HEALTH PRACTITIONER REGULATION NATIONAL LAW (WA) BILL 2010

Committee

The Chairman of Committees (Hon Matt Benson-Lidholm) in the chair; Hon Simon O'Brien (Minister for Transport) in charge of the bill.

Clauses 1 to 3 put and passed.

Clause 4: Application of Health Practitioner Regulation National Law —

Leave granted for the following amendments to be considered together.

Hon SIMON O'BRIEN: I move —

Page 3, line 5 — To delete "Schedule —" and insert —

Schedule, as modified to give effect to subsections (5), (6) and (7) —

Page 3, after line 28 — To insert —

(5) In the Schedule section 3(3)(c) delete "and are of an appropriate quality." and insert —

consistent with best practice principles.

(6) In the Schedule section 113(3) in the Table delete "medical practitioner" and insert —

medical practitioner, physician

(7) In the Schedule after section 141(4)(c) insert —

(da) the first health practitioner forms the reasonable belief in the course of providing health services to the second health practitioner or student; or

The first amendment is to adjust the construction of the wording for the amendment I am also moving to insert proposed subsections (5), (6) and (7). By way of explanation, proposed subsection (5) reflects the submission by the Australian Medical Association, which Hon Sue Ellery referred to, to delete the words "and are of an appropriate quality" and insert "consistent with best practice principles." That has already been discussed during the second reading debate. The government agrees with the AMA and has made that concession. Proposed subsection (6) deletes "medical practitioner" and inserts instead "medical practitioner, physician". This amendment is to the table of health profession titles that are protected. It adds the title of physician to the titles that are protected for medical practitioners. Although the title of physician is protected nationally through specialist registration established by the ministerial council under section 13 of the national law, this amendment provides additional protection for the title of physician for medical practitioners in WA. Finally, proposed section (7) inserts new paragraph (da) and adds a further exemption for mandatory reporting of notifiable conduct by a health practitioner. This will exempt a health practitioner from mandatory reporting when a practitioner becomes aware of an issue through treating another practitioner or student. This is to avoid discouraging a practitioner who has a problem from seeking treatment in Western Australia. These are the amendments that the government is moving in support of the submission by the AMA that was alluded to by Hon Sue Ellery during the second reading debate. I invite the house to support these amendments.

Hon GIZ WATSON: I am pleased to see these amendments and am happy to support them. We raised these issues in the second reading debate and were persuaded by the Australian Medical Association's arguments on these two matters in particular. We note the way that the minister has proposed to insert the changes. We are completely in support of these amendments because they are important to address those two issues. I am particularly pleased with the response regarding the mandatory reporting requirements; that is a very sensible amendment. I point out that I will not need to move the amendments I have on the supplementary notice paper because they have been covered by amending this clause. The minister has just done it in a slightly different way.

Hon Simon O'Brien: So we are all in furious agreement.

Hon GIZ WATSON: We are in furious agreement. Consensus has broken out all around. I expect that to be in the headlines tomorrow morning!

Hon SUE ELLERY: We appreciate that the government has moved the amendments that the Australian Medical Association was seeking. I will express my personal point of view of mandatory reporting. Some of the reasons that this matter was the subject of debate go as much to changing the culture among the professions as it does to changing the regime around their registration and professional standing. We need to make as much of an effort to build into the schools at which the medical profession is taught their understanding of their own

standing. We need to debunk the culture that it is an admission of weakness to seek assistance. The medical profession is not the only profession that finds itself in this position. We need to do as much work about changing the culture as we do to changing the laws to give effect to the changes that we want.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 5 and 6 put and passed.

Clause 7: Exclusion of legislation of this jurisdiction —

Hon SIMON O'BRIEN: It might assist the committee of the whole if it would agree to this motion now. I move —

> That consideration of clause 7 be deferred until consideration of proposed section 247 of the schedule.

The reason for that is that proposed sections 245, 246 and 247 of the schedule all relate to questions of regulations, parliamentary scrutiny and disallowance. It might be more convenient if we consider those as a job lot of amendments later.

Hon GIZ WATSON: It was not quite clear when we would deal with this clause if we postpone it at this stage—when is the minister proposing it will come up?

The CHAIRMAN: After proposed section 247 of the schedule—is that correct, minister?

