

1 June 2022

Mr Aaron Harper MP
Chair
Health and Environment Committee
Queensland Parliament

Dear Chair

The Insurance Council of Australia¹ welcomes the opportunity to make a submission to the Inquiry into the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022.

1. The new paramount principle of maintaining public confidence....

The Bill would insert the following guiding principle for the Scheme that would be paramount with respect to other guiding principles:

(1)(b) public confidence in the safety of services provided by registered health practitioners and students. (Clause 34)

The effect of this principle, in terms of the administration of the National Law, is not clear. Public confidence is an inherently vague and uncertain concept. Further, the sources and measures of public confidence are unclear. Our concern is that while most would agree that public confidence is important to the Scheme, it will be open to a wide array of interpretations and moreover subject to inappropriate influences and if it were integrated into how decisions are made it could inappropriately influence the operation of the Scheme.

It is imperative that National Law decision makers and tribunals discharge their duties in an objective and impartial manner following careful consideration of the evidence. Decision makers and tribunals are bound by the legal requirement to provide natural justice to all parties involved in a matter.

The need to include this principle in the National Law has not been demonstrated. We note the principle derives from a policy direction issued by Australian Health Ministers rather than from one of the reviews that have informed the development of this Bill. Accordingly, the rationale for this amendment is not as well established as other amendments.

QLD Health advised the Committee that the reason for this amendment is to address concerns over the time taken to resolve consumer complaints. QLD Health explained to the Committee that:

...where the national scheme has to balance the rights of practitioners and the rights of health consumers, ministers have said that, where there needs to be a balancing, that balancing needs to come down in favour of consumers rather than practitioners...(Proof Transcript, page 4, 23 May 2022)

If this is in fact the intention it could have the unintended consequence of undermining the neutrality of decision making and therefore confidence in the Scheme, including among health practitioners. If realised this could potentially increase the number of applications for review / appeals of decisions.

In addition, QLD Health's seeming interpretation of primacy being given to consumer interests appears at odds with Australian Health Ministers' policy direction on this issue, which contemplates "*at least equal weight*" being given to the expectations of the public and the profession (Policy Direction 2019-1, p2, first clause 3). This apparent discrepancy is an illustration of the challenges involved in interpreting such broad, complex considerations. Where these uncertainties arise at the drafting stage, they are even more likely to emerge when decision-makers are trying to interpret them.

Further, the Bill contains a principle that addresses timeliness in context of other administrative objectives:

(2)(a) the scheme is to operate in a transparent, accountable, efficient, effective and fair way;
(Clause 34)

Principle (2)(a) appears to provide sufficient guidance on timely resolution of complaints and other responsibilities, by emphasising *efficient* operation of the scheme while balancing it against *transparency, accountability, effectiveness* and *fairness*. This principle appears to be both sufficient and comprehensive for this purpose and it is unclear what in addition would be done should the principle of public confidence be legislated.

Before legislating for such a principle, it would be prudent to consider first, what barriers exist to timely complaint resolution in the legislation and agencies. The ICA would therefore caution against legislating for this principle and suggest this element of the Bill be put aside pending further review, noting the Committee undertakes ongoing oversight of complaint handling in the Scheme.

2. Removing the prohibition on testimonials and introducing a new requirement to ensure testimonials are not false, misleading or deceptive

While we appreciate the intention of this amendment is to enable health practitioners to include reviews on booking and other sites associated with their practice, the new requirement to ensure these testimonials are not misleading and deceptive would require health practitioners to ensure the accuracy and balance of testimonials on sites under their control.

This will require health practitioners to establish compliance processes for vetting testimonials, which could include ongoing, real-time monitoring and the need for regular professional advice. For this reason, a phased introduction should be considered. This could involve deferring the proclamation of this amendment to give health practitioners sufficient time to prepare for the amendment. Once proclaimed, Ahpra should adopt a phased approach to enforcement by declaring its intention not to apply penalties for the first 12 months and to provide guidance on compliance during this period.

3. The new discretion not to refer a matter to a disciplinary tribunal on public interest grounds

The ICA support the proposed of the discretion not to refer a matter to a tribunal. However, the threshold for referral may, in practice, still be too low and therefore consideration should be given to accord greater discretion in deciding not to refer a matter to a tribunal.

The requirement for there to be no public interest in referral may prove a difficult criterion to satisfy. While the Bill provides guidance on matters that should be considered when determining the public interest in referral, these criteria do not provide guidance for example on the level of risk that should be tolerated.



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The development of guidelines dealing with the exercise of this discretion, in consultation with the insurers, would provide clarity and enable appropriate and effective use of this discretion.

We trust that our initial observations are of assistance. If you have any questions or comments in relation to our submission please contact Aparna Reddy, General Manager, Policy – Regulatory Affairs, on telephone: + 61 427 902 960 or email: areddy@insurancecouncil.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Hall'.

Andrew Hall

Executive Director and CEO

ⁱ The Insurance Council is the representative body of the general insurance industry in Australia and represents approximately 95% of private sector general insurers. As a foundational component of the Australian economy the general insurance industry employs approximately 60,000 people, generates gross written premium of \$59.2 billion per annum and on average pays out \$148.7 million in claims each working day (\$38.8 billion per year).