Submission to the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024.

Health, Environment and Innovation Committee.

January 8, 2025.

Acknowledgement of Country

The Mental Health Lived Experience Peak Queensland (MHLEPQ) respectfully acknowledges the Traditional Custodians of the Lands and Waters throughout Queensland. We thank the Elders—past, present, and emerging—for their wisdom and enduring strength.

We recognise that the legacy of colonisation has profoundly impacted First Nations peoples, contributing to unique and significant experiences of societal exclusion and health inequities. Colonisation has enforced systems of racism, stigma, and discrimination, leading to intergenerational social disadvantage and marginalisation. This further impacts the social and emotional wellbeing of First Nations communities.

We acknowledge the enduring resilience and resistance of First Nations peoples in the face of these adversities. We respect their rights and autonomy to lead their own healing journeys, guided by their beliefs and traditional practices and connectedness to Country, family, and spirit.

Who are the MHLEPQ?

The Mental Health Lived Experience Peak Queensland (MHLEPQ) was established in July 2021 to provide advice and advocacy informed by people with lived experience of the Queensland mental health system. Our work is underpinned by equity, access, cultural safety, recovery, and human rights and we are funded by the Mental Health, Alcohol and Other Drugs Branch, Qld Department of Health. MHLEPQ is a member of the National Mental Health Consumer Alliance, where other state and territory consumer peak bodies meet to coordinate on shared issues, including issues relating to Commonwealth policy and government-funded services.

Solidarity with Lived Experience

The MHLEPQ supports people with lived and living experience of mental ill-health, distress and suicidality, some of whom have been harmed by breaches of their human rights within culturally unsafe systems that they sought for support.
We work in partnership with and are guided by the lived experiences and expertise of the MHLEPQ members, whose valuable recommendations have the power to create lasting change. MHLEPQ is committed to advocating for a human rights-based approach across the mental health and social systems, ensuring reform toward more representative, inclusive and responsive systems that meet the needs of the communities they serve.

Human rights statement

Mental health is integral to the human experience and is related to a person's ability to participate in society and live according to their own sociocultural and political values. The Mental Health Lived Experience Peak Queensland advocates that the right to mental health is a fundamental human right and a whole-of-society obligation to promote, protect, and uphold.

The right to health should include support with the social determinants of mental health such as adequate housing, a clean, healthy and sustainable environment, and health services that are affordable, effective, and culturally appropriate. By acknowledging mental health as a fundamental human right, we affirm our commitment to a just and equitable society where everyone can thrive. Human rights in mental health are both a constitutional and working principle of the peak and one of the main objectives of its advocacy work. The MHLEPQ work with members to prioritise the human right to mental health for all Queenslanders.

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Recommendations

Recommendations
1. Any healthcare worker with notifications or substantiated sexual misconduct claims that haven't been fully assessed should not be in a seclusion environment or in-patient unit without full supervision (if at all).
2. Provide mandatory deadlines to the Australian Health Practitioner Regulation Agency (AHPRA) for initial assessment of notifications and communication of the outcomes to both the notifier and the practitioner who is subject to the notification.
3. Ensure that legislative reform for re-registration provides clear pathways and timely processes matched to the original reason for registration lapse, cancellation or disqualification.
4. The MHLEPQ recommend that the Civil Burden of Evidence (balance of probabilities) should apply to any matter that has the potential to impact patient safety, including but not limited to public and consumer protection from malpractice and abuse.
5. Ensure that law reform to increase protection for notifiers considers systemic factors such as organisational protectionism and investigation independence, including an independent consumer complaints mechanism.
6. Amend National Law to include non-employees of Queensland Health and all health service organisations in extended whistleblowing legislation.
7. Consider reforming National Law to exempt medical practitioners from mandatory reporting in the context of therapeutic relationships, in line with the Western Australian exemption.

Overview

The MHLEPQ is grateful for the opportunity to submit to the consultation on the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024 (the Bill). Member and public protection and confidence in health legislation through standardisation of the National Law is a high priority for our organisation. This includes but is not limited to the focus areas of the legislation change, being re-registration processes for cancelled or disqualified practitioners; transparency of disciplinary action toward practitioners who have engaged in serious sexual misconduct; and strengthening protections for complainants while clarifying consumer protections concerning nondisclosure agreements.

