

HEALTH AND DISABILITY SERVICES (COMPLAINTS) AMENDMENT BILL 2021

Third Reading

HON SAMANTHA ROWE (East Metropolitan — Parliamentary Secretary) [2.25 pm]: I move —

That the bill be now read a third time.

HON NICK GOIRAN (South Metropolitan) [2.25 pm]: I rise as, effectively, the acting lead speaker for the opposition as we consider whether the Health and Disability Services (Complaints) Amendment Bill 2021 is to be read for a third time. President, I note for the record—I apologise if I said Acting President; it is probably a carryover from last night—that Hon Martin Aldridge is away on urgent parliamentary business. He would ordinarily be the lead speaker for the opposition with respect to this bill.

As members will recall, the purpose of the bill, which was in effect agreed to by the house at the second reading stage, is to introduce the national code of conduct for health workers, with particular application to those workers who are not registered under the national registration and accreditation scheme. The bill that went into the Committee of the Whole House was a bar 2 bill, which is an indication that the bill had been amended by the other place. This bar 2 bill that is now before us is about to be sent to the other place with a number of further amendments. Notwithstanding that the other place received the bill from the government, it determined that it needed improvement. That so-called improved bill arrived in the Legislative Council, was considered by the Committee of the Whole House, and is now in need of additional refinements and enhancements.

We can see that the bill needed maintenance work from the very beginning. That maintenance work is found at clause 43 of the bill, which deals with a consequential amendment to the Freedom of Information Act 1992. Clause 43 was inserted by the other place. Members might recall—and I draw the attention of the Acting President, and I will report to you—that the Committee of the Whole House had the opportunity to consider supplementary notice paper 60, issue number 2. It had a number of amendments on it. Indeed, there were six amendments, four of which came from the Standing Committee on Uniform Legislation and Statutes Review. A further two amendments came to the attention of the Committee of the Whole House through the work of the honourable Parliamentary Secretary to the Minister for Culture and the Arts.

Of those six amendments, some were agreed to and others were rejected by the Committee of the Whole House, primarily to reflect the will of the government. In effect, the amendments that passed deal with two matters. Firstly, a statutory review is now being inserted into the bill; and, secondly, what I would say is a more significant matter: dealing with the review of a published public warning. I will deal with the first of those two matters. The Standing Committee on Uniform Legislation and Statutes Review has identified that the bill could be improved by the inclusion of a statutory review. The Committee of the Whole House has agreed to that and, evidently, the government has agreed to that. Interestingly, we still have a suboptimal bill before us because, as was drawn to the government's attention, the statutory review clause that is being inserted into the bill now, or recommended to the other place that they agree be inserted, is a statutory review clause only with respect to the amendments that are found in this bill. It is not a statutory review clause that will consider the entire Health and Disability Services (Complaints) Amendment Bill 2021. That is significant because it was uncovered during the Committee of the Whole House's consideration of, I believe, clause 1 that the Health and Disability Services (Complaints) Act 1995 currently contains a statutory review clause, but it is not recurring; in other words, one statutory review will occur but no others.

That statutory review clause says that the act needed to be reviewed five years after the relevant amendments had been made. They came into operation in 2010. Five years later, in 2015, no statutory review was commenced. Alert members opposite will recognise that they were not government in 2015 when that particular statutory review clause ought to have commenced. Nevertheless, when the McGowan government came into power in 2017, again no statutory review commenced. We can see here that there are, if you like—if people want to play the blame game—two governments at fault. No-one started anything in 2015 and no-one started anything in 2017. But what was particularly revealing in an answer from the parliamentary secretary was that the review is now in its “infant stages”. This is some seven years after the review was supposed to commence.

The parliamentary secretary gave an assurance that the government's intention is to continue with the review and, in fact, it was identified that a pot of money has been allocated for that review to be undertaken. It is expected—I think, from memory—that the review will conclude at the end of next year. Sometime in the next financial year, this particular statutory review will come to an end and that will be it. There will be no more reviews of the Health and Disability Services (Complaints) Act 1995, except for the minor statutory review that will now take place as a result of the amendment that has been put and recommended by the Committee of the Whole House. It is suboptimal and regrettable that the government has not taken the opportunity to insert into the act, at this time, either a fresh whole-of-act review clause or, alternatively, a clause to establish a regularly recurring one. The government has decided not to do either of those things, despite the fact that it was brought to its attention. That is regrettable. It is suboptimal lawmaking, yet it is acknowledged that the work of the Standing Committee on Uniform Legislation

and Statutes Review has brought about an enhancement and improvement to the bill. It is also recognised that the government has accepted and supported one of those enhancements, albeit a suboptimal one.

