

Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024

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Mr Aaron Harper MP
Chair
Health, Environment and Agriculture Committee
Parliament House
George Street
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By email: HEAC@parliament.qld.gov.au

Dear Mr Harper

The Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024

I refer to the Health Practitioner Regulation National Law and Other Legislative Amendment Bill introduced on 11 September 2024 by Minister Fentiman.

As outlined in the earlier submission from the Office of the Health Ombudsman (OHO) dated 19 February 2024, I would like to express my support for the amendments.

The Bill introduces the following reforms:

1. Expanding the information available on the national public register to include where there has been a finding made by a Tribunal that a registered health practitioner has engaged in sexual misconduct which amounts to professional misconduct;
2. Providing stronger protection for complainants and notifiers from reprisal, threats and intimidation; and
3. Establishing nationally consistent requirements for practitioners to obtain a reinstatement order prior to applying for re-registration, following cancellation or disqualification.

The Bill contains amendments to the *Health Ombudsman Act 2013* (Qld) and modifications to the *Health Practitioner Regulation National Law Act 2009* (Qld) to support the National Law as applied in Queensland as a co-regulatory jurisdiction. The OHO has strong working relationships with Ahpra, and staff often engage in consultations about matters involving registered practitioners. These discussions take place throughout the complainant management process from the initial complaint about an individual health practitioner (through the joint consideration process) to matters that are the subject of disciplinary proceedings at the Queensland Civil and Administrative Tribunal. We are confident that the amendments will support the OHO's continued cooperation and coordination with Ahpra and the National Boards.

Publication when a practitioner is found to have engaged in sexual misconduct

The Bill amends the National Law to provide that entry for a registered practitioner on the public register will include further details if a Tribunal has made a finding of professional misconduct and the basis for that finding was that the practitioner has engaged in sexual misconduct. This change clearly aligns with the main guiding principle of the Health Ombudsman Act that the health and safety of the public is paramount.

There is no definition of sexual misconduct in the Bill. Instead, the term has its ordinary meaning. The Bill also provides that the publication requirements will take effect even if the sexual misconduct is not the only or main basis for the finding of professional misconduct by the Tribunal. There will be a very limited discretion afforded to the National Boards in deciding whether a tribunal finding of professional misconduct was based on sexual misconduct.

These amendments aim to deter other practitioners from engaging in sexual misconduct. I agree that this is critical. Any sexual exploitation by a registered health professional is an egregious abuse of trust and can result in profound and long-lasting impacts on victims.

In my view it is crucial to provide transparency and reassurance to the public. When a registered health practitioner is convicted of a sexual offence or is found by the Tribunal to have committed sexual misconduct, the effect on the public may be significant. In particular, when a practitioner behaves in a way that constitutes sexual misconduct, it can erode public confidence in the health services provided by registered practitioners. It is very important that the members of the public feel safe when accessing health care. Publication of findings of professional misconduct involving sexual misconduct on the public register will assist the public in making informed choices when accessing the health services provided by registered health practitioners. It will also provide transparency and assist in maintaining public confidence in registered health professionals.

Procedural safeguards for practitioners

The Bill stipulates that the register will also be updated to include a link to the Decision and Reasons of the Tribunal.¹ The Bill also clearly provides that additional information must not be published on the register if that would be contrary to a non-publication order. The National Boards will also retain their discretion not to publish certain information if non-publication is necessary to protect the health and/or safety of the practitioner and/or members of their family. The OHO supports this measure and agrees that the personal health concerns of individual practitioners should be kept confidential.

Support for health service complainants

The OHO is committed to providing support to people who make complaints to OHO about sexual misconduct. I am aware of the Notifier Support Service provided by Ahpra and fully support this valuable initiative.

Although we do not have a stand alone complainant support service at the OHO, we recognise that some complaints need more tailored management and support processes. Our staff are committed to providing a customer-focused and sensitive approach to complaint management and engagement of witnesses in investigation and tribunal processes. They aim to balance the OHO's

¹ If there is a non-publication order that applies to a Tribunal decision involving sexual misconduct, then every effort will be made to ensure that the patient or victim is not identified.

statutory obligations with an ability to manage people sensitively and compassionately through the OHO's processes. The OHO also offers a culturally sensitive, person-centred approach to addressing complaints from Aboriginal and Torres Strait Islander complainants, supported by a dedicated specialist Complaints Advisor.

Increased protections for complainants from reprisal, threats and intimidation.

I note that currently the National Law does not contain an offence of reprisal. The new section 237A is designed to provide protection from reprisal, threats and intimidation for notifiers who make a notification in good faith. I am supportive of this and the corresponding amendment to the Health Ombudsman Act to amend s261 to prohibit threats and intimidation as well as reprisals. I also commend the insertion of s263A into the Health Ombudsman Act and the addition of section 237B to the National Law to void non-disclosure agreements from preventing or limiting a person from making a health service complaint or a notification under the National Law.

In my view, it is critical that complainants and notifiers feel safe from reprisals, threats and intimidation when they make a complaint or notification to the OHO or Ahpra.

Reinstatement Orders

I support the proposed amendment to introduce a new requirement for cancelled or disqualified practitioners to apply for and obtain a reinstatement order from the responsible Tribunal before applying for re-registration. This requirement already exists in New South Wales. I note that the Bill will insert a new Part 8, Division 12A into the National Law and will amend section 126 of the Health Ombudsman Act.

I understand that the respondent to the application by the practitioner will be whichever regulator brought the disciplinary proceedings originally and therefore in Queensland it will either be the Health Ombudsman or the National Board. My view is that this amendment will provide a nationally consistent approach to reinstatement orders and will provide the public with greater transparency.

Further I note and support the proposed amendment to section 107 of the Health Ombudsman Act. This amendment will remove the wording of indefinitely disqualifying a practitioner and stipulate clearly that the Tribunal may impose a sanction that either permanently disqualifies a practitioner or disqualifies or cancels their registration for a specified period.

Conclusion

I would be happy to discuss any of the amendments further and I thank you for the opportunity to make a submission.

Yours sincerely



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Health Ombudsman