Private Health Facilities Bill 2007

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Extract from NSW Legislative Council Hansard and Papers Wednesday 6 June 2007.

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [4.26 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 delivered by the Parliamentary Secretary in the other place incorporated in *Hansard*.

Leave granted.
I have pleasure in reintroducing the Private Health Facilities Bill. This bill will promote the health and safety of the public of New South Wales by updating and enhancing the licensing and regulation of private health facilities in New South Wales. Private health facilities in this State generally provide world-class standards of care and treatment. The Government is committed to ensuring that the legislation that regulates such facilities ensures that those standards are maintained and that the public may continue to utilise the private sector with confidence.
This bill was originally introduced as the Private Health Facilities Bill 2006. That bill lapsed on the proroguing of Parliament for the recent election. The second reading speech on that bill provides information on the review of the Act and the major provisions and concepts introduced in the bill. I refer members to that speech for that important background information. The introduction of the bill in 2006 provided stakeholders with an extended opportunity to scrutinise the bill's contents and to raise with the Department of Health any concerns they may have. As a result of that opportunity, the bill I have introduced today includes four amendments to the previous version.
I wish to thank the stakeholders who have taken the time to provide additional comment on the bill, which has resulted in small but, nonetheless, important improvements to the proposed licensing structure. The first amendment is to clause 8, which now provides that when a licence is approved in principle, that approval may be renewed a maximum of six times. The previous bill provided that an approval could be renewed a maximum of four times. Representations from the industry have convinced the Government that, while five years will in most cases be a more than adequate time to complete the development of a facility, certain large and complex developments may take longer. Therefore, it has been agreed that the provision should be amended to allow an approval in principle to run for up to seven years. This amendment provides operators with additional flexibility without affecting the integrity of the planning process.
The second amendment is to clause 29 (1) (a), which provides for the Director General of Health to suspend a private health facility licence in certain circumstances. Private health facility operators have expressed support for the introduction of the power to suspend a licence in appropriate cases. In expressing that support, operators requested that the provision be amended to ensure that a licence could be suspended only when that action was necessary to prevent substantial and serious risk to patient safety. That is an entirely reasonable request,

and the provision has been amended accordingly.
I also wish to emphasise that the Government is acutely aware of the impact that suspension of a licence would have not only on an operator's business but also on the livelihoods of the people employed by that operator. I assure the House and operators that in enforcing the provisions of the legislation the regulatory authorities will suspend a licence only when they form the view that patient safety cannot be secured by other less restrictive means, such as the issuing of an improvement notice under clause 52 of the bill.
The third amendment is to clause 39 (4) of the bill, which concerns medical advisory committees. Clause 39 (4) of the previous bill required a medical advisory committee to report to the Director General of the Department of Health any repeated failure by a licensee to act on the committee's advice on certain matters when that failure may adversely impact on the health or safety of patients. Following discussions with industry, that provision has been amended to require notification when the licensee's failure to act on the committee's advice is likely to impact adversely on patient health and safety.
The Department of Health Private Health Care Branch, which administers the regulatory system on behalf of the director general, has advised that this is an appropriate amendment and that it reflects the approach it would expect medical advisory committees to take. It remains, of course, a matter for the medical advisory committee to determine whether a matter is likely to impact adversely on patient health and safety. This amendment is appropriate and recognises that the medical advisory committee's primary function is advising the licensee on clinical governance in a facility.
The final amendment is the deletion of the clause that made provision for the issuing of penalty notices or on-the-spot fines. In the time since the bill was introduced in 2006 the Department of Health has had an opportunity to carefully review the various offences provided for in the legislation. Many of those offences involve serious matters of public health and safety that would be inappropriate to address by way of a penalty notice, which involves no admission of guilt and no public record of any failing or wrongdoing. Other offences in the legislation, such as those that involve the exercise of judgment and for which defences may be raised, are not amenable to the limitations inherent in a penalty notice regime. Therefore, the clause that dealt with penalty notices in the previous bill, clause 54, has been deleted.
Stakeholders have raised a number of other matters concerning the interpretation of various provisions in the bill. I take this opportunity to provide some guidance on those matters. A concern has been raised that the removal of the licensing distinction between private hospitals and day procedure centres should not allow facilities that are currently licensed as day procedure centres to convert to full-service private hospitals in an unregulated and unplanned manner. I am able to give an assurance that that will not be the case. It is anticipated that the licensing standards will provide for a range of service classes and three distinct accommodation classes: day only, overnight recovery, and full-service private hospital.
An operator who wishes to convert an existing day-only facility into one that provides overnight recovery or into a full-service private hospital will be required to make a formal application to the Director General of the Department of Health, who will determine the application based on the legislative requirements, including consideration of any published development guidelines. In terms of the development

of planning guidelines, I can give an undertaking that the views of all stakeholders will be sought as the guidelines are developed.

As a final matter, concerns have been raised about clause 62 of the bill, which provides that when a corporation contravenes a provision, each person who is a director of the corporation or is involved in its management is taken to have committed the same offence if that person knowingly authorised or permitted the contravention. This provision does not make directors and managers personally liable to prosecution for breaches of which they had no knowledge. Prosecution of individual directors or managers can occur only in circumstances when they authorised or permitted a breach whilst knowing it to be a breach. Managers and directors who exercise their duties in good faith will not be subject to personal prosecution for breaches by corporate licensees.

The provisions of the Private Health Facilities Bill 2007 provide the framework for an effective licensing and regulatory system for private health facilities in the twenty-first century. I look forward to working cooperatively with the industry and the professions in developing the licensing standards under the revised regulatory framework to ensure that the public of New South Wales can continue to have confidence in the high standards and quality of services provided in the private health care sector. I commend the bill to the House.