Speech by

Hon. WENDY EDMOND

MEMBER FOR MOUNT COOT-THA

Hansard 17 November 1998

HEALTH AND OTHER LEGISLATION AMENDMENT BILL

Hon. W. M. EDMOND (Mount Coot-tha— ALP) (Minister for Health) (3.59 p.m.), in reply: I take this opportunity to thank all members for their contributions. Obviously, members on the Government side had made the effort to inform themselves of the important advances made in this Bill, particularly for cancer research and for women. Some of the Opposition members seemed to understand its significance, although they tried rather desperately to find parts to oppose for opposition's sake. I acknowledge that the member for Logan submitted his Christmas list and I have taken note of it.

The member for Gladstone raised a number of quite detailed issues. I am happy to discuss some of those with her at a later date. One of the issues that she raised related to the Cancer Fund and whether, if it could not manage the registry, somebody else could do so. The suggestion that the Cancer Fund manage the registry has been on the cards since 1994. It has been delayed. Everybody has been working towards that end. The legislation specifically does not lock in the Cancer Fund, other than through regulations. If, at a future date, the fund does not wish to carry on that duty or there is some problem, it can be transferred to another body such as the QIMR if necessary. I will be addressing many of the other issues that the member for Gladstone raised when I address the issues that were raised by members opposite.

As to serious incidents of a public health nature—if they were to happen, both the Public Health Officer and the CHO have a duty of care to inform the Minister and the Minister has a duty to respond, as does the CEO. The changes to the Bill will mean that two people are able to give independent medical advice to the Minister. It is a misconception that, as a result of the changes to the CHO position, that position will not be capable of giving advice to the Minister. That is an erroneous suggestion.

I will address some of the repeated themes that have been raised. I will address them even though I believe them to be largely political point scoring. One constant theme raised by members opposite and by the member for Gladstone was: why is the provision regarding the CHO included in this Bill? This is the Health and Other Legislation Bill. It contains a string of diverse amendments, not just the Pap Smear Register or the Cancer Register transfer but also amendments related to food services, dental technicians, anaesthetics, the Nursing Act, the Speech Pathologists Act—all sorts of diverse matters are included within this Bill. It is a miscellaneous amendment Bill to amend lots of bits and pieces of the Health Act. That is why that amendment is included in this Bill.

Another theme raised by members opposite was: why the rush? The member for Maroochydore insisted that she was not concerned that the Commonwealth had threatened to withdraw funds if the Pap Smear Register was not progressed. She said that that was not a valid excuse, because she had an assurance from the Commonwealth Government that funds would not be withdrawn. Her trust is greater than mine. The evidence is simply not there to support her view. There is no written agreement to secure funding for the Pap Smear Register. Despite all the assurances that the member for Maroochydore received, the Commonwealth has already cut funding to Queensland Health. It has already reduced the funding by a cut of $761,000 to base funding for the program. That cut that we were assured was not going to happen has already happened. That cut was related directly to the delay in the establishment of the Pap Smear Register in 1998-99. The risk for the next financial year is another snippet, just another $500,000 that the Commonwealth could decide unilaterally to remove.

That will not be expended until the Pap Smear Register is established. I would rather spend that money on health-care services than give it to the Federal Government. Why the rush? I would rather ask: why the delay? This legislation relating to administrative changes to the office of the CHO should have occurred along with the major restructure of the department in 1996.

The member opposite is quite right when she says that I vigorously supported regionalisation and opposed the centralisation of the department. I will gladly defend regionalisation and its enormous benefits to regional and rural Queensland. For the first time, we saw tertiary services moving outside of Brisbane to give country and regional people a fair go, to improve access to services wherever they are living—something that I am always surprised that members opposite, who purport to represent the bush, do not support. I well remember how the previous Minister blamed every problem on regionalisation and claimed that abolishing it and setting up a centralised system would save hundreds of millions of dollars. He went so far as to say that there was no need to increase the budget in Health, because getting rid of regionalisation would take away the need for any further funding. In the end, it came to a saving of perhaps $20m. The last figure I heard was perhaps $5m. In fact, there were probably no savings. I noticed in the Budget papers that the cost of providing Queensland Health's human resources information technology equipment increased by $7m—that is just one line item—because it had to be provided not to 13 regions but to 38 districts.

