



Australian Medical Network

Summary: Passing of The Health Practitioner Regulation National Law

13 October 2022

The Health Practitioner Regulation National Law and Other Legislation Amendment Bill passed through the Queensland parliament on 13 Oct 2022, amending the National Law which regulates health professionals. It will now become law once the Governor General of Queensland grants Royal Assent¹.

- 50 ALP MPs and 32 LNP MPs voted yes².
- 1 ALP, 1 LNP, 1 Independent, 1 One Nation, 3 Katter's Australian Party
- LNP members spoke against the bill citing concerns about lack of natural justice, the effect of testimonials in advertising, and interference with the doctor-patient relationship – and then still proceeded to vote for it.

Impact of The Change to The National Law

This change to the National Law:

- applies not only in Queensland but also automatically in Victoria, Tasmania, Northern Territory and Australian Capital Territory. The Health Ministers (but not the parliaments) of New South Wales and South Australia have committed to passing regulations in the same terms. WA's Health Minister has committed to passing legislation in the same terms.

Call To Action

Health professionals and all Australians in NSW, SA and WA can lobby their parliamentarians to stop these changes becoming law in their state.

¹ https://documents.parliament.qld.gov.au/explore/education/factsheets/Factsheet_3.7_MakingOfALaw.pdf

² https://documents.parliament.qld.gov.au/events/han/2022/2022_10_13_DAILY.pdf page 2735

- fundamentally changes the doctor - patient relationship in Australia by inhibiting the doctor's and health practitioner's ability to provide information so that a patient can give informed consent and the health practitioner can disclose risks and adhere to their Hippocratic Oath and code of conduct as set out by AHPRA.
- gives a legislative basis for the current unlawful sanctioning by AHPRA of doctors and other health professionals. It does this by writing into the law, the interference in the doctor patient relationship which is described in AHPRA's 9 March 2021 Joint Position Statement. (The Joint Position Statement threatens regulatory action against health professionals who do or say anything which in AHPRA's view undermines the national immunisation campaign.)
- goes further than the Joint Position Statement because the law now says "public confidence in safety of services" which is much broader than avoiding undermining the national immunisation campaign. Public confidence is not defined and gives AHPRA very wide discretionary power. AHPRA has already been robustly criticised by numerous inquiries for abuse of its existing powers.
- conflicts with AHPRA's code of conduct guidelines - which have the status of law - and contravenes the Australian Constitution, High Court Case law and interferes with the legal relationship between doctor and patient.
- State and Territory Health Ministers unanimously agreed to add clause 34, 'public confidence' to the Bill which was not part of the reform process. Health Ministers now control the Health System and National Law and the question that needs to be answered, is - who is advising them?
- patient outcomes will be compromised, because they now have no say, and their doctor will be unable to explore wider options with them. Doctors and health professionals are already heavily monitored. This law will foster greater mistrust in the public because the national health culture will be based on fear and bureaucratic power. Innovation that is not in line with public confidence will be stifled or destroyed.
- these changes will not weed out and reprimand doctors who are actually negligent and cause harm and instead it provides greater powers to AHPRA to reprimand and censor any doctor who has an opposing medical or health viewpoint that may benefit their patient and the public.

QLD Health Minister D'Ath's Interpretation

- Qld Health Minister D'Ath stated in parliament during the readings of the Bill that 'public confidence', as opposed to 'public safety', only applies to AHPRA as a paramount guiding principle, not to doctors and so we needn't worry about any change to the doctor patient relationship.

"The guiding principles in the national law do not apply broadly to govern all aspects of health care or the relationship between a patient and their health practitioner.

The fact is that the guiding principles are there to guide the regulators and they do not apply to individual health practitioners. I emphasise that the provision of health care will continue to be guided by universal practices, including informed consent, medical ethics and individualised treatment tailored to each patient. Health practitioners will continue to act in accordance with their training and their professional obligations by explaining the risks and benefits of care in a way that can be understood by their patients. Let me explain which entities these principles in the national law will apply to.

