




Speech By
Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 11 May 2022

HEALTH PRACTITIONER REGULATION NATIONAL LAW AND OTHER LEGISLATION AMENDMENT BILL

Introduction

 **Hon. YM D'ATH** (Redcliffe—ALP) (Minister for Health and Ambulance Services) (11.16 am): I present a bill for an act to amend the Health Ombudsman Act 2013 and the Health Practitioner Regulation National Law Act 2009 for particular purposes. I table the bill and explanatory notes and a statement of compatibility with human rights. I nominate the Health and Environment Committee to consider the bill.

Tabled paper: Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022 [632](#).

Tabled paper: Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022, explanatory notes [633](#).

Tabled paper: Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022, statement of compatibility with human rights [634](#).

This bill implements the second stage of nationally agreed reforms to the National Registration and Accreditation Scheme for health professions. The reforms include important measures to protect the public and ensure the national scheme remains up to date and fit for purpose. These are the most wide-ranging reforms in the scheme's history and represent a major milestone for the regulation of Australia's health professions.

The national scheme was established in 2010 after the adoption of the health practitioner regulation national law by all states and territories. As agreed nationally, Queensland hosts the national law on behalf of all participating jurisdictions. Any amendments to the national law must be made by the Queensland parliament.

The national scheme is central to the safe and effective regulation of Australia's health professional workforce. It ensures that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered. By allowing practitioners to have their registration recognised anywhere in Australia, the scheme promotes a health workforce that is agile and responsive to the needs of patients, practitioners and the health system. The scheme also supports innovation in health education and service delivery by providing uniform standards for the registration of health practitioners and the accreditation of health education providers.

Over the past decade the national scheme has grown and matured. At its commencement, 10 national boards were established to regulate approximately 500,000 health practitioners in 10 health professions. Today 15 national boards regulate over 825,000 registered health practitioners across 16 professions.

The scheme's governance and administration have also evolved under the stewardship of the Australian Health Practitioner Regulation Agency, Ahpra, which is responsible for the overall management and administration of the national scheme under the national law. When the national scheme came into effect, Australian health ministers committed to continually review and update it to ensure it continues to protect the public and meet future workforce needs.

In 2014, health ministers commissioned an independent review of the national scheme. That review made 33 recommendations and led to additional reviews into specific aspects of the national scheme and the national law. In 2017, the first stage of reforms to the national law was passed by the Queensland parliament, supported by all Australian states and territories. This included amendments to provide for the national regulation of paramedics.

In 2019, the national law was further amended to clarify the mandatory reporting obligations of treating practitioners and to increase penalties for persons who unlawfully hold themselves out as registered health practitioners. These amendments were fast-tracked ahead of the second stage of amendments contained in this bill. Building on these initial reforms, in November 2019 Australian health ministers approved preparation of a second stage of amendments to the national law.

On 14 February 2022, after extensive interjurisdictional collaboration and stakeholder consultation, the final form of the amendments was approved on behalf of all Australian governments. On behalf of Queensland as host jurisdiction for the national law, it is my privilege to introduce these much anticipated reforms. I will now speak to the specifics of the reforms and to other significant provisions of the bill.

The national scheme and the national law play a vital role in protecting the health and safety of patients and the public. This requires holding registered health practitioners to the highest professional standards while ensuring that any issues with a practitioner's performance, conduct or health are promptly identified and addressed. It also requires effective enforcement to deter unlawful practices, such as the unauthorised use of protected titles, that can cause harm and undermine public trust.

A major focus of the reforms in the bill is to strengthen public safety and increase public confidence in health services provided by registered health practitioners. The bill refocuses the guiding principles of the national law to make protection of the public and public confidence the paramount consideration in administering the law. This will require Ahpra, the national boards and other entities operating under the national law to place protection of the public and public confidence in health services foremost in all decisions and actions. In this way, the new principle will encourage a responsive, risk based approach to regulation within the national scheme. Since 2013, Queensland has modified the application of the national law to make the health and safety of the public paramount. As this paramount principle will now apply nationally, Queensland's modification is no longer needed and is removed by the bill.

