Speech by

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HEALTH PRACTITIONER REGISTRATION BOARDS (ADMINISTRATION) BILL
HEALTH PRACTITIONERS (PROFESSIONAL STANDARDS) BILL

Ms BOYLE (Cairns—ALP) (2.59 p.m.): I am pleased to support the Health Practitioners (Professional Standards) Bill 1999. I will address some matters in the Bill that relate particularly to the health of health practitioners and to our management of health practitioners who become impaired. Long gone are the days when doctors were treated as though they were slightly above ordinary mortals, when we accepted a doctor's wisdom without question, when we did not consider for a moment whether or not we should get a second opinion or whether or not the doctor was in a fit and proper state to offer service. These days, consumers in all fields, including in their dealings with doctors and other health practitioners, have much higher expectations and are much more willing to complain. That is probably the reason for an increase in complaints, rather than there being more bad practice. These days, consumers not only expect high standards of service but will question and complain when they feel it is appropriate.

Additionally, health practitioners and particularly doctors experience significant stress in their work. Of course, they face similar personal stresses to other people in the community. In common with the community at large, health workers are not immune to the development of psychiatric, psychosocial or physical illnesses and addictions. Because of the privileges conferred on some types of health practitioners, they are more vulnerable in some ways. For example, they have easier access to drugs of addiction than members of the general community. The problems associated with illness and addiction among health-care practitioners, in particular with medical practitioners, are well documented. It is estimated that up to 7% or 8% of doctors suffer from significant alcohol abuse and perhaps 1% from severe narcotic abuse. A range of studies of suicide rates indicates that depression is a significant problem for the medical profession.

The Medical Board of Queensland is currently managing about 126 impaired doctors. There are more than 10,000 registered doctors in total. Over 50% of the doctors on the health assessment and monitoring program have drug dependency problems, 6% are alcohol dependent and about one-quarter have a mental illness. An impaired health worker is a potential source of danger to the patients under his or her care. There is also increasing recognition that a doctor in trouble in one part of his or her professional life is quite likely to be in trouble in other areas, for example, involved in overservicing or irregular billing practices.

Many registration authorities around the world have recognised the need to implement programs to assist and monitor practitioners who are impaired. These programs aim to restore and maintain the good health of practitioners and to ensure that impairments do not cause incompetence and poor clinical judgment; in effect, that they do not endanger patients' safety. Five years ago the Medical Board of Queensland implemented a program for impaired medical practitioners in Queensland. The program recognises that sometimes the quality of medical practice may suffer if a doctor is unwell and that it is not always appropriate to manage impaired practitioners through a disciplinary process. The Medical Board's experience in this area has been important in informing the development of this legislation.

There is no doubt that the medical profession is leading the way in respect of the management of impaired practitioners. Legislation in New South Wales and Victoria contains detailed provisions dealing with impaired registrants. These are considered to be among the most successful provisions of the legislation. The valuable work of Doctors Health Advisory Services in managing impaired

practitioners needs also to be acknowledged. These services are separate from the boards and are run by the professions. It is anticipated that they will continue to have an important role within the professions, providing an alternative or complementary service to that offered by the boards. Of course, it is not just medical practitioners who may become impaired and require assistance at some time in their professional career. Members of all the registered health professions are potentially susceptible to illness or addiction and, accordingly, all registration authorities should be in a position to monitor, counsel and assist such registrants while still ensuring the protection of the public from harm. This then is the rationale behind the provisions of the Health Practitioners (Professional Standards) Act 1999, which establishes a uniform approach to dealing with impaired practitioners from all the registered health professions.

To this date, there have been some problems with existing legislative arrangements. The approach to impairment is not uniform across the current health practitioner registration Acts. The legislation tends to focus on either "medical fitness" or "mental illness", rather than the broader concept of impairment. The Medical Act is the only health practitioner registration Act that currently defines impairment. Also, the statutory processes for dealing with questions of fitness to practise also vary. The Dental Act 1971 and the Optometrists Act 1974 have no provisions to deal with medical fitness. The effect of the current provisions in the non-medical registration Acts is to prevent a focus on rehabilitation. Existing Acts do not provide the opportunity for an informal and collaborative approach to management of health issues.

