

Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022

Explanatory Notes

FOR

Amendments to be moved in consideration in detail by the Honourable Yvette D'Ath MP, Minister for Health and Ambulance Services and Leader of the House

The title of the Bill

Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022

Objectives of the Amendments

The Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022 (Bill) amends the Health Practitioner Regulation National Law (National Law), as agreed by Australian Health Ministers on 18 February 2022. The Bill also amends the *Health Ombudsman Act 2013* and the local modification provisions of the National Law to ensure the National Law amendments operate effectively in Queensland. Modifications to the National Law are contained in the *Health Practitioner Regulation National Law Act 2009*.

The amendments in the Bill strengthen public protection and increase public confidence in health services provided by practitioners registered under the National Registration and Accreditation Scheme for health professions (National Scheme). The amendments also implement reforms to improve governance and promote the efficient and effective operation of the National Scheme, while ensuring the scheme remains up to date and fit for purpose.

Clause 85 of the Bill amends section 133 of the National Law to, in part, remove a ban on the use of testimonials in health service advertising.

During the Health and Environment Committee's inquiry, stakeholders raised concerns about this proposed change to advertising restrictions, particularly in relation to advertisements about cosmetic surgery and procedures.

On 1 September 2022, the final report of the *Independent review of the regulation of medical practitioners who perform cosmetic surgery* was released. This report was commissioned by the Australian Health Practitioner Regulation Agency and the Medical Board of Australia. Some of the comments in the review mirror the concerns about testimonials raised during the Parliamentary Committee process.

On 2 September 2022, federal, state and territory Health Ministers agreed to progress legislative and non-legislative reforms to improve consumer protections relating to cosmetic surgery.¹

To ensure any amendments to advertising laws are consistent with these future cosmetic surgery actions and reforms, Health Ministers agreed to withdraw the amendments in the Bill relating to testimonials. The issue of patient testimonials will instead be reviewed as part of the wider measures to improve safety in the cosmetic sector.

Achievement of the Objectives

The amendments omit clause 85(1) from the Bill, which would have omitted section 133(1)(c) of the National Law. This will have the effect of withdrawing an amendment to remove the National Law's ban on using testimonials in health service advertising.

As a consequence of this change, the amendments will also:

- omit clause 85(4) of the Bill, which would have inserted a definition of *advertise* that includes use of testimonials; and
- update the commencement provision at clause 2 to omit reference to the commencement of clauses 85(1) and (4).

Alternative Ways of Achieving Policy Objectives

There are no alternative ways of achieving the policy objectives.

Estimated Cost for Government Implementation

There are no additional costs for the removal of the amendments to the National Law relating to testimonials.

Consistency with Fundamental Legislative Principles

The amendments are consistent with fundamental legislative principles.

¹ Health Ministers' Meeting (HMM) Statement on cosmetic surgery (2 Sept 2022), accessible at <https://www.health.gov.au/resources/publications/hmm-statement-on-cosmetic-surgery-2-september-2022>.

Consultation

Consultation on the Bill began in July 2018 with the release of a consultation paper, *Regulation of Australia's health professions: keeping the National Law up to date and fit for purpose*. In addition to the consultation paper, eight consultation forums were held across all Australian states and territories. Approximately 300 people attended these forums, with representation from professional associations, specialist colleges, regulators, medical indemnity insurers, practitioners, unions, health complaint entities, research institutions, public entities and health consumers. To ensure the perspectives of consumers were adequately represented, additional targeted consultation was undertaken with organisations and individuals representing healthcare consumers.

Targeted consultation on a consultation draft of the Bill was then undertaken between 26 February 2021 and 27 April 2021. Consulted stakeholders included national and state regulators, professional associations, professional indemnity insurers, the National Health Practitioner Ombudsman, medical colleges, patient safety bodies and health consumer bodies.

Views expressed during consultation and the Parliamentary Committee's inquiry were mixed on the issue of removing the ban on testimonials in health service advertising. Concerns about the potential misuse of testimonials in the cosmetic sector were expressed by several stakeholders and interested individuals.

Further consultation on advertising restrictions will occur in light of future proposed reforms to improve protections relating to cosmetic surgery and procedures.

Consistency with legislation of other jurisdictions

The amendments relate to provisions of the National Law, which applies in all participating jurisdictions.

NOTES ON PROVISIONS

Amendment 1

Amendment 1 omits references to sections '85(1) and 85(4)' from clause 2 of the Bill, which sets out the commencement of the Bill's provisions. Clauses 85(1) and (4) of the Bill are omitted by amendments 2 and 3.

Amendment 2

Amendment 2 omits clause 85(1) of the Bill which amended section 133 of the National Law. Section 133 will be reviewed in the context of future planned reforms relating to the cosmetic surgery sector.

Amendment 3

Amendment 3 omits clause 85(4) of the Bill. This amendment is consequential to amendment 2.