The amendment to the Health Ombudsman Act 2013 (Qld) and modifications to the Health Practitioner Regulation National Law Act 2009 (Qld) are also naturally highly relevant to our organisation and its members given the co-regulatory mechanisms in our state. We agree that suitably trained and qualified practitioners who are fully accountable to competency and ethical standards that are highly transparent to the public are strong levers for societal and consumer safety.

The MHLEPQ applaud a political response by Health Ministers across Australia to the issue of staggering increases in complaints for serious misconduct including sexual misconduct against consumers, as noted in the Statement of Compatibility. We apply human rights-based and equity lenses to analyse systems from the viewpoint of people with lived experience. We amplify the knowledge and expertise of people with lived experience of mental ill-health, distress and suicidality in collaboration with other governmental, non-governmental and academic institutions to provide evidence-based recommendations for systemic change, oriented by consumer's inalienable right to health and freedom from breaches that impact their autonomy and dignity.

In principle, the MHLPEQ supports the objectives and three agreed amendments and Queensland-specific amendment of the Bill, including the modifications to the Health Practitioner Regulation National Law Act 2009 (Qld). We also support the specific limitations on human rights of practitioners addressed in the Statement of Compatibility, the purposes for the limitations and that the limitations will meet the purposes. However, the devil is in the details (of the legislation) and this submission offers some perspectives through the lens of people with lived experience, positioned as both consumer and medical practitioner concerning more detailed considerations to inform legislation.

This submission is structured into three major sections that discuss overarching principles; the three main National Law amendments proposed in the Bill; and other considerations. Direct quotes are included in green within the body of the text, and we make seven (7) recommendations for the Committee's consideration.

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Discussion

Overarching Principles

1. **Apply a lived experience lens** to legislative and regulatory reform.

What is good for medical practitioners with mental health issues is likely to be a good improvement to the entire system and for everyone interacting with it

~MHLEPQ member~

2. **The individual human rights** of people living with mental ill-health, particularly those in the healthcare system as involuntary patients, must be protected and promoted with the utmost integrity.

   Key message 1:

   Where an involuntary patient has raised a complaint or concern about sexual misconduct, a health professional independent of the health service provider should immediately assess the situation.

   Recommendation 1:

   Any healthcare worker with notifications or substantiated sexual misconduct claims that haven't been fully assessed should not be in a seclusion environment or in-patient unit without full supervision (if at all).

3. **Systemic institutional factors** should be considered alongside individual medical practitioner factors, particularly the tendency for bureaucratic institutional protection. Health services should be accountable to the same standards that individual practitioners are.

There are many instances where the conduct of an organisation, if attributed to a person would lead to deregistration or reprimand. For example, a person who makes multiple errors in written communication or timeliness of referrals etc may be subject to regulatory action, but entire health services who consistently fail in their communication often do so with impunity.

~MHLEPQ member~

4. **Advocate for restorative justice** mechanisms (for example, restorative just learning culture) including alternative dispute resolution procedures for public complaints that represent relatively minor practitioner transgressions.

[…there should be] mandatory conciliation early and tell them exactly what they are doing wrong in very plain language, outline some options and solutions for them, have

some follow-up and oversight to check on implementation, and an option to escalate back to the formal complaint system if required.

~MHLEPQ member~

5. **Ensure timeliness and benchmarks** for all complaints and notification processes, which are currently dogged by extremely slow timeframes. Focus on the most urgent cases based on risk to the public, while necessary and understandable, leads to longer timeframes and prolonged uncertainty.

Recommendation 2:

Provide mandatory deadlines to the Australian Health Practitioner Regulation Agency (AHPRA) for initial assessment of notifications and communication of the outcomes to both the notifier and the practitioner who is subject to the notification.

This is even more important when the notification involves a practitioner with mental health issues because the process can cause deterioration in their condition even when the notification is not upheld

~MHLEPQ member~

National Law Amendments

1. ***National Law amendment 1***

The process for re-registration should be matched to the reason for the registration lapsing. Pathways for registration after cancellation or disqualification by a tribunal must distinguish between situations where registration was related to a complaint or notification (or to avoid a complaints process) and other causes.

Waiting for tribunals can be very prolonged, stressful and have significant negative impacts on income and wellbeing.

