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

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SUBMISSION

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AMA submission to the inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024

Introduction

The Australian Medical Association (AMA) again objects to the unacceptably short consultation window for the *Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024.* We provide further comment on this at the end of the submission. The introduction of the consultation prior to Christmas provides minimal time for stakeholders to consider the changes.

The AMA does not oppose the Bill detailing the amendments to the Health Practitioner National Law (the National Law). We have excluded changes to the Health Ombudsman Act 2013 from our submission.

The provision of medical care requires the highest levels of trust between patients and medical practitioners. Patients need to know their practitioners will practise in a way that justifies their trust in them. The AMA does not condone conduct which breaches the trust the community has in their medical practitioners.

Reinstatement orders

The AMA is generally supportive of a nationally consistent approach to practitioners seeking reinstatement. Applying this rule to all states and territories across Australia ensures a uniform approach. This is a very sensitive area, and it is important for public and practitioner confidence in the National Registration and Accreditation Scheme (the National Scheme) that the approach taken is robust and consistent across jurisdictions.

The requirement to seek a reinstatement order from the tribunal responsible for the application of the sanction in the first instance, as it applies in New South Wales, retains continuity of responsibility for handling of the practitioner's case. It may bring to bear greater knowledge of the circumstance of the case in determining whether reinstatement is appropriate at that point in time, which may not be readily apparent to a different agency.

Everyone has the right to have their case heard by a fair, independent, and unbiased tribunal. The proposed amendments introduce limitations on this right by allowing tribunals to set a specific period during which a person cannot apply for reinstatement after their registration has been cancelled or their application for reinstatement has been denied. In Queensland, a tribunal can even permanently prevent a person from applying for reinstatement, meaning they would never be able to reapply for re-registration. This could potentially restrict their access to the tribunal, either temporarily or permanently, and ultimately their right to practise again. The AMA stresses that this power must be used sparingly.

Expanding information on the public register

Sanctions imposed on practitioners by tribunals need to be proportionate to the seriousness and nature of the conduct. In general, once the time frame of the sanction has been served, the practitioner should not be punished in perpetuity, provided they do not re-engage in that conduct.

The proposal to permanently include a practitioner's entire regulatory history on the national register represents a serious and ongoing punishment in perpetuity. This sanction needs to be balanced against the rights of patients to be able to be confident in placing their utmost trust in their treating practitioner.

In the case of professional misconduct of a sexual nature, the breach of trust between practitioner and patient is of such a nature and degree that it tilts the balance in favour of a prospective patient's right to know. The AMA would therefore support the ongoing publication of a practitioner's regulatory history in relation to all transgressions of a sexual nature, including sexual boundary violations.

Before supporting the publication of the wider, full regulatory history of a practitioner, the AMA believes further justification must be shown as to why this proposal has been made. This proposal would transgress the principle that practitioners should not be punished in perpetuity or in a disproportionate way for relatively minor offences (of a non-sexual nature) committed long ago.

Given the serious impact the permanent publication of a practitioner's regulatory history will have on the practitioner's personal and professional reputation, the threshold for triggering the permanent publication of the practitioner's regulatory history on the register needs to be clear and in proportion to the seriousness of the practitioner's conduct.

The AMA considers the threshold of "professional misconduct of a sexual nature" as it is understood and applied by the Medical Board of Australia (see Sexual Boundaries in the Doctor-Patient Relationship) as well as the wider medical profession is an appropriate threshold to trigger the proposed sanction. It will be important to ensure these guidelines are regularly reviewed so they remain clear, fit-for-purpose, and reflect contemporary professional and community standards.

Protection for notifiers

The AMA recognises the regulatory process itself can be traumatising for people who have been subject to the harm arising from the misconduct. Notifiers should feel safe reporting misconduct without fear of reprisals or intimidation. We are in favour of greater support being provided to people who are subject to misconduct from a health practitioner, recognising the need to balance the rights of all parties.

This Bill ensures non-disclosure agreements cannot prevent notifiers from reporting health practitioner misconduct, promoting transparency and protection for those who come forward with concerns or wish to make notifications.

The outlined provisions will not affect the way in which vexatious complaints are managed under the National Law. However, a proportion of complaints to Ahpra are of a vexatious or unwarranted nature. These complaints can cause great distress to practitioners during the investigation process. It is critically important regulatory agencies have in place robust processes that can deal sensitively with notifiers, while ensuring vexatious and unwarranted notifications are rapidly identified and closed out.

Comment on consultation

The consultation for this Bill does not meet the basic levels of consultation Australians expect from their elected representatives and public institutions. The National Law regulates almost one million health professionals working across 16 professions. Changes to the National Law have significant impacts on the careers and livelihoods of every health professional. Any amendment to the National Law demands meticulous and comprehensive analysis, along with meaningful consultation with all relevant stakeholders.

As far as we are aware, there is no reason why Queensland must pass amendments to the legislation before other states and territories. All other aspects of the management of the National Scheme are swapped between jurisdictions. The chair of the Health Ministers' Meeting (HMM) rotates among the health ministers with state and territory health departments taking turns to provide secretariat support. The health departments also alternate responsibility for leading consultations on major reforms. The drafting of this Bill has also been in development since February 2023.[1] By speeding this Bill through, the HMM has again sought to avoid appropriate scrutiny.

[1] State Government of Victoria (2024). "Proposed reforms to the Health Practitioner Regulation National Law". https://engage.vic.gov.au/proposed-reforms-to-the-health-practitioner-regulation-national-law. Accessed 19 September 2024.

The Office of Impact Analysis guide on best practice consultation states: "Depending on the significance of the proposal, between 30 to 60 days is usually appropriate for effective consultation, with 30 days considered the minimum. Longer consultation periods may be necessary when they fall around holiday periods."[2]

There are 14 clauses detailing amendments to the National Law. Some of the amendments proposed are complex, requiring proper scrutiny. While we do not have significant concerns with the intention of the Bill, any change to legislation can have unintended consequences.

Australia's health professionals deserve to be appropriately and meaningfully consulted on changes to the National Law.

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[2] The Office of Impact Analysis (2023). "Best Practice Consultation". https://oia.pmc.gov.au/sites/default/files/2023-08/best-practice-consultation.pdf