

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

CONSULTATION PAPER

Other matters for inclusion in Bill B

**SUBMISSION FROM THE OPTOMETRISTS REGISTRATION BOARD OF
TASMANIA**

(COMMENTS HIGHLIGHTED IN YELLOW)

Proposal 3.5.1: It is proposed that the second stage legislation provide a broad delegation power (as in Clause 46 of the National Law Bill), that would allow a national board to delegate any of its functions, including all of the key decisions listed above, to committees of the board or to staff or other persons, other than the power of delegation. Under such an arrangement, a board would have the discretion to determine the constraints or boundaries placed on any delegation, as well as the number and make up of any committees it requires in order to make key decisions listed above.

Response
Supported

Proposal 3.5.2: It is proposed that the only statutory committees in the new scheme would be panels convened for the purposes of hearing individual matters (health, performance or conduct).

Response
Supported

Proposal 3.5.3: It is proposed that the legislation require a minimum of three members on a panel for the purposes of statutory decision-making with at least 50 per cent and no more than two thirds of the members being registrants from the profession concerned and at least one member being a community member.

Response
Supported.

Proposal 3.5.4: It is proposed that the legislation provide that a panel should not include any person who was a member of the board or committee that took the decision to refer the matter to the panel.

Response
Supported

Proposal 3.5.5: It is proposed that where a board establishes any committee other than a statutory committee or panel that the composition is not prescribed in legislation but rather is a matter for the board to determine in line with any directions from Ministerial Council.

Response
Supported

Proposal 3.6.1: It is proposed that the legislation provide for safeguards relating to the delegation of board powers as follows:

- a delegation must be in writing and specify the person or persons to whom the delegation made, the decision or decisions that may be taken under delegation, and the period to which the delegation relates, as well as any conditions the board has attached to the exercise of the decision making under delegation, and include the ability to rescind a delegation

- a right of review for a person whose interests are affected by a decision made under delegation similar to the rights of review against decisions of the board itself (with powers for the board to delegate the conduct of such a review)
- a statutory limit on the length of time a practitioner's registration may be suspended without review by the board (or delegate of the board)
- a right of review for key registration and panel hearing decisions, as outlined in section 10 of the complaints consultation paper, to the relevant State or Territory tribunal for decision
- general and specific provisions with respect to conflicts of interest that require a person to exclude themselves from decision-making in the event of a conflict, including, for example, where a small number of practitioners operate in a single geographical area, and
- general provisions with respect to procedural fairness, such as separation of powers between original decision making and review of decisions.

Response
Supported

Proposal 4.1.1: With respect to advisory committees, it is proposed that the legislation, while providing powers for boards to establish such committees, would be silent on the process through which a board might select members of its advisory committees. This would afford a board maximum flexibility to determine their terms of appointment.

Response
Supported

Proposal 4.1.2: The stakeholders are asked to advise of their preferred option for appointments to committees to which board powers are delegated.

Response
Option 1 Supported

Proposal 4.1.3: Stakeholders are requested to advise of their preferred option for appointments to statutory hearing panels.

Response
The Board supports Option 1 with an ability to expediting appointments to panels where appropriate expertise is not available in the nominations received through the public process

TABLE 1: State and Territory laws that will interface with the national registration scheme

Interface	Proposed approach
<i>Freedom of information</i>	<p>In order to ensure transparency and accountability in the operation of the national scheme, it is considered desirable that it be subject to a single freedom of information regime rather than multiple regimes, and that there be clarity for any person making an FOI application as to which legislative scheme applies.</p> <p>The National Law Bill gives effect to Option 1, that is, the Queensland <i>Freedom of Information Act</i> applies during the establishment phase of the scheme. However, in framing the second stage legislation, it is possible that either the Commonwealth or the Queensland FOI legislation might apply.</p> <p>Proposal 5.2.1: With respect to freedom of information, it is proposed that the Commonwealth <i>Freedom of Information Act</i> apply (Option 1).</p> <p>Response As this is to be a national scheme, Commonwealth legislation should be used for national consistency where possible. The Board is unsure of the full legal implications of this proposal and would like to see further analysis of any differences between State and Commonwealth legislation.</p>

Interface	Proposed approach
<p>Privacy & confidentiality</p>	<p>With respect to confidentiality and lawful disclosure provisions, the National Law Bill gives effect to Option 4 (tailor made provisions). It is expected that the second stage legislation will contain similar provisions imposing obligations on those administering the scheme (such as board members, committee members and staff) to keep confidential any information they obtain in the course of carrying out their responsibilities.</p> <p>Proposal 5.2.2: With respect to confidentiality and lawful disclosure, it is proposed that tailor made provisions along the lines of Clause 53 of the National Law Bill be included in the second stage legislation (Option 4).</p> <p>Response Supported</p> <p>With respect to privacy law, the question of which privacy regime should apply to the national scheme has been addressed in a separate consultation paper titled 'Privacy and Information Sharing' with various options proposed. The Australian Law Reform Commission's report on Australian Privacy Law and Practice has found Australia's privacy laws to be multilayered, fragmented and inconsistent, causing complexity, significant compliance burdens and costs, as well as impeding projects in the public interest.</p> <p>Changes are expected in privacy regimes as a result of the report. Flexibility to adjust to future changes can be included in the national legislation.</p> <p>Proposal 5.2.3: With respect to the application of a privacy regime, it is proposed that the existing Commonwealth private sector privacy regime and the National Privacy Principles apply, and are incorporated by reference into the national scheme legislation (Option 1).</p> <p>Response Supported</p>

