Health and Other Legislation Amendment Bill (No. 2) 2023

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Queensland Nurses & Midwives' Union

Submission to

Health and Environment Committee

Health and Other Legislation Amendment Bill (No.2) 2023

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submission

Contents

Introduction

The Queensland Nurses and Midwives' Union (QNMU) thanks the Health and Environment Committee for the opportunity to comment on the *Health and Other Legislation Amendment Bill (No. 2) 2023* (the Bill).

Nursing and midwifery is the largest occupational group in Queensland Health (QH) and one of the largest across the Queensland government. The QNMU is the principal health union in Queensland covering all classifications of workers that make up the nursing and midwifery workforce including registered nurses (RN), midwives, nurse practitioners (NP) enrolled nurses (EN) and assistants in nursing (AIN) who are employed in the public, private and not-for-profit health sectors including aged care.

Our over 71,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses and midwives in Queensland are members of the QNMU. As the Queensland state branch of the Australian Nursing and Midwifery Federation, the QNMU is the peak professional body for nurses and midwives in Queensland.

Through our submissions and other initiatives, the QNMU expresses our commitment to working in partnership with Aboriginal and Torres Strait Islander peoples to achieve health equity and ensure the voices of Aboriginal and Torres Strait Islander nurses and midwives are heard. The QNMU supports the Uluru Statement from the Heart and the call for a First Nations Voice enshrined in our Constitution. The QNMU acknowledges the lands on which we work and meet always was, and always will be, Aboriginal and Torres Strait Islander land.

The QNMU welcomes the Queensland Government's initiative in preparing this landmark legislation. The amendments make a number of significant changes to improve access to healthcare and patient safety by guaranteeing safe workloads for midwives, improved access to termination services and quality improvements across public sector health services.

In particular, we thank the state government's acknowledgement of the crucial role that midwives play in delivering safe, high quality health care through the commitment to legislate minimum midwife-to-patient ratios. These nation-leading midwifery ratios will have a profound impact on our midwifery members' ability to provide best quality care for women and babies across Queensland.

The QNMU considers that the legislation addresses the majority of matters we have raised in our initial submissions to the Queensland Government. We raise a number of remaining issues and opportunities to further refine and enhance the accuracy and applicability of the Bill.

Recommendations

The QNMU Recommends

***Hospital and Health Boards Act 2011* amendments**

- Explicitly codifying the ratio of one midwife to every six patients, including babies, in the *Hospital and Health Boards Regulation 2023;*
- Removing the amendment to enable a Quality Assurance Committee (QAC) to disclose information about a health professional in specified circumstances, as it is overly punitive and does not give sufficient regard to the impacts on health practitioner wellbeing or existing regulatory mechanisms already in place;

***Termination of Pregnancy Act 2018* amendments**

- Establishing a number of operational and educational measures to ensure the safe and effective implementation of legislation;
- Considering the suitability of women seeking access to early medical termination services from pharmacists;
- Retaining the term 'woman' in the Act; and

***Mental Health Act 2016* amendments**

- Clarifying that consent must be obtained from the subjects of expert reports and transcripts or their legal representatives who have the right to make decisions on their behalf.

Hospital and Health Boards Act 2011 amendments

Midwife-to-patient ratios

Establishing and maintaining safe workloads has been a long-term priority for nurses and midwives working across all health sectors in Queensland. After years of lobbying against dangerously high workloads and patient safety concerns through the "Count the Babies" campaign, we welcome the state government's commitment to legislate minimum midwife-to-patient ratios.

The implementation of minimum ratios in Queensland public health facilities for midwives will be distinct from all other ratio models applied in Australia. The Bill makes Queensland the first jurisdiction to clarify that every baby will be counted as a separate patient when they are staying in the same hospital room as their birth parent.

These amendments provide much needed relief from workload pressures and ensure that Queensland Health midwives feel valued, supported, and heard. It will also enable midwives to provide Queensland women and babies with the level of care they need and deserve, as per the QNMU's *Positive Practice Environment Standards for Nursing and Midwifery*.

