Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022

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DOCTORS' HEALTH in QUEENSLAND

Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022

Doctors' Health in Queensland submission to the Queensland Health and Environment Committee consideration of the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022

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Doctors' Health in Queensland (DHQ) [(1)] welcomes the opportunity to make a submission to the Queensland Parliament on proposed amendments to the National Law.

DHQ is the peak body advocating for doctors' health in Queensland, providing education, expertise, and a 24/7 helpline for doctors and medical students in Queensland. We collaborate at a national level with Doctors' Health Services and the Australasian Doctors' Health Network, as well as with the other state and territory-based Doctors' Health Advisory Organisations. Our experience provides the foundation for a deep understanding of the needs and concerns that impact on the health and wellbeing of medical students, doctors, and patients in Queensland.

While this submission will focus on the perspective of the medical profession, it is acknowledged that the other registered health professionals will be similarly impacted.

DHQ strongly opposes the amendment to Clause 20, Part 8AA: Public statement for the following reasons:

1. The proposed change to the legislation will cause serious harm to affected doctors, including reputational damage, loss of income/employment, and mental health issues, including a very high risk of triggering suicidal ideation or actions. [(2)]

2. The omnipresent fear of being named, blamed, and shamed for failures in the health system has the potential to further demoralise and deter doctors from continuing to care for needy communities, especially those in rural and remote regions, further exacerbating existing workforce shortages.

3. The proposed amendment perpetuates the unfounded popular theory that being 'tough' on 'bad' doctors will improve patient safety. Paradoxically, this approach has been proven to drive a culture of shame and secrecy which harms both patients and the healthcare workforce, while acting as a barrier to solving the underlying systemic issues that are the real cause of harm to patients. [(3)]

4. No evidence has been provided that this amendment to the legislation is necessary, nor has it been demonstrated how it will improve public safety beyond what can already be achieved with the existing powers of the Health Ombudsman.

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5. The proposed amendment is demonstrably unfair. Issuing a public statement prior to completion of an assessment or investigation:

- Assumes guilt and denies natural justice and procedural fairness.
- Carries the risk of unwarranted reputational harm which is irrevocable. No revision or revocation can expunge the original statement from the public record.
- The stated safeguards and their timelines (e.g., 'notice to be given one business day prior to the statement being made') are insufficient protection to mitigate the risk of error and to allow the person under investigation sufficient time to respond.
- There has been insufficient community consultation. As the peak body for doctors' health in Queensland, DHQ has not been consulted. As the provider of support services to doctors who are experiencing distress because of notifications and investigations, we would have appreciated the opportunity to share the realities of this experience earlier. In addition, the timeline for lodging this submission has been brief, limiting our organisation's capacity for consultation with our stakeholders.

DHQ acknowledges the need for an effective Health Practitioner Regulation National Law to ensure that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered. However, health practitioner regulation is only a very small component of the holistic response to patient safety issues.

There is a significant contribution to complaints from the suboptimal health and wellbeing of doctors. This derives from reversible and treatable mental health conditions (such as burnout, anxiety, and depression) arising in the setting of toxic and difficult workplaces, inhumane work practices and a systemic disregard for the wellbeing of the medical workforce.

The medicolegal complaints process in Australia is a well-known trigger for catastrophic thinking, suicidal ideation, and suicide attempts. All doctors' health programs in Australia are aware of this and are working to respond to this threat on a 24/7 basis with limited resources.

The proposed change to the legislation will only exacerbate this risk for every doctor who is the subject of a complaint, whether it has a basis, or whether it is malicious, vexatious, or frivolous.

DHQ respects the need for public safety and confidence in the provision of health services. Notifications provide an important mechanism for identifying and addressing potential risks to the public. To ensure the stated goal of confidence in the system is achieved, notifications need to be fair, transparent, and subject to accountable processes for all concerned, including the person who is the subject of the notification.

The proposed amendment is in conflict with reports published by the Australian Commission on Safety and Quality in Healthcare (https://www.safetyandquality.gov.au/our-work/indicators-measurement-and-reporting/patient-safety-culture) which references the work of the Institute of Medicine (US) Committee on Quality of Health Care in America: 'To Err is Human' [4]:

'…the biggest challenge to moving toward a safer health system is changing the culture from one of blaming individuals for errors to one in which errors are treated not as personal failures, but as opportunities to improve the system and prevent harm.'

Deliberate medical malfeasance is incredibly rare. Common complaints made about doctors include miscommunication, unmet expectations, adverse events or outcomes, and concerns re fitness to practice or impairment. While patients and our community may perceive these as a failure of the doctor, experienced practitioners and patient safety experts recognise that these are symptoms of systemic failures. The existing deficits in the health care system have been exacerbated by the current health care crisis, with clinical capacity overloaded and overwhelmed. Doctors negatively impacted by burnout, PTSD, or experiencing an exacerbation of mental health symptoms should be treated with the same care, respect, dignity, and privacy afforded to patients, and not subjected to public humiliation.

As a comparison, it is noted that any error in judgement by the Health Ombudsman is protected from consequences: 'no liability is incurred by the Health Ombudsman for the making of, or for anything done for the purpose of making a public statement under this section in good faith'. An equivalent error in judgement by a doctor is treated punitively and – if the proposed amendment becomes legislation - potentially in the public arena.

