



Minister for Health and Wellbeing
Minister for Higher Education
Minister for Medical and Health Research
Minister for Transport
Minister for Vocational Education and Skills
Member for Yerrabi

Mrs Giulia Jones MLA
Chair
Standing Committee on Justice and Community Safety
(Legislative Scrutiny Role)
scrutiny@parliament.act.gov.au

Dear Chair

Thank you for Scrutiny Report 30 of the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role), and your comments on the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2019*.

These amendments provide a balance between removing barriers for registered health practitioners seeking treatment for impairments, intoxication or departure from professional standards, and the necessity of providing strong protection from harm for health consumers from practitioners who suffer from impairment. Additionally, having appropriately qualified and registered health care practitioners is fundamental to ensuring high quality care in the ACT, and safeguarding the community from unregistered people posing as health professionals is an important aspect of that care.

I thank you for the opportunity to provide comments on specific areas of the Report. I have addressed each of your concerns below.

Notification of commencement of the amendments

I note the Scrutiny Committee's concern that affected people and entities will not know that amendments have commenced, and how they would be aware of this National Law. The amendments will commence when proclaimed in Queensland, and will be publicly announced, with an accompanying information awareness campaign for registered health practitioners and their employers. The ACT Legislation Register will be updated when the amendments come into effect, in line with current practice.

The National Law requires that every health practitioner is registered with their respective National Board under the National Registration and Accreditation Scheme (NRAS or the National Scheme). All students enrolled in an approved program of study, or who are undertaking clinical training, must also be registered as a student with their respective National Board. All health practitioners who are

ACT Legislative Assembly

London Circuit, Canberra ACT 2601, Australia GPO Box 1020, Canberra ACT 2601, Australia
Phone +61 2 6205 0051 Email fitzharris@act.gov.au



@MeeganFitzMLA



MeeganFitzharrisMLA



registered under NRAS must renew their registration each year with their National Board, and continue to meet their professional standards and obligations.

The Australian Health Practitioner Regulation Agency (AHPRA) is developing an information awareness campaign for health practitioners and their employers about the impending changes to those obligations as a result of the legislative amendment. AHPRA has commenced engagement with health practitioners regarding the content and delivery of the information material, and revisions to the relevant National Board guidelines.

Explanatory Statement

With the enactment of the National Law in 2010, the ACT Legislative Assembly adopted the National Law using an 'adoption of laws', or mirroring, model, so that any amendment to the Queensland legislation would apply automatically in the ACT, with no mechanism to require or enable it to be passed in the Assembly.

In tabling the Queensland legislation and Explanatory Statement, I have sought to ensure that the Assembly is informed of amendments to the National Law. I note that although the principles of the Scrutiny Committee refers to ACT legislation, the operation of the National Law does not require tabling in the ACT Legislative Assembly and there is no legal obligation to provide explanatory statements for these amendments.

However, as a matter of good practice, I will in future continue to provide a Tabling Statement to brief the Assembly on the policy intent and address the implications of amendments to the National Law. This could in future include addressing compliance with the ACT's human rights legislation. I hope this will be of benefit to the Assembly and address some of the concerns of the Committee regarding a lack of oversight.

Mandatory Reporting Obligations

The changes to mandatory reporting obligations for treating practitioners are intended to enable a holistic assessment of their practitioner-patient's impairment, intoxication or departure from professional standards, such as taking into account the steps they have taken to mitigate any risk to the public. Treating practitioners will have discretion to report whenever they think patient safety may be at risk (even when the practitioner-patient is taking steps to mitigate the risk), but must still report where the safety of patients is at risk. The policy intention is to encourage health practitioners to seek treatment when they need to, without fear of the current mandatory reporting obligations. The current obligation to report notifiable conduct will not change for other registered health practitioners (such as employers or registered work colleagues).

The exemption will not apply to cases of sexual misconduct, and the amendment strengthens the reporting of sexual misconduct by treating practitioners by including reporting the risk of future sexual misconduct, such as 'grooming' behaviour. This new requirement is based on the professional relationship between patients and their treating practitioner, and their understanding of their patient. Strengthening the reporting of sexual misconduct is consistent with the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse, and with community expectations that the public should be protected from practitioners who take advantage of patients in their care.

These reforms balance the need to provide reassurance that health practitioners can seek treatment for health issues, with the need to protect the public from risk of harm.

Privacy concerns

The committee notes that in forming a holistic assessment, the practitioner-patient must disclose additional personal details to the treating practitioner, and that this has privacy and reputation implications for the practitioner in the case where a report is made. As is the case in any patient – health practitioner relationship, it is the patient’s decision how much and which information to disclose to assist in the diagnosis and treatment of their medical condition. The amendments do not require additional information to be provided, but will allow that personal information to be used by the treating practitioner in their assessment of the risk of harm posed to the public, and the need to report the practitioner to AHPRA on behalf of the relevant National Board.

The amendment to retain a seized document for longer than six months is a result of the offence of people falsely claiming to be a health practitioner becoming an indictable offence. Offences will no longer be subject to a time limit to institute proceedings, and evidence may need to be kept for longer periods of time than six months.

The policy need for these amendments followed a number of cases of unqualified people posing as registered health practitioners, performing procedures restricted to qualified and registered professionals over extended periods of time. The penalties available under the current provisions did not reflect the serious nature of the offences or the significant risk of harm to the public.

The primary goal of the National Law is to protect the wellbeing of the general public, particularly vulnerable people who seek treatment for medical and health conditions. In addition, there are already provisions in place to protect the privacy of individuals under investigation by AHPRA, and these will be retained. The disclosure of personal information to AHPRA and the relevant National Board under the current mandatory reporting obligations also will not change with the new provisions. AHPRA is the statutory authority responsible for administering the NRAS or the National Scheme, and provides support to the National Boards. AHPRA and the National Boards are bound by the rules of natural justice when dealing with any notifications or complaints, and must ensure that all their processes accord with procedural fairness and privacy provisions.

Part 10 of the *Health Practitioner Regulation National Law Act* (as in force in each state and territory) sets out the obligations for AHPRA and the National Boards regarding disclosure of information and privacy, and the application of the Commonwealth *Australian Information Commissioner Act 2010* and *Privacy Act 1988*. The *Health Practitioner Regulation National Law Regulations* provides more detail about the application and responsibilities regarding privacy and the disclosure of information, in particular Part 3.

In addition, the National Health Practitioner Ombudsman and Privacy Commissioner provides independent oversight of NRAS, and is required to achieve redress for individuals, including enabling people to make a complaint about administrative processes such as privacy concerns.

Thank you for bringing this matter to my attention.

Yours sincerely

Meegan Fitzharris MLA
Minister for Health and Wellbeing