

**Health, Communities, Disability Services and Domestic and Family Violence Prevention  
Committee Inquiry:**

**Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2017**

**SUBMISSION**

By Elizabeth Dolan, RN, CNS

Dear Senators,

I provide this submission to the inquiry of the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (the Committee) into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2017 (the Bill), to present as evidence for Committee's consideration a statement of my personal experiences, including the direct impacts I have witnessed upon health practitioners, during and after being subjected to investigation by a health authority so empowered under the Health Practitioner Regulation National Law Act 2009 (the Law).

This submission bears direct relevance to the Bill, because the Bill as tabled will provide further powers to those health authorities established and/or empowered under the Law and some of those proposed additional powers, in my view, will only serve to increase the potential for health practitioners, subjected to such investigation under the amended Law, to suffer impacts similar to, and most likely even worse than, those I have witnessed, those powers without doubt being and becoming even more so, excessive, unwarranted, unfair and harmful.

I write to you as a Clinical Nurse Specialist who has worked in health care for the past 37 years. I am passionate about medicine and nursing, and that passion and total commitment and dedication to my profession saw me being awarded the 2015 NSW Health Excellence in Nursing and Midwifery Consumer Appreciation Award, considered by the Health Ministry to be one of the most prestigious awards in Health.

I am deeply concerned about the future of nursing and medicine, especially in regard to our health care and regulatory systems. Over the many years of my career I have seen the rise in power given to regulatory bodies, and its abuse thereof, to the point where they have become a law unto themselves.

This is particularly the case when it comes to the complaints process where there is no consideration given to the nature of the complaint and whether it is vexatious, a genuine mistake or in extremely rare cases an intent to cause harm.

Having witnessed many of my colleagues subjected to the horrors of the current investigatory processes it is abundantly clear that the system, the regulatory bodies and the National Law are in a deep need of an urgent review.

Our regulatory bodies are required to support medicine in delivering a high standard of care but they need to have a greater awareness of what accountability and responsibility is, by being accountable and responsible themselves, and this they are not.

The responsibility of judge and executor must be separated. It is ridiculous that a regulatory body can also be an investigative body: this is a clear conflict of interest and destroys the impartiality required to fairly assess a case.

Being responsible in the role as a regulatory body means working with and for people, the good of all people, thus considering the wellbeing of everyone including that of the practitioner, something that the regulatory bodies currently do not do.

The proposed amended Law that gives additional powers to the dysfunctional regulatory bodies is deeply worrisome and alarming to say the least. The regulatory bodies purport to protect the public but who protects health practitioners from members of the public who make anticompetitive or vexatious complaints?

Health professionals work in constant fear of having a complaint made against them and from what I have witnessed they have every reason to have this fear. Those who have had complaints made against them are subjected to a system that instils fear and blame. There is wariness and a fear of being investigated and hung out to dry by a system that is designed to intimidate and blame and thus restrains innovation in medicine.

The reality of the current fear based, adversarial, and punitive system is that when cunningly utilized by vexatious complainants it can destroy a practitioner's reputation, and is definitely not working to keep the public safe. It in fact does the opposite by affecting the health and well-being of health care practitioners and the health care system at large.

Medicine and nursing is becoming a ticking box exercise and anyone who dares to bring new ideas and new innovations are likely to be complained about by those who have ulterior and self-invested motives. I have repeatedly witnessed the effects that this ease to abuse and thus unjust complaints process has had on my colleagues. It is both devastating to experience as well as to observe as a witness and it is designed to intimidate health care practitioners from speaking up.

Below is an account of what I have witnessed:

### **IMPACT STATEMENT**

#### **By what authority empowered under the Law was the practitioner/s investigated?**

The Australian Health Practitioner Regulatory Agency (AHPRA) and the Health Care Complaints Commission (HCCC).

#### **Were the practitioners investigated as a consequence of a notification (complaint) against them?**

Yes

#### **Do I feel the notification against the practitioners were vexatious, false or otherwise being without sound basis?**

In all cases the complaints were vexatious

#### **What did the practitioners tell me regarding how they felt while under investigation?**

All of the practitioners were initially in shock when they received the complaint. Some of the complaints were made late on a Friday afternoon and people were expected to find a lawyer and respond to the complaint in a very short period of time. This is important because the people being investigated were health professionals not necessarily well versed in answering complaints. These were all very highly skills professionals who love what they do, care deeply about their patients/clients and who had built solid reputations within their chosen fields. Initially there was the optimism that the regulatory bodies would see through the vexatious complaints but very quickly it became obvious that this was not the case. All of the health care professionals in question began to feel at different times traumatized, stigmatized, vilified, criminalized, belittled, bullied, intimidated, harassed, tortured, punished, shamed, assumed guilty and worn down. This was very distressing to see and it came as a result of the manner in which the regulatory bodies conducted their investigations. There was an attitude that the practitioners were guilty of something otherwise a complaint would not have been made. This is naïve at the very least and at worst against the law of the land, which clearly states that people are innocent until proven guilty.

