

## Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022

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1 June 2022

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

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Dear Committee Secretary

### **Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022**

Thank you for the opportunity to provide feedback on the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022 (**Bill**). The Queensland Law Society (**QLS**) appreciates being consulted on the Bill.

This submission has been compiled with the assistance of the QLS Occupational Discipline Law Committee and Health and Disability Law Committee, whose members have substantial expertise in this area.

QLS supports the Bill's policy intent to strengthen public safety and confidence in the provision of health services. We note the Bill seeks to ensure efficient implementation of the National Registration and Accreditation Scheme (**NRAS**) for health professions and achieve its stated objectives.

QLS is aware that a number of the proposed amendments are based on consultation with stakeholders over a period of time and are largely 'mechanical' in nature, with the intent of making it easier to implement the scheme and fulfil its objects. However, we draw the Committee's attention to several provisions which cause concern and which require further consideration or amendment.

**Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022****Giving regulators limited discretion not to refer matters to responsible tribunal**

We support the insertion of new section 193A into the National Law to allow National Boards to decide not to refer matters to a tribunal where there is no public interest in such a referral. Our members have seen matters referred to the tribunal in circumstances where there is no public interest in the matter being pursued, such as where the practitioner is no longer registered and has retired.

**Decision by responsible tribunal about registered health practitioner**

We support the inclusion of clause 99 in the Bill, noting it addresses current issues associated with section 196 of the Health Practitioner Regulation National Law.<sup>1</sup>

We note, however, there is no corresponding amendment to the mirror provision contained in section 107(4) of the *Health Ombudsman Act 2013* (Qld) (**HOA Act**). We recommend a similar provision be inserted in the HOA Act to address the comparable issues with that legislation, and to bring it in line with the amendments to the Health Practitioner Regulation National Law.

**Public statements**

QLS raises concerns with the potential impact of clauses 20 and 100 of the Bill. Through these clauses, the Bill inserts new provisions to allow specified entities to make public statements about individuals who are the subject of investigations or disciplinary proceedings, and whose conduct poses a serious risk to public health and safety.<sup>2</sup> We understand the public statement will be subject to a show cause process and appeal to a relevant tribunal.<sup>3</sup>

Some of our members are concerned the proposed provisions relating to public statements may contravene the principles of the presumption of innocence and natural justice. In particular, individuals subject to public statements may be adversely affected before a disciplinary proceeding is finalised. This may cause further concern in circumstances where the relevant individual is successful in appealing the public statement, or the disciplinary proceeding is subsequently abandoned.

Further, we note a public statement would have a substantial impact on an individual's reputation, and their ability to register under the NRAS. Some of our members do not view that the procedural safeguards proposed in the Bill, including the appeal process, as sufficient to protect against an individual's reputational damage.

Other members consider that clauses 20 and 100 have the requisite safeguards such as the show cause notice and right of appeal referred to.

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<sup>1</sup> Under the *Health Practitioner Regulation National Law Act 2009* (Qld).

<sup>2</sup> Explanatory Notes, Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022, 6.

<sup>3</sup> Ibid 6.



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In the circumstances, we recommend further consideration be given to the impact of these provisions, balancing the need to ensure public safety with the rights of the individual practitioner and the significant and irreversible damage that may be caused to this person.

Our members who are concerned by the amendment note a regulator is already empowered to use its immediate action powers to prevent an individual from practising in circumstances where the regulator is of the view the individual presents a relevant risk to the public. Any restriction placed on registration is published on the publicly available register of practitioners, which would fulfil a similar function to a public statement.

**Disclosure of information to protect the public**

The Bill extends the information sharing provisions to permit, or in some instances require, the National Boards to disclose serious risks posed by a registered practitioner prior to taking disciplinary action.<sup>4</sup> Under the proposed changes, if the National Board forms the view a registered practitioner poses a serious risk and notice is necessary to protect the public, then the National Board must give written notice of the risk and relevant information about the practitioner to their current employer and other relevant entities.<sup>5</sup>

We understand these amendments are proposed on the basis they will improve protections for the public where a regulator has formed a reasonable belief that a practitioner poses a serious risk to the public but has not yet taken action.<sup>6</sup> Similarly, we understand the amendments will allow an employer to implement training or supervision, before a disciplinary matter is finalised.<sup>7</sup>

Some of our members are concerned the proposed amendments contravene the principles of natural justice and the presumption of innocence because individuals will be required to disclose certain information and undertaken additional training or the like prior to the finalisation of a disciplinary process.

As suggested above, consideration should be given to the use of existing regulatory powers that can prevent an individual from practising, where the regulator is of the view the individual presents a risk to the public. Members who are concerned with this new requirement consider the existing immediate action powers sufficient to adequately respond to serious risks to the public.

**Removal of immediate action conditions**

We note section 62(2)(a)(ii) of the HOA Act allows a tribunal to remove immediate action conditions at the conclusion of disciplinary proceedings. This provision is used in place of waiting for the Office of the Health Ombudsman to remove the conditions administratively

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<sup>4</sup> Ibid 9.

<sup>5</sup> Ibid 9.

<sup>6</sup> Ibid 9.

<sup>7</sup> Ibid 9 – 10.

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following a hearing. We recommend consideration be given to introducing a similar provision in the Health Practitioner Regulation National Law.

### Cost to regulators

It appears that following the the introduction of the HOA Act, the provisions relating to costs under the Health Practitioner Regulation National Law were inadvertently removed. Consequently, Queensland is one of the few jurisdictions where costs are often not awarded.

This has resulted in regulators being unable to recover their costs, including from insured practitioners, or choosing not to bring matters in the tribunal due to the costs involved. This significantly undermines the NRAS for health professionals, resulting in a costs regime that is out of step with other occupational disciplines, including the legal profession and engineers.<sup>8</sup>

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED] or by phone on [REDACTED]

Yours faithfully



Kara Thomson  
**President**

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<sup>8</sup> *Legal Profession Act 2007* (Qld) s 462; *Professional Engineers Act 2002* (Qld) s 131.