



NSW Legislative Council Hansard

Pharmacy Practice Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 6 September 2006.

Second Reading

The Hon. JOHN HATZISTERGOS (Minister for Health) [11.41 a.m.]: 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 Pharmacy Practice Bill. This Bill will protect the health and safety of the public of New South Wales by updating and enhancing the effective regulation of pharmacy practice.

The Bill will replace the Pharmacy Act 1964. The legislation contains more robust professional regulation similar to recent improvements to the regulatory systems for other health professionals, such as medical practitioners and dentists.

The pharmacy profession, and the business of pharmacy, is highly regulated at a federal level. State Governments register pharmacists and set standards for pharmacies. The Federal Government controls the overall number and location of pharmacies via the Pharmaceutical Benefits Scheme.

In recognition of this national dimension to the regulation of pharmacy the Council of Australian Governments agreed to conduct a joint national review of pharmacy legislation and the Pharmaceutical Benefits Scheme provisions of the National Health Act. The Council of Australian Governments accepted the Final Report of the Review and referred it to each state for implementation in August 2002.

Since that time the NSW Department of Health has been engaged in extensive consultation with all relevant stakeholders in the health and pharmacy sectors.

I would particularly like to place on the record the government's thanks to the members, registrar and staff of the NSW Pharmacy Board who have given of their time and practical expertise to ensure that the Bill that I have presented today is administratively rigorous.

The Pharmacy Guild has played a role in strongly advocating for pharmacy businesses continuing to be owned and managed by professional and accountable pharmacists. I turn now to those provisions of the Bill and provide an explanation of their operation.

Honourable members will be aware that pharmacy businesses and pharmacists enjoy a privileged and protected position within the community. The primary rationale for that privileged position is the important role of pharmacy in the integrated community health care system.

Professional pharmacists are a vital link in the chain of effective health care delivery and are gatekeepers to public access to important drugs and medications. Members will be aware of the potentially disastrous consequences that can arise from inadequately supervised access to medications, most notably drug dependence and adverse reactions to individual drugs or drug combinations. Ensuring that pharmacy practice remains committed to the delivery of professional high quality health care services will help to address these adverse consequences.

The Government is vitally concerned that pharmacy continues to be in a position to serve as a shop front source of health care services, information and advice. This role includes pharmacy's contribution to delivering methadone and buprenorphine treatments to drug dependent people under the NSW Opioid Treatment Program.

Consistent with the Government's support for pharmacist owned and controlled pharmacies, Part 3 Division 2 of the Bill contains detailed provisions concerning the ownership of pharmacies. Section 25(1) of the Bill provides that only registered pharmacists, partnerships of registered pharmacists and corporations made up exclusively of registered pharmacists may hold pecuniary interests in pharmacy businesses. Honourable members will however note section 25(2), which provides that a non-pharmacist may have a pecuniary interest in prescribed circumstances.

A provision to the same effect exists in the current Pharmacy Act and is designed to address circumstances such as where a community is in need of pharmacy services but is unable to attract a pharmacist prepared to invest the capital to establish a pharmacy business. In those circumstances regulations could be made authorising an organisation such as a local government authority or an aboriginal health service to hold a pecuniary interest in a pharmacy business. I emphasise that in these circumstances a registered pharmacist would be in charge of the pharmacy at all times and all professional pharmacy services would have to be undertaken by a registered pharmacist.

There have been concerns raised with me that the regulation making power is too broad and that the potential exists for a future government to make regulations allowing generally for non-pharmacy corporations such as supermarket chains to own and operate pharmacy businesses. I wish to place on the record the Government's view that any such action would be contrary to one of the philosophical underpinnings of the Bill that pharmacies should be owned and operated by pharmacists and the Government reiterates its assurances to the pharmacy profession that the regulation making powers would not be used in this way.

On the subject of supermarkets I draw honourable members attention to section 1(8)(b) of schedule 2 of the Bill. That section provides that the Pharmacy Board may not approve pharmacy premises that are co-located with a supermarket. This provision is designed to ensure that pharmacy businesses remain independent of the commercial pressures that may be imposed by close relationships with supermarket chains and their key focus on high turnovers and profits.

The Federal Minister for Health has recently approved new pharmacy location rules for the Pharmaceutical Benefits Scheme via a determination under section 99L of the National Health Act. Amongst other things those rules have the effect of preventing the co-location of supermarkets and pharmacies in the same fashion as that proposed by the Bill.

