

Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022

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1 June 2022

Mr Karl Holden
 Committee Secretary
 Health and Environment Committee
 Parliament House
 George Street
 Brisbane Qld 4000

Via email: hec@parliament.qld.gov.au

Dear Mr Holden

Submission on the *Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022*

Thank you for inviting Ahpra to make a submission to the Health and Environment Committee on the *Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022* (the Bill) that was introduced into Queensland Parliament by the Hon Yvette D'Ath, Minister for Health and Ambulance Services on 11 May 2022.

Background to amendments

Ahpra acknowledges that the Bill will implement the second stage of nationally agreed reforms to the National Law¹ and includes amendments that are specific to how the legislation is applied in Queensland as a co-regulatory jurisdiction in the National Registration and Accreditation Scheme (the National Scheme). Ahpra has developed a strong working relationship and communicates regularly with the Queensland Health Ombudsman and her office (the OHO), including through the joint consideration process for individual complaints. We are confident that the local application of amendments included in the Bill will support our continued cooperation and coordination between the Health Ombudsman and Ahpra and the National Boards.

The Bill

Ahpra agrees that the Bill accurately reflects the policy decided by Australian Health Ministers. The Bill also reflects the commitment of Health Ministers to ensuring our legislation is kept up to date and is fit for purpose for the national regulation of health practitioners to protect the public.

We would like to comment on some key reforms and related implementation activities to support the changes if the Bill is passed:

a. Refocusing the objectives and guiding principles of the National Law

Ahpra and the National Boards agree that having **public protection and public confidence in the safety of services provided by registered health practitioners and students** enshrined in the National Law as the paramount objective should provide greater clarity and put beyond doubt, that all entities exercising powers under the National Scheme – including but not limited to Ahpra, the National Boards, courts and tribunals – must place public protection and public confidence as paramount considerations in administering the scheme, making regulatory decisions, or otherwise exercising functions under the National Law.

¹ The Health Practitioner Regulation National Law, as in force in each state and territory.

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Ahpra and the National Boards regulate these registered health professions: Aboriginal and Torres Strait Islander health practice, Chinese medicine, chiropractic, dental, medical, medical radiation practice, midwifery, nursing, occupational therapy, optometry, osteopathy, paramedicine, pharmacy, physiotherapy, podiatry and psychology.

In practice, public protection has been at the heart of our administration of and regulation under the National Scheme from its inception more than a decade ago. Our primary role is public protection and we adopt a risk-based approach to regulation, taking action that is proportionate to risk of harm to patients and the public. The proposed paramount objective will provide a strong foundation to our regulatory approach and mirrors Health Ministers' [Policy Direction 2019-01 – Paramountcy of public protection when administering the National Scheme](#) which we have implemented as is required under the National Law.

We reviewed our policies, standards and guidelines in light of the policy directions issued by Health Ministers in 2019/20 which provide a clear mandate to the National Boards and Ahpra to further strengthen public protection in the work of the National Scheme. Of note is our updated [Regulatory Principles](#) which underpins the work of the National Boards and Ahpra in regulating Australia's registered health practitioners, in the public interest. They shape our thinking about regulatory decision-making and have been designed to encourage a culturally safe and responsive, risk-based approach to regulation across all professions. The regulatory principles consider community expectations and reflect ministerial directions. Our published [Regulatory Guide](#) which sets out how Ahpra and the National Boards manage notifications about the health, performance and conduct of practitioners was also updated.

Ahpra and National Boards will further engage with our regulatory partners and external stakeholders to ensure that the Bill's paramount guiding principle is fully reflected in all relevant policies and procedures.

We welcome the introduction of a **new guiding principle and objective that recognises the importance of cultural safety for Aboriginal and Torres Strait Islander Peoples** and the National Scheme's role in the development of a culturally safe and respectful health workforce that is inclusive and responsive to Aboriginal and Torres Strait Islander Peoples and helps eliminate racism. The National Scheme's [Aboriginal and Torres Strait Islander Health Strategy Group](#) (the Strategy Group) comprises Aboriginal and Torres Strait Islander health sector leaders and representatives from accreditation entities, National Boards, Ahpra and the Chair of Ahpra's Agency Management Committee. The Strategy Group is a key stakeholder that provided direct feedback on the wording of this new objective and guiding principle during development of the Bill.

