QUEENSLAND PARLIAMENT
COMMITTEES

Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024

Health, Environment and Innovation Committee

Report No. 1

58th Parliament, February 2025

Health, Environment and Innovation Committee

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Chair's Foreword

This report presents a summary of the Health, Environment and Innovation Committee's examination of the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

During our inquiry I was shocked to hear how, over a four-year period, 16 health practitioners had committed suicide while involved in a complaints process under the National Law. Even without hearing directly from victims and survivors of health practitioner sexual abuse, it is clear that making the National Scheme safer for all its users is critically important.

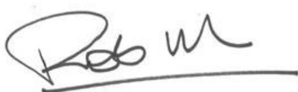
We must ensure that all health practitioners understand that serious sexual boundary violations will never be tolerated. We must also keep in mind the very grave professional and personal implications for health practitioners who are associated with sexual misconduct. There must be agreement about the threshold of behaviour that would trigger such a finding.

The documented rise in sexual misconduct complaints warrants careful consideration of how to make the system more capable of informing the public about those health practitioners who have engaged in sexual misconduct. We must also acknowledge that members of the public routinely get little opportunity to search for information about their care providers when they are admitted to hospital. They might have chosen their doctor but not the many other health or allied workers they encounter during their stay. Many of those staff are not even regulated by the National Law, and that is cause for concern.

I am confident that the recommendations we have made towards amendments to the Bill and its implementation, strike sufficient balance between the rights of patients and the rights of practitioners.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill, and who appeared before the committee at the public hearing. I also thank our Parliamentary Service staff and Queensland Health.

I commend this report to the House.



Rob Molhoek MP
Chair

Executive Summary

The Bill makes amendments to the Health Practitioner Regulation National Law (National Law) and the *Health Ombudsman Act 2013*. Queensland is the host jurisdiction for the National Law, which binds each participating Australian jurisdiction, with variations to suit each locality. The National Law is set out in the Schedule of the *Health Practitioner Regulation National Law Act 2009* in line with amendments which are agreed to by the Australian Health Ministers Meeting (HMM).

The HMM agreed to make amendments to the National Law in response to a three-fold increase in complaints over the last three years about sexual misconduct by health practitioners. The proposed amendments will make it a requirement for additional information to be included on public registers about the regulatory history of practitioners who have engaged in sexual misconduct. The Bill also introduces a requirement for health practitioners seeking to be re-registered after a period or cancellation or disqualification to obtain a reinstatement order from a tribunal as a necessary step in applying for re-registration with a National Board. The Bill additionally provides greater protections for people who make notifications or assist regulators during investigations about registered health practitioners.

The committee published 23 submissions and held a public hearing during which we heard from 15 witnesses. After considering the submissions and testimony we received and reviewing the Bill (including its explanatory notes and its statement of compatibility with human rights) for compliance with the *Human Rights Act 2019*, the *Parliament of Queensland Act 2001* and the *Legislative Standards Act 1992*, we are recommending that the Bill be passed.

Our assessment of the Bill's compliance with issues of fundamental legal principle found the Bill has sufficient regard for the rights and liberties of individuals, and the institution of Parliament. We carefully analysed one of the Bill's proposals, regarding the retrospective publication of practitioners' regulatory history to ensure it sufficiently protects the rights and liberties of individuals. We also find that the Bill is compatible with human rights, after giving careful consideration of the justifications provided for the Bill placing limits on a practitioner's ability to seek a tribunal hearing in certain circumstances.

The committee made 4 recommendations, found at page vi of this report.

Recommendations

Recommendation 1 6

The committee recommends that the Bill be passed.

Recommendation 2 16

The committee recommends that the explanatory notes and / or clause 21 of the Bill be amended to clarify any requisite legislative threshold for sexual misconduct.

Recommendation 3 21

The committee recommends that Clause 21 of the Bill be amended to provide that a decision to publish a health practitioner's regulatory history, based on an inference by National Boards that a tribunal's finding of professional misconduct was based on sexual misconduct, is an appellable decision under Part 8 Division 13 of the National Law.

Recommendation 4 41

The committee recommends that, during implementation of the Bill, the Australian Health Ministers Meeting consults further with relevant stakeholders around operationalising any legislative threshold of sexual misconduct, and the National Boards' discretion to infer.

Glossary

Ahpra	Australian Health Practitioner Regulation Agency
ALA	Australian Lawyers Alliance
AMA	Australian Medical Association
Avant	Avant Mutual
FLP	Fundamental Legislative Principle
HMM	Health Ministers' Meeting
HO Act	*Health Ombudsman Act 2013*
HRA	*Human Rights Act 2019*
LEQ	Labor Enabled Queensland
LSA	*Legislative Standards Act 1992*
National Law	Health Practitioner Regulation National Law
National Scheme	National Registration and Accreditation Scheme
NLA	*Health Practitioner Regulation National Law Act 2009*
OHO	Office of the Health Ombudsman
OIAC	Office of the Australian Information Commissioner
OQPC	Office of the Queensland Parliamentary Counsel
Protected Action	*means* (a) making a notification, in good faith, under the National Law; or, (b) giving information, documents or other assistance in the course of an investigation or for another purpose under the National Law to a person exercising functions under the National Law.[1]
QCAT	Queensland Civil and Administrative Tribunal
QLS	Queensland Law Society
QNMU	Queensland Nurses and Midwives Union

[1] Bill, cl 22 (inserts new s 237A (2) to the *National Law*).

RACGP	The Royal Australian College of General Practitioners
Reinstatement Order	*means* An order [from a tribunal] that a disqualified person is eligible to apply to a National Board for registration under the National Law.[2]
Relevant Person	*means* An employer (or former employer) of a health service provider) or former health service provider, or a health service provider.[3]
Sexual Boundary Violation	Conduct undertaken by practitioner, a patient or another person close to the patient which involves, but is not limited to, unwarranted touching or comments, pursuing a sexual relationship, unnecessary or unwarranted physical examinations, flirtatious behaviour, seeking information about sexual history unrelated to the provision of healthcare, or sexual exploitation, abuse, harassment or assault.[4]

[2] Bill, cl 16 (amends s 5 of the *National Law*).

[3] Bill, cl 12 (inserts new s 263A to the *HOA*).

[4] Victorian Government, *Management of professional misconduct and strengthening protections for notifiers* (Consultation Paper, January 2024) <https://engage.vic.gov.au/proposed-reforms-to-the-health-practitioner-regulation-national-law> p 5 citing Medical Board of Australia, ‘Guidelines: Sexual Boundaries in the doctor-patient relationship’ (Report, 20 July 2020, accessed 6 January 2025) <https://www.medicalboard.gov.au/codes-guidelines-policies/sexual-boundaries-guidelines.aspx>.

1. Overview of the Bill

The Bill was introduced by the Honourable Timothy Nicholls MP, Minister for Health and Ambulance Services, and was referred to the Health, Environment and Innovation Committee (the committee) by the Legislative Assembly on 12 December 2024.

1.1. Aims of the Bill

In 2022-23, regulators received 841 allegations of sexual misconduct in relation to 278 registered health practitioners under the National Scheme, which was a 223% increase over the previous three years.[5] In February 2023, Australian Health Ministers at the Health Ministers' Meeting (HMM) agreed to amend the Health Practitioner Regulation National Law (National Law) to expand the information available on the public register for practitioners who have engaged in serious sexual misconduct. [6] The HMM agreed that national consistency in the re-registration process was essential, in addition to increased protections for notifiers and prospective notifiers when making a complaint about a practitioner.[7]

Australian Health Ministers agreed to the National Law amendments out of session in July 2024.[8] The objectives of the agreed amendments are to:

- protect public safety by establishing a nationally consistent process for practitioners to regain registration after their registration has been cancelled, or they have been disqualified from registration, by a tribunal
- increase transparency for the public about disciplinary action against health practitioners who have been found by a tribunal to have engaged in serious sexual misconduct
- strengthen protections for notifiers and clarify consumer protections in relation to non-disclosure agreements about the health, conduct or performance of health practitioners.[9]

To achieve these aims, the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024 (Bill) amends the National Law to:

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5 Explanatory notes, p 3.
6 Explanatory notes, p 3. See also Victorian Government, *Management of professional misconduct and strengthening protections for notifiers* (Consultation Paper, January 2024) <https://engage.vic.gov.au/proposed-reforms-to-the-health-practitioner-regulation-national-law> p 6.
7 Victorian Government, *Management of professional misconduct and strengthening protections for notifiers* (Consultation Paper, January 2024) <https://engage.vic.gov.au/proposed-reforms-to-the-health-practitioner-regulation-national-law> p 6.
8 Explanatory notes, p 1.
9 Explanatory notes, p 1.

- require cancelled and disqualified practitioners to seek a reinstatement order from a responsible tribunal before applying to a National Board for re-registration
- provide greater information to the public about practitioners who have been found to have engaged in professional misconduct, including involving sexual misconduct, by expanding the information required to be included on the national public registers
- provide greater protections for people who make notifications or assist regulators during investigations about registered health practitioners.[10]

1.2. Context of the Bill

The National Law provides the legal framework for the National Registration and Accreditation Scheme (National Scheme) for all health professions, which is administered by the Australian Health Practitioner Regulation Authority (Ahpra).[11] The National Law commenced in 2010, wherein its guiding principles are first, to protect the public, and second, that public confidence in the safety of services provided by health practitioners and students in Australia, regardless of the state or territory the care is provided in, is paramount.[12]

As a result, the National Scheme administers a singular registration for health practitioners, which is recognised nationally and provides uniform standards for registration of practitioners and accreditation of health education providers.[13] The National Scheme regulates an estimated 900,000 health practitioners, under the National Law which established 15 national boards to regulate 16 professions, including:

- Aboriginal and Torres Strait Islander health practice
- Chinese medicine
- Chiropractic
- Dental practice
- Medical practice
- Medical radiation practice
- Midwifery

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[10] Explanatory notes, p 4.

[11] Explanatory notes, p 1.

[12] Explanatory notes, p 2. See also Ahpra, *Policy Directions and Guidance* (Webpage, 4 September 2023, accessed 18 December 2024) <https://www.ahpra.gov.au/About-Ahpra/National-SchemeStrategy.aspx>.

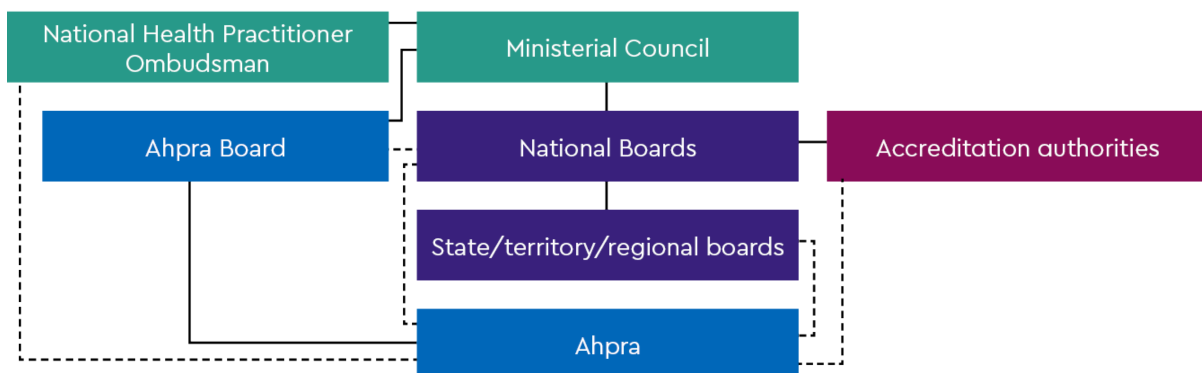
[13] Explanatory notes, p 2. See also Ahpra, *Quality Framework* (Infographic, 15 February 2022, accessed on 18 December 2024) <https://www.ahpra.gov.au/Accreditation/Quality-framework.aspx>.

