

# The Medical Journal of Australia • MJA

# MEDIA RELEASE

## **QUALIFIED PRIVILEGE LEGISLATION: TIME FOR A REVIEW**

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A REVIEW of qualified privilege legislation may be warranted to maintain the balance between doctors' professional interests and the public interest, according to the authors of a Perspective published online today by the Medical Journal of Australia.

Led by Associate Professor Susannah Ahern, Head of the Registry Science and Research Unit at Monash University in Melbourne, the authors wrote that since 1992 qualified privilege legislation in Australia has allowed health professionals to have "open and frank discussions ... participating in the peer review of clinical cases".

Patient health-related datasets are protected by national and state-based privacy laws that safeguard identified patient information, but these data may be accessed by third parties in accordance with the law -- by statutory bodies such as the Australian Health Practitioner Regulatory Agency, or by jurisdictional health complaints commissions, and in medico-legal proceedings.

The Bawa-Garba case in the UK has put qualified privilege in the spotlight. Dr Bawa-Garba was a paediatrics registrar who was struck off the medical register following the death of a 6-year-old boy with Down Syndrome who was under her care in the Emergency Department of Leicester Royal Infirmary. She has recently been reinstated.

"While Bawa-Garba's personal reflection regarding the death ... documented as part of her training requirement by the Royal College of Physicians, was not made available in court, it has raised the issue of statutory protection of such documentation," wrote Ahern and colleagues.

"In Australia, the Royal Australasian College of Physicians Professional Qualities Reflection is currently covered by qualified privilege and offers reassurance that Australian physician trainees' personal reflections that may contain identified patient information are not accessible for disclosure by third parties.

"Nevertheless, case law in Australia and the UK still allows confidentiality (as a matter of common law), alongside privacy (the overarching Privacy Act 1988 and state, territory or other information privacy statutes) to be overridden in the public interest," they said.

"The role of qualified privilege at all levels warrants review, particularly for national qualified assurance and improvement activities. In particular, there should be an opportunity to consider whether the bodies that auspice large qualified improvement activities should have the ability to report or disclose information relating to clinician performance of substantial concern.

"The roles of various bodies in such a reporting process need to be determined.

"Ensuring an appropriate balance between these potentially competing professional and public interests through the further development and consideration of such models is critical and in the best interests of the medical profession and the broader community," they concluded.

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