Speech By

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MEMBER FOR MUDGEERABA

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HEALTH PRACTITIONER REGULATION NATIONAL LAW AND OTHER LEGISLATION AMENDMENT BILL

Ms BATES (Mudgeeraba—LNP) (3.43 pm): I rise to make a contribution to the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022. Speaking to this bill gives me another opportunity to place on the public record my sincere and heartfelt thankyou to all of our health practitioners across Queensland. Be they doctors, be they nurses, be they paramedics, be they allied health professionals, be they employees in our public health system, be they clinicians in privately-run facilities or be they professionals who run their own businesses, they have shouldered an immense burden in recent years and for some it has taken an immense toll. Our health system in Queensland is under enormous strain, and it is these people who have held it all together. They will not let our health system fall; they will hold it up. We all owe them our gratitude for that. The adversity of the pandemic as we once knew it has now shifted. Our health system remains under extreme pressure. So too are the health practitioners who hold that health system up each and every day. It is a pressure the likes of which we have never seen.

The reasons for that strain, that pressure and that stress is well documented. I have spoken about the causes of those pressures and stressors each and every day for years now. Much of it stems from this government's incompetence, and I will not stop talking about that. I will not stop speaking about those pressures and the causes of them because I want to be a voice for my colleagues on the front line who face distress and the fallout of what it actually means to work through a health crisis each and every time they walk in the front door of their workplace. To those professionals I say: I want you to know that my colleagues and I in the LNP hear you, we see you, we respect you and we admire you. A life working as a healthcare practitioner is not for everyone, and that is okay. It is a vocation. It is a calling to be there as new life is welcomed onto this earth, to be there as life leaves it and all of the trials and tribulations in between.

I want to put on record my respect for my nursing and medical colleagues—unlike those opposite, who do not understand what it is like when you welcome a new life onto this earth and when you are the person holding the hand of someone exiting this life. They are the trials and tribulations that nurses and doctors deal with every single day. Our health professionals are there with us on our best days and they are there with us on our worst. Before being elected to public office, health care was my life working as a registered nurse and then managing hospitals. That vocation brought me an incredible sense of fulfilment, as I know it does to many thousands of clinicians right across our great state, so speaking to legislation which deals directly with the framework which our health practitioners operate under is of great personal interest to me. It is also of great interest given my role as shadow minister for health and ambulance services, a role in which I am immensely proud to serve.

The bill amends the Health Practitioner Regulation National Law as agreed by Australian health ministers earlier this year. The bill also makes related amendments to the Health Ombudsman Act 2013 and local modifications to national law amendments so they are effectively able to be enforced in Queensland. The national scheme ensures that only health practitioners who are suitably trained and

qualified to practise in a competent and ethical manner are registered. It allows health practitioners to have a single registration recognised anywhere in Australia and provides for uniform standards for the registration of health practitioners and the accreditation of health education providers. That system is necessary, and without it Australians would not have access to the high standard of care to which we are all accustomed.

Queensland is a co-regulatory jurisdiction under the national law. In most other jurisdictions notifications about a registered health practitioner's health, conduct or performance are dealt with exclusively by Ahpra and national boards. Queensland's co-regulatory model means there are two entities, the Office of the Health Ombudsman and Ahpra, which deal with notifications about a registered health practitioner's health, conduct or performance. These notifications are referred to as complaints under the Health Ombudsman Act.

The LNP will not oppose the passing of this bill; however, the LNP will vote against key clauses which stakeholders have raised concerns about relating to natural justice. I will speak directly to those concerns in more detail a little later in my contribution.

The opposition recognises the importance of legislation which ensures health professionals in our state are held to the highest standards. This is primarily what this legislation goes to: the professional standards of those in the health industry here in Queensland and therein patient safety. As an opposition, we will always treat those two matters with the utmost respect and so should all of those in this House. It is a given that Queenslanders should have complete confidence in the health practitioners working across this state.

A fair and robust framework should exist to ensure patients are protected and safe when they are in the care of a clinician. It is therefore proper that these practitioners are appropriately regulated and scrutinised. The right checks and balances must exist across the sector to ensure those working in the sector are beyond reproach. We know that is the case for the vast majority—in fact the overwhelming majority—of health practitioners here in Queensland. They do the right thing. Their conduct is exemplary and the care for their patients is always at the front of their mind.

