

**SENATE COMMUNITY AFFAIRS COMMITTEE**

**ENQUIRY REGARDING**

**NATIONAL HEALTH REFORM AMENDMENT  
(NATIONAL HEALTH PERFORMANCE AUTHORITY)  
BILL 2011**

**SUBMISSION BY THE**

**AUSTRALIAN OSTEOPATHIC ASSOCIATION**

**APRIL 2011**



## EXECUTIVE SUMMARY

- In respect of the Principal Act, the Australian Osteopathic Association (AOA) remains concerned, as we were last year, that the ACSQHC should include qualified allied health professionals (including osteopaths) on its staff and in the governance arrangements. Amendments to the Principal Act are proposed to ensure this.
  
- Regarding the proposed Performance Authority, AOA
  - notes the potentially very wide scope of the Authority;
  - requests clarification, therefore, whether the osteopathic profession is intended to be within the Authority's purview;
  - requests that, if osteopaths are included, appropriate governance arrangements are made to ensure there is an adequate understanding of our profession.
  
- AOA may seek an opportunity to comment further, once clarification of the Government's intention regarding our profession is available.

## **THIS SUBMISSION**

The Australian Osteopathic Association (AOA) represents the interests of Australian Osteopaths. Our profession is about 2000 strong and growing rapidly.

Our growth is a function of public demand for our services, despite little support from public subsidies available in massive amounts to the medical profession.

This supports is available, not only through Medicare benefits, very few of which are available to our patients. Also, however, medical practitioners have access to a wide range of support and assistance to help run their practices. No such support is available to our profession.

We ask the Committee to bear these realities in mind in considering our submission.

## **WHAT THE BILL DOES**

This Bill represents another go at legislating the Government's national health reforms, in light of the compromises arising out of COAG's most recent discussions on the matter.

Last year's Bill (the Principal Act), was the *National Health and Hospitals Network Bill 2010*. On 19 July 2010, we lodged with your Committee our submission on that Bill. A copy of the Executive Summary is at Attachment 1. We pointed out that the "Networks" were nowhere dealt with. The Bill did no more than establish, by Statute, an already existing agency. That is the Australian Commission on Quality and Safety in Health Care (ACSQHC).

Items 1-129 of Part 1 of the Schedule to the new Bill are largely procedural. They accommodate the new reality that the Act, as to be amended, will include not only the already-created ACSQHC. It will also create the new "National Health Performance Authority" (Item 130 – new Chapter 3).

## **LAST YEAR'S BILL – THE ACSQHC**

AOA has reviewed the proposed amendments in items 1-129 in the light of the submission we put to the Committee last year. We have also taken into account what new information has been made available.

In particular, we have taken into account the little that is known about the “Hospital Networks” and “Medicare Locals”.<sup>1</sup>

We see no reason to vary the points made about last year’s Bill. We again respectfully submit to the Committee that the observations and recommendations we made then remain valid under present circumstances.

**We ask the Committee, therefore, to review our previous submission and adopt the recommendations we made. (See Box).**

### **Recommendations to Community Affairs Committee in 2010**

We recommend that the Committee:

- support passage of the legislation;
- recommend amendments of the kind proposed in Attachment 1;
- support our proposal that the Minister ensure allied health professionals are involved in governance and operations of the ACSQHC;
- note professional osteopaths’ continuing concern that unqualified people may now manipulate the spine, other than the cervical spine; and
- support AOA’s proposal that the ACSQHC investigate the above matter urgently.

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<sup>1</sup> At Attachment 2 is a copy of AOA’s submission to the Department of Health and Ageing in response to their consultation paper on Medical Locals. It will be seen from that submission that we believe many issues require clarification. There has been no reaction to our submission from the Department.

AOA respectfully points out that the Committee did not appear to have addressed these recommendations last year. No doubt the press of business at the end of the Parliament could have been the reason. However, we would now submit our concerns again. In particular, we are very concerned about the relaxed conditions for spinal manipulation by unqualified persons.<sup>2</sup>

## **THIS BILL – WHY TWO AGENCIES?**

According to s. 9 of the Principal Act, the main functions of the ACSQHC is:

“to promote, support and encourage the implementation of arrangements, programs and initiatives relating to healthcare safety and quality matters.”<sup>3</sup>

Under s. 60 of the new Bill, the main function of the Performance Authority is said to be

“to monitor, and prepare reports on, matters relating to the performance of [hospitals and other healthcare providers].”<sup>4</sup>

It is hard to see why one single agency could not be designed to deal with the above matters. There are clearly large areas of overlap.

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<sup>2</sup> The Committee will be aware that there have been serious administrative failures with the new National Registration Authority, which began operations last July. AOA will be making a submission to the Senate inquiry on this matter. We will be pointing out that the uncertainty of some practitioners' legal status (because of computer failures), and the lax provisions on spinal manipulation, continue to create a very risky situation, for patients and practitioners alike.

<sup>3</sup> Para 9 (1)(a) of the Principal Act.

