Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022

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Australian College of Rural & Remote Medicine
WORLD LEADERS IN RURAL PRACTICE

College Submission
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About the Australian College of Rural and Remote Medicine (ACRRM)

ACRRM's vision is ***the right doctors, in the right places, with the right skills, providing rural and remote people with excellent health care***. It progresses this through providing quality Fellowship training; professional development education programs; setting and upholding practice standards; and through the provision of support and advocacy services for rural doctors and the communities they serve.

ACRRM is accredited by the Australian Medical Council to set standards for the specialty of general practice. The College's programs are specifically designed to provide Fellows with the extended skills required to deliver the highest quality Rural Generalist model of care in rural and remote communities, which often experience a shortage of face-to-face specialist and allied health services.

Initial Comments

The College welcomes the opportunity to provide feedback on the *Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022*. The College has participated in the Consultation process since its commencement in 2017 and commented extensively on the proposed changes to the National Registration and Accreditation Scheme in earlier submissions.

ACRRM welcomes the inclusion of new objectives and guiding principles which recognise the importance of cultural safety for Aboriginal and Torres Strait Islander people, which will build capacity and ensure development of a culturally safe and respectful workforce responsive to their needs. We are also pleased to note the focus on the elimination of racism in the provision of health services.

It is an essential feature of the rule of law that legislation be clear and be able to be understood by those who are bound by it. The College is concerned that in a number of places, this legislation is too

broad in scope, confers wide-ranging powers on the National Boards, adds layers of bureaucracy which will create longer processing times and uncertainty, and strikes the wrong balance between protective/punitive measures and the basic human rights of health practitioners.

General Comments

1. Chapter 3 – Amendment of Health Practitioner National Law

College feedback regarding amendments to the National Law:

Cultural Safety for Aboriginal and Torres Strait Islander Peoples – the College strongly supports the amendment of Section 3 of the National Law to include new objectives and building principles relating to cultural safety for Aboriginal and Torres Strait Islander Peoples.

The College recognises that there is some risk that in acknowledging this objective, the Law makes notable the omission of dedicated objectives for other high-needs communities and other worthwhile priorities. We feel however that given the extent of the health inequity and the place of Indigenous peoples as Australia's First Nations; the issue stands alone as a seminal national healthcare priority.

Functions of the Agency Management Committee – we are concerned that the new subclause S25 (ka) which gives the Agency Management Committee power to "*do anything else necessary or convenient for the effective and efficient operation of the national registration and accreditation scheme"* is too broadly worded.

Provisions which confer power on an entity should clearly express the nature of the power and where appropriate, provide guidance as to how the entity on which the power is conferred should exercise it. The powers of the agency management committee should be sufficiently articulated to avoid the need for a "catch-all' clause, particularly one which includes the word "convenient". Whilst the concept of necessity can be objectively justified by reference to reasonable belief, facts and circumstances, the concept of convenience, being subjective, cannot. Should the words "or convenient" remain, we would suggest tempering this by referring to those actions being fair and reasonable.

Amendment of S12 – Approval of Registration Standards – we are concerned that the new S12(4) gives the Ministerial Council power to delegate powers under S12 (1). The College is of the view that approval of registration standards regarding the registration, renewal or endorsement should sit with the Ministerial Council and not within a delegated agency. This would appropriately ensure decision-making rests with elected representatives of government.

Part 8, Commencement of Registration (amending Section 56,64,72 and 76 of the National Law) – these amend the effective date of registration for general, specialist, provisional, limited, and non-practising registration. Currently the effective date of registration is the date the Board makes the decision. The amendments state that registration starts *"if the Board specifies a date, not more than 90 days after the Board makes the decision or, if a date is not specified, when they make the decision*."

As the National Law currently stands, registration starts when the Board makes the decision, and we can see no justification for a period of 90 days being applied in cases where the Board does not specify a date. Either a date should be specified in all cases, or the 90-day period should be reduced to, say, 30 days.