That brings me to section 26 of the Bill, which provides an exception from the ownership restrictions for certain friendly societies. As honourable members will be aware a friendly society is a mutual organisation that exists for the purpose of providing benefits to its members and does not seek to generate profits for the purposes of paying dividends. In the case of friendly society pharmacies any surplus funds that the business generates are returned to members via lower prices for products in the pharmacy.

I am advised that there are five friendly societies operating a total of eight pharmacies in New South Wales. Section 26(1) of the Bill provides that a friendly society may apply to the Minister for approval to own a pharmacy business. Before granting that approval the Minister must be satisfied that all the profits arising from the business will be returned to members by way of benefits and that the operation of the pharmacy is in the interests of the members of the friendly society, the public or both. Sections 26(5), (6) and (7) operate to provide that existing friendly society pharmacies may continue to operate without being required to obtain further approval.

There is a lengthy history of friendly society pharmacy in New South Wales. The initial such businesses were established at a time prior to the introduction of the Pharmaceutical Benefits Scheme and as not for profit entities they were able to supply important medications and pharmacy service at an affordable cost thereby delivering an extremely important service to their members and the community as a whole. While the existence of the Pharmaceutical Benefits Scheme now renders some of the original rationale for the existence of friendly society pharmacies redundant, the Government is firmly of the view that friendly society pharmacy continues to play an important role in the overall scheme of community pharmacy.

Section 27 of the Bill provides further exemption from the ownership restrictions for those corporations that owned pharmacy businesses prior to 5 October 1990. I am advised that there are eight such "grandfathered" pharmacy businesses in New South Wales. While these businesses are an historical anomaly, it is appropriate that existing interests and entitlements be preserved subject to the same conditions under which they currently operate. I emphasise that no additional corporate owners can be created and that this category is limited to the eight corporations currently in the market.

I would also like to bring to the attention of Members that the Bill was amended in the Legislative Assembly on the motion of the Government. The amendments have the effect of ensuring that an interest that a person holds in a grandfathered corporation cannot be transferred to any one who is not a registered pharmacist. The one exception to this position is an interest that a person holds in a listed corporation that is a grandfathered corporation or that has an interest in a grandfathered corporation. The shares in relevant listed corporations will still be able to be freely traded. The amendments provide for the same situation to apply under the Pharmacy Act 1964. The amendments to the Pharmacy Act 1964 will commence on assent.

Discussion of friendly society pharmacies and the grandfathered corporate pharmacies leads me to Part 11 of the Bill. Part 11 is a set of standard provisions that expressly prohibit employers directing or inciting their employee pharmacists to engage in unsatisfactory professional conduct or professional misconduct. Equivalent provisions are found in the Medical Practice Act 1992, the Dental Practice Act 2001 and the Optometrists Act

2002. While, due to the ownership restrictions in the Bill, these provisions have limited application to pharmacy they are relevant in those restricted circumstances where a friendly society or corporation conducts a pharmacy business subject to the exemptions in sections 26 and 27 of the Bill. The provisions create an offence, with significant monetary penalties. The provisions also allow the Director-General of Health to prohibit a person who has been found guilty of an offence under Part 11 from operating a business that provides pharmacy services.

I wish to emphasise that Part 11 of the Bill does not provide an additional mechanism for a non-pharmacist to obtain a pecuniary interest in a pharmacy business.

Honourable Members will recall that other health professional registration Acts introduced and passed in recent years have included template provisions in respect of:

- the registration of practitioners;
- disciplinary and complaints handling structures, including mechanisms to manage impaired practitioners;
- notification of a range of criminal matters by both courts and registered practitioners; and
- administrative matters.

These standard provisions have been included in the Pharmacy Practice Bill.

First I turn to specific provisions of the Bill that concern the registration and regulation of pharmacists.

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 in relation to the practice of pharmacy including by providing mechanisms to ensure that pharmacists are fit to practise. The Bill will achieve this objective through a number of initiatives.

The first of these initiatives 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 explicit requirement that applicants for registration must be competent to practise. Section 9 of the Bill defines competence to practise pharmacy as the possession of sufficient physical capacity, mental capacity and skill to practise pharmacy as well as the possession of sufficient communication skills, including an adequate command of the English language. As part of the requirement for competence, clause 16 of the Bill provides that the Pharmacy Board is to have the power to conduct an inquiry into a person's competence. If, following an inquiry, the Board is not satisfied as to the person's competence it will be able to grant registration subject to conditions or refuse registration.

