests for data would be

reasonable and able to be met readily. However, we do not support a process which would compel practitioners to collect data at their cost and then have what happens to that data determined by someone else.

4 Publicly available information

Proposal 4.1.1

Supported with the caution that there is a need here to balance providing the public with useful information and protecting the privacy and security of practitioners. As home addresses are often used as contact addresses we suggest suburbs or postcodes not be included in material released.

Proposal 4.2.1

Supported. We prefer Option3.

Proposal 4.3.1

Optometrists Association suggests this needs more work. Where a restriction on practice can be expressed clearly and is relevant to performance then there can be public benefit in recording that on the register. Recording the existence of a health condition with no further details as is proposed seems likely to be confusing and ambiguous for consumers and an unacceptable intrusion for practitioners. Whatever is decided here, we believe the decision to release any details of health conditions in a particular circumstance would be one for the relevant board and not the agency as proposed.

Proposal 4.5.1

Supported in principle, except that the decision whether to sell data from the register and the fee for doing so should be made by the board and not by the agency.

Proposals 4.6.1 and 4.6.2

Optometrists Association notes tribunals are state or territory agencies that we understand will continue to operate under state and territory legislation. As such whether to publish or not will continue to be a matter for the relevant state and territory legislatures. In principle we would not object to publication of tribunal decisions where there is a public interest to be served. In such cases we prefer Option 2.

5 The privacy regime

Proposals 5.1.1 and 5.2.1

Supported.

7 Information sharing

Proposal 7.2.1

This proposal raises again the question of who owns the data collected and who should bear the costs of, in this case, providing de-identified information to government agencies and researchers. As argued above, Optometrists Association believes the data from practitioners collected at practitioners' expense will belong to the professions. We expect professions through the national boards would generally wish to facilitate research but do not agree that there should be any obligation on the part of professions to provide data automatically. The correct approach here is simply to leave decisions as to whether to provide such data to the boards

Proposals 7.3.1, 7.4.1, 7.5.1, 7.7.1, 7.8.1, 7.12.1 and 7.13.1

Optometrists Association agrees public interest requires that information should be released as proposed here.

8 Health records

Proposal 8.1

Optometrists Association does not support the boards becoming the repository of last resort for patient records without further consideration. While this is a problem that should be addressed by health administrators, we doubt it should be part of a registration scheme.