Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022

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UNITED
WORKERS UNION

Submission to the Health and Environment Committee:

Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022

Introduction

United Workers Union (UWU) makes the following submission to the Health and Environment **Committee** in relation to the proposed *Health Practitioner Regulation National Law and Other Legislation Amendment **Bill** 2022*.

Overview of UWU

UWU represents almost 30,000 workers in Queensland across a range of public and private sector employers who are engaged in a diverse range of industries and occupations, and who remain under both the State and Federal industrial relations jurisdiction.

Our membership includes ambulance officers, health professionals and operational staff, school cleaners, teacher aides, early childhood educators, those employed in the contracting industries, including but not limited to cleaning, security and hospitality, private prisons and detention centres, aged care workers, logistics and supply chain and farm workers.

UWU has a long and proud history of advocating for and representing the industrial interests of our members employed in a myriad of industries including those employed in health and ambulance whose employment as registered professionals is subject to regulation by Ahpra, and the Office of the Health Ombudsman (OHO), as applicable.

The Bill

UWU generally supports the Bill and its objectives. Below we identify some areas of concern and provide recommendations on how those concerns could be resolved.

Effectiveness and efficiency of the scheme

We are concerned with how long Ahpra and OHO take to investigate and determine notifications concerning practitioners employed in the ambulance services and health industries, in some instances taking years to conclude.

Slow resolution is compounded by onerous interim restrictions on practice imposed as immediate action or through voluntary undertakings.

Whilst immediate action and undertakings are necessary in some cases to protect the health and safety of the public, it is also necessary to balance the action with a practitioner's right to continue development in their profession, and earn an income. We have observed an imbalance between these two considerations, rendering practitioners without meaningful work for prolonged periods and in some instances, without any income.

The following case studies illustrate the above points.

Case Study 1

A member of UWU employed as an Advanced Care Paramedic by the Queensland Ambulance Service (QAS) was accused of sexual harassment and inappropriate remarks. The paramedic self-reported the workplace investigation to the OHO on 13 February 2020. On 27 February 2020, OHO referred the matter to Ahpra.

16 weeks later, Ahpra proposed immediate action in the form of suspending the paramedic's registration. The paramedic was given five days to respond to the proposed action.

In response to the proposed action, the paramedic proposed an alternative to suspension by offering to give an undertaking on the following terms:

- not to practice as a paramedic with QAS;
- to only practice a paramedic under the supervision of a senior manager in secondary employment; and
- to commence relevant training to correct the behaviour.

The undertaking was rejected on the basis the paramedic's proposal was not sufficient to mitigate the perceived risks posed, and the paramedic's registration was suspended.

The suspension remained in effect for a period of 49 weeks. During that time, the paramedic was unable to find meaningful work, or work on similar pay, due to the oppressive nature of the suspension.

The suspension was lifted after 49 weeks when UWU raised concerns with how long the investigation was taking, highlighting the detrimental financial and psychological impact on the paramedic.

A further 38 weeks later, the paramedic received a final outcome confirming that '*no further action*' would be taken.

This case study exemplifies the significant delays that are not uncommon in these matters, and related adverse financial and psychological effects caused by the imposition of oppressive conditions over a protracted period of time.

It is relevant to note the paramedic did not contribute to the delay and responded to all requests made by Ahpra in compliance with each deadline (usually within 5 or 14 days of each request).

Case Study 2

A member of UWU employed as a Critical Care Paramedic by the QAS was the subject of a complaint made by QAS to OHO regarding the performance of a procedure outside of the credentialled scope of practice for a paramedic.

18 weeks after the complaint was made, OHO referred the matter to Ahpra.

Ahpra proposed immediate action by way of suspending the paramedic's registration.

In response to the proposed action, the paramedic proposed an undertaking not to practice using the *standard form* undertaking, which prohibits practise as a paramedic, and defines 'practice' as follows:

> *"For the purposes of this undertaking, 'practice' is defined as any role, whether remunerated for not, in which the individual uses their skills and knowledge as a paramedic in their profession. It is not restricted to the provision of direct clinical care and includes using the knowledge and skills of a paramedic in a direct non-clinical relationship with a client, working in management, administration, education, research, advisory, regulatory or policy development roles and any other roles that impact on safe, effective delivery of services in the paramedic industry."*

The undertaking was accepted by Ahpra.

