



Full Day Hansard Transcript (Legislative Assembly, 5 December 2007, Proof)

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Extract from undefined Hansard and Papers Wednesday, 5 December 2007 (Proof).

HEALTH LEGISLATION AMENDMENT BILL 2007 **Agreement in Principle**

Debate resumed from 30 November 2007.

Mrs JILLIAN SKINNER (North Shore—Deputy Leader of the Opposition) [8.02 p.m.]: The objects of the Health Legislation Amendment Bill 2007 are to amend various health Acts and regulations to provide for the more efficient operation of various health disciplinary tribunals and regulation boards; allow dental therapists to practise in the private sector; improve the registration process for international medical graduates; and prohibit the sale of tobacco products with a fruity or confectionary-like character. The bill contains other provisions, but they are the primary provisions and the ones that I will focus on.

The bill amends a number of Acts and regulations that cover governing bodies and health professions that deal with the various aspects of health care. It amends the Health Administration Act, the Health Services Act, the New South Wales Institute of Psychiatry Act, the Poisons and Therapeutic Goods Act, the Public Health Act, and the Smoke-free Environment Act. With regard to the variation of boards and other health bodies, it amends the Dental Practice Act, the Optometrists Act, and so on.

Various health professions have their own tribunals to hear complaints about registered health practitioners. Members of the tribunal are appointed for a term of seven years, which has resulted in some cases being disrupted as the term of a member, usually the chair of the tribunal, expires necessitating their replacement. If this occurs in the middle of a hearing, it is extremely disruptive to all concerned. The bill will allow a board member to complete a case before being required to stand down because of the expiry of his or term. It is an eminently sensible provision which the Coalition supports.

I turn to the provision that deals with dental therapists. Currently in New South Wales dental therapists are allowed to practise in the public sector only. This restriction has been removed in all other States. New South Wales currently has 2.6 dental therapists per 100,000 head of population, compared with the national average of 7.1 dental therapists per 100,000 head of population. The provision allowing dental therapists to practise in the private sector will not take effect until July next year. To date all parties, including the Australian Dental Association, with whom I have consulted, have accepted this addition to their workforce and their duties so long as dental therapists practise within the skills and competencies for which they have been trained.

Under the Dental Practice Act 2001 a registered dental auxiliary, such as a dental therapist or dental hygienist, is subject to the practice oversight of a registered dentist. As dental therapists have been restricted to practising in the public sector only, dentists in private practice have not been responsible for their oversight. I am advised that the Australian Dental Association is in the process of discussing new oversight guidelines with NSW Health and the Dental Board of New South Wales.

The association expects to continue to be included in these discussions—and I seek an assurance from the Parliamentary Secretary that this is intended—and expects that any oversight guidelines affecting dentists in private practice will be both practical and appropriate for the circumstances.

The Australian Dental Association has pointed out that the agreement in principle speech noted that the removal of the restriction on dental therapists working in private practice will, over time, result in an increase in the number of dental therapists engaged in clinical practice in New South Wales, and that this will have a positive impact on oral health and a reduction in public sector waiting lists. One would hope so. At last count, dental waiting lists in this State were over 200,000, which is a disgrace. That is an informal count, because the Government does not keep a record of people on public dental waiting lists. Many people wait in pain for far too long and eventually they are forced to have teeth removed instead of having them treated because the waiting lists are so long.

As the Australian Dental Association points out, allowing dental hygienists to work in the private sector alongside dentists under their supervision will enhance their capacity to treat more patients. The association says that this is a long-term workforce initiative and it will probably take five to seven years before we begin to see any significant impact. Current dental therapist numbers are small, at less than 300, and their training now involves a three-year degree. One would hope that removing the restriction will encourage more people to take up the course, which can be very rewarding. I have visited one of the campuses on the Central Coast together with my colleague the member for Hornsby.

Mrs Judy Hopwood: At Ourimbah.

Mrs JILLIAN SKINNER: That is right, at Ourimbah. We were very impressed with the course, with the facilities there, and with the academics teaching the course. I know that many of the people undertaking that course started their working lives as dental nurses or dental aides. It is hoped that removing the restriction will encourage more people to enter the field.

