



Speech by
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HEALTH PRACTITIONER REGISTRATION BOARDS (ADMINISTRATION) BILL
HEALTH PRACTITIONERS (PROFESSIONAL STANDARDS) BILL

Mr SULLIVAN (ChermSIDE—ALP) (4.06 p.m.): I rise to support the health practitioners legislation before the House. This legislation has been six years in the making and, as a member of the Labor caucus health committee during that period, I have some understanding of the work that has gone into the development of these Bills. I congratulate the staff of Queensland Health, the various practitioner boards, former ministerial officers and in particular those of our current Minister for Health for their efforts in bringing greater professionalism to the health industry in this State.

These Bills will enhance the rights of the community and provide health users with greater consumer protection. It was to those two topics that I wished to address my comments today. However, since this is the end of a long parliamentary sitting week and considering that a number of members, particularly country members, wish to head home to their families, I seek leave to incorporate my speech into Hansard. I support the Bills.

Leave granted.

As noted in the Policy Report of the Consumers' Association of the U.K., entitled *Leave it to the professionals?* Professional regulation in the 21st century, "The consumer, not being an expert, is often unable to judge the quality of what is on offer from the professional—their competence and/or the quality or suitability of the product they offer, where that product is complex or novel." (p. 37)

Arguably, the product of health care is complex and the consumer, not an expert. Accordingly, it is appropriate for government to regulate the delivery of health care in order to control the competence of the registered health professional, ensure a high standard of health care services and protect the public. The best method to ensure that registered health practitioners deliver their product in a safe and competent manner is via an effective complaints and discipline system.

The Health Practitioner (Professional Standards) Bill is the most significant health consumer protection law ever introduced into the Queensland Parliament and, consequently, is of great benefit to the public of Queensland

Health consumers, in particular, will benefit from the Bill. The Minister, in her Second Reading Speech, said "Overall, the Bills have a strong emphasis on public interest and this has been applauded by health consumer groups in particular". She concluded "The Bills enhance the regulation of the professions for the benefit of the community as a whole".

However, the Bill will not only benefit consumers of health care but, registrants, registration boards, the registered health professions as a whole and the Queensland community as well.

The Bill confers significant benefits on the community (through the creation of an effective disciplinary system) while also protecting the interests of the registrants, complainants and other individuals who are directly affected by it.

The Bill carefully balances protection of the public with the rights of registrants, complainants and other individuals (eg witnesses). However, the principal object of the legislation is the protection of the public. To the extent that the Bill impacts adversely on the rights of registrants (for example, with respect to a registrant's privacy), it is justified on the basis of this higher goal.

In its report on this Bill, the Scrutiny of Legislation Committee said "Whilst the bill contains many provisions which impinge on the rights of individuals, the committee recognises the significant efforts which have been made in drafting many of these provisions to take account of fundamental legislative principles".

Enhancing rights

The Bill enhances the rights on registrants, complainants and witnesses.

Registrants

The major reforms advantaging registrants are the introduction of comprehensive provisions detailing the procedures to be followed in the investigation and adjudication of unsatisfactory professional conduct. These provisions are consistent with fundamental legislative principles, particularly natural justice and protection from self-incrimination.

The Bill also has significant regard to the privacy of registrants within the context of the objectives of the legislation. For example, there is a 100 penalty unit fine under the Bill for the unlawful disclosure of confidential information and the Bill contains various discretions in respect of public access to disciplinary proceedings and decisions. The Bill also allows the tribunal to suppress the identity of a registrant who is the subject of disciplinary proceedings. Where the Bill authorises the disclosure of information about a registrant to other entities, this may only occur if the board is satisfied the entity needs to know the information and the disclosure will assist in achieving the objects of the legislation. These protections generally do not exist in equivalent legislation elsewhere in the country.

Ultimately, the Bill will improve professional standards and public confidence in the health professions and this will advantage all registrants and the community generally.

Complainants

The Government is committed to conferring new rights upon persons who make health complaints. The Health Rights Commission and the registration boards receive between 400 and 500 complaints about registrants each year. In most cases, these complaints are made selflessly and with hope that the health system will be improved for the benefit of others. Consumers who make such complaints need to be encouraged and supported.

Under the Bill, complainants are, for the first time, provided with statutory rights to:

- be given notice of disciplinary proceedings arising out of their complaints
- to attend those proceedings
- to be accompanied by a support person during those proceedings
- to have their identity suppressed during any public hearings and
- to be advised of the outcome of disciplinary proceedings.

