



Health Care Complaints Amendment (Special Commission of Inquiry) Bill.

Second Reading

Mr MORRIS IEMMA (Lakemba—Minister for Health) [12.50 p.m.]: I move:

That this bill be now read a second time.

The Government established the Special Commission of Inquiry into Campbelltown and Camden Hospitals headed by Mr Bret Walker, SC, after the report of the Health Care Complaints Commission [HCCC] was presented in December 2003. The HCCC report and investigations undertaken by the HCCC had numerous shortcomings. The interim report of the special commission, released today, has highlighted just how flawed the previous HCCC investigative process has been. Mr Walker's interim report highlights "what appears to be a serious avoidance by the HCCC of its mandatory statutory function when it received complaints concerning the conduct of medical practitioners".

Mr Walker is particularly critical that the HCCC "substantiates" complaints about individual patient care, without regarding those allegations as complaints against particular doctors. He describes this as "offensive to a sense of fairness". The failure of the HCCC to address issues of individual accountability was one of the crucial reasons why the Government established the special commission of inquiry. One of the key tasks of the special commission has been to review the clinical incidents, the subject of the complaints, and identify the most serious clinical incidents requiring further investigation. Mr Walker has now completed part of that task and has recommended that a number of matters be investigated by the HCCC with a view to instituting disciplinary action. He has also recommended that some matters be referred to the Medical Board for performance assessment.

Some people might ask why we are sending these matters back to the HCCC for investigation when the HCCC failed so completely to deal with the complaints the first time round. As is noted in the special commission's interim report, Parliament has given the HCCC the responsibility and power to carry out these investigations. The Medical Tribunal and the Nurses Tribunal are the bodies responsible for determining whether sanctions should be imposed on practitioners. Mr Walker does not have the power to conduct disciplinary proceedings against practitioners. Indeed, Mr Walker expressed the strong view at recent public hearings that it would not be appropriate for him to seek to carry out such a role.

The special commission's resources are best used to identify the most serious clinical incidents requiring further investigation. It is therefore appropriate that these matters be referred to the HCCC. The Government is confident that the HCCC will be able to carry out this task competently and quickly. The Government has recently taken steps to improve the operation of the HCCC. They include the appointment of a new acting commissioner, His Honour Judge Taylor. The Government has also provided additional funding to establish a specialist Macarthur team to carry out these investigations. The Macarthur team is headed by counsel from the private bar. Multidisciplinary teams will pursue these matters to completion. I am advised that none of the staff involved in the initial HCCC investigation's are members of this team.

Mr Walker has recommended that the Government introduce special remedial legislation to facilitate the implementation of the further actions recommended in his interim report. This need has arisen because the existing complaints legislation does not contemplate or permit intervention such as the special commission. Mr Walker has expressed the view that a subsequent prosecution may be subject to an argument that it is unlawful because of this "interference" in the decision-making process. Mr Walker has said that this is by no means an argument that may be safely ignored. The bill is necessary to prevent legal challenges on this and other technical grounds by health practitioners who will be subject to further investigation. Practitioners should not be able to avoid disciplinary sanctions on the basis of a technicality.

This legislation will ensure that the merits of the case against them can be argued before the relevant tribunal or professional standards committee, if such proceedings are instituted. The need for this legislation also arises because of the necessity to prevent further delays in this already lengthy process. The Government wants to ensure that the families and patients affected by the incidents at Campbelltown and Camden hospitals will be confident that these matters have been properly examined, as quickly as possible. This bill will ensure that that happens.

I turn now to the provisions of the bill. Clause 2 of new schedule 5 will require the HCCC to investigate matters that the special commission recommends be investigated. The clause streamlines the existing statutory process so that investigation can proceed without further delay. The procedural requirements in the Health Care Complaints Act to assess a matter prior to an investigation are deemed to have been complied with. There is no sound reason to delay the process further by requiring the HCCC to again assess complaints. Practitioners will have the opportunity during the further HCCC investigation to argue that the matter should not proceed to disciplinary action, and will ultimately be able

to defend their actions before the tribunal should disciplinary action be instituted.

Clause 3 of the schedule requires the HCCC to refer matters to the relevant board where recommended by the special commission for possible performance or impairment assessment. Clause 4 allows the special commission to provide information that it has already gathered to relevant bodies. This will ensure that the material and information gathered to date by the special commission can be used by the HCCC and registration boards without the need to regather that information. Clause 5 will allow that information to be taken into account by the HCCC, registration authorities, impairment or professional assessment bodies, and disciplinary bodies. This provision will put beyond doubt that the special commission's material can be considered without the risk of legal challenge. It will remain, however, the responsibility of each relevant body to form its own view on the material it considers.

Clause 6 will prevent legal challenges to the further HCCC investigations, disciplinary proceedings, or other actions that are recommended by the special commission. The clause will prevent legal challenges on the basis of technical grounds which may be raised by health practitioners. For example, it will prevent challenges on the basis that either the special commission or the HCCC has already considered the matters. Similarly, the fact that the special commission has made recommendations in relation to these matters will not be a reason to challenge the decisions of the HCCC or the tribunal.

The provision will also operate to ensure that the flawed process undertaken by the HCCC during its previous investigation at the hospitals does not prevent the complaints being pursued. It is intended to cover the broad range of challenges that might be made on technical grounds. The bill is intended to ensure that all matters will be properly tested on their merits in the tribunal or another relevant disciplinary body. No-one will be disadvantaged. Practitioners will have a full opportunity to argue the merits of their case before the relevant body. Staff, patients and families will be confident that these complaints have been fully tested, and pursued.

I advise the House that Mr Walker has reviewed a draft of this legislation and has indicated that he considers that the draft provided, which is virtually identical to this bill, is the kind of legislation which is urgently needed to permit these overdue investigations and prosecutions to be completed on their merits. In light of the urgent need for this legislation, as flagged by Mr Walker, the Government has indicated that it intends to pass the legislation through all stages this week. This is necessary because there is a risk that before Parliament resumes in May, some practitioners may be able to successfully challenge the further actions recommended by Mr Walker. I understand that Mr Walker has briefed the Opposition on this proposal, and explained the need for this legislation and the associated urgency. I commend the bill to the House

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