

Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022

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Australian Association of Psychologists incorporated (AAPi)



AAPi Feedback on Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022



Introduction

AAPI thanks the Health and Environment Committee for the opportunity to provide comment on the proposed changes to the National Law. While some of the amendments are welcome, we have concerns over the potential unintended consequences of some of the proposed amendments.

AAPI is the leading not-for-profit peak body representing all psychologists Australia-wide. Our members include psychologists from all areas of endorsement and those who have chosen not to pursue endorsement, from graduates through to university lecturers and leaders in their field. By advocating for equality for psychologists, the AAPI is also advocating for equitable access to mental health services for all Australians.

This submission has been compiled through consultation with the Board of AAPI and has been approved by the Board and Executive Director.

Sincerely,

A handwritten signature in black ink, appearing to be 'Amanda Curran', with a stylized, flowing script.

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Interim Prohibition Orders and Prohibition Orders

We agree with the proposed reforms to allow Ahpra to take action and issue interim prohibition orders to those persons who falsely hold themselves out to be registered health practitioners and to withdraw the registration of those who have obtained registration through use of false or misleading information. This will ensure that the public can have confidence that their provider is appropriately qualified and registered. We also support the requirement for suspended practitioners to submit renewal documents within one month of their suspension ending to ensure recency of practice, professional development, and criminal history are addressed in a timely manner and registration reinstated if appropriate.

Information Sharing and Public Announcements

We have concerns about the insertion of division 7B into part 8 of the National Law or addition of part 8AA into the Health Ombudsman Act to allow the issuing of public statements about practitioners who are subject to investigations or disciplinary proceedings for the following reasons:

1. Practitioners should not be viewed as guilty until proven innocent, as is the longstanding criticism of Ahpra. Ahpra has received overwhelming feedback through Senate enquiries and consultations that there is a lack of procedural fairness in the way it deals with practitioner complaints.
2. The ability for Ahpra to make public announcements will push scrutiny of practitioners who have not been formally investigated into the public domain where it may remain indefinitely. It is very hard for online information to be deleted fully and we have concerns that that this information will linger in the public domain.
3. There is the potential for reputational damage where complaints are unfounded or vexatious and are made publicly known before an investigation has taken place.
4. There has been significant research in the UK about the impact of investigations on doctors. Bourne et al's study of doctors found that doctors who had recently received a complaint were 77% more likely to suffer from moderate to severe depression, have increased incidence of suicidal thoughts, sleep difficulties, relationship problems, and physical health problems compared with people who had not been through a complaints process. Between 2005 and 2013, 28 doctors died through suicide or suspected suicide while undergoing investigation. It is clear through this research and through reports from AAPI members who have been subject to Ahpra investigation,



disciplinary processes are adversarial and affect the health and wellbeing of those who are subject to investigation, increasing the risk of mental illness. Research in the UK has recommended that when a practitioner becomes subject to a complaint that this be considered a risk factor for both depression and suicide. Research published in New Zealand in 2004 looked at the immediate and long-term impact on doctors who receive patient complaints. Of the 221 doctors who had received a medical complaint, the immediate impact revealed that 72.5% expressed feelings of anger, 65.1% felt depressed, 38.4% indicated they had reduced levels of enjoyment in practising medicine, 36.4% had feelings of guilt and being shamed. Long term, 36.6% continued to have feelings of angerⁱⁱ.

5. The threshold needs to be extremely high for public statements to be made about practitioners or to suspend practitioners.
6. AAPI is of the opinion that if a complaint is serious and meets threshold for “serious risk to public health and safety”, enough to require a public announcement to warn the public about potential risk, it would be more appropriate to conduct an investigation more promptly and decide if formal suspension from practice would be more appropriate rather than defaming practitioners publicly before an investigation has been undertaken.
7. We strongly object to the passing of this legislation as it is not consistent with the application of natural justice. There should be recourse for practitioners to apply for defamation actions, damages and legal costs claims should such legislation be passed and if it is found that a claim is unfounded, and the respondent has been subject to a vexatious or incorrect complaint. The board has also received feedback in recent times about their inappropriate dealing with vexatious complaints. This legislation change also has the potential to amplify the psychological and financial damage to practitioners.
8. There is also potential for breach of privacy and risk to the individual practitioner (particularly in the case of practitioners being stalked or targeted by former partners or clients as has occurred previously) as well as potential to identify a complainant publicly by the comments made.