From speaking firsthand with friends and colleagues in the industry, I know they have no issue with this level of scrutiny. The reason being that their practice is safe, careful and meticulous. However, for whatever reason, a very small minority of the health workforce choose to do the wrong thing from time to time, and when it happens it is devastating. I am not talking about the potential for known complications or one-off isolated incidents where an adverse outcome may be unavoidable. What I am talking about are trends of poor behaviour by a clinician or trends of poor patient outcomes from the one individual practitioner. Devastatingly, it does happen. When it does, authorities need to deal with the bad apples to ensure patient safety. It is a must, and they must also act to protect the reputation of all those practitioners who do the right thing.

The recent revelations out of the Mackay Base Hospital and the shocking instances of patient harm show us why this is necessary. In fact, it is very timely that this chamber debates this bill while the fallout from the Mackay Base Hospital disaster is still unfolding. Those cases in Mackay are tragedies, and I do not use that word lightly. They are tragedies in the truest form of the word: mothers losing their beautiful babies; young women—women in their 20s, no less—maimed to the point where it is no longer possible for them to have children; and allegations of cancers being missed resulting in premature death. These are tragedies and are unspeakable for those involved. The failures out of the obstetrics and gynaecology department as well as the urology department are a blight on our health system. They will not easily be forgotten by the people of Mackay and, sadly, despite being warned about the problems at hand, the minister failed to act.

Mr HARPER: Mr Deputy Speaker, I rise to a point of order on relevance. The member for Mudgeeraba is going on a political tirade. She needs to bring her speech back to the elements of the bill, which is the national practitioners—

Mr DEPUTY SPEAKER (Mr Lister): Member for Thuringowa, you have made your point. Member for Mudgeeraba, I am mindful of relevance. I ask you to come back to the long title of the bill.

Ms BATES: In reference to the long title of the bill, this bill amends the Health Ombudsman Act and the Health Practitioner Regulation National Law Act. These amendments strengthen public protection and increase public confidence in health services provided by practitioners registered under the National Registration and Accreditation Scheme. That is what I am talking about. We raised it in parliament, we raised it in the media and we raised it with the minister when we directly wrote to her and requested that a broader review take place. She never replied. She knew but she did not act. She knew and she did nothing. To a degree, so too—

Mrs D'ATH: Mr Deputy Speaker, I rise to a point of order. The member is going directly back to the same issue on which you have just pulled her up. This is not relevant to the bill. The bill talks about the regulatory bodies, but the member is straying and talking about my role as the minister. That is not part of this bill.

Mr DEPUTY SPEAKER: Member for Mudgeeraba, I am mindful of the explanation you gave previously about relevance to the bill. I do take the Leader of the House's point regarding commentary on the minister. I invite you please to be relevant to the bill.

Ms BATES: Thank you. To a degree, the people who failed were the agencies who were there to protect people—the very agencies we are talking about in this bill, the Health Ombudsman and Ahpra. For whatever reason here in Queensland, I do not believe that these agencies—Ahpra and the Health Ombudsman—are striking the right balance. They are not striking the right balance between ensuring patient safety by taking necessary action for those practitioners who do wrong; nor are they weeding out complaints which are vexatious or unfounded in a timely manner. My fear with this bill is that the government is not getting any closer to striking the right balance. The priorities are not quite right.

I mentioned earlier that the LNP have concerns with the natural justice components of the bill, specifically related to amendments to the Health Ombudsman Act 2013 and the Health Practitioner Regulation National Law. Clause 20 and clauses 100 to 102 of the bill deal with these provisions. Stakeholders from across the sector have raised concerns with natural justice being subverted due to the proposed amendments to the Health Ombudsman Act 2013 and the Health Practitioner Regulation National Law. The opposition's primary concern is that the bill as it stands will allow for a public statement to be issued against a practitioner prior to a proper investigation being completed into the alleged misconduct of the practitioner. We believe that no such statement should be made without a comprehensive investigation being conducted and finalised. What is more, the agency making the statement only has to provide the practitioner with a day's notice before the statement is made.

In their submission to the committee, the Australian Medical Association said—

The AMA does not support the Medical Board or Ahpra being able to issue a public warning before a tribunal has completed its actions. To do so would imply guilt and is likely to ruin a practitioner's reputation. A public warning is a severe and non-retractable step and should be undertaken only after a health practitioner has been shown to have breached a code of conduct or convicted of a relevant offence.