There is a shortage of medical practitioners in Australia. Schedule 2.6 to the bill deals with the qualifications for registration as a medical practitioner. In her agreement in principle speech the Parliamentary Secretary pointed out that the amendment will establish a mechanism for approved international medical graduates with appropriate qualifications and experience to obtain registration following a period of supervised workplace training. The Parliamentary Secretary pointed out that appropriate international medical graduates would be granted advance standing by the Australian Medical Council, following which they would be eligible for temporary registration on the condition that they practise in a supervised position whilst being assessed as to their competence and eligibility for general registration.

I wish to raise matters that have been raised with me by the Australian Medical Association in relation to these provisions. The association points out that considerable concern has been expressed about the current workforce crises within New South Wales teaching hospitals, particularly the need to provide appropriately qualified teachers, or senior doctors, to supervise overseas-trained doctors.

<55>

We have heard much about how we are short of skilled specialists, particularly in areas such as hospital emergency departments, and how our specialists are

aging. We have heard how extended hours for patient care, the necessity to fill gaps in rosters and the responsibility of training newcomers have placed an increased burden on them. The many doctors I have spoken to are very conscious of their responsibility to participate in training the next generation, and they are concerned to ensure that the Government will provide additional places for senior doctors in our hospitals to adequately supervise workplace training for international medical graduates. Evidence in *Hansard* from the Royal North Shore Hospital inquiry specifically highlights the lack of senior specialist doctors to provide supervision. Reference has been made in another context to the need for high quality training for international medical graduates. I ask the Parliamentary Secretary to comment on that in her reply and to give an assurance that additional, time, money and staff will be provided, if needed. Section 4 (2) (c) of item [1] in schedule 2.6 states that a person has recognised medical qualifications if, inter alia, the person:

(c) has received a certificate or other kind of qualification in accordance with the process approved by the Board for the purpose of qualifying a person for registration as a medical practitioner.

Reference to "certificate" creates some concern because, as the Australian Medical Association points out, surely any medical practitioner would have received, at the very least, a degree in medicine from an appropriate university and therefore nothing less than a "degree" should be recognised as medical qualifications. For example, how can a medical board compare verifying a certificate from some organisation throughout the world with verifying a degree from a recognised university? Rigid examination of overseas qualifications is imperative and to open the floodgates to include certificates from institutions that will not meet rigorous qualification standards is a potential recipe for disaster. I join with the Australian Medical Association in seeking an assurance from the Government that overseas-trained doctors will require a degree level of qualification before they can be considered for qualification and registration as a medical practitioner in New South Wales.

I turn now to the amendment that closes the loophole that allowed decisions made by the performance committee, a delegated function of the medical board, to be challenged. The Australian Medical Association has pointed out that the proposed retrospectivity of the amendment may result in a number of cases that are using this clause as a challenge being penalised because of the costs involved in such a challenge. We seek a comment and assurance from the Parliamentary Secretary that no-one will be penalised.

Schedule 2.11 to the bill deals with the Pharmacy Practice Act 2006 and amends the regulations to provide for the establishment of infection control standards to be followed by registered pharmacists in their professional practices. Representatives of the pharmacy profession have spoken to me many times. Coalition policy is to take up the offer of pharmacists, particularly community pharmacists, to play an extended role in providing healthcare services such as vaccinations, blood glucose screenings and the like. It seems entirely appropriate, given the associated risk of blood-borne infections associated with skin penetration, that if pharmacists were to take play such an extended role that rigorous infection control practices and standards be in place. My colleague the member for Hornsby who has practiced in this area will make further comments in this regard.

I now turn to items [2] and [4] of Schedule 2.13 deal with the sale of tobacco products. I join with all members of the House in expressing a desire to encourage people to give up smoking and, indeed, not to take it up in the first place. I am a

reformed smoker and I know how hard it is, but we should do all we possibly can to encourage people to either give up smoking or to discourage young people, particularly young women, from taking it up. For some reason young women still seem to think there is some glamour attached to smoking. If only they knew! I refer to the provisions in the bill targeted at young people to discourage them from smoking. New section 54A deals with fruit and confectionery flavoured tobacco products that are marketed to young people. The bill prohibits the sale of these tobacco products in an attempt to reduce the exposure of young people to tobacco. I could not agree more with this.