This approach is consistent with the National Scheme's [Aboriginal and Torres Strait Islander Health and Cultural Safety Strategy 2020-2025](#) and our [Statement of Intent](#), to ensure a culturally safe health workforce supported by nationally consistent standards, codes and guidelines across all professions in the National Scheme; and greater access for Aboriginal and Torres Strait Islander Peoples to culturally safe services of health professions regulated under the National Scheme. The National Scheme is well placed to help ensure a health system that is culturally safe and free from racism for Aboriginal and Torres Strait Islander Peoples and recognises that Indigenous Australians have a shorter life expectancy than non-Indigenous Australians and are at least twice as likely to rate their health as fair or poor.

For some time, the National Scheme has progressed work to embed cultural safety for Aboriginal and Torres Strait Islander Peoples in our policies and regulatory framework. Examples include: the scheme's updated [Regulatory Principles](#); the Nursing and Midwifery Board of Australia's [professional codes for midwives and for nurses](#); the Medical Board of Australia's professional code [Good Medical Practice](#); and the revised [shared Code of conduct](#)² that will take effect on 29 June 2022.

As with the new paramount guiding principle, communication will be essential to the successful implementation of this reform. If the amendment is passed, Ahpra and National Boards will work with the Strategy Group on implementation as well as communication.

b. Introducing a power for national regulators to issue interim prohibition orders

The ability for Ahpra and the National Boards to issue interim prohibition orders (IPOs) to unregistered practitioners (including those whose registration has lapsed or been suspended or withdrawn) is a new power. This power is designed to complement other National Law powers to

² The revised shared Code of Conduct will apply to the following National Boards: Aboriginal and Torres Strait Islander Health Practice, Chinese medicine, Chiropractic, Dental, Medical radiation practice, Occupational therapy, Optometry, Osteopathy, Paramedicine, Pharmacy, Physiotherapy, and Podiatry.

protect the public. An IPO can prohibit a person from practising while regulatory action or prosecution is finalised.

In Queensland, this power will complement an existing power of the Health Ombudsman to issue interim prohibition and prohibition orders. Ahpra will collaborate with the OHO to ensure that the agency best placed to issue the IPO does so, and to reduce the risk of unnecessary duplication. We anticipate that the majority of IPOs relating to disciplinary matters involving registered health practitioners would continue to be issued by, or in collaboration with, the OHO. Ahpra has a well-established working relationship with the OHO, including regular communication. The new joint consideration process provides a further opportunity for robust discussions about matters of shared interest and decision-making. Ahpra is confident that the strength of our working relationship and collaboration with the OHO to protect the public will assist in the coordination about which entity is best placed to issue an IPO.

National Boards (or their delegated decision makers) are responsible for managing most health and performance issues that are reported to the OHO about registered health practitioners. Existing provisions enable us to restrict a person's registration if the practitioner poses a risk to public health and safety. If a practitioner were to surrender registration to avoid a restriction being imposed on their practice as a registered health practitioner, the power to issue an IPO would enable us to prevent the person offering health services in an unregistered capacity to complement the powers we have with respect to registered practitioners.

Ahpra expects to exercise this new power judiciously and only when it is necessary to respond to a serious risk and protect public health or safety. Nationally, Ahpra has a criminal prosecution function for dealing with unregistered persons who hold themselves out as being registered, misuse a protected professional title or perform a restricted practice. In circumstances where Ahpra is investigating such a person and the person continues to engage in conduct that puts the public at risk, the IPO power could be used to prevent that person continuing to engage in the conduct while the investigation and prosecution is on foot. For example, Ahpra may consider issuing an IPO if it is investigating a person conducting dental practice without being registered as a dentist.³ Such a person can present a significant risk to the public and an IPO should be an effective public order in preventing that person continuing to engage in that activity.

The Bill provides appropriate safeguards for the exercise of this function, including the decision to issue an IPO being appellable to a relevant tribunal or court, a show cause process, and tribunal review if the regulator is seeking to extend an IPO beyond 120 days.