Although the Health Assessment and Monitoring Program operated by the Medical Board of Queensland is recognised as one of the best in the country, its absolute effectiveness is hamstrung by the provisions of the Medical Act as it stands currently. In particular, the existing scheme relies upon a practitioner voluntarily submitting to a health assessment and committing to an agreed monitoring program. The Act is unclear as to what action the board may take in circumstances where a practitioner does not comply with an agreed program. Furthermore, the Act is silent as to the powers that the board has to impose a monitoring program where a practitioner refuses to cooperate with attempts of the health assessment committee to have the practitioner's health assessed and to implement a monitoring program. In cases where the impaired practitioner does not cooperate with the efforts of the board, the only formal powers available to the Medical Board to determine whether a practitioner is impaired are the inquiry powers contained in the Medical Act. This is often intimidating, as the ultimate purpose of these powers is to determine whether the practitioner should remain registered.

In recognition that impaired registrants are ill and should be assessed and managed in a humane way that nonetheless protects the public, the Health Practitioners (Professional Standards) Bill sets out separate processes for the management of impaired registrants. The Bill defines an impaired registrant as one who—

> "... has a physical or mental impairment, disability, condition or disorder that detrimentally affects, or is likely to detrimentally affect, (their) physical or mental capacity to perform (their) profession and includes substance abuse or dependence."

The Bill recognises the need for a scheme similar to that that has been operated by some Australian Medical Boards to assist all registered health practitioners. The Bill builds on and refines the Medical Act 1939 model, remedying its deficiencies by clarifying the powers that may be exercised by a board in dealing with impaired practitioners. The Bill provides all boards with powers to act promptly when necessary to protect the public while also supporting a rehabilitative, non-coercive and non-punitive process. It provides for informality and cooperation in the initial stages and recognises that impaired practitioners have health rights. The process established by the Bill will allow boards to receive information from any source that indicates that there may be reason to suspect that a registrant is not fit to practise due to impairment. Boards will have the discretion of whether or not to act on information they receive, including the power to suspend a registrant immediately where extraordinary circumstances warrant such action. An example of an extraordinary circumstance is where suspension is necessary in order to protect the life, health or safety of patients.

The Bill provides an alternative to the disciplinary process to manage registrants who are impaired. A two-stage process is available under the Bill to deal with impaired registrants. The first stage involves the board negotiating an agreement informally with the registrant to manage the impairment. An approach that allows for informality in the initial stages has a number of benefits. It recognises that the impaired practitioner has become a patient and needs help. It encourages and supports them to seek help. It is also more likely to facilitate registrants' coming forward with concerns about fellow practitioners. Finally, informality in the initial stages is also significantly less costly.

Where the registrant is unwilling to cooperate with the board or an agreement cannot be reached, the second stage is triggered. The key feature of the second stage is the establishment of a health assessment committee. The health assessment committee has coercive powers to assess the nature and extent of any impairment suffered by the registrant and advise the board as to any conditions that should be imposed on the registrant's registration to protect the public. Health

assessment committees are not investigators and they are not commissions of inquiry. They are expert bodies established for the sole purpose of assessing a registrant's health. Where additional coercive powers are required, such as the power to enter premises or seize things, the board would need to utilise the investigation part of the Bill.

The Scrutiny of Legislation Committee has queried whether the powers to require a registrant to undergo a health assessment have sufficient regard to the rights and liberties of the registrant. In particular, the committee raises the registrant's right to privacy. The Government is satisfied that the provisions are justified, given the limited circumstances under which they may be used and the tightly cast duty of confidentiality under clause 392.

In order to ensure that the best health assessors are available to the board, their reports are shielded under the Bill from use in legal proceedings, except disciplinary proceedings. There are interstate precedents for this approach, and the Government is concerned that without it it will be difficult to attract suitably qualified assessors. The statutory shield does not adversely impact on the rights of registrants or complainants, because there is no impediment to another report being privately commissioned for use in litigation. An important innovation under the Bill is the requirement for all matters that may, if substantiated, provide grounds for deregistration or suspension of a registrant's registration to be referred to the tribunal for disciplinary proceedings.