The guiding principles and objectives of the national law will also be amended to set clear expectations for national scheme entities to foster culturally safe health services for Aboriginal and Torres Strait Islander peoples. This reform recognises the important role the national scheme has in contributing to health equity for Aboriginal and Torres Strait Islander peoples.

The bill includes a range of measures that will increase and improve the tools available to regulators to respond to public health and safety risks. The bill introduces powers for Ahpra and the national boards to issue interim prohibition orders to unregistered practitioners. These powers will be new in most states and territories. In Queensland, the Health Ombudsman already has power to issue interim prohibition orders and will continue to do so in most cases. Extending the power to issue an interim prohibition order to Ahpra and the national boards will complement the Health Ombudsman's existing powers.

While it is expected that the Health Ombudsman will still issue most interim prohibition orders in Queensland, the amendments will empower the national regulators to take swift action to address risks from people wrongly holding themselves out to be a registered health practitioner. They will allow the regulators to require a person to stop providing some or all health services, or using a specific title, while an investigation or disciplinary proceedings are pursued. To ensure natural justice, Ahpra and the national boards' power to issue an interim prohibition order is subject to a show cause process and appeal to the Queensland Civil and Administrative Appeals Tribunal. Every order must be reconsidered after 60 days. Extensions beyond 120 days must be approved by the tribunal.

The bill also empowers Ahpra, the national boards and the Health Ombudsman to issue public statements about persons whose conduct poses a serious risk to public health and safety and who are the subject of investigations or disciplinary proceedings. This will allow regulators to warn the public or relevant entities about serious risks that may impact them. For example, if an investigation revealed that a practitioner routinely failed to follow sterilisation procedures and potentially exposed patients to an infectious disease, the regulator would be able to notify the local community of their potential health risk, while also undertaking disciplinary proceedings against the person. These warnings could result in people receiving early treatment to mitigate risks to their health that they otherwise would not have known about. As with interim prohibition orders, a decision to make a public statement is subject to a show cause process and appeal to Queensland's Civil and Administrative Appeals Tribunal.

Other provisions of the bill amend the national law and Health Ombudsman Act to broaden the ability of national boards to share information about practitioners who are subject to disciplinary action or who may have posed a risk to persons or the public. The amendments will allow this information to be shared with certain persons who have, or had, an employment or similar arrangement with a practitioner—people who are in a direct position to help protect the public.

Further reforms in the bill to improve public safety include measures to strengthen the registration process, require health practitioners to report scheduled medicine charges and offences to the national boards, and increase the maximum penalties for advertising and direct and incite offences to reflect the seriousness of these offences. In addition to approving public protections, the bill includes a range of amendments to improve the governance of the national scheme and to enhance the scheme's efficiency and effectiveness.

The bill will allow the ministerial council to delegate its powers to approve registration standards to any entity it considers appropriate to exercise those powers. This will ensure minor or non-controversial updates to standards can be progressed more efficiently. However, the council will retain its obligation to ensure the function is properly exercised.

Separately, the bill will allow national boards to accept an undertaking from a person when deciding the person's application for registration or endorsement of registration. Currently, national boards can impose a condition on a practitioner's registration but cannot accept a voluntary undertaking from the practitioner during the registration process. Allowing boards to accept undertakings will provide increased flexibility, reduce some delays in registration and increase the involvement of practitioners in the registration process. Related amendments allow the Health Ombudsman to accept undertakings as an immediate registration action to mitigate risks to the public. This provides the Health Ombudsman with the same powers that the national boards already possess in relation to accepting an undertaking as a disciplinary measure. Registered practitioners will be able to apply to vary or revoke an undertaking given to the Health Ombudsman, and a decision to refuse to vary or revoke the undertaking is subject to a show cause process and appeal.

