

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

<b>Submission No:</b>	6
<b>Submitted by:</b>	Australian Society of Orthopaedic Surgeons
<b>Publication:</b>	Making the submission and your name public
<b>Attachments:</b>	No attachment
<b>Submitter Comments:</b>	



## **Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024**

1. ASOS notes that the proposed legislation covers all health practitioners, however ASOS will restrict comment to how this applies to medical practitioners.
2. ASOS supports appropriate regulation which seeks to protect the public from injury, harm or mistreatment by any medical practitioner including injury and harm of a sexual nature.
3. ASOS supports removing any medical practitioner from practice who, after due legal process, is found to pose a serious risk to the public.
4. ASOS is unable to fully evaluate the implications of the *Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024* in the 14 days available due to the complexity of the proposals which require a full legal evaluation with regard to patient protection, privacy, retrospectivity, presumption of innocence, rights of appeal, and the avoidance of unintended consequences.
5. ASOS makes the following observations.
  - a. There is no definition within the bill of the term “serious sexual misconduct” which is used 5 times in the Explanatory Notes of the Amendment Bill [Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024].
  - b. There is no definition of the term “serious sexual misconduct” in the National Law [Health Practitioner Regulation National Law Act 2009].
  - c. The current Medical Board of Australia (MBA) Guidelines<sup>1</sup> use the term “sexual misconduct” and defines it thus: *Sexual misconduct is an abuse of the doctor-patient relationship and can cause significant and lasting harm to patients.*

---

<sup>1</sup> Medical Board of Australia GUIDELINES: SEXUAL BOUNDARIES IN THE DOCTOR-PATIENT RELATIONSHIP, 12 Dec 2018

- d. ASOS is advised that the standard for a tribunal finding is the balance of probabilities, a lower threshold than in criminal proceedings where the test is beyond reasonable doubt.
  - e. ASOS notes that the Federal AMA has advised in its submission on this matter in February 2024, that *“the proposal for permanent inclusion on the national register of a practitioner’s entire regulatory history represents a serious and ongoing punishment in perpetuity”*.
6. It is important that any regulation and legislation of a disciplinary nature against medical practitioners have the confidence and support of all medical practitioners in good standing. This will only be achieved if the proposed regulations and legislation reflect due process and procedural fairness.
7. ASOS recommends that sufficient time be given for the bill to be carefully examined by expert legal practitioners including medical defence organisations to ensure that it does not contain the potential for unintended consequences which would detract from its objectives to provide better patient protection whilst maintaining the support of the overwhelming majority of medical practitioners in good standing.

Dr Roger Brighton  
Chairman, ASOS

Mr Stephen Milgate AM  
CEO, ASOS