I know of clinicians—both nurses and doctors—who have had sanctions put on them whilst there was a current investigation on foot. It did not matter to Ahpra; it did not matter that after that investigation was completed there was no cause to be shown. Some of those clinicians committed suicide. I will leave it at that.

The AMA are not the only group with reservations about this. The Australian Dental Association of Queensland, Speech Pathology Australia, the Royal Australian College of General Practitioners, the Australian Paramedics Association, the Australian Association of Psychologists, the Australian College of Rural and Remote Medicine and the Royal Australian College of Surgeons all expressed their concerns. That is some list. The crux of the issue is this: it could result in practitioners being inadvertently penalised for complaints which are later proven to be vexatious or unsubstantiated. Again, I know people who had vexatious complaints which were unsubstantiated and had black marks on their name on Ahpra and they are still trying to get their names cleared. If this situation were to arise, it could do untold professional, reputational and emotional damage to the practitioner involved. A public statement is not the only mechanism which the Health Ombudsman or Ahpra have at their disposal to uphold safety. There are other ways.

However, I do wish to be clear about this. Investigations into misconduct or malpractice which are substantiated require swift action by the relevant agency. This of course should also include a public statement being issued if that is what the regulator believes to be the right steps, but let that happen once the allegations are proven. Let natural justice run its course. I am talking about vexatious and false complaints—not people who have obviously performed malpractice. As the bill stands, given the concerns raised by countless stakeholders through the committee process, the LNP believe that clause 20 and clauses 100 to 102 do not strike the right balance and as such the LNP will be voting against those clauses.

When I talk about striking the right balance between patient safety and clinician conduct, I want to use a particular case to highlight the failures of how this legislative framework currently operates. Dr William Braun was referred to the Office of the Health Ombudsman following allegations of misconduct and malpractice. There were a swathe of complaints from doctors who had witnessed what they believed was inappropriate conduct. Many of his patients also bravely came forward with

complaints. Their lives had been turned upside down as a result of surgeries which went wrong. Public reports show the allegations made against Dr Braun to the Office of the Health Ombudsman were made by the executive director of medical services at Metro North HHS no less. They detailed concerns about Dr Braun's clinical performance and post-operative care as well as inappropriate conduct 'including, but not limited to bullying and sexual harassment'.

I mentioned bad apples earlier. Dr William Braun is one of them. I raised this very issue of Dr Braun's practice in this parliament years ago now, and I did it in the public interest because people had a right to know. Here is the kicker in this sorry story and it goes right to the heart of this bill. The Health Ombudsman had their case kicked out of both the Supreme Court and the Court of Appeal because the Health Ombudsman failed to meet their own deadline in investigating the case, for which they have a statutory obligation. Let me repeat that: they failed to meet their own deadline and the case was thrown out. The Health Ombudsman must have thought they had a decent case against Dr Braun because they would not have investigated the matter if they did not. They also would not have tried to overturn the Supreme Court's decision in the Court of Appeal and attempted to save the case that ultimately proved fruitless.

When I talk about the government failing to strike the right balance in this bill, in my mind there is no clearer example. On one hand we have the government legislating for the Health Ombudsman to name and shame practitioners before an investigation into them is even finalised, and that is what we are seeing in this bill, and on the other hand you have a case which should have been a lay-down misere against a dodgy doctor, William Braun. Yet, the Health Ombudsman could not even meet its own legislated deadline, so Dr Braun's lawyers get the case chucked out of the court not once, but twice. When you look at all of this in context, when you boil it all down, are the government's priorities right? Is the system working like it should be? There are questions the health minister really has to answer and if she answered them honestly, she would give an emphatic no.

My heart goes out to all of those patients of William Braun. They are still contacting me. I feel absolutely devastated for them and I say that today because I want that on the public record. I asked the Office of the Health Ombudsman about this in estimates earlier this year. I asked how this could ever happen; how could this failure have occurred? The answer I got: 'Human error.' That is not good enough. It is not good enough because it is a slap in the face to those doctors who mustered up the courage to call out a colleague for inappropriate conduct, and it is not good enough for those poor patients who were badly wronged by Dr Braun. They live with the repercussions every single day. That is just one case, just one example.

