Speech By

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MEMBER FOR MIRANI

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HEALTH PRACTITIONER REGULATION NATIONAL LAW AND OTHER LEGISLATION AMENDMENT BILL

Mr ANDREW (Mirani—PHON) (4.31 pm): I rise to speak on the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022. As set out in the explanatory notes, the bill amends the Health Practitioner Regulation National Law, the national law, and implements a range of reforms aimed at revising the regulation of Australia's health professions. According to the explanatory notes, the bill's main objectives are to strengthen public safety and confidence in the provision of health services; improve the governance of the national scheme; and enhance the effectiveness and efficiency of the scheme. Key changes in the bill include a refocusing of the objectives and guiding principles of the national law to make public safety and confidence the paramount consideration in health care; the granting of new powers to the national regulator, Ahpra, including the power to prohibit or restrict practitioners who have been deregistered from providing health services or using protected titles; granting Ahpra the power to issue public statements about a person whose conduct it deems poses a serious risk to public health and safety; and introduces new processes by which national boards make decisions and manage health, conduct and performance issues.

Section 3A of the bill sets out the new guiding principles for health services in Queensland, including protection of the public and public confidence in the safety of services provided by registered health practitioners and students. This overturns centuries of medical ethics which has always held as its core principle that a doctor's loyalty must, first and foremost, be to the health and wellbeing of their individual patient. The bill's refocusing of the national law's objectives and guiding principles make public safety and confidence the primary consideration for health care in Australia. This will pose a significant risk to the health and safety of individual patients and adversely impact people's trust and confidence in the whole system. If a doctor can no longer provide advice based on his knowledge and understanding of an individual patient's particular health status or help them weigh up the relevant risks of a particular type of medical care, why bother going to a doctor for advice at all? People should just go to the government website to find out what the official line is for the week.

This bill grants the Australian Health Practitioner Regulation Agency, Ahpra, a set of extremely broad and coercive powers. Page 12 of the bill's explanatory notes state that—

... the Bill clarifies that the National Agency may do anything necessary or convenient for the effective and efficient operation of the National Scheme, within the scope of the National Law.

These powers are not only broad; they are virtually without limit. It will give Ahpra carte blanche pretty much to take whatever action it deems necessary or convenient to safeguard public safety and confidence. Throughout the whole bill there is this same use of broad, vague language where so-called objectives are never properly defined or limited in any way. As the Australian Doctors' Federation commented on page 3 of its submission—

Who defines what is necessary or convenient?

This is particularly relevant given several recent court cases where Ahpra's disciplinary measures were subsequently overturned as unwarranted. That will not be possible under the changes made in this bill. No court will be able to overturn Ahpra's decisions in the future if this bill passes, as the regulator will have been made the final arbiter for determining what is necessary when it comes to safeguarding public health and safety. This will greatly increase the risk of serious human rights abuses and miscarriages of justice taking place in the future. The Australian Doctors' Federation also point out in its submission that the bill's use of broad and loosely worded objectives will interfere with the role of the Australian Medical Council, the AMC, which has always ensured high levels of public confidence in the Australian medical profession in the past.

I also oppose clauses 20 and 100 of this bill. Through these clauses, Ahpra is granted greatly expanded powers for publicly naming and shaming practitioners who it deems poses a risk to public safety. The bill provides no definition as to what those risks may be or exactly what guidelines of set criteria Ahpra must use in determining what does and does not pose a risk to public safety. This is particularly concerning given the bill grants the regulator disciplinary rights to name and shame practitioners before they have even been charged with an offence, let alone found guilty. Making public statements about a health practitioner being a risk to safety will have significant adverse impacts on the person's reputation and livelihood. Doing so before they have even been given a chance to defend themselves robs them of the presumption of innocence, natural justice and due process. It also takes away their human and civil right to practise their profession without political harassment or interference from the state. This is a very dangerous slippery slope for medical care in Queensland. There is a real danger here for these laws to be used as a political weapon for censoring and punishing those practitioners who refuse to toe the official line on anything.

The bar for stifling or demonising doctors who are willing to debate their alternative positions in public in good faith needs to be set very high. Such powers should only be exercised in strictly limited circumstances where evidence of objective patient harm can be demonstrated. Under the provisions of this bill, such limits are completely absent. The amendments, moreover, contain no right of reply for health professionals on evidence-based research and objective data, so the truth is no defence according to the provisions in this bill. There are also no clear avenues for appeal or redress in the bill for doctors unfairly targeted by Ahpra, even if they are subsequently cleared of all wrongdoing—another clear breach of health practitioners' human and civil rights.

These are significant and coercive powers that the government is proposing to grant a public health regulatory body over which it holds no jurisdiction or powers of oversight. There is a clear risk that these powers will be misused as a tool for suppressing and punishing dissenting voices within the health profession. At the very least, this authoritarian legislation will have the effect of chilling medical speech and suppressing science. Doctors should be free to engage in debate on the effectiveness of treatment options and to advise their patients honestly on any matter raised during a doctor-patient consultation. If doctors are not allowed to discuss alternative medical options with their patients, then the legal requirement for informed consent cannot be satisfied and the standard of care for patients will suffer.

Public confidence is fostered when people know that doctors are free to speak without threat or intimidation in accordance with their many codes of conduct, including the Hippocratic Oath, the Declaration of Geneva and the international code of ethics. These codes must be respected and so should a doctor's right to practise their profession without harassment or interference. I therefore strongly oppose the proposed amendments to clause 90AA. There must always be room for dissenting views and debate in a healthy and functioning democracy.

The state should not be inserting itself into the physician-patient relationship in this way, imposing its own views on doctors and shutting down debate on issues the state decides are off limits. It is important to note at this point that Ahpra is an unelected, bureaucratic agency which is answerable to no-one—as far as I can tell, anyway. Even the federal parliament appears to have no jurisdiction over it. Its decision-making processes and policies are therefore shrouded in secrecy and there is a complete lack of transparency or accountability around its various activities. In other words, it is a shadowy group operating as a monopoly and with none of the usual democratic checks or balances. For that reason alone, Ahpra must not be given the last word on what 'truth' in medicine is, or what actions are necessary to safeguard public trust. If the government really wanted to preserve public trust then it would start by providing full transparency around all its decision-making systems, processes and procurements, making it clear exactly who is accountable for what. That will never happen because ultimately this bill has little to do with safeguarding public safety and confidence and everything to do with controlling, censoring and silencing those few who refuse to toe the official line. I strongly oppose this bill.