Health Legislation Amendment Bill 2007

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HEALTH LEGISLATION AMENDMENT BILL 2007

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Bill introduced on motion by Ms Noreen Hay, on behalf of Ms Reba Meagher.

Agreement in Principle

Ms NOREEN HAY (Wollongong—Parliamentary Secretary) [10.16 a.m.], on behalf of Ms Reba Meagher: I move:

That this bill be now agreed to in principle.

This bill proposes amendments to a number of pieces of health legislation, namely various health professional registration Acts, the Health Administration Act 1982, the Health Services Act 1997, the New South Wales Institute of Psychiatry Act 1964, the Poisons and Therapeutic Goods Act 1966, the Public Health Act 1991 and the Smoke-free Environment Act 2000. I will first address the amendments to various health professional registration Acts contained in schedule 1 to the bill. The Acts amended by this schedule are each of those health professional registration Acts that establish a tribunal to hear serious complaints about registered health practitioners, including the Medical Practice Act 1992 and the Nurses and Midwives Act 1991. Each tribunal has a chair and a number of deputy chairs each of whom must be an Australian legal practitioner with at least seven years experience, or in the case of the medical tribunal a judge of the District Court, and who are appointed by the Minister for Health for a fixed term of office of up to seven years.

The situation has previously arisen when a tribunal chair has been in the middle of a number of disciplinary hearings when his term of office expired. This unfortunate turn of events resulted in a situation where the Minister has been forced to reappoint that person to the relevant tribunal in order to allow for the finalisation of the hearings. The only alternative would have been to allow the relevant hearings to be aborted and recommenced under a separate chair or deputy chair. This approach would have caused significant cost and inconvenience for all parties and could possibly have resulted in some disciplinary proceedings being abandoned all together. The proposed amendments provide that a chair or deputy chair whose term of office has expired is to be deemed to continue as a deputy chair for the sole purpose of finalising any partially heard inquiry or appeal.

The amendments in schedule 1 to the bill also provide for a tribunal to be able to order the non-publication of any information that might identify a party to a hearing or a witness in a hearing. These amendments complement existing tribunal powers to order the non-publication of the name and address of a party or a witness. The amendments will ensure that other identifying information such as photographs can be suppressed if the tribunal considers it necessary to do so. Schedule 2 to the bill also contains a number of minor amendments to a number of health professional registration Acts.

Firstly, the amendments in schedule 2.1 and 2.2 relate to the Dental Practice Act 2001 and the Dental Practice Regulation 2004. The first amendment proposes the deletion of section 33 (2) from the Act. Section 33 (2) of the Act essentially provides that dental therapists may only practise in the public sector. New South Wales currently has 2.6 dental therapists per 100,000 head of population. This compares unfavourably with the national average of 7.1 per 100,000 of population. This dearth in the number of dental therapists has a detrimental impact on the delivery of oral health services to the New South Wales community. It is expected that removal of the restriction will, over time, result in an increase in the number of dental therapists engaged in clinical practice in New South Wales with a positive impact on oral health and a reduction in public sector waiting lists. All other Australian jurisdictions have removed the equivalent restrictions over the past decade.

The second amendment to the Dental Practice Act relates to notifications of mentally incapacitated practitioners. The various health professional registration Acts provide that if a registered practitioner becomes a mentally incapacitated person, that is, a person who is an involuntary patient or a forensic patient within the meaning of the Mental Health Act or a protected person within the meaning of the Protected Estates Act, the relevant registration board is to be notified of that fact. At the moment these provisions apply to dentists and dental auxiliaries but not to dental students. The board registers dental students, like medical students, due to the significant patient contact that they have and to ensure that the impaired practitioner provisions of the Act apply to them. In keeping with this approach it is appropriate that the board be notified of dental students who become mentally incapacitated so that, if appropriate, support structures may be put in place by the board to assist those students

to overcome their mental health problems.

The amendments in schedule 2.6 and 2.7 relate to the Medical Practice Act 1992. Firstly item [1] in schedule 2.6 amends section 4 of the Act and deals with qualifications for registration as a medical practitioner. The proposed amendment will establish a mechanism for approved international medical graduates with appropriate qualifications and experience to obtain registration following a period of supervised workplace training. Appropriate international medical graduates would be granted advanced standing by the Australian Medical Council following which they would be eligible for temporary registration on the condition that they practice in a supervised position whilst being assessed as to their competence and eligibility for general registration. The proposed mechanism will provide a streamlined pathway to registration for appropriately qualified and experienced international medical graduates and has received national endorsement.

Secondly, item [5] in schedule 2.6 and the amendment in schedule 2.7 relate to notifications of mentally incapacitated practitioners. These amendments are in the same terms as the amendments to the Dental Practice Act that I have already discussed. Thirdly, items [10] and [15] in schedule 2.6 relate to the power of the Medical Board to delegate its functions. Unlike other health professional registration Acts the Medical Practice Act does not expressly authorise the board to delegate its functions to a committee. Rather, section 136 of the Medical Practice Act provides that the Medical Board may delegate its functions to a person.