I know that overtly fruit-flavoured cigarettes, such as DJ Mix and Peel, are attractive to young people. Their sale is banned in many other Australian States. I know that all major Australian tobacco companies do not oppose bans on such cigarettes. Again, a comment from the Parliamentary Secretary would be appreciated on this aspect of the legislation. Some traditional tobacco products are legal, such as rolling tobacco, cigars, and pipe tobacco with a fruity flavour that are not particularly targeted at young people. Menthol is also included in that range of products. I presume it is not the intention of the Government to target those products but rather the products targeted at young people.

Some comments have been made about the mobile selling provisions of the bill, with restrictions on selling tobacco from mobile vehicles and so on. It has been pointed out that tobacco sales representatives sell tobacco products to small business retailers across New South Wales to those who are out of stock and to help with stock management. The stock is usually carried from the cars of sales representatives to the stores. Some stores are located in shopping malls and other public places. Again I seek the Parliamentary Secretary's assurance that people legitimately carrying tobacco products to small businesses would not be the target of the Government.

I know concerns have been expressed about the restrictions on the sale of tobacco at concerts. I do not have any problem with that. It would be too hard to try to weed out the people who are under 18 years of age and those who are not. It is easier all round to try to restrict sales at concerts. I will not refer to any more aspects of the bill, except to say that I hope the measures in place to increase the workforce of both dental therapists and doctors in our hospitals and other practices, and banning tobacco, will help improve the health of the people of New South Wales and the health of our workforce. I believe that workforce numbers will be a problem for the administration of health care in New South Wales and, in fact, in Australia for the next decade.

<56>

Ms VERITY FIRTH (Balmain—Minister for Women, Minister for Science and Medical Research, Minister Assisting the Minister for Health (Cancer), Minister Assisting the Minister for Climate Change, Environment and Water (Environment)) [8.19 p.m.]: I will about aspects of the Health Legislation Amendment Bill 2007 that relate to my responsibilities as Minister Assisting the Minister for Health (Cancer). The first measure in the bill that relates to the cancer portfolio concerns the Central Cancer Registry. The registry collects notifications of all diagnoses of cancer in New South Wales. It was established in 1972 and notification is a statutory requirement under the Public Health Act. The registry has developed into an incredible resource for health policy experts to analyse trends in the incidence of cancer, treatment and survival over the years.

The data contained in the registry has enabled the publication of a number of key resources for health policy professionals, including the survival report, which I

launched earlier this year. The report highlighted the policy programs that have worked well in cancer control and showed dramatic improvements in five-year survival rates for a number of cancers. For example, the report was able to show that the five-year survival rate following a diagnosis of breast cancer has risen to 88 per cent since our expansion of BreastScreen early detection services. The report also draws attention to areas on which we now need to focus more attention. The registry, therefore, plays an important role in assisting in the development of public policy. It is crucial that its integrity be maintained. Unfortunately, as many as 7 per cent of all notifications to the registry are incomplete or inconsistent. The amendments contained in the bill will allow the registry to re-collect data in these cases to make sure that notifications have been recorded correctly.

The bill also includes a number of provisions that relate to tobacco. The New South Wales Government is proud to have a comprehensive tobacco control strategy in place. As a result, significant achievements have been made in this important health area. Since 1985 the smoking rate among men and women in New South Wales has dropped significantly. Twenty-two years ago approximately 35 per cent of men and 25 per cent of women were smokers. The percentage of people aged 16 and over who smoke daily or occasionally has now dropped to 17.7 per cent. Since 2003 more than 150,000 smokers have quit. The Government invests more than \$12 million a year reminding our community about the very real dangers of smoking through proven public education campaigns. The Government is particularly concerned to ensure that young people are protected from the harmful effects of tobacco smoke. Youth is the key life phase for initiation to smoking, with about 80 per cent of current smokers having started in their teenage years. Our data suggests that among 12- to 17-year-olds in New South Wales, 21 per cent have smoked in the last 12 months and 10.3 per cent are current smokers.