Hon SIMON O'BRIEN: Yes. That was my motion.

Hon LINDA SAVAGE: We will agree to that deferment. I am assured that means we can come back to it. I presume the minister proposes to answer the questions and concerns we have.

Hon SUE ELLERY: Hon Linda Savage is dealing with a committee report for the first time. I want the house to understand the advice I have given her. My understanding is the minister will address some of the issues raised around that issue when we get to that stage of the schedules.

Hon Simon O'Brien: Yes.

Hon SUE ELLERY: I have advised Hon Linda Savage, after listening to what the minister has to say, that she is not giving up her right to return to the amendments before the chamber and move them on behalf of the committee, just as she intended to do right now. I am reading between the lines and assuming that there is some fabulous argument or something that the minister will put to us that might make committee members think differently. That might not be the case, but that is the only reason I can see as to why the minister would want to defer debate about that now. I have explained to Hon Linda Savage that she is not giving up anything; she is waiting to hear what the minister has to say when we get to that point. If that convinces her that she does not need to do what the committee has put on the supplementary notice paper, so be it; if it does not convince her, she will proceed at that point to deal with the committee's amendments.

Hon SIMON O'BRIEN: I indicate that this in no way does away with our consideration of clause 7 or the honourable member's amendments. I am simply deferring it to a later time after we consider further committee recommendations. I indicated during the second reading debate that it is likely that we will have a fairly focused debate about the general issues that are raised there at that time. That might be the best time to consider everything. There is also an implication it would be difficult, from the committee's point of view, to advance what has been suggested be done with clause 7 until we have decided those other clauses. Those clauses, let us face it, are in a different part of the national legislative package. It is my intention to come back to clause 7.

Question put and passed.

Clause 7 postponed until after consideration of proposed section 247 of the schedule, on motion by Hon Simon O'Brien (Minister for Transport).

Clauses 8 to 126 put and passed.

Clause 127: Section 23 amended —

Hon SIMON O'BRIEN: I move the amendment standing in my name at 8/127 —

> Page 51, line 2 to page 52, line 20 — To oppose the clause.

The reason for so doing is contained in the next part of the amendment which is to substitute the words in the bill with the words proposed at 9/127; that is, at page 51, after line 1, to insert an amended clause 127 in the terms displayed on the supplementary notice paper.

The reason for these amendments are these: firstly, to update the terminology used from "pharmaceutical chemist" to "pharmacist"; secondly, to provide for national health boards to be informed when a health practitioner has had his or her right to prescribe or supply prescription drugs revoked; thirdly, to provide for practitioners endorsed under the national law to be allowed to prescribe and supply some prescription drugs, for example, qualified optometrists to be able to prescribe topical medicines.

Amendment put and passed; clause thus negatived.

New Clause 127 —

Hon SIMON O'BRIEN: I move —

Page 51, after line 1 — To insert —

127. Section 23 amended

(1) In section 23(2)(a) delete "a pharmaceutical chemist" and insert:

a pharmacist

(2) After section 23(3) insert:

(4A) If the CEO gives a dentist, medical practitioner, nurse practitioner or pharmacist a notice pursuant to any regulations made under section 64(2)(ha), the CEO may give a copy of the notice to the National Board as defined in the Health Practitioner Regulation National Law (Western Australia) section 5 for the person's health profession.

(4B) Subject to this Act, a person who is a member of a prescribed class of endorsed health practitioner is authorised in the lawful practice of his or her profession to do any one or more of the following things in relation to a medicine as is prescribed in relation to the prescribed class —

(a) possess;

(b) use;

(c) supply;

(d) sell;

(e) prescribe.

(4C) The authorisation given by subsection (4B) is subject to —

(a) such conditions and restrictions as may be prescribed; and

(b) any notice given by the CEO pursuant to any regulations made under section 64(2)(ha).

(4D) If the CEO gives an endorsed health practitioner a notice pursuant to any regulations made under section 64(2)(ha), the CEO may give a copy of the notice to the National Board as defined in the Health Practitioner Regulation National Law (Western Australia) section 5 that endorsed the registration of the health practitioner.

(4E) Subsection (4B) does not authorise a person to sell any poison in an open shop unless the person is licensed under this Act to do so.