We object to the proposed extension of information sharing provisions to permit or require disclosure of complaints to employers, past employers, and other relevant entities with whom the practitioner has a current practice arrangement such as those that share a premises prior to investigation or taking disciplinary action. This has very real risks for the financial and psychological well-being of those who have received complaints that are found to be unfounded. More than 70 % of complaints received by Ahpra in the 2020-2021 period were not investigated at all and only 10% of cases



resulted in regulatory action being taken. This means that 20% of notifications were investigated and no action was taken by the agency. These 20% of cases could be at risk of Ahpra making a public statement about them that would be unnecessary if the benchmark for information sharing was not significantly high. Ignoring the impact on the profession and solely focussing on the risk to the public has the potential to cause significant harm to practitioners and by extension to the public. Risk management is an essential part of the role of Ahpra but this needs to be a measured approach that balances both the risk to the public and the risk to the individual practitioner. Making public statements about a practitioner without a full investigation is not a measured or proportional response and should be discouraged.

Information On Public Register

The provisions to remove information about a registered health professional from the public register if the publication of that information presents a serious risk to the health or safety of a family member or associate is a welcome addition. AAPI also supports the inclusion of alternate names so that practitioners can be easily identified by the public.

Disciplinary Action – Health Practitioners Practicing While Unregistered

We agree with the amendment to the National Law so that those practitioners who continue to practice when their registration has lapsed are engaging in unprofessional conduct and where this is brief and inadvertent a practitioner should not be prosecuted but responses should be proportionate and result in disciplinary action instead.

Penalty Changes

We agree with the changes to the penalties but would like to stress at this time that appropriate education needs to take place to registered health professionals and those who employ them so there is a higher level of understanding before disciplinary action is undertaken.

Mandatory Notification By Employers

Currently, information regarding mandatory notification by employers is poorly disseminated by Ahpra. It is difficult to find the information regarding the requirements and can be confusing as many employers are also supervisors, who have different obligations. The proposed changes to require employers to notify Ahpra of any disciplinary action against the practitioner are appropriate but AAPI is concerned that education about obligations of employers needs to be better disseminated. AAPI is happy to work with Ahpra regarding the dissemination of such education and training.

Removing The Prohibition Of Testimonials

Regarding the proposed changes to the use of testimonials, amending section 133 of the National Law – while we acknowledge it is increasingly difficult to manage online comments/client testimonials, we have concerns about how this will impact other parts of the current advertising guidelines such as creating an unreasonable expectation of beneficial treatment. This change will also have the potential to impact the ability of practitioners to remove defamatory and false negative comments on websites where previously it was possible to ask for statements to be withdrawn due to the advertising guidelines and testimonial bans. It has the potential to negatively impact on patient privacy and may lead to coercion of clients to make positive reviews. This would be inappropriate and should be discouraged through the legislation. Testimonials have the potential to mislead and deceive potential clients due to the power differential between practitioner and client and the low likelihood of clients voicing their concerns about treatment. If this part of the Legislation is passed unchanged, significant education needs to occur for all Ahpra registered health practitioners to ensure they are still compliant with advertising guidelines.

Governance Changes

The delegation of power to approve registration standards needs to be kept outside of Ahpra and decisions need to be made by an impartial third party and following active consultation. We would like more information about the proposed changes to determine their appropriateness rather than relying on the examples provided.

ⁱ Bourne T, Wynants L, Peters M, et al. (2015) The impact of complaints procedures on the welfare, health and clinical practise of 7926 doctors in the UK: a cross-sectional survey. *BMJ Open* 4:e006687.

ⁱⁱ Cunningham W (2001) The immediate and long-term impact on New Zealand doctors who receive patient complaints *The New Zealand Medical Journal* 117(1198) available at:
http://www.nzma.org.nz/__data/assets/pdf_file/0011/17957/Vol-117-No-1198-23-July-2004.pdf