The QNMU reiterates the importance of explicitly codifying in the *Hospital and Health Boards Regulation 2023* the details of the ratios framework, such that one midwife is rostered to every six patients, including babies.

Sharing of Quality Assurance Committee information

The QNMU expressly opposes the amendment to enable a Quality Assurance Committee (QAC) to disclose information about a health professional to their chief executive where there is reasonable belief that the health professional's health, conduct, or performance poses a serious risk of harm to a person.

The QNMU recognises the necessary requirement for Hospital and Health Services (HHSs) to be informed about patient and staff safety concerns received by their QACs following a clinical incident. However, the desire for rapid and direct responses to patient safety risks must be measured and appropriate and not impose unintended consequences on health practitioners or unduly criminalise medical errors of health practitioners who have made genuine mistakes.

Most medical errors are a result of flawed systems, not reckless practitioners. Placing overly punitive measures on individual health practitioners fails to address system-level problems and their solutions. This approach may have severe impacts on health practitioners' reputation, negatively impact safety culture within the health care system, even in circumstances where the practitioner is found not to be at fault. The distinction between intention and recklessness of health practitioners needs to be regarded in the decision-making process to disclose information.

The QNMU considers that this amendment does not give sufficient regard to the wellbeing of health practitioners in allowing QACs to make such disclosures. We urge that any new regulatory powers must not impose unnecessary risk or stress on health practitioners. Although we agree that steps need to be taken where conduct occurs that can impact patient safety, we question the need for further regulatory burden and creating an additional bureaucratic pathway to manage issues where formal processes are already established. Queensland is a co-regulatory jurisdiction, which provides authority to the Office of the Health Ombudsman (OHO) and the Australian Health Practitioner Regulation Agency (Ahpra) to handle complaints and notifications about health services and health practitioners. Organisations also have internal capacity to respond to behavioural issues through disciplinary actions, suspensions, or positive performance management actions. The burden and stress of delays and response times for investigations, particularly for practitioners facing simultaneous investigations across regulatory bodies, already places avoidable stress and harm on practitioners. A more effective solution would be to provide additional resourcing to this important group.

Given the existing measures already in place to identify and address the issues raised, and the potential impact on health practitioners' wellbeing, the QNMU strongly opposes this amendment.

Appropriate Action by Chief Executive

The QNMU supports the amendments to clarify that the Chief Executive can take action they consider appropriate in response to a clinical review report or a health service investigation. Such amendments will provide clarification of the process where further required action is to be taken.

Sharing of information from root cause analysis

Root cause analyses provide a valuable opportunity to improve clinical services, patient safety and encourage continuous improvement of the healthcare system. The QNMU supports the Bill in amending the *Hospital and Health Boards Act* to allow key findings, recommendations and lessons learnt, from root cause analysis reports to be appropriately shared with the clinical governance areas within Queensland Health. We support the Bill's aim to balance the need for sharing valuable information for safety and quality improvement whilst upholding appropriate confidentiality of identifiable information.

***Termination of Pregnancy Act 2018 and Criminal Code* amendments**

Additional health practitioners to perform early medical terminations of pregnancy

Access to termination services in Australia is limited and inequitable, with many individuals facing significant and intersecting financial, social, geographical and health provider barriers to access necessary termination care (Commonwealth of Australia (Community Affairs References Committee) 2023). Improving access to safe and timely care for women is long overdue.

The QNMU commends Queensland Health on this important health care development to improve access to safe early medical termination services, and support patient autonomy, choice of provider, and recognition of reproductive rights for women.

Nurses and midwives provide highly qualified care across all reproductive healthcare services. Allowing nurses and midwives to perform medical terminations of pregnancy using MS-2 Step will improve access to termination of pregnancy care in locations where access to service providers, including GPs, sexual health clinics, and hospitals, who provide this service may be limited.

Operational objectives

To support this amendment, we recommend establishing a number of operational and educational measures to ensure the safe and effective implementation of this legislation. This includes developing a plan for educating the community regarding legislative changes and their improved access to health care practitioners when accessing early medical terminations. We also expect that access to education and support resources will be made available to health practitioners, such as nurse practitioners and endorsed midwives to support delivery of care.

