Queensland Law Society

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Office of the President

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Our ref: KB:H&D/OccD

Health, Environment and Innovation Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: [redacted]

Dear Committee Secretary,

Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024

Thank you for the opportunity to provide a submission to the Committee's inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024 (the 'Bill').

The Queensland Law Society (QLS) is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law and help protect the rights of individuals. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve access to justice.

QLS appreciates the opportunity to provide feedback on the Bill; however, due to the Christmas closure period, we have not been able to undertake an exhaustive review of the provisions and their potential impact. We have consulted with our Health and Disability Law Committee and Occupational Discipline Law Committee and make the following comments on the Bill.

The Bill amends the Health Practitioner Regulation National Law to require cancelled and disqualified practitioners to seek a reinstatement order from a responsible tribunal before applying to a National Board for re-registration. We express reservations about this change. The amendment will be a duplication of the current process in Queensland which will likely lead to delays and other issues of concern which we have outlined below. We do not consider it will achieve the stated objective of increased transparency.

As stated in the Explanatory Notes, following a period of disqualification, a practitioner can apply to the relevant National Board for re-registration. The Board then considers the application in the way provided for under part 7 of the National Law which includes an assessment of, among other things, whether the person is fit and proper to hold registration and can practise the profession competently and safely. This process will remain under the proposed amendments which means an order from QCAT will not give an automatic right of re-registration. There are several issues with the proposed new process including:

1. The parties to a Tribunal proceeding will be the National Board and the practitioner, which is confusing as, in addition to being a party to the Tribunal proceeding, the National Board will then consider the application for re-registration again and will do so notwithstanding what the Tribunal certificate states.

2. The Tribunal process does not appear materially different from the Board process insofar as both will include consideration by members of the practitioner's profession and both the Tribunal and the Board can impose conditions on practitioners. This essentially provides the Board with two opportunities to deal with the one set of issues, leading to a potential abuse of process and/or additional procedural burdens for the practitioner.

3. There will also be a degree of uncertainty surrounding the Tribunal's decision as the Board will be able to make a different determination. In addition, there will be a further barrier for a practitioner who has already completed their period of disqualification, which may result in an additional sanction not contemplated during the original disciplinary process.

4. Requiring practitioners to make an application for re-registration to QCAT will create additional work for the Tribunal. While the number of applications is unlikely to be significant, there will be an impact on the Tribunal's resources, which should be accommodated for by the Government. The Tribunal hearings will need to include two assessors from the profession. Their availability will impact how quickly a hearing can be arranged. When a practitioner is deregistered, their income is impacted and so any delay in hearing an application for re-registration is significant. Accordingly, the process needs to be facilitated as expeditiously as possible (which is necessarily impacted by available resources including room allocations and additional assessor hours).

5. Finally, we note that New South Wales is the only state that requires a tribunal order. Therefore, these amendments seek to achieve a national approach by requiring all other jurisdictions to change, which in our view, is not a pragmatic way to achieve consistency.

The commendable objective of the amendment is to provide greater transparency in decision making. Noting the above concerns, we do not consider this is best achieved by an additional QCAT process. The more prudent and practicable option would instead be for the Boards to publish their decisions on applications for re-registration. This would provide the same level of transparency achieved through imposing responsibility for the decision on the Tribunal.

Clause 21 – new section 225A

QLS is concerned by the construction of proposed new section 225A, and specifically subsection (3), which requires the National Board to make its own decision about whether sexual misconduct formed the basis for a Tribunal's finding of professional misconduct, regardless of whether the Tribunal's reasons for the decision expressly provide that sexual misconduct was a basis for the decision.

If a Tribunal has not expressly determined that sexual misconduct is a basis for its finding, the Board should not be required or permitted to make its own inference about the finding. Allowing

or requiring the Board to make this determination is not appropriate and undermines the authority of the Tribunal, which has heard all of the evidence in the proceedings.

The terms of the proposed s225A also suggest the Board is not bound by the Tribunal's decision. If the Tribunal has not expressly determined that sexual misconduct was a basis for the finding of misconduct, the Board should not be permitted to then draw its own inferences to conclude something other than what is expressly stated in the Tribunal's decision.

Significantly, the merits of the Board's decision about this issue are not able to be challenged by way of a merits review in the Tribunal. Instead, the practitioner will be forced to incur the time and expense of judicial review by a Court.

The proposed section 225B requires that a Board include a statement that the Tribunal decided that the person behaved in a way that constituted professional misconduct and 'that the professional misconduct included sexual misconduct". This statement may not be correct if the Board has merely inferred it from the Tribunal's decision.

We recommend these provisions be amended to remove the ability or requirement for a Board to draw inferences from a Tribunal decision that is then publicly recorded.

Meaning of "subject another person to detriment or reprisal" in new sections 237A

The proposed section 237A(1)(c), which is a new offence provision, provides that a person must not subject another person to detriment or reprisal because, or in the belief that, the other person has taken or intends to take protected action. We consider the phrase, "subject a person to detriment or reprisal" should be defined in the legislation.

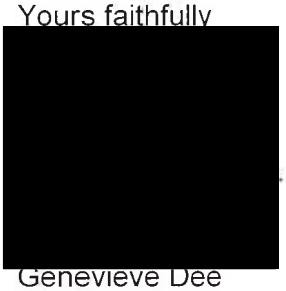
In our members' experience, doctors are often reluctant to treat a person whom they know has complained about them because it shows a breakdown in the therapeutic relationship (whether that breakdown is caused by the doctor, the patient, both or some other issue, is another question). Requiring the doctor to continue to treat someone in those circumstances is not in the patient or the practitioner's interests. We are concerned that such a broad phrase as "subject another person to detriment or reprisal" could be interpreted to include the practitioner refusing to treat the patient in those circumstances.

By way of example, a patient might attend upon a private GP and ask for a prescription for s8 medication. The GP declines the prescription because they consider it is not clinically appropriate (there may be concerns about drug use or other issues of addiction). The patient, unhappy with the decision to refuse to prescribe the medication, makes a complaint about the practitioner. Two months later, the patient wants to make another appointment with the practitioner. We query whether the amendments require the doctor to agree to treat the patient or otherwise be in breach of the section. Our members advise this type of scenario happens frequently. Clarity on this issue will be important.

The provision should be clarified to provide that declining to treat a patient who has complained about the practitioner would not, in and of itself, constitute subjecting another person to detriment or reprisal. If the practitioner declines to treat a patient who has complained about the practitioner, the practitioner should be required to take appropriate steps to transfer the patient's medical records to another practitioner if requested to do so and/or take reasonable steps to enable the patient to seek treatment elsewhere.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [redacted]

Yours faithfully



Genevieve Dee
President