At the date of this submission (152 weeks since the complaint was made), Ahpra still has not concluded its investigation.

It is relevant to note QAS finalised its investigation and disciplinary process within 48 weeks of the complaint.

It is also relevant to note the paramedic did not contribute to the delay and responded to all requests made by Ahpra in compliance with each deadline (usually within 14 or 28 days of the request).

This case study also exemplifies our experience of the prolonged periods Ahpra take to resolve complaints and the oppressive restrictions imposed on a practitioner when offering the standard undertaking.

Case Study 3

A paramedic was subject to an investigation and disciplinary process that concluded with the imposition of conditions on practice.

During the investigation process, the paramedic's employment was terminated. Unable to find alternative employment in a main city, the paramedic accepted employment at a regional mine site on a fly-in-fly-out basis.

The conditions imposed at the end of the disciplinary process included 12 months supervision by another registered practitioner. The paramedic proposed to satisfy the condition by nominating a colleague employed as a registered nurse at the mine site.

Ahpra did not accept the proposal on the basis the nurse was operating under a different scope of practice.

The paramedic was unable to secure work in a conventional setting (such as for an ambulance service) and was limited to employment at mine sites.

Mine sites generally do not require their paramedics to be registered in their role as emergency services officers.

Ahpra's inflexibility to the imposition of conditions resulted in the paramedic being unable to comply with the conditions imposed on his practice.

Case Study 4

A paramedic was the subject of an investigation and disciplinary process over a span of years. The matter was referred to the responsible tribunal for determination of a disciplinary outcome. A significant amount of material was filed by both parties, requiring significant use of resources and taxpayer revenue.

The tribunal delivered a Decision issuing Orders that the paramedic receive a reprimand.

This case study shows that in some cases excessive resources are being expended to effect minor sanctions, highlighting the need for greater flexibility to deal with matters other than by formal proceedings.

Does the Bill adequately address these concerns?

A key policy objective for the Bill is to "*enhance the effectiveness and efficiency of the scheme*". [1]

Changes to the paramount principle

The proposed changes in clause 34 of the Bill alter the main guiding principle from sole focus on the '*health and safety of the public*' to '*protection of the public and public confidence in the safety of services provided by health practitioners and their students'*.

Further '*other guiding principles*' are proposed including, *inter alia,* operating the national and accreditation scheme in a transparent, accountable, efficient, effective, and fair way; and the imposition of restrictions on practice only where it is necessary to ensure health services are provided safely and with appropriate quality.

We support the inclusion of these additional principles, including specifically those directed towards efficiency, efficacy, and fairness, and the imposition of restrictions on practice only where it is necessary for public safety. However, further changes may be necessary to effect meaningful change, including accountability measures should the new guidelines not be followed.

Changes to improve efficiency

The proposed changes in clauses 105 and 106 of the Bill amending ss. 179 and 180 would allow a National Board to take the most appropriate regulatory action based on all relevant information available to them at any time, thereby avoiding procedural duplication when unexpected matters arise during an investigation.

Whilst this change is welcome, the issue it addresses is uncommon in our experience and has not significantly contributed to delays. We have observed relatively straight forward cases without unexpected matters arising during the investigation also progress very slowly.

[1] Explanatory notes to the Bill at page 4.

The proposed changes in clause 103 insert new s.150A to the National Law which, in effect, would allow National Boards to refer matters to another entity after a preliminary assessment of a notification.

The explanatory notes to the Bill explain as follows:

> *"The amendments do not limit the entities to which a National Board may refer a notification. Entities may include the police, courts, jurisdictional health complaints entities, other health regulators such as state based medicines and poisons regulators, health services or employers, as appropriate."*

We support this initiative to the extent it would enhance procedural efficiencies; however, we are concerned about which entities would receive referrals, and whether those entities have appropriate/sufficient expertise.

We are also concerned that it may become difficult to track cases through dealing with a variety of different entities, at different times.

