Legislative Assembly Hansard (Extract)

Private Health Facilities Bill

Extract from NSW Legislative Assembly Hansard and Papers Wednesday 22 November 2006.

Second Reading

Mr PAUL McLEAY (Heathcote—Parliamentary Secretary) [10.46 a.m.], on behalf of Mr Frank Sartor: I move:

That this bill be now read a second time.

I have pleasure in introducing the Private Health Facilities Bill, which will promote the health and safety of the people of New South Wales by updating and enhancing the licensing and regulation of private health facilities in this State. Private health facilities in New South Wales generally provide very high standards of care and treatment. The Government is committed to ensuring that the legislation that regulates such facilities contributes to the public's continued confidence in them. This bill will replace the Private Hospitals and Day Procedure Centres Act 1988.

Private hospitals have been licensed and regulated in New South Wales since 1908 when the Private Hospitals Act was passed. That Act was followed by the Private Health Facilities Act 1982, which regulated private hospitals and nursing homes, and the Private Hospitals and Day Procedure Centres Act 1988. The number of different legislative schemes that have been implemented for the regulation of the private health sector over the past 25 years is a reflection of the pace of clinical and technological development in this sector. Although the bill replaces the current Act, it provides for a continuation of the current licensing and regulatory system, which is both understood by the industry and operationally effective. However, the bill introduces a number of important developments and variations.

Firstly, the bill proposes to remove the current licensing distinction between private hospitals and day procedure centres. Day procedure centres were first licensed as a separate type of facility as a result of the Private Health Establishments (Day Procedure Centres) Amendment Act 1987. That licensing became fully effective on 1 January 1993 with the commencement of section 37 of the Private Hospitals and Day Procedure Centres Act 1988. Since that time there have been significant developments in medical, surgical and anaesthetic techniques, such that a much broader range of procedures and increasingly complex procedures are now routinely undertaken as day surgery. These developments are also reflected in the fact that many facilities now wish to offer what is called 23-hour care and procedures requiring extended overnight recovery. In many instances these services can safely be provided in facilities that meet standards in between those currently prescribed for private hospitals and day procedure centres. The proposed removal of the distinction between private hospitals and day procedure centres will allow the licensing standards and processes to be flexible enough to accommodate both these developments and any further developments in the industry.

Secondly, the bill proposes to remove the current cap on the number of private hospital beds. Under the current Act an application for a private hospital licence may be refused if it would result in an increase in the number of patients who can be accommodated overnight in private hospitals in New South Wales. The cap effectively means that an operator cannot open a new facility or expand an existing one unless he or she holds bed approvals in reserve or purchases those approvals from another operator. In this way a market in private hospital bed approvals has been created. These approvals have in the past changed hands for thousands of dollars each. It is of note that the bed cap does not apply to day procedure centres. At the time the bed cap was established this would have been appropriate, but subsequent technological developments and the growth in the number of complex treatments that can be provided on a day-only basis mean that its effectiveness from a planning perspective is now seriously compromised.

Therefore, the bill proposes to replace the bed cap with broader planning power whereby the Director General of NSW Health may refuse an application if it would result in more than an adequate number of health services becoming available in a particular clinical or geographic area and would undermine the provision of viable, comprehensive and co-ordinated health services. Such a decision is to be made following consideration of any development guidelines that have been approved by the director general and published in the *Government Gazette*. Consistent with the removal of the licensing distinction between hospitals and day procedure centres, the service planning process will also apply to day-only facilities. This is appropriate given the increased sophistication and complexity of procedures that are now undertaken on a day-only basis.

Thirdly, the bill provides for the licensee of a private health facility to apply root cause analysis methodology to investigate serious adverse events at the facility. This is in line with the current requirements in respect of public hospitals and as with root cause analysis investigations in public hospitals the root cause analysis process in private facilities will be privileged. Private health facilities are already required to report serious adverse events to NSW Health and many facilities already conduct investigations that are equivalent to a root cause analysis

investigation. For those facilities the provisions of part 4 of the bill will simply formalise that situation and provide clinicians with added confidence to report adverse incidents without fear that the reporting will inappropriately be used against them in disciplinary proceedings.

Fourthly, the investigation and enforcement provisions of the bill have been enhanced. Given that this bill is designed to regulate facilities in the interests of public and patient safety a robust investigation and enforcement regime is appropriate. Stakeholders support this approach. I now turn to some of the key provisions of the bill. Clause 5 of the bill provides that licensing standards for private health facilities may be made by regulation. This reflects the approach taken under the current and former Acts. I assure members that any such regulations will be the subject of a regulatory impact statement as provided for in the Subordinate Legislation Act and be the subject of detailed consultation with stakeholders.

Clause 7 (4) (c) of the bill allows the Director General of NSW Health to develop a series of planning guidelines and apply those guidelines when considering an application for a licence. As I have already explained, this arrangement will allow for the more orderly and co-ordinated planning of health services across the entire State. In line with this more comprehensive approach to planning, clause 8 provides that an approval in principle may be renewed a maximum of four times. Whenever a person seeks to open a new facility or extend an existing facility it is usual to obtain the director general's approval in principle before commencing work. This arrangement provides applicants with some certainty that a licence will be granted, provided they comply with the conditions attaching to the approval, before they undertake significant work and investment.

