

Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022

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Submission to Health and Environment Committee

*Health Practitioner Regulation National Law and Other Legislation
Amendment Bill 2022*

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Introduction

The Queensland Nurses and Midwives' Union (QNMU) thanks the Health and Environment Committee for the opportunity to comment on the *Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022* ('the bill').

Nursing and midwifery is the largest occupational group in Queensland Health (QH) and one of the largest across the Queensland government. The QNMU is the principal health union in Queensland covering all classifications of workers that make up the nursing and midwifery workforce including registered nurses (RN), midwives, nurse practitioners (NP) enrolled nurses (EN) and assistants in nursing (AIN) who are employed in the public, private and not-for-profit health sectors including aged care.

Our more than 65,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses in Queensland are members of the QNMU, and many of our members work in rural or remote areas throughout Queensland.

The QNMU strongly supports the role of the National Registration and Accreditation Scheme (NRAS) for all registered health practitioners and continues to advocate for equity and fairness in the application of the Health Practitioner Regulation National Law (National Law).

The QNMU has previously provided a submission to NRAS on the initial consultation draft of the *Health Practitioner Regulation National Law Amendment Regulation 2021* and *Health Practitioner Regulation National Law Amendment Bill 2021*.

The QNMU notes that a number of issues and recommendations we have raised in our previous submission have not been adopted in the bill and remain key concerns for the QNMU. The QNMU supports some amendments in principle, but remains concerned about revisions to the following:

- the registration process;
- interim prohibition orders;
- public statements;
- disciplinary action for unregistered health practitioners;
- reporting of scheduled medicine offences;
- disclosure of information to protect the public;
- mandatory notifications by employers;
- Allowing the delegation of the Ministerial Council's power to approve registration standards;

- Allowing National Boards to refer matters to other entities at preliminary assessment.

As such, the QNMU has attached our previous submission for further consideration by the Health and Environment Committee.

Recommendations

The QNMU recommends:

- Reviewing the concerns provided in our previous submission and implementing the provided recommendations;
- Clarification to the scheduled medicine offences provision;
- Regulating unregulated care workers;
- Amending s136 to protect the use of the title 'registered nurse' in response to any other unregistered person or health practitioner holding out to be a registered nurse by way of conduct, not by title.

General comments

Whilst the QNMU expresses broad support for the bill, our concerns relate primarily to the potential unintended consequences and excessive punishment, or regulation of health practitioners provided for in some provisions. Our recommendations, as detailed in our previous submission, highlight changes to the drafting to improve its operation, fairness and equity for health practitioners governed by the legislation.

The QNMU broadly supports the following amendments:

- Updates to the guiding principles and objectives of the National Law to strengthen the focus on public safety and confidence in health services;
- Acknowledgement of the national scheme's role in ensuring the development of a culturally safe and respectful health workforce that is responsive to Aboriginal and Torres Strait Islander Peoples and their health and that contributes to the elimination of racism in the provision of health services;
- Proposed increase in penalties for breaching advertising restrictions and directing and inciting offences.

Disclosure of information to protect the public

We thank the Committee for acknowledging our concerns stated in our previous submission about disclosing information about a practitioner to the public and the possible reputational damage to a practitioner or unregistered person. We support a higher threshold to safeguard practitioners and ensure the National Law has an obligation to accord natural justice.

Scheduled medicine offences (part 14)

The QNMU raises particular attention to the scheduled medicine offences provision. We consider that a scheduled medicine offence should only be reported where there is evidence of repeated offences or misappropriation of medicines. There are many contributor factors to health practitioners mistakenly committing a scheduled medicine offence, such as unsafe staffing workloads and skill mix, lack of in-service education, poor governance, policies, and procedures. The QNMU strongly encourages clarity in the legislation between reporting wilful intent and unintended errors when addressing medication offences.

Unregulated care workers

As stated in our previous submission, the QNMU recommends amending the National Law to incorporate the regulation of unregulated health practitioners, in a similar manner to currently regulated health practitioners. The National Law should reflect the inherent and growing risk of unregulated nursing care workers, and the importance of

public protection by incorporating unregulated care workers by any name, into the regulated nursing profession with consistent minimum standards developed by the Nursing and Midwifery Board (NMBA). This should also take into account the Aboriginal and Torres Strait Islander Health Worker workforce and other unregulated workers who routinely practice in a clinical environment within the supervision and delegation of registered nurses.

