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

Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2017

SUBMISSION

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 upon me, 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 additional powers to those health authorities established and/or empowered under the Law and some of those proposed additional powers, in my view are biased and discriminatory and 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 experienced and am still experiencing, those powers without doubt being and becoming even more so, excessive, unwarranted, unfair and harmful.

There is a pervasive view that the public is at risk of harm by unscrupulous professionals, which forms a particular bias in the world view of health, and which is currently expressed in Law – that is, it is only health practitioners that act unscrupulously and that the public are mere targets or victims of these unscrupulous acts.

It does not take into consideration that 1) health professionals also make up members of "the public" and should thus be treated with the same rights and care as the public enjoys and 2) that members of the public and other health professionals may target health professionals in unscrupulous acts intended to harm.

Bias against health practitioners should not affect Law, however, in my view, the current Law discriminates against practitioners and does not protect them from misuse of the complaints process through vexatious and malicious complaints. The Bill further adds to the depth of this discrimination by providing additional powers mentioned above while NOT addressing the current discrimination and injustices to health practitioners being clearly and abundantly evidenced in health regulation.

Such evidence was presented in detail in submissions and evidence to two recent inquiries, with terms of reference directly related to this Queensland bill and inquiry, conducted by the federal Senate's Community Affairs References Committee. That committee, while acknowledging significant aspects of the evidence before it, failed in its responsibilities to effectively address that evidence in its reports.

Further and in light of the work of several organisations such as the Australian Medical Association and the Australian Psychological Society to bring improvements to the *Health Practitioner Regulation National Law Act 2009* and the Australian Health Practitioner Regulation Agency (AHPRA) notifications process which specifically relates to this Law, there appears to be little real uptake of the recommendations offered by these professional bodies to help rectify the bias against health practitioners.

For example, a report in *Australian Medicine* 2015 stated in relation to the AHPRA notification process:

- there was a lack of clarity and transparency regarding the process and decision-making;
- there was ineffective and inefficient vetting of complaints and notifications;
- investigation processes were overly complex and broader in scope than the notification;
- the duration of some investigations and the length of time matters took to be finalised was problematic;
- the limited information provided to the medical practitioner about the details of a notification, and the consequent disadvantage in responding to allegations, was concerning; and
- procedures did not afford due process – short timeframes to provide additional information and responses, and disparities in sharing information between the notifier and the practitioner under review. *2

The current Bill does not address these above standing concerns.

In demonstration of the increasing bias against health practitioners in the Bill, a particular provision is as follows, as stated in the explanatory speech for the Bill. *"The bill also makes it an offence to breach a prohibition order made in any state or territory, with a maximum penalty of $30,000. Although it is expected that practitioners will comply with prohibition orders made by a tribunal, until now it has not been an offence under the national law to contravene a prohibition order. The significant penalty associated with this offence is intended to deter anyone considering continuing to practice in contravention of such an order".*

This point serves to contribute to the bias within the Law against health practitioners, assuming that it is only practitioners that act unethically. It fails to protect practitioners from vexatious complaints, acts of harassment and abuse via the notifications process. We are witnessing further strengthening and bias of the law against health practitioners yet nowhere are we seeing similar protections offered by the introduction of penalties via national law for the prevalent if not epidemic abuse of the health regulatory system plaguing health practitioners.

A PLAGUE OF ABUSE – EVIDENCED BY AHPRA'S SELF REPORTING

Statistics in this regard show that a high percentage of notifications end in a decision to take "no further action" in relation to a notification.

The AHPRA Annual Report 2015/2016 reveals that of the 5227 notification that were closed in 2015/2016, 3466 ended in a decision of "no further action" against the health practitioner by the respective Board. (AHPRA Annual Report 2016).

This figure equates to 66% of all notifications ending in a decision to take "no further action" against a health practitioner. It suggests that the current National Law is ineffectively dealing with notifications and that a vetting process is required to reduce the number of investigations resulting is high levels of stress and other negative impacts for practitioners.

A further example - 82% of all notifications against psychologists end in a decision to take "no further action". *1

A disproportionately high percentage of notifications are put through a considerable administrative and investigation process that are or appear from these statistics to be unsubstantiated or inconsequential or worse, anti-competitive, vexatious and/or malicious.