I might also mention in passing that it is interesting that today we are dealing with the third reading of the Health and Disability Services (Complaints) Amendment Bill 2021—a bill with amendments by the other place and now amendments recommended by this house—hot on the heels of the bill that we were dealing with yesterday to which, under no circumstances, was the government prepared to accept or consider any amendments. That is quite a contrast in approach, I might add.

I want to acknowledge at this time the work of the parliamentary secretary, Hon Samantha Rowe, who had carriage of this bill. From what I can gather, in the ordinary sequence of events, she normally might not have had the carriage of the bill but was called upon at short notice to fulfil some duties. I thank the honourable member, the parliamentary secretary, for the way in which she handled the bill, including genuinely taking up the concerns of the opposition and relaying them to the minister, seeking responses, and relaying them back to the house—precisely as ought to be done.

Hon Alannah MacTiernan: She is a fabulous member, isn't she? We are very proud of her.

Hon NICK GOIRAN: There is no disagreement from me, Minister for Regional Development.

Hon Alannah MacTiernan: Excellent. We will all sing her praises. Three cheers for Samantha!

Hon NICK GOIRAN: Credit where credit is due, Minister for Regional Development.

The ACTING PRESIDENT: Order!

Hon NICK GOIRAN: Minister for Regional Development, I only wish that the Swinbourn–Rowe type of approach to legislation were seen more frequently within government. I have to say, in fairness —

Hon Alannah MacTiernan: As the honourable member —

Hon NICK GOIRAN: Hold your horses, Minister for Regional Development. I was about to say: in fairness to the Minister for Regional Development, she is one of the ministers who genuinely engages with opposition members when we have questions, so the criticism when it comes to the handling of bills was not directed at the Minister for Regional Development. I have acknowledged before that when the Minister for Regional Development is in the seat, there have been plenty of times the minister and I have disagreed on things, but she takes on our concerns and considers them. That is appropriate. That is the standard of lawmaking that we expect in the Legislative Council. It is just regrettable that that does not happen consistently with the McGowan government. That is why I say credit where credit is due.

Hon Kyle McGinn: What are you trying to say? I feel a bit offended.

Hon NICK GOIRAN: I do not think you have had that many opportunities, with all due respect, honourable member! But next time the honourable member wants to take on one of the Attorney General's portfolio bills, I would be happy to ask a few questions. It is interesting that the opposition gives a compliment to the parliamentary secretary and all of a sudden it attracts a lot of unruly interjections. But I genuinely thank the parliamentary secretary for taking on those matters. I will return to the bill.

The second type of amendments that are being recommended to the other place deal with the issue of a published public health warning. I want to acknowledge at this time Hon Martin Aldridge, who was forensically examining this bill and continuously drawing to the government's attention an issue that emerged. This issue was that if the bill had been left unamended, we would have had the regrettable situation in which a public health warning statement could have been made and published with no prospect of a review. That has now been amended because of the work of Hon Martin Aldridge and Hon Samantha Rowe to make sure that that has been fixed. I hope that the other place will agree to those amendments when they are put before it. I will, however, note that it does not completely address all the concerns that were raised because one of these public health warning statements could still be made in the absence of either an interim prohibition or a prohibition order. The parliamentary secretary indicated to the Committee of the Whole House that the government's intention is not for that to occur, but despite the opposition's request for that intention to find its way to legislation, I regret to report that that is not the case, and so there is that gap in the legislation as it returns to the other place.

