Speech By

Hon. Tim Nicholls

MEMBER FOR CLAYFIELD

Record of Proceedings, 2 April 2025

HEALTH PRACTITIONER REGULATION NATIONAL LAW AND OTHER LEGISLATION AMENDMENT BILL 2024

Resumed from 12 December 2024 (see p. 464).

Second Reading

Hon. TJ NICHOLLS (Clayfield—LNP) (Minister for Health and Ambulance Services) (8.42 pm): I move—

That the bill be now read a second time.

The bill was introduced on 12 December 2024 and referred to the Health, Environment and Innovation Committee. I acknowledge the work of the committee and thank the stakeholders who made submissions and attended the hearing. I table the government's response to the committee's report.

Tabled paper: Health, Environment and Innovation Committee: Report No. 1, 58th Parliament—Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, government response 300.

The committee made four recommendations. I welcome the committee's first recommendation, that the bill be passed. I will address the committee's other recommendations shortly. I also table an erratum to the explanatory notes. The erratum amends the explanatory notes to give effect to the committee's second recommendation and clarifies other issues raised by the committee.

Tabled paper: Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024, explanatory notes: Erratum 301.

The bill introduces three reforms to the Health Practitioner Regulation National Law. It also modifies the national law as it applies in Queensland and makes related amendments to the Health Ombudsman Act. The national law sets out the legal framework for regulating health practitioners across all of Australia. As the host jurisdiction, Queensland is responsible for amending the national law on behalf of all states and territories. The national law amendments were agreed by the health ministers of all states and territories and the Commonwealth in July 2024.

There has been a significant increase in the number of complaints of sexual misconduct made against health practitioners. The Australian Health Practitioner Regulation Agency—Ahpra—reported an alarming 1,156 complaints about professional boundary violations, including sexual misconduct, that were made against health practitioners in 2024. This is an increase of 37.5 per cent from the previous year. Of those complaints, 174 related to practitioners working in Queensland.

Sexual misconduct can cause harm and long-lasting trauma to patients and those close to them. It can also damage community confidence in the safety of services provided by health practitioners. Any act of sexual misconduct committed by a health practitioner is, of course, an egregious breach of the trust they hold. It is something that Queenslanders should never have to experience or tolerate. The reforms in this bill will provide more information to the public and employers about sexual misconduct by health practitioners. It will also provide greater protections for those brave members of the community who stand up and make a good faith complaint against a practitioner.

Finally, the bill will strengthen the process for a practitioner to regain their registration after it has been cancelled by a tribunal.

I will turn now to the substance of the bill. The public has the right to know if their healthcare provider has a regulatory history relating to sexual misconduct. To this end, the bill makes more information available about practitioners with a history of sexual misconduct. This will enable people to make more informed decisions about provision of their health care. It will also provide Hospital and Health Services and other healthcare employers with the information they need to better protect their patients.

The bill requires the national boards to publish information on the public registers about tribunal findings of professional misconduct that are based on sexual misconduct. The information to be included on the registers includes the finding of professional misconduct, the fact that the professional misconduct included sexual misconduct, the sanctions imposed, and a link to the tribunal's published decision and accompanying reasons. This information must remain on the register permanently, subject to limited exemptions. It is information that is or was in the public realm.

Currently, the public registers only include information that relates to findings of professional misconduct and active sanctions, such as conditions or suspensions currently in effect. However, once a sanction is no longer active it is removed from the register and there is no easy way for consumers or employers to find a practitioner's past regulatory history. Clearly, that is unsatisfactory. This does not meet community expectations. The Australian Lawyers Alliance told the committee that many clients would not have consulted a practitioner had they known about the practitioner's regulatory history relating to sexual misconduct.

The bill includes safeguards to protect privacy, especially for victims. The board must not include information on the public registers if it would breach a court or tribunal non-publication order. The bill also maintains the national boards' discretion not to publish information if doing so presents a serious risk to the health or safety of the practitioner, their family or an associate. This may apply, for example, if publication would present a serious risk that the practitioner may self-harm.

