Speech By

Laura Gerber

MEMBER FOR CURRUMBIN

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HEALTH PRACTITIONER REGULATION NATIONAL LAW AND OTHER LEGISLATION AMENDMENT BILL

Mrs GERBER (Currumbin—LNP) (12.26 pm): Our local nurses, midwives, chiropractors, dentists, pharmacists, optometrists, physiotherapists, psychologists and doctors are just some of the health practitioners affected by this bill who care for our community day in and day out. Their work plays a central role in improving access and quality health care in our community.

I want to take this opportunity to sincerely thank every single member of our hardworking health workforce for their unwavering service to our community, with the strain they have worked under in recent years and the significant challenges they have faced, particularly the health workers in my border community who during border closures were locked out and had to fight to be considered essential and then battled the border closures every single day just to be able to serve our community. The resilience and dedication they have shown is incredible.

All of the difficulties you have faced in these past years you have taken in your stride, and I am immensely grateful for all the work you have done. My LNP colleagues and I know that you have been crying out for more support. The Queensland Health system is in crisis. Just last month ambulance ramping hit 45 per cent across the state.

Mr KELLY: Mr Deputy Speaker, I rise to a point of order on relevance.

Mr DEPUTY SPEAKER (Mr Krause): I will seek some advice. Member for Currumbin, you have been broadly relevant to the bill. Other members have spoken about the issues you have been speaking about. However, I advise you to come back to the long title of the bill as much as you possibly can.

Mrs GERBER: To our overworked doctors, nurses and paramedics who are doing their absolute best to hold this broken system together: we hear you, we see you, we respect you and we admire you.

This bill amends the Health Practitioner Regulation National Law, which is the national scheme that ensures that only health practitioners who are suitably trained and qualified to practice in a competent and ethical manner are registered and it allows for their registration to be recognised anywhere in Australia.

Given the important work that health practitioners do and the crucial role they play in upholding patient safety, it is incredibly important that health practitioners are held to the highest standards. They must be beyond reproach. This is vital to ensuring that Queenslanders have complete confidence in the health practitioners who are working in our community. For the most part our health practitioners do their jobs to the best of their abilities, but there is a very small minority of health workers who choose to do the wrong thing from time to time. This is where the regulator steps in. In Queensland we have adopted a co-regulatory model of dealing with notifications about registered health practitioners.

Mrs GERBER (Currumbin—LNP) (2.00 pm), continuing: Queensland complaints against a registered health practitioner in terms of their health, conduct or performance can be dealt with in Queensland by the Office of the Health Ombudsman, the national agency and the boards. As many in this chamber know, before I was elected as the member for Currumbin just over two years ago I was a prosecutor. I worked in-house at the Office of the Health Ombudsman prosecuting disciplinary proceedings and protecting the public from health practitioners who endanger the public through their own health, conduct or performance.

Throughout the Health and Environment Committee's examination of the Health Practitioner Regulation National Law and Other Legislation Amendment Bill it became evident that stakeholders, both in their submissions to the committee and their attendance at public hearings, were concerned with a number of aspects of the bill. The main concern I share relates to the bill allowing the Health Ombudsman to make a public statement about a practitioner prior to a fulsome investigation.

As anyone who works in the disciplinary space knows, there is a small minority of people who do the wrong thing and require the regulator to step in to ensure the public is protected. As a disciplinary prosecutor, I prosecuted health practitioners who posed a serious risk to the public. For context, some of the types of prosecutions concerned fraud, inappropriate prescribing, poor clinical performance, possession of child exploitation material, practitioner-patient boundary violations, drug offences and sexual assaults.

The process when I was a disciplinary prosecutor worked like this. The OHO would receive a notification about a health practitioner's heath, conduct or performance. This would be triaged and a determination would be made as to what steps should be taken next. Relevantly, the Health Ombudsman may decide to assess a complaint under part 5 of the act to obtain any further information they might need in order to determine the appropriate outcome. After assessment, it may be that the complaint is referred for a full investigation under part 8 of the act. At the conclusion of the investigation the matter may then be referred to the DoP, which is the legal department, the Director of Proceedings, for a disciplinary prosecution or a determination as to whether or not the matter should be referred to QCAT.