Additional considerations

The QNMU raises the following additional consideration relating to the regulation and practice of registered nurses and midwives.

Directing and Inciting Offences (part 17)

The QNMU recommends further amendments to section 136 of the Act to protect the use of the title 'registered nurse' in response to any other unregistered person or health practitioner holding out to be a registered nurse by way of conduct, not by title. For example, an anaesthetic technician, unregulated care worker or social worker cannot hold themselves out to be a registered nurse by way of their conduct. A registered nurse has a specific scope of practice that is restricted to their profession. The QNMU recommends that further clarification in the legislation is required.



Submission to National Registration and Accreditation Scheme (NRAS)

*Consultation on the Draft Health Practitioner
Regulation National Law Amendment Bill 2021
and draft Health Practitioner Regulation National
law Amendment Regulation 2021*

April, 2021

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Introduction

The Queensland Nurses and Midwives' Union (QNMU) thanks the National Registration and Accreditation Scheme (NRAS) for the opportunity to provide feedback on the *draft Health Practitioner Regulation National Law Amendment Regulation 2021* (the regulation) and *Health Practitioner Regulation National Law Amendment Bill 2021* (the bill).

Nursing and midwifery is the largest occupational group in Queensland Health and one of the largest across the Queensland government. The QNMU is the principal health union in Queensland covering all classifications of workers that make up the nursing and midwifery workforce including registered nurses (RN), registered midwives (RM), enrolled nurses (EN) and assistants in nursing (AIN) and students who are employed in the public, private and not-for-profit health sectors including aged care.

Our more than 65,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses and midwives in Queensland are members of the QNMU.

The following submission will provide considerations regarding several key provisions of the bill and the regulation as they relate to the nursing and midwifery professions.

Our submission can be read in conjunction with the submission provided by our national peak body, the Australian Nursing and Midwifery Federation (ANMF).

Recommendations

The QNMU recommends:

- the insertion of section 3A and consistent application of cultural safety practices and commitment to increasing the Aboriginal and Torres Strait Islander nursing and midwifery workforces;
- increase transparency by publicly reporting any decisions made by entities who have been delegated the power to approve registration standards;
- removal of part 22, s150A to refer notifications to another entity (following preliminary assessment), with the exception of the employer;
- part 13 of the bill should be reviewed to reflect that a scheduled medicine offence should only be reported where there is evidence of repeated offences or misappropriation of medicines;
- part 17 should include a process for determining disciplinary action based on intent, whereby practitioners who mistakenly allowing their registration to lapse do not

receive the same disciplinary action as those who wilfully and intentionally practice without a current registration;

- section 18 – Mandatory notifications - should be reviewed so that employers are only required to notify AHPRA when there has been a finding of misconduct;
- removal of the amendments made to part 20, interim prohibition orders;
- removal of the amendments made to part 21, public statements. Regulators should only issue public statements where the health practitioner is found guilty of misconduct;
- removal of the amendments made to part 25, s220A. The employer should only be notified when action has been taken against the health practitioner;
- removal of part 19, requirement to provide records during a preliminary assessment;
- incorporating unregulated health practitioners into the National Law.

Proposed Amendments to the National Law

Cultural Safety for Aboriginal and Torres Strait Islander Peoples (Draft Bill Part 3)

The QNMU commends NRAS on the proposed amendments to build a culturally safe health workforce that is respectful and responsive to Aboriginal and Torres Strait Islander peoples' needs and contributes to the elimination of racism in the provision of health services (ANMF, 2018).

The QNMU recommends the National Law include measures to ensure the consistent application of cultural safety practices across hospital and health services for Aboriginal and Torres Strait Islander peoples.

We view the bill as an opportunity to address the underrepresentation of Aboriginal and Torres Strait Islander nurses and midwives. As such, the National Law should give explicit recognition to employing Aboriginal and Torres Strait Islander health practitioners and raise awareness within the nursing and midwifery professions to practice cultural safety.