For the practitioner who has been the subject of a complaint, they have nonetheless endured an extremely stressful period of time, consequent to the adversarial and uncaring attitude taken by AHPRA towards health practitioners under its interpretation of the National Law. This in many cases has brought considerable harm to the practitioner, even if a finding of "no further action" is made.

In some cases, a decision for a Board to take no further action does not stop unscrupulous, unethical or abusive actions by a practitioner, as is evidenced in my personal experience.

Complaints are not vetted as to their intent or background, making health practitioners vulnerable to unscrupulous, vexatious, malicious and otherwise baseless complaints.

It would seem to make more sense for the Health Practitioner Regulation National Law to introduce heavy deterrents against vexatious, malicious, anticompetitive complaints, and notifications made by those that are simply disgruntled. The Bill should seek to prevent the misuse of the complaints process, especially in light of the afore mentioned facts and the seeming lack of common sense being currently displayed by AHPRA and the regulatory bodies in administering the National Law as it currently stands.

It is recommended that the Health Practitioner Regulation National Law address bias against health practitioners and introduce deterrents to making unsubstantiated, vexatious, malicious and anti-competitive complaints.

For example, "*The bill also makes it an offence to produce a vexatious, malicious, anti-competitive, unscrupulous or otherwise unsubstantiated complaint to a regulatory body in any state or territory, with a maximum penalty of $30,000 with possible jail terms for serial offenders; and requires the regulatory authority that would investigate the complaint, if found valid, firstly to investigate and validate the complaint and the complainant. Although it is expected that complainants will comply with prohibition of vexatious, unsubstantiated, malicious, anti-competitive and unscrupulous complaints, until now it has not been an*

offence under the national law to do so. The significant penalty associated with this offence is intended to deter anyone considering contravention of this Law".

In 2015, the Australian Medical Association (AMA) suggested a vetting process for notifications to improve the notification experience and made suggestions about *"what a good system would look like from the practitioner perspective. This included:*

- *timely and sensible vetting of notifications and complaints;*
- *arrangements for dealing with vexatious complaints quickly, and an alternative mechanism for assisting the complainant to resolve their dispute where there is otherwise no risk to the public;*
- *early and personal contact with the practitioner to advise that a notification had been received, acknowledging the impact this can have on practitioners, and explaining how the process will work;*
- *recognition by colleagues and employers that notifications are not evidence of sub-standard practice but are a 'fact of life' of medical practice, with investigations being carried out in the interest of public safety; (in my view, this relates to Point 4 of the Bill),*
- *a process that assists the practitioner to gain insight, and supports them to remedy their practice if it is lacking;*
- *a process that quickly and fairly addresses unsafe and poor practice, fairly and appropriately;*
- *that practitioners be afforded confidentiality during the investigation and decision making; and*
- *that there be clear and accessible information about the notifications process to inform practitioners about what to expect". *2*

It is my view that the committee should consider the above recommendations made by the AMA in conjunction with the following points.

The National Law should be amended to ensure notifications against practitioners are addressed in a timely manner, seeking to investigate the complainant's motivation for making the complaint and complaints should not be accepted that:

1. seek to use the complaints system for personal grievances;
2. are of an unsound and extreme nature;
3. are anticompetitive;
4. seek to harass, intimidate and attack practitioners in any way and especially for their personal, philosophical or religious beliefs and associations, or for any other discriminatory reason;
5. are made by people who have not had direct dealing with the practitioner;
6. are not directly affected by the practitioner in the course of the practitioner's duties;
7. do not disclose any personal nature of a grievance with the practitioner based on a difference in personal beliefs or preference of practice approach;
8. do not disclose any underlying grievances unrelated to the practitioner's practice;
9. do not disclose any public or private action taken against the practitioner or action that has intended to cause harm to the practitioner such as cyber-abuse,

trolling or other forms of abuse and harassment of the practitioner.

I provide additional context to my formal recommendations, to address the current bias against health practitioners in the Law, as follows.

- The intent of my recommendations is to ensure that, where action is being taken against a health practitioner, a national board is required and empowered to investigate the background, nature and validity of the complaint.

- This intent, if implemented, will help to protect practitioners from unscrupulous complaints by ensuring that, regardless of the outcome of the notification, a health practitioner, their employer or equivalent entity will be made aware of any and all information relating to a notification, including whether or not the complaint has undergone a vetting process and the outcome of that process.