Hon SUE ELLERY: Minister, I understood the reason for changing "pharmaceutical chemist". Can the minister provide a bit more of an explanation about why we need to change it? As I understood the second part of the minister's explanation, we were giving effect to something else as well, which I did not quite catch. I might get the minister to explain what the rest of the changes are about.

Hon SIMON O'BRIEN: I thank Hon Sue Ellery for her question. There is another aspect to what is being proposed by this amendment—the replacement of clause 127 with a new clause 127—and this further requirement is to clarify and ensure that medical practitioners, dentists and pharmacists will continue to be able to prescribe and supply prescription drugs once other endorsed health practitioners such as optometrists and podiatrists are also able to prescribe and supply some prescription drugs. This is a pretty basic fundamental, one would have thought, of a requirement. We could be in all sorts of trouble with the national scheme if this

provision was not there. Therefore, for the sake of safety, this jurisdiction has added this provision, and I understand that other jurisdictions are also making a mirror amendment.

Hon Sue Ellery: Was it a drafting error? Why wasn't it in the original bills? Was it just omitted?

Hon SIMON O'BRIEN: It was a drafting error. If it is any comfort to we Western Australians, it was across the national scheme, and it is being rectified in all the participating jurisdictions. Nonetheless, it is a very important error to be picked up.

New clause put and passed.

Clauses 128 to 133 put and passed.

Clause 134: Section 64 amended —

Hon SIMON O'BRIEN: I move —

Page 55, lines 14 to 18 — To delete the lines and insert —

(a) in paragraph (ha) delete "section 23(2) in relation to drugs of addiction or specified drugs or both;" and insert:

section 23(2) or (4B) in relation to a poison or medicine;

I advise the committee that the effect of this amendment is that it updates the terminology from "drugs of addiction or specified drugs" to "poison or medicine" to align with some amendments that we are putting into the Poisons Act.

Hon SUE ELLERY: I do not mean to be difficult, but I wonder whether I could get a bit more information than that it is to align with some amendments we are making to the Poisons Act. Perhaps the minister could tell us about some of the amendments we are making to the Poisons Act.

Hon SIMON O'BRIEN: I am just trying to work out the best way to explain this to the committee. In the first instance, I would draw members' attention to the words that we are proposing to delete—that is, lines 14 to 18—and then invite members to compare them with the words proposed to be inserted. There are a couple of key differences, and they relate to the way in which we are amending, by this provision, the Prisons Act 1981, section 64(2). That is what we are doing.

Hon Sue Ellery: The Poisons Act or the Prisons Act?

Hon SIMON O'BRIEN: I am sorry; it is the Poisons Act.

Hon Sue Ellery: The Prisons Act is the next bit on that page. That is why we are a little confused.

Hon SIMON O'BRIEN: I am sorry; I misread it. It is section 64 of the Poisons Act. This is the trouble. The clause in the bill, of course, is in itself an amendment of that act, so I am now proposing an amendment of that amending clause. By simple comparison, members can see how it is now being further amended. It is in the terminology. It was initially proposed to delete the words "drugs of addiction or specified drugs or both". Instead, we are going to delete the phrase "section 23(2) in relation to drugs of addiction or specified drugs or both" and insert "section 23(2) or (4B) in relation to a poison or medicine". The change there is to introduce the reference to a subsection (4B). As I understand it, that changes the terminology that will appear in the Poisons Act from what it previously has been, which was "drugs of addiction or specified drugs", to the new term that is going to be used—this is a reflection of the national scheme, as I understand it—which is "poison or medicine". That is the updating of terminology to which I referred. What we are doing now is just tweaking the amendment to update the terminology.

I turn now to the substantive part of the amendment. The substantive clause in our bill adds the words "endorsed health practitioner"—for example, optometrist and podiatrist—to the existing classes of health practitioners—for example, medical practitioners, dentists and pharmacists—in relation to whom the Governor may make regulations regarding revocation of rights to prescribe and supply. Therefore, this is literally a consequential amendment—one of very many in this case—to the Poisons Act, that is consequential to the introduction of the national scheme.

