

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

Dear Mr Holden,

In my role as the Health Ombudsman, I wish to provide a submission in support of the *Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022* (the Bill).

Undertakings

I note that the *Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022* will insert a new Part 7, Division 1, Subdivision 2 into the *Health Ombudsman Act 2013*. As a consequence, the Health Ombudsman will for the first time, be permitted to accept undertakings from a registered practitioner as a form of immediate registration action. This amendment will significantly enhance the efficiency of co-regulation in Queensland and will make the *Health Ombudsman Act* more consistent with National Law.

As such the Health Ombudsman will be able to take immediate registration action to protect public health and safety more quickly and effectively.

Several safeguards will be embedded in the new subdivision 2. For example, if the Health Ombudsman refuses to grant an undertaking application made by a registered health practitioner, the practitioner may apply to the Queensland Civil and Administrative Tribunal (QCAT) for a review of the decision.

Public Statements

I wish to express support in particular for the amendments which will allow the Health Ombudsman to make a public statement warning the public about a health practitioner. I note that a new Part 8AA will be inserted into the *Health Ombudsman Act 2013* which will provide that:

The Health Ombudsman may make a public statement about a person if—

(a) either of the following applies—

(i) the health ombudsman reasonably believes the person is contravening, or has contravened, a relevant provision;

(ii) the person's conduct, performance or health is the subject of an assessment under part 5 or an investigation under part 8; and

(b) the health ombudsman reasonably believes that— (i) because of the person's conduct, performance or health, the person poses a serious risk to persons; and (ii) it is necessary to issue a public statement to protect public health or safety

It is noted that there are several safeguards included in the Bill relating to public statements. In particular, the Health Ombudsman will be required to provide the practitioner with a show cause notice advising that he or she intends to issue a public statement. In the notice the Health Ombudsman will be required to explain:

- That the Health Ombudsman intends to make a public statement;
- The way the public statement will be made;
- The content of the proposed public statement; and
- That the person may make a verbal or written submission within the reasonable period specified in the notice.

If the Health Ombudsman ultimately decides to issue a public statement, he or she must provide the person with a notice at least one (1) business day before issuing the statement, and advise the person that he or she may seek review in QCAT of the decision to issue the public statement.

I note that the legislative amendments will insert a similar provision into the National law to allow the Australian Health Practitioner Regulation Agency (Ahpra) to issue a public statement if certain criteria are met. The health commissioners in South Australia, New South Wales and Victoria already have the power to issue a public statement. I note that the Health Complaints Commissioner in New South Wales routinely issues a public statement to warn the public when she imposes a prohibition order (on a fixed term or permanent basis) on an unregistered health practitioner. Given that the Office of the Health Ombudsman frequently receives complaints about very serious conduct, it is prudent for the Health Ombudsman to also have the power to warn the public about a practitioner who poses a serious risk to persons. This will enhance the protection of the public and increase public trust in the Office of the Health Ombudsman.

Interim Prohibition Orders

It is noted that the Bill inserts a new Division 7A into Part 8 of the National Law to allow Ahpra and the National Boards to issue interim prohibitions orders in limited circumstances. These powers will complement the existing powers of the Health Ombudsman to issue interim prohibition orders. This will allow Ahpra to take swift action to manage a serious risk and protect the public (in those circumstances where a practitioner is alleged to have committed an offence under the National Law) until a matter is referred to the Health Ombudsman to consider more comprehensive regulatory action.

Ahpra and the Office of the Health Ombudsman already have a strong working relationship and therefore I am confident that we can implement a process to ensure we work together effectively so that co-regulation in this area is enhanced.

Penalty for breaching a prohibition order or an interim prohibition order

I note that the Bill amends sections 78 and 90P of the *Health Ombudsman Act 2013*, to significantly increase the maximum penalty for contravening an interim prohibition order or prohibition order to 450 penalty units or three (3) years imprisonment. I am highly supportive of this amendment. Interim prohibition orders and prohibition orders are only imposed on a person where the Health Ombudsman has formed a reasonable belief that the person poses a serious risk to

persons. In my view, the increased penalty appropriately reflects the seriousness of the offence of contravening an interim prohibition order or prohibition order.

Conclusion

Finally, I am confident that Ahpra and the Office of the Health Ombudsman will continue to work collaboratively going forward and that the reforms in the Bill will support the strong co-regulatory arrangements already in place.

I would be grateful to have the opportunity to speak with the Committee and answer any particular questions the Committee members may have. The Committee may find it helpful to have representatives from my office and Ahpra jointly appear, as both agencies will be involved in the necessary work to implement the reforms in Queensland if the Bill is passed.

Yours sincerely



Dr Lynne Coulson Barr OAM
Health Ombudsman