Health practitioners should be aware of relevant legislation regarding their rights and obligations if refusing to provide or participate in treatments or procedures to which they conscientiously object. This includes their obligation to inform the client about their conscientious objection status and refer the client in a timely manner to alternate registered health practitioners who can provide the required service. We ask that appropriate education is provided to nurses and midwives regarding their rights and obligations to conscientious objection to providing termination of pregnancy care.

The development of a Statewide Health Management Plan to establish a level of clinical governance and standardised processes across the sectors within Queensland is also recommended.

Prescribed health practitioners

We raise concerns regarding the suitability of women seeking access to early medical termination services from pharmacists. The provision of termination services is complex and nuanced, requiring appropriately trained and qualified health practitioners to provide thorough patient consultations, obtaining patient history and examinations before going ahead with a medical termination. Consultations should cover the physical, mental, and pharmacological effects of the medication. Pharmacists do not have this training. Further concerns include that pharmacists are not able to order ultrasounds or blood tests when they are deemed necessary, nor do they have access to the Medicare Benefits Schedule or Pharmaceutical Benefits Schedule.

A busy retail pharmacy setting does not provide the optimal environment for complex diagnostic reasoning, appropriate consultation, or the necessary environment to maintain confidentiality when discussing women's private health issues. Consideration needs to be given to ensuring that multidisciplinary clinics are appropriately resourced and supported to provide information about this service in a respectful, qualified, and confidential manner.

Criminal Code amendments

The QNMU provides no further comments.

Replacing references to 'woman' with 'person'

The QNMU supports any person's rights to self-determination and equitable access to culturally safe, high quality health care (Maier 2023). In some circumstances, the application of gendered rather than sexed terminology is appropriate, and we endorse the importance of being inclusive and respectful. However, in this context, we disagree with the proposed amendments to replace the term 'woman' with 'person' in the Termination of Pregnancy legislation.

This view is not intended to exclude pregnant people who do not identify as women, nor to diminish the rights of transgendered or non-gendered people. Instead, we caution against the potential adverse consequences of desexed language when referring to sexual and reproductive health services.

The terms *women, woman* and *women and babies* provide essential language that supports a human-centered philosophy of midwifery care that empowers and protects all women and persons who are accessing their care (Maier 2023). Women continue to experience discrimination based on sex and harmful gendered stereotypes associated with being female. The removal of the term 'woman' in legislation that is targeted at a population level has the potential unintended consequence of making biological sex less visible and more difficult to clearly explain in healthcare education (Dahlen 2021).

The QNMU argues that statutory language needs to be specific to the context and the cohort of people upon which it is focussed. We therefore recommend that term 'woman' is retained in the legislation.

***Public Health Act 2005* amendments**
The QNMU provides no further comments.

***Mental Health Act 2016* amendments**
The QNMU is in broad support of the proposed amendments to the *Mental Health Act 2016*, to clarify how Mental Health Court expert reports and transcripts may be released and used. We reiterate the need for this process to ensure reports are de-identified and only used and released in appropriate circumstances. This might include planning for and delivering appropriate treatment and care services, such as developing medical care plans. We support the additional safeguards included in the Bill to ensure information is appropriately disclosed, such as providing the Mental Health Court with the discretion to limit the purposes for which information in the report may be shared.

Decision-making capacity is critical in this process and must give appropriate consideration to the rights and liberties of persons whose information is shared. We urge that the Bill clarifies that consent must be obtained from the subject of the report or their legal representative who has the right to make decisions on their behalf.

References

Commonwealth of Australia (Community Affairs References Committee) (2023). Ending the postcode lottery: Addressing barriers to sexual, maternity and reproductive healthcare in Australia, Parliament of Australia.

Dahlen, S. (2021). "Do we need the word 'woman' in healthcare?" Postgrad Med J 97(1150): 483-484.

Maier, B. (2023). "The use of the term 'woman' not patient or person in midwifery." Inscope 25(Autumn): 39-41.