



NSW Legislative Council Hansard

Health Legislation Amendment (Unregistered Health Practitioners) Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 18 October 2006.

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [9.21 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.

I have pleasure in introducing the Health Legislation Amendment (Unregistered Health Practitioners) Bill, an important bill that will improve the protection of the New South Wales community by addressing what may be seen as a gap in the regulation of health practitioners. New South Wales is the first jurisdiction in Australia to take this important step. As honourable members would be aware, a great many health services are provided by people who do not come within a statutory registration scheme, and the overwhelming majority of them are honest, caring and competent. However, a few health practitioners are anything but honest and competent and care for nothing more than their own financial advancement.

When patients seek health services they are entitled to be protected from the shonks and rip-off merchants who peddle false hope. People battling serious or terminal illnesses can be desperate, and will sometimes hand over large amounts of money for useless treatments. They may also be influenced to forgo proven medical treatments. The bill addresses community concerns about those charlatans. It provides for the making of a code of conduct for unregistered health practitioners under the Public Health Act 1991, which will set appropriate standards for such health practitioners.

The Health Care Complaints Commission already can investigate complaints about any health service provider. That ability will be expanded to specifically include the investigation of breaches of the code of conduct by unregistered health practitioners. Furthermore, if the complaint is proven the commission will be able to issue a prohibition order that places conditions on the way a person provides health services, or restricts the health services that the person can provide, or prohibits the person from providing health services altogether.

There are also concerns about practitioners who, due to serious misconduct or incompetence, have been deregistered from a health profession but who, nonetheless, continue to practice in unregistered fields. The most obvious examples of that are deregistered medical practitioners or psychologists who set themselves up to practice under titles such as psychotherapist or counsellor. Deregistered physiotherapists, chiropractors and osteopaths may set up under the title of remedial masseur, and deregistered midwives may set up under the title of doula or birth attendant.

To address those concerns the bill provides that when a person is deregistered from a health profession the tribunal or board that deregisters the person may also impose a prohibition order on the person. A person who is the subject of a prohibition order, or who has been deregistered from a health profession, will be required to include information to that effect in any advertising or promotion of the health service they provide. They will be required to also inform each of their patients of the prohibition order or deregistration prior to commencing to provide a service. The rationale for those requirements is simply to ensure that patients can make informed choices about their health service provider when they seek or receive health services.

In preparing the bill, officers of the Department of Health consulted with professional associations representing unregistered health practitioners and discussed its provisions with them. The associations consulted include the Australian Traditional Medicine Society, the Psychotherapy and Counselling Federation of Australia, the National Herbalists Association, the Australian Acupuncture and Chinese Medicine Association and the Australian Register of Homeopaths. The representatives of those associations have been uniformly supportive of the proposed bill as they are as concerned as the Government to remove shonks from the industry. Consultation has been held also with the Medical Services Committee, the Australian Medical Association, and the professional associations representing unregistered health practitioners employed within the public health system, such as dietitians and orthoptists. All bodies consulted have indicated their support for the Government's policy.

I now turn to the specific provisions of the bill. Schedule 1 to the bill amends the Public Health Act 1991. Item [1] to the schedule replaces the current Part 2A of the Public Health Act with a new Part 2A. New section 10AB

provides that the limitation period for instituting proceedings for an offence under Part 2A is two years rather than the current six months. The reason for seeking to extend the limitation period is that prosecuting relevant offences can be complicated and can require the use of a great deal of clinical, scientific, and expert evidence. The investigation and evaluation of that evidence cannot reasonably be undertaken in six months.

Proposed section 10AK of the Public Health Act creates an offence for a person to provide a health service in contravention of a prohibition order. The section also requires deregistered people and people subject to a prohibition order to advise their patients of those matters prior to providing health services. Proposed section 10AL requires deregistered practitioners and people subject to a prohibition order to include that information in any advertising for their health services. A person who has been deregistered in another Australian State or Territory will be subject to the same requirements if they provide health services in New South Wales. Proposed section 10AM provides for a code of conduct for unregistered health practitioners to be made by regulation. The code of conduct will be the subject of detailed consultation with all relevant professional groups before it is finalised. A number of the professional associations I have referred to have already assisted in this process by providing the Department of Health with copies of the codes of conduct that apply to their members.

Existing section 10AB of the Public Health Act prohibits the advertising or promotion of health services in a manner that is false, misleading or deceptive, or which creates an unjustified expectation of beneficial treatment. The new provision expands on this by also prohibiting advertising that is likely to mislead or deceive, or which is likely to create an unjustified expectation of beneficial treatment. This expansion is wholly appropriate in a provision that is concerned with consumer protection and it is in line with equivalent provisions in section 42 of the Fair Trading Act 1987 and section 52 of the Trade Practices Act 1974.

Schedule 2 to the bill amends the Health Care Complaints Act 1993. Proposed Division 6A of the Act will allow the Health Care Complaints Commission to take action against an unregistered health practitioner. Proposed section 41A provides that after an investigation the commission may issue a prohibition order against an unregistered person and/or issue a public warning about the practitioner if the commission is satisfied, first, that the practitioner has breached the code of conduct made under the Public Health Act or the person has been convicted of an offence under the Fair Trading Act or the Trade Practices Act that relates to the provision of health services, and, second, that the practitioner poses a serious risk to the health of members of the public.

There is to be an appeal to the Administrative Decisions Tribunal about the commission's determinations. In the same way that proposed section 41A permits the commission to provide a public warning about an individual and their services, proposed section 94A will provide the commission with a power to issue a public warning about particular unsafe treatments or services without linking that warning to a particular individual. The power to issue public warnings is similar to the power to issue public warnings in section 86A of the Fair Trading Act. Proposed section 948 provides for the Health Care Complaints Commission to make publicly available the name of any health practitioner who, on disciplinary grounds, has been deregistered. The commission is also to make publicly available any disciplinary decision of a tribunal or board where the complaint is proved.

Schedule 3 to the bill makes a range of amendments to the various health professional registration Acts. These amendments will permit a tribunal or board that deregisters a practitioner on disciplinary grounds to also issue a prohibition order against that person; and require each of the registration boards to make publicly available the names of practitioners who are deregistered on disciplinary grounds along with any disciplinary decision of the tribunal or board where the complaint is proved. The bill will help to further protect the public by establishing the standards of appropriate conduct expected of all health practitioners and by providing strong powers to deal with the dishonest and disreputable minority of practitioners. I commend the bill to the House.