In October 2000 the Medical Board established a performance review program to address concerns about medical practitioners who may have been practicing at a sub-optimal level. The program is designed to provide an alternative pathway for dealing with practitioners who are neither impaired nor guilty of professional misconduct, but for whom the board has concerns about the standard of their clinical performance. The program is designed to address patterns of poor practice and provides an avenue for education and retraining where inadequacies are identified, while at all times ensuring that the public is properly protected. Relying on the broad power of delegation in section 136 of the Act the Medical Board has delegated its functions in respect of performance assessment to a committee called the Performance Committee.

This delegation has recently been challenged on the basis that a committee is not a person. The Medical Board has received advice from senior counsel that the delegation power in section 136 of the Medical Practice Act should be construed so as to include a reference to a committee established under section 133 of the Act. If the power of delegation were construed in this fashion the board's delegation is valid. However counsel considers that the matter is not beyond doubt and that it would be advisable to amend the Act to put this matter beyond argument.

If the current challenge to the validity of the delegation to the performance committee were successful it may call into question all actions taken by the committee and all performance reviews undertaken by the board since the program was introduced in October 2000. All such actions by the board in implementing the performance review program have been undertaken in good faith and for the purpose of protecting the public from underperforming medical practitioners. Undermining the actions of the board in these matters would not be in the public interest and, in order to prevent protracted legal argument, the board's previous delegation of its functions to committees established under section 133 of the Act should be retrospectively validated.

Lastly, the other items in schedule 2.6 relate to those provisions of the Medical Practice Act that permit the board to order a medical practitioner to undergo a medical examination. The proposed amendments will allow the board to order that a medical practitioner undergo an examination by a registered health professional designated by the board. The Medical Board has sought the amendment so that it may, in appropriate cases, require a practitioner to be examined by a psychologist or other health professional with particular qualifications and skills. Similar broad powers to require practitioners to be examined by a registered health practitioner rather than a medical practitioner already exist in the Nurses and Midwives Act 1991.

The items in schedule 2.9 relate to the Nurses and Midwives Act 1991. The Nurses and Midwives (Performance Assessment) Act 2004 amended the Nurses and Midwives Act. That Act inserted part 4A to provide a performance assessment program for nurses and midwives. The program is modelled on the successful performance assessment program in the Medical Practice Act. Due to a drafting oversight at the time performance assessors were not provided with the standard statutory protection from personal liability for acts done in good faith in the exercise of their duties. The proposed amendments correct this oversight. Schedule 2.10 proposes an amendment of the Optometrists Act 2002 to permit the Optometrists Registration Board to charge an application fee when a registered optometrist applies for an optometrist's drug authority. Any such fee to be charged is to be determined by the Minister following consultation with the board.

Schedule 2.11 proposes an amendment of the Pharmacy Practice Act 2006 to allow for regulations to be made establishing infection control standards to be followed by registered pharmacists in their professional practices. The pharmacy profession has expressed its interest in offering to the public a range of health care services such as vaccinations and blood glucose screening. In the event that pharmacists offer this type of service, involving skin penetration and the associated risk of blood born infections, it is important to ensure that robust infection control standards are in place to protect public health. Infection control standards are currently proscribed for a

range of health care practitioners including medical practitioners, dental practitioners, nurses and midwives.

The proposed amendment to the Health Administration Act 1982, which is contained in schedule 2.4 to the bill, will clarify that the employment-related costs associated with New South Wales health service staff who are engaged to provide services for the wholly self-funding health professional registration boards may be met from the funds of the boards. Schedule 2.5 to the bill contains proposed amendments to the Health Services Act 1997. The amendments in items [1], [2] and [3] in schedule 2.5 propose a structure to allow the Director General of Health to delegate her functions with respect to the provision of ambulance services to a body appointed for that purpose. The Director General of Health currently has the power to delegate her functions with respect to the provision of a range of health support services to appointed bodies. The proposed amendment will allow for a similar power of delegation with respect to the provision of ambulance services.

The amendment in item [4] of schedule 2.5 provides that a committee of review, appointed under part 4 of chapter 8 of the Health Services Act, may refer concerns about the performance or competence of the applicant to the Medical Board or the Dental Board as appropriate. Committees of review are appointed by the Minister to hear appeals from visiting practitioners who have had their clinical privileges reduced, who have not been reappointed, or who have had their appointment suspended or terminated. Appeals are generally heard in camera and the committee's report is confidential to the parties and the Minister. Committees of review are currently unable to refer any concerns they may have about a practitioner's ongoing competence or performance to the appropriate registration board. This is an important public safety matter and the proposed amendment will allow any such concerns to be addressed in an appropriate manner.

Item [5] in schedule 2.5 contains an amendment to the Health Services Act to provide protection from personal liability for any person who in good faith assists in a review of the performance or conduct of a member of the New South Wales health service or a visiting practitioner. This will assist public health services in obtaining the assistance of practitioners, and other people, in assessing and reviewing the performance or conduct of employees within the public health system. Item [6] in schedule 2.5 contains an amendment of the Health Services Act 1997 to include the provision of prostheses and medical devices within the definition of health service.