In Opposition I also saw that health workers were fed up with change. They were fed up with the waste of stationery and resources every time there was a Government change. In Opposition I gave a commitment to work within the current system; not to cause more ideologically motivated upheaval just to score cheap political points but to work with the current system and improve it. I consider that I am mature enough, experienced enough and able enough to be flexible; however, that does not mean that I will not make changes to the current system to make it work. That is exactly what I am doing here.

Much has been said about the dark, secret reasons for the downgrading of the role of the CHO. For very clear reasons, the role is being changed, not downgraded or abolished. The CHO will still and must provide direct advice to the Minister. I think every member on the opposite side of the Chamber believed that the role had been removed totally. That is totally untrue. For the benefit of the member for Callide, I point out that the CHO is not a doctor at the front line who is treating patients and being bullied by the bureaucrats; the CHO is a senior bureaucrat in the Department of Health in Brisbane. That person is a Brisbane-based bureaucrat. The member for Maroochydore is right when she says that the CHO position worked well under Labor's regionalisation, but the 1996 structure created an anomalous position where the CHO has to delegate functions to officers in the department for whom the CHO does not have direct managerial control. Most of the managerial responsibilities for the CHO were removed in the 1996 restructure of Queensland Health and not in this Bill. One of those delegations without management control is the one referred to most by the Opposition speakers, the public health. An argument was put that the CEO would delegate those powers to the Public Health Manager, who is, also within this Bill, a suitably qualified medical practitioner. Yes, he would do that—just as the CHO does now. There is no difference. The day-to-day management of public health would still be handled by the delegated officers who would still have access to the Minister and the CEO as they do now.

The member for Gladstone asked why I do not wait until the introduction of the new public health Bill to introduce those changes. For the benefit of the member for Gladstone, I am happy to say that these changes have been needed since 1996; however, they were first mooted in 1995 and have been included in public consultation as part of the review of the Health Act. However, the Public Health Bill is one of the numerous Bills waiting for attention because of the attitude of the previous Minister. He constantly said, "What is the rush? Why make a decision?" That is why we have such an embarrassing pile of legislation waiting in the too-hard basket, much of which was well under way, with the consultation done, under the previous Labor Government and was expected to come into the House in 1996—for example, the radiation safety Bill, the mental health Bill, the health practitioners registration Bill and all its various professional Bills, and many more.

Much of this legislation comprises extensive regulations and subordinate legislation, which has to be introduced by next year. If the previous Minister had occasionally made a decision or had occasionally put his hand to legislation, maybe we could have waited for the Health legislation. However, I was not prepared to sit back and let a problem caused by the previous Government with its 1996 legislation continue to cause inefficiencies and management problems for the next 18 months. I say to the member for Gladstone that it will probably be more like 18 months before the public health Bill comes into the House because of the previous Minister's inaction. In the short term, the amendment that is proposed is not 18 months too soon; it is proposed two years too late.

I will outline the powers of the CHO. They are: membership of the Council of the Queensland Institute of Medical Research; advise the Minister and the chief executive on matters relating to the QIMR Council; advise the Minister and chief executive on ethical issues relating to transplantation and anatomy; forbid performance of a post-mortem; coordination of ethical and standards issues through

the Queensland Health Ethics Advisory Committee; liaise with universities through the Queensland Health University Liaison Forum, the Board of the Faculty of Health Sciences at the University of Queensland, the Board of the Graduate School of Medicine Studies and the NQCS steering and advisory committees; participate in Queensland Health Medical Specialists Joint Working Group; promote, facilitate and coordinate Queensland Health's research agenda; establish the research council, or equivalent, and develop the Queensland Health research policy—and that is a new role; the Queensland Health representative on the National Health and Medical Research Council; membership of the Queensland Council on Obstetric and Perinatal Mortality; oversight of the Queensland committee to inquire into perioperative deaths; educate the health service community about the Powers of Attorney Act; provide advice to the Minister and chief executive on the health risks and the health status of the Queensland public; provide advice to the Minister and chief executive on clinical issues, clinical risk management and adverse outcomes; participate in National Expert Advisory Group on Safety and Quality in Australian Health Care, which is another new role; membership of the Medical Board; advise the Minister and chief executive on matters of relevance to the Medical Board; management of Queensland's Health participation in emergency services; membership of Queensland Emergency Medical Systems Advisory Committee; oversight of Queensland Health State disaster plan and local district and hospital disaster plans, and we have all heard members opposite try to say that that is now going to be done by the CEO; disaster planning; coordinating clinical aspects of aeromedical transport of acutely ill or injured patients and involvement in other aero-retrieval issues; licensing of private hospitals; advise the Minister and the CEO on matters relating to private health facilities; advise the Minister and the CEO on strategic public health issues; membership of the Radiological Advisory Council; and advise the Minister and the CEO on child abuse and neglect issues. One wonders just how much more we could load into one position. One wonders how much more power one person can handle.