The amendments contained in the bill seek to close two of the marketing gimmicks used by tobacco companies to target young people. Fruit and confectionery-flavoured cigarettes are marketed with colours, names and descriptors designed to appeal specifically to young people. Some packets have even been designed to illuminate under disco lights. The taste and smell of tobacco smoke is masked by overt flavourings such as peach, apple, iced lemon and chocolate. These cigarettes contain tobacco and all the same toxins as regular cigarettes. Their marketing encourages the impression that they are herbal, non-tobacco products. The concern with these products is that the image portrayed on the packets wrongly suggests that these products are cleaner, safer and more natural than conventional cigarettes. Consequently, they may be attractive to young people who may otherwise not start smoking. The legislation will make it an offence to sell these fruit and confectionery-flavoured cigarettes.

The legislation bans the sale of tobacco products from mobile vendors. The Government is concerned that tobacco companies have been installing smoking tents at youth music festivals. These events are open to people of all ages, including under-18s. The tents may feature DJs to attract young people, as well as prominent tobacco displays, often with attractive promoters. The proposed amendment extends to all mobile vendors of tobacco, whether selling from temporary structures or ambulatory. This is to improve our ability to ensure that the prohibition on sales to minors is being complied with. Finally, the bill includes an amendment to improve the operation of the Smoke-Free Environment Act. Since 2005-06 the Government has enhanced the capacity of public health units to enforce and monitor compliance with tobacco legislation. This will continue in

2007-08. An amendment under this legislation will enable environmental health officers to impose on-the-spot penalties for breaches of certain offences under the Smoke-free Environment Act 2000. I commend the bill to the House.

Mrs JUDY HOPWOOD (Hornsby) [8.25 p.m.]: I will make a brief contribution to the Health Legislation Amendment Bill 2007. The bill amends various Acts and regulations to make provisions with respect to health professionals, disciplinary tribunals and certain mental health matters relating to medical or dental students and miscellaneous amendments. The objects of the bill, which are extensive, include:

to allow the Chairperson or Deputy Chairperson of a health professional disciplinary tribunal to continue to sit on the Tribunal after the expiry of the person's term of appointment in certain circumstances

to extend the existing power of disciplinary tribunals, professional standards committees and Boards established under health professional legislation may issue orders precluding the disclosure of particular types of information that are capable of identifying a person to include orders in respect of information, pictures and other material

to increase the maximum penalty for a breach by a corporation of a non-disclosure order imposed by the Nurses and Midwives Tribunal or a professional standards committee under the *Nurses and Midwives Act 1991*

to require the Medical Board and the Dental Board (as appropriate) to be notified if a registered medical student or a registered dental student becomes a mentally incapacitated person

to remove a restriction on registered dental therapists carrying out dental auxiliary activities other than as an officer or employee of or a contractor to a public sector agency or prescribed body

Other objects of the bill are:

to make it clear that the supply or fitting of a prosthesis or therapeutic device is a health service within the meaning of the *Health Services Act 1997*

to entitle persons with medical qualifications granted overseas to be registered as a medical practitioner in certain circumstances

to enable the Medical Board to order a medical practitioner who is the subject of a complaint or inquiry to be examined by a specified registered health practitioner

Further objects of the bill are:

to enable regulations to be made setting infection control standards to be followed in the practice of pharmacy

to enable the Director-General to make an order to prohibit or restrict certain persons from possessing, supplying or prescribing poisons in certain circumstances

Two important aspects of the bill are:

to enable the prohibition of the sale of tobacco products with a distinctive fruity, sweet or confectionery-like character

to prohibit the sale of tobacco products by a vendor carrying the products for sale on his or her person or from a mobile or temporary structure

The background to this detailed legislation is that various health professions have their own disciplinary tribunals to hear complaints about registered health practitioners. Members of the tribunals are appointed for a term of seven years. In some cases tribunals have been disrupted when a member's term expires. The bill enables a member to continue to sit on the tribunal to complete a case. That amendment is of benefit to the cases being heard by the tribunals. The practice of dentists and dental therapists has been a matter of discussion, controversy and angst over many years. The restriction on dental therapists has been removed in all other States. As previous speakers have said, New South Wales currently has 2.6 dental therapists for every 100,000 head of population compared with the national average of 7.1 for every 100,000. This is a matter of concern, particularly in relation to waiting lists. The Australian Dental Association has been consulted and has made a number of comments, to which I will refer.

<57>

The Australian Dental Association stated:

The addition of dental students for impaired registrant's purposes appears reasonable and so ADA NSW is happy for this to proceed.

