HPARA
Seeking Health Reform

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

Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2017

SUBMISSION FROM

Health Professionals Australia Reform Association

Health Professionals Australia Reform Association (HPARA) offers the following submission and recommendations to the Committee.

The Health Practitioner Regulation National Law Act 2009 (the Law) has been shown to obstruct some health practitioners (practitioners) from treating patients and has also caused some practitioners real harm. This has occurred despite the primary objective of the Law to protect the public. The Law affords little recognition to the rights of practitioners and provides less than the normal legal protection guaranteed to patients, or are afforded to citizens in most other circumstances. This objective, to protect the public, can be misused as a shield that permits and allows authorities under the law to unfairly deny health practitioners natural justice, deny due process and avoid the right to a health practitioner the assumption of innocence until a fair judgement has been made.

Authorities that are established by and empowered under the Law can treat practitioners with suspicion, prejudice, and bias. Complainants, however, are protected, even when complaints are frivolous or vexatious. Previous enquiries and recently at two Senate Enquiries in Australia have highlighted these deficiencies and exposed evidence that practitioners have been unfairly treated, harmed and traumatised by the process of an investigation into a complaint or notification. Some practitioners have had careers adversely impacted on, suffered severe depression, and rarely some have lost their life after or during the conduct of investigations.

Previous State and Federal enquiries have found significant problems with the national regulation and complaints process undertaken by AHPRA and despite recommendations being made it is still a fact that many of the problems are unresolved and of major concern to health practitioners.

Alarming evidence was presented to the two recent inquiries conducted by the Federal Senate's Community Affairs References Committee (CARC), in relation to health regulation. The need for change and improvement in the operation of regulatory authorities was publicly recognized by those Committees. The evidence presented demonstrated a perceived, real and persistent vulnerability for Health Practitioners under the Law by abuse of the regulatory system occurring in the form of notifications (complaints) against practitioners. Some notifications were vexatious or false and without a sound basis. In our view, from the evidence presented, there is a connection between vexatious or false notifications and practitioners feeling unfairly treated and harmed. The consequences of the process by the actions of the regulatory authorities can and does, on too many occasions, cause real health and financial damage to health practitioners.

The Law currently provides no balancing protections, procedural fairness or natural justice for health practitioners who come under investigation of the regulatory authorities. A minor finding, against an aspect of the conduct of a practitioner, that may not reflect on competence in clinical practice, can be demonstrated to result in significant and long term impact to the health, well-being and future career of a practitioner. These impacts can be excessive when viewed in the context of the nature of the respective notification or complaint. The Law, as it currently stands, erodes the long-held reputation of medicine and health as a viable, attractive and fulfilling career. . The National Law and its current application, does not correspond to how Society, in Australia and worldwide views, values and respects health practitioners who are generally regarded as being learned, well trained, highly skilled, and ethically aware.

The very existence of HPARA is evidence there are significant and increasing numbers of health practitioners calling for urgent major reform of the National Law. HPARA was formed to support these practitioners and their calls to bring about necessary reform. Many relevant issues were recently presented by these and other practitioners in evidence for consideration at the two recent inquiries of the Federal Senate Community Affairs References Committee (within the terms of reference). The Senate Committees, noted with concern the evidence presented, and in both instances made recommendations that addressed much, but not all, of that evidence before them. However, except for these Senate Enquiries, Health Practitioners have had no organisation to publicly represent their concerns. or highlight the deficiencies of the current registration and regulation system. Since its formation HPARA has conducted two highly successful and well attended National Meetings. The first was held in Sydney in 2016 and the second in Melbourne in 2017. have been held. At these meetings evidence was presented of the significant harm done to health professionals and the damage to the health system itself. A brief viewing of the attached references will demonstrate the documentation all is not well in our regulatory and registration system.

The problems associated with the current legislation will remain while there is persistence in the application of a punitive approach promoted by the proposed legislation. Advice from several experts in many industries other than health support a non-punitive approach that fosters recognition of error, investigation without blame, and undertaking corrective measures that are preventative. Many health authorities have not yet recognised the importance and scientific basis for such an approach which exposes the root causes of complaints and helps identify those complaints that are without merit. Such an approach would not ignore practitioners who are now suffering harm on multiple levels. When the processes of notification and investigation become punishments in themselves, cooperation is not fostered and real solutions become unlikely to be found.

The Bill now before this committee presents the opportunity for the committee and the Queensland Parliament to take the initiative, as the host jurisdiction, to stop additional detrimental provisions being added to the Law, and to make positive recommendations to initiate much needed reform to the Law. Rejecting the suggested changes will help ensure the Law reflects the current values of Australian society. It should also be recognised that the current legislation needs reform to protect good health practitioners. Such an approach that supports reform of the legislation based upon validated research will uphold the integrity of medicine and health as valuable and vital career paths.

Some (but not all possible) examples of the provisions in the Bill that will increase the Law's existing unfairness and detriment to health practitioners are as follows.

