

AMA Queensland Submission

Targeted consultation on how Ahpra and the National Boards propose to use the new power to issue public statements (warnings)

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AMA Queensland thanks Ahpra for the invitation to comment on the use of the public statement provisions in the National Law. We note, however, that the consultation is targeted and not open to the public. This is highly inappropriate for a law that has grave implications for practitioners right across the health sector and has attracted wide-spread condemnation. AMA Queensland urges Ahpra to undertake open, transparent consultation with the entire Australian community so all doctors, nurses, allied health and other professionals and patients can have their say about the use of these controversial provisions.

AMA Queensland reiterates its vehement opposition to the enactment and implementation of the public statements provisions. They represent a gross violation of the fundamental principle of natural justice and will cause irreparable damage to practitioners' reputations, careers and lives. This will drive many to reconsider their careers as health professionals in a time of critical workforce shortages.

Health professionals occupy a position of trust and must be held to the highest standards, including being accountable for any and all wrongdoing. For that reason, strong regulatory processes already exist to protect the community. Despite this and repeated requests, however, Australia's Health Ministers have refused to provide evidence demonstrating the new powers are warranted. Governments at all levels have also failed to adequately consider alternative means of achieving the associated policy intent.

As such, AMA Queensland calls for the immediate abandonment of all steps to implement the laws. We further submit that jurisdictions must ensure these unwarranted provisions are repealed before they can cause unnecessary harm.

It is, therefore, with great reluctance that AMA Queensland submits the below feedback concerning the use of the laws by Ahpra and the National Boards. Our input is given only in the interests of attempting to mitigate the grave threat posed by the provisions to all health professionals as far as, and if, possible. It in no way represents AMA Queensland's agreement to their enactment and use.

Threshold test

The provisions must only be used, if at all, in the most egregious cases where Ahpra and the National Boards have exhausted all other means of protecting the public. Whilst the consultation paper states the proposed threshold test is 'set at a high level' AMA Queensland is of the view it could afford greater safeguards and include, as a minimum, that the following must be established prior to the law being used:

- the practitioner and their alleged behaviour must pose a grave threat to the public;
- the chief executive must be of the reasonable belief that:
 - there is sufficient evidence available to Ahpra and/or the relevant National Board to substantiate the allegations; and
 - there is a high probability the practitioner will be found to have contravened a relevant provision of the National Law;
- Ahpra and/or the relevant National Board have issued an interim prohibition order concerning the practitioner; and
- there are no other means available to protect the public.

Despite the above suggestions, AMA Queensland maintains the view that regardless of the requirements included in any threshold test they will be wholly inadequate to sufficiently safeguard against the harms inherent in the law. The only effective means is by abandonment and legislative repeal.

Show cause process

The show cause process still appears to allow only one day for practitioners to appeal before the law is used. This is despite AMA Queensland repeatedly advising that this timeframe is patently inadequate. There is also an absence of sufficient information in the consultation paper concerning the appeals process and how practitioners can access it.

We also object to the use of email as the primary means of communication of notices to practitioners. It is outrageous to assume overworked health practitioners check their email each and every day. This must be amended to require direct contact with the practitioner before adequate notification is satisfied. Given the ramifications for practitioners from use of the provisions, this must be implemented as a mandatory notice requirement.

Revocation

As AMA Queensland has repeatedly advised, the revocation provisions for public statements are wholly inadequate and cannot remedy the harm caused by an inaccurate 'naming and shaming' of a practitioner. Unfounded allegations remain available, permanently, on the public record and cannot be effectively or practically removed. They will continue to harm the practitioner's reputation and life forever.

AMA Queensland submits that revocation of any public statement must, as a minimum, be accompanied by a formal, public apology in writing and published online along with an associated media release.

Ahpra and National Boards accountability

Ahpra and the National Boards must be held accountable for their decisions to use the provisions on each and every occurrence. A reporting process must be implemented that requires full explanation and justification to an independent body that is adequately resourced to conduct open, transparent evaluations of such decisions. This body must also be vested with a compensation scheme for practitioners who suffer harm, including reputational, financial, health and other damage as a result of unwarranted use of the provisions.

Case studies

The consultation paper states the powers 'will not be used commonly' and 'would more likely be used for serious matters involving unregistered people as opposed to currently registered practitioners'. AMA Queensland calls on Ahpra and the National Boards to publish the statistics that support this view, including factual, de-identified case studies and fictional examples.

Likewise, question five on page seven of the consultation paper states:

Are there ways we can explain how this new power may be used to avoid misunderstandings among practitioners and consumers?

AMA Queensland suggests Ahpra and/or the National Boards provide factual, de-identified case studies and fictional examples that demonstrate the type of situations in which Ahpra and/or the National Boards intend to invoke the laws. Practitioners must be able to understand the types of alleged breaches that Ahpra and/or the National Boards believe warrant the use of the provisions. Depending on the case studies and examples provided, this may help to allay some practitioner fears, although the passage of the legislation has highly alarmed the majority.

Additional submissions by the Australian Medical Association

In addition to the above feedback, AMA Queensland also supports consistent submissions made by our Federal body, the Australian Medical Association. Ahpra and the National Boards must also refer to it as part of this submission.