The member for Maroochydore raised the question of how such a position is managed in other States. Indeed, as the member for Logan mentioned, she held out the ACT system as one that we should follow. How on earth do health services in the ACT compare to health services in Queensland? The ACT health service is not even sure if it has a regional or a centralised system as it has only one public hospital. If that is the only example that the member could find of States with a similar system, I rest my case. However, even what she said in that regard is simply untrue.

The real situation in the other States is that, in Victoria, there is a CHO, but it is not a statutory position. Under Victorian health legislation, the Secretary of the Department of Health, which is an equivalent position to the director-general in Queensland, holds all statutory public health powers. In New South Wales, there is a chief health officer but, again, it is not a statutory position. In South Australia, the equivalent of the chief health officer is called the chief medical officer. It is not a statutory position. In Tasmania and Western Australia, there is a chief medical officer, but in neither State is it a statutory position, nor does it hold any statutory functions. In the Northern Territory and the Australian Capital Territory, which the member opposite held out as a shining example, each has a statutory chief health officer position and that position holds some statutory functions. However, unlike in Queensland, the respective chief health officers each manage a division of the Health Department and, therefore, oversee the work of officers to whom their statutory functions are delegated.

Clearly, regardless of which party is in power in which State, these changes are in keeping with modern organisational structures. I recognise the origin of many of the arguments put forward by the members opposite. They were submitted to me and, I gather, hawked around to other Government members. I read those arguments, I considered them and I consulted with those more knowledgeable than me about the situation in other States and the structures that exist there. However, I am not convinced of the accuracy of the arguments or their claims about accountability.

If we are going to talk about accountability, one of the things that I should say is that proper accountability to Parliament can be assured only if there are proper lines of accountability within departments. That usually means that the chief executive, as head of the department, is the accountable officer for all departmental activities. At the moment, there are a number of core functions of Queensland Health for which the chief executive is not properly accountable because those functions are held by the CHO. That is simply not good government. Also, as I said earlier, most of the managerial responsibilities of the CHO were removed in the 1996 restructure of Queensland Health under the previous Government. That means that, because of that restructure, the CHO has to delegate many functions to officers whom the CHO does not directly manage. Again, that type of arrangement is simply not good government.

We also heard about a lack of consultation. As I said earlier, this issue has been discussed since 1995. It was first discussed in a discussion paper on the review of the Health Act in 1995. Over 1,000 copies of that paper were distributed to stakeholders. Earlier this year, it again went through a process of consultation with all interested bodies. It is interesting to note that, in that second round of consultation undertaken earlier this year under the previous Government, the draft policy paper suggested three options in relation to this issue: firstly, that the CHO should retain his or her statutory

functions; secondly, that these functions should be transferred to the chief executive; and, thirdly, that these functions should be transferred to the manager of public health services. If the previous Minister totally rejected this proposal, as we have been asked to believe, why was it included in the draft policy paper put out by the previous Minister of the previous Government? Again, over 1,000 copies of the paper were sent to stakeholders. Submissions closed in May and they were analysed before these amendments were developed.

These consultation processes have indicated that there is limited interest in this issue among the majority of public health stakeholders. For example, of over 200 submissions received on the draft policy paper, only 22 commented on this issue and nine of those submissions came from within Queensland Health. That is hardly surprising. This is an administrative matter that does not affect the daily function or policies of health services. However, of the nine submissions from within Queensland Health, seven supported the powers being transferred to the chief executive, highlighting the concern about this issue within the department.

