



Podiatrists Bill.

Second Reading

The Hon. HENRY TSANG [Parliamentary Secretary] [6.06 p.m.]: I move:

That this bill be now read a second time.

I have the pleasure of introducing the Podiatrists Bill, which will protect the health and safety of the public of New South Wales by providing for effective regulation that ensures podiatrists are fit to practise. The bill proposes the repeal of the Podiatrists Act 1989 and its replacement with new legislation for the registration of podiatrists, which is appropriately updated to strengthen and improve regulation in a similar fashion to improvements that have been made to the regulatory system for other health professionals, such as medical practitioners. The bill is the result of an extensive review process that has taken place over the past few years, consistent with the requirements of competition policy. The review has involved detailed conversation with all relevant stakeholders and, in particular, the podiatry profession. The bill having been introduced, honourable members should note the opportunity for detailed consideration over the coming parliamentary recess, as the bill is permitted to lie on the table. The podiatry profession will also enjoy the opportunity for further detailed consideration over the coming months as the bill lies on the table.

The bill proposes revision of the composition of the Podiatrists Registration Board. It is proposed that the board now comprise seven members, those being two podiatrists nominated by the Minister from a panel of podiatrists nominated by the Australian Podiatry Association (NSW) and other relevant professional organisations; one podiatrist nominated directly by the Minister; one podiatrist involved in education; an officer of the Department of Health or the public health system; a community representative and a legal practitioner. Honourable members will recall that health professional legislation introduced and passed in recent times has included cognate amendments to the Public Health Act 1991 in respect of any restrictions on health care practices necessary in the interests of public health and safety. Their placement in the Public Health Act underpins the public health and safety rationale of any restrictions. I seek leave to incorporate the remainder of my second reading speech in *Hansard*.

Leave granted.

This bill takes a similar approach in relation to certain foot care practices. It is proposed that these practices be restricted to medical practitioners, podiatrists and registered nurses employed by the public health system, a licensed private hospital, a licensed day procedure centre or a licensed nursing home. The practices proposed to be restricted in this manner are, first, the undertaking of invasive procedures performed on the feet and toenails under anaesthesia. This practice would be restricted to medical practitioners and podiatrists. Second is the undertaking of debridement of hypertrophic and necrotic tissues of the foot, and the undertaking of treatment of the feet of immuno-compromised or vascular-compromised individuals and individuals suffering from peripheral neuropathy. These practices would be restricted to medical practitioners, podiatrists and registered nurses employed by a public health organisation, a nursing home, a private hospital or a day procedure centre. However, they are in no way intended to prevent other health professionals such as chiropractors, osteopaths and physiotherapists from undertaking their normal professional practice in respect of immuno-compromised or vascular-compromised individuals and individuals suffering from peripheral neuropathy.

I turn now to the specific provisions of the bill. To ensure that the welfare of patients is the paramount consideration in administering the Act, clause 3 of the bill states that the objective of the legislation is to protect the health and safety of the public by providing mechanisms to ensure that podiatrists are fit to practise. The bill will achieve this objective through a number of initiatives. The first of these initiatives is to provide that the board may refuse to register a person, or register him or her subject to conditions, where it is not satisfied that he or she is competent to practise. For the first time it will be an express requirement that applicants for registration must be competent to practise. As part of the requirement for competence, clause 14 of the bill provides that the Podiatrists Registration Board would have the power to conduct an inquiry into a person's competence. If, following an inquiry, the board is not satisfied as to the applicant's competence it will be able to grant registration subject to conditions or refuse to register the applicant. This power to conduct an inquiry will also apply when a person applies to have his or her registration restored.

The second initiative within the bill, to ensure that podiatrists maintain their competence, is the introduction of a more robust annual renewal process. This process will require practitioners to submit annual declarations to the board on renewal of registration. Clause 20 of the bill provides that these declarations will cover criminal convictions and findings, ongoing good character, the refusal by another jurisdiction to register the person, the details of any suspension or cancellation of registration or the imposition of conditions in another jurisdiction or by another health registration board in New South Wales, whether the practitioner is registered with another health registration board in New South Wales, significant physical or mental illness that is likely to affect a podiatrist's ability to practise, and continuing professional education activities.

In addition to practitioners being required to provide the board with an annual declaration detailing any criminal findings, clauses 21 and 22 of the bill also provide for the board to be notified about practitioners who are the subject of criminal findings. Under these provisions courts will be required to notify the board of practitioners who have been convicted of an offence or made the subject of a criminal finding in respect of a "sex or violence offence". Essentially, a criminal finding is one where an offence has been proven but a conviction has not been recorded. A "sex or violence offence" is an offence involving sexual activity, acts of indecency, child pornography, physical violence or the threat of physical violence. Practitioners will be required to notify the board within seven days if they have been convicted of an offence of a type that courts are required to report, or if they have sustained a criminal finding in relation to a "sex or violence offence", or if they are facing criminal proceedings for a "sex or violence offence" where the allegations relate to conduct occurring in the course of practice or involving minors.