- Nursing
- Occupational therapy
- Optometry
- Osteopathy
- Paramedicine
- Pharmacy
- Physiotherapy
- Podiatry; and,
- Psychology.[14]

Queensland is the host jurisdiction for the National Law, wherein each participating jurisdiction applies the National Law through local legislation, with variations to suit each locality.[15] The National Law is set out in the Schedule of the Health Practitioner Regulation National Law Act 2009 (NLA) in line with amendments which are agreed to by Australian Health Ministers.[16]

National Board functions include the development and approval of standards, codes and guidelines for professions, including the development and approval of codes for guidelines for registered health practitioners, and registration of students and practitioners.[17]

Figure 1. The structure of organisations which operate under the National Scheme.[18]



[14] Ahpra, *Help & Tips – Who is registered?* (Webpage, accessed on 18 December 2024) <https://www.ahpra.gov.au/Registration/PractitionerSearchQuicktips.aspx?QuicktipsListId=%7B4E9EBC93-541A-4917-A90A-C41F518E48A3%7D>.

[15] Explanatory notes, p 1.

[16] Explanatory notes, p 1. See also *Health Practitioner Regulation National Law 2009* (Qld) sch.

[17] Explanatory notes, p 2.

[18] Ahpra, *Who's who in the National Scheme?* (Infographic, October 2022, accessed 18 December 2024) <https://www.ahpra.gov.au/About-Ahpra/What-We-Do/The-National-Registration-andAccreditation-Scheme.aspx>.

Public consultation on the proposed changes to the National Law was first undertaken by the Victorian Government, who are responsible for leading interjurisdictional legislative policy development on behalf of Australian Health Ministers.[19] As a result, 217 submissions were received, which informed amendments to the Bill in advance of its introduction to the Queensland Parliament.[20]

The Bill amends the NLA and the *Health Ombudsman Act 2013* (HO Act), to ensure that the law operates effectively and efficiently within the co-regulatory arrangements associated with the National Scheme.[21] In Queensland, the Office of the Health Ombudsman (OHO) has primary responsibility for notifications (also referred to as ‘complaints’ under the HO Act) about registered health practitioners.[22] In practice, Ahpra manages complaints about less serious misconduct and performance issues, whereas the OHO manages complex and serious matters about registered practitioners (which includes referral of the most severe matters to the Queensland Civil and Administrative Tribunal (QCAT)).[23] The OHO also manages complaints about unregistered persons under the co-regulatory arrangements.[24]

1.3. Inquiry process

On 11 September 2024, the then Minister for Health, Mental Health and Ambulance Services and Minister for Women introduced the Bill into the Queensland Parliament. The Bill was referred to the former Health, Environment and Agriculture Committee for detailed consideration. That committee called for submissions on the Bill, and subsequently published 14 submissions before the dissolution of the 57th Parliament on 1 October 2024, which resulted in the Bill lapsing.[25]

The current Bill was re-introduced - with substantially identical content, save for some sub-section renumbering - by the Honourable Timothy Nicholls MP, Minister for Health and Ambulance Services on 12 December 2024 and referred to our committee. We contacted submitters to the lapsed Bill to determine if they would like to resubmit their submissions, of which 11 opted to do so. During the period 17 December 2024 to 9 January 2025, we then

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[19] Victorian Government, *Management of professional misconduct and strengthening protections for notifiers* (Consultation Paper, January 2024) <https://engage.vic.gov.au/proposed-reforms-to-the-health-practitioner-regulation-national-law> p 6.

[20] Queensland Health, *Written Briefing on the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024* (published on 23 December 2024) p 5.

[21] Explanatory notes, p 1.

[22] Explanatory notes, p 2.

[23] Explanatory notes, p 2.

[24] Health Practitioner Regulation National Law (Queensland) s 5 (definition of ‘unregistered person’).

[25] See, for example, Health, Environment and Agriculture Committee, Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024 (Lapsed) (Webpage, 1 October 2024, accessed 19 December 2024) <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=238&id=4450>.

called for further submissions, and accepted 24 submissions, all of which were published except for 1 which requested confidentiality.

The committee sought a written briefing from Queensland Health and held a public hearing on 28 January 2025. The committee engaged with stakeholders at the hearing and through consideration of their written submissions. The Department of Health (the Department) responded to all submissions received, both to the lapsed Bill and the current Bill. Where relevant, this report may refer to a submission to the lapsed Bill, which remain available on the previous committee's webpage.[26]

1.4. Legislative compliance

The committee's deliberations included assessing whether the Bill complies with the requirements for legislation as contained in the *Parliament of Queensland Act 2001*, the *Legislative Standards Act 1992* (LSA),[27] and the *Human Rights Act 2019* (HRA).[28]

1.4.1 *Legislative Standards Act 1992*

Fundamental legislative principles are the principles relating to legislation that underlie a parliamentary democracy and require that legislation has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.[29] During our inquiry we identified issues with the Bill's compliance with the LSA because of:

- consistency with the principles of natural justice;
- retrospectivity;
- the right to privacy; and
- the relevance and proportionality of prescribed consequences.

These are discussed in Part 2 of the report. Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly.[30]

Committee comment

The committee is satisfied that the explanatory notes that were tabled with the introduction of the Bill contain the information required by Part 4 of the LSA.

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[26] Health, Environment and Agriculture Committee, Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024 (Lapsed) (Webpage, 1 October 2024, accessed 19 December 2024) <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=238&id=4450>.

[27] *Legislative Standards Act 1992* (LSA).

[28] *Human Rights Act 2019* (HRA).

[29] *LSA* s 4(1) and 4(2).

[30] LSA, s 22.

The committee is satisfied that the explanatory notes contained a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

1.4.2 *Human Rights Act 2019*

We identified issues with the Bill's compatibility with the HRA, which are analysed further in Section 2 of this report:

- the right to privacy and reputation (section 25); and,
- the right to a fair hearing (section 31).

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA.

Committee comment

The committee found that the Bill is compatible with human rights.

Further, the committee is satisfied that the statement of compatibility contains a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

1.5. Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends that the Bill be passed.

2. Examination of the Bill

This section discusses key themes which were raised during the committee's examination of the Bill.

2.1. Expanded and permanent publication of a health practitioner's regulatory history

Under the National Law, National Boards are currently required to publish active disciplinary sanctions on the public register, which must then be removed at the end of the sanction.[31] There is no requirement to make public the disciplinary histories of registered practitioners.[32] According to the explanatory notes, this has resulted in health practitioners

31 Explanatory notes, p 3. See *National Law* s 159N (6).

32 Statement of compatibility, p 3; Explanatory notes, p 3.

with histories of serious sexual misconduct having disciplinary information removed from the public register, which impedes public awareness of those historical events, that patients and employers may take into account.[33]

The Bill proposes to change National Boards' obligations regarding publication of disciplinary sanctions on the national public register.[34] For a health practitioner recorded on a National Register or Specialists Register, the proposed amendments would apply if a National Board was satisfied that:

- a responsible tribunal decided, on or after the participation day for the health profession,[35] that the practitioner behaved in a way that constitutes professional misconduct, and
- a basis for the tribunal's decision was that the practitioner engaged in sexual misconduct, whether or not it occurred in connection with the practice of the practitioner's profession.[36]

The Bill proposes to allow National Boards to make these decisions by giving them discretion to infer that a tribunal's finding of professional misconduct was based on sexual misconduct, with such sexual misconduct not required to be the sole or main basis for the tribunal's finding.[37]

Once satisfied about the element of sexual misconduct, the National Board would be required to publish additional information about a practitioner, including:

- the name of the tribunal which made the finding
- that the tribunal decided that the person behaved in a way that constitutes professional misconduct, and which included sexual misconduct
- any sanction(s) imposed by the tribunal, and
- a copy of, or link to, the decision of the tribunal (if available).[38]

[33] Explanatory notes, p 3.
[34] Explanatory notes, p 3.
[35] Explanatory notes, p 6. Note: Participation day is defined as 1 July 2010 for chiropractic, dental, medical, midwifery, nursing, optometry, osteopathy, paramedicine, pharmacy, physiotherapy, podiatry and psychology (s 250 *National Law*); as 1 July 2012 for Aboriginal and Torres Strait Islander health practice, Chinese medicine, medical radiation practice and occupational therapy (s 250 *National Law*); as 1 December 2018 for paramedicine (s 306 *National Law*).
[36] Bill, cl 21 (inserts new s 225A into the *National Law*).
[37] Bill, cl 21 (inserts new s 225A into the *National Law*).
[38] Bill, cl 21 (inserts new s 225B into the *National Law*).

2.1.1 The effect of permanent publication and retrospectivity

All submissions broadly acknowledged the positive intent of the proposal.[39] The Office of the Australian Information Commissioner (OIAC) acknowledged that the proposed amendments will result in a reduction of the privacy rights of individual practitioners by 'providing greater public visibility of disciplinary action' but that the amendments enhance the community's right to access information, especially where that information 'addresses an identified risk of serious harm to the community'.[40] Labor Enabled Queensland (LEQ) supported the amendments and emphasised the need for transparency in the health profession to protect the public. LEQ emphasised the importance of protecting vulnerable members of the public, especially those with a disability.[41]

The Royal Australian College of General Practitioners (RACGP) noted that despite general support for the proposal's objective of greater accountability and transparency amongst its membership, there were concerns that the permanent publication of information may have unintended consequences, especially where allegations are exceedingly complex:

> We do not support publishing tribunal outcomes where allegations against the practitioner have been disproved. Concerns have also been raised about the publication of tribunal outcomes for complex cases, such as those which result in time-limited conditions or those where allegations were proven in part. The RACGP recommends the publication of these complex cases be considered on a case-by-case basis as the publication of previous disciplinary history has the potential to impact beyond the intended consequences of any regulatory action.[42]

The Australian Medical Association (AMA) supported the permanent publication of professional misconduct of a sexual nature:

> The breach of trust between practitioner and patient is of such a nature 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.[43]

However, the AMA were not supportive of the proposal to publish the regulatory history of a practitioner regarding findings of professional misconduct, where the finding of misconduct is not solely sexual.[44]

> 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.

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39 See, e.g., Submission 5; Submission 13; Submission 15; Submission 16; Submission 18; Submission 19; Submission 20; Submission 22.
40 Submission 24, p 1.
41 Submission 17, p 1.
42 Submission 2, p 2.
43 Submission 14, p 2. See also Submission 6, p 2.
44 AMA, *Response to Questions on Notice* (published 5 February 2025).