Delegation of the Ministerial Council's power to approve registration standards (Draft Bill Part 7)

The QNMU acknowledges that the intended purpose of this provision is to facilitate effective and efficient operation of the approval of registration standards. The QNMU considers that delegation should only be exercised subject to the conditions imposed on the delegated function. In order to ensure transparency, the QNMU also recommends public reporting of delegated decisions regarding the approval of registration standards.

Referral to another entity following preliminary assessment (Draft Bill Part 22)

The QNMU opposes this Part. The only exception would be to enable the national board to refer the matter back to the employer if the employer is the complainant, but not to other entities.

Endorsement as midwife practitioner (Draft Bill Part 11)

The QNMU does not foresee any issues with the provision to remove endorsements of registrations for midwife practitioners as this endorsement has not been utilised.

Exclusion of information from registers (Draft Bill Part 28)

The QNMU supports the move to broaden the grounds for excluding information from the public register if the publication of information poses a risk to the health and safety of the practitioner, their family or their associates. We consider this amendment to be an encouraging move towards increasing protections for health practitioners and their families who experience domestic and family violence.

Reporting of scheduled medicine offences (Draft Bill Part 13)

Part 13 s 130 Scheduled medicine offence—

- (a) means an offence against a law of a State or Territory if—
 - (i) the law regulates the authority of registered health practitioners or students to administer, obtain, possess, prescribe, sell, supply or use scheduled medicines; and
 - (ii) the offence relates to registered health practitioners or students administering, obtaining, possessing, prescribing, selling, supplying or using scheduled medicines; but
- (b) does not, for a participating jurisdiction, include an offence declared or prescribed by a law of the jurisdiction not to be a scheduled medicine offence for the purposes of this Law.

The QNMU supports the proposed amendments to allow individual states and territories to declare certain offences are not a scheduled medicine offence for the purpose of that jurisdiction. We acknowledge that the intended purpose of the changes is to ensure that new reporting requirements are no broader than necessary to protect the public.

The QNMU considers that a scheduled medicine offence should only be reported where there is evidence of repeated offences or misappropriation of medicines. A clear distinction is

required between reporting wilful intent and unintended errors when addressing medication offences. It is the view of the QNMU that there are many contributing factors for a health practitioner mistakenly committing a scheduled medicine offence, due to unsafe staffing workloads and skill mix, lack of in-service education, poor governance, policies and procedures. The QNMU believes that all health and aged care services must provide education opportunities to support nurses and midwives to utilise medicines appropriately and avoid medicine administration errors.

Disciplinary action in relation to health practitioners while unregistered (Draft Bill Part 17)

It is the view of the QNMU that disciplinary action should only take place where there is evidence of intent, rather than an honest mistake. The provision doesn't account for health practitioners who experience injuries, illnesses or accidents leading them to mistakenly allow their registration to lapse. The QNMU recommends including a process for determining disciplinary action based on intent.

Mandatory notification by employers (Draft Bill Part 18)

The QNMU recommends a review of the mandatory notification provisions:

53 Amendment of s 142 (Mandatory notifications by employers)

(1) Section 142(1), before the note—

insert—

Example. An employer takes action against a registered health practitioner, for example, withdrawing or restricting the practitioner's clinical privileges or right to practise at a hospital, because the employer reasonably believes the public is at risk of harm by the practitioner practising the profession in a way that constitutes a significant departure from accepted professional standards (see paragraph (d) of the definition of **notifiable conduct**). The employer must notify the National Agency of the notifiable conduct.

The QNMU acknowledges that the proposed notation is intended to provide education to employers about notification requirements. Whilst the QNMU has no issue with the notation, we strongly encourage a review of the mandatory notification provisions more broadly. In our view, employers should only be required to notify AHPRA when there has been a finding of misconduct.

In addition to this, the QNMU maintains treating practitioners should have a full exemption from notifications regarding health impairment, so that the therapeutic relationship can be maintained, and practitioners are encouraged to seek care.

Directing and Inciting Offences (Draft Bill Part 16)

The QNMU expresses broad support for the proposed increase in penalties for directing and inciting offences.

