




Speech By
Rob Molhoek

MEMBER FOR SOUTHPORT

Record of Proceedings, 3 April 2025

HEALTH PRACTITIONER REGULATION NATIONAL LAW AND OTHER LEGISLATION AMENDMENT BILL

 **Mr MOLHOEK** (Southport—LNP) (11.45 am): I also rise this morning to make a contribution in respect of the Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024. At the outset I want to acknowledge the minister and say thank you. In my many years as a committee member—and I have been involved in various committees over many years—I am struggling to recall a time where a minister has actually responded so positively to recommendations of a committee. I want to thank the minister for listening and for his willingness to take on board some of the recommendations of the committee—not all of them.

We had very fulsome responses and a significant amendment—in that the entire contents of the explanatory notes were resubmitted and changed to better reflect the issues raised by the committee and to clarify definitions around the difference between ‘serious sexual misconduct’ and just ‘sexual misconduct’. We would not trivialise either, but the committee raised concerns around these definitions and the need for absolute clarity in the future so that others who find themselves in a situation where they want to prosecute these issues have a definition that stands up under law.

As chair of the committee, it was our role to hear from submitters and consider whether the policies to be achieved by the legislation and its application have sufficient regards to the rights and liberties of individuals and the institution of the parliament. The bill makes amendments to the Health Practitioner Regulation National Law and the Health Ombudsman Act 2013. Queensland, as has already been stated, is the host jurisdiction for this national law which binds each participating Australian jurisdiction, with variations to suit each locality. The committee received 23 submissions and held a public hearing, during which we heard evidence from 15 witnesses. I want to thank all those organisations which made significant contributions to the review of this legislation for their submissions and their time as witnesses.

The objectives of the bill are to amend the Health Practitioner Regulation National Law to: better protect public safety by establishing a nationally consistent process for practitioners to regain registration after their registration has been cancelled or they have been disqualified by a tribunal; increase transparency for the public regarding disciplinary action against health practitioners who have been found by a tribunal to have engaged in serious sexual misconduct; and strengthen protections for notifiers while clarifying consumer protections in relation to non-disclosure agreements about the health, conduct or performance of health practitioners. Put simply, the legislation seeks to establish a public register of practitioners who have engaged in serious sexual misconduct. I probably should delete the word ‘serious’; it is just sexual misconduct.

The Health, Environment and Innovation Committee also has oversight of Queensland’s Office of the Health Ombudsman. While standing orders prevent me from discussing in detail some of the complaints handled by the ombudsman, I can speak generally about the complaint system as data is published annually by the OHO.

In the year 2023-24, the number of complaints received increased by eight per cent, from 8,613 to 9,264. Forty-eight per cent of these complaints were assessed and categorised as high-risk or priority matters, compared to 22 per cent in previous years. Seventy-six decisions were made to take immediate action against registered and unregistered health practitioners in the same year. As at 30 June 2024, 286 practitioner monitoring cases were open, an increase of 14 per cent. The Director of Proceedings received 107 matters from the Health Ombudsman for consideration for referral to QCAT in that same year, also an increase of around 23 per cent on the previous year.

Furthermore, the OHO reports each month to our committee on the more serious matters awaiting action by the Director of Proceedings and on all matters exceeding two years. Without going into details, complaints and actions regarding sexual misconduct make up a significant portion of all complaints received and dealt with by the Office of the Health Ombudsman.

Given the rise in complaints, I can assure the House that the need to provide greater information to the public about practitioners who have been found to have engaged in professional misconduct involving sexual misconduct, as proposed in this bill, is more than justified. We must ensure all practitioners understand that serious sexual boundary violations will never be tolerated.

That said, there is a need for fairness and due process. Several submitters raised concerns about the risks associated with wrongly or unfairly naming practitioners on a national register. During our inquiry I was shocked to hear that over a 14-year period 16 health practitioners had taken their own life while involved in the complaints process under the national law. Even without hearing directly from victims and survivors of health practitioner sexual abuse, it is clear that making the national scheme safer for all is critically important.

At the public hearing on Tuesday, 28 January the committee heard evidence from representatives of the Australian Medical Association, the Royal Australian College of General Practitioners, the Queensland Nurses and Midwives' Union, Avant Mutual, the Australian Lawyers Alliance, the Queensland Law Society, the Office of the Health Ombudsman and the Australian Health Practitioner Regulation Agency, Ahpra. The Australian Medical Association stated that the breach of trust between practitioner and patient is of such a nature that it tilts the balance in favour of a prospective patient's right to know. That, simply, is the argument for the national register. Therefore, the AMA supports the ongoing publication of a practitioner's regulatory history in relation to all transgressions of a sexual nature. However, some submitters raised legitimate concerns about the retrospective nature of the proposal for permanent publication.

The committee spent a significant amount of time exploring this issue with relevant stakeholders and is reasonably satisfied that these concerns are best addressed through the safeguards contained within the bill and by Ahpra ensuring clear protocols and parameters are in place. Ahpra noted that practitioners rightly expect procedural fairness and natural justice in their regulatory processes. As a result of these concerns, the committee has recommended that during the implementation of the bill the Australian Health Ministers' Meeting consult further with relevant stakeholders around operationalising any legislative threshold of sexual misconduct and the national boards' discretion to infer.

In recommendation 2 of the report, the committee has asked that either the bill or the explanatory notes be amended to clarify any requisite legislative threshold for sexual misconduct or its ordinary meaning at law. I am pleased to see that the minister has provided an erratum and amended the explanatory notes as requested.

A significant number of submitters raised concerns about this important discrepancy between the legislation and the explanatory notes. The legislation specifically refers to sexual misconduct, for which there is no definition in the current national law. The explanatory notes, however, use the term 'serious sexual misconduct' and provide an extensive list of examples. The Medical Board of Australia's guidelines in relation to sexual misconduct state that 'sexual misconduct is an abuse of the doctor-patient relationship' and 'can cause significant and lasting harm to patients'. While this is a reasonably robust definition, it is not entirely fit for purpose as it relates only to doctors. The national law proposes to regulate an estimated 900,000 health practitioners through 15 established national boards which cover chiropractic, dental, midwifery, Chinese medicine, Aboriginal and Torres Strait Islander health practice, medical radiation, nursing, optometry, paramedicine, pharmacy, physiotherapy, psychology, podiatry, occupational therapy and medical practice generally.

The committee welcomes and supports the legislation as proposed. However, it should be noted that there are a significant number of unregistered practitioners to whom this law does not apply. There is not the same level of oversight for personal carers, social workers, naturopaths, nutritionists, herbalists, reflexologists, music therapists, theatre technicians, medical assistants or hypnotherapists, to name a few. In fact, the Office of the Health Ombudsman identified just on 40 occupations that are unregistered but all of which involve significant patient contact.

In closing, I wish to acknowledge the work of my fellow committee members and the committee secretariat and thank them all for their contributions in reviewing this important legislation. I commend the bill to the House.