The provision to enable dental therapists to work in private practice is a workforce and competency issue (and will not take effect until July 2008). To date all parties (including ADA NSW) would seem to accept this addition to the workforce and their duties so long as dental therapists practice within the skills and competencies for which they have been trained.

Under the Dental Practice Act 2001 (NSW) a registered dental auxiliary (such as a dental therapist or dental hygienist) is subject to the practice oversight of a registered dentist. As Dental Therapists have been restricted to practising in the public sector only, dentists in private practice have not been responsible for their oversight. ADA NSW is in the process of discussing new oversight guidelines with NSW Health and the Dental Board of NSW. We expect to continue to be included in these discussions and also expect that any oversight guidelines affecting dentists in private practice are both practical and appropriate for the circumstances.

In relation to dental therapists I quote again from comments made by the Australian Dental Association:

In the agreement in principle speech introducing the bill into the lower house it was noted that removal of the restriction on dental therapists "working in private practice will, over time, result in an increase in the number of dental therapists engaged in clinical practice in New South Wales with a positive impact on oral health and a reduction in public sector waiting lists". This is a long-term workforce initiative and will probably take 5-7 years before we really begin to see any significant impact (current dental therapists numbers are small—less than 300—and their training is now a three year degree).

I am not sure how removing the restriction will lead to a reduction in public sector waiting lists however. If anything, dental therapists will be tempted to leave the public sector for higher wages on offer in the private sector thereby

aggravating current waiting times in the public sector. Unless public sector wages (for dentists and dental auxiliaries) are made more competitive these waiting lists will simply continue to get worse.

Obviously, the Government must address that issue. I commend the Community Drug Action Team in the Hornsby area for its work on prohibiting the sale of tobacco and tobacco products with distinctive flavours. The organisation, under the leadership of Michael Colinan, has worked extremely hard in relation to drug and alcohol issues and other addictive substances—tobacco is not the least of their worries. This will be a very welcome provision for that organisation. I note that the Australian Dental Association, the Nurses Association, the Nurses and Midwives Registration Board, the New South Wales Dental Board, the Optometrists Association Australia and the Australian Medical Association have been contacted in relation to this legislation. Some have responded, but by and large the bill has been received in a positive light.

I will not comment on overseas doctors. Suffice it to say it is extremely important that overseas doctors working in the Australian environment have specific observation and support because they may not have been exposed to the clinical practice that Australian undergraduate medical students receive. It has been pointed out in other spheres that increasing supervision and education for overseas doctors in places like accident and emergency departments would be extremely helpful to Australian-trained doctors working in those areas. The Government must address that matter also. In conclusion, the Opposition does not oppose the legislation, but I would like the Minister to comment on the points I have raised.

Mr JONATHAN O'DEA (Davidson) [8.33 p.m.]: The Health Legislation Amendment Bill 2007 aims to amend various Acts that govern the health profession and services in New South Wales. Some of the issues addressed cover health professional regulatory and disciplinary processes, the ability of dental therapists to practise in the private sector, the streamlining of international graduates and prohibiting the sale of tobacco products with fruit or confectionary flavouring. Most proposed amendments in the bill appear sensible, but some could create a lower standard of care for clinical and professional services than the people of New South Wales expect and deserve.

The section of the bill dealing with overseas-trained doctors provides a potentially unsafe quick fix, rather than ensuring an improvement in the quality of clinical services. The streamlining of registration for overseas medical graduates is a contentious issue and, if anything, the process of screening and registration should be made more robust. In many instances inadequate clinical and communication skills have compromised or harmed patient care. I understand this streamlining process, which was put into place in Queensland, produced the Doctor Death scandal at Bundaberg Hospital, the case of Dr Haneef at the Gold Coast Hospital and others. In Bundaberg it was the nurses who raised the alarm about the standards of some overseas-trained doctors. Many nurses in New South Wales would most likely do the same if they did not fear being victimised by the New South Wales Government.

The safety and quality of care for all patients should be paramount. There is already a shortage of doctors, especially emergency room specialists in New South Wales. The Premier recently said the Government would provide 35 new doctors in nine hospital emergency departments, but where are they coming from? Is this streamlining approach intended to simply fast-track doctors into emergency

departments when the doctors may not necessarily be appropriately supervised, mentored or credentialled?

