Legislative Assembly

Optometrists Bill Hansard Extract

08/05/2002

Second Reading

Mr McMANUS (Heathcote—Parliamentary Secretary), on behalf of Mr Knowles [8.13 p.m.]: I move:

That this bill be now read a second time.

I have pleasure in introducing the Optometrists Bill 2002. This bill is a reintroduction of the Optometrists Bill 2001, which lapsed upon the proroguing of Parliament, with the addition of a small number of important amendments to the provisions dealing with the ownership of optometry practices and the use of therapeutic drugs in the practice of optometry. The Optometrists Bill will protect the health and safety of the public in New South Wales by providing for the effective regulation of the optometry profession and by ensuring that optometrists are fit to practice. This bill repeals the Optometrists Act 1930, which was last substantively amended in 1969.

The new legislation is appropriately updated so as to strengthen and improve the regulation of optometrists in a similar fashion to improvements that have recently been made to the regulatory systems for other health professionals, such as medical practitioners, dentists, chiropractors, physiotherapists and osteopaths. This bill is the result of a thorough review process that involved exhaustive consultation with all relevant stakeholders and in particular the optometry and medical professions. Over the course of both this review and previous reviews, dating back to 1988, a number of draft bills have been produced for consideration. However, this legislation will see the conclusion of that review process and allow the optometry profession to develop in a manner appropriate for the role it fills in the health care system and in a fashion similar to developments in other jurisdictions both in Australia and overseas.

The issue that has been the primary cause for the number and length of the various reviews is the optometrists' access to therapeutic drugs. The current Act allows optometrists to use diagnostic drugs in professional practice but prevents the use of therapeutic drugs. In the course of the current review a clinical issues working party was established to examine a number of matters relating to clinical optometry, including the use of therapeutic drugs, to achieve a consensus among stakeholders on this matter. The working party recommended that restrictions on the use of therapeutic drugs be removed from the Optometrists Act and that the matter be dealt with by the Poisons and Therapeutic Goods Act. This is the approach that is taken to regulate the access of other professions, including the medical profession, to restricted medications, and the Government has agreed that it is the approach that should be taken for access by optometrists.

The human eyes and visual system are extremely complex and delicate and any damage to those systems or loss of sight is a very serious matter that is of great concern to the public. It is therefore entirely appropriate to take a very cautious approach when approving any expansion of the role of optometrists into the treatment of ocular conditions by the use of therapeutic drugs. Any reforms that are contemplated must be based on verifiable competencies. The current bill therefore provides that the Optometrists Board may issue a registered optometrist with a drug authority and that there may be different classes of optometrist drug authority which relate to different therapeutic substances.

In the interests of ensuring that there is an appropriately high level of clinical governance in the approving of therapeutic substances for use by optometrists, the bill will amend the Poisons and Therapeutic Goods Act to establish an expert committee to determine the classes of optometrist drug authority that may be issued by the Optometrists Board; the poisons and restricted substances that are to be covered by each class of optometrists drug authority; the competency standards an optometrist must meet in order to be granted an optometrist drug authority of a particular class; the criteria to be used to ascertain whether an optometrist meets those competency standards, including criteria as to necessary education, training and experience; the maximum period for which an optometrists drug authority may be granted; and the ocular conditions that an optometrist who holds a particular class of optometrists drug authority is authorised to treat.

The committee will be established by the Director-General of Health and will comprise the Chief Health Officer of the Department of Health, who will be the chair of the committee, a registered optometrist nominated by the Optometrists Registration Board, an ophthalmologist nominated by the Royal Australian and New Zealand College of Ophthalmologists, a physician nominated by the Royal Australasian College of Physicians, and a clinical pharmacologist chosen by the director-general. Therefore there will be appropriate safeguards to ensure that only competent optometrists can access restricted drugs.

I emphasise for the benefit of honourable members that optometrists will not be able to sell restricted medications and that the only way optometrists will be able to supply such medications is by way of clinical sample. The Royal Australian and New Zealand College of Ophthalmologists was extensively consulted during the development of these provisions and has agreed that the process for optometrists to access therapeutic drugs as set

out in the Optometrists Bill is appropriate. The provisions will require the involvement of both the medical and optometry professions in the development of competency standards and in determining the therapeutic substances that optometrists will be approved to use and the ocular conditions that optometrists will be approved to treat.

