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

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Queensland Nurses & Midwives' Union

Submission to

Health, Environment and Innovation Committee

Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024

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submission

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Introduction

The Queensland Nurses and Midwives' Union (QNMU) thanks the Health, Environment and Innovation Committee (the Committee) for the opportunity to provide feedback on the *Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024* (the bill). The introduction of this lapsed bill to the committee allows the QNMU to resubmit our response which is principally unchanged to the submission that was provided to the previous committee inquiry in September 2024.

The QNMU is Queensland's largest registered union for nurses and midwives, representing over 74,000 members. The QNMU is a state branch of the Australian Nursing and Midwifery Federation (ANMF) with the ANMF representing over 326,000 members.

Our members work in health and aged care including public and private hospitals and health services, residential and community aged care, mental health, general practice, and disability sectors across a wide variety of urban, regional, rural, and remote locations.

The QNMU is run by nurses and midwives, for nurses and midwives. We have a proud history of working with our members for over 100 years to promote and defend the professional, industrial, social, and political interests of our members. Our members direct the QNMU's priorities and policies through our democratic processes.

The QNMU expresses our continued commitment to working in partnership with Aboriginal and Torres Strait Islander peoples to achieve health equity outcomes. The QNMU remains committed to the Uluru Statement from the Heart, including a pathway to truth telling and treaty. We acknowledge the lands on which we work and meet always was, and always will be, Aboriginal and Torres Strait Islander land.

The QNMU supports, in principle, the objectives of the amendments in the bill to modify the *Health Practitioner Regulation National Law Act 2009* (the National Law) and *Health Ombudsman Act 2013*. However, the amendments that seek to establish a nationally consistent process to regain registration after health practitioners have had their registration cancelled or disqualified and the amendment to publish disciplinary actions that are no longer active, overreach their intention of increasing transparency for the public and protecting public safety. These amendments are punitive and unnecessary, particularly when the role of the Australian Health Practitioner Regulation Agency (Ahpra) is focused on strengthening public protection by regulating health practitioners and setting standards and policies all registered health practitioners must meet.

The QNMU has provided a general comment and recommendations. Additionally, we have used the headings for implementing the National Law amendments[1] to organise our specific feedback.

Recommendations

The QNMU recommends:

- Retaining the current legislation that under the National Law, National Boards are required to publish active disciplinary sanctions on the national public register.
- Retaining the current legislation under the National Law where a health practitioner following any period of disqualification can apply to the relevant National Board for re-registration.
- If the bill is passed, a framework be developed for all National Boards to ensure consistency around their discretion to use necessary inference for tribunal findings of professional misconduct based on sexual misconduct.
- If the bill is passed, the state government develop an education plan to assist the public's understanding of those public protections built into the non-disclosure agreements.

General comment

The QNMU has concerns that in general the amendments are intended to apply retrospectively, with some exceptions. We note the justifications for retrospectivity for the provisions provided in the explanatory notes. We contend however, that this bill will impose further punishment if additional information is to be published on the register going back to 1 July 2010 (for nurses and midwives amongst other health practitioners) if the bill is passed. This amendment is unnecessarily punitive for the health practitioner whose conduct has been sufficiently remediated for them to remain on the register.

Reinstatement orders

The QNMU does not support the bill's proposal that a disqualified health practitioner in Queensland is required to first apply to the Queensland Civil and Administrative Tribunal (QCAT) for a reinstatement order to become eligible to apply for re-registration. This double handling has no purpose as QCAT would examine the same evidence as that which would be brought before a National Board or the Office of the Health Ombudsman (OHO). It will add an unnecessary workload to QCAT which is likely to then lead to delays in hearings, which would be detrimental to health practitioners seeking re-registration.

[1] *Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024* explanatory notes.

Expanding information on the public register

The QNMU acknowledges the intent of the amendment is to strengthen public safety by increasing transparency that the public can access regarding disciplinary action involving health practitioners who have engaged in sexual misconduct. Whilst sexual misconduct is a serious issue in its own right, the QNMU contends that the amendment is disproportionate to any public interest principle where the relevant National Board has either not required this information be published or has renewed the registration of a person on the basis of them obliging their fitness to practice requirements.

