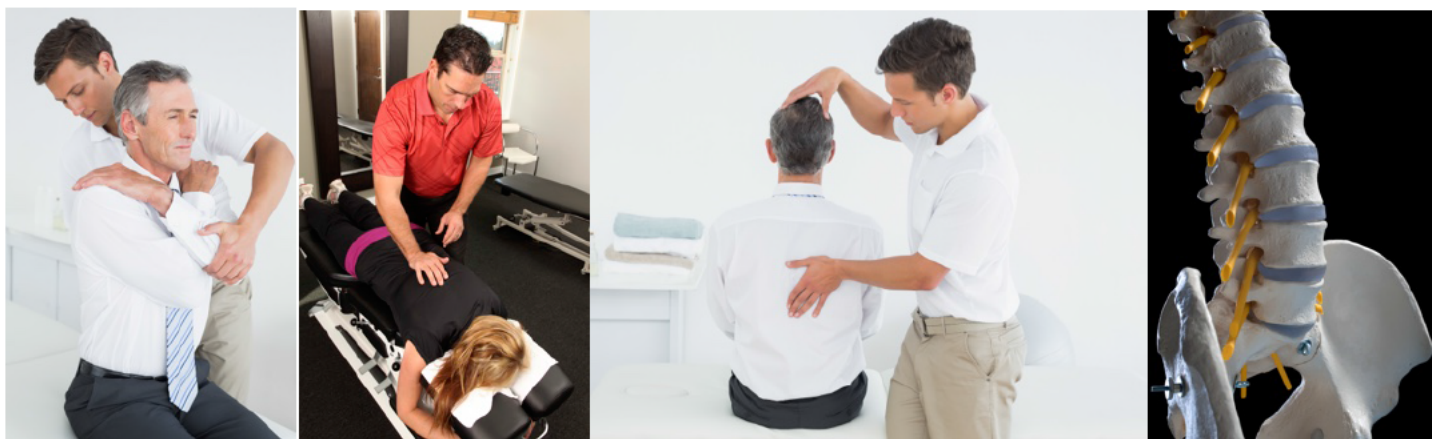




Submission to the Health Practitioner Regulation and Other Legislation Amendment Bill 2017.

July 2017



About CAAQLD

The Chiropractors' Association of Australia (Queensland) Limited (CAAQLD) is the premier body representing chiropractors in Queensland, and is the only state-based representative Association for Chiropractors in Queensland.

Nationally, the Chiropractors' Association of Australia (CAA) represents approximately 3000 members and is the largest chiropractic association in Australia.

As an Association, it is CAAQLD's goal to empower Queenslanders to experience a healthier life through chiropractic care, and to uphold the highest standards of care and professionalism in research, education and practice.

Policy Objectives and Reasoning - Bill Summary

The Bill amends the Health Practitioner Regulation National Law as agreed by the Council of Australian Governments Health Council.

The following are the key reforms proposed:

- 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 complainant (notifiers) and practitioners
- technical amendments to improve efficiency and effectiveness of the National Law.

Additionally, the Bill outlines amendments to the *Health Ombudsman Act 2013*.

Executive Summary:

National Boards should not be consolidated, rather be kept separate and profession specific.

Given the number of professions during the national consultation who raised concerns or opposed proposals and recommendations to consolidate low regulatory workload boards, in addition to an absence of information showing that a consolidation of National boards is likely to improve efficiencies or most importantly improve or enhance public safety, legislating to change the established structure, whether now or in future should not be considered.

Should the decision be taken to consolidate National Boards, professional representation should be greater than 1 representative.

A strength of current National Boards is the variety of clinical and geographical experience within the profession to be drawn from on each of the boards. A dilution of some of the National Boards to one size fits all will be to the detriment of all professions subject to the new board. One representative from a profession is not adequate, it will dilute impartiality, and decrease the voice and independence of smaller professions.

The collection of registrant employment data needs to be kept secure, adhere to relevant requirements of the Privacy Act and not diminish a registrants rights to privacy. Strict policies governing the use of this data should be put in place.

