Speech By

Hon. Dr Steven Miles

MEMBER FOR MURRUMBA

Record of Proceedings, 31 October 2018

HEALTH PRACTITIONER REGULATION NATIONAL LAW AND OTHER LEGISLATION AMENDMENT BILL

Introduction

Hon. SJ MILES (Murrumba—ALP) (Minister for Health and Minister for Ambulance Services) (11.36 am): I present a bill for an act to amend the Ambulance Service Act 1991, the Health Practitioner Regulation National Law Act 2009 and the Hospital and Health Boards Act 2011 for particular purposes. I table the bill and explanatory notes. I nominate the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee to consider the bill.

Tabled paper: Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2018 [1769].

Tabled paper: Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2018, explanatory notes [1770].

The Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2018 will make two priority reforms to the health practitioner regulation national law following an agreement by all Australian health ministers. The bill will amend mandatory reporting requirements for treating health practitioners following an extensive consultation process. These changes will encourage registered health practitioners to have confidence to seek treatment for their own health conditions. The bill will also strengthen patient and consumer protections under the national law by increasing the maximum penalties for persons who falsely hold themselves out as registered in a health profession or who use restricted professional titles.

The national law commenced operation in 2010 following the agreement of the Council of Australian Governments to establish a national registration and accreditation scheme for the health professions. The national law establishes 15 national boards that register and regulate health practitioners from 16 regulated health professions, including doctors, nurses, midwives, dentists, pharmacists and psychologists. Any changes to the national law must be agreed by health ministers of all states, territories and the Commonwealth at the COAG Health Council before they are introduced into the Queensland parliament as the host jurisdiction for the national law.

On 12 October 2018, the COAG Health Council approved amendments to the national law to implement these two priority reforms. These issues have been considered extensively by health ministers from the Commonwealth, states and territories over the past 18 months. This bill represents the culmination of extensive cooperation and consultation by ministers and officials in all jurisdictions on these matters.

Turning to the amendments to reform mandatory reporting by treating practitioners under the national law, mandatory reporting has been an important aspect of the national law since its inception in 2010. The mandatory reporting regime protects the public by ensuring AHPRA and the national boards are notified about registered health practitioners who may be placing the public at risk of harm.

In Queensland, mandatory reports are made to the Queensland Health Ombudsman and dealt with under Queensland's co-regulatory arrangements for handling complaints about health practitioners. The mandatory reporting provisions in the national law require employers and registered health practitioners to report certain conduct of other registered health practitioners. The conduct that must be reported includes intoxication at work, sexual misconduct in connection with the practice of a health profession, placing the public at risk of substantial harm due to an impairment or health condition and placing the public at risk of harm through a significant departure from accepted professional standards.

Registered health practitioners are also required to make mandatory reports about a student who is registered under the national law if the student has a health concern or impairment that may place the public at substantial risk of harm when the student is undertaking clinical training.

Some stakeholders have expressed concerns that these requirements may discourage practitioners who are unwell from seeking treatment because they are concerned that their treating practitioner will be required to make a mandatory report, particularly where a patient-practitioner is seeking help for a mental health issue or drug and alcohol problem. To address these concerns, the bill makes several significant changes to the way the mandatory reporting requirements apply to treating practitioners under the national law.

The bill establishes a higher threshold for treating practitioners to make a mandatory report about a practitioner-patient's impairment, intoxication or practice outside of standards. The threshold only requires reporting if there is a substantial risk of harm to the public.

The bill includes guidance about the factors a treating practitioner may consider in deciding whether a practitioner-patient's impairment would meet the threshold of substantial risk of harm. The legislation makes clear that a treating practitioner may consider matters such as the nature, extent and severity of the impairment; whether the practitioner-patient is taking steps, or is willing to take steps, to manage their impairment; and whether the impairment can be managed through appropriate treatment. This sends a clear message to practitioners and students that, if they are engaged in treatment and are willing to take steps to address their impairment, a treating practitioner is not required to make a mandatory report.

The legislation requires a treating practitioner to use their professional judgement and expertise in considering whether an impairment is being managed appropriately to mitigate risks to the public. Mandatory reporting is only required in cases that meet the higher threshold of reporting—if public safety would be in jeopardy.

The legislation also provides a framework for treating practitioners to make a holistic assessment of risk of a practitioner-patient's conduct. This enables a treating practitioner to look at conduct related to impairment, intoxication and practice outside of standards against the same threshold for reporting and consider whether mandatory reporting is required. Again, the treating practitioner must use their experience and professional judgement.

