

Health, Environment and Innovation Committee

Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024 *Report No. 1, 58th Parliament*

Government Response

On 7 February 2025, the Health, Environment and Innovation Committee (the Committee) published a report following its inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024 (the Bill).

The report contains four recommendations. The Government's response to each recommendation is set out below.

Recommendation 1

The committee recommends the Bill be passed.

Government response: Noted

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.

Government response: Supported

The Government supports amending the explanatory notes to clarify the legislative threshold for sexual misconduct set out in the Bill. An erratum will be tabled during the second reading debate.

The erratum will explicitly describe the threshold for publication set out in the Bill. To that regard:

1. The Bill requires National Boards to include additional information about a practitioner's regulatory history in the National and Specialists Registers in the circumstances set out in clause 21 of the Bill.
2. The circumstances are:
 - a) that a tribunal decided the practitioner behaved in a way that constitutes professional misconduct; and
 - b) a basis for the tribunal's decision was that the practitioner engaged in sexual misconduct.
3. It is intended for the ordinary meaning of 'sexual misconduct' to apply.
4. Defining the term 'sexual misconduct' or qualifying the term, for example, 'serious sexual misconduct', were considered as alternative ways of clarifying which conduct was sufficiently serious to justify the permanent publication of the information prescribed in clause 21. However, these raise further definitional issues without improving clarity. Definitional issues include the role of context in determining whether a specific instance of a behaviour is sexual in nature and whether a sexual

behaviour amounts to misconduct, and the implication that there might be non-serious sexual misconduct.

5. Accordingly, the Bill adopts the threshold of 'professional misconduct'. As a formal decision the tribunal may make under the National Law, it provides a clear and unambiguous threshold for the purposes of triggering publication under Clause 21. Since professional misconduct is the highest level of misconduct under the National Law, it is an appropriate standard.

This matter will also be addressed during the second reading debate.

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 appealable decision under Part 8 Division 13 of the National Law.

Government response: Not supported

The Government has reviewed Clause 21 and is of the view that appellate review under Part 8, Division 13 of the National Law is not appropriate.

Clause 21 of the Bill requires the relevant National Board to publish additional information about a practitioner's regulatory history if sexual misconduct engaged in by the practitioner served as a basis for a tribunal finding of professional misconduct.

Under this reform, National Boards will not reconsider or decide the facts of a matter. The facts are determined by the tribunal, whose findings are subject to appeal. In Queensland, appeals of tribunal decisions are set out in the *Queensland Civil and Administrative Tribunal Act 2009*.

Instead, the Board will decide, based solely on the tribunal's published decisions and reasons, whether sexual misconduct was a basis of the tribunal's finding of professional misconduct.

Because a tribunal's decision may not expressly base its finding of professional misconduct on any particular type of conduct, including sexual misconduct, the Bill gives National Boards discretion to infer, on the basis of the tribunal's decision and reasons for decision, that the tribunal's finding of professional misconduct was based on sexual misconduct.

The discretion to infer is extremely narrow. The inference must be 'necessary', in that it is required to make sense of the tribunal's decision in the context of the tribunal's findings of fact. This ensures that any doubt favours the practitioner: if the tribunal's decision and reasons for decision can be understood without inferring that the basis for the tribunal's professional misconduct decision was that the practitioner engaged in sexual misconduct, the 'necessary' test is not met.

Nothing in clause 21, including the 'necessary inference' test, authorises or requires the Board to re-litigate, review, or overturn the tribunal's professional misconduct decision.

As such, there is no strong rationale for subjecting the Board's decision to a merits-based review process.

However, since a Board may err in law, its decisions are subject to judicial review. For example, it would be a legal error for the Board to make an inference that does not meet the 'necessary inference' test.

This is consistent with the approach taken for similar administrative decisions by Boards under the National Law, which are non-appellable but remain subject to judicial review.

This matter will also be addressed during the second reading debate.

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.


Government response: Supported in principle

The Government supports the recommendation for relevant stakeholders to be consulted on operationalisation of requirements for publishing additional information on the national registers, including the threshold for publication and the National Boards' discretion to infer.

The Minister for Health and Ambulance Services has raised this recommendation with the Australian Health Ministers' Meeting. The Minister has also instructed Queensland Health to raise this matter with the Australian Health Practitioner Regulation Agency (Ahpra) and National Boards, who will be primarily responsible for operationalising this reform.

To this regard, Ms Ayscough, Acting CEO of Ahpra, acknowledged at the Committee's public hearing that 'practitioners rightly expect procedural fairness and natural justice in [Ahpra's] regulatory work.' Ms Ayscough committed Ahpra to engaging with stakeholders on their implementation activities. Further, Ms Ayscough advised the Committee that Ahpra would publish guidelines on the publication requirement to ensure full transparency.

It is intended to allow at least 12 months from passage of the Bill to commencement of these provisions to allow Ahpra, the National Boards and tribunals to have sufficient time to update their administrative arrangements to appropriately implement this reform.

Queensland Legislative Assembly	
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	02 APR 2025
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