Speech By

Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

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HEALTH PRACTITIONER REGULATION NATIONAL LAW AND OTHER LEGISLATION AMENDMENT BILL

Second Reading

Hon. YM D'ATH (Redcliffe—ALP) (Minister for Health and Ambulance Services) (2.42 pm), in reply: I thank all members for their contributions to the debate on the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022. I thank members for their support of these important reforms. As I noted at the outset of this debate, these are the most wideranging reforms in the scheme's history and represent a major milestone for the regulation of Australia's health professions. I am proud to be supporting legislation that strengthens public safety and increases public confidence in health services provided by registered health practitioners.

I would like to address several points raised by members during the debate. I will begin by responding to the opposition's claims about natural justice and procedural fairness. I will also speak to some of the specific points raised, in particular the provisions in the bill that will enable regulators to warn the public in rare cases where a practitioner's behaviour is placing patients or other persons at serious risk.

While protection of the public must always be paramount, it is also important that practitioners be treated fairly when regulatory actions are taken under the national law. I fully acknowledge the concerns raised by health professional stakeholders that regulatory actions can significantly impact a practitioner's reputation and livelihood. It is for this reason that the new regulatory powers proposed in this bill, including the power to issue public statements, are subject to strict limitations and include significant procedural and review rights. These safeguards will ensure that regulatory actions are not taken prematurely or without adequate grounds.

The need to balance the rights of practitioners and the protection of the public was front of mind for policymakers during development of the bill. Extensive consultation was undertaken with stakeholders, and great care was taken to ensure that new measures aimed at promoting public safety are narrowly tailored and provide procedural fairness for practitioners. With very few exceptions, the bill provides practitioners with the opportunity to make submissions before regulatory action is taken. In many cases, practitioners are also able to seek review of regulatory decisions after the fact.

The member for Mudgeeraba stated that the opposition's primary concern with the bill is that it will allow regulators to warn the public about serious dangers before completing a comprehensive investigation into allegations of misconduct. Some members speculated that this power could be misused by overzealous regulators who are out to name and shame practitioners and to ruin their careers. That is a gross mischaracterisation of the proposed reforms. Let me be absolutely clear: the purpose of empowering regulators to make public statements is not to name and shame practitioners. It is not to be used as a punitive or disciplinary measure. Rather, this power will be available in a very small number of cases where there is a need to immediately warn the public because a practitioner is engaging in conduct that poses an imminent danger to patients or other persons.

Given the strict criteria for making a public statement, regulators are expected to exercise this power sparingly, in cases where the public clearly has a right to be warned of immediate and serious risks. For example, in 2009 a Victorian anaesthetist infected over 50 patients with hepatitis C after injecting himself with the opiate fentanyl before using the same needles to administer the drug to his patients. This is the type of very significant case where a public statement might be used, given the immediate risk to public health and the need for patients to be notified.

As I have said, the bill strikes a careful balance between ensuring that regulators have the tools they need to protect the public from harm while also protecting the rights and professional reputations of registered health practitioners who are doing the right thing. The reputational risks to practitioners were carefully considered in developing the amendments. The bill tightly constrains the powers for regulators so that public statements can only be made about a person in appropriate circumstances.

The bill also includes other checks and balances prior to making a public statement. The regulator must allow the practitioner to make written or verbal submissions about the proposed statement and must consider these submissions before making a decision. The regulator must also revoke a public statement once the grounds for the statement no longer exist. A decision to make a public statement can also be appealed to the relevant tribunal; in Queensland this is QCAT. The Victorian Health Complaints Commissioner has had a power to issue public warnings since 2018. The power has only been used 10 times against seven practitioners, when the commissioner determined it was necessary to issue a public warning to avoid a serious risk to the life, health, safety or welfare of persons or the public. These public warnings were primarily about unregistered health practitioners suspected of performing dangerous and in some cases unlawful procedures such as providing unregulated homebirth services or unlawfully possessing and administering cosmetic injectables.

Beyond the specifics of this bill, I feel compelled to comment on the rank hypocrisy of those opposite. It was particularly galling to hear the member for Mudgeeraba's contribution. According to her speech, she apparently fears that the bill would degrade the principles of natural justice. Apparently she does not believe that a statement should be made against a clinician without a comprehensive investigation being conducted and finalised. I am not sure how the member for Mudgeeraba was able to read her speech with a straight face, to be honest. This is the person who has been chastising the Palaszczuk government for awaiting the findings of investigations before taking action against clinicians!

Somehow the member thinks it is appropriate for politicians to be making judgement calls on who works in our hospitals prior to investigations being completed, but it is entirely illegitimate for our health regulators to take appropriate action in exceptional circumstances. The member for Mudgeeraba has no issue completely contradicting herself in the way that they seek to make commentary in this chamber about doctors—whether they are or are not being investigated—before any findings and that it is appropriate for the opposition to do that but not regulators.