The impairment provisions do not prevent boards from using the investigative and disciplinary provisions of the Bill to deal with impaired registrants if this is considered more appropriate. It is intended that, where a registrant's impairment manifests in conduct which gives rise to serious complaints from users or their representatives, the investigative and disciplinary provisions of the legislation will be utilised to protect the public.

In order to protect the privacy of the registrant, the impairment process is conducted in private and the complainant is not advised of the details of any conditions or undertakings entered into, except where they are recorded on a publicly accessible register, although in the case of matters referred to the tribunal the tribunal has the discretion to open the proceedings to the public where it is in the public interest to do so. The details of any conditions or undertakings pertaining to impaired registrants are generally not recorded on the publicly accessible register, but a board does have a discretion to do so when it is in the interests of users of the registrant's services or of the community generally.

The Bill strikes a careful balance between encouraging self or peer reporting and public accountability. It is important that the impairment processes under the legislation are subjected to external scrutiny, especially where the processes are triggered by consumer complaints or complaints to the Health Rights Commission. The Bill requires the board to provide the commissioner with a notice of the outcome of impairment processes which have been triggered by certain types of complaints. This is the minimum position acceptable to the Government in respect of this issue.

While it may appear that there is no external scrutiny of the impairments process in respect of third party complaints and self-referrals, this is acceptable because all serious matters will be referred to the tribunal, which is totally independent. The suggestion that notification of this information to the commissioner will compromise registrant confidentially is rejected, as the commissioner and the staff of the commission are subject to a very strict duty of confidentiality. The Bill will not stop registrants' self-referrals to or the valuable activities of the Doctors Health Advisory Service.

There are several elements of the Bill that relate to the protection of consumers, to their participation in these processes and to their scrutiny of the proper management of impaired practitioners or such allegations. I would like to draw these to the attention of honourable members. Each of the adjudicative bodies, boards, professional conduct review panels and the Health Practitioners Tribunal will have input from consumer or public members. Consumer membership of the board, which has responsibility for initial decisions about impaired practitioners, will be increased from one to two.

If impairment is serious and there is an imminent risk, the board has powers to immediately suspend or impose conditions on registration. The board must then immediately either investigate the matter or refer it to the Health Practitioners Tribunal. When a practitioner is immediately suspended or has conditions placed on their registration because of an imminent risk, this must be recorded on the register which is accessible to the public.

The board has powers to require a registrant to undergo a health assessment. If a registrant does not cooperate, the board may refer the matter to a health assessment committee or the Health Practitioners Tribunal. The tribunal has the power to suspend or deregister a practitioner.

If the board decides that a practitioner is impaired, it may enter an undertaking with the practitioner, investigate the practitioner or refer to a professional conduct review panel or the Health Practitioners Tribunal. An undertaking could include, for example, practising only under supervision, attending counselling or rehabilitation, attending health assessments, or undergoing random urine drug

screening, blood tests or hair tests. If the board believes that it is in the public interest to do so, the details of the undertaking may be recorded in the register.

There will be independent scrutiny of the board's decisions about impairment, including investigations. The Bill requires the board to inform the Health Rights Commissioner and the complainant of its decisions about impaired practitioners. The board must also keep the commissioner informed of progress on its investigations and must consider the commissioner's comments. Further, the commissioner may report to the Minister about investigations conducted by the board.

I am satisfied indeed that these are provisions which reflect our concern for the health of practitioners as well as our concern for high quality standards of provision to the clients, the consumers of Queensland. I am convinced that the democratic processes—the opportunity for participation by the consumers and scrutiny of decisions related to impaired practitioners—more than satisfy the appropriate standards.

In conclusion, society makes a considerable investment in the training of health practitioners. It is in everyone's interests, therefore, for impaired practitioners to be rehabilitated and assisted to return to work as soon as possible. This piece of legislation before the House will allow Queensland to become a leading light in the management of impaired practitioners. The impairment provisions included in the Health Practitioner (Professional Standards) Act 1999 will allow Queensland to set the standard in Australia for the management of impaired practitioners.