The provision to enable dental therapists to work in private practice is a workforce and competency issue and takes effect in July 2008. To date, all parties including the Australian Dental Association, appear to accept this so long as dental therapists practice within the skills and competencies for which they have been trained. With dental therapists in the public sector possibly migrating to the private arena, existing dental staff shortages and long waiting lists, we should train more people in the dental field. As the member for North Shore indicated, the time frame to train a dental therapist is three years, so there will be no instant fix for the overall provision of oral health services in New South Wales. I should also disclose my interest as a director of a company that runs various dental centres.

I particularly support the proposed changes affecting the sale of tobacco products with a distinctive fruity, sweet or confectionary-like character that might encourage a minor to smoke. Smoking does not kill instantly but rather over a lifetime. Any measure that prevents an impressionable teenager from taking up the habit must be applauded. In that sense, I also agree with the prohibition of marketing at youth events and music festivals frequented by those less than 18 years of age. However, I reiterate the shadow Minister's request for confirmation that the bill is not intended to apply to menthol or to target those over 18 years of age, including elderly Australians who, for example, may use cigars or pipe tobacco, some of which traditionally has a fruity flavour.

Ms NOREEN HAY (Wollongong—Parliamentary Secretary) [8.38 p.m.], in reply: I acknowledge the contributions to the debate on the Health Legislation Amendment Bill 2007 by the member for North Shore, the member for Balmain, the member for Hornsby and the member for Davidson. In response to some of the matters raised by the member for North Shore I can confirm that the Australian Dental Association and the Dental Therapists Association will continue to be included in the ongoing refinement of practice oversight guidelines for dental therapists.

We look forward to a new era in future negotiations with the Rudd Federal Labor Government. One of the first acts of the Howard Federal Government when it was elected in 1996 was to abolish the Federal dental scheme that was established by the Keating Government, which resulted in many of the problems in dental care we are faced with today.

<58>

The Howard Government also reduced funding to universities for dentists. I raise that to put in the picture our hope for future negotiations and cooperation with the new Rudd Labor Government.

In relation to the query of the member for North Shore regarding international medical graduates, I confirm that the certificate referred to in the bill is a certificate issued by the Australian Medical Council following assessment of a practitioner's qualifications. I can also confirm that there will be no undermining of the high standard of medical qualifications as a result of this bill. I refer to item [15] in schedule 2.6 and I confirm that it retrospectively validates previous delegations by the board. This matter has been discussed with the Australian Medical Association's solicitors and they have raised no objection. The reasoning behind this provision was explained in depth during the in principle debate. It is an essential part of the amendments.

The member for North Shore also raised a number of queries with respect to the

proposed amendments to the Public Health Act. I confirm that the amendments are not designed and will not be used to prevent sales representatives and delivery people from carrying on their ordinary activities of selling tobacco by wholesale and delivering bulk tobacco for ordinary retail sale. I also confirm that the amendments in relation to fruit and confectionery-flavoured tobacco are clearly designed to prohibit the sale of tobacco aimed at children and young people. During the agreement in principle speech I went into some detail to explain that this is aimed at those who are specifically targeting our kids.

As was rightly mentioned during the debate, cigarette addiction appears to grab hold of people in their young years—quite often 12-year-olds and 13-year-olds. These fruit and confectionery flavours are targeting that very age group because the industry seems to have established that if it can get them young it has a smoker for many years. If we can save them then, we will reduce the need to deal with the results in later years. The bill is clearly designed to prohibit those seeking to attract children and young people and clearly not targeted at ordinary pouch tobacco marketed to adults. Obviously, if we could have got to them when they were 12 years of age, we might not have to explain that it is separate nonetheless that is where we are at today.

Many of the amendments in the bill will assist in the ongoing development and expansion of the New South Wales health workforce and contribute to the improved health status of the people of New South Wales. We need to focus on workforce areas that were raised in earlier discussions. The Minister has discussed many times in this House a whole host of issues such as recruitment, targeted university places and nursing places. Hopefully we are all on the same page and will travel together to improve that area. I commend the bill to the House.

Question—That this bill be now agreed to in principle—put and resolved in the affirmative.

Motion agreed to.

Bill agreed to in principle.

Passing of the Bill

Bill declared passed and transmitted to the Legislative Council with a message seeking its concurrence in the bill.
