Optometry Australia

Submission into the review of the National registration and accreditation scheme for health professions

October 2014
Attention:
Mr Kim Snowball
Independent reviewer
On behalf of the Australian Health Ministers Advisory Council (AHMAC)

Introduction
Optometry Australia welcomes the opportunity to provide a considered response into the review of the National registration and accreditation scheme for health professions (August 2014).

Optometry Australia is the national peak body for the optometry profession, comprising a membership base of over 90% of registered optometrists in Australia. The optometry profession consists of a workforce of approx. 4,788 nationally registered optometrists. As the cornerstone of primary eye care in Australia, optometry plays a central role in the prevention, early detection and management of eye disease and vision loss.

Optometry Australia was an early supporter of the National Registration and Accreditation Scheme (NRAS) and four years on we believe this approach has been to the significant benefit of professions, practitioners, governments and the community.1 Despite this, the NRAS is not without its challenges and our submission addresses in detail the key issues impacting the optometry profession in particular.

Key Recommendations
Based upon the issues raised and discussed by the reviewer, Optometry Australia makes the following key recommendations:

i) The Optometry Board of Australia is preserved as an independent entity providing national representation, leadership and innovation, and is well-placed to continue to work with all governments.

ii) Existing powers of National Boards are preserved which allow the appointment of external bodies to manage accreditation functions.

iii) A Chairperson of a profession-specific National Board must be a current registered practitioner in that profession and hold the respect of his/her peers and other key stakeholders.

iv) Improvements are made to the existing complaints and notifications process where both notifiers and practitioners are provided timelier, clearer and more transparent information throughout the processes’ entirety.

v) Key performance measures and defined timeframes for the management of complaints and notifications are adopted nationally and are periodically reported upon to Health Ministers, National Boards and the public.

1 Optometry Australia submission. September 2008. Response to the National Registration and Accreditation consultation paper.
vi) The Optometry Board of Australia is granted more flexible powers to adopt alternative dispute resolution arrangements where there is appropriate consent between all parties.

vii) National Law is amended so that provisions for mandatory notifications are consistent with the current exemptions in Western Australia.

viii) Residual regulatory issues consequential to National Law such as the supply of optical appliances and use of scheduled medicines by optometrists, are resolved in a manner which provides national uniformity.

ix) National Law is amended to provide greater clarity on the regulation of testimonials permissible by practitioners and health services.

The remainder of our submission provides responses to key questions within the consultation paper.

Should a single Health Professions Australia Board be established to manage the regulatory functions that oversee the nine low regulatory workload professions?

Optometry Australia does not support the proposed option to dissolve the nine identified Boards with a relative low-regulatory workload (including optometry) into a single Health Professions Board, citing inefficiencies. By contrast, we strongly support the preservation of the independent, existing national Boards and their primary functions including the Optometry Board of Australia, in the interests of appropriate regulatory oversight and public safety. We oppose the option to dissolve the nine-identified national Boards for several reasons:

• The number of complaints and notifications in isolation is not a sound indicator of regulatory requirements and hence does not support the proposal;
• Current registration fees are not a barrier to optometrists seeking registration and have actually decreased for each of the past two years;
• A single health professions board would not have the necessary profession-specific expertise and knowledge to fulfil the requirements of nine individual health professions;
• As optometry is a rapidly growing and evolving health care profession, significantly scaled-back regulatory oversight would only be to the detriment of the future needs of the profession and inversely impact upon the eye health needs of the broader community;
• Establishing a single Health Professions Board increases the risk of greater divisions between medicine and other registered providers of health care.

Optometry Australia does not consider the number of complaints and notifications in isolation as a sound indicator of the regulatory requirements of a health profession as suggested by the reviewer. By contrast, it may actually reflect effective and efficient regulatory function. A range of other factors needs to be considered in addition to the number of formal notifications including the level of ‘risk’ to public safety, based upon each profession’s unique health care characteristics and delivery model. Optometrists provide a highly sophisticated level of clinical care (in both independent and co-management circumstances), using specialised equipment and they are also
trained to prescribe and administer topical scheduled medicines for various eye conditions. In the context of the clinical role of optometrists in caring for the community’s primary eye health needs, dissolving the Optometry Board of Australia is neither desirable nor logical.

