NSW Legislative Assembly Hansard

Health Legislation Further Amendment Bill

Extract from NSW Legislative Assembly Hansard and Papers Wednesday 22 September 2004.

Second Reading

Mr MORRIS IEMMA (Lakemba—Minister for Health) [7.30 p.m.]: I move:

That this bill be now read a second time.

This bill proposes amendments to a number of pieces of health legislation, namely, the Dental Technicians Registration Act 1975, the Health Services Act 1997, the New South Wales Institute of Psychiatry Act 1964, the Optical Dispensers Act 1963 and the Public Health Act 1991. The bill also proposes the repeal of the Nursing Homes Act 1988. I commence with the repeal of the Nursing Homes Act and the associated amendments to the Public Health Act. The Nursing Homes Act was enacted in 1988 and requires all nursing homes in New South Wales to obtain a licence to operate from the Director-General of Health. The Act does not apply to those facilities that were previously known as hostels.

The Nursing Homes Act predates the Commonwealth Government's Aged Care Act 1997, which establishes a comprehensive funding and regulatory regime for aged care facilities for both nursing homes and hostels. Therefore, nursing homes in New South Wales are currently regulated by both State and Commonwealth governments. This is in contrast to other States, where the Commonwealth alone regulates nursing homes. As part of the Government's obligations under the competition principles agreement the Department of Health conducted a review of the Nursing Homes Act. That review concluded that as the Commonwealth's Aged Care Act provides a comprehensive regulatory and funding system for aged care the Nursing Homes Act adds an additional and unnecessary layer of regulation to the aged care sector.

There has long been concern by nursing home operators that duplicate State Government regulation of nursing homes places additional barriers to the opening of new places by service providers. The repeal of the Nursing Homes Act demonstrates the Government's commitment to remove any obstacles to bringing new aged care places on line and it will assist families in securing a place for a family member who requires dedicated professional care. While the Commonwealth regulatory system is comprehensive and incorporates a wide range of powers to sanction poor performers there is one area where the Government is concerned that Commonwealth regulation is inadequate and where it is necessary to retain State Government regulation. This is a strong commitment from the Government in the area of professional nurse staffing.

Under the Nursing Homes Act all licensed facilities are required to employ a chief nurse to be responsible for the overall care of the residents of a nursing home. Licensed nursing homes are also required to ensure that there is at least one registered nurse on duty at all times in the facility. The Commonwealth's legislation does not include requirements for minimum nurse staffing. Therefore, cognate to the repeal of the Nursing Homes Act, amendments to the Public Health Act have been prepared to carry over the current staffing requirements from the Nursing Homes Act. For that purpose a definition of "nursing home" is to be included in the Public Health Act. That definition includes any facility that is currently licensed under the Nursing Homes Act or that was approved in principle for licensing, any facility that in the future is granted high-care residential places under the Commonwealth's Aged Care Act and any other class of facility prescribed by the regulations.

This comprehensive definition is designed to retain the status quo in relation to nurse staffing. The inclusion of any facility that in the future is granted an allocation of high-care places is intended to ensure that there is a level playing field and that residents in a facility that would have been required to be

licensed under the Nursing Homes Act will be guaranteed the same minimum staffing levels as those facilities that were, in fact, licensed. The power to make regulations to include additional classes of facilities in the definition of "nursing home" will provide a mechanism to quickly respond to any changes in the way the Commonwealth allocates aged care places. This is particularly relevant, given the recent Commonwealth review of aged care funding.

I take this opportunity to provide the House with an undertaking that the Government will monitor developments in the Commonwealth's classification of aged care places and will regulate as required to ensure that any changes do not allow facilities providing care to the most dependent residents to avoid their obligations to have a registered nurse on duty at all times and to appoint a director of nursing. Officers of the Department of Health have undertaken detailed consultation with peak aged care industry bodies and the New South Wales Nurses Association on these matters. It is important to acknowledge that all participants in these consultations have acted in good faith and done their best to reach agreement on the most appropriate mechanism to meet the Government's commitment to maintain nurse staffing levels for the benefit of nursing home residents.

The proposed amendments to the Public Health Act achieve an appropriate balance. It is further proposed to amend the Public Health Act to delete section 52. This section requires the Minister to approve crematory equipment and apparatus. Consistent with the Government's commitment to the competition principles agreement, the Department of Health undertook a review of the Public Health Act, which recommended removing that section. It was found to be overly regulatory. The Environment Protection Authority has oversight of industry operations with its regulations governing equipment and omissions.

The next proposed amendment is to the Dental Technicians Registration Act 1975 to bring the maximum penalties for breaches of the Act and the regulations into line with the penalties that apply under other health professional registration Acts in New South Wales. The proposed increase for penalties for an offence under the Act is from five penalty points to 50 penalty points or from $550 to $5,500. It is proposed to increase the penalties that can be imposed by regulation from two penalty points to 10 penalty points, or from $220 to $1,100. It is important to ensure that the penalties remain comparable to, and consistent with, similar penalties applying to other health professionals.