I will now address two issues raised by stakeholders and the committee in relation to the publication provisions. The first issue is that the term 'sexual misconduct' may not provide a clear threshold for permanent publication of a practitioner's related regulatory history. The committee recommended the explanatory notes and/or the bill be amended to clarify the legislative threshold for sexual misconduct. The government supports this recommendation. The erratum I have tabled amends the explanatory notes to clarify the threshold set out in the bill. The threshold is clear and appropriate.

Under the bill, not all sexual misconduct will trigger the permanent publication of information on the public register. Publication will occur only if the tribunal has found the misconduct was a basis for a finding of professional misconduct. Professional misconduct is an existing threshold in the national law, and since it is a formal decision made by a tribunal, it is clear and unambiguous. As the highest level of misconduct under the national law, professional misconduct also serves as an appropriate threshold.

In the context of clause 21 of the bill, the threshold captures sexual misconduct at the higher end of the spectrum, but it excludes behaviours which, although sexual misconduct, are less likely to represent a risk that justifies permanent publication of a practitioner's related regulatory history.

During development of the bill, consideration was given to alternative ways of establishing a threshold. This included considering defining 'sexual misconduct' or using a qualifier such as 'serious sexual misconduct'. 'Sexual misconduct' is an existing term used in the national law and defining it for purposes of this reform would not provide a clear statutory threshold for publication. This is because a definition would need to cover the wide variety of behaviours which may be sexual misconduct and take account of the role of context in determining whether a specific instance of a behaviour amounts to misconduct and is sexual in nature. A qualified term such as 'serious sexual misconduct' was not used because it does not provide a clear threshold. It also misleadingly implies that some forms of sexual misconduct are not serious.

The second issue is reflected in the committee's third recommendation. The committee recommended that a board's decision that a tribunal's finding of professional misconduct was based on sexual misconduct should, if based on an inference, be subject to a merits-based review. While we recognise this is a matter of concern for stakeholders, the government does not support this recommendation. I will briefly explain why. All major decisions a board makes under the national law are subject to merits review by the relevant tribunal, but other administrative decisions are not. In this instance, the government considers merits review of the board's decision is not appropriate.

The bill requires a national board to publish the prescribed information if it is satisfied sexual misconduct was a basis for the tribunal's professional misconduct finding. The board makes this assessment solely using the tribunal's decision and the reasons for that decision; however, the tribunal's decisions and reasons may not expressly call the behaviour 'sexual misconduct'. It may use other terminology. Also, the tribunal may make a single global finding of professional misconduct based on multiple types of misconduct. For this reason, the bill recognises that the national board may need to infer that sexual misconduct was a basis for the tribunal's finding of professional misconduct. The board is only permitted to draw such an inference if it is necessary to make sense of the tribunal's decision. If the tribunal's decisions and reasons can be understood without inferring that sexual misconduct was a basis for the finding of professional misconduct, the inference is not necessary. These strict requirements ensure the benefit of the doubt goes to the practitioner.

Importantly, if a practitioner believes a national board has misconstrued a tribunal's decision regarding the practitioner's misconduct, the practitioner can apply to a court for a judicial review of the board's decision. That judicial review is appropriate because whether the board drew an improper inference from the tribunal's decision is ultimately a question of law. For the same reason, it would be inappropriate to submit the board's decision to a merits-based review. The board is not making a merits decision. Rather, its role is strictly limited to reviewing the tribunal's decision and reasons for determining whether they trigger the statutory requirement to publish information about that decision on the public register. Allowing practitioners to seek a merits review of these decisions would serve no purpose other than to delay publication and impose unnecessary costs on tribunals and regulators. This aspect of the bill is also clarified in the erratum to the explanatory notes that I have tabled this evening.

The second reform in the bill strengthens statutory protections for people who make a complaint under the national law or Health Ombudsman Act. This reform has been overwhelmingly supported by stakeholders. The bill makes it an offence to threaten, intimidate, take negative employment action or cause other detriment to a complainant. It also expands similar offences under the Queensland Health Ombudsman Act to cover threatening or intimidating conduct.