The reviewer cites greater efficiency as rational for the possible establishment of a single health professions board and notes that optometry is a profession incurring higher costs than the regulatory workload indicates. Although Optometry Australia believes fees should be minimised as much as possible, we do not believe fees currently inhibit optometrists seeking registration, and we do not believe current registration fees are viewed as exorbitant by the profession, noting that fees have reduced for each of the last two consecutive years. Such circumstances do not seem to justify the measure being considered given the risks to professional practice and community safety.

The capacity for a single Health Professions Board to fulfil the requirements of nine separate health professions seems highly problematic and we feel this proposed option undervalues the important role that the existing nine Boards play in providing appropriate regulatory oversight for their profession. National Boards set content-specific regulatory policy and develop various registration standards, policies and guidelines, all of which requires substantive content knowledge to ensure practitioners are able to effectively and easily benchmark their practice within the evidence-base and context of their profession.

The future requirements of each profession and their capability to respond to the growing primary eye care needs of the community must also be considered. Economic and demographic factors such as an increasing optometric workforce, expanding scope of practice and an ageing population associated with a rising prevalence of eye and vision conditions mean optometry will continue to require independent regulatory and strategic oversight, allowing flexible and proactive responses to the changing needs of the community. The ‘promotion of access to health services’ and ‘development of a flexible, responsive and sustainable workforce’ are key objectives under the NRAS. Notwithstanding the need to scrutinise the safe provision of various healthcare services, it is an unrealistic expectation for a single national Board to provide the necessary capability and heterogenic expertise to address important issues related to access and workforce across different professions in an effective or efficient manner.

In recent times, Australia’s health care system has taken significant strides toward achieving a patient-centred approach to health care provision, such as better multi-disciplinary collaboration across health care professions (e.g. co-management arrangements between optometry and ophthalmology). Optometry Australia believes dissolving the nine identified boards into a single health profession board would be a retrograde step in that it would only foster further divisions between medicine and other essential forms of health care and presents a potential future risk to the protected title of those professions. It is vital profession-specific Boards are maintained to continue effective collaborative relationships between professions.

Accordingly, any governance reform of the NRAS should also consider the potential impact and synergies with other national health priorities and objectives which aim to improve the effective delivery of health care such as national quality and safety initiatives, improving consumer
participation and access, and the capacity for professions to close the gap on Indigenous health disparities.

Taking all these factors into consideration, it is vital the Optometry Board of Australia is maintained to provide national representation, leadership and innovation, and is well-placed to continue to work with all governments.

**Alternatively, should the nine National Boards overseeing the low regulatory workload professions be required to share regulatory functions of notifications and registration through a single service?**

Optometry Australia does not support the sharing of regulatory functions between National Boards, including the management of complaints and notifications.

In considering the purpose of the review, Optometry Australia in principle feels there could be potential merit in sharing some non-profession specific, administrative functions between the identified nine National Boards in order to realise some efficiencies. However, given the ongoing confusion around the delineation of roles between AHPRA and Boards, we are relatively unclear which specific administrative functions could suitably be shared that is not already.

First and foremost, any potential consolidation of administrative functions must not be to the detriment of the existing national boards in terms of their ability to drive regulatory policy, direct complaints and notifications processes, develop profession-specific registration standards, codes and guidelines and effectively communicate to notifiers and practitioners. Boards must also maintain control over any profession-specific sub-committees in order to perform their duties appropriately.

We recommend that if reform is to be pursued, further analysis should be undertaken to assess the practical feasibility of sharing some administrative functions under boards, including the role and capacity of AHPRA to provide the necessary administrative support above its current capacity.

In summary, Optometry Australia strongly supports the retention of the existing nine identified boards, including the Optometry Board of Australia, and their ability to carry out regulatory functions independently (option 3). We note there could be potential opportunity to share some administrative functions under boards but these should be of a generic nature only and should not include regulatory functions which require profession-specific knowledge or expertise, especially complaints and notifications.

**Should savings achieved through shared regulation under options 1 or 2 be returned to registrants through lower fees?**
If any NRAS governance restructuring is pursued, it is logical for savings realised to be passed onto registrants of the professions affected by virtue of lower fees. However as outlined above, we do not support dissolving National Boards.