Hon Sue Ellery: I will ask this by way of interjection, if I may. As I understand the minister's explanation, this is a consequential change to the terminology. This is not a policy change. We are not extending some powers to some new group that did not have those powers before. We are not taking away some powers from some group that did have those powers before. It is about the language. It is not about the substance of the policy, as I understand the minister's explanation.

Hon SIMON O'BRIEN: This amendment as it appears in the bill—as is the case with so many of the amendments that we have now accepted en bloc—is made to recognise the inclusion of a new block of practitioners who may be prescribing and supplying, and that in some cases the Governor may make regulations to revoke that power. That is what is there in the bill. Although we are still going to adopt that, I hope, like the last 100 or so clauses that we have moved en bloc, the amendment that I am now moving is in effect an amendment to update the terminology. It is as simple as that.

Hon Sue Ellery: Thank you.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 135 to 166 put and passed.

Schedule 1: Health Practitioner Regulation National Law —

Hon GIZ WATSON: I will not be moving amendment 14/S to proposed section 3 standing in my name on the supplementary notice paper. The minister has already accommodated that amendment.

I now refer to proposed section 77. I move —

> Page 125, after line 27 —To insert —
>
> (4a) It is unlawful for a National Board to discriminate against an applicant on the ground of a spent conviction of the applicant. Section 22 *Spent Convictions Act 1988* applies.

I raised the issue of spent convictions during my second reading contribution. Under this bill, a person who has a spent conviction will be barred from becoming a medical practitioner. The Greens believe that a spent conviction should be exactly that—spent—and that if a person has been granted a spent conviction, that should not prevent that person from going into the next stage of his or life. I understand that the case has been put that under this bill there is a particularly high bar that will need to be met. That bar is comparable to the bar that is provided for under the working with children legislation. The Greens, however, feel that the bar is set too high. We therefore ask that the chamber support the removal of this provision and the insertion of the new provision that I have moved. That would make it clear that it is unlawful for a national board to discriminate against an applicant on the ground of a spent conviction.

Hon SIMON O'BRIEN: I certainly do not dismiss the member's concerns about this matter. The member's concerns reflect an aspect of the spent convictions legislation that I always find very interesting. That is that all of the exemptions and exceptions that are provided under that legislation contrive to make it less than a simple exercise. I will indicate why the government will not be supporting this amendment. It is not because of any lack of sympathy for the motives of the mover of this amendment. But I will advise the member and the house of something that I was not aware of until I became involved with this bill and this amendment. The Medical Board of Australia has a published criminal history registration standard. I do not know if the member is aware of that. It is certainly relatively new to me.

The current standard is that people applying for registration to a board must disclose their criminal history, including spent convictions. That is the profession's standard now and, as the member can see from the material in front of her, is the national standard that is contemplated and will endure. Very briefly, I understand it is dealt with in this way. The Medical Board of Australia has a standard approved by the Australian Health Workforce Ministerial Council on 31 March 2010 pursuant to the Health Practitioner Regulation National Law, the substance of which is the schedule that we are just now contemplating and the subject that it is anticipated the member wishes to discuss. The standard sets out a number of considerations that the board is required to take into account in considering an individual's circumstances. When considering the criminal record of an applicant, the board must have regard to the following broad factors. None of them will be a surprise but I will quickly mention what they are. They are, firstly, the nature and gravity of the offence or alleged offence and its relevance to health practice; secondly, the period of time since the health practitioner committed or allegedly committed the offence; thirdly, whether a finding of guilt or a conviction was recorded for the offence or a charge for the offence is still pending; fourthly, the sentence imposed for the offence; fifthly, the ages of the health practitioner and of any victim at the time the health practitioner committed or allegedly committed the offence—I add as an aside: with particular emphasis on whether the person was under 18 years of age; sixthly, whether or not the conduct that constituted the offence or to which the charge relates has been decriminalised since the health practitioner committed or allegedly committed the offence; seventhly, the health practitioner's behaviour since he or she committed or allegedly committed the offence; eighthly, the likelihood of future threat to a patient of the health practitioner; and ninthly, any information given by the health practitioner to attend to any other matter that the board considers relevant.

Those are the factors that it is prescribed the board shall consider. It does that from the policy perspective that it is necessary that persons seeking registration as a medical practitioner should not have their convictions or other parts of their criminal history kept secret or confidential at the time their application for registration is being considered; and that is in the public interest. It is one of those exceptions, and it is the government's view that that should prevail.

