

**National Health
Practitioner Ombudsman**

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6 June 2022

Committee Secretary
Health and Environment Committee
Parliament House
George St
Brisbane QLD 4000

By email: hec@parliament.qld.gov.au

Dear Health and Environment Committee

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

I thank the Committee for the opportunity to comment on the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022 (the Bill).

My office strives for fair and positive change in the regulation of registered health practitioners for the Australian community. Our primary role is to provide oversight of bodies in the National Registration and Accreditation Scheme (National Scheme), including the Australian Health Practitioner Regulation Agency (Ahpra) and the National Health Practitioner Boards (the Boards).

I generally support the reforms outlined in the Bill and welcome ongoing legislative reforms necessary to ensuring the National Scheme achieves its objectives and operates efficiently and effectively.

Recommendations for further consideration

I appreciated the opportunity to participate in the targeted consultation on the draft Bill in 2021. To reduce undue repetition, this submission summarises my office's ongoing concerns and recommendations for further consideration in relation to some reforms.

Interim Prohibition Orders (IPO) (Part 21)

While I broadly support this amendment, I am concerned that the Bill allows notice of a proposed IPO to be provided verbally as part of the show cause process. I note that other relevant health complaints legislation stipulates that notice must be made in writing, whilst

the practitioner can elect to provide a response orally or in writing.¹ I believe verbal notice could unnecessarily undermine the show cause process because:

- in some circumstances it may prove difficult to accurately convey the details of a proposed IPO verbally
- practitioners may find it more difficult to provide a comprehensive response to the proposed order when written notice is not available to reference.

Referral to other entities (Bill Part 24)

I encourage further consideration of whether the Bill appropriately ensures notifier privacy and confidentiality in relation to referral to other entities. Notifiers may not wish to disclose to some entities certain personal or health information detailed in their notification to Ahpra. For example, patients who make a notification about their treating health practitioner may not wish for their concerns to be known by the relevant health service if they wish to continue their treatment with the service. Similarly, health practitioners who make a notification about a fellow health practitioner at their workplace may not wish for their employer to know the content of their concerns.

To better protect notifier privacy consideration should be given to whether:

- notifiers must be informed if any personal or health information they have provided as part of the notification will be shared with another entity, and whether their consent must be obtained to do so, or
- the entities which the Boards will share information with should be specified and whether these entities should meet set requirements based on known referral pathways.

The consequences of not appropriately considering notifiers' privacy are considerable; both for the individual involved and for the National Scheme. If there is a perception that a notifier's personal information can be shared with any entity, in any context, this may reasonably lead people to decide against making a notification. Barriers to making a notification should be eliminated or reduced wherever possible given the role notifiers play in alerting regulators to potential public safety risks.

Show cause process (Part 25)

The Bill allows the Boards to take a different form of regulatory action from that initially proposed without an additional show cause process, and I am concerned that this is not consistent with the principles of procedural fairness. It is a fundamental legal principle that those affected by a decision are made aware of it and are provided with the opportunity to respond. Under this Bill, it would be open to a Board to decide to take regulatory action that has a greater impact on the practitioner than that initially proposed without an additional

¹ For example, the Health Complaints Commissioner in Victoria is required to provide notice of a proposed order in writing.

show cause process. I suggest that the principles of procedural fairness should be considered further in relation to the show cause process.

An alternative arrangement could be to allow the Boards to waive the show case process with the agreement of the practitioner if a show cause process appears to be unnecessarily repetitive.

Exclusion of information from registers (Part 30)

I am pleased to see that the Bill ensures greater discretion to exclude information from the public register that may present a serious risk to the health and safety of a practitioner, their family or their associates. However, I suggest it is made clear that the public interest should also be considered when deciding not to publish certain information on the public register.

The public register serves a critical purpose: it helps keep people safe by providing information to make informed decisions about their healthcare. This may include, for example, gender-based conditions on a practitioner's registration in relation to sexual misconduct. Any decision to exclude information from the public register should consider both risks to the health and safety of a practitioner, their family and their associates, and the overall purpose of the public register (and the National Scheme): to protect the public and ensure patient safety.

Expanded role of the NHPO and the National Health Practitioner Privacy Commissioner (NHPPC)

I note that consultation on the full range of proposed Stage 2 reforms to the National Law included proposed amendments to the Health Practitioner Regulation National Law Regulation 2018 to extend the jurisdiction of the NHPO and the NHPPC. These amendments reflected Health Ministers' decision in February 2020 to extend the role of the NHPO and NHPPC to "accept appeals from certain decisions made by accreditation entities."² I look forward to the implementation of these changes in the future and would welcome further consultation on the progression of these amendments.

Yours sincerely



Richelle McCausland
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National Health Practitioner Privacy Commissioner

² COAG Health Council, Communique: Response to the Independent Accreditation Systems Review Final Report, 12 February 2020