



Submission to

The Health Communities, Disability Services and
Domestic and Family Violence Prevention Committee

*Health Practitioner Regulation National Law and
Other Legislation Amendment Bill 2018*

November, 2018

-  106 Victoria St, West End Q 4101
-  GPO Box 1289, Brisbane Q 4001
-  (07) 3840 1444
-  (07) 3844 9387
-  qnmu@qnmu.org.au
-  www.qnmu.org.au

submission

Introduction

The Queensland Nurses and Midwives' Union (QNMU) thanks the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (the committee) for the opportunity to provide feedback on the *Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2018* (the bill).

Nursing and midwifery is the largest occupational group in Queensland Health and one of the largest across the Queensland government. The QNMU is the principal health union in Queensland covering all classifications of workers that make up the nursing workforce including registered nurses (RN), registered midwives (RM), enrolled nurses (EN), assistants in nursing (AIN) and personal care workers (PCW) who are employed in the public, private and not-for-profit health sectors.

Our more than 59,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses in Queensland are members of the QNMU.

The QNMU promotes safe, quality nursing and midwifery care to all members of the community and supports the regulatory mechanisms that ensure health care is provided by regulated and competent health practitioners. Regulatory mechanisms should also ensure health practitioners who are or might be suffering from a health impairment are encouraged to seek referral and treatment without fear of a breach of trust and confidentiality by the treating practitioner. Any delay or failure to seek timely referral and treatment can have adverse consequences for the health practitioner and the public.

It has been the consistent position of the QNMU that it is not necessary for treating practitioners to make mandatory notifications where the health practitioner is engaged in and compliant with treatment. International and Australian research (Beran, 2014; Raniga et al., 2005) indicates mandatory reporting carries a punitive quality rather than compassion towards rehabilitation. A focus on sanctions is weighted against the practitioner, particularly when they are aware of the need for help but fear retribution.

The QNMU made a comprehensive submission to the Council of Australian Government's (COAG) consultation on proposed reforms to mandatory reporting. Here, we restate our position and ask the committee to accept our recommendations to amend the bill as stated.

Recommendations

The QNMU recommends the bill:

- provide a complete exemption for treating practitioners from the requirement to report all forms of notifiable conduct in respect to their practitioner patients;
- mirrors the provisions contained in the *Health Practitioner Regulation National Law (WA) Act 2010* (s.141(4)(da) that state a mandatory notification is not required if “*the first health practitioner forms the reasonable belief in the course of providing health services to the second health practitioner or student*”;

In the event the committee does not accept the above recommendation, the QNMU recommends the committee:

- recommends the Australian Health Practitioner Regulation Agency (AHPRA) provide a comprehensive implementation, communication and education program to raise awareness and compliance with the new regime amongst registered health practitioners.

We recognise the bill (clause 19) includes provisions that enable a treating practitioner to use their professional judgment and expertise in deciding whether a mandatory report about a practitioner or student’s impairment is required. This list of factors a treating practitioner may consider includes:

- the nature, extent and severity of the impairment;
- the steps the practitioner or student is taking or willing to take to manage the impairment; and
- the extent to which the impairment can be managed with appropriate treatment.

These factors make it clear only the most serious impairments that are not being appropriately managed through treatment need to be reported and will assist treating practitioners in their assessment. However, we continue to recommend our long-held position the focus should be on the therapeutic relationship between the treating practitioner and the patient practitioner. The treating practitioner should be exempt from reporting all forms of notifiable conduct in respect of their practitioner patients.

Ensuring health practitioners can seek help when needed and the public is protected from harm

From the perspective of the health practitioner seeking treatment for a mental health disorder or an alcohol or other drug dependence, the development of a therapeutic relationship with the treating practitioner is of the utmost importance. Essential to that therapeutic relationship is trust and confidentiality.

If the treating practitioner is then required to formally notify the regulatory authority of the patient's impairment, inevitably leading to forced restrictions to practice that can be imposed for up to two years, that therapeutic relationship can be very difficult to maintain.

In a recent survey of Australian mental health professionals (Edwards & Crisp, 2017) 57% indicated the mandatory reporting requirement would act as a barrier to seeking help if they were distressed. The prevalence of stigmatising attitudes, concern for lack of confidentiality, embarrassment, preference for self-help and career concerns are further impediments (Beyond Blue, 2013). Legislated, compulsory notification can therefore become counterproductive if it deters practitioners from seeking assistance.

In our experience, it can also compel treating health practitioners to make mandatory notifications to (AHPRA) about other health practitioners when this is not truly required (for example, when the health practitioner patient has insight into their impairment and they are appropriately treated, or when the health practitioner is on leave from work and not practising the profession until their impairment issues are appropriately treated).

The QNMU has assisted a number of members who have been admitted to health facilities where, although there were had been no concerns regarding the member's clinical practice, the facility has notified AHPRA that the member had a health impairment placing the public at substantial risk of harm.