**Should the appointment of a Chairperson be on the basis of merit?**

Optometry Australia strongly supports the existing regulation under National Law for the Chairperson of each National Board to be a registered practitioner in that particular profession. It is paramount the Chair is a registered practitioner who intricately understands the professional landscape and the full impact of strategic decisions. The appointment of Chair should be on the basis of merit; where the person is a registered practitioner in their particular profession and has the appropriate professional respect of their peers and other stakeholders. We also support the principle of consumer participation on national boards. Consumer representation in healthcare governance has been shown to be beneficial to strategic planning and decision-making and acknowledges the central role of consumers in Australia’s health care system. We believe the contribution made by the existing consumer representation on the OBA has been most valuable and we support ongoing consumer involvement.

**Is there an effective division of roles and functions between National Boards and accrediting authorities to meet the objectives of National Law?**

Optometry Australia believes National Law outlines an effective delineation of roles between National Boards and accreditation bodies and we support the prerogative of National Boards to appoint external bodies to undertake accreditation functions as deemed necessary.

Given Boards are responsible for the registration of practitioners, we support the continuation of the existing arrangements where National Boards are responsible for approving accreditation standards developed by accreditation bodies and that accreditation bodies are ultimately accountable to National Boards for accreditation functions.

From an optometry perspective, we believe the Optometry Board of Australia and the Optometry Council of Australia and New Zealand (the optometry accreditation body) work in a positive and collaborative manner to achieve accreditation objectives under National Law.

Although not indicated by the reviewer, we would oppose any future steps to consolidate accreditation functions across professions, in the same way that we oppose the consolidation of regulatory functions across National Boards.

**How effective are the current processes with respect to assessment and supervision of overseas trained practitioners?**
We believe the current process and responsibility of the Optometry Council of Australia and New Zealand to assess overseas-trained optometrists is working effectively.

**Should the Australian Health Workforce Advisory Council be reconstituted to provide independent reporting on the operation of the National Scheme?**

Providing it does not unnecessarily increase bureaucracy and complexity and there is appropriate transparency, Optometry Australia feels reconstituting the Australian Health Workforce Advisory Council could add value to the effective reporting of National Law to governments.

**Should the Australian Health Workforce Advisory Council be the vehicle through which any unresolved cross-professional issues are addressed?**

In principle, Optometry Australia believes there should be some mechanism under National Law to help address cross-professional points of conflict; however more clarity and detail regarding the possible role of the Australian Health Workforce Advisory Council in facilitating this is required. We believe the Australian Health Workforce Advisory Council would need to assess issues with a focus on pursuing the evidence and remaining true to the intent of National Law and associated inter-Governmental agreements. The composition of a re-constituted Australian Health Workforce Advisory Council would need to reflect fairness and it will be important that no one profession is seen to be privileged by virtue of over-representation, while ensuring that they are respected across the professions and the community.

**Should there be more flexible powers for National Boards to adopt alternative dispute resolution, for instance to settle matters by consent between the Board, the practitioner and the notifier?**

Optometry Australia supports the Optometry Board of Australia having more flexible powers to adopt alternative dispute resolution arrangements where there is appropriate consent between all parties, thereby fostering improved cost and time-effective processes.

Feedback provided to Optometry Australia from optometrists with a complaint/notification made against them is consistent with the reviewer’s observations:

- Insufficient feedback provided by AHPRA to the practitioner by way of communication, information and clarification on notification matters;
- Lengthy time-delays in the provision of information from AHPRA to the practitioner resulting in inadequate responsiveness;
- Minimal guidance/support on how to satisfy notification conditions arising from investigation outcomes; and
• Poor advice on what can be notified and the role of AHPRA versus the role of alternative resolution mechanisms.

As outlined by the reviewer, there were 9.1 notifications per 100,000 optometrists, representing 0.5% of all health practitioner complaints nationally in 2012-13. The Optometry Board of Australia imposed conditions on one practitioner with all others having no further action taken against them in regards to the notification (excl. NSW where a co-regulatory arrangement exists). According to the Optometry Board of Australia, the predominant nature of the complaints made against optometrists was communication-related issues between practitioner and patient. Our experience with assisting members of our profession who have had a complaint made against them is that the majority of notifications are customer service-related, for example a dispute over a product refund, and not related to performance or conduct.