Under the current Act an approval in principle may be renewed indefinitely and this arrangement does not facilitate the orderly and co-ordinated planning of services. The intention that approvals in principle be limited to five years strikes an appropriate balance between the interests of effective planning and providing operators with a suitable period of time in which to undertake the necessary building and development. Clause 18 of the bill provides for the supply of any additional information by an applicant that the director general may reasonably require to determine an application. This provision will, amongst other things, allow the director general to obtain information that demonstrates that health and safety issues are adequately addressed. For example, an applicant who wishes to be licensed to undertake novel or experimental procedures may be required to provide evidence of the clinical validity of those procedures.

Clause 29 of the bill is a new provision that allows for the director general to suspend a licence. Suspension of a licence would only be available if the licensee is in breach of a licensing standard and there is a substantial risk to patient safety or if the facility does not have a medical advisory committee. The power to suspend a licence is an important departure from the provisions of the current Act, which provides only for the cancellation of a licence. The proposed power to suspend a licence recognises that such action may be necessary in the interests of patient safety whilst also recognising that cancellation of a private health facility licence may have a significant impact on other facilities in the area and the public health system in general. It recognises also that private health facilities are often substantial businesses employing many people whose livelihoods would be impacted by cancellation.

Clause 39 of the bill concerns medical advisory committees. The bill requires the licensee of each facility to appoint a medical advisory committee for the facility. Medical advisory committees are to be responsible for advising licensees on the credentialing of practitioners to provide services at the facility and the clinical responsibilities of those practitioners as well as advising the licensee on clinical practice and patient care matters at the facility. While the current legislation provides for the appointment of medical advisory committees that requirement is contained in the licensing standards rather than in the Act itself. The experience with medical advisory committees is that they are of fundamental importance in maintaining appropriate standards. Accordingly the requirement for the appointment of those committees is now to be included in the Act.

Part 4 of the bill consists of provisions regarding the appointment of root cause analysis teams and investigations by those teams into serious adverse incidents. These provisions are consistent with those provisions applying to public health services in the Health Administration Act. Extending these provisions to the private sector means that regardless of whether a patient is treated in the public or private health sector in New South Wales he or she can have confidence that there are systems in place to respond properly to adverse incidents and to learn from those incidents. Clause 42 of the bill provides that when a reportable incident occurs in a private health facility the licensee is to appoint a root cause analysis team to investigate the incident.

It is important to note that clause 43 provides that a team does not have the authority to conduct an investigation into the conduct of an individual practitioner. Concerns about individual practitioners should always be reported to the management of the facility and in appropriate cases to the Health Care Complaints Commission and the relevant health registration board. Notwithstanding the prohibition on a team conducting an investigation into an individual health practitioner, clause 44 provides that a team must notify the licensee and the medical advisory committee if it is of the opinion that its investigation raises issues of individual unsatisfactory professional conduct or impairment. Furthermore, a team may notify the licensee and the medical advisory committee if it is of the opinion that an investigation raises matters of unsatisfactory performance of a health professional.

Clauses 45, 46 and 47 provide a non-disclosure regime for information held by a team. These provisions are of vital importance in encouraging staff and clinicians to be involved in the root cause analysis process and to be frank and forthright in their dealings with a root cause analysis team. The non-disclosure provisions relate to information collected by the team but not to the team's report, which must be provided to the licensee and the medical advisory committee. The licensee is then required to provide a copy of the report to the Director General of NSW Health and may also provide it to any other person that the licensee considers appropriate.

Part 5 of the bill deals with enforcement matters. This part of the bill contains a number of new and expanded powers over those in the current Act. Importantly, clause 51 allows authorised officers to enter and inspect any premises other than residential premises for the purposes of determining if there has been a contravention of the Act, the regulations or a licence condition. Under the current Act authorised officers can enter only licensed premises or premises that are the subject of an application for a licence. This has meant that officers have had no power to enter premises they reasonably believed were being operated illegally as unlicensed day procedure centres or private hospitals. The proposed new powers address this significant gap in enforcement powers.

Clause 52 of the bill allows for authorised officers to issue improvement notices to a licensee. Improvement notices will be familiar to members from other legislation including the Occupational Health and Safety Act, the Marine Safety Act and the Rail Safety Act. In essence, an improvement notice is a notice to a licensee requiring them to take specified action to ensure compliance with the Act, regulations or a licence condition, within a set period. Failure to comply with an improvement notice is an offence. A licensee may appeal to the Administrative Decisions Tribunal to have the decision to issue the notice reviewed. The use of improvement notices is expected to provide an efficient and effective means to ensure compliance with licensing standards and the Act. Clause 54 of the bill provides that an authorised officer may issue a penalty notice or an on-the-spot fine for those offences that the regulations prescribe as penalty notice offences. It is intended that a penalty notice would be issued only for the more minor offences that do not go to patient safety, such as a practitioner failing to provide notice of a pecuniary interest in the appropriate fashion.

Clause 58 of the bill provides that the Director General of NSW Health may direct a licensee to engage an external expert to advise the licensee on the conduct of the facility. This power can be used only if the director general has reason to believe that the facility is not being conducted in accordance with the Act, the regulations, or a licensing standard. An external expert engaged under this provision would have a role similar to the role played by the Clinical Excellence Commission in respect of the public sector. The policy behind this provision reflects NSW Health's approach to working co-operatively with licensees to ensure that high standards are maintained in the interests of patient safety.

The provisions of the Private Health Facilities Bill provide the framework for an effective licensing and regulatory system for private health facilities in the twenty-first century. The Minister and I look forward to working co-operatively with 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 hospital sector. I commend the bill to the House.