Interface	Proposed approach
<p><i>Ombudsman legislation</i></p>	<p>All States and Territories and the Commonwealth have enacted ombudsman legislation (see Attachment 5 in complaints consultation paper for summary of laws).</p> <p>The National Law Bill gives effect to Option 1, that is, the Queensland <i>Ombudsman Act</i> applies. However, further work is underway to analyse the implications of Option 1 (one jurisdiction's law applies) and Option 2 (all applicable State and Territory laws apply) with respect to the full operation of the scheme, in order to determine a preferred position to put to Ministers. Given the need for consistency across Australia, the Commonwealth <i>Ombudsman Act 1976</i> is preferred..</p> <p>Proposal 5.2.4: With respect to ombudsman legislation, it is proposed that the <i>Commonwealth Ombudsman Act 1976</i> apply (Option 1).</p> <p>Response As this is to be a national scheme, Commonwealth legislation should be used for national consistency where possible. The Board is unsure of the full legal implications of this proposal and would like to see further analysis of any differences between State and Commonwealth legislation.</p>
<p><i>Financial accountability legislation</i></p>	<p>The National Law Bill gives effect to Option 4 (tailor made provisions). This approach is considered to provide the necessary financial, auditing and reporting accountabilities. It is possible for additional provisions to be included in the second stage legislation to ensure a suitable financial accountability framework to support the full operation of the scheme, for example, to provide clarity as to the investment powers of the national agency.</p> <p>Proposal 5.2.5: With respect to financial accountability, it is proposed that tailor made provisions be included in the second stage legislation (Option 4).</p> <p>Response Supported</p>

Interface	Proposed approach
<p>Public sector administration legislation</p>	<p>The National Law Bill gives effect to Option 4 (tailor made provisions). This approach allows staff to be employed directly by the national agency, under relevant awards, rather than as Queensland public servants.</p> <p>This approach appears to provide the necessary independence and flexibility for the national scheme and is proposed to be carried forward in the second stage of legislation.</p> <p>Proposal 5.2.6: With respect to the employment arrangements and accountability of staff and board members under the scheme, it is proposed that tailor made provisions be included in the second stage legislation (Option 4).</p> <p>Response Supported</p>
<p>Statutory interpretation legislation</p>	<p>The National Law Bill gives effect to Option 4 (tailor made provisions). The approach taken is to apply the interpretation provisions in Schedule 2 of the <i>Consumer Credit Code</i>, set out in the <i>Consumer Credit (Queensland) Act 1994</i>, to the National Law as if the provisions were a part of the National Law.</p> <p>Tailor made provisions are considered to provide the necessary clarity, certainty and consistency of interpretation of the legislation across jurisdictions (rather than multiple Acts interpretation regimes applying). It is proposed that tailor made provisions be included in a Schedule attached to the National Law in the second stage legislation, rather than adopted by reference from the Consumer Credit Code.</p> <p>Proposal 5.2.7: With respect to statutory interpretation, it is proposed that tailor made provisions be included in the second stage legislation (Option 4).</p> <p>Response Supported</p>

Interface	Proposed approach
<p>Warrant powers</p>	<p>The consultation paper on complaints proposes Option 2 (all State and Territory laws apply). This would mean that when a national board requires a warrant to enter and search premises, it would make application to the relevant State or Territory Magistrates Court (or equivalent).</p> <p>Proposal 5.2.8: With respect to warrant powers, it is proposed that the national scheme legislation require application for a warrant to be made via existing State and Territory legislation (Option 2).</p> <p>Response As this is to be a national scheme, Commonwealth legislation should be used for national consistency where possible. The Board is unsure of the full legal implications of this proposal and would like to see further analysis of any differences between State and Commonwealth legislation.</p>
<p>Working with children checks legislation</p>	<p>It is proposed that Option 2 (all State and Territory laws apply).</p> <p>Protocols will be required between the national agency and State and Territory agencies that administer the working with children checks, to deal with how the agencies interact with respect to applications for checks, when matters affecting eligibility status come to the attention of either party, and the obligations on parties to inform each other.</p> <p>Proposal 5.2.9: With respect to working with children legislation, it is proposed that existing State and Territory legislation, where it exists, continues to apply (Option 2).</p> <p>Response As this is to be a national scheme, legislation should be nationally consistent.</p>

Interface	Proposed approach
<p>Special events legislation</p>	<p>It is proposed that Option 2 (all State and Territory laws apply).</p> <p>Special events legislation will no longer need to apply to practitioners from interstate (since they will be nationally registered). However, jurisdictions may still wish to have capacity to streamline arrangements through which practitioners from overseas visiting for large events are conferred with various authorities and/or exempted from committing holding out and other offences. Consequential amendments in Bills C may be required. Protocols may also be required between those State and Territory government departments responsible for administering special events legislation, and the national boards.</p> <p>Proposal 5.2.10: With respect to special events legislation, it is proposed that existing State and Territory legislation, where it exists, continues to apply (Option 2).</p> <p>Response Supported</p>

6 Trans-Tasman Mutual Recognition and the national scheme

It is important that the national scheme is implemented in a way that implements the Trans-Tasman Mutual Recognition Principle with respect to the regulated health professions, that is, that a practitioner registered in an equivalent occupation in New Zealand is automatically eligible for registration in that occupation in Australia and vice versa. It is intended that existing linkages, for example, between national accreditation bodies and the equivalent registering authorities in New Zealand be maintained and strengthened, and that existing joint standard setting and assessment processes continue.

Proposal 6.1: It is proposed that the national scheme legislation and any consequential amendments be framed in a way that allows for the Trans-Tasman Mutual Recognition Principle, and preserves the linkages between Australian and New Zealand regulatory authorities and supports joint standard setting and accreditation.

Response Supported