- The national boards and AHPRA will develop procedure regarding the investigation and validation of complaints and complainants, and the required information to be provided by notifiers/complainants under the recommended amendments to the Bill, including: the background of the complainant; whether they have had direct contact with the practitioner; and whether they have any vested interest or conflict of interest or any other personal agenda.

The following provision of the Bill, as described in the explanatory speech, is unreasonable, criminalising and in breach of a practitioners right to privacy. This provision is unnecessarily harsh, and appears to seek to publically "brand" the practitioner, as not even most convicted criminals are currently treated by modern societies in such a manner. It results in shaming and publically embarrassing the practitioner and long term detrimental impacts not proportional to what is in most cases a disciplinary action.

Currently, it is a requirement to have listed against a practitioner's registration whether there are any conditions, undertakings or restrictions placed upon the practitioner. This is sufficient notice to the public in some cases, but still does not address that some (if not a high percentage of) complaints are vexatious, malicious or otherwise unsubstantiated.

I now refer to the following provisions of the Bill, as stated in the explanatory speech.

"The bill will also require a practitioner who is subject to a prohibition order to inform patients and employers about the prohibition order before providing health services. Details of a prohibition order will also need to be included in any advertising of the practitioner's health services. These are further important safeguards for the public to ensure they are fully informed about any restrictions on a practitioner's practice".

A practitioner has a right to privacy throughout the investigation process and beyond, and the impact of the current Law and Bill disregard this basic right. While the public should be protected from harm, this mandate should not override practitioners' basic human rights, nor should the rights of practitioners be disregarded.

"The bill will enable national boards to require a health practitioner who is under investigation to provide details of all of the places at which the practitioner practices, regardless of the manner of their engagement or appointment... The intent of these amendments is to ensure that, where action is being taken against a health practitioner, a national board is able to inform all places at which the person practices. This change will help to protect public safety by ensuring that, regardless of the manner of engagement of a health practitioner, their employer or equivalent entity will be made aware of any disciplinary action or conditions imposed on registration".

In the context of the current bias against practitioners within the Law and the extensive misuse of the complaints process, this Bill serves to put more pressure on practitioners, with what seems to be to be a further invasion of privacy.

Currently, AHPRA places some limited information about conditions, restrictions, undertakings etc against the national register which is publically available online. This may be insufficient in some cases of actual or extreme harm to patients, however this measure does not extend to explain the nature of the conditions, restrictions or undertakings, nor does it address the nature and background of the complaint, should they be malicious, vexatious, anti-competitive or unscrupulous.

As statistics show that 82 % of all complaints against psychologists end in a decision to "take no further action" the above points in the Bill seem a further invasion of a practitioner's life and practice without addressing the real issue.

Equal measures need to be taken to protect practitioners from vexatious and malicious complaints. The Bill should instead be amended to **"help to protect public safety, including the safety of practitioners by ensuring that regardless of the manner of engagement of a health practitioner, a full, fair and unbiased account of the complaint, whether the complaint went through a vetting process and the outcomes will be made public, in consultation with the practitioner, taking into account that not all complaints are made on legitimate grounds".**

Details of my personal experience follow.

PERSONAL IMPACT STATEMENT

By what authority empowered under the Law was I investigated?

The Psychology Board of Australia under AHPRA.

Was I investigated as a consequence of a notification (complaint) against me?

YES.

I work as a psychologist. There was a total of five complaints made against me by two people to the New South Wales Health Care Complaints Commission (HCCC) and AHPRA. The complainants also contacted the Australian Psychological Society about their perception

of me as a "cult psychologist" and "recruiting vulnerable clients to a sexual molestation death cult".

Do I feel the notification against me was vexatious, false or otherwise being without sound basis?

YES.

The entire process was flawed, in that, when I became aware of a member of the public, [redacted] who had never attended my practice as a patient or in any other capacity had made comments about my practice online, stating that I was a "cult psychologist" and "recruiting vulnerable clients to a sexual molestation death cult" and the like, I wrote to inform AHPRA, the HCCC and the Australian Psychological Society.

The Chinese Medicine Board of Australia responded by taking my letter of concern as a notification but failed to deter or sanction the then (unbeknownst to me) registered health practitioner, [redacted] from engaging in the foul online abuse of me.

In retaliation [redacted] then made a series of four notifications to AHPRA and the HCCC against me. The HCCC dismissed [redacted] complaint.