The third significant initiative is part 4 of the bill. Part 4 introduces a new disciplinary system, similar to the model applying to a number of other health professions. Clauses 24 and 25 provide for a two-tier definition of misconduct based on the definitions in the Nurses Act. The adoption of the two-tier definition, which includes both unsatisfactory professional conduct and professional misconduct, will allow the board to deal with both serious and less serious complaints in the most appropriate manner. Clause 26 of the bill provides the grounds for a complaint about a practitioner. The grounds for complaint have been drafted to be consistent with the grounds for complaint in the Health Care Complaints Act, the changes in the grounds for refusing a person registration, the introduction of the two-tier definition of misconduct and the introduction of an impaired practitioners system.

The bill proposes a Podiatrists Tribunal, which would deal with complaints when practitioners are charged with professional misconduct. The tribunal would be chaired by a legal practitioner with at least seven years experience, and include two podiatrists and a consumer selected by the board. The tribunal would hear the more serious complaints about practitioners, and the board would, where appropriate, conduct inquiries into complaints that are less serious. The bill also proposes the establishment of a Podiatry Standards Advisory Committee. The committee would be used by the board as an expeditious and expert mechanism to inquire into complaints about podiatry services that the Health Care Complaints Commission does not propose to investigate. Those complaints will generally be at the lower end of the spectrum of seriousness. It is proposed that the committee chair be a podiatrist nominated by the board. In addition there would be two other podiatrists selected by the Minister from a panel of practitioners put forward by the board. There would also be a consumer representative on the committee.

Due to the importance of complying with the rules of natural justice, board members would not be eligible to be appointed to the committee. Precluding board members from sitting on the committee will ensure that complaints are not considered by the same individuals in different capacities. The bill provides that members of the committee be appointed for a fixed term of four years. The committee will investigate complaints and make recommendations to the board for its resolution. Included as part of the committee's investigatory powers will be the power to require a practitioner who is the subject of a complaint to undergo skills testing. Skills testing will assist the board in dealing with complaints about professional standards and in ensuring that practitioners maintain appropriate professional standards.

It is not proposed that the committee have the power to determine complaints, but it would be able to facilitate the patient and the practitioner reaching an appropriate agreement. Should the committee, during its investigations, reach the view that a complaint raises an issue of unsatisfactory conduct which requires referral for a disciplinary inquiry, the board will be obliged to follow this recommendation. In such cases the board would either conduct an inquiry into the complaint or, for the most serious matters, refer the complaint to the tribunal for a hearing.

Honourable members will be aware of the valuable role that the Health Care Complaints Commission performs in investigating complaints about health service providers and in appropriate cases instituting disciplinary action against practitioners. I emphasise that, under the new disciplinary provisions, the Health Care Complaints Commission will continue to play an important role in the investigation and prosecution of complaints. As part of the board's powers to protect the public it will be able to impose conditions on a practitioner's registration or suspend that registration, where it is necessary to do so to protect the life or the physical or mental health of any person.

This leads me to part 5 of the bill, which proposes a system for the board to manage impaired practitioners. The provisions of part 5 of the bill are modelled on provisions in the Medical Practice Act, which have operated successfully for a number of years. The rationale for such a system is that practitioners whose ability to practise is impaired by factors such as physical or mental illness, or drug and alcohol abuse, can be managed and assisted before those problems develop to such an extent that patients are placed at risk. Following the impairment process, the board will be able to place conditions on a practitioner's registration or suspend that registration where it is satisfied that the practitioner has agreed. Where the practitioner does not agree to the recommendations of an impaired registrants panel, the board will have the option of lodging a complaint about the practitioner and having that complaint dealt with by the tribunal or at a board inquiry.

The bill includes comprehensive appeal mechanisms to ensure that there are appropriate checks and balances in the disciplinary system. Where a complaint is heard by the board there is a right to appeal to the tribunal, and for that appeal to be by way of a fresh hearing. There is also an avenue for a practitioner to appeal to the tribunal on a point of law. Where a complaint is heard by the tribunal there is a right to appeal to the Supreme Court. However, such an appeal may only be made on a point of law or in respect of the sanction that is imposed by the tribunal. In the interests

of administrative effectiveness and efficiency the board will have the power to delegate certain of its functions and to establish committees. The establishment of committees will allow the board to co-opt outside expertise from both the podiatry profession and other professions for specific matters, such as education.

The provisions of this bill are aimed at ensuring that the public can continue to have confidence in podiatrists and to expect the highest standards of competence and conduct from the profession. I am therefore pleased to introduce the Podiatrists Bill 2003 and allow the bill to lie on the table of this House over the forthcoming parliamentary recess. This will provide the opportunity for interested parties generally, and the podiatry profession in particular, to consider detail of the bill. In the course of the legislation review the Department of Health conducted extensive consultation with the podiatry profession. Consultation with the profession will continue while the bill lies on the table. I welcome comment on the bill and, in particular, comment on the proposed restrictions on certain foot care practices. I welcome any suggested amendments to the bill which improve its effectiveness in the public interest. I commend the bill to the House.

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