The security and use of proposed collection of employment data is of concern. Whilst the reasoning for this data collection seems reasonable on the surface, it is unclear in the explanatory material provided, if data will be collected for ALL registrants, or just those who are in the midst of the notification and disciplinary process. The collection and maintenance of this data is time consuming and costly, in addition to being onerous for practitioners.

It is appropriate to amend Health Ombudsman legislation to provide consistency across jurisdictions.

Any amendments to the *Health Ombudsman Act* that aren't to the detriment of practitioners and create consistency with National Law are appropriate. Decreasing confusion and inconsistencies that currently exist for not only practitioners, but members of the public, are a positive step toward creating a more robust regulatory system.

Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2017

The Chiropractors' Association of Australia (Queensland) Limited (CAAQLD) welcomes the opportunity to submit feedback to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee regarding the Health Practitioner Regulation National Law and Other Legislation Amendment Bill.

As the policy objectives and proposed amendments are wide and varied, we have not attempted to address all amendments, rather we have focused on a number of specific items most relevant to the profession represented. These issues are:

1. Changes to the structure of National Boards by regulation following consultation.
2. Improvements to complaints notifications management, disciplinary enforcement powers of National Boards.
3. Amendments to the Health Ombudsman's Act

Part 2 Amendment of Health Practitioner Regulation National Law Act 2009

Replacement of s31 (Establishment of National Boards)

The new section s31(2) provides that the regulations may:

- continue an existing National Board for a health profession
- establish a National Board for a health profession or for two or more health professions, or
- dissolve a National Board for a health profession if it is replaced by another Board established for that profession

The new section s31(4) contains a requirement to undertake public consultation before making a regulation which puts in place a new structure for National Boards.

Comment

As referenced in the discussion paper, in 2014 the Snowball review of the National Scheme recommended the consolidation of the nine low regulatory workload National Boards into a single National Board. While the Australian Health Ministerial Council did not accept this recommendation, this Bill allows for changes to be made in future.

Throughout the review and subsequent consultation processes, CAA entities have opposed changes proposed stemming from this recommendation.

The CAAQLD does not support the consolidation of any of the National Boards and is of the belief that each of the registered professions should have their own discrete, profession-specific board. The promulgation of a one-size fits all professions board to manage regulatory function and oversee multiple professions, is viewed as a backward step to gains made to date under the NRAS.

We encourage legislators to consider through to conclusion the possible challenges and issues that would arise from the consolidation of National Boards and whether it is really in the public interest and to what extent it will be to the detriment of the health workforce. The replacement of s31 to provide for future National Board restructure or consolidation to date has failed to take into account and address the following concerns and challenges:

- The risk of smaller professions losing their voice. The current health workforce culture does not provide a mindset or frame of reference for collaboration, particularly in the regulation space. While collaboration is improving in some areas, there still remains an overwhelming ignorance of the skill level and abilities of other health professions. There is a strong culture of 'turf protection' and bullying. In this culture, the larger professions will dominate to the detriment of smaller professions and their practitioners, and ultimately the public.
- The need for profession specific expertise and knowledge to drive standards and policy development, accreditation standards, promote innovation and change and workforce reform and practices. Amalgamating National Boards will dilute profession specific expertise and knowledge and has the potential to dilute the effectiveness of the Amalgamated boards, particularly in the regulatory space.
- Practitioner confidence in regulation. We question whether practitioners will feel adequately heard and represented under a consolidated National Board and the impact this will have on practitioner confidence in the regulator.
- Necessity - no information provided showing that public health and safety will improve. A diluted board has the potential to achieve the opposite.

It is vitally important to both address these issues prior to legislating an allowance for change to National Board structure and to be very certain that the any structure being moved to represents an improvement for the NRAS, practitioners and the public.

While it is pleasing to see the proposed legislation contains requirement to undertake public consultation before making regulation to put in place a new structure for National Boards, does this represent enough of a disincentive for future legislators looking for a quick change based on expediency or cost savings?

Recommendation 1: Keep s31 legislation as it is. Remove proposed amendments from the Bill. Keep providing a National Health Practitioner Board for each health profession.