Ahpra will review relevant operational policies and procedures to support decision-making and make system changes to ensure that the IPOs are published as required under this provision of the Bill. Communication with key stakeholders about this reform will be an important part of our implementation.

c. **Introducing a power for national regulators (and the Queensland health ombudsman) to issue public statements**

Enabling Ahpra and the National Boards to issue a public statement about a person – including registered practitioners who are the subject of an assessment, investigation or disciplinary proceeding – is a new power designed to strengthen protection of the public and is one that has the potential to adversely impact a practitioner.

The threshold for issuing a public statement is, appropriately, set at a high level. We must form a **reasonable belief** that the person's conduct, performance or health poses a **serious risk** to others **and** that a public statement **is necessary to protect public health or safety**. Therefore, if it is necessary to issue a public statement it will be for this purpose and for the most serious matters. For example, Ahpra may be investigating a notification about a registered health practitioner, and it comes to light that infection control procedures have not been followed appropriately which poses a serious risk that patients have been exposed to an infectious disease. In addition to working with public health officers, Ahpra could issue a public statement to warn the public of the potential health risk and continue to bring disciplinary proceedings against the practitioner. The provision in the Bill is therefore not a broad power to enable Ahpra or the National Boards to 'name and shame' registered health practitioners that are being investigated before there is a Tribunal outcome. It is different to

³ Under the National Law (section 121) dental acts are a restricted practice.

Ahpra publishing a news item for information and educative purposes after a state or territory tribunal or court makes a decision in a matter.

There are other safeguards in addition to the exercise of this power being set at a high threshold – including requiring a show cause process to be undertaken prior to issuing a public statement.

As with the new power to issue an IPO, communication with key stakeholders about this reform will be important. Ahpra will make the necessary system changes to support the issuing of public statements and their revocation as needed. We will also develop operational processes and procedures as part of our implementation activities if the Bill is passed, to ensure the judicious exercise of this power and appropriate procedural fairness for those who are the subject of a public statement.

We will again draw on our strong working relationship and communication with the OHO to ensure there is appropriate coordination across our agencies in Queensland.

d. Improving processes for registration decisions and to manage health, conduct and performance issues

The National Boards and Ahpra welcome the suite of amendments that will help improve registration processes and provide us, as regulators, with powers to better respond to risks to the public and increase flexibility when we need to respond to health, performance and conduct issues. These provisions include, but are not limited to:

- National Boards **accepting an undertaking** as part of a registration decision. This is expected to improve timeliness, reduce pressure on Board resources and improve oversight of practitioners. Practitioners may also benefit from this process as they are able to voluntarily agree to the enforceable undertaking rather than go through a process where a National Board imposes a condition on their registration.
- National Boards will have the ability to **withdraw a practitioner’s registration** if they reasonably believe it was obtained using false or misleading documentation. To ensure procedural fairness, the power will be subject to a show cause process and appeal to a responsible tribunal.

Having the ability to accept an undertaking and withdraw registration is expected to provide Boards with more flexibility in making appropriate registration decisions and may see a small reduction in referrals to state and territory Tribunals (in the case of withdrawal of registration).

- Enabling National Boards to **remove information relating** to a registered health practitioner **from the public register** if the publication of that information presents a serious risk to the health or safety of the practitioner, a family member of the practitioner or an associate of the practitioner, is welcomed. It further supports safety for practitioners and can be readily done administratively. The current power to exclude information from the public register only covers circumstances where the risk is to the practitioner only.
- Practitioners will have the option to nominate one **alternative name** to be published on the public register. Practitioners who practise under an alternative name for legitimate reasons, such as adopting an Anglicised name, will be able to use both their legal name and their nominated alternate name. Members of the public will be able to better search the online register for practitioners and find those who use an alternative name.
- Reporting of **scheduled medicine offences** will require practitioners to notify the relevant National Board if they are charged with or convicted of a scheduled medicine offence. Early reporting of these offences will allow National Boards to respond quickly to the risks posed to the public by practitioners who misuse scheduled medicines.
- The ability for National Boards to take disciplinary action against a health practitioner who continues to practise after their **registration has ended or while their registration is suspended** will ensure that Boards can respond to a practitioner’s failure to renew their registration on time in a way that is proportionate to the severity of a practitioner’s conduct. Boards can take into account other relevant considerations, including competing enforcement priorities and the need to provide effective deterrents to protect the public and promote confidence in the national scheme. The current powers for dealing with this circumstance are

limited to prosecuting the practitioner for an offence or imposing conditions on their registration when they apply to renew.

