

1 June 2022

Committee Secretary  
Health and Environment Committee  
Parliament House  
George Street  
Brisbane Qld 4000

Via [hec@parliament.qld.gov.au](mailto:hec@parliament.qld.gov.au)

Dear Committee Secretary,

The Royal Australian College of General Practitioners (RACGP) thanks the Health and Environment Committee for the opportunity to provide input into the Health and Environment Committee's Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022 (the Bill).

The RACGP is Australia's largest professional general practice organisation, representing over 43,000 members working in or toward a specialty career in general practice.

The RACGP has had the opportunity to previously comment on the development of the Bill and acknowledges our support for many of the provisions within the Bill, particularly amendments pertaining to cultural safety, ensuring National Boards afford practitioners the opportunity to show cause after a change to proposed actions and the ability for practitioners to request to remove information from the public register where there is a risk to safety for themselves or their family.

Should you wish to discuss this submission, please contact myself or Ms Michelle Gonsalvez, National Manager - Advocacy and Policy, via [michelle.gonsalvez@racgp.org.au](mailto:michelle.gonsalvez@racgp.org.au) or 03 8699 0490.

Yours sincerely



Adj Prof Karen Price  
RACGP President

## *Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022*

### **Public protection and confidence**

The RACGP notes that no changes were made to the draft Bill, and reiterates our support for the importance of public protection and confidence in the guiding principles of the National Law. However, the Bill does not achieve the balance we would expect, as practitioners also need to have confidence in the National Law.

Practitioners already lack confidence in the current system, particularly as it relates to complaints. It is perceived to focus more on the prosecution of practitioners than the protection of patient safety through remediation of the issues that lead to the complaint. Undergoing an investigation for a complaint can be an extremely stressful and time-consuming process, that can have significant reputational and professional consequences, regardless of whether the practitioner in question is at fault.

The stress from regulatory processes can impact the mental health of a practitioner which in turn can impact patient care. Medical practitioners experience numerous stressors, which have increased because of multiple health crises in recent years. Medical practitioners are at a higher risk of mental illness and suicide when compared with the rest of the population.<sup>1</sup> The impact of notifications was highlighted in the recent Community Affairs References Committee [report](#) about the Administration of registration and notifications by the Australian Health Practitioner Regulation Agency (AHPRA) and related entities. The report acknowledged the significant amount of stress involved in the current notifications process, as well as the challenges posed by vexatious notifications, with little redress available to practitioners. It also highlighted the devastating impact of these processes on the health and wellbeing of some practitioners.

Practitioners who lack confidence in the regulatory system will potentially lead to more defensive medicine, which risks misdiagnosis, over-treatment of benign conditions, or under-treatment of serious conditions, because of fear of vexatious complaint or prosecution. This would weaken public confidence in the healthcare system.

It is also important to consider the potential long-term impact on the medical workforce. Interest in general practice as a career is declining, with less than 15% of medical graduates choosing GP training. Anecdotally, regulatory burden is often cited as a reason for deciding against a career in general practice. An overly judicious regulatory system that undervalues practitioner concerns will inevitably lead to reduced medical workforce recruitment and increased practitioner stress.

The RACGP considers that to put patient safety first, fair and supportive systems are essential. Amendments to legislate public confidence without appropriate balance of practitioner confidence could further undermine the system.

### **Disciplinary action in relation to health practitioners while unregistered**

The RACGP remains opposed to this amendment. This amendment appears unnecessary, as current provisions in the National Law under Part 7 and Part 8 are considered adequate.

National Boards already have powers to prosecute more serious instances of practicing without registration, and where less serious instances occur, there are provisions to apply conditions where necessary on renewal of registration. Therefore, it appears these changes would only work to allow National Boards to apply conditions more quickly where issues are identified as minor and/or inadvertent.

There is potential for this amendment to be unacceptably overused, whereby there would be the ability to apply unnecessary conditions to practitioners whose registration has lapsed at no fault of their own.