Replacement of s33 (Membership of National Boards)

In line with our opposition to proposed changes to s31, CAAQLD would prefer for the amendments to this section (s33) and any further amendment legislation related to a change of board structure, to be removed from the Bill.

Should the decision be taken to make changes to s31, it is our recommendation that measures be included in Clause 6 to allow for a level playing field that does not allow larger professions to dominate a consolidated National Board.

One member from each profession is not enough to provide adequate diversity and experience from within a profession, particularly for the profession specific expertise and knowledge that is required for effective and relevant regulation, policy development and workforce reform.

Recommendation 2: Should it be decided to remove s31 from the Bill, additionally remove any related proposed amendments and additions to legislation.

Recommendation 3: Should amendments to s31 go ahead, consider further legislation amendments to allow for a level playing field for all professions, including an increase to the required number of profession specific board members.

Replacement of s132 (National Board may ask registered health practitioner for employer's details)

The Explanatory Notes and Bill do not clearly state at what point this data is planned to be collected. It is presumed that this information will only be gathered to this extent in the instance of a notification against a practitioner that may then require the use of such details. To keep this level of information as a standard is otherwise unnecessary and a costly exercise to keep up to date.

As a professional Association, our experience in maintaining a database of contact information is that keeping these details up to date and accurate is an undertaking in both time, resources and practitioner participation. We would be concerned to see resources being spent in this manner.

While the reasoning for this data collection seems reasonable on the surface, concern remains that this data may be misused in a way that breaches practitioner privacy. Of particular concern is that prior to notification of action against a registered health practitioner to employers and associated parties, recency of information should be confirmed, so that notifications are not unwittingly sent to unnecessary parties.

Development of strong policies will be needed to ensure that provisions of the Privacy Act are observed, that confidentiality is maintained and that data is protected and is not used to the detriment of registrants.

Amendment of s206 (National Board to give notice to registered health practitioner's employer)

Again, while this seems reasonable on the surface, it is vitally important that strong policies underpin the power of notification of conduct and performance action being taken against a health practitioner. Of particular concern is ensuring that the correct information goes to the correct parties.

All comments made in relation to s132 changes on the previous page are applicable here.

Recommendation 4: Clarify in legislation at which point the extensive practitioner employment data should be collected. Ensure that all amendments in legislation require strong policy underpinning these expanded powers.

Part 3 – Amendment of Health Ombudsman Act 2013

CAAQLD is supportive of measures to amend Health Ombudsman Act 2013 to provide consistency across jurisdictions.

In line with previous comments regarding changes to National Law, particularly in relation to the notification of action against practitioner to employers, the same comments regarding Privacy and duty of care should be observed.

General Comments

As outlined in the discussion paper, we highlight again the concept of “discretionary power” in many of the proposed legislative amendments based on a public risk test.

While the use of a public risk test is a positive step toward mitigating concerns regarding the inherent bias potential in the use of “discretion”. Concern still remains that this is not as robust or specific wording as it could be and should perhaps be reviewed or reconsidered for alternative phrasing.

Recommendation 5: Reconsider alternative phrasing for “discretionary” powers to remove the possibility of potential bias and abuse of “discretionary” powers.

Conclusion:

The Chiropractors' Association of Australia (Queensland) Limited (CAAQLD) again thanks the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee for the opportunity to submit feedback regarding the Health Practitioner Regulation National Law and Other Legislation Amendment Bill.

We thank you in advance for consideration of the comments and recommendations raised within this submission.

Recommendations:

Recommendation 1: Keep s31 legislation as it is. Remove proposed amendments from the Bill. Keep providing a National Health Practitioner Board for each health profession.

Recommendation 2: Should it be decided to remove s31 from the Bill, additionally remove any related proposed amendments and additions to legislation.

Recommendation 3: Should amendments to s31 go ahead, consider further legislation amendments to allow for a level playing field for all professions, including an increase to the required number of profession specific board members.

Recommendation 4: Clarify in legislation at which point the extensive practitioner employment data should be collected. Ensure that all amendments in legislation require strong policy underpinning these expanded powers.

Recommendation 5: Reconsider alternative phrasing for "discretionary" powers to remove the possibility of potential bias and abuse of "discretionary" powers.

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