> 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.
>
> There are many instances where a finding of low-level misconduct is readily addressed and no longer demonstrates a reasonable threat to the public. Publishing the regulatory history of practitioners in perpetuity for all findings of professional misconduct would punish practitioners and cause undue stress.[45]

Several other submitters also raised concerns that different types of conduct, taken together, can be found to amount to professional misconduct and that publication, disproportionate to any public interest principle, would be triggered even in circumstances where sexual misconduct was not the sole, or main, basis for the tribunal's finding of sexual misconduct.[46]

The Queensland Nurses and Midwives Union (QNMU) acknowledged the intent of the proposal was to protect public safety through increased transparency, however opposed the proposal for permanent publication. It recommended retaining the current framework wherein National Boards are only required to publish active disciplinary sanctions on the public register and noted that there are existing organisational reporting structures in place to protect patients receiving care from health practitioners, including employed nurses or midwives.[47]

Some submitters also opposed the retrospective nature of the proposal for permanent publication.[48] Avant Mutual (AVANT) stated that retrospective publication of a regulatory history is procedurally unfair, as the practitioner was not at the time of the original tribunal finding, nor would - at the point of intended publication- be afforded the opportunity to provide submissions in relation to permanent publication.[49] The Queensland Law Society (QLS) noted:

> the impact that publishing historical information on a public register may have on an individual in circumstances where they have already proceeded through a disciplinary process, where a finding has been made and where sanctions have been issued. At that time, entry on the register was not permanent and had the practitioner been aware of that requirement they may have taken a different approach in their matter. This is why the retrospective application of laws is of great concern to the society and our members.
>
> An affected person has no opportunity to respond to the change in circumstances now imposed on them. In a similar vein, the regulators and the tribunal involved in the original

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[45] AMA, *Response to Questions on Notice* (published 5 February 2025).

[46] See, for example, Submission 21, p 2-3; Submission 8, p 1; Submission 19, p 3-4.

[47] Submission 20, p 4.

[48] Submission 2, p 2-3; Submission 19, p 4. See also Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 14, 16, 22, 23.

[49] Submission 19, p 3.

> finding and sanction based their decisions on the law at the time, which included balancing community safety and protection. Changing the outcome now does not support that work. We urge the government to consider the very real impact that publishing historical data may have on the individual's reputation, livelihood and wellbeing as well as on the community and circumstances where salient details and misconstruing the basis of that information and damaging practitioners quite significantly beyond the scope of what was ever intended by this legislation.[50]

The potential for regulatory histories to be republished on social media without necessary context was also raised by submitters. The QLS indicated at the public hearing this would inhibit the ability of health practitioners to defend their reputation or correct the public record.[51]

> Once things are in social media, it is like a beast essentially that has been unleashed and it is very difficult to rein it back in, if ever. That is absolutely a consequence or a potential consequence of this. There are Facebook groups, Instagram groups and things like that that exist out there where things are discussed and the nuances and the legal reality is many times lost, so that is an absolute concern.[52]

The Department responded to submitter feedback regarding the impact of publication on the individual practitioner:

> The threshold for triggering the publication requirement is set at the highest level under the National Law – a tribunal finding of professional misconduct on the basis of sexual misconduct. The impact of publication on the individual right to privacy is proportionate to the public protection it provides.
>
> The publication requirements are protective, not punitive in nature. They are not intended to impose an additional sanction on the practitioner, but rather to provide consumers and employers with information to make decisions about safely engaging health care providers.
>
> Under the National Law, sanctions, and the period of any sanction for professional misconduct, are determined by an independent tribunal following a hearing. The tribunal may make non-publication orders about its decision and reasons, which apply to the publication requirements under the Bill. The Bill does not change this arrangement.[53]

[50] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 22.
[51] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 23.
[52] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 23.
[53] Queensland Health, *Department response to submissions received for the Bill* (published 22 January 2025) p 5.

Committee comment

The committee heard from many submitters about the impact of permanent publication of regulatory histories that involve some element of sexual misconduct. We are persuaded by the QLS's evidence that requiring permanent publication for findings of misconduct that were made by tribunals in the past, may worsen the impact of that finding in ways the tribunal did not consider at the time it determined the matter.

We also acknowledge that we live in a digital world in which publicly available information can be screen-shotted and shared with the rest of the world, without sufficient context. This could create ongoing harm to practitioners which is not justified by claims of proportionality between the rights of the public and the practitioner.

We share the view of many submitters that the critical issue here is the nature of what would be published. Without a clear definition or standard for what 'sexual misconduct' is, it is hard to tell exactly what would end up being published. That lack of clarity is concerning.

2.1.2 Definition and threshold of 'sexual misconduct'

Ahpra noted that these amendments are part of ongoing work to improve protection for the public who are engaging with a registered health practitioner.[54] In their submission, Ahpra stated:

> Ahpra and the National Boards condemn sexual misconduct in all of its forms by registered health practitioners. Any sexual exploitation is a gross abuse of trust and can lead to long lasting and profound damage.[55]

The Australian Society of Orthopaedic Surgeons submission observed:

> 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
>
> b. There is no definition of the term "serious sexual misconduct" in the National Law
>
> c. The current Medical Board of Australia (MBA) Guidelines 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*. [56]

The explanatory notes state that the term 'sexual misconduct' is necessarily not defined in the Bill or the National Law because any narrow definition or particular threshold or

[54] Submission 12, p 2.
[55] Submission 12, p 2. See also Submission 5, p 4.
[56] Submission 6, p 1.

standard of conduct could conflict with any historical decision by a tribunal that a practitioner's conduct amounted to professional misconduct.[57] It is therefore intended that 'sexual misconduct' in the Bill is to be read broadly, to ensure consistency with the term's existing use in the National Law regarding sexual misconduct by a registered health practitioner that might be notifiable conduct.[58]

Ahpra noted that 'sexual misconduct' bears its ordinary meaning under the Bill and the explanatory notes.[59] The explanatory notes provide several examples of sexual misconduct that include but are not limited to any violation by a practitioner of a professional boundary between the practitioner and a person under the practitioner's care that could be considered sexual.[60]

Examples of sexual misconduct provided in the explanatory notes to the Bill
Any of the following that is not clinically indicated – • touching, including hugging, kissing, stroking, caressing, or massaging; • intimate physical examination; • asking or directing a person to fully or partially undress; • seeking or obtaining a sexual history; • making sexual comments, suggestions, or gestures; • disclosing the sexual history of the practitioner or another person, real or fictional; • distributing, sending, displaying, making, or requesting any sexually explicit images, messages or audio/video recordings; • conveying a desire or willingness to enter a sexual relationship; • flirting, whether or not the flirting is overtly or expressly sexual; • engaging in sexual humour or innuendo; • engaging in any form of sexual activity; • engaging in sexual behaviours in the presence of the person, either directly or remotely by means of communications technology; • sexual exploitation, abuse or harassment; • conduct that facilitates a sexual act or formation of a sexual relationship ('grooming'),including by contacting the person electronically or via social media.

[57] Explanatory notes, p 22.
[58] See *National Law* s140, Part 8, division 2. See also Explanatory notes, p 22.
[59] Submission 12, p 2. See also Explanatory notes, p 6.
[60] Explanatory notes, p 23.

Sexual misconduct may occur in relation to a person under the practitioner's care even if the person consents to, initiates, or willingly participates in the conduct.

Sexual misconduct by a practitioner, in the practise of the practitioner's profession, may also include conduct in relation to a person other than a person under the practitioner's care. This may include, but is not limited to, for example –

- any violation by a practitioner of a professional sexual boundary between the practitioner and a carer of, or other person close to, the person under the practitioner's care;
- workplace sexual abuse, harassment, or impropriety.[61]

The lack of a definition in the Bill for 'sexual misconduct' was raised by several submissions.[62] Several witnesses at the public hearing recommended that at a minimum, additional clarity was required to ensure that the meaning of 'sexual misconduct' is interpreted and applied correctly in practice.[63] AVANT submitted:

> In the absence of a definition in the legislation, the best guide as to what amounts to sexual misconduct for the medical profession is in the medical board's sexual boundary guidelines. In those guidelines, as pointed out in the explanatory notes, there are a range of boundary violations listed there and a spectrum of behaviour. As it says in a couple of places in the explanatory notes, the threshold for the issue would be high. There are a range of behaviours. It is difficult, because for all patients who have been subject to boundary violations of inappropriate sexual conduct it is serious. [64]

The AMA similarly supported the threshold of 'professional misconduct of a sexual nature' as contained in the Medical Board of Australia's (MBA) guideline *Sexual boundaries in the doctor-patient relationship* as an appropriate trigger for the sanction of permanent publication. [65] At the public hearing the AMA noted, "When we have thresholds, there needs to be a common understanding of what that threshold is, so we would suggest using medical board definitions."[66]

The MBA guideline defines 'sexual misconduct' as 'an abuse of the doctor-patient relationship. It undermines the trust and confidence of patients in their doctors and of the

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[61] Explanatory notes, p 23.

[62] Submission 6, p 1; Submission 16, p 8; Submission 19, p 4.

[63] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 2-3, 14.

[64] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 16.

[65] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 4; Submission 4, p 2. See also Medical Board of Australia, 'Guidelines: Sexual Boundaries in the doctor-patient relationship' (Report, 20 July 2020, accessed 3 February 2025) <https://www.medicalboard.gov.au/codes-guidelines-policies/sexual-boundaries-guidelines.aspx>.

[66] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 3.

community in the medical profession. It can cause significant and lasting harm to patients.'[67] The QLS expressed concern at the broad nature of behaviours captured by the MBA guideline:

> The importance of clarity and defining what it means for this piece of legislation is really important. The current definition under the board's code of conduct and the guidelines is intentionally broad. It is a matter for the committee. Is it a consensual sexual relationship with another adult? Does it have to be a current patient? You could engage in a sexual relationship with a former patient that goes on to include marriage and children. That would be a matter that would be in breach of the board's sexual misconduct guidelines and therefore can be—and has been on many occasions—prosecuted in the tribunal. That would not necessarily perhaps be appropriate for this. Where the patient is particularly vulnerable et cetera, even if it was consensual—and obviously those matters where there is no consent are quite serious—those are the matters that ought to be captured by some type of legislation as a variant of this.[68]

At the public hearing, the QNMU noted that one of the recurring themes at the hearing was the need for standardisation and definitions, particularly where misconduct can occur in the course of the practitioner – patient relationship.[69]

The Australian Lawyers Alliance (ALA) recommended that the threshold for triggering the publication requirements should be lowered from professional misconduct related to a finding of sexual misconduct to include 'unsatisfactory professional conduct' to ensure a broad range of harmful and unsafe conduct which compromises public safety are captured by the amendments, where it may not otherwise be recorded.[70] At the public hearing, the ALA flagged a range of examples involving sexual misconduct which had been found by a tribunal to amount to unprofessional professional conduct but not the higher threshold of professional misconduct; these included instances of practitioners touching patients' breasts and pelvic areas unnecessarily during examinations without receiving informed consent.[71]

In a response received before the public hearing, the Department stated that "lowering the threshold to 'unsatisfactory professional conduct' would potentially capture behaviours which do not represent a serious risk to public safety."[72] The Department emphasised that the threshold for permanent publication of a regulatory history is based on a finding of the

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[67] Medical Board of Australia, 'Guidelines: Sexual Boundaries in the doctor-patient relationship' (Report, 20 July 2020, accessed 3 February 2025) p 1 <https://www.medicalboard.gov.au/codes-guidelines-policies/sexual-boundaries-guidelines.aspx>.

[68] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 24.

[69] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 13.

[70] Submission 4, p 5-6.

[71] ALA, *Response to Questions on Notice* (published 5 February 2025).

[72] Queensland Health, *Departmental response to submissions received on the Bill* (published 22 January 2025) p 6.

most serious type of professional misconduct under the National Law, namely, sexual misconduct. In response to submitter concerns about the lack of a definition of 'sexual misconduct' contained in the Bill, the Department reiterated that the definition of sexual misconduct was purposefully omitted from the Bill to ensure consistency with existing uses in the National Law.[73]

Committee comment

We share the concerns about the potential for confusion arising from the lack of a supplied definition of 'sexual misconduct' in relation to the proposal for permanent and retrospective publication. We note that the explanatory notes, in justifying the Bill, refer to 'serious sexual misconduct' no fewer than five times, yet the Bill itself uses the term 'sexual misconduct' without any qualifying threshold or standard.

