Health Legislation Amendment Bill.

Second Reading

Mr HICKEY (Cessnock—Minister for Mineral Resources), on behalf of Mr Iemma [10.50 a.m.]: I move:

That this bill be now read a second time.

The Health Legislation Amendment Bill incorporates a number of proposed amendments to legislation within the Health portfolio, namely, the Health Services Act 1997, the Mental Health Act 1990, the New South Wales Institute of Psychiatry Act 1964, the Poisons and Therapeutics Goods Act 1966, the Royal Society for the Welfare of Mothers and Babies Incorporation Act 1919 and the Smoke-free Environment Act 2000. The various amendments are to ensure that these Acts are kept up to date and operate effectively.

I will now outline the nature of these amendments. First, in relation to the Health Services Act, the bill introduces amendments to clarify that medical indemnity insurance under section 85 of that Act has the same meaning as approved professional indemnity insurance under the Health Care Liability Act 2001. In 2001 the Government introduced the Health Care Liability Act to help address the medical indemnity crisis. The Health Care Liability Act introduced the requirement for all medical practitioners practising in New South Wales to be covered by approved professional indemnity insurance unless exempt by the Act or regulations. The Minister for Health approves the kind and extent of insurance cover doctors must carry. In addition, the New South Wales Government moved to extend Treasury Managed Fund coverage to the public patient work of visiting medical officers and, where relevant, their practice companies.

As the Health Services Act currently stands, where a visiting medical officer contracts with a public health organisation through his or her practice company, the company must carry a level of public liability and medical indemnity insurance approved by the Director-General of Health. It is, therefore, proposed to amend the Health Services Act to clarify that medical indemnity insurance under the Health Services Act has the same meaning as professional indemnity insurance under the Health Care Liability Act. This will enable consistency between the kind of cover visiting medical officers' practice companies are required to have under the Health Services Act and the mandatory cover requirements of the Health Care Liability Act.

The amendment will also clarify that a medical practitioner's practice company does not need to carry medical indemnity insurance when it is exempt under section 19 (4) of the Health Care Liability Act 2001 in respect of medical services to be provided under the relevant service contract. The Treasury Managed Fund coverage for public patients is one such set of exempt circumstances. This bill also introduces an amendment to the Act to allow the Minister to appoint a member to the board of a statutory health corporation in lieu of the staff-elected member where the statutory health corporation has a staff of fewer than 50. The Act currently requires the boards of both area health services and statutory health corporations to include one member elected by the staff of the organisation.

The Act requires those elections to be conducted by the New South Wales Electoral Commission. Having a staff representative on the board provides a useful channel for staff and management to address various issues. However, where a statutory health corporation has a very small staff, the time, expense and resources involved in conducting the election process is difficult to justify. As a case in point, the New South Wales Institute for Clinical Excellence was created in December 2001 as a statutory health corporation to address training and education and to set priorities for health services research. The corporation currently has five permanent employees. The employees operate as an executive unit liaising with the board, area health services, health professionals and other stakeholders. As such, the institute does not have the same day-to-day work force issues faced by other statutory boards and the staff representative position would be better utilised in providing additional expertise to the institute's board in its main educative and research functions.

In order to accommodate such circumstances it is proposed to amend clause 2 of schedule 5 to the Act, which deals with the election and the appointment of staff-elected board members to allow for the Minister to appoint a person where the corporation employs fewer than 50 people, thus saving the expense of an election. The Government also proposes minor amendments to the Mental Health Act in relation to the appointment to the Mental Health Review Tribunal. The Mental Health Act currently provides that the Mental Health Review Tribunal is to consist of members appointed by the Governor. Of the members appointed to the tribunal, one is to be a full-time member appointed as the president of the tribunal; one or more may be full-time members appointed as a deputy president of the tribunal; and the remaining members, if any, may be appointed as full-time or part-time members.

The proposed amendment will enable the deputy president to be appointed on a part-time basis. This will allow for greater flexibility where, for example, the workload of the tribunal warrants the appointment of additional part-time deputy presidents rather than, as at present, requires the positions to be filled on a full-time basis. The bill also makes a minor consequential amendment to the Statutory and Other Offices Remuneration Act 1975. It is also considered necessary to amend the New South Wales Institute of Psychiatry Act 1964. The Institute of Psychiatry is established by the Act as a not-for-profit organisation, the objects of which are directed at research and training in relation to mental illness. The institute is partly funded through the health budget that generates more than one-third of its income from fees charged for education courses that it runs.