However, it may give comfort to the member in the spirit of the argument that she has advanced that those factors that have to be considered by the board give the board the capacity to weigh the substance of those convictions and whether or not they are pertinent to the application at the time. That is the agreement at ministerial council level for a national approach to this difficult matter and, with the greatest of respect, that is why the government will not be supporting this amendment.

Hon GIZ WATSON: I have a couple of further questions on that. I appreciate the detail that the minister has provided and it gives me some comfort. I have two further questions. Firstly, is there an example of a matter relating to a spent conviction for an offence that has been committed, if the minister follows my drift? I obviously do not know all the case history in this area. However, I am not aware of a doctor who has been convicted of a misconduct offence or an offence against a patient and it then transpired that the doctor had an earlier conviction that was not obvious because it was spent, if the minister can see what I mean. Perhaps the minister does not know, but I just wondered whether there were examples that led to this very high bar. I do not for a moment argue that we need very high confidence in and a very strong assessment of people suitable to be registered as doctors, but when we are contemplating something as strong as this, I think we need a bit of justification as well.

Hon SIMON O'BRIEN: No, I do not know, and there is no advice available to me as to any incident that could be quoted along the lines the member mentioned. That probably gives some support to the view that these are matters that can be reliably left to the board, but it remains the government's view that there be a policy of full disclosure of criminal history. That is supported by the medical profession. The fact that I do not have any anecdote to share—I do not know whether there are too many abroad—perhaps indicates that it is a system that works. The system does provide for all matters to be confidentially taken into account by the board, but at the same time it preserves what the government believes is the public's expectation; that is, people who apply to be registered as a medical practitioner must disclose to the relevant authority any criminal history they may have.

Hon GIZ WATSON: My final question on that is: are the disclosure requirements the same or higher compared with the disclosure requirements for working with children checks?

Hon SIMON O'BRIEN: My unqualified response to the member—based on more qualified advice immediately available to me—is that, if anything, the working with children requirements might even be a little more stringent than the requirements provided in this bill. In any case, we do not believe that the provision we are considering is higher; it is at least on a par.

Hon SUE ELLERY: The opposition will not be supporting the amendment moved by Hon Giz Watson. I want to make a couple of points. In the first instance, I am not sure how we would actually measure or enforce the amendment that is before us now, as it would not remove the requirement for applicants to disclose their criminal history. With the greatest of respect, it seems illogical to tell people that they must put their whole criminal history before the board, and then tell them that when the board is considering that criminal history, they cannot, effectively, discriminate. If we assume that in this sense, "discriminate" means either to impose some restrictions on their capacity to be registered, or on being registered at all—how can that be done? It cannot be said that the information must be put before the board and that it needs to be considered, but the board cannot actually act in a way that is, if members like, negative or has a negative effect on the applicant. I think if the member wants to achieve what she wants to achieve, the amendment would have to specify that that criminal history should not include spent convictions; having said that, I would not agree with that either because I think it is right that the bar should be set very high for the medical profession. Medical practitioners hold a very powerful position in our community because they deal, literally, with patients' lives, and it is appropriate that a high bar be set. After having said that, I am pleased that the minister was not able to give us examples of the profession having let itself down, and therefore the rest of us down, by individuals hiding their criminal history. But I think we do need to set the bar high, and therefore, even if the member was trying to achieve the effect of not having spent convictions considered, we would not be in a position to support that either.

Hon LIZ BEHJAT: I wanted to add a couple of comments on Hon Giz Watson's proposed amendment from the committee point of view. The committee looked at the question of spent convictions—I draw the house's attention to the report at 4.69 on page 54. Clause 199 of the Health Practitioner Regulation National Law (WA) Bill 2010 provides a right of appeal against any decision made by the board, which allows for anybody who has had to disclose information about a spent conviction or any other criminal history and has had their registration denied because of that to appeal under the act. It was felt that under this national law, the principles of natural

justice are observed, and that aggrieved applicants have appropriate avenues of appeal against that national board decision. We also considered the relationship to the working with children legislation with regard to spent convictions, and indeed this is as high as what was set in that legislation. I just wanted to add that for the clarification for the house.