The explanation for not defining 'sexual misconduct' supplied in the explanatory notes and by the Department is that the term can't be defined because of the potential for inconsistency with its existing use in the National Law and with previous tribunal decisions. Yet, the existing use of 'sexual misconduct' in the National Law relates to a ground upon which someone can complain about a practitioner. That complaint may at some point result in an investigation into a practitioner. That is the effect of the term when used in that way. When we consider the way in which the Bill is using the term 'sexual misconduct' it appears the effect of it is much more significant. It could lead to the permanent publication of a practitioners' whole regulatory history.

Regarding the need to not define the term because of potential previous tribunal decisions, we heard evidence those tribunal decisions can cover a very broad range of sexual behaviours. It seems there is consistency among all proponents and submitters that this proposal is intended to capture serious sexual misconduct.

We did not receive any submissions towards an appropriate definition of 'sexual misconduct'. The one supplied by the MBA guideline is not fit for purpose as it relates only to doctors. The range of sexual behaviours (including, but not limited to criminal acts) which submitters say is included in the 'ordinary' meaning of 'sexual misconduct' is vast. We cannot provide a legislative definition that would cover every sexual behaviour.

[73] Queensland Health, *Departmental response to submissions received on the Bill* (published 22 January 2025) p 7.

It seems to us that in the absence of a definition, for clarity the Bill should attach some form of threshold to the sexual misconduct. The explanatory notes, which are supposed to assist our understanding of the Bill, inconsistently utilises both 'sexual misconduct' and 'serious sexual misconduct' without adequate explanation or delineation between the two. It is unclear what the intent of the Bill is here.

We are cognisant of the risks of applying a threshold to behaviours that might be sexual misconduct, particularly as we have not heard directly from survivors and victims of sexual abuse by health practitioners during our inquiry. However, the Bill also provides for National Boards to infer findings about behaviours that could be sexual misconduct, without any hint of what standard that sexual misconduct is required to meet before it triggers publication.

Whether the publication requirement should only apply to cases of professional misconduct solely involving sexual misconduct is a difficult issue to resolve. The rationale for the Bill is to equip the public with knowledge about registered health practitioners who may have engaged in serious sexual misconduct, but it is also the objective of the National Law to protect the public by ensuring that only suitably trained, qualified, competent and ethical practitioners are registered. We heard from submitters that serious non-sexual matters, to which a sexual behaviour is somehow related, may result in a tribunal finding of professional misconduct.

We believe that a standard of 'serious sexual misconduct' applying to the publication requirement proposed by the Bill, will result in fewer instances of publication of the full regulatory history of a practitioner who does not objectively represent harm to the public.

Recommendation 2

The committee recommends that the explanatory notes and / or clause 21 of the Bill be amended to clarify any requisite legislative threshold for sexual misconduct.

2.1.3 Necessary inference and merits review

The Bill proposes to allow National Boards to have discretion to infer that a tribunal's finding of professional misconduct was based on sexual misconduct, with such sexual misconduct not required to be the sole or main basis for the tribunal's finding.[74]

At the public hearing, Ahpra submitted that the proposal for Board inference was necessary to deal with the 1,265 findings of professional misconduct involving sexual misconduct and/or sexual boundary violations that have historically been made since the commencement of the National Scheme in July 2010.[75]

> At the moment, and in the past, the concept of sexual misconduct in tribunals has not been one that tribunals have found necessary to determine—that is, when they are looking at conduct and they are determining whether there is professional misconduct they do not specifically refer to the conduct as being sexual misconduct or otherwise. What that means is that there is currently a large number of findings of professional misconduct which might fall within the description of the bill as being sexual misconduct but the tribunals have not used that expression. That will fall upon the board to determine whether that professional misconduct is in fact sexual misconduct such that it gives rise to it. It will be necessary for the board to make that decision. That is why it is unavoidable that the board will have to make an inference as to whether the tribunal was finding professional misconduct on the basis of sexual misconduct.[76]

Ahpra explained at the public hearing that initial assessment of the historical cases would "be undertaken by lawyers in accordance with the guidelines that will be developed by the board, but the board would be the ultimate decision-maker in deciding whether to publish."[77] In addition, Ahpra advised decisions made by National Boards "are decisions that are very carefully considered. Reasons are articulated, but the hearings are not public, and the decisions are not published."[78]

The explanatory notes state that the power of National Boards to make inferences from tribunal findings of professional misconduct is limited because the inference must be 'necessary' on the facts.[79] As such, the Bill proposes that a National Board's decision on this issue will be subject to limited appeal rights (meaning that merits review by a tribunal

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74 Bill, cl 21 (inserts new s 225A into the *National Law*).

75 Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 27.

76 Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 31.

77 Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 31-32.

78 Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 28.

79 Explanatory notes, p 6.

will not be available.)[80] Under the National Law there are a wide range of decisions made by National Boards which are provided appeal rights to a tribunal against the decision.[81]

Submitters and some witnesses at the public hearing were not supportive of the proposal to provide National Boards with powers to infer.[82] AVANT submitted that "this proposal is new and has not previously been subject of public consultation".[83]

According to the QLS:

> If a Tribunal has not expressly determined that sexual misconduct is a basis for its finding, the Board should not be required or permitted to make its own inference about the finding. Allowing or requiring the Board to make this determination is not appropriate and undermines the authority of the Tribunal, which has heard all of the evidence in the proceedings.[84]

In a similar vein, AVANT submitted the proposal was "inappropriate and unfair and usurps and undermines the role of the tribunal."[85]

A QNMU witness at the public hearing also noted an independent review of the National Scheme has started.[86] The Dawson Review will look for complex or unnecessary processes within the National Scheme such that "some of the issues that we have talked about today hopefully will be dealt with, particularly around the definitions, standardisation and consistency of outcomes."[87] The need for the Dawson Review was identified in early 2023, when "the public raised concerns about inconsistent practices. As a result, Commonwealth, state and territory health ministers agreed to an independent review of the [National Scheme].[88] Terms of reference for the review were published in May 2024, including:

> Consider how regulatory decisions, particularly those relating to professional misconduct, under the National Law are considered by civil and administrative tribunals

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80 Explanatory notes, p 6.
81 *National Law* s140, Part 8, division 13.
82 Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 12, 15-16, 23.
83 Submission 19, p 3-4.
84 Submission 21, p 2-3.
85 Submission 16, p 2.
86 Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 13.
87 Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 13.
88 Department of Health and Aged Care, Australian Government, 'Independent review of complexity in the National Registration and Accreditation Scheme' (Webpage, 9 January 2025, accessed on 2 February 2025) <https://www.health.gov.au/our-work/independent-review-of-complexity-in-the-national-registration-and-accreditation-scheme>.

> in each jurisdiction, and whether there are options within the National Law or more broadly to ensure greater consistency of decision making.[89]

The consultation paper for the Dawson Review further notes:

> Regulation occurs profession by profession, with very limited cross-profession decision-making, even on primarily 'profession neutral' issues such as sexual misconduct or family and domestic violence allegations (where consistent and urgent decision-making is necessary).[90]

At the public hearing, the committee asked Ahpra whether it would be more appropriate to have tribunals make clear statements about sexual misconduct rather than supply National Boards with discretion to infer:[91]

> Going forward that is quite likely—that in tribunal proceedings you will see either the representatives of the board or representatives of the practitioner making submissions about whether this is sexual misconduct or not and maybe seeking a positive finding from the tribunal in that regard. That may well be how it occurs, and I suspect it will be. Looking backwards, we have that batch of 1,265 matters that need to be considered. In those matters it is unlikely that the tribunal would have made a finding about sexual misconduct.
>
> If we only focused on looking forward and we are only looking at the new cases that flow, then the public would end up with a distorted view. They would end up with a view of those practitioners in the future who were found to have engaged in sexual misconduct but those from last year who might have engaged in equally or more serious sexual misconduct would not have that material on the register. That would create a distorted view for the public. That is why it is necessary to take a look back and to continue it into the future.[92]

Ahpra noted:

> Practitioners rightly expect procedural fairness and natural justice in our regulatory work. We recognise the concerns expressed by some stakeholders about information being published permanently on the national register. These concerns are best addressed through the safeguards in the bill and by Ahpra ensuring we have clear protocols and parameters in place. We will engage with key stakeholders on our implementation activities and publish guidance to ensure full transparency.[93]

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[89] Department of Health and Aged Care, Australian Government, 'Independent review of complexity in the National Registration and Accreditation Scheme' (Webpage, 9 January 2025, accessed on 2 February 2025) <https://www.health.gov.au/our-work/independent-review-of-complexity-in-the-national-registration-and-accreditation-scheme>.

[90] Department of Health and Aged Care, Australian Government, 'Consultation Paper 1: Review of complexity in the National Registration and Accreditation Scheme' (Report, September 2024, accessed 3 February 2025) <https://www.health.gov.au/sites/default/files/2024-09/consultation-paper-1-review-of-complexity-in-the-national-registration-and-accreditation-scheme_0.pdf>.

[91] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 31

[92] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 31-32.

[93] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 27.

At the hearing, the QLS stated that merits review is often a more cost and time-effective option and that it would be appropriate for merits review to be provided for in the Bill.[94] The QLS additionally noted that the requirement of proposed section 225B, that a National Board publishes a statement that a tribunal decided the practitioner behaved in a way which constituted professional misconduct and 'that the professional misconduct included sexual misconduct', may be misleading if a Board merely inferred the sexual misconduct from the Tribunal's decision.[95] The QLS recommended that this proposal be amended to remove the ability, or requirement, for a Board to draw inference from a Tribunal's decision that is publicly recorded.[96]

In its response to submissions made before the public hearing, the Department advised that the Bill does not undermine the authority of a tribunal, rather it provides a mechanism for National Boards' discretion to infer, where it is 'necessary', and based solely on the Tribunal's reasoning and findings of fact.[97] The Department advised that:

> [...] if the Tribunal's decision can be understood without making an interference, or if there is any doubt, the board cannot be satisfied that the tribunal's decision triggers the publication requirements.[98]

The Department additionally noted that the Bill does not task National Boards with deciding whether sexual misconduct amounted to, or was capable of amounting to, professional misconduct, nor does it require or authorise National Boards to review the merits or legality of the Tribunal's decision.[99] The Department reiterated that practitioners are also able to challenge the legality of the Board's decision through judicial review.[100]

Committee comment

Despite all submitters agreeing that the intent of this Bill is to capture more serious instances of behaviour constituting sexual misconduct, the Bill supplies no definition of that term to National Boards to support their discretion to 'infer' that professional misconduct findings by tribunals involved sexual misconduct. While we note that the National Law includes a mechanism for National Boards to develop and approve codes and guidelines to provide guidance to registered health practitioners, the one example of such a guideline that was raised during the inquiry, the MBA guideline provides such a wide spectrum of behaviours representing a sexual boundary violation that it

94 Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 24.
95 Submission 21, p 3.
96 Submission 21, p 3.
97 Queensland Health, *Response to submissions* (published 22 January 2025) p 6.
98 Queensland Health, *Response to submissions* (published 22 January 2025) p 6.
99 Queensland Health, *Response to submissions* (published 22 January 2025) p 6.
100 Queensland Health, *Response to submissions* (published 22 January 2025) p 6.

is unclear exactly how that might assist a Board reasonably exercise its discretion to infer.

