

Parliament of Queensland

An Inquiry 2017

The Health Practitioners Regulation National Law and Other Legislation Amendment Bill 2017

Co submitted to the
Council of Australian Governments (COAG) Health Council

AN INDIVIDUAL NON-CONFIDENTIAL SUBMISSION BY

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There are no Confidential Annexures & Links

This submission is being sent electronically from the University of Havana, Cuba, where the author is attending an international meeting.

It is respectfully and reverently dedicated to the Indigenous Peoples of Australia, the traditional Land-owners who have suffered generations of abuse, oppression and bullying by some new Australians who continue to do so at this time.

It particular focuses on the Lands of the Kauma peoples, where the author's family lives and serve humbly and temporarily, in unity with their common cause and following the (westernised, non Indigenous) Australian tradition of healthy disrespect for authority and perceived "overbearing" entities.

Terms of Reference

The relevance of submission facts is in italics below.

The Bill

The Bill includes the following amendments to the Health Practitioner Regulation National Law (the National Law) agreed by the Council of Australian Governments Health Council, sitting as the Australian Health Workforce Ministerial Council (COAG Health Council) on 29 May 2017:

- national regulation of paramedics, including the establishment of a Paramedicine Board of Australia
- *enabling the COAG Health Council to make changes to the structure of National Boards by regulation following consultation*
- recognition of nursing and midwifery as two separate professions, rather than a single profession, with the professions continuing to be regulated by the Nursing and Midwifery Board of Australia
- *improvements to the complaints (notifications) management, disciplinary and enforcement powers of National Boards to strengthen public protection and ensure fairness for complainants (notifiers) and practitioners, and*
- *technical amendments to improve the efficiency and effectiveness of the National Law.*

The Bill also amends the *Health Ombudsman Act 2013* to

- *make consequential amendments as a result of the proposed changes to the National Law, and*
- *make changes requested by the Health Ombudsman as part of the Committee's Inquiry into the performance of the Queensland Health's functions pursuant to section 179 of the Health Ombudsman Act 2013. These include:*
 - i. enabling the Health Ombudsman to vary their decisions to take immediate actions*
 - ii. clarifying that an investigation may be 'continued' after immediate action, and*
 - iii. waiver of right to receive three-monthly notices about progress of investigation*

Introduction

The Bill appears to be progressively introduced Australia-wide and not in QLD alone – as with the flawed “lead” QLD legislation of 2009¹ regarding the Health Practitioner Regulation National Act.

The distinguished Parliamentarians of QLD may consider to properly and not perfunctorily debate and simply pass it with a first reading as it did with some previous Acts. This appears to be another repeat of forcing a Bill through without proper informed consultation and debate. It is unconstitutional and should be under heavy scrutiny and not be simply passed in the middle of the night as is the usual case.

There are already numerous draconian regulations imposed by the previous health related Acts – undebated and casually passed in variation by many State Parliaments. This is not acceptable and the current Bill appears to be another attempt to undermine the intelligence of the people and usurp the true principles of democracy.

In Australia, we now appear to live in an oligarchy and increasingly harsh strong-arm bullying tactics are being used in health practitioner regulation as well the regulation of other professions.

In particular, the author wishes to highlight the existence of an incomplete and inconsistently applied Commonwealth Act used to automatically validate those regulations and Bills in various states – that of the Health Practitioner Consequential Amendments Act 2010 (Cth)².

There appears to be conflicting information on the validity of this and that it may be not fully in force and therefore all relevant Bills and regulations automatically pushed through nationally, based on a single state statute achieving an “Act” status may actually be *ultra vires and thus unlawful*. The proposed Bill will be subjected to this Commonwealth Act – one which prevails over State statute.

This submission focuses on the rule of law issues alone and may reveal attempts to stealthily rectify these errors via another set of processes which are outside the rule of law themselves. It also causes distractions from the 2017 recommendations by the Senate to the COAG Health Council, especially Recommendation 3³. I also refer to my assigned ‘Confidential Submission’ in Aug 2016 about the the function of the Office of the Health Ombudsman.

1. *Health Practitioner Regulation (National) Act 2009*

2. *Health Practitioner Consequential Amendments Act 2010 (Cth)*

3. *Senate Inquiry, Australian Federal Parliament 2017 “Complaints mechanism administered under the Health Practitioner Regulation National Law”*

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/ComplaintsMechanism

Submissions to the Federal Senate – 2016 and 2017

Submissions no 37 and no 125 (2016)⁴ and also no 35 (2017)³ of two previous Federal Senate Inquiries refer.

