




Speech By
Hon. Shannon Fentiman

MEMBER FOR WATERFORD

Record of Proceedings, 11 September 2024

**HEALTH PRACTITIONER REGULATION NATIONAL LAW AND OTHER
LEGISLATION AMENDMENT BILL**

Introduction

 **Hon. SM FENTIMAN** (Waterford—ALP) (Minister for Health, Mental Health and Ambulance Services and Minister for Women) (11.18 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, the explanatory notes and a statement of compatibility with human rights. I nominate the Health, Environment and Agriculture Committee to consider the bill.

Tabled paper: Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024 [1802](#).

Tabled paper: Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, explanatory notes [1803](#).

Tabled paper: Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, statement of compatibility with human rights [1804](#).

The bill amends the Health Practitioner Regulation National Law and the Health Ombudsman Act 2013 to better protect patients in Queensland and across Australia from sexual and other serious misconduct. Queensland hosts the national law on behalf of all states and territories, which means that any amendments to the national law must be made by the Queensland parliament. The amendments in the bill have been approved by all Australian health ministers.

Health practitioners are responsible for establishing and maintaining safe and respectful therapeutic relationships with people under their care. Sexual and other serious misconduct by health practitioners is an appalling abuse of the trust placed in them and cannot be tolerated. Health ministers agreed to amend the national law in response to an alarming increase in the number of complaints about sexual misconduct by health practitioners. In 2022-23, there were over 800 complaints received across Australia about violations by health practitioners. This is 223 per cent higher than three years ago and represents a growing and concerning trend of reported inappropriate behaviour.

The bill will require all practitioners who have had their registration cancelled by a tribunal to obtain a reinstatement order from the tribunal before reapplying to a national board for registration. This requirement also applies to practitioners whom a tribunal has disqualified from registration, including, for example, a practitioner who surrendered their registration during or prior to a disciplinary proceeding. The bill uses the term 'disqualified person' to describe both types of practitioners, as they are essentially disqualified from applying for registration until a tribunal issues a reinstatement order.

The bill requires the responsible tribunal for each jurisdiction to decide, in every case, whether a disqualified practitioner will be allowed to reapply for registration under the national law. In Queensland, this will be the Queensland Civil and Administrative Tribunal, QCAT. The bill provides a clear process and criteria for tribunals to follow, which will promote national consistency and ensure these decisions are both rigorous and transparent. In deciding an application for a reinstatement order, the tribunal may

consider whether the practitioner is a fit and proper person to be registered in the profession, and whether they are able to practise competently and safely. The bill also requires the tribunal to consider the complaints history of the practitioner.

If the tribunal grants the reinstatement order, it can order conditions be placed on the practitioner's registration. If the tribunal dismisses the application, it can set a period in which the practitioner cannot make another application. In Queensland, QCAT will have the power to permanently ban a practitioner from making an application for a reinstatement order. Importantly, a reinstatement order only allows a disqualified person to apply for registration. It does not automatically entitle the person to be registered. The person must still apply to a national board. While the national board may consider the tribunal's reasons for granting a reinstatement order, it may also decide not to register the person. The reinstatement order requirement raises the bar and provides greater transparency for a disqualified person seeking re-registration.

The bill expands the information on the national public registers of health practitioners regarding findings of serious sexual misconduct. Sexual misconduct is an egregious violation of the trust that is core to the practitioner-patient relationship, particularly given the power imbalance in that relationship, and it is important to be able to know if a practitioner has a history of serious sexual misconduct. Currently, the national registers record any sanctions imposed on a practitioner who has engaged in professional misconduct. However, these sanctions are removed from the register once they are no longer active. As a result, consumers and employers cannot easily find out whether a practitioner has a history of serious misconduct. The bill addresses this gap.

The bill requires additional information to be included on the public registers for practitioners whom a tribunal has found to have engaged in professional misconduct involving sexual misconduct. This additional information will remain on the registers permanently. The additional information includes a statement that the tribunal's finding of professional misconduct was based on sexual misconduct, related sanctions, and a link to the tribunal's published decision. This information is already publicly available in most cases, but is difficult for most health care consumers to find and interpret. Importantly, the new information requirement will be applied retrospectively to any professional misconduct findings that included sexual misconduct since the relevant profession came under the national law. For most professions, this will be since 1 July 2010.

Sexual misconduct is not defined in the bill and so takes on its ordinary broad meaning. However, national boards can provide guidance to practitioners through codes and guidelines. Sexual misconduct that amounts to professional misconduct can include a violation of a professional boundary between a practitioner and a person under their care, such as clinically unnecessary touching or intimate examination. Sexual misconduct can also include criminal offences, whether committed in connection with the practice of the profession or not, for example, sexual assault.

The bill provides safeguards, including that the published information must comply with any court or tribunal non-publication order to protect victims' identity. By permanently including practitioners' regulatory history relating to serious sexual misconduct on the public register, the bill will allow consumers and employers to make better-informed choices about health practitioners.

The bill will also provide stronger statutory protections for notifiers under the national law. In Queensland, notifiers are referred to as complainants. The bill expands existing protections by making it an offence to threaten or intimidate a complainant, take negative employment action, or cause other detriment to a complainant. The maximum penalty will be \$60,000 for an individual and \$120,000 for a body corporate. For Queensland, the bill also updates corresponding protections in the Health Ombudsman Act to cover threatening or intimidating conduct.

The bill also clarifies consumer rights in relation to non-disclosure agreements. Recent reviews have identified that patients who have signed a non-disclosure agreement are not always aware of their right to make a complaint to a regulator. The bill makes it an offence for a health service or practitioner to enter into a non-disclosure agreement with a person that does not clearly state that the person may make a complaint or assist regulators. The bill also voids a non-disclosure agreement to the extent it seeks to limit a person from making a complaint or assisting regulators. This will apply to existing non-disclosure agreements, regardless of when they were made.

The bill raises the bar for disqualified persons seeking re-registration, improves the information on the public register about health practitioners with a history of serious sexual misconduct, and strengthens consumer protections.

I thank health ministers from across Australia for their commitment to these reforms, to improve safety for all health consumers. I commend the bill to the House.

First Reading

Hon. SM FENTIMAN (Waterford—ALP) (Minister for Health, Mental Health and Ambulance Services and Minister for Women) (11.26 am): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to Health, Environment and Agriculture Committee

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