The committee is satisfied that the National Boards have responsibility for general eligibility matters and should retain those powers. Further, we note Ahpra's advice that it will develop guidelines to assist National Boards exercise their discretion. However, we are concerned that an independent review into the National Scheme has already observed a lack of consistency of outcomes, and very little cross-profession agreement in decision-making about sexual misconduct cases. We are not satisfied that the proposed amendment places adequate limitations on the powers of National Boards with respect to drawing a 'necessary' inference.

Furthermore, by removing the possibility of merits review for these type of decisions, the procedural fairness rights of the health practitioner are limited, without, in our view, sufficient justification. We cannot see a significant difference between an 'inference' decision, and all the other decisions made by a National Board, which are already given appeal rights by the National Law. We suggest there should be appropriate appeal rights available to a practitioner affected by this proposal, such as being provided by the Board with a written reason for their decision, fair opportunity to respond, and right of appeal to a relevant tribunal, before the publication of information about the practitioner's regulatory history.

Recommendation 3

The committee recommends that Clause 21 of the Bill be amended to provide that a decision to publish a health practitioner's regulatory history, based on an inference by National Boards that a tribunal's finding of professional misconduct was based on sexual misconduct, is an appellable decision under Part 8 Division 13 of the National Law.

2.1.4 Fundamental legislative principles

Legislation should not adversely affect the rights and liberties of individuals, or impose obligations retrospectively, without strong argument.[101] In evaluating legislation that has a retrospective effect, the committee may have regard to:

- whether the retrospective application is beneficial to persons other than the government; or

[101] *LSA* s 4(3)(g). See also Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 55 ('OQPC, *FLP Notebook*').

- whether individuals have relied on the legislation and have a legitimate expectation under the legislation before the retrospective clause come into effect.[102]

Any consequence imposed by legislation should be both relevant and proportionate to the actions wherein the consequence applies.[103]

2.1.4.1 Retrospective application

The explanatory notes state that retrospective legislation may be justified if it is beneficial, curative or validating in nature, or if it is in the public interest.[104] The explanatory notes provide the following justifications for this proposal:

- retrospective operation is necessary to provide greater transparency to the public in relation to practitioners who have engaged in professional misconduct involving sexual misconduct, and
- the Bill addresses the asymmetry of information between the public and health practitioners by providing the public with the appropriate information to make informed decisions about the provision of their healthcare.[105]

Committee comment

The committee is not satisfied that the retrospective publication of a practitioner's regulatory history is compliant with fundamental legislative principles. When the retrospective application of the amendment is weighed against the policy objective of public awareness, the publication of retrospective regulatory histories is inappropriate without further safeguards. For this reason, we have supplied two recommendations to mitigate the impact of retrospective application, in terms of any legislative standard of sexual misconduct that must be found to have occurred, and the protection of appeal rights for practitioners before their regulatory histories are made public.

2.1.4.2 Relevance and Proportionality

Submitters indicated that publication of information with respect to a finding of professional misconduct against a health practitioner may potentially impact their reputation, which may impact the viability of their practice.[106] It may also result in the permanent association of that person as someone who has engaged in sexual misconduct, even decades after the

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[102] OQPC, *FLP Notebook*, p 56. See also Scrutiny of Legislation Committee, Alert Digest 2006/8, 51st Parliament, 1st session, pp 12-13.
[103] OQPC, *FLP Notebook*, p 120.
[104] Explanatory notes, p 12.
[105] Explanatory notes, p 12.
[106] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 9, 21.

misconduct, and in circumstances where the practitioner never engaged in misconduct again.[107]

The evaluation of this impact must be weighed against the objective of the Bill, which is to provide patients and potential patients with the ability to make fully informed decisions about their healthcare providers.

Committee comment

The committee is satisfied that the proposed publication is compliant with the fundamental legislative principle of relevance and proportionality because a finding of professional misconduct, and sexual misconduct amounting to professional misconduct are amongst the most serious regulatory findings a tribunal can make with respect to the conduct of a health practitioner. We note that there was little support among submitters for reducing the threshold of conduct triggering this requirement to unsatisfactory professional conduct.

The recommendations we have proposed will ensure that the permanent publication of information on national public registers is proportionate to the seriousness of the conduct and relevant to ensuring public protection and justified when balanced between the public interest - including the victims and survivors of health practitioner sexual abuse - and the rights of the health practitioner.

2.1.5 Human Rights

The HRA protects the right to privacy and reputation by preventing unlawful or arbitrary interferences with an individual's privacy, family, home or correspondence and extends to the right not to have one's reputation unlawfully attacked.[108]

An arbitrary interference includes an interference that may be lawful but is not reasonable in the circumstances.[109] Reasonableness is assessed by evaluating the necessity, foreseeability, proportionality and irregular nature of the interference.[110]

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[107] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 24.

[108] *HRA*, s 25.

[109] Australian Human Rights Commission, 'Freedom from interference with privacy, family, home and correspondence or reputation' (Webpage, accessed 11 January 2025) <https://humanrights.gov.au/our-work/rights-and-freedoms/freedom-interference-privacy-family-home-and-correspondenceor>. See, e.g., *International Covenant on Civil and Political Rights*, art 17.

[110] Nicky Jones and Peter Billings, An Annotated Guide to the Human Rights Act 2019 (Qld) p 264.

2.1.5.1 Privacy and Reputation

The Bill engages the right to privacy through amendments which require the permanent publication, in public registers, of additional information about health practitioners who have engaged in professional misconduct, which included sexual misconduct.[111] This could result in a wide range of individuals and bodies accessing adverse information about the practitioner, including: former, existing and prospective patients/clients; other health practitioners, colleagues and industry contacts; service providers; friends, family and members of the local community.

The statement of compatibility notes that the information now required to be published in the public registers has previously been publicly available, and the amendments merely place the onus on the National Boards to publish the information in a 'readily accessible place or form'.[112] The Bill contains safeguards to protect individual privacy, including:

- National Boards must not publish information that is subject to tribunal or court non-publication orders, including orders made to protect the privacy of a victim of sexual misconduct[113]
- additional information must not be recorded in a public register, or must be removed if, on appeal, the responsible tribunal's decision regarding professional misconduct is stayed, overturned or materially modified [114]
- existing safeguards to protect the health and safety of the practitioner, their family and their associates applies to the additional information,[115] and
- any decision to include information in a register is subject to judicial review.[116]

The purpose of the limitation on a practitioner's privacy and reputation is to protect public safety and enable the public to make informed, decisions about their healthcare providers, especially where that practitioner has a history of professional misconduct, including sexual misconduct.[117] This purpose is consistent with the guiding principles of the National Scheme, which is established by the National Law. However, the availability and potential dissemination of such information may be detrimental to the practitioner's reputation, in addition to causing distress for them and their family and associates, especially in

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[111] Bill, cl 21.

[112] Statement of compatibility, p 4.

[113] Bill, cl 21 (inserts new s 225A(6) and 225A(8). See also, Statement of compatibility, p 5.

[114] Bill, cl 21 (inserts new s 22A(5). See also, Statement of compatibility, p 5.

[115] Bill, cl 21 (inserts new s 225A(7). See also, Statement of compatibility, p 5. Cf *Health Practitioner Regulation National Law Act 2009*, s 226(2). NB: Under the current law, a National Board may decide to withhold information from the public register at the request of the practitioner, and where the Board holds the reasonable belief that the inclusion of the information presents a serious risk to the practitioner, a member of their family, or their associate.

[116] Statement of compatibility, p 5.

[117] Queensland Health, *Departmental response to submissions received on the Bill* (published 22 January 2025) p 5.

circumstances where the misconduct was historical, and the practitioner has subsequently been re-registered and continued to practice without incident.

The explanatory notes provide that the scope of publication is limited to professional misconduct including sexual misconduct, and that patient advocacy groups, and public submissions generally supported the permanent publication of such information on the grounds of increased transparency and the public's right to know about a practitioner's history.[118]

Committee comment

The committee is satisfied that the appropriate balance has been struck between the importance of a health practitioner's right to privacy and reputation against the purpose of limitation itself.

The committee notes that the information which will be more widely available as a result of these amendments is already available in the public domain. In some instances, the additional information required by these amendments can be omitted, or only published for a relevant time, which will be determined by the Tribunal on a case-by-case basis.

The explanatory notes make it clear that the decision to consolidate the publication of this information was assessed in light of its prior availability in the public domain and its relevance to the public's right to know, beyond the duration of a tribunal-imposed sanction.

2.2. Reinstatement orders as a requirement for re-registration

Registered health practitioners are held to the highest standard of conduct, in large part because of the trust placed in them by patients in times of vulnerability.[119] Their conduct has a direct causal impact on patients, for better or worse.[120] It is common for professions in which power imbalances may exist because of the knowledge, training and expertise of one of the parties, to require rigorous and strict eligibility criteria for registration.[121] It is an accepted community expectation that a registered health practitioner must be a fit and

118 Explanatory notes, p 15.

119 See, e.g., Medical Board of Australia, *Good medical practice: a code of conduct for doctors in Australia* (Guidelines, October 2020) <https://www.medicalboard.gov.au/Codes-Guidelines-Policies/Code-of-conduct.aspx>.

120 Explanatory notes, p 2; Statement of compatibility, p 3. See, e.g., Council of Australian Governments, *Policy Directive 2019-1* (Communiqué, 3 January 2020, accessed on 15 January 2025) <https://www.psychologyboard.gov.au/Standards-and-Guidelines/CodesGuidelinesPolicies.aspx>.

121 Ahpra, 'Registration Standards' (Webpage, 10 May 2023, accessed 15 January 2025) <https://www.ahpra.gov.au/Registration/Registration-Standards.aspx>.

proper person to act within the profession, and must be competent and safe in their practice.[122]

Under the current system, health practitioners can re-apply directly to the National Boards for registration following cancellation or disqualification for professional misconduct.[123] The Bill proposes establishing a new process for practitioners to undertake before they are eligible to apply for re-registration following a cancellation or disqualification order by a tribunal, based on a finding of professional misconduct (including sexual misconduct) notwithstanding any other conditions of eligibility.[124] The explanatory notes state that the Bill seeks to address inconsistencies in the process of regaining registration at a national level.[125]

The Bill requires a health practitioner seeking re-registration after cancellation or disqualification, to seek a reinstatement order from a tribunal (in Queensland, QCAT). This will not apply to practitioners who have already obtained re-registration or have a current application for registration already commenced.[126]

This requirement to apply for a reinstatement order already exists in New South Wales,[127] and the Bill will bring consistency in the process of re-registration across all states and territories. Section 163B(3) of the New South Wales National Law mirrors clause 16 of the Bill, which proposes to introduce the requirement across jurisdictions.[128]

The tribunal must determine, at the time of the proceeding, whether it would be appropriate to make a reinstatement order by assessing:

- whether the applicant is, at the time of the hearing, a fit and proper person to hold registration and can practice in the profession both competently and safely; and,
- any notifications made about the person, regardless of when the notification was made.[129]

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[122] Ahpra, 'Registration Standards' (Webpage, 10 May 2023, accessed 15 January 2025) <https://www.ahpra.gov.au/Registration/Registration-Standards.aspx>.
[123] Queensland Health, *Departmental response to submissions received on the Bill* (published 22 January 2025) p 3-5.
[124] Explanatory notes, p 10.
[125] Explanatory notes, p 4.
[126] Bill, cl 23 (inserts new section 327 into the National Law). See also, Explanatory notes, p 4.
[127] *Health Practitioner Regulation National Law* (NSW) No 86a of 2009, s 149E(1), 163B.
[128] Bill, cl 16 (amends s 5 of the National Law). Cf *Health Practitioner Regulation National Law* (NSW) No 86a of 2009, s 163B(3).
[129] Explanatory notes, p 5.