This is what I am talking about when I say the government is not striking the right balance. It is plain to see it is not. I am not sure what the minister's priorities are, but I would be fixing the obvious shortcomings of the Office of the Health Ombudsman before legislating new provisions like we are seeing today. How is this for a start, minister: get your own house in order first and focus on getting the known bad apples prosecuted because what we have seen with the William Braun fiasco is just not on.

I flagged earlier in my contribution that the LNP holds some serious concerns about the removal of the prohibition on testimonials. My colleagues and I fear that lifting this ban may be to the detriment of patients across Queensland. Based on the amendments tabled by the minister, the decision to back away from lifting the prohibition on testimonials is a sensible one. Both in the public discourse and through the committee's review, there was an acknowledgement that Ahpra and the Health Ombudsman are routinely unable to monitor and penalise unscrupulous operators and clinicians who breach testimonial advertising conditions.

In practice what does this mean? It means that under the law, as it currently stands, practitioners flouting the ban on testimonials are often left unpunished by Ahpra and the OHO. A broad cross-section of stakeholders almost unanimously recognised that removing the provisions of testimonial advertising will not lead to improved patient outcomes. If these amendments had not been moved, it could in fact lead to worsened patient outcomes, given the difficulty regulatory agencies have in enforcing the law as it stands now. This is particularly relevant in the cosmetic medicine industry where there have been a number of well-publicised media stories where patients have suffered as a result of poor clinical practice.

The Australasian Society of Aesthetic Plastic Surgeons certainly believe lifting the ban was not a good idea. Their president, Dr Robert Sheen, said in their written submission that—

> 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.

The Australian Society of Plastic Surgeons raised the same concern. Their president, Dr Dan Kennedy, wrote—

> There are plenty of cases demonstrating the risks associated with attracting patients to a medical practice via testimonials. I have not seen any evidence that testimonials drive improved patient outcomes.

Many other stakeholders shared those views. It is important to note that whilst this bill was before the committee Ahpra was running a review titled 'Independent review of the regulation of medical practitioners who perform cosmetic surgery'. That review was also assessing the suitability of advertising and testimonials in the sector. Stakeholders who made submissions to the Health and Environment Committee noted that removing the prohibition of testimonials in this legislation while the review was underway would be premature. I concur with those views.

The committee's second recommendation in its report was that the minister provide an undertaking during the second reading debate to not commence the provisions repealing the prohibition on testimonials in health service advertising until the completion of the independent review of the regulation of health practitioners in cosmetic surgery, and the accompanying guidelines and educational material have been published. The final report by Ahpra has been published and it says that practitioners should be discouraged from using testimonials. That report says that discouraging testimonials should occur until all the recommendations of the independent review have been progressed. Having only been released in the last month or so, we are a long way from seeing those recommendations implemented. Based on the overwhelming feedback from stakeholders and the finding from Ahpra's independent review, the LNP would have voted against the removal of the prohibition on testimonials if it had not been amended.

Whilst on my feet, I want to briefly touch on the proposed amendments that an individual practitioner's registration will require public confidence in the safety of services provided. Many MPs will probably have received emails from a campaign to this effect, as I did. It should be noted that no industry stakeholder really raised this as a substantive issue throughout the committee process. I appreciate that the notion of public confidence and the potential conflicts which could arise did feature in correspondence from some submitters, but this was not in the same context as the email campaign suggested. While I do not agree with many of the views shared as part of this campaign, there are some reasonable questions which the minister should answer around the vagaries of these proposed provisions of the bill. I think that it is fair for the minister to explain that the proposed amendments will not lead to individual health practitioners being in conflict with their code of conduct or common law obligations to individual patients.

To round out my contribution, I want to say this: the absolute vast majority of our clinicians do the right thing, and they do the right thing day in and day out. They care for the patients meticulously and they conduct themselves professionally. They are to be commended for that. However, as I have spoken about at great length, when a bad apple is identified, we need the right laws in place to protect patients. Patient safety is paramount and, as parliamentarians, we should do all we can to protect patients in this state from those who stray from their obligations as health practitioners. As members of this House, it is incumbent on us to ensure that the right balance is struck between protecting patients and ensuring that the health practitioner workforce is able to appropriately undertake their job. I do not believe that this bill strikes that balance. To the minister I say this: let's get some of the issues in your own backyard sorted out before embarking on some of the changes outlined in this bill.