This bill has been through significant consultation and is the subject of national consensus among all health ministers across the country—every state and territory health minister and the Commonwealth health minister. It is a national bill agreed to at a national level.

The member for Mudgeeraba asked me as the minister to confirm that the proposed amendments to insert a new paramount principle about public safety and confidence will not lead to practitioners being in conflict with their codes of conduct or common law obligations. A similar issue was raised by the member for Mirani and a number of other members. The bill establishes a new guiding principle in the national law to make protection of the public and public confidence in health services the paramount consideration in administering the national law.

I believe this amendment has been misunderstood and mischaracterised by those opposite. The guiding principles in the national law do not apply broadly to govern all aspects of health care or the relationship between a patient and their health practitioner. The fact is that the guiding principles are there to guide the regulators and they do not apply to individual health practitioners. I emphasise that the provision of health care will continue to be guided by universal practices, including informed consent, medical ethics and individualised treatment tailored to each patient. Health practitioners will continue to act in accordance with their training and their professional obligations by explaining the risks and benefits of care in a way that can be understood by their patients.

Let me explain which entities these principles in the national law will apply to. The paramount principle in the national law is directed at entities exercising powers under the national law, including the Australian Health Practitioner Regulation Agency, national boards, the Queensland Health Ombudsman, the National Health Practitioner Ombudsman, accreditation authorities such as the Australian Medical Council, administrative tribunals, courts and other entities exercising functions under the national law. The guiding principles will apply to a broad range of decisions made by these entities,

including decisions about accreditation and registration standards for health practitioners as well as decisions to take health, conduct or performance action against practitioners. The new guiding principle will create a specific legislative obligation to place public safety and public confidence as the most important factor in all decisions and actions of entities exercising functions and powers under the national law. This approach will encourage a responsive, risk-based approach to regulation across all health professions regulated under the national law.

As many members noted, public and community confidence in health services is strengthened when the few practitioners who do the wrong thing are subject to disciplinary action. The new paramount principle, which in part requires national scheme entities to consider community confidence in health services, reinforces this message and helps to achieve good health outcomes for patients and health consumers. The inclusion of the new guiding principle does not make a significant change to the law in Queensland. The guiding principles of the national law in Queensland have been modified to make health and safety of the public the paramount consideration. This paramount principle already guides regulatory decisions in Queensland.

The member for Mirani stated that the amendments updating the functions of Ahpra will give it broad discretionary powers. This amendment was recommended in the review of governance of the National Registration and Accreditation Scheme commissioned by the Australian Health Ministers' Advisory Council. The review recommended this amendment to recognise Ahpra's coordinating role in administering the national scheme and its wide range of functions. I would like to make clear that this amendment is not intended to extend the scope of Ahpra's powers. Rather, it recognises that Ahpra may do anything incidental or ancillary to fulfil the specific powers and functions already conferred on it. The amendment mirrors the language of a similar function given to national boards, which is appropriate given Ahpra's role in administering the national scheme. This type of provision is common across the statute book. For example, similar provisions are included in the Queensland Biosecurity Act 2014 and the Queensland Guardianship and Administration Act 2000.

As outlined in my second reading speech, I intend to move amendments during consideration in detail to withdraw provisions from the bill that would allow the use of testimonials in health service advertising. I appreciate the comments of members expressing support to withdraw these provisions based on developments that have occurred since the bill was introduced. I noted that some members had not realised that we are going to be moving these amendments. Either their side did not fill them in or they did not see the amendments circulated because they were still saying in their speeches that we should do this without acknowledging that we had already flagged that we were going to be doing it. It is hard to move from the script sometimes.

As I explained in my second reading speech, the amendments to regulate testimonials in the same way as other health service advertising are being withdrawn so they can be considered in the context of broader reforms to increase protections in the cosmetic sector. This is consistent with the recommendation from the Health and Environment Committee and with the views expressed in some submissions to the committee's inquiry. Withdrawing the amendments at this time also recognises the concerns expressed in the independent review of the regulation of medical practitioners who perform cosmetic surgery, which was handed down after the committee tabled its report. Health ministers across Australia have agreed to the withdrawal of the amendments as well as to making significant changes to increase safety for people considering or undergoing cosmetic procedures.

In closing, I would like to take this final opportunity to express my sincere appreciation to all those who have contributed to the development and debate of these important reforms. I thank the staff at Queensland Health, our state and territory counterparts and the many individuals and organisations who have helped shape the reforms and provided input into the bill.

Lastly, I wish to once again acknowledge the extraordinary work of our registered health practitioners and all health professionals who continue to care for record numbers of patients throughout Queensland and across Australia. Despite the many challenges in recent years, their resilience and professionalism have saved countless lives and contributed to the health and wellbeing of our communities. Their dedication to improving the lives of others is a source of comfort and inspiration for all of us. I commend the bill to the House.