2.2.1 Respective roles of the National Boards and tribunals in re-registration

The proposed role for a tribunal in this amendment is independent from the assessing power currently vested in a National Board, and does not displace National Boards' 'separate and independent duty to assess the practitioner's fitness and propriety' to be a member of the profession.[130] National Boards are not bound to re-register an applicant merely because a positive reinstatement order has been issued by a tribunal,[131] and must consider other criteria in their assessment, including recency of practice, and any other issues which may have arisen between the issuance of the reinstatement order and the application for re-registration.[132]

At the public hearing, Ahpra clarified the National Boards' decision remit. "Issues of recency of practice, CPD, indemnity insurance et cetera are issues for consideration by the national board but they are not issues for consideration by the tribunal."[133]

The AMA was supportive of a uniform approach to practitioners seeking re-registration.[134] Their submission noted that introducing a requirement to seek reinstatement from the tribunal which imposed the de-registration or cancellation at first instance ensures continuity in the handling of the matter.[135] Their submission emphasised that this continuity allows for a greater understanding of the circumstances of the case, and whether reinstatement is appropriate, which may not be readily apparent in separate agencies, when the case changes hands.[136]

The RACGP wrote:

> The RACGP supports a nationally consistent requirement for practitioners to seek a reinstatement order if their registration has been cancelled or they have been disqualified from practicing. Australia currently has too many variable jurisdictional requirements and greater consistency would streamline the process.[137]

Conversely, the QLS took the position that bringing the National Law in line with the NSW practice is not a pragmatic approach to achieving consistency across all Australian jurisdictions. It recommends a simpler process for increasing transparency is for the

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[130] Explanatory notes, p 5.

[131] See, Ahpra, *Court and Tribunal Decisions* (Webpage, 16 December 2024, accessed 20 December 2024) < https://www.ahpra.gov.au/Resources/Tribunal-decisions.aspx>.

[132] Explanatory notes, p 5.

[133] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 29.

[134] Submission 14, p 1.

[135] Submission 14, p 1.

[136] Submission 14, p 1.

[137] Submission 2, p 1.

National Board's decision to be published.[138] QLS also identified the impact on tribunals of this additional work.[139]

2.2.2 Potential for duplication

QLS noted that the proposed process of application for a tribunal reinstatement order and eventual application to a National Board for re-admission does not appear 'materially different' from the Board process already in place in the National Law.[140]

> This essentially provides the Board with two opportunities to deal with one set of issues, leading to a potential abuse of process and/or additional procedural burdens for the practitioner.[141]

AVANT and the QLS both noted that the Bill does not appear to bind a National Board to the decision of the Tribunal, which has the potential to result in a different determination, or additional sanctions or conditions imposed on the practitioner's registration.[142] Additionally, they raised concerns that there is a perceived conflict with a National Board's role as respondent in reinstatement hearings, and subsequently, as the decision-maker for the re-registration application.[143]

The QNMU submitted that requiring reinstatement orders to be heard by QCAT will lead to administrative delays, which may have a detrimental impact on the practitioner seeking re-registration.[144] The QLS further submitted that reinstatement orders posed a further barrier to a health practitioner who has completed their period of disqualification, inadvertently leading to another sanction being imposed which was not considered during the original disciplinary process.[145]

Witnesses at the public hearing submitted that a tripartite balance must be struck between trauma-informed processes which enable and encourage reporting of the most serious misconduct, support for victim-survivors, and appropriate support systems being available for health practitioners engaging with the process.[146] Additional to the reinstatement order, the RACGP proposed a default condition which would require attendance at ongoing peer-counselling, alongside reporting to National Boards for a specified time following their re-

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[138] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 25.
[139] Submission 21, p 2.
[140] Submission 21, p 2
[141] Submission 21, p 2.
[142] Submission 19, p 3-4; Submission 21, p 2-3.
[143] Submission 19, p 3.
[144] Submission 20, p 4.
[145] Submission 21, p 2.
[146] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 2-3, 6, 12-13, 18, 27.

registration.[147] They consider that such conditions would 'encourage the practitioner to follow a path of non-recurrence of sexual transgressions with patients'.[148]

In its response to submissions, the Department contended that it would be inappropriate to bind National Boards to the decision of a tribunal, as the decision to determine the ability to apply for re-registration is fundamentally different than the decision to re-register someone as a health practitioner.[149] For example, where an applicant for re-registration has been charged with a subsequent serious offence in the intervening period between the issuance of the reinstatement order and the application for re-registration, it is in the public interest and relevant for a National Board to consider all the circumstances at that time.[150]

The Department clarified that it is accepted practice that a National Board may be a respondent in a reinstatement hearing, but any subsequent decision making with respect to the applicant's re-registration would be handled by a different department.[151] Further, in co-regulatory jurisdictions, a National Board is not the respondent in a reinstatement hearing.[152]

The Department disclaimed significant duplication of process, stating that a reinstatement order is not a review of the original decision to cancel or disqualify a practitioner, but provides an additional layer of independent scrutiny. It places the onus on the practitioner to satisfy a tribunal they are fit and competent to practice again, in light of their disqualification.[153] While noting there will be some duplication, the Department observed that both tribunals and National Boards are necessary parts of the process for different reasons.[154] National Boards are required to evaluate the fitness and competency of the person at the time of re-registration, including any relevant information in the intervening period, as well as assessment for other eligibility requirements.[155]

The Department considers that the introduction of this requirement is not anticipated to have a substantial impact on the resources of the Tribunal.[156] For example, between 2018-2022, New South Wales only held 39 reinstatement hearings.[157]

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[147] Submission 2, p 1. See also, Submission 5, p 2.
[148] Submission 2, p 1.
[149] Queensland Health, *Departmental response to submissions received on the Bill* (published 22 January 2025) p 4.
[150] Queensland Health, *Response to submissions* (published 22 January 2025) p 4.
[151] Queensland Health, *Response to submissions* (published 22 January 2025) p 5.
[152] Queensland Health, *Response to submissions* (published 22 January 2025) p 5.
[153] Queensland Health, *Response to submissions* (published 22 January 2025) p 4.
[154] Queensland Health, *Response to submissions* (published 22 January 2025) p 3-4.
[155] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 29.
[156] Queensland Health, *Response to submissions* (published 22 January 2025) p 3.
[157] Queensland Health, *Response to submissions* (published 22 January 2025) p 4.

Committee comment

Despite conflicting submissions about whether this proposal results in unnecessary duplication, we are satisfied that the proposed process of applying to a tribunal for a reinstatement order is not a fundamental duplication of the process, since the respective evaluation by the tribunal and a National Board assess different aspects of a practitioner's character, history, and fitness to practise.

The committee is satisfied that the Bill provides adequate protection from a conflict occurring between a decision of a tribunal and a National Board, whether perceived or actual.

The committee is satisfied that a nationally consistent approach to re-registration is preferable to individual state-level requirements, owing to the interjurisdictional nature of health practitioner registration and practice in Australia.

2.2.3 Fundamental legislative principles

The reinstatement order proposal has a retrospective effect because it will introduce a future procedural requirement for persons who are currently de-registered as the result of a finding of professional misconduct, and who intend to seek re-registration.[158] This amendment will apply even when a tribunal made a finding of misconduct before the amendments come into force.[159]

The introduction of this process vests the original decision maker (in Queensland, QCAT) with the power to assess the re-application of a health practitioner taking into account the reasons for the original decision of the tribunal.

The explanatory notes seek to justify the retrospective application of the amendments on the basis that there is no substantive right to be re-registered, rather that de-registered persons are entitled to apply for re-registration 'following the expiry of any sanction imposed by a tribunal'.[160] In practice, a disqualified person will lose the right to apply for re-registration without first seeking an order from the appropriate tribunal. This process is already in practice in New South Wales.[161]

[158] Explanatory notes, p 10-11.
[159] Bill cl 23 (inserts s 327 into the *National Law*).
[160] Explanatory notes, p 10-11.
[161] Explanatory notes, p 2-3.

Committee comment

The committee is satisfied that the proposed reinstatement order process is compliant with the fundamental legislative principle of retrospectivity because it does not prohibit applying for re-registration following the expiry of sanctions imposed on a de-registered health practitioner. Instead, it imposes a more robust process of evaluation of the practitioner's ability to participate in the profession both competently and safely and evaluates whether they are a fit and proper person to hold registration.

2.2.4 Human Rights

A person charged with a criminal offence, or party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal (in Queensland, QCAT) after a fair and public hearing.[162]

The Bill proposes to increase the procedural requirements that de-registered health practitioners must comply with when seeking re-registration. The proposed amendments provide that a tribunal may specify a period for which a person may not apply, or re-apply, for a reinstatement order.[163] The Bill also permits a tribunal to permanently disqualify the person from applying for a reinstatement order in circumstances where, immediately before commencement, the person was disqualified from applying for registration as a health practitioner indefinitely under the HO Act.[164]

The Bill limits a health practitioner's right to a fair hearing, because it denies access to the tribunal for the purpose of applying, or re-applying, for a specified period of time, or permanently, depending on the finding of the tribunal. The Bill includes safeguards to protect the right of appeal through legislation and rules for the relevant tribunal.[165] Further, the Bill does not amend the requirement that any entity that has functions under the National Law is to exercise their functions having regard to its guiding principles, including that the National Scheme is to operate in a transparent, accountable, efficient, effective and fair way.[166]

The limitation seeks to protect public safety by granting a tribunal the power to exclude a person from practice who it deems, even after a specified period following disqualification, to be unfit to hold registration.[167] The tribunal may determine that the person is unfit to hold

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162 *HRA*, s 31(1).
163 Bill, cl 20 (inserts new s 198E(3), 198E(5) and 198(6) into the *National Law*); cl 23 (inserts new s 328 into the *National Law*).
164 Bill, cl 28 (inserts s 58 into the *NLA*, replacing s 328 in the *National Law* with respect to its application in Queensland).
165 Statement of compatibility, p 5.
166 Statement of compatibility, p 5.
167 Statement of compatibility, p 3.

registration and place a permanent ban.[168] The limitation enables the tribunal to make determinations about the severity of the conduct canvassed in these amendments and to assess a health practitioner's desire to be re-registered weighed against considerations of public safety.

Committee comment

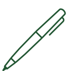
The committee is satisfied that the limitation of the right to a fair hearing is reasonably and demonstrably justified. The right is only limited to the extent that it provides the tribunal with power to exclude a narrow subset of persons from seeking re-registration. It is appropriate that a tribunal would exercise discretion to decide a specified period, or permanent order, of de-registration, following a hearing which detailed the nature and particulars of the allegation of professional misconduct.

2.3. Increased protection for persons making a complaint against a health practitioner

The explanatory notes emphasise the need for a strong reporting culture amongst practitioners and consumers, to ensure that health professions are upholding the standard of conduct for safe and ethical practice across Australia.[169]

The Bill proposes to increase protections for persons making complaints against health practitioners under the National Law and co-regulatory arrangements.[170] These extend protection to notifiers beyond mere legal liability, but also from detriment on the basis that they have made, or may make, a complaint about a health practitioner.[171]

Additionally, the amendments make it an offence to omit acknowledgement of these protections from non-disclosure agreements, to ensure that individual parties do not attempt to circumvent the amendments through contractual loopholes, and that parties to the agreement are aware of their rights.[172]



2.3.1 Protection against false, malicious or vexatious complaints

There was widespread support for increased protections in the reporting process and for persons who are making notifications under the National Law and HO Act.[173] Despite this support, several submissions raised areas of concern and opportunities for improvement to achieve the objective of the Bill.