My final remark on this matter is that I appreciate that we had, in effect, a full parliamentary sitting week last week to examine these matters of the Health and Disability Services (Complaints) Amendment Bill 2021. We probably did not need a full parliamentary sitting week to scrutinise this bill. It only took that long because, in the first instance, the Minister for Health decided to hide the consultation report from the opposition. It had been requested by Hon Martin Aldridge and others, but the minister made the decision to block the provision of that report. It was not until we got into consideration of clause 1 that Hon Samantha Rowe, in her capacity as parliamentary secretary, took the issue up again, and eventually what emerged was the *Consultation report on the national code of conduct*

for health care workers in Western Australia, tabled paper 1699. It is very significant, and perhaps it is no wonder that the Minister for Health decided to hide this report from the Parliament because, quite contrary to the minister's suggestion that there were wholesale or overwhelming levels of support, the consultation paper suggests otherwise. There are several instances—for example, in answer to question 2—where there was hardly what could be described as wholesale or overwhelming support. The question was –

Are there any specific health services that should be considered for exclusion or inclusion under the National Code?

Sixteen people said yes, 17 said no, and nine made no response. That was one of some 15 questions that were posed as part of the consultation process. This consultation report was very instructive and very informative as we continued to examine the bill that was before us. One of the revelations in the report was concern on the part of some stakeholders that there would be an inconsistency between who can complain about registered and unregistered healthcare workers. In other words, the government undertook some consultation, we finally found out what some of the stakeholders think, and it emerged that some of them had said, “Be careful: you could be creating an inconsistency here.” With the benefit of that information having finally been transparently provided to the Parliament, the opposition asked some questions of the government with regard to this alleged inconsistency. It became clear that the government had no response. The government was not able to provide any explanation for why it would be acceptable that we are creating, as a result of this bill, an inconsistency between who can complain about a registered healthcare worker and who can complain about an unregistered healthcare worker. From here on in, as I understand it, anyone will be able to lodge a complaint about an unregistered healthcare worker, but not anyone can make a complaint about a registered healthcare worker. There may be reasons for such an inconsistency, but the government has not articulated what those reasons are. There simply was no explanation at all, other than to accept that there is an inconsistency. The acknowledgement that there is an inconsistency creates a duty and requirement on the government to explain why that inconsistency should remain or whether it should be fixed. Was it done on purpose? Is it an accident? Regrettably—we have seen this in other pieces of legislation—the government simply has no response to these things.

The other example that I would like to give members is on page 14 of this consultation paper, question 3, which reads —

Do you agree with the proposed approach of permitting anyone to make a complaint about a breach of the National Code by a health care worker?

A very important recommendation was made by the authors of this consultation paper. It states —

The ability for anyone to make a complaint is supported, however where the complaint is about a mental health service, the complainant should not be required to try and resolve a complaint with the service provider in the first instance.

We have been given a warning. The authors of this consultation report have warned the government and Parliament that special attention ought to be given if the complaint relates to a mental health service. I regret to report that the government has chosen to ignore that. It has taken no measures with respect to this issue. It will continue to be the case that a complainant may be required to try to resolve a complaint with a service provider in the first instance, despite the fact that we have been given a warning by the authors of this consultation paper that that should not happen.

Again, just because the consultation paper authors say, recommend or suggest something, it does not mean that the government needs to agree with it and it certainly does not mean that the Parliament needs to agree with it, but the government should be in a position of being able to articulate why it is either supporting or not supporting that proposal. I regret that that simply has not been done with respect to this matter, so it sits in limbo, presumably to the detriment of those who may have a complaint about a mental health service.

In conclusion, the record now reflects that the Minister for Health's substandard bill has been improved, although regrettably not to the level that it could have been. I hope that the new Minister for Health will recognise, as a result of the passage of this bill, that there is absolutely no point trying to hide information from Parliament. This is precisely the type of practice that got her predecessor into hot water, and I would like McGowan government health ministers to cease and desist with this practice. We do not see this practice in other portfolios; it seems regrettably to be common practice in the health portfolio. There is no point trying to hide information from Parliament; ministers will always be exposed if they try to do so. As the parliamentary secretary can attest, all that results is a longer consideration and scrutiny process by the house of review, when we have to spend so much time extracting information that should have been transparently provided in the first instance. With those remarks, it is my view that the Health and Disability Services (Complaints) Amendment Bill 2021 is now ready to be third read.

Question put and passed.

Bill read a third time and passed.