While it may be argued that the threshold for public statements is high, this provides no comfort for the medical profession. The threshold for mandatory reporting is similarly high, but fear of mandatory reporting is endemic in the profession. There is little trust and low expectations of procedural fairness by the regulatory bodies.

The Senate Community Affairs Reference Committee tabled its report into the Administration of registration and notifications by AHPRA and related entities under the Health Practitioner Regulation National Law in April 2022: (https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/AHPRA/Report).

The report highlighted the harms of the notification process:

'The committee was deeply concerned and moved by the stories it has heard regarding the devastating impact of a notification on some health practitioners.

The committee acknowledges that there is a significant amount of stress involved in the notifications process for practitioners. This is unduly exacerbated by a range of issues with the process, including how regulators communicate with parties, a lack of understanding and transparency about the process, and of course, because of protracted timeframes and delays.

As discussed in the previous chapter, the committee is concerned with persistent issues with delay, communication, and transparency in the notifications process. The committee is strongly of the view that AHPRA and the national boards must continue to prioritise reforms that will improve health practitioners' and notifiers experience with the process.

Vexatious notifications pose significant challenges for health practitioners, and the committee recognises that the prevalence of these types of matters is of ongoing concern within many professions.

The committee was alarmed to hear about the detrimental impact of the mandatory reporting regime in the National Scheme. The evidence provided to the committee on the mental health risks within the medical profession, and the need to encourage and support practitioners to seek out help when they are unwell, was particularly compelling.'

The arguments for a move away from the current mandatory reporting model to the Western Australian model were equally compelling. The committee notes that in addition to broad support amongst peak bodies, the Western Australian model was recommended to be adopted nationally by an independent review of the national scheme.'

Doctors' well-documented fears of notification and mandatory reporting will only be further exacerbated by the proposed amendment to the legislation.

In summary:

Our community, our leaders, and our healthcare workforce are united in their desire for safer health systems and genuine public confidence in the safety of services provided by registered health practitioners.

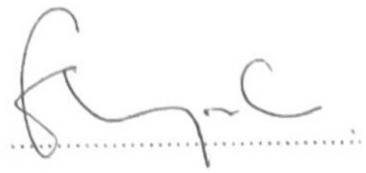
Strategies for promoting and improving patient safety need to be based on best available evidence. As outlined by the World Health Organisation (https://www.who.int/news-room/fact-sheets/detail/patient-safety):

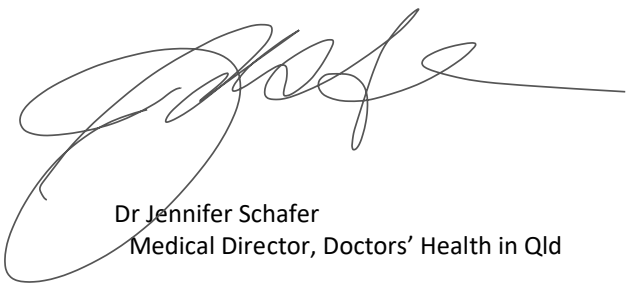
'To err is human and expecting flawless performance from human beings working in complex, high-stress environments is unrealistic. Assuming that individual perfection is possible will not improve safety. Humans are guarded from making mistakes when placed in an error-proof environment where the systems, tasks and processes they work in are well designed. Therefore, focusing on the system that allows harm to occur is the beginning of improvement, and this can only occur in an open and transparent environment where a safety culture prevails. This is a culture where a high level of importance is placed on safety beliefs, values and attitudes and shared by most people within the workplace.'

The proposed amendment to Clause 20, Part 8AA: Public statement:

- acts as the antithesis of a safety culture, paradoxically undermining progress toward systems and communication pathways that enhance patient safety.
- will harm affected doctors and is certain to trigger more doctor suicides.
- will exacerbate fears of being named, blamed, and shamed for system failures, which will influence medical career choices, encouraging doctors to leave the profession, and magnify existing medical workforce shortages.
- provides no evidence of benefit to patient health or safety.
- provides no greater protection for the public beyond the existing powers of the Health Ombudsman.
- is manifestly unfair and unjust.

DHQ strongly advocates that the recommendations from the Senate Community Affairs Reference Committee report – particularly the recommended change to mandatory reporting - are implemented prior to considering any extension of regulatory powers.





Dr Glynn Kelly
Chair, QDHP Board.

Dr Jennifer Schafer
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Annotations and References:

1. Doctors' Health in Queensland (DHQ)is the business name for Doctors' Health Advisory Services Queensland (DHASQ) and Queensland Doctors' Health Programme (QDHP).
2. Haysom, G. (2016). The impact of complaints on doctors. *Australian Family Physician*, *45*(4), 242-244.
3. Radhakrishna, S. (2015). Culture of blame in the National Health Service; consequences and solutions. *BJA: British Journal of Anaesthesia*, *115*(5), 653-655.
4. Institute of Medicine (US) Committee on Quality of Health Care in America; Kohn LT, Corrigan JM, Donaldson MS, editors. To Err is Human: Building a Safer Health System. Washington (DC): National Academies Press (US); 2000. Available from: https://www.ncbi.nlm.nih.gov/books/NBK225182/doi: 10.17226/9728