The second initiative within the Bill, to ensure that pharmacists maintain their competence, is the introduction of a more robust process for the annual renewal of registration. This process will require each practitioner to submit an annual declaration to the Board when seeking to renew their registration.

Section 31 of the Bill provides that these declarations will include, amongst other things, criminal convictions and findings, the refusal by another jurisdiction to register the pharmacist, 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, significant physical or mental illness that is likely to affect a pharmacist's ability to practise, and continuing professional education activities. These provisions are standard across health professional registration Acts passed in recent years. However noting the role of pharmacists in regulating the community's access to medications and benefits under the Pharmaceutical Benefits Scheme, the Bill also requires pharmacists to report the details of any conviction or finding for an offence connected with the Pharmaceutical Benefits Scheme.

In addition to pharmacists being required to provide the Board with an annual declaration detailing any criminal findings, sections 32 and 33 of the Bill also provide for the Board to be notified about pharmacists who are the subject of criminal findings.

The third significant initiative is Part 4 of the Bill which introduces a new disciplinary system, similar to the model applying to a number of other health professions. Sections 36 and 37 provide for a two tier definition of misconduct. The adoption of the two tier definition, which includes both unsatisfactory professional conduct and professional misconduct, will the range of complaints to be dealt with in the most appropriate manner.

Specific to the Pharmacy Practice Bill, the definition of unsatisfactory professional conduct in section 37(1) includes matters relating to the excessive or inappropriate supply of precursor drugs. This recognises the privileged position of pharmacists in relation to possession and supply of scheduled medications containing precursor drugs, such as pseudoephedrine, that can be diverted to the illicit drug market. Any pharmacist who engages in this type of conduct and profits from this pernicious trade has breached the public's trust, should be held to account by his or her profession and, where appropriate, removed from the profession's ranks.

The Bill provides for the establishment of a Pharmacist's Tribunal, to consider complaints of professional misconduct. The Tribunal is to be chaired by a legal practitioner with at least seven years experience, and include two pharmacists and a consumer selected by the Board. The Tribunal will hear serious complaints about pharmacists and the Board will, where appropriate, conduct inquiries into complaints that are less serious.

Like a number of other registration Acts, the Bill proposes the establishment of a Pharmacy Care Assessment Committee. The Committee can be used by the Board as an expeditious end expert mechanism to inquire into those complaints about pharmacy services that the Health Care Complaints Commission does not propose to investigate. Those complaints will generally be those at the lower end of the spectrum of seriousness.

The Committee is to 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 order skills testing. Skills testing will assist the Board in dealing with complaints about professional standards and in ensuring that pharmacists maintain appropriate standards.

Should the Committee, during its investigations, reach the view that a complaint raises an issue of unsatisfactory professional conduct or professional misconduct 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 more serious matters, refer the complaint to the Tribunal for a hearing.

Honourable Members will be aware of the role of the Health Care Complaints Commission in investigating complaints about health service providers and undertaking disciplinary action. I emphasise that under the new disciplinary provisions the role of 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 pharmacist's registration or suspend that registration where it is necessary to do so to protect the life or the physical or mental health of any person. Equivalent emergency provisions exist in other health professional registration Acts.

Part 5 of the Bill proposes a system for the Board to manage impaired pharmacists. Part 5 is modelled on impairment provisions in the Medical Practice Act, which have operated successfully for a number of years. Pharmacists 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 the point where members of the public are placed at risk.

Following the impairment process the Board will be able to place conditions on a pharmacist's registration or suspend that registration where it is satisfied that the pharmacist has agreed. Where the pharmacist does not agree to the recommendations of an impaired registrants panel, the Board will be able to lodge a complaint about the pharmacist to be dealt with by the Tribunal or at a Board inquiry.

Similar to other health professional registration Acts the Bill includes comprehensive appeal mechanisms to ensure that there are appropriate checks and balances in the disciplinary system.

This Bill is aimed at ensuring that the public can continue to expect the highest standards of competence and conduct from the profession. I commend the Bill to the House.

I bring to the attention of honourable members that the bill was amended in the Legislative Assembly on the motion of the Government. The amendments have the effect of ensuring that an interest that a person holds in a grandfathered corporation cannot be transferred to anyone who is not a registered pharmacist. The one exception to this position is an interest that a person holds in a listed corporation that is a grandfathered corporation or that has an interest in a grandfathered corporation. Shares in relevant listed corporations will still be able to be freely traded. The amendments provide for the same situation to apply under the Pharmacy Act 1964. The amendments to the Pharmacy Act 1964 will commence on assent.