The bill includes amendments to streamline registration and disciplinary processes under the national law. National boards will be given limited discretion to decide not to refer matters to a tribunal when there is no public interest in doing so. This might occur, for example, where a national board is investigating a practitioner for charging excessive fees and the health practitioner agrees to tender their resignation and cease practising. Even though there is no ongoing risk to the public, the board currently has no discretion not to refer the matter to a tribunal. Giving national boards limited discretion to decide not to refer matters to the responsible tribunal where there is no public interest to do so will help ensure resources can be better allocated to areas of greater risk.

Queensland established the Office of the Health Ombudsman to strengthen the health complaints management system, improve transparency and accountability, and resolve confusion as to which entity is responsible for dealing with risks and complaints about healthcare practitioners. Under Queensland's co-regulatory arrangements, the Office of the Health Ombudsman is the first point of contact for all health service complaints. This includes complaints about the conduct or performance of both registered and unregistered health practitioners. The Health Ombudsman and national regulators work together to oversee and regulate registered health practitioners, with the Health Ombudsman having power to refer appropriate matters to Ahpra and the national boards to deal with under the national law.

To ensure Queensland's co-regulatory arrangements continue to operate effectively under the reforms to the national law, the bill includes amendments to the Health Ombudsman Act 2013 and modifies how some of the national law reforms will apply in Queensland. Most of these amendments are necessary to ensure the amendments to the national law will operate as intended under Queensland's co-regulatory framework. The bill also includes a small number of provisions that will support cooperation and coordination between the Health Ombudsman, Ahpra and the national boards in the broader context of the reforms being made to the national law. Significantly, a modification of the national law's interim prohibition order powers will require Ahpra and the national boards to advise the Health Ombudsman when they issue an interim prohibition order to a Queensland practitioner. This will ensure the Health Ombudsman is aware of potential risks in the community.

Another modification will allow Ahpra and the national boards to refer matters relating to an interim prohibition order to the Health Ombudsman. These matters can only be referred with the agreement of the Health Ombudsman. This modification will help ensure the appropriate regulator is responsible for seeing these matters through to resolution. The bill also amends the Health Ombudsman Act to align the maximum penalties for contravening an interim prohibition order and prohibition order to the equivalent penalties under the national law. This increases the maximum penalties from

200 penalty units to 450 penalty units or three years imprisonment. This is an appropriate penalty for wilfully ignoring a lawful order and continuing to practise in ways that could seriously harm the public. The alignment of penalties also avoids having different penalties apply to the same conduct depending on which regulator issues an order.

Finally, the bill modifies the national law to insert a general regulation-making power allowing Queensland to make regulations under the national law. Currently, the law only allows the making of regulations that are approved by national health ministers. The inclusion of a regulation-making power for Queensland provides more flexibility for accommodating Queensland-specific circumstances. The national scheme was created in 2010 with the overarching goal to protect the public. Since its commencement, the scheme has grown and matured but the central goal of protecting the public remains. The amendments in this bill build on the successes of the national scheme and will ensure that the national law continues to meet its objectives. The 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.

The changes in 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. If this bill is passed by the Queensland parliament, the changes to the national law will apply automatically in other jurisdictions except New South Wales and 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 all participating jurisdictions. Achieving policy agreement across every state and territory and the Commonwealth was a big task requiring dedication, leadership and a commitment to collaboration across all levels of government with the health sector and with the broader community.

I take this opportunity to thank my fellow members of the ministerial council for the spirit of collaboration in which they worked to develop these important reforms. I also thank the stakeholders who participated in numerous consultation processes throughout the development of the reforms. The input from practitioners, healthcare consumers, peak bodies, insurers, unions and others has been critical in refining the reforms and preparing for their implementation. Finally, I thank our health professionals for their dedication, professionalism and hard work to keep Queenslanders healthy and safe. These past few years have posed many challenges requiring innovation and new ways of working for everyone. Our health professionals rose to the occasion, providing extraordinary and inspirational service to their communities. I commend the bill to the House.

First Reading

Hon. YM D'ATH (Redcliffe—ALP) (Minister for Health and Ambulance Services) (11.33 am): I move—

That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to Health and Environment Committee

Mr DEPUTY SPEAKER (Mr Lister): Order! In accordance with standing order 131, the bill is now referred to the Health and Environment Committee.