Given the low-risk nature of most complaints made against optometrists, providing the Optometry Board of Australia with more flexible powers to implement alternative dispute resolution arrangements (such as conciliation) seems a logical course of action (we acknowledge that under current arrangements, Boards can refer complaints back to a jurisdictional entity to manage in a conciliatory way, where such options are available at the jurisdictional level). The option for alternative dispute resolution under many circumstances would mitigate unnecessary stress on the practitioner, satisfy the notifier and improve overall efficiency by allowing the system to handle higher-risk notifications such as those directly related to public safety in both a cost-effective and time-effective manner.

Is there sufficient transparency for the public and for notifiers about the process and outcomes of disciplinary processes?

Optometry Australia supports improvements to the current notifications system where clearer, transparent and timely information is provided to both notifiers and practitioners throughout the entirety of the notifications process, as stated above.

To achieve greater transparency and clarity, Optometry Australia supports the proposed outlined amendments to National Law under sections 167, 177 and 180.

Should performance measures and prescribed timeframes for dealing with complaints and notifications be adopted nationally?

Optometry Australia supports the establishment of key performance indicators (KPIs) to assess the timely and effective management of notifications by national boards and AHPRA. We believe these KPIs should be adopted nationally to provide consistency for practitioners and be periodically reported upon to national boards and the public. This would also serve to improve transparency and

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public confidence in the process. However, consistent with practitioner experience, we note results from the initial 12-months of monitoring against KPIs shows current AHPRA performance is well below expectations and the cause of this under-performance is being examined. We would welcome AHPRA sharing the outcomes from their exploration into notifications performance and any subsequent opportunity to provide input into measures and strategies to improve performance.

**Should the co-regulatory approach in Queensland, where complaints are managed by an independent commissioner, be adopted across all States and Territories?**

Optometry Australia does not support expansion of a co-regulatory model and believes there should be national uniformity of the management of complaints and notifications.

Complaints and notifications processes should be consistent across jurisdictions for both practitioners and patients and we believe the principle of a co-regulatory model runs counter to this and the objectives and broader principles of the NRAS.

A robust national notification process is vital to ensure uniform standards are maintained for practitioner health, performance and conduct and that patient safety is not compromised. Optometry Australia supports a regulatory model where health professions are ultimately assessed by their peers (and noting the positive contribution of consumer involvement on the OBA and the Registration and Notifications Sub-Committee).

It is not uncommon for optometrists to provide eye care services across jurisdictional borders such as those involved in the Visiting Optometrists Scheme (VOS) and other outreach programs. Co-regulatory models adopted in some jurisdictions increase the likelihood of inconsistencies in the manner in which complaints are acted upon and outcomes arising from similar notifications, potentially compromising public confidence and practitioner fairness.

Ideally, a single-entry point for handling complaints and notifications would be desirable and minimise unnecessary confusion and complication for complainants; the existence of co-regulatory models makes this difficult to achieve. Complaints should be given full and fair consideration, and this requires a process of board assessment of the actions taken. Specific co-regulated approaches that have been established do not support this. Notably, in Queensland, complaints are managed by the Health Ombudsman who is provided with authority to act on complaints and notifications without a requirement to consult with practitioners within the relevant profession. We believe this does not support the most informed decision-making regarding assessment of a health practitioner’s clinical care or practice behaviours and as a system, lacks the required checks and balances and procedural fairness. This is significant as these decisions affect not only public safety, but also the reputation, career and livelihood of the health practitioner in question, as well as (potentially) accessibility to health care services in the practitioner’s local catchment.
Should the mandatory notification provisions be revised to reflect the exemptions included in the Western Australian and Queensland legislation covering health practitioners under active treatment?

Optometry Australia supports the proposal to amend National Law to be consistent with the exemptions in Western Australia and Queensland. This would provide national uniformity and encourage care/help-seeking behaviour among practitioners (thereby protecting the public).

What other changes are required to improve the existing complaints and notifications system under the National Scheme?

In addition to the points raised above on how to improve the notifications process, Optometry Australia believes there is an additional area relating to professional conduct which does not seem to be addressed by National Law. Although the ultimate responsibility for professional conduct lies with each individual practitioner, there is also a responsibility and accountability of practice owners and health service employers to ensure individual practitioners are able to deliver services in line with their scope of clinical practice and the clinical needs of their patients. Consideration should be given to how the National Law or alternate instruments may protect employee practitioners from potential outward pressures and influences so they can deliver services in a way that is clinically appropriate and aligns with their respective professional code of conduct and standards.

How should the National Scheme respond to differences in States and Territories in protected practices?