<sup>4</sup> Sub-s. 60 (1) of the new Bill.

## THE NEW BILL – THE PERFORMANCE AUTHORITY

In her Second Reading Speech, the Minister described the Authority a

“the new watchdog for Australia’s health system”.

It is of some concern to the osteopathic profession to know

- will the watchdog be watching them?
- how will it do this?
- who will the watchdogs be?
- will they have any professional skills or knowledge of our profession?
- once the dog has watched, what will be its bark and what, more importantly, its bite?

Another set of questions relate to the interaction of the various agencies either in existence or to be set up as part of the health reforms. So we ask – how will each of the agencies listed below work with each other? In the event of disagreements, who arbitrates?

- the ACSQHC;
- State Health Departments;
- Medicare Locals;
- Hospital Networks;
- the National Registration Authority;
- Clinical groups.

These questions might be thought to be not relevant to the present Bill. However, we ask the Committee to look closely at section 60 (1)(a) of the Bill. This lists five entities whose performance – a term not defined in s. 5 – is to be monitored and reported on.

Items (i) to (iii) clearly refer to hospitals<sup>5</sup>, which are the principal beneficiaries of the COAG accord. Items (iv) and (v), however, could be anyone or anything:

- Item (iv) – “primary health care organisation” is to be defined in s. 5 as  
“a body or organisation of a kind specified in a legislative instrument ...”<sup>6</sup>

There is nothing in the Minister’s Second Reading Speech or the Explanatory Memorandum to say what the legislative instrument will provide. Clearly, however, osteopathic practices, which provide primary healthcare, could be caught by the instrument.

- Item (v) is even more problematical, because it includes within the Authority’s purview **anything else** to do with healthcare not covered by items (i) to (iv). It is, moreover, unclear who decides that a body – **or organisation** – provides health care. This catch-all clause could apply to the AOA itself, or any other professional association.

It seems to us that the possible scope of the Authority goes, or could go, well beyond the public sector, or beyond those healthcare professionals who receive significant public funding. As we have mentioned above, osteopaths receive virtually no public assistance. We have estimated that something like 5% of our fees are funded by Medicare to our patients.

We ask, therefore, what could, or should, the Performance Authority have power to do with respect to the osteopathic profession? That is, in addition to the functions of the ACSQHC and/or the National Registration Authority?

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<sup>5</sup> Sub-section 60 (2) makes it clear that things done in hospitals, for example by private practitioners (including osteopaths) are deemed to be done by the hospitals.

<sup>6</sup> Emphasis added. Use of “of a kind” suggests that actual entities will not be specified, it be left presumably to the Authority to say: “you are included” or not.

**We respectfully request the Committee to seek clarification on these issues from the Minister or Department. We are not in any position to comment more particularly on this part of the Bill in the absence of such clarification.**

## **OSTEOPATHS' CO-OPERATION WITH HEALTH REFORMS**

Osteopaths are one of the “allied health professionals” that are referred to in the various health reform proposals. Yet the osteopathic profession is never referred to specifically. Still less is there ever any discussion about how osteopaths fit into the new arrangements.<sup>7</sup>

Nevertheless, our profession is keen to make a contribution and we will do so, if asked, on the basis of mutual professional respect.

## **RECOMMENDATIONS**

**We recommend that the Committee**

- **adopt the recommendations we made to the Committee last year about the Bill that has become the Principal Act (see Box above);**
- **seek clarification about the scope of proposed sub-s. 60 (1) in the new Bill, in particular as to its application or potential application to the osteopathic profession;**
- **note that, once such clarification is available AOA may seek to address the Committee further; and**

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<sup>7</sup> See Attachment 2, regarding Medical Locals. Eventually, we would like to know how, if at all, osteopaths fit in with the ML proposal and, if so, what say we may have in their governance.



- **note that osteopaths remain very concerned that unqualified persons can manipulate the spine, and that it is only a matter of time for serious consequences to result from this situation.**

**National Health and Hospitals Network Bill 2010 – Executive Summary**

- The Australian Osteopathic Association represents the interests of Australian osteopaths.
- As such, the AOA is vitally interested in how the proposed health reforms are given effect.
- The present Bill's title belies its purpose. The National Hospital and Health Network is **not** the subject of the Bill.
- Details of what the NHHN is, how it will work, and governance arrangements, remain unknown. Australian osteopaths are keen to cooperate in a professional way with whatever emerges.
- The Bill does establish by statute the already existing Australian Commission on Safety and Quality in Health Care (ACSQHC).
- We consider that allied health professionals (one of whom osteopaths are) should be explicitly represented in the governance arrangements for the ACSQHC. We propose appropriate amendments to the Bill for this purpose.
- Osteopaths will be pleased to cooperate with the Commission. We point out that our profession has an excellent safety record. It seems, however, that the Commission will have no powers to enforce its standards. Everything it does must go to the individual State Governments.

AOA remains very concerned that spinal manipulation, other than of the cervical spine, can be lawfully performed by unqualified persons. This is a matter for urgent consideration by the ACSQHC.