As with the other changes, communication with key stakeholders is important for our implementation. Part of our implementation activities will be to review and update as needed our published Regulatory Guide and our operational processes and procedures.

e. Improving information sharing to protect the public

National Boards can currently require registered health practitioners to provide information about their current employment and practice arrangements. Health Ministers have identified that removing barriers to disclosure of information in certain circumstances are key reforms that will improve information sharing between employers and regulators and allow for identification of previously unknown risks to the public. In practice, Ahpra and the National Boards expect to exercise these powers judiciously and will review relevant policies and procedures and engage with stakeholders as needed to support implementation. Changes include amendments to:

- empower National Boards to **request information about a practitioner's previous employers and places of practice**, and to **notify these former employers** if a decision is made to take health, performance or conduct action against a practitioner and the Board becomes aware that the practitioner may have posed a risk to health and safety while working for the prior employer or at the prior place of practice.
- enable National Boards to **disclose information to an employer about a registered practitioner** during an investigation if there is reasonable belief of a serious risk to public health and safety.
- empower Ahpra and National Boards to **disclose information to an employer of an unregistered person** under investigation for registration offences, such as holding out, using a restricted title or the performance of a restricted act, if the person's conduct poses a risk to public health and safety.

f. Lifting the specific ban on testimonials

Restrictions on advertising in relation to regulated health services – including the specific ban on testimonials – has been in place since the start of the National Scheme in 2010. Advertising is an important way health practitioners and providers of regulated health services promote their services to the public. Advertising can influence a consumer's decision-making about their health care needs. It is important that consumers have access to information that is accurate, not misleading, and is supported by acceptable evidence.

Ahpra has an [Advertising hub](#) which contains the laws and other guidance about how to advertise; resources to help advertisers understand their obligations and to check their advertising is correct; and information for the public including about how to make a complaint and how we manage complaints about advertising.

Lifting the specific ban on testimonials does not mean that testimonials, including via social media, will no longer be regulated under the National Scheme. Testimonials will be regulated in the same way as advertising of health services – ie testimonials must not be:

- (a) false, misleading or deceptive or is likely to be misleading or deceptive; or
- (b) offer a gift, discount or other inducement to attract a person to use the service or the business, unless it also states the terms and conditions of the offer; or
- (d) create an unreasonable expectation of beneficial treatment; or
- (e) directly or indirectly encourage the indiscriminate or unnecessary use of regulated health services.

This change to the National Law is consistent with our current approach where we focus on testimonials involving more risk, which are those that are false, misleading or deceptive or likely to be, which is a breach of section 133 of the National Law. This change also reflects a fundamental shift since 2010 in technology and advertising and how consumers access information about regulated health services and registered health practitioners. It will keep the National Law

contemporary. Importantly, the maximum available penalty for breaches of advertising restrictions are increased to reflect the potential harm false or misleading advertising can have for consumers and align with other breaches of the National Law such as the deliberate misuse of a restricted professional title.

This change is to take effect on a date to be fixed by proclamation. This will give Ahpra time to work with the National Boards to review their *Advertising Guidelines* and communicate with stakeholders about the change and what it means.

About us and our work as national regulators

The National Scheme is now in its twelfth year of operation. The Queensland Health and Environment Committee has an understanding of the work that we do in Queensland in conjunction with the OHO. Nationally, Ahpra works in partnership with 15 National Boards to regulate over 825,000 registered health practitioners from 16 health professions. Together, our primary role is to protect the public and set the standards and policies that all registered health practitioners must meet. Our mission is to protect the public by regulating health practitioners fairly and effectively to facilitate access to safer healthcare. The National Law⁴ prescribes the roles and powers that National Boards and Ahpra have in addressing concerns about the practice and conduct of registered health practitioners (and in certain circumstances, registered students).