The college has been concerned to ensure that the public health is protected, and I take this opportunity to place on record the Government's appreciation of its efforts and contribution to the development of this legislation. Honourable members are aware that the Government supports the continuation of restrictions on the ownership of optometry practices. However, a number of non-optometrist owners currently enjoy rights under the Optometrists Act 1930. These non-optometrist owners are to continue to enjoy those rights. Therefore the existing provisions of the Optometrists Act 1930 by which those non-optometrist owners are entitled to operate an optometry business are carried forward by reference in this bill. The result is to preserve the status quo and all existing rights.

The bill includes a regulation-making power that provides that regulations may be made prescribing a person or class of persons as allowed to operate an optometry business. That power is intended to be used to allow organisations such as universities, public health organisations and Aboriginal medical services to employ optometrists to provide optometry services. I emphasise that this provision will not allow non-optometrists to undertake optometry practice but will merely allow certain prescribed organisations or persons to employ optometrists to provide optometry services. Recent health professional Acts passed by the Parliament amended the Public Health Act to define and restrict certain health care practices to particular registered professions. Restrictions have been placed in the Public Health Act in order to underpin the fact that those restrictions are enacted to protect public health rather than to protect the professional turf of particular professions.

This bill takes the same approach to the prescribing of optical appliances with that practice being restricted to registered medical practitioners and registered optometrists. The term "optical appliance" means contact lenses, spectacle lenses or any other appliance designed to correct, remedy or relieve any refractive abnormality or defect of sight. The bill will not affect the manufacture, fitting and supply of optical appliances as this is controlled by the Optical Dispensers Licensing Act and there will be no restriction on the manufacture and sale of so-called ready-made glasses which are merely magnifiers and are freely available from a number of retail outlets including community pharmacies.

I turn now to the specific provisions of the bill. To ensure that the welfare of patients is the paramount consideration in administering the Act, clause 3 of the bill states that the objective of the legislation is to protect the health and safety of the public by providing mechanisms to ensure that optometrists are fit to practise. The bill will achieve this objective through a number of initiatives. The first initiative is to provide that the board may refuse to register a person, or register him or her subject to conditions, where it is not satisfied that he or she is competent to practise. For the first time, it will be an express requirement that applicants for registration must be competent to practise. As part of the requirement for competence, clause 14 of the bill provides that the Optometrists Registration Board will have the power to conduct an inquiry into a person's competence. If, following an inquiry, the board is not satisfied as to the applicant's competence, it will be able to grant registration subject to conditions or refuse registration. The power to conduct an inquiry will also apply when a person applies to have his or her registration restored.

The second initiative within the bill, to ensure that optometrists maintain their competence, is the introduction of a more robust annual renewal process. This process will require practitioners to submit annual declarations to the board on renewal of registration. Clause 24 of the bill provides that the annual declaration will cover criminal convictions and findings, ongoing good character, the refusal by another jurisdiction to register the person, the details of any suspension or cancellation of registration or the imposition of conditions in another jurisdiction or by another health registration board in New South Wales, whether the practitioner is registered with another health registration board in New South Wales, significant physical or mental illness that is likely to affect an optometrist's ability to practise, and continuing professional education activities.

In addition to practitioners being required to provide the board with an annual declaration detailing any criminal findings, clauses 25 and 26 of the bill also provide for the board to be notified about practitioners who are the subject of criminal findings. Under these provisions courts will be required to notify the board of practitioners who have been convicted of an offence or made the subject of a criminal finding in respect of a sex or violence offence. Essentially, a criminal finding is one where an offence has been proven but a conviction has not been recorded. A sex or violence offence is an offence involving sexual activity, acts of indecency, child pornography, physical violence or the threat of physical violence. Practitioners will be required to notify the board within seven days if they have been convicted of an offence of a type that courts are required to report, if they have sustained a criminal finding in relation to a sex or violence offence, or if they are facing criminal proceedings for a sex or violence offence where the allegations relate to conduct occurring in the course of practice or involving minors.