We are specifically concerned about referrals to employers, especially those directly employing the relevant practitioner who may be concurrently dealing with the same subject matter through an internal disciplinary process, causing a conflict of interest.

We recommend that 'employers' be specifically excluded from the entities to which a referral could be made.

Proposed clause 109 inserts new section 193A to the National Law to provide limited discretion for National Boards to decide to not refer a matter to a responsible tribunal where the Board decides there is no public interest in such a referral**.**

We support this sensible change. There are clear benefits in allowing a National Board to pragmatically deal with certain matters that would obviate the need for formal proceedings, thereby avoiding unnecessary cost (including taxpayer burden) and use of resources.

This approach could have avoided the waste of resources in Case Study 4.

There will however be some instances where there is disagreement as to how a matter should be disposed, and for this reason we recommend that such decisions either be made by consent, or there should be an ability for a practitioner to seek external review of the decision.

The imposition of restrictions on practice only where it is necessary for public safety

As outlined in the case studies provided in this submission, there are instances where investigation processes are taking inordinate periods of time. During those extended periods, practitioners are prejudiced by oppressive conditions that stunt professional development and cause financial hardship.

Given the deleterious effect of oppressive conditions over a prolonged period, it is necessary to consider whether restrictions are, in practice, being limited to the minimum necessary to protect the public, so as to avoid undue hardship on practitioners. In our experience, the restrictions imposed on practitioners are often excessive.

To address the imbalance, we recommend adjusting the drafting in proposed clause 34 to reflect in new s.3A(2)(c) that once the decision has been made to impose restrictions, that the restrictions do not exceed the minimum necessary to achieve public safety, as follows:

> (c) restrictions on the practice of a health practitioner are to be imposed under the scheme:
>
> (i) only if it is necessary to ensure health services are provided safely and are of an appropriate quality, and
>
> (ii) to the minimum extent necessary to achieve the purposes in (i).

Section 156 of the *Health Practitioner Regulation National Law (Queensland)* empowers a National Board to take immediate action if it reasonably believes the practitioner's (alleged) conduct poses a risk to persons, and it is necessary to protect public health or safety. Immediate action is taken in the form of restrictions on practice or undertakings.

Section 156 does not contain any balancing criteria for National Boards to consider when imposing immediate action. It is reasonable to infer this is contributing to overly oppressive conditions being imposed on practitioner's practice.

To assist in resolving this issue, we recommend that section 156 be amended to align with the 'other guiding principles', including specifically 'fairness' and the above recommendation to only impose conditions to the minimum extent necessary to achieve public safety. Such changes may assist in avoiding the prejudicial circumstances outlined in case studies 1 to 3.

We also recommend including provision in s.125 to the effect that a practitioner may apply to change or remove a condition/undertaking imposed on their registration on the basis the condition is causing undue hardship.

Recommendations

Recommendation 1:

The proposed changes in clause 103 that insert new s.150A to the National Law should exclude employers from the entities to which a matter can be referred.

Recommendation 2:

Proposed clause 109 that inserts new section 193A to the National Law should be complimented with:

- provisions requiring practitioner consent to the decision to not refer a matter to a responsible tribunal;

  OR

- provisions providing for a practitioner to seek review of the decision to not refer their matter to a responsible tribunal.

Recommendation 3:

Adjusting the drafting in proposed clause 34 to reflect in new s.3A(2)(c) that once the decision has been made to impose restrictions, that the restrictions be only to the minimum extent necessary to achieve public safety, as follows:

> (c) restrictions on the practice of a health practitioner are to be imposed under the scheme:
>
> (i) only if it is necessary to ensure health services are provided safely and are of an appropriate quality, and
>
> (ii) only to the minimum extent necessary to achieve the purposes in (i).

Recommendation 4:

Amend s.156 of the *Health Practitioner Regulation National Law (Queensland)* to align with the other guiding principles, including fairness and the above recommendation to only impose conditions to the minimum extent necessary to achieve public safety.

Recommendation 5:

Including provision in s.125 of the of the *Health Practitioner Regulation National Law (Queensland*) to the effect that a practitioner may apply to change or remove a

condition/undertaking imposed on their registration on the basis the condition is causing undue hardship.

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