The bill also makes it an offence for a health service or practitioner to enter into a non-disclosure agreement with a person without clearly stating the person may still make a complaint or assist the regulators. The bill voids a non-disclosure agreement to the extent that the agreement limits a person from making a complaint or assisting regulators. This will apply to existing non-disclosure agreements, including those made before the bill commences. These amendments will strengthen the reporting culture, which is crucial to the effective regulation of the professions.

Finally, the bill requires a person whose registration has been cancelled, or who has been disqualified from registration, to obtain a reinstatement order before reapplying for registration. This is a requirement that already applies in New South Wales. The decision to allow a cancelled or disqualified person to reapply for registration will rest with the responsible tribunal in each jurisdiction. In Queensland, the Queensland Civil and Administrative Tribunal will perform this function in its professional disciplinary jurisdiction. When deciding to grant a reinstatement order, the tribunal may consider whether the disqualified person is fit and proper and able to practise competently and safely. The tribunal will also consider any complaints made against the practitioner.

While a reinstatement order allows a disqualified person to apply for registration, it does not automatically entitle the person to be registered. They must still apply to a national board for registration and the board must assess the application on its own merits against all the usual statutory criteria, including recency-of-practice requirements. This distinction is important, as some time may elapse between the reinstatement order and the application for registration. The national boards must maintain the discretion to consider matters that may arise in the intervening period—that is, between the practitioner making the application to the tribunal, subsequently making an application to the national board and the board making its decision in those circumstances.

If the tribunal grants a reinstatement order, it can also order conditions be placed on the person's registration if the person later gains registration. The board will also have discretion to set conditions, provided they are consistent with the conditions set by the tribunal. If the tribunal dismisses the application, it may prohibit the practitioner from making another application for a set period. In Queensland, QCAT will retain its power to permanently prohibit a practitioner from applying for a reinstatement order. The reinstatement order process will strengthen public protection and confidence in the professions by providing an extra layer of scrutiny for cancelled or disqualified practitioners seeking re-registration.

I will now finally address the committee's fourth recommendation. The committee recommended that during the implementation of the bill Australian health ministers consult further regarding the threshold for sexual misconduct and the national boards' discretion.

Mr DEPUTY SPEAKER (Mr Whiting): Can you please pause for a moment, Minister. I remind members of the gallery not to take photos of the proceedings.

Mr NICHOLLS: In respect of the fourth recommendation, the committee recommended that during implementation of the bill Australian health ministers consult further regarding the threshold for sexual misconduct and the national boards' discretion to infer sexual misconduct. I have raised this recommendation with other Australian health ministers. I have also instructed the department to raise this matter with Ahpra and the national boards, who will be primarily responsible for implementing this reform. Ahpra have advised the committee it will engage with key stakeholders on implementation of the bill and publish guidance to ensure full transparency.

This bill improves transparency for the community about sexual misconduct by health practitioners and strengthens the process surrounding re-registration for practitioners whose registration has been cancelled by a tribunal. It also strengthens consumer protections for those making good-faith complaints about a health practitioner. It is unfortunate that these reforms are needed to address those acting in wilful violation of their professional standards.

I want to emphasise and recognise the value and hard work of the overwhelming majority of our dedicated health practitioners. In developing this bill, we heard from practitioners and their representatives about the importance of professional standards in ensuring the delivery of safe health care and maintaining public confidence in the professions. In fact, who could have a greater interest in ensuring that than the professions themselves? We heard from practitioners who are appalled by those who take advantage of the trust of their patients and fellow professionals. These safe, competent and ethical practitioners make up the vast majority of Queensland's healthcare system. I want to thank these healthcare practitioners for their commitment to their community. Let me give a big shout-out, with a degree of self-interest, to occupational therapists. I happen to know one exceptionally well! Together, the reforms in this bill will contribute to a safer, more transparent and more equitable health system. I thank the committee. I commend the bill to the House.

Debate, on motion of Mr Nicholls, adjourned.