There are structures and organisational controls already in place to protect patients receiving care from health practitioners, including employed nurses and midwives. The Nursing and Midwifery Board of Australia (NMBA) undertakes functions as set by the National Law which requires nurses and midwives to comply with the *Code of conduct for nurses* (NMBA, 2018) and the *Code of conduct for midwives* (NMBA, 2018) which sets out legal requirements, professional behaviour and conduct expectations to meet registration standards. If the NMBA (or any National Board) has deemed a health practitioner safe to practice (with or without conditions) then publishing information about health practitioners who have engaged in professional misconduct involving sexual misconduct is unnecessary. If the practitioner is not safe to practice without what is essentially a 'public warning' then a National Board should reconsider whether they are a fit and proper person to hold registration.

The explanatory notes stipulate that since the National Law provides mechanisms for information to be removed once actions have ceased, this has resulted in patients or prospective patients not able to make fully informed decisions about their choice of healthcare practitioner. We contend that this is a fundamental misunderstanding of the way in which nurses and midwives work. There is an assumption that they work in a manner similar to other health practitioners who may be self-employed or independent contractors and chosen by patients to provide care. However, many nurses and midwives are employees of hospitals and health services, aged care facilities and medical practices. As such, patients and prospective patients do not engage them as individual practitioners, rather they are employed and rostered to work by the health service.

We also note that the bill provides that to initiate the publication requirements, sexual misconduct does not need to be the principal behaviour for the tribunal's findings of misconduct. As stated in the explanatory notes (p.6):

> The bill … gives National Boards discretion to infer, on the basis of the tribunal's decision and reasons for decision, that the tribunal's finding of professional misconduct was based on sexual misconduct. The inference must be 'necessary', in that it is required to make sense of the tribunal's decision in the context of the tribunal's findings of fact.

If the bill is passed, the QNMU advocates for a framework for all National Boards to use which examines what is 'discretion to infer' and the context around that the inference must be 'necessary'. This will ensure consistency across all National Boards in how they approach this reform.

Furthermore, we would support the removal of information from the register during the time a health practitioner has appealed the decision until there is an outcome. If information is on the register about a finding of misconduct on the basis of sexual misconduct, which is subsequently overturned or stayed on appeal this could be potentially traumatic for the health practitioner and cause damage to their professional reputation.

Greater protections for notifiers

The QNMU supports, in principle, greater protection for notifiers, including health practitioners (and students of a health practitioner course of study) making notifications about other health practitioners. We agree with making it an offence for a person causing detriment to, or taking reprisal against, anyone who, in good faith, makes a notification about a health practitioner.

We support that it will be an offence for health service providers or employers or former employers of health service providers "to enter into a non-disclosure agreement unless the agreement clearly sets out in writing, that it does not limit a person from making a notification or providing assistance to regulators and others performing functions under the National Law" (p.7). The QNMU suggests there must be protection of the public around the meaning of "unless the agreement clearly sets out" and would support the development of an education framework to assist the public's understanding. The QNMU would also submit that consideration be given to raising the maximum penalty for an individual which is proposed to be $5,000 and for a body corporate $10,000. As a disincentive we believe there is a need to considerably raise the bar in the penalty perspective. Penalties should outweigh the benefit to organisations of noncompliance.

In addition to this, must be the focus on why there is the need for non-disclosure agreements in the service of healthcare. We acknowledge that this is not within the remit of the bill, however the QNMU has concerns that patients and health practitioners are being required to enter into non-disclosure agreements about health outcomes which prevent them from sharing confidential information with others or being able to speak about their experience. We therefore support the amendments in the bill which render non-disclosure agreements void and unenforceable 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.

References

Nursing and Midwifery Board. Ahpra. (2018). *Code of conduct for midwives*. Retrieved from https://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Professional-standards.aspx

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