The third significant initiative is part 4 of the bill, which introduces a new disciplinary system. Clauses 28 and 29 provide for a two-tier definition of "misconduct" based on the definitions in the Nurses Act. The adoption of the two-tier definition, which includes both unsatisfactory professional conduct and professional misconduct, will allow the board to deal with both serious and less serious complaints in the most appropriate manner. Clause 30 of the bill provides the grounds for a complaint about a practitioner. The grounds for complaint have been drafted to be consistent with the grounds for complaint in the Health Care Complaints Act, the changes in the grounds for refusing a person registration, the introduction of the two-tier definition of "misconduct" and the introduction of an impaired practitioners system.

The bill introduces an Optometrists Tribunal, which will deal with complaints that practitioners are guilty of professional misconduct. The tribunal will be chaired by a legal practitioner with at least seven years experience and

will include two optometrists and a consumer selected by the board. The tribunal will hear the more serious complaints about practitioners and the board will, where appropriate, conduct inquiries into complaints that are less serious. The bill also introduces the Optometry Care Advisory Committee. The committee will be used by the board as an expeditious and expert mechanism to inquire into complaints about optometry services, which the Health Care Complaints Commission does not propose to investigate. Those complaints will generally be at the lesser end of the spectrum of seriousness.

The committee will comprise four members, being three optometrists and a consumer. The committee chair will be an optometrist nominated by the board and the other two optometrists will be selected by the Minister from a panel of practitioners put forward by the board. Due to the importance of ensuring that the committee is both independent and is perceived as independent, board members will not be eligible to be appointed to the committee. Precluding board members from sitting on the committee will ensure that the same individuals do not consider complaints in different capacities and forums. Members of the committee will be appointed for a fixed term of four years.

The committee will investigate complaints and make recommendations to the board for their resolution. Included as part of the committee's investigatory powers will be the power to require a practitioner who is the subject of a complaint to undergo skills testing. Skills testing will assist the board in dealing with complaints about professional standards and in ensuring that practitioners maintain appropriate standards. The committee will not have the power to determine complaints, but it can facilitate the patient and the practitioner reaching an appropriate agreement between themselves.

Should the committee, during its investigations, reach the view that a complaint raises an issue of unsatisfactory conduct that requires referral for a disciplinary inquiry, the board will be obliged to follow this recommendation. In such cases the board will either conduct an inquiry into the complaint or, for the most serious matters, refer the complaint to the tribunal for a hearing. Honourable members will be aware of the valuable role that the Health Care Complaints Commission performs in investigating complaints about health service providers and, in appropriate cases, instituting disciplinary action against practitioners. I emphasise that under the new disciplinary provisions the Health Care Complaints Commission will continue to play an important role in the investigation and prosecution of complaints. As part of the board's powers to protect the public it will be able to impose conditions on a practitioner's registration or suspend that registration when it is necessary to do so to protect the life or the physical or mental health of any person.

This leads me to part 5 of the bill, which introduces a system for the board to manage impaired practitioners. The provisions of part 5 are modelled on provisions in the Medical Practice Act which have operated successfully for a number of years. The rationale for such a system is that practitioners whose ability to practise is impaired by factors such as physical or mental illness, or drug and alcohol abuse, can be managed and assisted before those problems develop to such an extent that patients are placed at risk. Following the impairment process the board will be able to place conditions on a practitioner's registration or suspend that registration when it is satisfied that the practitioner has agreed. Where the practitioner does not agree to the recommendations of an impaired registrants panel, the board will have the option of lodging a complaint about the practitioner and having that complaint dealt with by the tribunal or at a board inquiry.

The bill includes comprehensive appeal mechanisms to ensure that there are appropriate checks and balances in the disciplinary system. When the board hears a complaint there is a right to appeal to the tribunal, and for that appeal to be by way of a fresh hearing. There is also an avenue for a practitioner to appeal to the tribunal on a point of law. Where the tribunal hears a complaint there is a right to appeal to the Supreme Court. However such an appeal may only be made on a point of law or in respect of the sanction that is imposed by the tribunal.

In the interests of administrative effectiveness and efficiency the board will have the power to delegate certain of its functions and to establish committees. The establishment of committees will allow the board to obtain outside expertise from both the optometry profession and other professions, such as the medical profession, for specific matters such as the development of competency standards for the use of drugs in the practice of optometry. The provisions of this bill will help to ensure that the public can continue to have confidence in optometrists and to expect the highest standards of competence and conduct from the profession. I commend the bill to the House.