Clause 20 Replacement of s 132 (National Board may ask registered health practitioner for employer's details)

(4) In this section—

practice information, for a registered health practitioner practicing in the health profession for which the practitioner is registered, means each of the following if it applies to the practitioner—

(a) if the practitioner is self-employed and shares premises with other registered health practitioners with whom the practitioner shares the cost of the premises—

(i) that the practitioner is self-employed;

and…

(iv) the names of the other registered health practitioners with whom the practitioner shares premises; …

HPARA comment: The above clause enables an authority to gather information about registered health practitioners that are not under investigation nor subject to the prohibition order in question, as if they were – guilty by association. The practitioner under a prohibition order should not be compelled to divulge any information that is not personal to the practitioner themselves. There are significant potential impacts to the other practitioners so nominated as and from being associated with the prohibited practitioner.

Clause 37 Insertion of excessive and substantial new Penalties 196A

After section 196—

insert—

196AOffences relating to prohibition orders

(1) A person must not contravene a prohibition order.

Maximum penalty—$30,000.

(2) A person who is subject to a prohibition order (the prohibited person) must, before providing a health service, give written notice of the order to the following persons—

(a) the person to whom the prohibited person intends to provide the health service or, if that person is under 16 years of age or under guardianship, a parent or guardian of the person;

(b) if the health service is to be provided by the prohibited person as an employee—the person's employer;

(c) if the health service is to be provided by the prohibited person under a contract for services or any other arrangement with an entity—that entity;

(d) if the health service is to be provided by the prohibited person as a volunteer for or on behalf of an entity—that entity.

Maximum penalty—$5,000.

(3) A person must not advertise a health service to be provided by a prohibited person unless the advertisement states that the prohibited person is subject to a prohibition order.

Maximum penalty—

(a) in the case of an individual—$5,000; or

(b) in the case of a body corporate—$10,000.

HPARA comment: The maximum proposed penalty for contravention of a prohibition order is extreme. A medical practitioner may be compelled to, or inadvertently, breach such an order in an emergency, or under principles the practitioner is sworn to and holds in higher esteem than the prohibition order, such as the Hippocratic Oath. Further, a health practitioner subject to a prohibition order is not a criminal and this new section imposes requirements that deliberately brand and shame the practitioner like a criminal. It is sufficient that a health practitioner accepts and observes any prohibition order imposed upon them, without having to publicly identify this to be

the case. To have to do so is not consistent with the majority of legally applied, non-criminal penalties and the values of Australian society. There are significant long-term potential impacts to the practitioner physically, emotionally, mentally and to their future career from such impositions.

The above examples are obvious and significant in their potential impacts, in addition to the many impositions and detriments already in the Law, of similar or greater impact.

HPARA Recommendations

It is recommended strongly that:

1. The committee recognises the evidence submitted by practitioners to the committee during this inquiry and notes all expressions in that evidence from practitioners who have felt they were unfairly treated, had their health harmed, were traumatised, suffered damage to their careers, by the by the complaints process and conduct of authorities permissible under the current Law.

2. The committee recognises 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 wrong, and recommends all participating legislatures take urgent action to effect the needed reform.

3. The committee, with regard to the Bill before it, in examining the Bill scrutinises all provisions of the Bill to identify and removes or modifies all clauses that may impose upon, or permit, further absence of procedural fairness, absence of natural justice or allows the assumption of guilt without proof, or, decides that the the Bill should not be passed in its entirety.

4. 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 deficiencies of the Law and resulting harm and detriment to health practitioners as presented in the evidence before this inquiry and outlined in this submission.

5. The committee, in recognising its responsibilities and those of the Queensland Parliament, as stated in recommendation no. 6 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.

In summary then the critical question for the committee is:

Is there any real or substantial evidence before the committee demonstrating that the Law as it now operates, and will continue to operate once amended by the Bill, will reflect the policy intent that was behind its making?

HPARA would suggest there is little evidence that is so.

The Bill, now before the Parliament of Queensland does nothing to correct existing and ongoing deficiencies in the National Law. The Bill instead will inadvertently add further complexity and possibly harm to Health Practitioners. Once passed in Queensland, as the host jurisdiction for the Law, the Bill will amend the Law as it applies in all participating jurisdictions of Australia. The Health workplace for Health Professionals is becoming increasingly threatening and even hostile to health workers and our registration and regulation bodies should be reducing the burden of sucpicion and blame rather than concentrating on introducing further hurdles and demands on those who look after the health of their fellow Australians.

Genuine and real effective reform in regulation and registration of health professionals can only come after a thorough Royal Commission that examines the root problems, searches for evidence based peer review that is consistent with international norms and is able to recommend. Only then will we have a better way forward for regulation and registration that grants the natural justice, due process and fair hearing that all health practitioners deserve.

Dr. John Stokes
Chairman
Health Professionals Australia Reform Association Committee

Date: 10 /07/2017

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