During this process immediate action may be taken by the Health Ombudsman against the health practitioner at any time in order to protect the public. The regulator is empowered to use its immediate action powers to prevent an individual practising or to put restrictions on the way an individual practises in circumstances where the regulator is of the view the individual presents a risk to the public. Any restriction placed on the registration is published on the publicly available register of practitioners and fulfils the function of protecting the public while an investigation or a prosecution is underway.

This bill as it stands will allow for a public statement to be issued prior to an investigation into any alleged practitioner misconduct being completed. As I have already stated, the public statement is different from immediate action to protect the public. At any time the Health Ombudsman may take immediate action to ensure the public is protected from serious risk that might be imposed by a practitioner. The ability to issue a public warning through a public statement prior to any investigation is an extra power. In my view, it could result in practitioners being penalised for complaints that, after proper investigation, are found to be unsubstantiated or there is insufficient evidence to proceed with disciplinary action.

In their submission to the committee, the AMA argued that a public warning is a severe and non-retractable step and should be undertaken only after a health practitioner has been shown to breach a code of conduct or convicted of a relevant offence. The Queensland Law Society adds to this, raising concern that the proposed provisions relating to the public statements may contravene the principles of the presumption of innocence and natural justice.

The AMA and QLS are not the only groups with reservations about the public statement clause proposed in this bill. The Australian Dental Association of Queensland, Speech Pathology Australia, the Royal Australian College of General Practitioners, Australian Paramedics Association, Australian Association of Psychologists, Australian College of Rural and Remote Medicine and the Royal Australasian College of Surgeons all expressed the same concerns.

If we go back to the operation of the Health Ombudsman Act, once an investigation is completed and if it is referred to the Director of Proceedings for disciplinary proceedings, the legal department—the department I worked in—assesses the matter to determine if it should be referred to QCAT for a disciplinary determination. It may refer the matter back to the Health Ombudsman with a recommendation if it is not ready for QCAT proceedings or because there is insufficient evidence to prove the allegations or for there to be no further action.

When looking at the OHO's annual report it can be seen that in 2019-20, 85 matters were referred to the legal department for consideration as to whether or not they be referred to QCAT. Of those matters, the legal department referred 42 back to the Health Ombudsman. In the year 2020-21,

89 matters were referred to the legal department and 41 went back to the Health Ombudsman. I know from my experience as a disciplinary prosecutor that among the reasons for the legal department to refer matters back to the Health Ombudsman is that the investigation lacks sufficient evidence to prove the case on the balance of probabilities, which is the legal standard required for a disciplinary prosecution in QCAT. Other reasons are no further action or that further evidence is required.

Given the rate of matters being referred back to the Health Ombudsman from the legal department—almost half—if a public statement can be issued by the Health Ombudsman before a matter is properly assessed, that is very concerning and leaves health practitioners open to reputational damage from vexatious or unsubstantiated complaints when after proper assessment it might be determined that there is insufficient evidence to proceed with the complaint.

The provisions in the bill allowing for the Health Ombudsman to revoke or retract a public statement if the complaint is subsequently found to be unsubstantiated, quite frankly, do not adequately fix the harm that will be caused as a result of the public statement being made in the first place. Once the public statement is made, the practitioner's reputation is damaged permanently and there is no removing that from the internet. There is no removing that from a Google search.

I turn now to the second part of the bill that I took issue with, and I acknowledge that the government has made some sensible amendments to keep the ban on testimonial advertising in place. The submissions made to the committee almost unanimously recognised that removing the prohibition on testimonial advertising would not lead to improved patient outcomes. I welcome the government recognising this with their amendment. In fact, throughout the committee process stakeholders suggested that the manipulation of testimonial advertising has the potential to worsen the current situation. This was certainly the message from the Australasian Society of Aesthetic Plastic Surgeons, who said—

> We consider that any weakening of restrictions around testimonials in advertising will contribute to a culture of misinformation and deceit that is already plaguing the poorly regulated cosmetic surgery sector and contributing to patient harm.

It is undeniable that advertising can influence a consumer's decision when making decisions for their healthcare needs. It makes it incredibly important that patients have access to information that is not just accurate but is also not misleading and is supported by acceptable evidence.

In conclusion, the absolute vast majority of our clinicians do the right thing day in, day out. To all those practitioners, I say a heartfelt thankyou. This bill is for that minority of practitioners who do the wrong thing, and the balance must be struck. Unfortunately, with the public statements clause, the appropriate balance is not being struck.