~MHLEPQ member~

Key message 2:

If re-registering has nothing to do with regulatory action or avoiding regulatory action, there should be a timely, less onerous process more suited to the original cancellation/disqualification. Ensure that the reform in legislation does not accidentally sweep all cases into one inflexible and burdensome process that results in undue difficulty for consumers and practitioners.

Where the registration status was related to a health issue and did not involve a prolonged period of concealment or unnecessary risk to the public, that is very different to misconduct related to significant errors in judgement, honesty, or repeated failure to correct the conduct

~MHLEPQ member~

Recommendation 3:

Ensure that legislative reform for re-registration provides clear pathways and timely processes matched to the original reason for registration lapse, cancellation or disqualification.

2. National Law amendment 2

Clear definitions of "serious sexual misconduct," including which situations qualify are needed, considering whether rules of evidence can be applied through less stringent administrative processes. Consideration must also be given to unintended consequences such as creating disincentives for consumers to disclose, given that they may have to provide evidence in a formal process that could be harmful.

Are we applying the civil burden of evidence (balance of probabilities) or are we applying criminal burden of evidence (beyond reasonable doubt). And do the usual rules of evidence apply? […] Should a tribunal making a determination to place something on the public register involve a judicial member on that tribunal?

~MHLEPQ member~

Recommendation 4:

The MHLEPQ recommend that the Civil Burden of Evidence (balance of probabilities) should apply to any matter that has the potential to impact patient safety, including but not limited to public and consumer protection from malpractice and abuse.

3. National Law amendment 3

Protecting medical practitioner notifiers from reprisal and retaliation from within the organisation is a crucial and complex issue, where the situation for notification is rarely clear and simple. It often involves workplace culture and sometimes complicity by the notifiers themselves.

This is a very real issue […] making a notification in relation to a colleague is extremely difficult and emotionally burdensome […] Hospitals and other employers and/or contractors (many doctors are Visiting Medical Officers) may initiate their own internal

processes that victimise the reporting practitioner and simultaneously seek to absolve the organisation from any wrong doing. The most potent retaliatory tactics are bureaucratic […] One of the most difficult things here is that in any situation where a person decides that an AHPRA notification or a Public Interest Disclosure is warranted, almost always involves some degree of legal peril for all involved

~MHLEPQ member~

Key message 3:

Any investigation into a mandatory notification by a medical practitioner in a hospital should be conducted independently from the hospital/organisation that has a vested interest in deflecting their own culpability or silencing whistleblowers.

Recommendation 5:

Ensure that law reform to increase protection for notifiers considers systemic factors such as organisational protectionism and investigation independence, including an independent consumer complaints mechanism.

The MHLEPQ agree with the high importance of a cultural shift toward strengthening public interest disclosures. Whistleblowing remains disincentivised and options for making a public interest disclosure are not well advertised.

Whistleblowing protection for healthcare practitioners should be enshrined and broadened.

~MHLEPQ member~

Recommendation 6:

Amend National Law to include non-employees of Queensland Health and all health service organisations in extended whistleblowing legislation.

Other considerations

4. ***Exemption from mandatory notification***

We ask that the Committee consider the advantages of reforming the National Law to align with Western Australia's exemption from requiring notification of a concern in the context of the therapeutic relationship

between one medical practitioner treating another medical practitioner (continuing to allow voluntary notification).

Healthcare worker who are accessing healthcare should be in no worse off position than a healthcare worker who is concealing their issues and not seeking healthcare

~MHLEPQ member~

Potential benefits include increased safety and reduced barriers to healthcare access for medical practitioners; and reduced numbers of unnecessary notifications[1]. While the APHPRA guidance states that as long as a health condition is well managed and the public is safe a report is not required, this remains a barrier for health professionals seeking healthcare.

Key message 4:

Making this exemption in National Law would improve trust within the therapeutic relationship between medical practitioners, while still allowing for voluntary notification and mandatory notifications for everyone else in the workplace.

Recommendation 7:

Consider reforming National Law to exempt medical practitioners from mandatory reporting in the context of therapeutic relationships, in line with the Western Australian exemption.

ENDS

Contact

MHLEPQ welcomes further discussion about this submission or any other matters relating to health practitioner regulation and mental health. Please contact:

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[1] See Australian Health Practitioner Regulation Agency (AHPRA) Guidelines: Mandatory notifications about registered health practitioners