Also, where the complainant or another witness has "special needs", the Bill provides the Health Practitioner Tribunal with the power to take these into account in the conduct of disciplinary proceedings. This is an important equity strategy, based on section 21A of the Evidence Act 1977, which recognises that the adjudicative process may be especially traumatic for certain classes of people (for example, children and people with disabilities) and that it is appropriate for the procedures of the tribunal to support them to give evidence. This provision will ensure, for example, that patients who are sexually abused by their doctors are not re-abused by the disciplinary process.

The Bill employs a number of mechanisms to ensure that public confidence in the professions and the disciplinary process is maintained. For example, a District Court Judge hears the most serious disciplinary matters, the proceedings of the tribunal are open to the public and complainants may attend disciplinary hearings.

The Bill supports complainants by ensuring the involvement of laypersons on all the adjudicative bodies (ie. registration boards, professional conduct review panels, the tribunal) and through the incorporation of a significant number of other accountability mechanisms (eg. oversight of board investigation activities by the Health Rights Commission, the tribunal conducting public hearings of the most serious disciplinary matters, recording of disciplinary sanctions and any conditions imposed in a publicly accessible register; specific annual reporting requirements; the creation of a publicly accessible collection of disciplinary decisions).

This Bill contains a range of strategies to ensure the public, the profession and other relevant entities are informed about the outcome of disciplinary proceedings. This will ensure that registrants are informed and educated about professional conduct issues in order to promote high standards of practice and deter unsatisfactory professional conduct. It will assist in maintaining public confidence in the disciplinary processes and the health professions. The strategies will also enable the public to make informed choices regarding registrants.

Problems with the current approach

The Bill implements a new model for the discipline of registrants which significantly reforms the current outmoded disciplinary model under the health practitioner registration Acts.

Currently, the discipline of health practitioners is controlled by eleven separate health practitioner registration Acts. These Acts were drafted over a 50 year period and are not uniform in respect of the grounds for disciplinary action, the adjudicative processes or the sanctions which may be imposed where a registrant is found guilty of misconduct.

Also, the current legislation does not provide any statutory rights for complainants and the rights of registrants are not sufficiently protected. The current disciplinary provisions are not very detailed and, consequently, the rights of registrants during investigative and disciplinary processes are not comprehensively set out.

The existing disciplinary processes are, arguably, unfair to registrants in that the 10 non-medical boards both prosecute and adjudicate disciplinary matters and it has been suggested that disciplinary decisions of these bodies could be challenged on the basis of apprehension of bias.

The disciplinary provisions of the current Acts are also deficient in respect of inadequate external accountabilities (eg proceedings are not required to be open to the public and disciplinary decisions and reasons for the decisions are not publicly accessible or otherwise reported).

The current provisions do not fully conform with fundamental legislative principles or contemporary drafting practice (for example, the powers available to boards under the Commissions of Inquiry Act 1950 are draconian and totally inappropriate). The President of the Medical Assessment Tribunal, Hon Justice Fryberg, has described the Medical Act 1939 as "ill-drafted, outdated and, in many respects, just plain bad".

Conclusion

The disciplinary process and the information dissemination strategies implemented by the Bill, will uphold standards within the professions, deter misconduct and maintain public confidence in the professions.

The Bill will advantage many different groups within the community.

A person who makes a complaint about a health service will benefit from greater involvement in the complaints process, the improved accountability of the disciplinary process and the increased flexibility in the complaint handling processes adopted by the boards and the Health Rights Commission.

Registrants will benefit from the Bill because the increased reporting requirements and clearly stated disciplinary procedures make the disciplinary process fairer and more accountable.

The Bill will bring with it, benefits for the registration boards. One piece of legislation will be easier for the boards to administer. All procedures in relation to disciplinary matters will be clearly stipulated, negating the need for the boards to devise procedural and administrative rules in relation to disciplinary matters and eliminating any uncertainty in relation to disciplinary powers.

Each of the health professions will benefit from the Bill because it will ensure that the standard of health care services delivered by the professions is high. This in turn will ensure that public confidence in the health professions is maintained.

Finally the Bill will benefit the community as a whole by ensuring a high standard of health service delivery. A higher standard of health service delivery will result in less adverse outcomes within the community and, ultimately, savings of health dollars,