#### **What impacts upon the practitioners did I witness affecting them during the investigation?**

Different things occurred for different people. For some their physical health suffered due to stress, with symptoms like disturbed sleep patterns, eating and digestion problems, increased anxiety, depression, mistrust of people, low morale and undue pressure on their relationship and family life. For others, it affected their personal and work relationships, their ability to work, time consuming answering false allegations, or they experienced a significant loss of income and reputation.

**What were the impacts upon the practitioners' family, friends and close colleagues that I witnessed and/or felt personally during and as a consequence of the investigation?**

The process equally affected both family and friends. Spouses and children were affected by the mistrust that arose in their communities, as people readily believe that "there is no smoke without fire". When someone goes through complaints process it instils fear in their colleagues that this will happen to them next. This prevents anyone from bringing innovation to healthcare and instead ensures that everyone will keep his or her head down and just do the bare minimum to survive in the industry.

**How did I feel personally after witnessing the investigation process and its impacts upon the practitioners?**

As a health care professional, I felt frightened because I now know that this can happen to me at any time. Anyone, at any time can put in a vexatious complaint against me and this has the potential to make me practise defensively, that is spend more time ticking all the boxes to cover myself rather than to deliver true care to people. I was angry at the injustice that I saw occurring and the way that own regulatory bodies criminalized health practitioners. There was a constant feeling that people were being intimidated and not being supported in the way that they needed to be.

**Do I feel the practitioners were fairly treated by being subjected to investigation as they were?**

No

**Were the practitioners subjected to a prohibition order as a result of the investigation?**

No

**What impacts upon the practitioners did I witness that happened as a consequence of the prohibition order?**

Damage to reputation was an obvious consequence and vexatious complainers know this and use this to their advantage. When people hear that a health care professional is under investigation they naturally avoid that person and this is one of the reason why vexatious complaints are made. This is no different to bullying children at school and adults at work, and as now commonly experienced online on all kinds of platforms.

**Do I feel the practitioners were fairly treated by what was imposed upon them in the prohibition order?**

All complaints were eventually dismissed and therefore no prohibition orders given. However, 'mud sticks' and the process to recover a reputation can take a long time to recover.

**Did I / do I feel those in authority who investigated and adjudicated the practitioners' case did so fairly, without bias and prejudice; and were competent, with the knowledge, experience, training and understanding required to properly perform their investigation / adjudication?**

No

## RECOMMENDATIONS

Based on what I have witnessed regarding the practitioners mentioned above and my own personal experiences, as outlined above in this submission, and my knowledge of the similar experiences of other health practitioners, I recommend that:

- The committee recognises the evidence submitted to the committee by health practitioners and in other submissions to this inquiry and validates all expressions in that evidence of practitioners feeling, and being witnessed to have been, unfairly treated, harmed and traumatised, their experiences in having

their careers irrevocably impacted, by the harsh and overbearing powers and conduct of authorities permissible under the current Law.

- The committee, proceeding from recommendation 1 above, accepts that the Law as implemented is producing harmful outcomes that are either not intended by the original policy intentions, or if intended by those policy intentions, are an indication that the policy intentions were/are disturbingly wrong, and either way accepts responsibility on behalf of all participating legislatures take immediate and assertive actions to initiate the required far-reaching reform so clearly needed.
- The committee, with regard to the Bill before it, in examining the Bill scrutinises all provisions of the Bill to identify all clauses that may impose upon, or permit, further unfairness, harm and detriment to practitioners in addition to that which is currently permitted and occurring under the existing Law, and recommends either that the Bill not be passed in its entirety, or the removal of those clauses from the Bill.
- The committee, as an instrument of the Parliament of Queensland, the host jurisdiction for the application of the National Law in Australia, recognises its key responsibility, and that of the Queensland Parliament, to initiate appropriate measures to correct the significant and disturbing deficiencies of the Law and the resulting harm and detriment to practitioners as presented in the evidence before this inquiry and outlined in this submission.
- The committee, in recognising its responsibilities and those of the Queensland Parliament, as stated in recommendation no. 4 above, recommends in its report to the House on this Bill that Queensland acts assertively and urgently to call for a royal commission, as a matter of priority, to review the Law and the operations of all health authorities that are established by and empowered under the Law in all participating jurisdictions of Australia.
- The committee, as paramount to the Bill proceeding, recommends amendments to the Bill to enact that the rights and interests of practitioners are seen as equal to those of their patients and the general public. Practitioners have equal rights to be protected from abuse, a right to freedom of association and should not be investigated on the basis of vexatious, malicious or otherwise unsubstantiated complaints. When complaints are made a thorough investigation into the nature of the complaint needs to be made.
- When complaints are found to be vexatious the complainant needs to be prosecuted and held accountable for their actions. Their name needs to be put on a register and made known to the public for the public menace that they are.

In making my submission I note that I am willing for my submission to be made public under parliamentary privilege.

Warm Regards,  
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