The Psychology Board undertook a two year investigation of me, but failed to acknowledge the background of abuse and that the notification against me was in retaliation to the earlier letter of concern I submitted to AHPRA. The Psychology Board failed to deter or sanction Esther Rockett's abuse of me online and, via the medical complaints process, failed to protect me from further online abuse in part as a direct result of AHPRA sharing information with the complainant.

AHPRA and the Psychology Board failed to recognize that [redacted] who made the complaints had previously and for a number of years targeted me in an online cyberabuse/hate campaign and neither of the complainants had ever attended my practice. They claimed I was a "cult psychologist" who was "recruiting vulnerable clients to a sexual molestation death cult". Their use of the AHPRA complaints process was an extension of their online abuse of me. AHPRA failed to recognize this and deter the complainants from using the medical complaints process as a way of harassing me.

During the course of the investigation, I was required to make several lengthy submissions, usually with tight deadlines from the Board, and which were unclear as to the intent and direction of the investigation. The requests for information from the Board were often unclear and unrelated to the content of the original complaint. I found this confusing and intimidating.

The Board found my conduct unprofessional based on my [redacted] and that I had published an article that was "not of the standard expected of a practitioner".

It seems disproportionate to have gone through a two year (plus) investigation process and had to undergo 24 hours of supervision as conditions of my registration for a matter that

has been generally agreed to be relatively minor and that had no bearing on my direct work with patients.

How did I feel while under investigation?

I was disbelieving that the Psychology Board would take action to investigate me for two years or more when I had previously informed them that the people making the complaints, namely [redacted] had targeted me in an online cyber abuse campaign where they made claims that I was a [redacted] "was recruiting vulnerable clients to a sexual molestation death cult" and the like.

I felt unsafe generally speaking and worried for my personal safety. I experienced extreme stress and at one point had thoughts of suicide because of the insanity of the investigation process. I felt that my privacy was not protected and that I was further bullied and attacked by the complainant online throughout the investigation process and beyond.

The online abuse continues to this day, despite efforts to have the offensive material removed from online platforms and addressed through police action.

The Psychology Board included pictures of me and [redacted] in their investigation documents, which were taken from my Facebook page. This was an invasion of my privacy and irrelevant to the matter.

I found the investigation process confusing, humiliating and embarrassing. I felt fearful that my registration as a psychologist would be revoked. I felt dismissed and not taken seriously when I explained the abusive background of the complainants.

What were the other impacts to me personally during the investigation?

Because of the prolonged stressful nature of the investigation, which ran for over two years, I was at one point diagnosed as [redacted] I was later diagnosed with an [redacted] The stress of the investigation lead me to feel highly anxious, burnt out, tired and lethargic. I was unable to be physically active and felt exhausted. My relationship at the time suffered and eventually ended as a direct impact of the prolonged stress I was under. I was unable to sleep well. At one point I had thoughts of suicide as a way of ending the stress and anxiety and the insanity of the system of investigation that I had been subject to.

I could not comprehend why the Psychology Board had not taken into account the fact that [redacted] were targeting me in an online cyber abuse campaign and that their complaints to AHPRA were merely an extension of this.

I certainly felt worn down and under pressure by the constant requirements to answer to or respond to multiple complaints and requests for information. I felt that the Board was unclear in their investigation process and were "fishing" for an issue to make a finding against me.

Generally speaking, practitioners feel fearful of AHPRA and the investigation process. One colleague stated that I had not gone to the tribunal for a fair hearing but merely for "sentencing".

The impacts of cyber-abuse are well known and well documented. AHPRA did nothing to acknowledge the background of abuse, the impact on me or to deter or sanction the misuse of the complaints process for personal issues.

It has been suggested by other Psychologists that [redacted] has psychological issues that contribute to [redacted] complaining behavior.

What were the impacts on my family, friends and close colleagues that I observed and/or felt personally during and as a consequence of the investigation?

My family and friends were all deeply concerned for me. Because of the impacts on my health, I was tired and burnt out. This made me less able to support [redacted] for example or engage in leisure activities as I would have liked, simply because I was either responding to AHPRA documents, which took many hours, or I was too tired to do anything else apart from the bare necessities of household tasks.