It is proposed to amend the Health Services Act 1997 to support NSW Health's shared corporate services program. The report of the Independent Pricing and Regulatory Tribunal entitled "New South Wales Health: Focusing on Patient Care" confirmed that the potential exists for significant savings to the health system through consolidation of corporate services and other support functions and it recommended that a shared corporate services entity be established. There already has been significant work undertaken to reform the delivery of corporate services across area health service boundaries. In order to make further progress in the efficient and effective provision of corporate and health support services, amendment of the Health Services Act is now required to establish a shared corporate services vehicle for the public health system. The proposed vehicle is through the establishment of a Public Health System Support Division of the Health Administration Corporation, a corporation established under the Health Administration Act 1982.

The concept of shared corporate service delivery is now being embraced here and overseas, in both the public and private sector, as an effective means of improving corporate and business service delivery within a large organisation. In NSW Health, the Shared Corporate Services Program will drive this process. Included in the program are all health support services such as linen and catering services, as well as traditional corporate services such as human resources, finance, information technology, asset management and administrative services. The program will see services delivered through local and regional networks by public sector staff under an umbrella service delivery structure in the form of a Public Health System Support Division of the Health Administration Corporation. This structure will provide maximum flexibility so as to allow the delivery of services in the most efficient manner.

The bill includes provisions to facilitate the transfer of public health system staff engaged in corporate and health support service delivery to the Public Health System Support Division of the Health Administration Corporation, or the use of such staff by the Health Administration Corporation. I

emphasise for the benefit of members that any employee of a public health organisation who is transferred to the Public Health System Support Division of the Health Administration Corporation will retain all existing entitlements and employment conditions. Like all other staff in the public health system, employees of the Health Administration Corporation engaged in the Public Health System Support Division to provide health support and corporate services within that system will be employees of NSW Health.

These proposals are about achieving the maximum benefit to the public health system by establishing a division of the Health Administration Corporation as the public sector provider of health support services. Proposed section 126G ensures that the shared corporate services program can be implemented in a consistent manner across the public health system, and that maximum benefit of the program can be realised. This clause provides that compliance with Ministerial directions concerning the provision and use of corporate and health support services under the new shared model does not expose public health organisations or the Health Administration Corporation to potential action under Part IV of the Commonwealth Trade Practices Act. Section 51 of the Trade Practices Act permits the statutory authorisation of conduct that might otherwise fall under Part IV, and there is precedent for its use in these circumstances in the form of section 134O of the Victorian Health Services Act 1988.

I turn now to the proposed amendments to the New South Wales Institute of Psychiatry Act 1964. The purpose of these amendments is to ensure that the institute may operate outside the territorial boundaries of New South Wales without seeking Ministerial approval, and to address administrative difficulties experienced by the institute in relation to the incurring of expenditure and the employment of staff. One of the primary roles of the institute is the provision of education and training to health professionals and other members of the community in the field of mental health. For over 30 years the institute has been engaged in providing education and training to individuals, both interstate and overseas, and has been recognised by the World Health Organisation for this role. However section 4 (3) of the Act requires Ministerial approval before the institute may operate outside the borders of New South Wales. In order to facilitate the institute's ongoing collaborations with other jurisdictions and to remove unnecessary administrative impediments to those collaborations, it is proposed to remove the requirement that Ministerial approval be obtained before the institute operates outside New South Wales.

The second series of amendments to the Act is to allow the institute, subject to the Minister's approval, to arrange for the employment of its own staff. This amendment will, if approved, make administration of the institute more efficient. Finally, it is proposed to provide the institute with a general power to delegate its functions to its staff. This power of delegation will allow the administration of the institute to be undertaken in a more effective and efficient fashion.

The bill also contains proposed amendments to the Optical Dispensers Licensing Act 1963 to address serious concerns about the health risks associated with coloured and novelty contact lenses. The Optical Dispensers Licensing Act restricts the dispensing and sale of optical appliances. The Act currently defines an optical appliance as an appliance designed to correct, remedy or relieve any refractive abnormality or optical defect of sight. This definition does not include coloured or novelty contact lenses that serve no corrective purpose. Therefore, any person, irrespective of their training or expertise in eye care, may carry out the sale and dispensing of those contact lenses. The United States Food and Drug Administration [FDA] issued a consumer warning on the dangers associated with such lenses. The FDA warned that improper use of such lenses could lead to loss of sight and it recommended that consumers should only obtain lenses following proper fitting by an eye care professional.

It is therefore proposed that the Optical Dispensers Act be amended to ensure that novelty and coloured contact lenses may be obtained only from registered optometrists and licensed optical dispensers. The proposed amendment will ensure that the supply of lenses remains within the purview of regulated health professionals and helps to ensure that lenses are properly fitted and that consumers receive proper attention and advice when purchasing lenses. While the proposed amendments will ensure that those lenses can be retailed only by optometrists and optical dispensers, there will be no requirement for purchasers to obtain a prescription. The proposed amendment will not affect current business practice and will not disadvantage manufacturers or suppliers who have advised the Department of Health that their

lenses are distributed only via optical dispensers and optometrists. I commend the bill to the House.