Speech By

# Aaron Harper

## MEMBER FOR THURINGOWA

Record of Proceedings, 14 February 2019

## HEALTH PRACTITIONER REGULATION NATIONAL LAW AND OTHER LEGISLATION AMENDMENT BILL

**Mr HARPER** (Thuringowa—ALP) (5.40 pm): I rise to support the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2018. This bill was referred to our health committee on 31 October 2018. The bill proposes to raise the mandatory reporting threshold for treating practitioners. A treating practitioner will only be required to make a mandatory report if their practitioner patient's conduct involving intoxication, impairment or substandard practice places the public at substantial risk of harm. These reforms are aimed at ensuring health practitioners seek treatment for health conditions—such as a mental health issue or an alcohol or drug problem—without fear of being subject to mandatory reporting.

On 6 November 2018 the committee invited stakeholders and subscribers to make written submissions on the bill. The committee received a public briefing about the bill from the Department of Health on 12 November 2018. The bill seeks to amend the health practitioner regulation national law as agreed by the Council of Australian Governments Health Council on 12 October 2018. The bill will introduce reforms to mandatory reporting by treating practitioners to ensure health practitioners have confidence to seek treatment for health conditions, while protecting the public from harm. The bill will double the penalties for holding out and related offences under the national law from $30,000 to $60,000 and introduce a maximum imprisonment term of three years for the most serious offences.

I think it is important to note that Queensland, as the host jurisdiction, has a very important role to play in the passing of this bill. If the bill is passed, the amendments would automatically apply in all states and territories except Western Australia, which must pass corresponding legislation. It is important to share with members that this began with a national discussion paper in 2017. It invited submitter comments from key stakeholders—such as the AMA, the Royal Australian College of General Practitioners and AHPRA—on four options for reforms to mandatory reporting by treating practitioners.

Issues raised included concerns about patient confidentiality and requirements to report past conduct and a lack of national consistency. Half of the submissions were supportive of a model that would continue to require mandatory reporting by treating practitioners for intoxication, practice outside of professional standards and sexual misconduct. In Queensland, stakeholders included AMAQ, the QNMU, Health Consumers Queensland, AHPRA, MIGA and others. Twenty-nine submissions were received before the closing date of 26 November 2018.

We must remember that the stated objective of the mandatory reporting reforms is to ensure health practitioners have confidence to seek treatment for their health conditions while protecting the public from harm. A number of submitters expressed some concern over these changes, such as the AMAQ, particularly around the threshold of reporting in relation to the likelihood of harm or the level of harm. Dr Michael Clements of the RACGP saw the professional and ethical obligations of doctors as sufficient—like the Western Australian model—for the reporting of practitioner patients by treating practitioners. He remarked—

We do not need mandatory reporting. If we have a patient in front of us who we genuinely believe is a risk to the public, we already notify under the voluntary rules.

The Royal Australian and New Zealand College of Psychiatrists suggested the 'exceedingly nuanced language' in the bill would not give health practitioners the confidence to seek help. They stated—

The RANZCP is concerned that the proposed reform may not improve the confidence of health practitioners in the legal protections afforded to them to seek help for an 'impairment'.

In contrast, Mr Martin Fletcher, the CEO of AHPRA, suggested there is a misunderstanding in the health profession about what mandatory reporting means and what it requires practitioners to do. He went on to say—

There are crippling fears about what regulators will do when they get a mandatory report and there are distressing stories of doctors and other health practitioners being afraid to seek the care they need because of fear of losing their registration. This is despite the fact that no registered health practitioner in the jurisdictions in which we administer the national law has had their registration cancelled by a tribunal as a result of a mandatory report about an impairment.

Mr Fletcher also made the point that in less than one per cent of notifications, both mandatory and voluntary, for all grounds—sexual misconduct, intoxication, impairment and substandard practice—do registered health practitioners have their registration cancelled. Importantly, no registered health practitioner has had their registration cancelled as a result of a mandatory report related to impairment.

This bill sends a clear signal that treating practitioners are not required to automatically make a mandatory report if a practitioner patient has a health condition. The bill allows treating practitioners to use their professional judgement and expertise to consider the nature of the practitioner patient's impairment and the proposed treatment plan. The proposed reforms make it clear that not every impairment needs to be reported. A mandatory report is only required if the practitioner patient's impairment exceeds the threshold of substantial risk of harm.

The committee expects that if the bill is passed AHPRA and the national boards will provide further guidance on the higher threshold for reporting in guidelines to be developed. The minister spoke about how the health professional will be educated through the programs, particularly when he responded to our second recommendation. The committee considers that the substantial risk of harm test for mandatory reporting by treating practitioners strikes the right balance between the health of the practitioner patient and the health of the broader community.

The bill ensures health practitioners can seek help for health conditions by raising the mandatory reporting threshold for treating practitioners, while at the same time maintaining strong protections for health consumers. It does this by retaining mandatory reporting where a treating practitioner reasonably believes the public is at substantial risk of harm.

I want to turn to the member for Mudgeeraba's comments about the proposed amendments they distributed to the House earlier. They want to amend the reporting requirements to align with the Western Australian model that there is no mandatory reporting obligation for a treating practitioner of another registered health practitioner unless the issue involves sexual misconduct. I find it interesting that the member for Mudgeeraba, who is a former health professional who worked for many, many years in nursing, would actually support mandatory reporting for just sexual misconduct. We cannot have health practitioners in this state with impairments, intoxication, drug addiction or any other particular issues treating patients. I agree with the member for Mudgeeraba that patient safety must come first.

I turn to COAG's consideration of the Western Australian model—the lite model—at its meetings in November 2017 and April 2018. Queensland Health advised the committee that health ministers decided not to adopt the Western Australian model. The COAG Health Council communique issued on 13 April 2018 stated—

... Ministers agreed unanimously to take steps to protect patients and strengthen the law to remove barriers for registered health professionals to seek appropriate treatment for impairments including mental health.

Ministers agreed to a nationally consistent approach to mandatory reporting which will be drafted and proposes exemptions from the reporting of notifiable conduct by treating practitioners—

if the treating practitioner considered it will not place the public at substantial risk of harm—

(noting Western Australia's current arrangements—

allow for the reporting of only sexual misconduct. It goes on—

The legislation will include strong protection for patients and will remove barriers for registered health professionals to seek appropriate treatment. The legislation will specifically include a requirement to report past, present and the risk of future sexual misconduct and a requirement to report current and the risk of future instances of intoxication at work and practice outside of accepted standards.

As a committee, we listened to the stakeholders. We believe that the recommendations we proposed in the report strike the right balance. They protect both the health practitioners and health consumers in Queensland. I commend the bill to the House.