The submission to the review from the Office of the Chief Health Officer supported the functions being transferred to the chief executive. I will repeat that. The submission to the review from the Office of the Chief Health Officer supported the functions being transferred to the chief executive. Its submission states—

> "... the proposal that statutory public health functions be transferred to the Chief Executive of Queensland Health, on the basis that that officer is ultimately accountable for all of Queensland Health's responsibilities, is persuasive, and is supported by the Office of the Chief Health Officer."

Further targeted consultation about the Health and Other Legislation Amendment Bill was undertaken with key groups. Those groups included the AMA, the Queensland Nursing Union, the Faculty of Public Health Medicine, the Department of Social and Preventive Medicine at the University of Queensland and the Public Health Association. Those groups made valuable contributions, rather than just opposing for opposition's sake. It is quite clear that the Opposition's huffing and puffing about changes to the role of the CHO is a desperate attempt to find something to oppose for opposition's sake but without any justification, and to cover its embarrassment in the delay in bringing forward all of these important amendments and its embarrassment at the huge backlog of legislation that built up as a result of the previous Minister's inaction.

I now address the concerns of the Scrutiny of Legislation Committee. Firstly, I thank the Scrutiny of Legislation Committee for its comments on the Bill. The committee sought information as to whether the contracting out of the CEO's function of establishing and maintaining the Cancer Register will in any way reduce traditional forms of accountability through mechanisms such as the Freedom of Information Act 1992, the Judicial Review Act 1991 or the Parliamentary Commissioner Act 1974.

I have sought advice from Crown law on the concerns raised by the committee. I am pleased to advise that the proposed transfer of the maintenance of the Cancer Register to the Queensland Cancer Fund does not in any way reduce traditional forms of public accountability. Crown law has indicated that, while a person would not be able to make a request directly to the Queensland Cancer Fund under the Freedom of Information Act, it would be possible to make an application to Queensland Health. This is because under the terms of the agreement between the department and the Cancer Fund, the State retains ownership of the data and the register, and the provisions of the Bill themselves indicate that Queensland Health is entitled to access the register. Crown law has indicated that it considers the register as information that will be under the control of the CEO and as information that Queensland Health will be entitled to access. As such, the register will come under the definition of "document of an agency" for the purposes of the Freedom of Information Act.

The committee also asked whether the Judicial Review Act will apply to the Cancer Register after it is transferred to the Queensland Cancer Fund. Crown law has indicated that there are four key elements that must be satisfied in order for the Judicial Review Act to have relevance. One of these is that an applicant for judicial review must be a person aggrieved by an administrative decision. In its advice to me, Crown law indicated that, under the proposed provisions of the Bill, it does not appear that the Queensland Cancer Fund will be making any decisions in relation to which persons could be aggrieved.

I have also been advised by Crown law that, for similar reasons, the Parliamentary Commissioner Act has limited relevance to the Queensland Cancer Fund because, under the provisions of the Bill, the Cancer Fund will not be taking any administrative action in relation to which persons would be aggrieved. However, in the unlikely event that a person was aggrieved within the meaning of the Parliamentary Commissioner Act, Crown law has advised that sections 13(7), 13(8) and 13(9) of the Parliamentary Commissioner Act clarify that the powers of the commissioner may be exercised in circumstances where an agency such as Queensland Health has conferred functions upon or given instructions to another body such as the Queensland Cancer Fund to act on behalf of the department.

Crown law has advised that any action taken by the Queensland Cancer Fund in maintaining the register would be taken to be an action of Queensland Health for the purposes of the Parliamentary Commissioner Act.

The committee also sought information on the by-laws made under the Speech Pathologists Act since 28 November 1995. The committee is concerned that the retrospective application of the proposed amendment would call into question the validity of any by-laws made since this time, unless in practice the by-laws had been submitted to the Governor in Council for approval. The Speech Pathologists By-law 1995 and the four amendments to the by-law have been made since 28 November 1995. These by-laws deal with the administration of the board, including the process for meetings and dealing with the board's funds, as well as provisions about the registration process for speech pathologists, the use of practical names and conditions of advertising, and the fees payable by speech pathologists. I can confirm that the Speech Pathologists By-law 1995 and the four amendments to the by-law were all submitted to the Governor in Council for approval and, as such, the retrospective application of the amendment does not affect the validity of the by-laws.

Finally, I thank all members for their contributions. I indicate that we will be opposing the amendments circulated by the member opposite.