The QLD Parliament is encouraged to take full notice of these mentioned submissions and their contents (and also many others) which will not be mentioned here except to state that they apply as much to QLD as to other states, including alleged corruption in NSW and Victoria. The recent erudite public comments of a distinguished Queenslander QC, Mr Anthony Fitzgerald⁵ refer.

The Current Bill

The new features of this Bill give additional powers of what is perceived by many persons and parties as draconian legality to an allegedly progressively corrupt and dysfunctional regulator (and other co-regulators like the Health Care Complaints Commission (NSW), and the Office of the Health Ombudsman (QLD) country wide.

On casual scrutiny, the some of the proposed amendments to the OHO Act 2013 are actually best included in the National Acts and be mutually beneficial to all - but this may be just an attempt to quietly correct previous errors and getting away with them using legal arguments: it must not happen.

In the author's view, this Bill must never be passed before the multiple present national problems have been resolved. Introducing these will further compound the challenges faced in finding an acceptable solution to all parties which document previous fatal errors in law etc. Some of these are detailed in the 2017 Senate Inquiry and its reports³. The Government has yet to respond and cannot rely on an enactment of such a Bill to justify its complicity in their already mendacious actions.

Section 136 of the National Law (in QLD¹)

In the author's personal experience with this in Queensland between 2015 and now, this has been regularly mishandled with no entity taking responsibility for it. Have a new amendment bill will add further confusion to its jurisdiction which are handled "competitively" by the Office of the Health Ombudsman and by AHPRA.

The Lack of Evidence to justify the enactment of this Bill and its potentially harmful consequences to all

As previously mentioned, many Australian policy decisions have appeared to be discretionary rather than evidence based – not examining the international Campbell Collaboration (or Cochrane Collaboration) and other credible data bases on social policy with due diligence. Neither has there been any respect whatsoever for basic human rights.

4. *Senate Inquiry, Australian Federal Parliament 2016 – "Medical Complaints Processes in Australia"*
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/MedicalComplaints45

5. *Tony Fitzgerald 2015 Brisbane Times "Power and the inconvenience of the truth"*
<http://www.brisbanetimes.com.au/queensland/power-and-the-inconvenience-of-truth-20131122-2y1et.html>

Those Queensland medical practitioners whom the public knows, whose basic human rights had been trampled on include (not comprehensively) [REDACTED] – and nationally, for 2017, many asylum seekers are only several of many victims.

The recently Federal Government Department of Health⁶ - altered frequency policy-generated evidence for Papanicolaou smear screening of fertile Australian women at “world first” 2 yearly intervals is actually a prospective cohort study. This has been done without the women’s informed consent and is a typical example of a violation of the United Nation’s Declaration of Helsinki, unknown to many in the public. The currently best international scientific evidence for normal women world wide is from Finland⁷.

Another is the discretionarily persecution of practitioners diagnosing and attempting to treat *borrelia* related illness, concluded in another recent Australian Senate Inquiry⁸. Many clinical problems have their origins in Queensland, which is in the flight path of international migratory birds during the northern hemisphere winter.

For a purportedly developed country (without a proper Human Rights Bill⁹) to progress as such is improper and does not follow the rule of law¹⁰

Summary

In conclusion, based on the precepts mentioned above, it will be unwise to rush (or boast about) the Bill through as another national ‘lead’ enactment without wide public consultation and debate with an already publicly well-proven Constitutionally-unstable Health Practitioner Regulation National Act 2009 etc³ (Senate Report), also (Submission 35).

The reality of a full national Royal Commission is again becoming more obvious with COAG ignoring and not even wishing to comment on Recommendation 3 of the Senate Inquiry 2017³ – being, in the opinion of the author, contempt of Senate and for the people.

6. Australian Government Pap smear initiative 2017
<http://www.cancerscreening.gov.au/internet/screening/publishing.nsf/content/cervical-screening-1>

7. Cochrane Database www.cochrane.org

8. Senate Inquiry into Lyme and Lyme like illness 2016

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Lyme-like_Illness

9. Triggs, G 2017 Interview with ABC <http://www.abc.net.au/news/2017-06-23/gillian-triggs-human-rights-commission-radicalised-in-the-job/8643024>

10. Lord Bingham 2007 Cambridge University: The 6th David Williams Lecture “The Rule of Law”
<https://www.cambridge.org/core/journals/cambridge-law-journal/article/the-rule-of-law/0E971B5BB930C2E363D351C5CBC3B855>