While it is important to give registered health practitioners greater confidence to seek treatment for their health issues, this must be done in a way that does not compromise the safety of patients or the public. For this reason, the bill retains mandatory reporting requirements for treating practitioners in circumstances where the public may be placed at substantial risk of harm.

The bill also strengthens requirements for reporting of sexual misconduct, including a new requirement to report risks of future sexual misconduct. This will ensure that, if a treating practitioner becomes aware a practitioner-patient is, for example, grooming a child or a patient, they would be required to report the matter to the regulator.

Queensland has already modified the national law as it applies in Queensland now to include a partial exemption from mandatory reporting by treating practitioners. The current Queensland provision is similar to the approach in the bill, as it also uses a reporting threshold of substantial risk of harm. However, to overcome some confusion about the application of the current Queensland provision and to ensure national consistency, Queensland has agreed to adopt the national law approach to mandatory reporting by treating practitioners. This means that all elements of the mandatory reporting reforms in the bill will apply in Queensland, including the guidance factors included in the national law provisions. To achieve this outcome, the bill removes Queensland's current modification about this issue.

The amendments will be supported by guidance and education materials for health practitioners. Subject to the bill being passed, Commonwealth, state and territory health ministers have asked the Australian Health Practitioner Regulation Agency to develop an education campaign so that registered

health practitioners are aware of the new requirements and the opportunities for practitioners to seek treatment for their health issues. The national boards and the Australian Health Practitioner Regulation Agency will also revise their current guidelines related to mandatory reporting to provide guidance to practitioners. These materials will be developed in consultation with stakeholders.

Turning to the amendments to increase penalties under the national law, these reforms will strengthen patient and consumer protections under the national law by increasing the maximum penalties for persons who falsely hold themselves out as registered in a health profession, or who use restricted professional titles. The bill also introduces an imprisonment term of up to three years, which could be sought in prosecutions for the most serious offences.

These reforms respond to high-profile cases in recent years in which individuals have held themselves out as registered health practitioners when they are not. This conduct already constitutes an offence under the national law. However, it has become apparent that the current penalties are inadequate compared to the potential for significant harm involved in offences of this type, especially harm to members of the public who believe a person is registered. This conduct involves a significant breach of trust, especially given the high esteem in which the community holds registered health practitioners and the very private and personal nature of seeking health care. In several prosecutions for these offences, magistrates have expressed the view that they would have imposed an imprisonment term if one were available.

The bill will double the maximum monetary penalties for holding out and related offences to $60,000 for an individual and, where relevant, $120,000 for a body corporate. The bill also introduces an imprisonment term of up to three years for these offences.

The bill also contains minor amendments as a consequence of the reforms. In particular, the bill modifies the application of the national law in Queensland to ensure the reforms operate appropriately under Queensland's co-regulatory model for dealing with health complaints.

The changes to the national law in the bill are supported by all Australian health ministers. They reflect the policy positions approved by governments in each state and territory, except Western Australia, which has notified health ministers it will retain its current arrangements in relation to mandatory reporting. If this bill is passed by the Queensland parliament, the changes to the national law will apply automatically in other jurisdictions, except for South Australia, which must make regulations to adopt the changes, and Western Australia, which enacts its own separate legislation. I am proud of Queensland's important role as the host jurisdiction for the Health Practitioner Regulation National Law and for the responsibility of progressing these important changes on behalf of health ministers across the country.

This bill demonstrates an ongoing commitment to protecting the health and safety of the public and a focus on professional and competent practice by health professionals. It will enable health practitioners to have confidence to seek help when they need treatment for their own health conditions. This is vital not only for their own wellbeing but also to ensure the public receives safe health care.

The bill is the result of a collaborative effort by all states and territories and the Commonwealth. I take this opportunity to thank my fellow members of the COAG Health Council for the spirit of collaboration in which they worked to develop these important reforms. I also thank the stakeholders who participated in the two rounds of consultation on the mandatory reporting reforms in the bill. There will be ongoing opportunities for stakeholders to be involved in the development of guidelines and education programs. I strongly encourage stakeholders to get involved in those processes.

Finally, I take this opportunity to thank our dedicated health professionals who go to work every day in our hospitals, clinics and local practices. They provide extraordinary service to the people of Queensland in our remote communities, small towns and thriving communities, providing quality care and life-changing treatment. I commend the bill to the House.

First Reading

Hon. SJ MILES (Murrumba—ALP) (Minister for Health and Minister for Ambulance Services) (11.46 am): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

Madam DEPUTY SPEAKER (Ms McMillan): In accordance with standing order 131, the bill is now referred to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee.