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## Health Legislation Amendment Bill 2007

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### HEALTH LEGISLATION AMENDMENT BILL 2007

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#### Second Reading

**The Hon. PENNY SHARPE** (Parliamentary Secretary) [10.43 p.m.], on behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

#### Leave granted.

This bill proposes amendments to a number of pieces of health legislation, namely the 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 firstly address the amendments to various health professional registration Acts contained in Schedule 1 of 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 7 years.

The situation has previously arisen where 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 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.

Schedule 2 of 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. All other Australian jurisdictions have removed the equivalent restrictions over the last decade.

New South Wales currently has 2.6 dental therapists per 100,000 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 practise in New South Wales with a positive impact on oral health and a reduction in public sector waiting lists.

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. Dental students, like medical students, are registered by the Board 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 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 amendment number 1 in Schedule 2.6 is an amendment to section 4 of the Act and concerns 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 amendment number 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 to the amendments to the Dental Practice Act that I have already discussed and the same rationale applies to these amendments to the Medical Practice Act.

Thirdly amendment numbers 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 practising 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 practice rather than one off incidents unless the single incident is demonstrative of a broader problem, 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 amendments 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 be examined by a registered health practitioner rather than a medical

practitioner already exist in the Nurses and Midwives Act 1991.

The amendments in Schedule 2.9 relate to the Nurses and Midwives Act 1991. In July 2004 the Nurses and Midwives Act was amended by the Nurses and Midwives (Performance Assessment) Act 2004. That Act inserted Part 4A in the Act 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.

The amendments in Schedule 2.10 propose 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.

The amendments in Schedule 2.11 propose an amendment to 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 blood glucose screening and a vaccination service. In the event that this type of service, involving skin penetration and the associated risk of blood borne infections, is offered by pharmacists it is important that public health is protected by ensuring that robust infection control standards are in place. Infection control standards are currently prescribed for a range of health care practitioners including medical practitioners, dental practitioners, nurses and midwives.

The proposed amendment to the Health Administration Act 1982, that is contained in Schedule 2.4 of 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 of the bill contains proposed amendments to the Health Services Act 1997. Amendments 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.

Prior to the passage of the Public Sector Employment Legislation Amendment Act in 2006 ambulance services were provided by the Ambulance Service of New South Wales, which was a statutory corporation established under the Ambulance Services Act 1990. That Act made the Director-General of Health responsible for the provision of ambulance services in New South Wales.

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.

Amendment 4 in 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 (either medical practitioners or dentists) who have had their clinical privileges reduced; who have not been reappointed as a visiting practitioner; 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.

Amendment 5 in Schedule 2.5 provides for amendment to the Health Services Act to provide a 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 amendment 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.

Amendment 6 in Schedule 2.5 provides for 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 arisen as to whether the supply, as well as 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 amendments in Schedule 2.8 relate 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 in Schedule 2.12 relate to the Poisons and Therapeutic Goods Act 1966. The proposed amendment 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 in Schedule 2.13 relate to the Public Health Act 1991. Firstly amendment number 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 as 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.

Amendments 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 cost health care cost is almost half a billion dollars.

The nicotine in tobacco smoke is an extremely addictive drug. Both the former US 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 as these products are just as dangerous and addictive as other types of tobacco. The amendments in amendment number 3 of Schedule 2.13 will allow the Minister for Health to ban, by way of order in the Government Gazette, these types of tobacco product. 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 musical festivals. The sale and marketing of tobacco products at these events is aggressively promoted by tobacco manufacturers and as I have already noted some 90 per cent of adult smokers commenced smoking whilst still teenagers. Accordingly 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 carry and 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 are 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 by individuals, such as the offence of smoking in a non-smoking area. More serious offences by occupiers of premises would continue to be dealt with by way of court action due to the very important educative value of dealing with this type of matter in public.

I commend these amendments to the House.

**The Hon. JENNIFER GARDINER** [10.43 p.m.]: Like the Commission for Children and Young People Amendment Bill 2007, the Health Legislation Amendment Bill 2007 can be described as a machinery bill, or a bill that tidies up various pieces of health legislation. It is the sort of bill that we expect to see at this late stage in the parliamentary year. Nevertheless, it contains some important provisions, and I will address some of the more notable ones. The bill will allow the chairperson or deputy chairperson of a health professional disciplinary tribunal to continue to sit on the tribunal after the expiry of that person's term of appointment in certain circumstances. Tribunal members are appointed for seven years, and in the past the expiration of a term has disrupted cases before them and forced other arrangements to be made. The bill resolves that problem.

The bill extends the existing power of disciplinary tribunals, professional standards committees and boards established under health professional legislation so they may issue orders precluding the disclosure of particular types of information that are capable of identifying the person to include orders in respect of information, pictures and other material. It requires the New South Wales Medical Board and the New South Wales Dental Board, as the case may be, to be notified if a registered medical student or a registered dental student becomes mentally incapacitated. That is obviously an important provision. As to the scandalous situation in New South Wales regarding dental waiting lists and the shortage of dental services available to the people of this State, the bill will remove a restriction on registered dental therapists who carry out dental auxiliary activities other than as an officer or employee of, or a contractor to, a public sector agency or prescribed body.

In New South Wales dental therapists are allowed to practise only in the public sector. As usual with matters relating to dental health, New South Wales is dragging the chain. All other States in Australia have removed this restriction. New South Wales currently has only 2.6 dental therapists per 100,000 people compared with the national average of 7.1 per 100,000 people. I have spoken at length in the House about the scandalously and unbelievably long waiting lists for dental services in New South Wales. If this provision means that dental services will be available to a wider group in our community, it is most welcome.

The bill also enables a committee of review under the Health Services Act 1997 to refer matters to the Medical Board or the Dental Board, as appropriate, to be dealt with as a complaint when the committee is of the opinion that serious concerns exist in relation to the performance or competence of an appellant, the appellant has engaged in conduct that may constitute professional misconduct or unsatisfactory professional conduct, or the appellant may suffer from an impairment. The bill provides that no liability attaches to persons in connection with the conduct of a disciplinary review of a member of the New South Wales health service. It makes clear that the supply or fitting of a prosthesis or therapeutic device is a health service within the meaning of the Health Services Act 1997.

Importantly, in relation to overseas-trained doctors, it entitles persons with medical qualifications granted overseas to be registered as a medical practitioner in certain circumstances. In that regard the bill seeks to streamline the pathway to registration for appropriately qualified and experienced international medical graduates. The bill amends the Medical Practice Act 1992 by inserting new section 4 (2), which states:

A person has recognised medical qualifications if the person:

- (a) is a graduate of a Medical School (whether within or outside Australia) accredited by the Australian Medical Council, or
- (b) has successfully completed examinations held by that Council for the purposes of registration as a medical practitioner, or
- (c) has received a certificate or other kind of qualification in accordance with the process approved by the Board for the purpose of qualifying a person for registration as a medical practitioner.

That is certainly an important addition to the Medical Practices Act. The bill also enables the Medical Board to order a medical practitioner who is the subject of a complaint or injury to be examined by a specified registered health practitioner. It makes clear that the Medical Board and the registrar can delegate certain functions to

groups of persons, including committees established under the Act to which I have just referred. It allows certain senior employees and executives to be appointed as a member of the New South Wales Institute of Psychiatry. In relation to the pharmacy profession, the bill enables regulations to be made setting infection control standards to be followed in the practise of pharmacy, which is an important provision. The bill also enables the Director General of Health to make an order to prohibit or restrict certain persons from the possession, supply or prescription of poisons in certain circumstances, and provides authorisation for the director general to do certain other things.

The bill will prohibit the sale of tobacco products which have a distinctive fruity, sweet or confectionary-like character. It will also prohibit the sale of tobacco products by a vendor carrying the products for sale on his or her person, or from a mobile or temporary structure. The Opposition notes that more than 90 per cent of adult smokers commence smoking during their teenage years, and fruit and confectionery flavoured tobacco products are marketed at young people to try to suck them in, so to speak, and get them hooked on tobacco. In prohibiting the sale of those tobacco products, the bill seeks to reduce the exposure of children and young people to tobacco products, and the Opposition strongly supports those provisions.

In brief, the bill sets out to provide for the more efficient operation of various health disciplinary tribunals and regulatory boards, and hopefully, even in a small way, it will assist in widening the scope of dental therapists to practice in the private sector. We trust that it will improve the registration process for international medical graduates, and limit the vulnerability of young people to the sale of tobacco products that have a fruity or confectionery-like character. For those reasons, the Opposition does not oppose the bill.

**Ms LEE RHIANNON** [10.52 p.m.]: The Health Legislation Amendment Bill 2007 makes minor amendments to a number of health-related bills. The Greens will not oppose this bill. I will not go through each section of the bill, instead I will draw out the more significant changes regarding dentists and tobacco sales. One of the more significant amendments in this bill is the amendment to the Dental Practice Act. This bill removes section 33 (2) of the Act, which prevents dental therapists from practising in the private sector. I have contacted the Australian Dental Association [ADA] regarding this amendment, and understand that it does not oppose this bill so long as dental therapists continue to practise within the skills and competencies for which they have been trained.

The ADA supports the requirement under the Dental Practice Act that a registered dental auxiliary, such as a dental therapist or dental hygienist, is subject to the practice oversight of a registered dentist. I understand that the ADA is in the process of discussing new oversight guidelines with NSW Health and the Dental Board of New South Wales, flowing from this amendment. Will the Minister in his reply give an assurance that the ADA will continue to be included in those discussions? That is an easy question for the Minister to answer, and I look forward to his response.

The Minister in his agreement-in-principle speech, promoted this amendment as a means to increase the number of dental therapists engaged in clinical practice, thereby reducing public sector waiting lists. That claim seems a bit far-fetched and warrants greater explanation. We know that dental waiting lists in New South Wales are appalling. This initiative will probably take five to seven years before we begin to see any significant impact. I understand that current dental therapist numbers are small—less than 300—and training requires a three-year degree. Further, it is completely unclear how removing the restriction will lead to a reduction in public sector waiting lists. If anything, dental therapists will be tempted to leave the public sector for the higher wages on offer in the private sector. The more likely outcome is that current waiting times in the public sector will be aggravated. Unless public sector wages for dentists and dental auxiliaries are made more competitive, those waiting lists will simply continue to get worse.

In relation to amendments to the Public Health Act, the Greens support moves in this bill to stop so-called tobacco companies employing young women to sell cigarettes in licensed premises. We should prohibit the sale of tobacco from mobile or non-permanent premises, such as festivals. The Greens also support amendments allowing the Minister to ban the sale of cigarettes that are flavoured to be fruity, sweet or like confectionery. Those products are marketed primarily at children and young people. I hope that all members agree that the jury is well and truly in on the health impacts of tobacco. It is estimated that 90 per cent of adult smokers began smoking in their teenage years. It is clear that we need to nip in the bud any advertising that is so blatantly targeted at young people. On the tobacco side of the ledger this bill is a plus, but more work needs to be done. The Government needs to pick up its game in relation to the alcohol industry because, like the tobacco industry, we know that some companies specifically target young people: it is wrong and it needs to be dealt with. The Greens will not oppose this bill.

**Reverend the Hon. FRED NILE** [10.56 p.m.]: The Christian Democratic Party supports the Health Legislation Amendment Bill 2007, which is almost a statute-at-law bill as it amends a number of bills that relate broadly to the health sector. The bill amends the following Acts: Health Professional Registration Act, Dental Practice Act, Health Administration Act, Health Services Act, Medical Practice Act, New South Wales Institute of Psychiatry Act, Optometrists Act, Pharmacy Practice Act, Poisons and Therapeutic Goods Act, Public Health Act and the Smoke-free Environment Act. The proposals are not controversial and the Christian Democratic Party has not been lobbied by any of the respective boards opposing the changes to the legislation and I assume those boards have

asked for the amendments.

I commend the Government for the amendments to the Public Health Act, which will ban the sale of fruit and confectionery flavoured cigarettes. Confectionery and fruit flavoured cigarettes are marketed primarily at children and young people. The tobacco industry tries to get young people hooked on cigarettes, and then it has customers for life until they quit or die. South Australia has previously banned those products. The amendments prohibit the sale of tobacco products by mobile vendors or from mobile or temporary premises. I urge the Government to give further consideration to the prohibition of smoking in cars, especially cars with children in them. I know that is being discussed again in Victoria and other States, but I think New South Wales should take the lead on that issue as well as the prohibition of the public display of cigarette packets in retail shopping centres as a marketing ploy by the tobacco industry.

The Smoke-free Environment Act will be amended so that penalty notices, on-the-spot fines, may be issued for offences under the Act. Penalty notices would be issued for offences by individuals, such as refusing to stop smoking in an enclosed place. Once again we need to ensure that the laws dealing with smoking in enclosed places are black and white and that patrons in clubs and other places fully understand them. At present there is some confusion as to what is legal and what is illegal in so-called enclosed places. I believe the Government should rectify that issue urgently. We support the bill.

**The Hon. DON HARWIN** [10.59 p.m.]: I note that a number of provisions in the Health Legislation Bill 2007 arise directly from some of the matters dealt with by the Joint Select Committee on Tobacco Smoking, which of itself arose from a private member's bill introduced by Reverend the Hon. Fred Nile some time ago. The joint select committee was established in the final year of the last Parliament.

**Reverend the Hon. Fred Nile:** The smoking in cars bill.

**The Hon. DON HARWIN:** I thank Reverend the Hon. Fred Nile. Indeed, his smoking in cars bill was the catalyst and part of the reference for the joint select committee. During the inquiry we took extensive evidence on the issue of the sale of tobacco products with a distinctive fruity sweet or confectionery-like character. In particular, this has been a tactic of a number of tobacco companies in order to increase smoking among young people, especially young woman—that was the evidence we received. The committee certainly considered that matter during the inquiry and referred to it in its report. I remain concerned about the capacity of companies to try to increase juvenile smoking through the production and sale of such products. I am pleased to see that a specific power in the legislation will ensure that the Government has the wherewithal to proceed in this area.

I note that this bill will prohibit the sale of tobacco products by a vendor carrying the products for sale on his or her person or from a mobile or temporary structure. That is an important step forward as well, and I congratulate the Government on taking action on that issue. The joint select committee canvassed other matters extensively, and I encourage the Government to continue to push forward and take proactive steps to ensure that we deal with the sale of tobacco products as effectively as possible. I do not need to detail the statistics in terms of the costs to the public health system related to smoking. It is a tragedy that such a large amount of public health dollars need to be spent on dealing with the consequences of tobacco smoking.

I note that the bill will empower an authorised inspector to issue penalty notices for offences under the Smoke-free Environment Act 2000. This was possibly the most difficult issue the committee had to deal with. It is important to provide smoke-free areas, particularly on licensed premises. That matter was dealt with extensively in legislation some time ago. The provisions in this bill are a small step forward in terms of providing smoke-free areas, and that is a good thing. With those few comments, I commend the legislation to the House. Of course, the Opposition will not be opposing the bill.

**The Hon. MELINDA PAVEY** [11.05 p.m.]: I take this opportunity to add to the contribution of the Opposition in debate on the Health Legislation Amendment Bill 2007. Government members may have noticed that we received some very late advice from concerned people in New South Wales about the unintended consequences of the legislation. As previous speakers have pointed out, that is what happens when legislation is dumped on us at the last second without proper consultation. I will not go into that, other than to say that there is concern about the ban on the sale of cigarettes from mobile vehicles. Anyone who has worked in an industrial estate knows that there is not usually a sandwich or lunch shop nearby, so a smoko van travels around industrial estates. I can see the Hon. Greg Donnelly nodding his head.

**The Hon. Greg Donnelly:** Most of them are members of the estate.

**The Hon. MELINDA PAVEY:** That is not my experience. However, the point remains that we all know smoking is bad, but it is a choice that adults make. It is also a choice of adults to work in factories and to have a sandwich and perhaps a packet of cigarettes delivered for lunch. That is their right but not under this legislation. So this bill will have an impact on small business and on workers who may not work efficiently without their cigarettes for the afternoon. It is worth considering that, given that the legislation was introduced quickly.

**The Hon. Penny Sharpe:** Productivity arguments.

**The Hon. MELINDA PAVEY:** The Hon. Penny Sharpe referred to productivity arguments. That is worth considering. As a strong union representative, the Hon. Greg Donnelly would appreciate that these provisions will have an impact on workers on factory sites, for example. He may be one of the few remaining Labor Party members who have connections with people working on industrial sites. The issue of fruity flavoured tobacco products has also been raised; there is genuine concern about that. The point made to us very late in the piece is that it would be better to label the products as fruity flavoured cigarettes. For example, it appears that an attempt was made in Tasmania to ban menthol cigarettes.

**The Hon. Penny Sharpe:** There would be a lot of people concerned about that.

**The Hon. MELINDA PAVEY:** The Hon. Penny Sharpe rightly interjects that many people will be concerned about that. That is another issue that needs to be put on the record. It is important to point out that the sale of tobacco products at pop concerts and to people under the age of 18 is already illegal. This information was brought to our attention at the last minute. As I have pointed out, these problems arise when we do not have time to properly consult and discuss these issues with the community. The impact of the legislation on small business should be considered in terms of selling cigarettes from mobile vans.

**The Hon. PENNY SHARPE** (Parliamentary Secretary) [11.09 p.m.], in reply: I thank honourable members for their contributions to this debate. The bill contains a large number of minor amendments to various health Acts. I thank honourable members for their patience in dealing with these matters. Although in many respects they are minor amendments, they are important to the ongoing functioning of the health system. Ms Lee Rhiannon raised a number of issues about amendments to the Dental Practice Act relating to dental therapists. I can advise that the Australian Dental Association has been consulted and does not oppose the amendments. The association will be consulted, as practice oversight guidelines are refined for dental therapists. I can also advise the House that New South Wales Health anticipates that the removal of section 33 (2) of the Dental Practice Act will assist in encouraging retired dental therapists to return to clinical practice. The experience of other jurisdictions is that similar moves resulted in dental therapists commonly working in both the public and private sectors. This bill is expected to have a positive impact on oral health in New South Wales. I commend the bill to the House.

**Question—That this bill be now read a second time—put and resolved in the affirmative.**

**Motion agreed to.**

**Bill read a second time.**

**Leave granted to proceed to the third reading of the bill forthwith.**

### Third Reading

**Motion by the Hon. Penny Sharpe agreed to:**

That this bill be now read a third time.

**Bill read a third time and returned to the Legislative Assembly without amendment.**

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