The question has previously arisen as to whether the supply, as opposed to the fitting, of prostheses and medical devices—such as heart pacemakers—is included within the definition of "health service". While this matter has always been addressed by treating the supply and fitting of medical devices and prostheses as a single instance of service, and therefore within the definition of "health service", in order to avoid any dispute it is considered prudent to amend the Act to clarify that the supply of therapeutic goods, such as medical devices and prostheses, is a health service.

The amendment proposed in schedule 2.8 relates to the New South Wales Institute of Psychiatry Act 1964. The purpose of this amendment is to allow for additional flexibility in appointing the board. The amendment will allow for an experienced clinician from the public health system to be appointed to the board of the institute whilst ensuring that clinical expertise is not lost to the system. The amendments proposed in schedule 2.12 relate to the Poisons and Therapeutic Goods Act 1966. The proposed amendment in item [2] will allow the Director General of Health to suspend or cancel the right of a medical practitioner, dentist, nurse practitioner, midwife practitioner, pharmacist, optometrist or veterinary surgeon to possess and supply drugs and substances in schedules 2, 3 and 4 of the Poisons List.

Currently the Act confers an automatic right for the relevant professions, other than optometrists, to possess these medications. There are a number of substances in schedules 2, 3 and 4 of the Poisons List, including benzodiazepines, anabolic steroids and pseudoephedrine, that are from time to time subject to misuse including unlawful supply and self-administration. The Director General of Health currently has the power to restrict, suspend or cancel the right of a practitioner to possess and supply drugs of addiction. The proposed amendment will ensure that the same powers exist with respect to all scheduled substances.

The amendments proposed in Schedule 2.13 relate to the Public Health Act 1991. The amendment proposed in item [1] in the schedule addresses a technical difficulty with the operation of the New South Wales Cancer Registry, which is administered by the New South Wales Cancer Institute on behalf of the Director General of Health. Approximately 7 per cent of cancer notifications made to the registry each year are incomplete or contain discrepancies between the notification and the pathology report that accompanies it. The number of these cases detracts from the overall accuracy of the Cancer Registry and therefore the ability of the registry to achieve its objectives in monitoring the rates and trends on specific types of cancer in New South Wales. As the law currently stands, the Cancer Registry is unable to contact treating medical practitioners to resolve these discrepant and incomplete notifications. A medical practitioner who provided patient information to the registry would, in the absence of an express authorisation by the patient, breach his or her obligations under privacy laws. The proposed amendment will ensure that the registry can obtain from medical practitioners the information it needs to fulfil its public health surveillance role.

Items [2] to [4] in schedule 2.13 deal with the sale of tobacco products. As members will be aware, tobacco

smoking kills approximately 6,500 people and is the main cause of over 55,000 hospital admissions in New South Wales each year. The cost of smoking to the New South Wales community is some $7 billion per annum; of this the direct health care cost is almost half a billion dollars. The nicotine in tobacco smoke is an extremely addictive drug. Both the former United States Surgeon General and the Royal College of Physicians are on record as stating that the pharmacologic and behavioural processes that determine tobacco addiction are similar to those that determine addiction to drugs such as heroin and cocaine.

It is estimated that more than 90 per cent of adult smokers commenced smoking during their teenage years. Fruit and confectionary flavoured tobacco products are marketed to young people and are often promoted as having a cleaner and healthier image than traditional tobacco products. This image is misleading. These products are just as dangerous and addictive as other types of tobacco. The amendment proposed in item [3] of schedule 2.13 will allow the Minister for Health to ban, by way of order in the *Government Gazette*, fruit or confectionary flavoured tobacco products that appeal to minors. Similar bans have previously been implemented in South Australia, and Tasmania has recently passed amendments to its public Health Act to ban the sale of fruit and confectionary flavoured or scented tobacco and tobacco products.

The sale of tobacco products to anyone under the age of 18 years is a criminal offence. Therefore, it seems somewhat anomalous that tobacco products are aggressively marketed at youth events and music festivals. Accordingly and in keeping with the Government's commitment to reduce the exposure of children and young people to tobacco, this bill contains amendments to the Public Health Act to prohibit the sale of tobacco products from mobile or non-permanent premises. The ban on mobile sales of tobacco products will also apply to the sale of tobacco products carried by a person for sale in a public place. This part of the amendment is designed to prevent the sale of tobacco by the so-called tobacco girls who are often found selling tobacco products in licensed premises. I emphasise for the benefit of members that this amendment is not designed to affect the activities of workers who deliver tobacco products to shops and other premises for regular retail sale.

Finally, I turn to the amendment to the Smoke-free Environment Act 2000 that is contained in schedule 2.14 to the bill. This amendment, and the cognate amendment to the Fines Act in schedule 2.3, will allow for penalty notices, or on-the-spot fines, to be issued by authorised officers for breaches of the Act. Penalty notices would be issued subject to strict guidelines approved by the Department of Health and only for offences prescribed by the regulations as penalty notice offences. I commend these amendments to the House.

Debate adjourned on motion by Mr Daryl Maguire and set down as an order of the day for a future day.