

Inquiry - Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024

Submission No:	4
Submitted by:	Australian Lawyers Alliance
Publication:	Making the submission and your name public
Attachments:	See attachment
Submitter Comments:	

Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024 (Qld)

Submission to the Health, Environment and Agriculture
Committee, Queensland Parliament

25 September 2024

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal people of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input to the Health, Environment and Agriculture Committee ('Committee') on the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024 (Qld) ('Bill'), which proposes additions and amendments to the Health Practitioner Regulation National Law ('National Law').
2. The ALA supports legislative responses to what has been identified as "a concerning increase in notifications made against registered health practitioners for sexual misconduct".²
3. Our submission addresses the following matters:
 - the recording of additional information in National Registers or Specialists Registers;
 - increasing transparency and the need for public education; and
 - voiding provisions of non-disclosure agreements and introducing offences regarding entering into certain non-disclosure agreements.

Recording of additional information in National Registers or Specialists Registers

4. The ALA notes that proposed new sections 225A and 225B provide for additional information which must be recorded in the National and Specialists Registers,³ including where "the practitioner behaved in a way that constitutes professional misconduct".⁴
5. The ALA submits that "unsatisfactory professional conduct" should also be included in this Bill, to ensure that information regarding that conduct is also recorded in the National and Specialists Registers.
6. Drawing on the experiences ALA members' clients, the ALA's proposed amendment would ensure a broad range of harmful and unsafe conduct is captured, conduct which compromises public safety and which may otherwise not be recorded.

² Explanatory Notes, Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024 (Qld) 3.

³ Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024 (Qld) cl 21.

⁴ Ibid, proposed new s 225A(1)(a).

Recommendations

- That references to “professional misconduct” in proposed new sections 225A and 225B of the National Law should be expanded to “professional misconduct and/or unsatisfactory professional conduct”; and
- That references in proposed new sections 225A and 225B to “sexual misconduct” should be amended to refer not just to a health practitioner engaging in sexual misconduct that constitutes “professional misconduct” but also to sexual misconduct that constitutes “unsatisfactory professional conduct”.

Increasing transparency and the need for public education

7. The ALA supports the policy objective underpinning this Bill of increasing transparency for the public,⁵ especially with regards to disciplinary action against health practitioners regarding serious sexual misconduct.⁶
8. We submit that these reforms must be supported by public education campaigns, in order to educate the general public about the existence of the National and Specialists Registers and how to navigate those registers. ALA members are concerned, for example, that the general public is largely unaware of Ahpra’s register of registered medical practitioners and, by extension, unaware of the general public’s basic right to access information (including notes on disciplinary action) about their doctor or prospective doctor.
9. Further, the ALA submits that Ahpra’s approach to its online resources should be focused on ensuring that the information in those online resources reaches members of the general public. For example, Ahpra’s profile of a registered health practitioner should appear as one of the top results when a member of the public conducts a Google (or other search engine) search of that health practitioner. This will ensure that members of the public can assess whether they would like to access the services of that registered health practitioner, with regard to any disciplinary action or restrictions on their practice featured on Ahpra’s online profile of the registered health practitioner.

⁵ See: Explanatory Notes, Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024 (Qld) 1.

⁶ See, eg, Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024 (Qld) cl 21.

Recommendations

- That the default position should be that information about health practitioners remains on the National and Specialists Registers, with information removed only as an exception (and on application only) rather than the norm; and
- That Ahpra invests resources into improving the search engine optimisation value of their website and online resources.

Voiding provisions of non-disclosure agreements and introducing offences regarding entering into certain non-disclosure agreements

10. The ALA notes this Bill envisages that the provisions of a non-disclosure agreement (NDA) will be void “to the extent they seek to prevent or limit a notifier from making a notification or providing assistance to persons performing functions under the National Law”.⁷
11. We submit that the definition of “non-disclosure agreement” in the Bill, as defined in proposed new sections 237B(3) and 263A(3), should be expanded. ALA members are concerned that the current drafting lends itself to the interpretation that an NDA is a standalone document.
12. The ALA is seeking to ensure that there is no ambiguity surrounding the fact that non-disclosure clauses can be embedded or included in other contracts or agreements between parties, such as employment contracts or contracts for the provision of health services.
13. The ALA also supports the decision by Australian Health Ministers to clarify in the National Law that an NDA “cannot prevent a person from making a notification or providing information to a health regulator”.⁸ We note that this includes via the creation of offences for entering an NDA if that NDA limits a person from notifying health regulators or assisting in any other way with an investigation under the National Law.⁹

⁷ Explanatory Notes, Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024 (Qld) 8; see: Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024 (Qld) cl 22, proposed new s 237B(1), and cl 12, proposed new s 263A(2).

⁸ Explanatory Notes, Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024 (Qld) 4.

⁹ Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024 (Qld) cl 22, proposed new s 237B(1), and cl 12, proposed new s 263A(2)

Recommendations

- That the definition of “non-disclosure agreement” in the Bill be expanded to include the following:

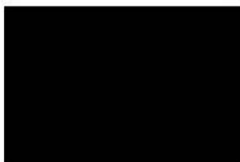
“For the avoidance of doubt, a non-disclosure agreement can be included as a clause within a contract, for example a contract of employment.”

- That Federal, State and Territory Health Ministers across Australia ensure that any information shared by a complainant, notifier or victim survivor to health regulators and to any other entity about their experiences with a health practitioner or multiple health practitioners is handled in confidence and with the safety (physical and psychological) of the complainant, notifier or victim survivor as the foremost priority.

Conclusion

14. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input to the Health, Environment and Agriculture Committee on the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024 (Qld).

15. The ALA is available to provide further assistance to the Committee on the issues raised in this submission.



Sarah Grace

President, Queensland Branch Committee

Australian Lawyers Alliance