For example, through an administrative or system error in processing the registration, or where contact details may have changed, causing a practitioner to miss a renewal notice.

### Increased actions before investigation process complete

Multiple amendments within the Bill would allow the issuing of information regarding a complaint before an investigation process is complete, which in most cases the RACGP does not support.

There are ongoing issues surrounding the complaints mechanism which have eroded practitioner confidence in the system.

The RACGP has previously raised issues that practitioners experience with the complaints mechanism, including inadequate vetting of complaints, lack of communication and transparency, poor timeliness, and lack of recognition of the professional and personal consequences of investigations.

The RACGP recognises that the AHPRA and the National Boards are working towards addressing issues with the complaint's mechanism, however, many issues remain. As a result, the RACGP does not support amendments that would allow increased actions to be taken before investigations and all appeals processes are complete. The exception being where it is considered essential for public safety (for example, if there is a risk of imminent serious harm to a significant number of people).

### Public statements

As previously stated, the RACGP understands the intent of amendments to empower the National Agency, National Boards and Health Ombudsman to issue public statements about persons, but we remain concerned about the potential impacts for practitioners.

The threshold to be applied needs to be further clarified, to make it clearer when this power could be applied or what steps would be taken before this power is applied. It is important that the definition of 'reasonable belief' be centred on facts and known events. Decisions on clinical risk should be made by those with the appropriate clinical expertise and professional judgement regarding the true likelihood of serious harm.

We note the inclusion of show cause and appeals processes and the requirement for a regulatory body to revoke a public statement. While welcome, this does not prevent unforeseen damage that could occur from a public statement issued where the practitioner is not at fault. This is of particular concern to the specialty of general practice, as GPs operate in a small business environment characterised by patient choice and competition between providers.

### Referral to another entity following preliminary assessment

In our [2018 submission](#), the RACGP states that we do not support any broader powers for AHPRA or the National Boards to refer matters to other entities such as health services or employers before an investigation process is complete. Referral to other entities should be restricted to medical colleges for remedial purposes and the court or tribunal directly related to the matter at hand.

We note that the Bill retains concerning elements that would only serve to render the complaints mechanism more complex, for example, the National Board being able to continue to deal with a notification after the referral of a notification or part of a notification to another entity; and enabling referral to multiple entities.

These amendments suggest that referrals could result in dual or multiple investigations, and potentially conflicting outcomes for practitioners experiencing an investigation process.

This seemingly undermines the intent of the amendment to reduce lengthy investigations and ensure that investigations are managed by the entity best placed to deal with issues associated with the complaint.

#### *Implication of amendments for employers*

The Bill makes several amendments to the National Law to increase the ability of National Boards to share information with certain individuals and entities who have an employment or other practice arrangement with a registered health practitioner.

The RACGP is concerned that the process outlined regarding information sharing still excludes the opportunity for practitioners to show cause. It is important that AHPRA has appropriate, fair and robust show cause processes in place to ensure the practitioners who are not at fault are not unfairly harmed in this process.

While employers have a duty to act and to protect the public, the RACGP also has concerns regarding the liability and risk which may be imposed on employers and contracting entities under this proposal.

We acknowledge the intention to provide educational materials to relevant stakeholders, employers/entities and registered health practitioners to help them understand their responsibilities should they receive a notification about a practitioner or unregistered person. The materials must be timely and detailed to mitigate the risk of unnecessary, disproportionate or inappropriate action being taken against the practitioner. Guidance must also be specific about any differences in responsibility between employers and contracting entities.

The RACGP believes that, ultimately, responsibility for information sharing should remain with AHPRA and the National Boards rather than employers, and that the public would be best protected by ensuring that notifications are dealt with in a timely manner using robust and fair processes.

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<sup>1</sup> Bailey, Eleanor & Robinson, Jo & McGorry, Patrick. (2018). Depression and suicide among medical practitioners in Australia: Depression and suicide. *Internal Medicine Journal*. 48. 254-258. 10.1111/imj.13717.