The Act contains a general power enabling the institute to do and perform all acts and things necessary to give effect to its objects, but it does not contain an express authority to charge fees for courses. While there is no suggestion that the institute has been acting beyond its power in charging fees, in accordance with advice provided by the Crown Solicitor, the bill proposes to amend the Act to put the institute's ability to charge fees beyond doubt. The Poisons and Therapeutic Goods Act 1966 and regulation establish the framework for the regulation and control of poisons in New South Wales. This regulatory regime is designed to prevent accidental poisoning, medical misadventure and abuse and it is an important tool in ensuring public health and safety.

As part of this objective, part 4 of the Act contains a specific set of provisions designed to restrict and regulate the possession, manufacture and supply of drugs of addiction. Division 2 of part 4 of the Act contains specific restrictions on the prescribing of drugs of addiction as a treatment for drug-dependent persons. Under these provisions, drugs of addiction can only be prescribed as treatment for a drug-dependent person where a medical practitioner has been granted a special authority by the Director-General of Health. These provisions regulate the prescription of methadone and buprenorphine and represent the legislative basis for the NSW Health methadone program.

Sections 28A and 29 of the Act grant the director-general the power to issue approvals to prescribe and supply drugs of addiction and to impose conditions on such approvals. When exercising this power the director-general relies on the recommendations of the medical committee which is established under section 30 of Act. The provisions also allow the director-general to revoke an approval with the regulations establishing powers for an immediate suspension of an approval where there is a risk to public health or safety. The bill proposes to make a number of amendments to this regulatory regime to improve and enhance the oversight of the New South Wales methadone program. First, as I indicated, the regulations currently allow suspension of authorisations to supply drugs of addiction where there is a risk to public health or safety.

However, a question has arisen as to whether this regulatory power was sufficiently broad to cover approvals granted under the Act. To put this matter beyond doubt, it is proposed to place the suspension power in the Act itself. The bill therefore provides for suspension of an approval or the imposition of conditions on an approval when the circumstances are sufficiently urgent and when the director-general is of the opinion that the action is necessary for the purpose of protecting the life, or the physical or mental health, of the medical practitioner or any other person. This is the same test currently used in the regulation.

Section 29 will also be amended to allow the recognition of electronically generated forms, including applications and authorities to prescribe drugs of addiction. The aim of this change is to support the Department of Health's current project to develop an Internet-based system designed to increase the efficiency of processing applications. The system will include appropriate security mechanisms to verify and protect the information provided. The bill will also make some amendments to ensure that the director-general and the Medical Committee are able to obtain all relevant documentation they require to properly perform their regulatory role. At the moment information is obtained through enforcement and monitoring of compliance activities, involving voluntary provision of information by approved prescribers and through reliance on the powers of entry and seizure contained in section 43 of the Act. The aim of the bill is to improve both of these options.

New section 30AA will allow the Medical Committee to obtain relevant information from both the Health Care Complaints Commission and the New South Wales Medical Board when considering a possible contravention of an approval or the related provisions of the legislation. As honourable members would be aware, the Health Care Complaints Commission and the Medical Board have a key role in the assessment, investigation and determination of complaints against medical practitioners. Information they hold on, for example, outstanding disciplinary action relating to misuse of drugs by a practitioner can be directly relevant to that practitioner's obligations under the poisons legislation. The amendment proposed in the bill will allow the committee to obtain this information, and thus ensure that it has relevant information to hand when considering these issues. It will also prevent the duplication of effort on the part of the various regulatory authorities and, by avoiding duplication of effort, will also ensure a quicker response to situations when there is an issue of public safety involved.

It should, however, be emphasized that the power will be subject to tight constraints in relation to both who may exercise it and the circumstances in which it will apply. The exercise of the power will be confined to the Medical Committee or persons operating under delegation from that committee. Further, the power will only be available in circumstances when the committee is investigating a breach of the legislation or a breach of an approval under

part 4 of the Act. As I have already indicated, the second set of powers relied on to oversee the New South Wales methadone program arises out of the search and seizure powers in section 43 of the Act. These are also to be enhanced by the bill.