Show cause processes (Draft Bill Part 23)

The QNMU is supportive of the proposed amendments to the show cause process. In our view, the principles of natural justice should always apply to enable health practitioners a fair and unbiased opportunity to be heard before disciplinary action is taken. We support the decision to align the National Law with the right to procedural fairness.

Interim prohibition orders (Draft Bill Part 20)

Queensland and New South Wales complaints handling, and disciplinary functions operate under the co-regulatory mechanism, as recognised by the National Law. Queensland has established a state-based complaints system, the Office of the Health Ombudsman (OHO) under the *Health Ombudsman Act 2013 (HO Act)*. Under the Queensland co-regulatory model, notifications and other disciplinary and enforcement measures can be dealt with by the National Law or the HO Act.

The Health Ombudsman handles matters more serious in nature, such as suspensions or matters concerning professional misconduct, whilst AHPRA often deals with less serious matters. The QNMU questions the need to expand the role of AHPRA and other National Boards to issue interim prohibition orders (IPO's) to unregistered practitioners when the Health Ombudsman already has the discretion to handle registered and unregistered health practitioner related complaints.

Serious boundary violations might occur if a national board that has no regulatory authority for unregistered workers takes such an action. While not required in states with co-regulatory jurisdictions, it may be appropriate for other states and territories.

Public statements (Draft Bill Part 21)

The NMBA already releases information through newsletters and media statements about practitioners who present a serious risk to the public and the National register provides a platform for notification of practitioners who fall into one of the following categories:

1. The person who has their registration cancelled and is the subject of a prohibition order or interim prohibition order or;

2. The person who has withdrawn their registration or let it lapse apparently to avoid disciplinary action.

The QNMU considers that regulators should only issue public statements where the health practitioner is found guilty of misconduct. We recognise there is a need to balance the protection of the health practitioner's employment and professional reputation with the risk to public safety and protection. Processes such as suspension of practice and monitoring practice remain available to ensure public health and safety, however, the QNMU considers that issuing a public statement should be reserved for circumstances where there is a finding of misconduct only.

Disclosure of information about registered practitioners to protect the public (Draft Bill Part 25)

In our view, the only occasion where the National Board may notify an employer is where a matter has been referred to the immediate action committee and the committee decides there is a serious risk to public safety. This may not necessarily require notifying the employer. It should be a decision of the board as to whether this action is taken. In our view, the threshold for notifying an employer is too low. We suggest a review of this threshold, given the significant consequences notification has on the health practitioner.

Notifying an employer during the investigation process pre-supposes that there will be a finding against the health practitioner, when this is not definitive. In many cases National Boards in partnership with AHPRA may decide to take no further action but the employer has still been notified. Such a situation places undue stress on the health practitioner and has the potential to impact their workplace relationships, reputation, employment outcomes and future job prospects, as well as placing a significant burden on the practitioner's physical and mental health.

Until such time as natural justice has occurred through a properly considered assessment of the matter by the board, there should be no notification made to the employer. It is the view of the QNMU that the employer should only be notified when action has been taken against the health practitioner.

Requirement to provide records for preliminary assessment (Draft Bill Part 19)

The QNMU cautions against including Part 19 of the draft bill. Although it is possible that information gathered by the National Board could exonerate the health practitioner, there is a significant concern that the National Board has a disproportionate power to retrieve personal information and documents, compared with other regulatory bodies. We support a health practitioner's right to privacy during an investigation.

Additional considerations not provided for in the bill

The QNMU recommends amending the National Law to incorporate the regulation of unregulated health practitioners, in a similar manner to the currently regulated health practitioners. The National Law should reflect the inherent and growing risk of unregulated nursing care workers, and the importance of public protection by incorporating unregulated care workers by any name, into the regulated nursing profession with consistent minimum standards developed by the board.

References

Australian Nursing and Midwifery Federation. (2018). Cultural safety; nurses and midwives leading the way for safer healthcare. Joint statement by the Australian Nursing and Midwifery Federation, the Australian College of Nursing, the Australian College of Midwives and the Congress of Aboriginal and Torres Strait Islander Nurses and Midwives.

Health Practitioner Regulation National Law Act (QLD)

Health Practitioner Regulation National Law Act 2010 (WA)