As outlined by the reviewer, there are some regulatory inconsistencies in the protected practices across Australian jurisdictions, including optometry. Optometry Australia supports measures which seek national uniformity regarding residual regulatory issues from where the National Law ends and State and Territory laws continue. This includes the supply of optical appliances and the use and prescription of scheduled medicines by optometrists. These inconsistencies increase the risk for harm to patients and inadvertent regulatory breaches by optometrists practising in multiple states and territories. Consistent with the objectives of the National scheme, Optometry Australia believes these areas should be the focus of the next phase of national regulatory reform which seeks uniformity across jurisdictions.

Supply of optical appliances

Section 122 of the National Law makes it an offence for anyone other than an optometrist or medical practitioner to prescribe optical appliances. As the National Law does not extend to supply of optical appliances, there are different approaches to regulation of the supply of optical appliances.

3 Sub-section 122 of National Law; Restriction on prescription of optical appliances. (note; under certain conditions, an orthoptist is permitted to prescribe spectacles only)
across states and territories. This exposes the public to avoidable risk and practitioners to the risk of unintended breaches of regulation. As highlighted by the reviewer, currently only Tasmania and South Australia have specific legislation in this area.

Optometry Australia recommends all states and territories adopt uniform legislation which is based on the following precedents:

- **Supply of contact lenses**: contact lenses (both cosmetic and vision correcting) can pose a significant risk to ocular health and vision if they are not professionally prescribed or if they are not used and maintained correctly, and must not be supplied without presentation of a valid prescription.

- **Expired prescriptions**: All jurisdictions must prohibit the supply of any contact lenses under expired prescriptions under any circumstances, and spectacles must not be supplied under expired prescriptions unless there is a compelling reason to do so.

- **Ready-mades**: ‘Ready-mades’ are inexpensive spectacles sold without a prescription in pharmacies and other retail outlets. They are normally used for the correction of presbyopia, a condition that affects most people over the age of 40 years. Although considered an inferior form of optical appliance, Optometry Australia acknowledges for some people in some circumstances ready-made spectacles can offer a timely and affordable vision aid. To support informed decision-making, we believe legislation must enshrine a requirement for purchasers to be made aware at the point of purchase of the limitations of ready-mades, and encourage purchases to seek preventative eye care.

_Scheduled medicines_

While the NRAS determines which optometrists are qualified to use and prescribe scheduled medicines, the powers to authorise the use of scheduled medicines remain with State and Territory governments.

Optometry Australia recommends all States and Territories should adopt the approach legislated by the NSW and ACT Governments which links legislation to the national list of scheduled medicines approved by the Optometry Board of Australia. This method is preferred because it is simple and clear. It does not duplicate approval processes or require any additional action by the NSW or ACT Governments when the OBA may amend its list. Adoption of the NSW legislation by all jurisdictions would see changes to the OBA list come into force at the same time around the country without the delays inherent in some present jurisdictional arrangements.

_Are legislative provisions on advertising working effectively or do they require change?

Optometry Australia supports amending National Law to provide greater clarity on when testimonials are permissible by health services and business, as outlined by option 2 (p.27). This

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would serve to strike a balance between protecting the public from misleading health claims and devolving responsibility to the practitioner for what is said about their services.

Our experience suggests current provisions are confusing and misunderstood by practitioners and practice owners. Current provisions also place unnecessary burden on practitioners to monitor what might be said about them/their services in an online context which lays an unreasonable responsibility on practitioners for actions which are not within their scope to control or influence. Practitioners should only be liable for testimonials which they have actively sought to publicise or should have reasonably been expected to know about by virtue of their day-to-day behaviours and interactions with patients, and subsequently this should be enshrined in legislation. Given the pace in which social media is growing; consideration should be given to reviewing advertising regulations on a more regular basis.

Finally, Optometry Australia frequently receives queries from members seeking clarification on the advertising of regulated health services, particularly given the recent proliferation of mainstream advertising for optometry services and products, which some members rightly or wrongly believe push the boundaries of what is considered appropriate under National Law (section 133). While Optometry Australia acknowledges the largely educative approach of the OBA regarding advertising matters, it is our view that further guidance on the interpretation of the advertising provisions of National Law should be provided to practitioners and practice owners to reduce uncertainty and assist to preserve the primary intention of National Law as it relates advertising.