The paramount principle in the national law is directed at entities exercising powers under the national law, including the Australian Health Practitioner regulation Agency, national boards, the Queensland Health Ombudsman, the National Health Practitioner Ombudsman, accreditation authorities such as the Australian Medical Council, administrative tribunals, courts and other entities exercising functions under the national law.

The guiding principles will apply to a broad range of decisions made by these entities, including decisions about accreditation and registration standards for health practitioners as well as decisions to take health, conduct or performance action against practitioners. The new guiding principle will create a specific legislative obligation to place public safety and public confidence as the most important factor in all decisions and actions of entities exercising functions and powers under the national law. This approach will encourage a responsive, risk-based approach to regulation across all health professions regulated under the national law³.

- Minister D’Ath further stated that public confidence is already in place nationally, however this is not the case. Queensland (but not all other jurisdictions) currently has the ‘health and safety of the public as the paramount principle⁴ – but no State or Territory has legislated for “public confidence”. The term ‘public confidence’ is undefined, open to abuse and its broad interpretation will be controlled by AHPRA and the government. The doctor or health practitioner will end up being subjected to an investigative or disciplinary process that has not got clear checks and balances and therefore places them on the back foot immediately.
- Minister D’Ath’s statement contradicts the Ministerial Directive made on 3 Jan 2020 - which led to the public confidence element being included in the Bill – making it clear that the intention *is* to interfere and control the doctor patient relationship:

3. When considering whether a registered practitioner’s conduct may be considered unprofessional conduct or professional misconduct, National Boards and Ahpra must give at least equal weight to the expectations of the public as well as professional peers with regards to the expected standards of practice by the registered practitioner.

³ https://documents.parliament.qld.gov.au/events/han/2022/2022_10_13_DAILY.pdf page 2730 and 2731

⁴ <https://www.legislation.qld.gov.au/view/html/inforce/current/act-2009-hprnlq#sec.3A>

- It does not say anywhere in the Bill, that public confidence is not to be a paramount consideration when AHPRA assesses a doctor’s conduct to decide whether there’s been unprofessional conduct or misconduct.
- It is clear that the purpose of this change is to give AHPRA a legislative basis for interfering in the doctor/patient relationship.
- The recent pandemic has shown that when in a health crisis, governments and health ministers and bureaucrats, dictated only one approach and punished any health professional who was *‘guided by universal practices, including informed consent, medical ethics and individualised treatment tailored to each patient.’* (Minister D’Ath’s words.) State governments also punished any Australian who did not comply as was recently headlined in QLD where a group of teachers pays were cut for not complying to a medical procedure. Further raising questions around Minister D’Ath’s interpretation of the law.
- Minister D’Ath stated, “This amendment was recommended in the review of governance of the National Registration and Accreditation Scheme commissioned by the Australian Health Ministers’ Advisory Council.”
 - There is no reference to “paramount”, “confidence” or even “safety” in the review of governance of the National Registration and Accreditation Scheme commissioned by the Australian Health Ministers’ Advisory Council.⁵
 - There is only one reference to “confidence” in an earlier review, the Independent Review of the National Registration and Accreditation Scheme for health professions (2014). That reference is in Appendix 4, which explains that public confidence is one of the aims of the UK scheme.⁶ It appears that Australian Health Ministers have borrowed from the UK without consulting properly (if at all) in Australia on this important change to the law.

Call To Action

- Health professionals and all Australians in NSW, SA and WA can lobby their parliamentarians to stop these changes becoming law in their State.

- Victoria, Tasmania, ACT and NT also need to lobby their parliamentarians to insist that this change not become law in those jurisdictions

⁵ <https://www.ahpra.gov.au/About-Ahpra/Ministerial-Directives-and-Communiqués/National-Scheme-reports-and-reviews.aspx>

⁶ Available at the link above