My colleagues were disbelieving that I had been treated in such as way, describing the process as bullying and systemic abuse. There were a number of colleagues who were sympathetic, but would not act in support of me publically for fear of recrimination and attack.

My family were at a loss as to how to support me with the investigation.

How did I feel after the investigation?

I felt relieved that the process was finally over, however, I felt bullied, persecuted and stigmatized. I felt the process was one of systemic abuse and harassment that failed to acknowledge the background of abuse that had fueled the original notification against me. It seemed to me that there was a bias against a particular theoretical approach to psychology and that the Board had difficulty in substantiating the complaint.

The Board also found my conduct unprofessional based on an article that was published online that was below the standard expected. The investigation process and conditions on my registration are disproportionate to this.

The Board found my conduct unprofessional based on my [redacted] yet there was no evidence of this. I felt set up and persecuted based on my choice of association with the above complementary health organization and that there was no sound basis for any investigation process nor findings against me.

Do I feel I was fairly treated by being subjected to investigation as I was?

NO.

The investigation was a sham based on a bias against a particular ideology of psychology and had nothing to do with my practice and treatment of clients.

The complaints were an extension of a campaign of online abuse by [redacted] which was very evident but not acknowledged or taken into account by the Board and this stark omission is plainly an attack on my personal beliefs and associations.

Some have stated that the abuse of me, including being complained about to the Board is an extension of [redacted] overt and unending campaign of abuse against [redacted] and that I am merely caught up in a bigger game.

Further, I do not believe that [redacted] have any real care for public safety in the making of their complaints, but that they merely used me and the AHPRA complaints process to bolster their hate campaign against [redacted]

My perspective remains that the findings against me were improperly related to and influenced by my association with [redacted]

This is a breach of basic human rights and freedom of association and based on the fact that there was no wrongdoing found in relation to my clinical practice, I found this outcome unjust.

Was I subjected to a prohibition order as a result of the investigation?

YES. I had conditions placed on my registration as a psychologist for 12 months.

What were /are the impacts to me personally as a consequence of the prohibition order?

I was required to attend supervision for 24 hours in a 12 month period which was time consuming and costly.

The conditions placed on my registration were financially costly to me and were made public, without also publicizing the abusive background of the complaints. This was embarrassing and demoralizing, an extension of the bullying and persecution. I felt "branded", shamed, vilified, abused, fearful and persecuted. I undertook counseling and support and it took me a long time to work through the feelings of shame, abuse and fear. I had lost confidence in myself and AHPRA.

I also became fearful to pursue my personal and religious beliefs and felt intimidated by the Board. I believed for a time that there would be further negative ramifications if I continued to pursue my interest in [redacted] and association with others similarly interested, as it was intimated by the Board that there would be.

Do I feel I was fairly treated by what was imposed upon me in the prohibition order?

NO.

The Board did not acknowledge the background of abuse that fuelled the complaints.

It does not follow natural justice that any practitioner feels intimidated, threatened or persecuted when no wrong doing in their clinical practice was investigated or found.

It is unjust that the investigation process and conditions set out were not in proportion to the so-called Breach.

Did I / do I feel those in authority who investigated and adjudicated my 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.

There is currently a fundamental bias in the *Health Practitioner Regulation National Law Act 2009* against practitioners that fails to protect them from unscrupulous complaints.

There is a bias against practitioners generally, automatically seeing complainants as victims of unscrupulous or incompetent practitioners.

There was a particular bias against me based on my interest in energetic and spiritual aspects of psychology.

This draws into question the capabilities and performance standards of the National Boards and AHPRA as the quasi-judiciary they in fact are, and needs to be addressed in the proposed amendments to the Law.

RECOMMENDATIONS

Based on my personal experiences as outlined above in this submission, and my understanding of the similar experiences of other practitioners, I recommend that:

1. The committee recognizes the evidence submitted by myself and other practitioners to the committee during this inquiry and validates all expressions in that evidence from practitioners of feeling unfairly treated, harmed and traumatised, their experiences in having their careers and health irrevocably impacted, by the harsh and overbearing powers and conduct of authorities permissible under the current Law.

2. 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.

3. 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.

4. The committee, as an instrument of the Parliament of Queensland, the host jurisdiction for the application of the National Law in Australia, recognizes 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.

5. The committee, in recognizing 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.

6. That 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.

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

Sincerely

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[redacted]

4 July 2017

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