Speech By

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MEMBER FOR SOUTH BRISBANE

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HEALTH PRACTITIONER REGULATION NATIONAL LAW AND OTHER LEGISLATION AMENDMENT BILL

Dr O'SHEA (South Brisbane—ALP) (12.56 pm): In addressing this bill, I would like to first acknowledge the work of my colleagues on the Health, Environment and Innovation Committee, all the submitters who provided contributions and the secretariat for their hard work in supporting the committee with its review of this proposed legislation. This bill will amend the Health Practitioner Regulation National Law and the Health Ombudsman Act 2013. The national law is designed to protect the public by ensuring only health practitioners who are suitably qualified to practise in a competent and ethical manner are registered. I should inform the House that I am registered as a medical practitioner, now non-practising, with the Medical Board under Ahpra—the Australian Health Practitioner Regulation Agency.

The bill will amend the national law in three ways. Firstly, it will establish a nationally consistent process for health practitioners to apply for re-registration after a tribunal has either cancelled their registration or temporarily disqualified them from registration. At the moment, in all jurisdictions other than New South Wales, a practitioner can apply directly to their health profession's national board for re-registration following a period of disqualification. The amendment to the national law will require all cancelled or disqualified practitioners to first obtain a reinstatement order from a responsible tribunal before applying to a national board for re-registration. This is the current practice in New South Wales.

Secondly, the national law will be amended to expand the information available on the public register about practitioners who have engaged in professional misconduct involving sexual misconduct. The final amendment will provide greater protections for people who make notifications or assist regulators during investigations about registered health practitioners.

When reviewing this bill, I was concerned about the amendment related to the permanent and retrospective publication on the public register of disciplinary action against health practitioners. I will first explain why this amendment has been proposed and then elaborate on my concerns with it. In recent years, there has been a marked increase in the number of allegations of sexual misconduct against registered health practitioners, which is why the Australian health ministers agreed to amend the national law to expand the information on the public register for practitioners who have engaged in serious sexual misconduct. Sexual misconduct by a health practitioner betrays the trust inherent in the practitioner-patient relationship and can have devastating effects on the patient.

As a doctor, the safety of patients and their right to make fully informed decisions about their choice of healthcare professionals are of vital importance to me. The increase in the number of complaints of sexual misconduct against health practitioners is why our laws need to be strengthened. This bill will increase transparency to better protect the public. While there is a need to strengthen our laws, it must be understood that the overwhelming majority of our doctors, nurses and other health practitioners work tirelessly caring for their patients in an ethical and highly competent manner.

Dr O'SHEA (South Brisbane—ALP) (3.02 pm), continuing: While there is a need to strengthen our laws, it must be understood that the overwhelming majority of our doctors, nurses and other health practitioners work tirelessly caring for their patients in an ethical and highly competent manner. Given the grave professional and personal ramifications for a health practitioner of being identified as having engaged in sexual misconduct, in reviewing the proposed amendment it was important to balance the rights of patients and their need for protection with the rights of practitioners. The importance of getting this balance right is pointed out by the Australian Medical Association, the AMA, in its submission to the inquiry where it states—

We do believe it is entirely possible to have a scheme that ensures the public is protected without derailing the lives and careers of the doctors who have dedicated their lives to patients and communities but we do not currently have that system. This was demonstrated in 2023 when Ahpra released a report that identified 16 deaths by suicide and four instances of attempted suicide or self-harm among practitioners who were subject to regulatory notification.

These deaths were over a four-year period to 2021.

There are two aspects that concern me about the amendment related to expanding the information available on the public register regarding practitioners who have engaged in professional misconduct involving sexual misconduct. Firstly, there was a lack of definition of the threshold for sexual misconduct that would result in permanent and retrospective publication on the public register of disciplinary sanctions related to a health practitioner. During the public hearing the AMA stated that, although they do not oppose the permanent publication of the regulatory history where there has been a serious sexual misconduct violation, there is—

... still some lack of clarity around the definitions. It would seem that more consultation or thought needs to be given to what the threshold is.

Defining the threshold is essential given the proposed amendment would apply if a practitioner was found to have behaved in a way that constituted professional misconduct, whereas sexual misconduct was not the sole or main basis for the tribunal's decision, as the Queensland Nurses and Midwives' Union observed. They stated—

We also note that the bill provides that to initiate the publication requirements, sexual misconduct does not need to be the principal behaviour for the tribunal's findings of misconduct.

When asked during the public hearing if the AMA were supportive of the proposal in the bill to publish the regulatory history of a practitioner regarding findings of professional misconduct where the finding of misconduct is not solely sexual, the AMA responded that they opposed this proposal. They stated in their submission—

Sanctions imposed on practitioners by tribunals need to be proportionate to the seriousness and nature of the conduct.

These concerns regarding defining the threshold for publication in the bill were addressed by the committee in recommendations 2 and 4. In response to these recommendations, the Minister for Health and Ambulance Services has clarified the legislative threshold for sexual misconduct by amending the explanatory notes to state that the threshold for publication has been limited to only tribunal findings of professional misconduct based on sexual misconduct. I thank the minister for responding to these recommendations.

The second concern I had with this bill was the introduction of a provision for a national board to infer from a tribunal's report that a finding of professional misconduct was based on sexual misconduct. The Queensland Law Society raised this issue in their submission, stating—

If a Tribunal has not expressly determined that sexual misconduct is a basis for its finding, the Board should not be required or permitted to make its own inference about the finding. Allowing or requiring the Board to make this determination is not appropriate and undermines the authority of the Tribunal, which has heard all of the evidence in the proceedings.

The Queensland Nurses and Midwives' Union stated in their submission—

If the bill is passed, the QNMU advocates for a framework for all National Boards to use which examines what is 'discretion to infer' and the context around that the inference must be 'necessary'.

This new proposal for a national board to infer from a tribunal's report that a finding of professional misconduct was based on sexual misconduct is of particular concern given that a practitioner can appeal a tribunal panel's findings and have a merits review where their case is reviewed by the tribunal. However, practitioners would have to challenge the legality of the national board's decision through judicial review. During the public inquiry the Queensland Law Society reflected this concern, stating—

It is the society's position that there ought to be a process for a merits review. It is generally less expensive to seek a merits review than to go through a judicial review, which is a more longwinded process and takes up a higher court's time.

These concerns were addressed by the committee in recommendation 4 and recommendation 3. In response to these recommendations, the Minister for Health and Ambulance Services decided that a national board's decision to publish a health practitioner's regulatory history would not be able to be appealed through the tribunal but, instead, would require judicial review. This is disappointing particularly given the retrospective nature of this bill. Notwithstanding this, the opposition strongly supports the passage of this bill to strengthen our laws to protect public safety and to increase transparency for the public to enable them to make fully informed decisions about their choice of healthcare professionals. I commend the bill to the House.