Amendment put and negatived.

Hon GIZ WATSON: I move —

Page 171, line 7 — To insert before "drugs" —

other

This is quite a small amendment, but I think it is worth pursuing. I made the point in my second reading contribution that in a lot of the language used around the issue of drugs there is a separation of alcohol from drugs, and there is an inference there that when we talk about drugs we are usually talking about illicit drugs. I think it is well understood in the health profession that alcohol is a drug, and it is one of the more serious drugs that our community has to grapple with. Therefore, the proposition is that when we are talking about using the terminology in this legislation—I am looking at the terms used under "notifiable conduct"—the bill refers to practitioners having —

practised the practitioner's profession while intoxicated by alcohol or drugs …

My proposition is that we insert before "drugs", the word "other", which would more accurately reflect that alcohol is a drug, as is any other, and it more accurately reflects the reality of the situation. I do not think that there should be any problem with making that amendment, but I am interested to hear the minister's response.

Hon SIMON O'BRIEN: This one really worries me because, at face value, there is not a lot to object to because it is such a simple matter. At worst, the proposal could be criticised as being semantics; at best, the member makes a fair point. What worries me about this is that it is these little, apparently inconsequential sorts of amendments that might invite everyone to start getting up and making a contribution—that is what worries me! I will not get into the merits of what the member is talking about because I recognise she has a point, and while the member was talking I was looking at other bits and wondering how they could be worded better! I think our way forward with this is to have regard to what it is we are dealing with in this schedule. This is the Health Practitioner Regulation National Law Bill 2009 that, in effect, we are adopting as part of our bill. Although as good parochial Western Australians with a very active delegated legislation committee, we assert the right to decide what laws shall govern us, I do not think we should be tinkering with the words of this cross-jurisdictional provision unless there is a very compelling reason to do so. Although the member makes a reasonable point, I do not think it sets a good precedent if we start just tweaking words, unless we have a very substantive reason to then go back to our fellow jurisdictions and say, "Right, we take exception to this", because it might make it look as though we are tinkering with little things that do not matter and, heaven forbid, ignoring the things that do. With the greatest of respect, I do not know if it is worth adopting this amendment, and the government will not be supporting it.

Hon SUE ELLERY: I agree with the minister that it is probably even arguable whether the amendment is outside the scope of the bill—I am saying it is probably arguable. For the purposes of the debate, I agree with the view put by Hon Giz Watson. What are the similarities between what we describe now as drugs and what we describe as alcohol? Are they manufactured? Yes. Do they have an impact on a person's judgement; do they impair function? Yes, they do all of those things. Does one taste nice and perhaps the others do not taste at all? Probably yes!

Hon Giz Watson: Does alcohol not taste of anything?

Hon SUE ELLERY: I think alcohol tastes very nice—as for what anything else tastes like, I could not possibly comment! My point is that I think we need to acknowledge the similarities and the effects. Are they both addictive? Absolutely. Does society pay a high price for people's addiction to both of them? Absolutely. I do not want to drag the debate out, but I support the amendment.

Hon GIZ WATSON: I appreciate the reasoning behind other members' disinclination to support the amendment, and I realise that if we changed one word it could have major consequences—I do not think this one would. I am not going to press this hard, but in the language of healthcare professionals, they certainly know that alcohol is a drug, and that is the sort of language they use. Perhaps it is something I should have spotted earlier, and then I might have managed to persuade people that the amendment would not cause the outbreak of World War III. Having said that, I think I have made that point, and I will not pursue it any harder.

Amendment put and negatived.

Hon GIZ WATSON: My next amendment reads as follows —

Page 173, line 4 — To insert —

(f) the first health practitioner forms the reasonable belief in the course of providing health services to the second health practitioner or student.

This particular amendment has been dealt with by way of the amendments that were introduced by the minister and subsequently passed. Therefore, I will not be pursuing this amendment.

As to Committee

Hon SIMON O'BRIEN: I move —

That further consideration of the Health Practitioner Regulation National Law (WA) Bill 2010 be postponed until after consideration of the Pharmacy Bill 2010.

The reason being that I would like to get some advice about the debate we will have about the regulations, which might happen on another day. In the meantime, it would be good if we could make progress on other matters before the house.

Question put and passed.