As a professional standards regulator, we have powers to intervene where there is an ongoing risk to the public that requires regulatory oversight, or the performance or behaviour of the practitioner is so far below the standard expected that their overall fitness to practice is called into question. In New South Wales, Ahpra and National Boards do not manage notifications about registered health practitioners. They are managed by the NSW Health Care Complaints Commission and the 15 health professional councils in that state, supported by the Health Professional Councils Authority. In Queensland, the Office of the Health Ombudsman receives all complaints regarding registered health practitioners and through a process of joint consideration work with Ahpra to decide whether it will keep the complaint or refer it to a National Board and Ahpra to manage.

Trust is fundamentally important to be an effective regulator. Ahpra and the National Boards rely on members of the community, health practitioners, students, employers, co-regulators, educators and many others to engage and work with us as national regulators. They expect us to be fair, transparent, responsive, empathic and accountable as we regulate and work effectively with our partners to keep the public safe.

Ahpra maintains a wide range of important relationships and partnerships across the health care system in Australia as well as internationally. Our [National Scheme engagement strategy 2020-2025](#) demonstrates our commitment to working with a broad range of stakeholders and doing our part to protect the health and safety of the public within a wider network of regulation.

Ahpra and the National Boards have undertaken a program of continuous improvement in all aspects of our regulatory functions. Most recently, we have implemented changes to the way we investigate concerns using an enhanced risk based approach at preliminary assessment of matters. This approach improves our understanding of risk and ensures that matters of significant risk progress to investigation, while low risk matters can be finalised more expeditiously.

We have strengthened our communications about support networks that are available to health practitioners who are subject to a notification. Independent and accessible support is available to health practitioners who are subject to a notification to Ahpra. Practitioners rightly expect procedural fairness and natural justice. We recognise that for registered health practitioners, having a concern raised about them is very stressful. We encourage practitioners to use the independent services that are available if they need support. Practitioners who are the subject of a notification are also advised of the available support services during their initial phone contact and correspondence from Ahpra. Practitioners are encouraged to contact their indemnity insurer as soon as practicable via our verbal contact with them.

⁴ Part 5 of the National Law sets out the functions of National Boards. Part 4 sets out the functions of Ahpra as the National Agency for the scheme. Part 8 sets out health performance and conduct powers. The National Law, as it applies in each state and territory, is accessible from that jurisdiction's Legislation website.

Ahpra has a dedicated webpage with information for practitioners who are subject to a notification which can be accessed [here](#).

Implementation

If Queensland Parliament passes the Bill into law, Ahpra is tasked with implementing the reforms nationally. Based on our review of the Bill, we will be ready to implement the amendments that commence on assent, including the new objective and guiding principles. In addition to implementation activities highlighted above, Ahpra is developing a plain English guide for the changes, and what they mean for registered health practitioners and the public.

We acknowledge that a corresponding Amendment Bill will be brought to the Western Australian Parliament for debate and passage. The delayed commencement (on proclamation) of most provisions – including those that will impact our regulatory operations – will help us communicate and engage with key stakeholders to support a smooth implementation. Having these provisions commence at the same time across all jurisdictions helps to mitigate the risk of inconsistent application of the National Law in participating states and territories. Some provisions of the Bill will require system changes to be made to support implementation and also the development of new and revised internal policies and procedures. We will work with the National Boards and delegated decision makers and Ahpra staff to ensure the changes are well understood to support nationally consistent decision-making.

Closing

In closing, we recognise that the Bill progresses the most wide-ranging reforms to the National Law and the National Scheme since the inaugural legislation was debated in passed by Queensland Parliament in 2009 and subsequently adopted by all other states and territories.⁵ We would like to recognise that there has been substantial collaboration and engagement nationally during the drafting of the Bill, led by Queensland and Victoria. The Bill should achieve its objective of strengthening public safety and confidence in the provision of health services, improving the governance of the National Scheme; and enhancing the effectiveness and efficiency of the scheme.

Ahpra appreciates the opportunity to contribute to discussions on the Bill and would welcome an opportunity to speak with the Committee and answer any questions members may have, if this would be helpful. As Queensland is a co-regulatory jurisdiction for notifications/complaints, the Committee may find it helpful to have Ahpra and the Queensland OHO jointly appear, as both agencies will undertake implementation activities to support the reforms in Queensland if the Bill is passed.

If you have any queries about this response, please do not hesitate to contact me.

Yours sincerely



Martin Fletcher
Chief Executive Officer

⁵ Western Australia has enacted a corresponding National Law.