In these cases, the members had already discussed their health crisis with their employers, clearly had insight into their health conditions, were compliant with treatment and had removed themselves from the workforce until such time as they were fit to return to work. In spite of this, the Nursing and Midwifery Board Australia (NMBA) imposed conditions on the members which did not appear justified, particularly given there had been no complaint about their clinical practice.

The QNMU believes the National Law as in force in Queensland should mirror the National Law provisions in Western Australia and provide treating practitioners with a complete exemption from making a mandatory notification of a nurse or midwife who has sought treatment for a health impairment. Many medical professional bodies have called for the

West Australian amendment to be enacted in all jurisdictions to provide consistency as envisioned initially under the National Law and the national registration and accreditations scheme (Goiran et. al, 2014).

Consistent with this position, the QNMU urges the Committee to propose amendments to the National Law in each state and territory which mirrors s.141(4)(da) of the *Health Practitioner Regulation National Law (WA) Act 2010* which states that a mandatory notification is not required if *'the first health practitioner forms the reasonable belief in the course of providing health services to the second health practitioner or student'*.

Establishing such a provision within the National Law across all jurisdictions will provide clarity for all treating practitioners and make a significant reduction to the volume of unnecessary notifications received by AHPRA. This could have an important positive impact upon the workloads of AHPRA Officers in the processing and referring of notifications to the relevant National Boards.

Guidance for Treating Practitioners

At present, Queensland has a partial exemption for treating practitioners from making a mandatory notification about a nurse or midwife with a health impairment. The exemption is partial, when compared to the similar provision of the National Law as in force in Western Australia because the Queensland exemption exists only if the nurse or midwife *'does not pose a substantial risk of harm to the public or has not engaged in professional misconduct'*.

In our view, the amendment will provide a higher reporting threshold as the treating practitioner will be required to assess whether the practitioner-patient's conduct involving impairment, intoxication and departure from professional standards is *'placing the public at substantial risk of harm'*.¹ As the conduct or behaviours may be interrelated, the treating practitioner may make an overall assessment in deciding whether to make a mandatory report.

These proposed changes along with the list of factors a treating practitioner may consider in their assessment should provide some clarity around mandatory reporting. Uncertainty in these areas has allowed treating practitioners to err on the side of caution and protect their own professional liability by making a notification to the regulating body.

¹ This does not apply to mandatory reporting of sexual misconduct.

Deterrence

Nurses and midwives are well aware the National Law has mandatory notification provisions for treating practitioners. These provisions have high potential to act as a deterrent for nurses and midwives to seek timely treatment for their disorder. We have received anecdotal evidence that the introduction of mandatory notification provisions for treating practitioners in the National Law has led to a decrease in calls to health programs by health practitioners.

Safeguards

When a nurse or midwife presents for treatment, the treating practitioner will invariably provide a period of time off work whilst treatment takes place. When this occurs, the impaired practitioner is not presenting any risk of harm to the public because they are not practising the profession.

A nurse or midwife who has the insight and professionalism to seek referral to a specialist and initiate treatment of an impairment should be supported in their treatment and rehabilitation, rather than be subjected to the further humiliation and hardship imposed by the regulating body.

Confidentiality

The National Law preserves the principle of legal privilege for the legal profession and also preserves the principle of client confidentiality when making admissions to insurance providers, however the long-accepted principle of patient confidentiality is not supported for health practitioners. Providing a complete exemption for treating practitioners will be consistent with this long-held principle.

Implementation, Communication and Education Program

Given the proposed amendments may have significant implications for all registered health practitioners, the QNMU asks the state government to recommend AHPRA develop a comprehensive implementation and education program to raise awareness and compliance with the new regime.

Increased Penalties for 'Holding Out' and Related Offences

The QNMU supports the amendments to the National Law that increase penalties for 'holding out' and provide for circumstances in which 'holding out' is prosecuted on indictment and summarily in Queensland.

References

Beran, R. (2014) 'Mandatory notification of impaired doctors', *Internal Medicine Journal*, 44, pp. 1161-1165.

Beyond Blue (2013) *National Mental Health Survey of Doctors and Medical Students* retrieved from https://www.beyondblue.org.au/docs/default-source/research-project-files/bl1132-report--nmhdmss-full-report_web

Edwards, J. & Crisp, D. (2017) 'Seeking help for psychological distress: Barriers for mental health professionals', *Australian Journal of Psychology*, 69, pp. 218-225.

Goiran, N., Kay, M., Nash, L., & Haysom, G. (2014) 'Mandatory reporting of health professionals: The case for a Western Australian style exemption for all Australian practitioners', *Journal of Law and Medicine*, 22, pp. 209-220.

Raniga, S., et al (2005) 'Attitudes of hospital medical practitioners to the mandatory reporting of professional misconduct', *The New Zealand Medical Journal*, 118 (1227).

Legislation

Health Practitioner Regulation National Law Act 2009 (Qld)

Health Practitioner Regulation National Law (WA) Act 2010 (WA)