[168] Bill, cl 7 (amends s 107(4)(a) of the *HOA*). See also Explanatory notes, p 17.
[169] Explanatory notes, p 26.
[170] Explanatory notes, p 7. See Bill, cl 22.
[171] Explanatory notes, p 7. See Bill, cl 22 (inserts new s 237A into the National Law).
[172] Explanatory notes, p 7. See, Bill cl 22 (inserts new s237B(2) into the National Law).
[173] See, e.g., Submission 1; Submission 2; Submission 5; Submission 11; Submission 14.

The RACGP, AVANT and the Australian College of Nursing support the amendments but raised concerns that the Bill does not provide adequate protection for health practitioners against complaints which are either without merit, or that have been repetitively lodged as a form of retribution by an aggrieved person.[174]

AVANT and the QLS proposed an amendment to the Bill (or explanatory notes) that clarifies the meaning of 'detriment' is not to be read as extending to the appropriate termination of a doctor-patient relationship and arrangements for ongoing care, in accordance with the relevant code of conduct.[175]

The Department clarified that the proposed section 237(1)(c) of the Bill only creates an offence if the reprisal or detriment is made because the person against whom the reprisal is made has made a 'good faith notification'.[176] Therefore, any complaint made in good faith, including a practitioner's decision to terminate a therapeutic relationship, made in accordance with accepted professional standards and guidelines, would not be considered a reprisal under the Bill. The Department further submitted that National Boards may provide guidance to practitioners about when and how it is appropriate to end a therapeutic relationship.[177]

2.3.2 Non-disclosure agreements

The RACGP opposed creating an offence for the failure to inform a person of their right to make a notification and recommended that the relevant clause of a non-disclosure agreement would merely be void if a person has not been notified of their rights.[178]

The ALA recommended that the definition of 'non-disclosure agreement' be expanded to make it clear that a clause within a contract is encompassed within the definition.[179]

The Department contended that a strong reporting culture is crucial to the operation of the National Scheme.[180] The proposed new section 236A already voids any provision of a non-disclosure agreement that prevents or limits a person from making a good faith notification or from assisting a regulatory body during an investigation.[181]

The Department considered that the introduction of an offence for failing to put in writing, that a non-disclosure agreement does not limit the rights of the parties to the agreement, is intended to place the onus on the contracting party to actively ensure that relevant persons

[174] Submission 2, p 2; Submission 19, p 3; Submission 18, p 4.
[175] Submission 19, p 3; Submission 21, p 3.
[176] Queensland Health, *Response to submissions* (published 22 January 2025) p 3.
[177] Queensland Health, *Response to submissions* (published 22 January 2025) p 7-8.
[178] Submission 2, p 3.
[179] Submission 4, p 8.
[180] Queensland Health, *Response to submissions* (published 22 January 2025) p 8.
[181] Queensland Health, *Response to submissions* (published 22 January 2025) p 8.

are aware of their rights under the National Law.[182] The Department clarified that the definition of 'non-disclosure agreement' contained in new section 237B includes 'contract or other agreement'.[183]

2.3.3 Fundamental legislative principles

Any consequence imposed by legislation should be both relevant and proportionate to the actions wherein the consequence applies.[184] This means that a penalty should be proportionate to an offence, and penalties should be consistent with each other.[185] The explanatory notes state the reason for increasing penalties and offences under the National Law and HO Act are because "notifiers are not currently protected from reprisals, harm, threats, intimidation, harassment or coercion."[186]

2.3.3.1 Relevance and Proportionality

Increased penalties for taking a reprisal under the HO Act

A person takes a reprisal if they cause, or attempt to conspire to cause, detriment to another person because, or in the belief that, any person has made or may make a health service complaint; or has provided or may provide information or other assistance to the health ombudsman, a staff member of the OHO or an authorised person.[187]

The Bill proposes to amend the HO Act to increase the maximum penalty for taking a reprisal from 200 penalty units ($32,260) or 2 years imprisonment to 375 penalty units ($60,487.50), or 2 years imprisonment, for an individual; or 750 penalty units ($120,975) for a corporation.[188]

New offence under the National Law – Reprisal

The Bill seeks to introduce the offence of reprisal into the National Law, prohibiting a person from using threats or intimidation to attempt or persuade another person not to take 'protected action', in addition to prohibiting dismissal on the same basis.[189] The explanatory notes seek to justify this new offence on the basis that the only existing protections for notifiers who act in good faith under the National Law is on the basis of liability in civil, criminal or administrative circumstances.[190]

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[182] Queensland Health, *Response to submissions* (published 22 January 2025) p 8.
[183] Queensland Health, *Response to submissions* (published 22 January 2025) p 8.
[184] OQPC, *FLP Notebook*, p 120.
[185] OQPC, *FLP Notebook*, p 120 citing *Nationwide News Pty Ltd v Wills* [1992] 177 CLR 1, 30-31 (Mason CJ).
[186] Explanatory notes, p 4.
[187] Health Ombudsman Act 2013, s 261 (HOA).
[188] Bill, cl 11 (amends s 262 of the HOA).
[189] Bill, cl 22 (inserts new s 237A and 237B into the National Law).
[190] Explanatory notes, p 4.

The Bill proposes to set the maximum penalty at $60,000 for an individual, or $120,000 for a body corporate. Under the National Law, National Boards and Ahpra are considered a 'body corporate'.[191]

New offence under the HO Act – limits on non-disclosure agreements

The Bill seeks to introduce a new offence to the HO Act which prohibits a 'relevant person' from entering into a non-disclosure agreement, unless that agreement specifically sets out that the non-disclosure agreement does not limit the parties from making a notification, or complaint, in good faith.[192] The proposed offence also requires that the agreement specifically provide that a person is not prohibited from assisting with investigations under the HO Act or the National Law.

The Bill proposes to set a maximum penalty at 30 penalty units ($4,839) for an individual; or 60 penalty units ($9,768) for a corporation.[193]

New offence under the National Law – limits on non-disclosure agreements

In 2022, the Report on the *Independent Review of the regulation of medical practitioners who perform cosmetic surgery* identified the risk associated with a lack of awareness amongst health care consumers with respect to their right to make complaints (or assist health regulators with investigations) where they have signed non-disclosure agreements.[194] The *Independent Review* concluded that most non-disclosure agreements which either prohibit the party from making a notification, or where the agreement is silent on the right to do so, are likely to be unenforceable.[195]

The Bill proposes to set a maximum penalty of $5,000 for an individual; or, $10,000 for a corporation. The proposed offence and penalty are identical to those proposed under the HO Act.[196]

Committee comment

The committee is satisfied that the proposed offences are compliant with the fundamental legislative principle of relevance and proportionality and consistent with other existing offences in the National Law. Further, the committee notes that relevant proposed offences under the National Law are

[191] Health Practitioner Regulation National Law (Queensland) s 23 and 31A.
[192] Bill, cl 12 (inserts new s 263(1) into the HOA).
[193] Bill, cl 12 (inserts new s 263A into the HOA).
[194] Office of the Health Ombudsman, *Independent Review of the regulation of medical practitioners who perform cosmetic surgery* (Report, August 2022, accessed 8 January 2025) p 7-8, 46-47<https://www.ahpra.gov.au/Resources/Cosmetic-surgery-hub/Cosmetic-surgery-review.aspx>.
[195] Explanatory notes, p 4.
[196] Explanatory notes, p 28.

identical to the proposed offences under the HO Act, even if the maximum penalty may differ.[197]

2.3.3.2 Retrospectivity

The explanatory notes acknowledge that the prohibition of restrictive clauses in non-disclosure agreements would lead to the voiding of certain clauses which may have been previously agreed to by the parties to the agreement.[198] The nullification of certain clauses under these amendments relies on the contractual principle of severance, in that, the amendments will only impact the operation of the prohibitive clauses, not the agreement in full.[199] Further, the amendments have the beneficial effect of omitting contractual clauses which protect and identify the right of the parties to make a notification about a health practitioner, and to be empowered to participating in the reporting process.

The explanatory notes seek to justify the retrospective operation of these amendments by noting the intention of the Bill, which is to provide greater protection for notifiers.[200] "It is essential to the operation of the National Scheme that there is a strong reporting culture and that there are no limitations placed on notifiers in relation to their interaction with the regulators."[201]

Committee comment

The committee is satisfied that the prohibition of restrictive non-disclosure agreements is compliant with the fundamental legislative principle of retrospectivity and is consistent with the objectives of the Bill.

The committee is satisfied that the relevant provisions do not have an adverse impact and have sufficient regard for the rights and liberties of individuals.

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197 Bill, cl 12 (inserts new s 263A into the HOA). Cf Bill, cl 22 (inserts new s 237B into the National Law).
198 Bill, cl 13 (inserts new section 320I into the HOA), cl 23 (inserts new s 329 to the National Law). See also Explanatory notes, p 13.
199 Bill, cl 12 (inserts new s 263A into the HOA), cl 22 (inserts new s 237B into the National Law). See also Explanatory notes, p 13.
200 Explanatory notes, p 18.
201 Explanatory notes, p 13.

2.4. Other relevant matters

The following matters, some of which are outside the scope of the Bill, were raised during the inquiry process, and became relevant to committee consideration.

2.4.1 Public and practitioner education campaigns

The Australian Association of Psychologists Inc supported the Bill, including the permanent publication of a practitioner's regulatory history, but suggested that more education is essential, in addition to the establishment of preventative mitigation measures, such as 'professional development courses on transference, countertransference and risk factors', which are current initiatives within their membership.[202]

The ALA recommended that the Bill must be accompanied by public education campaigns for consumers:

> ALA members are concerned, for example, that the general public is largely unaware of Ahpra's register of registered medical practitioners and, by extension, unaware of the public's basic right to access information (including notes on disciplinary action) about their doctor or prospective doctor.[203]

To achieve greater public awareness of the purpose and operation of the public register, the ALA suggested that resources should be dedicated to improving the search engine optimisation value of Ahpra's website and online resources, such that 'Ahpra's profile of a registered health practitioner should appear as one of the top search results when a member of the public conducts a Google (or other search engine) search of that practitioner'.[204]

LEQ recommended enhancing accessibility to information on national public registers for persons with disabilities by providing content in Easy Read formats.[205]

Ahpra noted that it expects the development and implementation of systems, policies, procedures and education programs to take 12 months.[206]

The Department noted that Ahpra has indicated that broader communication with relevant stakeholders who are impacted by the Bill will be important and that they will likely develop a plain English guide for the changes, including explanations of what they mean for health

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[202] Submission 3, p 2.
[203] Submission 4, p 6. See also, Submission 1, p 1; Submission 13, p 1.
[204] Submission 4, p 6-7.
[205] Submission 17, p 2. See, e.g., Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Summary and Vision for an Inclusive Australia: Final Report – Easy Read* (Report, 29 September 2023) <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20%20Executive%20summary%2C%20Our%20vision%20for%20an%20inclusive%20Australia%20and%20Recommendations%20-%20Easy%20Read.pdf>.
[206] Submission 12, p 5.

practitioners and patients alike.[207] The Bill will commence by proclamation, which is anticipated to be in early 2026.[208]

Committee comment

The committee acknowledges the underpinning of the Bill is to improve transparency, which requires accessibility. We have formed the view that, given the range of registered professions involved and the lack of patient choice of care providers during hospital stays, the public are still unlikely to engage strongly with the public registers even after the additional information is added. Employers are more likely to benefit from the information registers as they run pre-employment checks.