Part 11, insertion of new Division 6A Withdrawal of Registration – a newly inserted s85A of the National Law will give National Boards power to withdraw the registration of a registered health practitioner if they "reasonably believe" the practitioners registration was improperly obtained. Currently, this would be referred to the responsible tribunal under Division12, subdivision 1, s196. In the view of the College, this is an example of the guiding principle of public confidence in the safety of health services undermining fair and proper principles of natural justice. This amendment may potentially lead to registered health practitioners' having their registration wrongly removed, being denied a fair hearing by the responsible tribunal prior to removal of registration, and then having to appeal that decision to the responsible tribunal.

New Sections 149A and 149B – these new sections in the National Law will give National Boards the power to request documents as part of a preliminary assessment within a "specified reasonable time" and in a "specified reasonable way". These time limits and processes should be clearly defined in the National law and not left to the test of "reasonableness". Whilst the College accepts that there may be variations in the way the National Boards operate, all registered health practitioners should be subject to the same time limits and specifications when required to provide documents. This is particularly important considering the addition to these new sections of maximum fines for failure to comply.

Interim Prohibition orders, new Part 8, Division 7A, s159B – interim prohibition orders appear to add another layer of regulatory function which is arguably unnecessary, considering the powers already afforded to National Boards to take immediate action under Sections 155- 159A. The College has concerns that the addition of interim orders may result in further bureaucracy, delays in reaching a conclusion and as such extend the period of uncertainty for the health practitioner involved.

Part 24, new section 150A Referral to other entities – this will give the National Boards the power to refer notifications about health practitioners or students to another entity, whilst at the same time retaining the right to deal with the notification or part of the notification. From a health practitioner perspective, this will result in increasing the number of agencies the health practitioner requires to correspond with, with no certainty that the issue will be handled by the National Board, by another agency, or by the National Board and another agency.

Part 26, new section 193A Discretion not to refer matters to responsible tribunal – this will give National Boards the power to decide *not to refer* a matter about a registered health practitioner to a responsible tribunal if they consider there is no public interest in the matter being heard by the tribunal. This is another example where the Bill gives priority to public confidence and trust over and above the right of the health practitioner to have his or her case determined by the responsible tribunal. S193(a)(i) of the National Law refers to behaviour constituting professional misconduct, and legislation which gives National Boards the power not to refer to tribunals is contrary to natural justice and potentially constitutes a breach of health practitioners human rights.

Part 27, news S220A Disclosure of information about registered practitioners to protect the public - this increases the powers or National Boards to disclose information where they believe it is necessary to protect public health and safety. This expands on the existing rights under s220 of the National Law, which is arguably sufficient in scope as it currently stands.

Whilst the section states that subsections (2) and (3) do not apply if the National Board considers it is not in the public interest to give notice, the examples quoted are perverse, and demonstrate another

occasion where the legislation prioritises the public interest over natural justice. Subsection (5) should be reworded to state that subsections (2) and (3) do not apply if they would impact on an investigation, place a person or persons at risk or harm, or violate the health practitioners rights to privacy.

2. Chapter 2 – Amendment of Health Ombudsman Act 2013

College feedback on amendment of the Health Ombudsman Act 2013

S14 Dealing with health service complaints and other matters and new sections 65A,B,C,D,E and F – these sections extend the list of appropriate actions which the Ombudsman can take and adds the option of "accepting an undertaking from the practitioner". The College welcomes the addition of this course of action, as it broadens the scope for taking the least restrictive regulatory response which is appropriate in the circumstances to protect public safety. Undertakings are a useful addition which will avoid the need for the imposition of conditions or restrictions.

S78 Offence of contravening order – The College is concerned to note the addition of 3 years imprisonment as a penalty, over and above the monetary penalties imposed by existing legislation.

New Section 8AA Public Statements – the College is concerned to note new provisions (S90AA) allowing the Health Ombudsman to make public statements. The provision states *"A public statement made by the health ombudsman may be made in a way that the health ombudsman considers appropriate".*

The drafting of this section confers a broad discretion on the Health Ombudsman to make a statement in any way it sees fit, and in the view of the College, these powers should be clearly defined and more prescriptive in nature.

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ACRRM acknowledges Australian Aboriginal People and Torres Strait Islander People as the first inhabitants of the nation. We respect the Traditional Owners of lands across Australia in which our members and staff work and live and pay respect to their Elders past present and future.