The section 43 powers operate for the purpose of ascertaining whether the provisions of this Act or the regulations are being complied with. The activities of approved prescribers of methadone and buprenorphine are also covered by the conditions of the director-general's approval under section 29. Similarly, the activities of methadone clinics are governed by their licence and licence conditions. While these approvals and licences are given under the terms of the Act, it is considered important to ensure that the Act clearly states that the powers established under section 43 apply not only to the Act and regulations but also to any approval, authority or licence given pursuant to the Act or regulations and any conditions thereunder.

In addition, the current powers granted under section 43 do not allow inspectors to access documentation of approved prescribers or clinic records, but are directed almost entirely to the seizure of goods and tracking their supply. While this is highly appropriate in relation to most breaches of the legislation, effective enforcement of ~~P~~part 4 of the Act, which deals with access to and regulation of the supply of drugs of addiction to drug-addicted persons, requires an ability to access clinic records. It is only by examination of the records that inspectors can ascertain whether the conditions imposed by the Act and legislative approvals are being complied with. Records of a prescription are, for example, critical in establishing whether an approved practitioner is prescribing in accordance with a recognised therapeutic standard and in a quantity within such recognised standards. I draw the attention of honourable members to the fact that these changes to section 43 will also apply to the activities of methadone clinics, and will allow examination of records relevant to auditing compliance by a clinic with its licence and licence conditions. They will thus provide the regulators with a more effective tool in their oversight of both practitioners and clinics.

In addition, the enhanced section 43 powers will also apply to provisions relating to ~~S~~schedule 4 ~~A~~appendix D substances such as anabolic steroids and barbiturates. Under the legislation, prescription of such "prescribed restricted substances" must only be for medical treatment and in accordance with the "recognised therapeutic standard". Again, in order to properly check possible breaches of these provisions, it is important for inspectors to be able to obtain access to the relevant records. Finally, as honourable members would be aware, in March last year the Government announced new measures designed to combat the use of anabolic steroids, particularly among body builders and gym enthusiasts. In statements previously made to the House, the then Minister for Health noted that the most recent national drug strategy household survey revealed a 30 per cent increase in lifetime steroid use for non-prescribed purposes.

That means that there may be as many as 40,000 people in this State alone who are using or have used anabolic steroids. Steroid abuse has well-known negative side effects. Two homicides in New South Wales have been linked to roid rage, as it is commonly known. Anabolic steroids are currently classified as schedule 4 appendix D drugs under the legislation. As one of the measures being taken to combat the growing abuse of these drugs, the bill provides for an increase in the maximum penalty for illegal possession of these drugs from six months to two years imprisonment. Such penalty may be imposed either separately or in addition to a fine of up to $2,200. The Department of Health has consulted a number of relevant bodies during the drafting of these amendments, including the Attorney General's Department, the Office of the New South Wales Privacy Commissioner and the Health Care Complaints Commission. They have indicated broad support for the proposals. In addition, both the Medical Board and the Medical Services Committee have indicated support for the proposed amendments.

Section 11 of the Royal Society for the Welfare of Mothers and Babies' Incorporation Act 1919 provides that the Governor, on the recommendation of the society's council, is to make by-laws for the management of the society's affairs. The by-laws are primarily concerned with the internal management of the society. The Regulation Review Committee has suggested that the Act be amended so that the by-laws no longer need to be made by the Governor, and therefore would not be subject to the staged repeal process under the Subordinate Legislation Act 1989. As suggested by the committee, the bill amends the Act to permit the society to make its own by-laws. Finally, minor amendments are also proposed to the Smoke-free Environment Act 2000 to ensure that all bars, pubs and nightclubs within Star City Casino are included in the general bar and gaming area exemptions under section 11 of the Act.

The amendment proposed is designed to address an anomaly arising from the fact that section 11 failed to include premises regulated under the Casino Control Act, but only those premises under the Liquor Act and Registered Clubs Act. It represents no change in government policy. Future amendments to the Smoke-free Environment Act have already been announced to underpin the agreement between the hotel and club industry and the Government for the phased rollout of non-smoking around bars. This phased rollout will also extend to premises in the casino environs. The various amendments to legislation that I have outlined are designed to ensure that the relevant pieces of legislation operate effectively. I commend the bill to the House.

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