We note Ahpra's acknowledgement of the necessity of education campaigns. Anything that will support the health literacy of the public is a relevant resourcing consideration for regulators. The committee encourages Ahpra to work with the state-level oversight bodies (in Queensland, the OHO) to develop accessible public education campaigns and information packets.

2.4.2 Consultation timeframes

2.4.2.1 Inquiry timeline

Submitters raised concerns that the timeframe for providing submissions to the committee's inquiry was too short, given the Christmas period it occurred in. Submissions opened on Tuesday 17 December 2024 and closed on Thursday 9 January 2025. Some potential submitters contacted the committee to advise that the timeframe was impossible to meet. Other stakeholders provided submissions but noted the short timeframe.[209]

The AMA's submission referenced the Commonwealth Office of Impact Analysis guide on best practice consultation.[210]

> 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." As such we expect that 30 business days is the minimum appropriate standard for consultation with stakeholders.[211]

[207] Queensland Health, *Response to submissions* (published 22 January 2025) p 8.
[208] Queensland Health, *Response to submissions* (published 22 January 2025) p 9.
[209] Submission 14, p 3-4. See also Submission 18.
[210] AMA, *Response to Questions on Notice* (published 5 February 2025).
[211] AMA, *Response to Questions on Notice* (published 5 February 2025).

The committee secretariat contacted potential submitters (included former submitters to the lapsed Bill) to confirm the version of the Bill was substantively identical to the lapsed Bill previously tabled in the 57th Parliament in 2024.

2.4.2.2 Health Ministers Meeting

Some submissions levelled strong criticism at the HMM consultation process that preceded the tabling of the Bill in the Queensland Parliament.[212] The Department advised in its written briefing:

> Due to HMM's request for urgency in the development of the Bill, no external consultation on the draft Bill was undertaken. However, development of the Bill was informed by public and interjurisdictional consultation.
>
> In January and February 2024, national public consultation on the proposed reforms was undertaken. A consultation paper was developed, led by Victoria who is responsible for leading interjurisdictional legislative policy development on behalf of Australian Health Ministers. Additionally, in January 2024, a targeted information session with patient advocacy and sexual violence support organisations was hosted by Ahpra. During public consultation, organisations and individual members of the public were invited to participate through the Engage Victoria website. Key professional organisations, including health complaints entities, professional associations, specialist practitioner colleges, and Aboriginal and Torres Strait Island health organisations received direct communications about how to participate in the consultation process.
>
> Through this process, 217 submissions were received from a range of stakeholders, including members of the public, individual practitioners, professional organisations, sexual assault survivor groups, health regulators (including the Queensland Office of the Health Ombudsman), tribunals (including QCAT) and information commissioners.[213]

The AMA submitted that changes to the law affecting the medical profession must occur in proper consultation with health professionals.[214]

> The profession must be listened to in consultation on the national law and health ministers cannot be the only people in Australia who drive changes to the national law and determine how Ahpra and the national laws will regulate us—the almost one million health professionals in Australia. [215]

The AMA raised specific concerns that the National Scheme (including the proposed amendments) were not supportive of practitioner safety.[216]

> The AMA does remain concerned that the national scheme does not do enough to support the wellbeing of health professionals. We do believe it is entirely possible to have a scheme that ensures the public is protected without derailing the lives and careers of the doctors who have dedicated their lives to patients and communities but we do not currently have that system. This was demonstrated in 2023 when Ahpra released a report

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[212] See, e.g., Submission 6, Submission 14, Submission 19.

[213] Queensland Health, *Response to submissions* (published 22 January 2025) p 4-5.

[214] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 3.

[215] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 3.

[216] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 2.

> that identified 16 deaths by suicide and four instances of attempted suicide or self-harm among practitioners who were subject to regulatory notification.[217]

The AMA clarified those 16 deaths were over a four-year period from January 2018 to December 2021.[218]

Submitters spoke to the need for more consultation around specific aspects of the proposed amendments, particularly around the term 'sexual misconduct' and the right of National Boards to infer.[219] At the public hearing, the AMA submitted:

> It would seem that more consultation or thought needs to be given to what the threshold is. As our submission outlines, the main point we want to raise is that these powers need to be used judiciously. For that to occur, tribunals obviously need clarity around definitions and what would be an appropriate threshold so that tribunals not only understand how they are expected to act but also doctors under investigation have an understanding of what to expect and to help protect their wellbeing under investigation.[220]

At the public hearing a QNMU representative submitted:

> We have to remember that we are dealing with a number of lives here…from a victim point of view and a practitioner point of view, so I think there is an overwhelming need to make sure that as much as possible we get it right the first time around. If indeed that capacity to infer is brought into the legislation, then I think there needs to be some robust checks and balances around that and, should that happen, we would certainly love to be part of that consultation around that. There is a place for subjectivity, and we know that various tribunals make differing decisions. I would suspect that even from an Ahpra point of view there is some variation in the kinds of decisions that they make around similar complaints, so that is something where we need to be very careful before we go down there in that there is the possibility of a slippery slope there. [221]

Committee comment

We take on board submitter concerns about the length of time for making submissions. The timing of a State election, which resulting in the Bill lapsing the first time, impacted the length of our submission period, which was relatively short given the request from HMM for urgency. We do however note this Bill is substantively identical to the lapsed Bill so, submitters did also have the benefit of that submission period, which ran for two weeks.

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[217] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 2.

[218] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 3.

[219] See, e.g., Submission 14, p 3-4; Submission 20; Submission 21; Submission 19.

[220] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 5.

[221] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 12.

In terms of the consultation process undertaken by the HMM, we note it is unusual that an exposure draft of the Bill was not undertaken, particularly given the process that we understand took place the last time the HMM proposed changes to the National Law, in 2023 towards the issue of protected titles in the context of cosmetic surgery. At that time the HMM undertook a Consultation Regulation Impact Statement process.

We are deeply upset to hear of the 16 practitioner suicides which have occurred while those doctors were involved in a notification process under the National Scheme. It seems to us that this tragedy should mandate optimal consultation processes to arrive at the very best system which is safest for all who interact with it. Our earlier recommendations towards an appropriate threshold for 'sexual misconduct', and procedural fairness safeguards around National Boards' discretion to infer, would be best supported by further engagement with relevant stakeholders.

Recommendation 4

The committee recommends that, during implementation of the Bill, the Australian Health Ministers Meeting consults further with relevant stakeholders around operationalising any legislative threshold of sexual misconduct, and the National Boards' discretion to infer.

2.4.3 Regulation of unregistered health practitioners

Some submitters raised concerns that while the changes to the National Law proposed in the Bill would apply to registered health practitioners, the National Law does not capture unregistered practitioners involved in care work for the public. People with a disability or people residing in aged care often receive care from unregistered providers. The point was made during the committee's questioning of QNMU at the public hearing.

> **Mr J KELLY:** If we go to the non-registered staff such as admin officers, cooks, cleaners and catering staff, all of those people potentially have access to a patient unsupervised. [...] Do any of those people get captured by this legislation?
>
> **Mr Prentice:** This applies to those health practitioners who are registered under the Ahpra framework. There has certainly been some speculation that there should be additional professional groups brought into the Ahpra framework, and we also need to remember aged care, because there are a significant number of currently unregulated workers who work there in that over 70 per cent of the aged-care workforce is unregulated as well. You are right: if we are looking at hospitals, hospital work environments are exceptionally complex work environments. If you were to map out all of the connections that centre around a patient, it is a real spiders web of people coming and going and providing hopefully high-quality safe services.
>
> [...]
>
> **Ms Beaman:** Just broadly, we are on the record stating that we do believe that there should be the regulation of the care workforce at all levels... we do believe that there is

an absolutely vulnerable population. Whether that is residential aged care or people in the community accessing NDIS, there is an absolute vulnerability there...

Mr Prentice: Yes. Right from when the aged-care royal commission started looking at the whole aged-care sector, one of the ANMF's stances was that the unregulated workforce needed to be brought into either the Ahpra framework or something of similar rigour. I do not think that outcome has been achieved as yet and certainly you could make the same statement about the disability workforce as well. We are a very big supporter of the benefits of a regulatory environment to ensure the safety and quality of care delivery.[222]

Committee comment

We note this issue of how to best regulate unregistered health providers has been a regular discussion we have with the OHO and Ahpra because of our oversight of the Queensland health complaints management system. We will continue to work towards ensuring that all members of the public receiving health care in public and private health facilities are protected through appropriate regulation of their care providers.

[222] Hansard, *Public Hearing – Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, Transcript of Proceedings* (28 January 2025) p 12.

Appendix A – Submitters

Sub No.	Name / Organisation
1	Care Opinion Australia
2	Royal Australian College of Practitioners
3	Australian Association of Psychologists Inc
4	Australian Lawyers Alliance
5	Queensland Network of Alcohol and Other Drug Agencies Ltd.
6	Australia Society of Orthopaedic Surgeons
7	Robert Heron
8	Optometry Australia
9	Confidential
10	Office of the Health Ombudsman
11	The Royal Australian and New Zealand College of Psychiatrists
12	Australian Health Practitioner Regulation Agency
13	Australian College of Nurse Practitioners
14	Australian Medical Association
15	Australian and New Zealand Society of Nuclear Medicine
16	Mental Health Lived Experience Peak Queensland
17	Labor Enabled Queensland
18	Australian College of Nursing
19	Avant Mutual
20	Queensland Nurses and Midwives' Union
21	Queensland Law Society
22	Australian College of Children and Young People Nursing
23	The Australian Worker's Union of Employees, Queensland
24	Australian Information Commissioner

Appendix B – Submitters to the lapsed Bill

Sub No.	Name / Organisation
1	Name Withheld
2	Associate Professor Yvonne Parry
3	Australia Society of Orthopaedic Surgeons
4	Australian Association of Psychologists Inc
5	Australian Lawyers Alliance
6	*Not allocated*
7	Western Queensland Primary Health Network
8	Australian College of Nurse Practitioners
9	Royal Australian College of General Practitioners
10	Australian Medical Association
11	Brisbane Rape and Incest Survivors Support Centre
12	Australian Health Practitioner Regulation Agency
13	Confidential
14	Office of the Health Ombudsman
15	Care Opinion Australia
16	Queensland Nurses and Midwives' Union

Appendix C – Witnesses at Public Hearing, 28 January 2025

Organisations

Australian Medical Association	
Dr Danielle McMullen	President

Royal Australian College of General Practitioners	
Dr Michael Wright	President

Queensland Nurses and Midwives Union	
Sarah Beaman	Secretary
Daniel Prentice	Professional Research Officer

Avant Mutual	
Dr Patrick Clancy	Senior Medical Advisor
Ms Georgie Haysom	General Manager - Advocacy, Education and Research

Australian Lawyers Alliance	
Lidia Monteverdi	Senior Member, Medical Law Special Interest Group

Queensland Law Society	
Genevieve Dee	President
Claire Bassingthwaighte	Deputy Chair, Health and Disability Law Committee Member, Occupational Discipline Law Committee
Kate Brodnik	Principal Policy Solicitor

Office of the Health Ombudsman	
Dr Lynne Coulson Barr OAM	Health Ombudsman
Prue Beasley	Director

Australian Health Practitioner Regulation Agency (Ahpra)	
Kym Ayscough	Acting Chief Executive Officer
Jamie Orchard	General Counsel
Nick Lord	National Director, Engagement and Government Relations