

**HEALTH AND DISABILITY SERVICES (COMPLAINTS) AMENDMENT BILL 2021**

*Committee*

Resumed from 11 October. The Deputy Chair of Committees (Hon Dr Sally Talbot) in the chair; Hon Samantha Rowe (Parliamentary Secretary) in charge of the bill.

**Clause 28: Parts 3D and 3E inserted —**

Progress was reported after the clause had been partly considered.

**The DEPUTY CHAIR:** I draw members' attention to supplementary notice paper 60, issue 1. There are three amendments relating to this clause, but last night we decided to let the debate proceed.

**Hon SAMANTHA ROWE:** Last night during debate, quite a number of questions were taken on notice. I will start by providing those answers to the chamber.

The first answer I have is to a question from Hon Nick Goiran about exercising discretion to accept mental health complaints that have not been considered by the provider. I have been advised that the Health and Disability Services Complaints Office does not have a specific policy of this nature. However, it does have a general policy covering high-risk situations that would apply to all jurisdictions, covering health, mental health and disability. This discretion is applied to matters when it is not considered in the interest of either the complainant or the provider to refer in circumstances involving the death of an individual, concern for the wellbeing of a child or an adult, clinical risk, alleged sexual boundary violation or matters that present as a threat to self-harm, by way of example. This process has been in operation for a number of years. It is fit for purpose and operates effectively. It will apply to complaints received for the national code.

I have a correction to the information provided on whether or not there was engagement with the Mental Health Commission. I think this is also for Hon Nick Goiran. In January 2022, HADSCO made a submission to the statutory review of the Mental Health Act 2014. HADSCO provided updated information to the Mental Health Commission about the national code and also raised the issue of the discretion to accept complaints when an individual has not raised the matter with the provider.

Hon Nick Goiran also raised the issue of discretion to accept a complaint that relates to a matter that occurred more than 24 months before the complaint was made. Section 24 of the Health and Disability Services (Complaints) Act, section 34 of the Disability Services Act and section 321 of the Mental Health Act deal with the time limit for making a complaint. All three acts stipulate that the director must reject a complaint that relates to a matter that occurred more than 24 months before the complaint was made unless, in the director's opinion, good reason has been shown for the delay. Reasons for delay may include that the consumer was unaware of the issue until 24 months—for example, an incorrect diagnosis that was not identified until after 24 months—or a significant period of mental illness that prevented the consumer raising a complaint on their own behalf or appointing a representative within the time frame.

There was also a question about referrals from the Public Sector Commission, which I think was asked by Hon Martin Aldridge during consideration of clause 1. He asked about the referral of matters from the Corruption and Crime Commission and the Public Sector Commission to HADSCO. One of the outstanding items was about referrals from the PSC. I can confirm that the Public Sector Commission is able to refer matters to HADSCO in accordance with part 4A, division 2, subdivision 4 of the Corruption, Crime and Misconduct Act 2003. Under section 45M(c), the Public Sector Commissioner may decide to —

refer the allegation to another independent agency or an appropriate authority for action in accordance with sections 45R(1) and 45S(1), and those sections apply accordingly;

There was also a question from Hon Nick Goiran about section 26, "Complaints that must be rejected". This was during consideration of clause 4. The honourable member asked whether HADSCO had any policies or procedures for complaints that must be rejected under section 26 of the Health and Disability Services (Complaints) Act 1995. Section 26 concerns vexatious complaints and complaints that do not warrant further action. I am advised that HADSCO has procedures that provide guidance for dealing with these complaints. The guidance covers general definitions for the terms "vexatious", "trivial" and "without substance", with examples to exist in making decisions under section 26 of the act.

During discussion of clause 7, Hon Nick Goiran asked whether it was necessary to include proposed section 17A(4) in the legislation. Proposed section 17A(4) states that the offence provisions at proposed section 17A(3) for failing to return the identity card after ceasing to be a member of staff does not apply if the person has a reasonable excuse. It is usual for a reasonable excuse defence to be included for persons for such an offence. The purpose is to provide a defence for a person who, for a reasonable reason, is unable to comply with the requirement to return their identity card—for example, if their wallet was stolen with the identity card inside.

During consideration of clause 28, Hon Nick Goiran asked about the timing of the preliminary impact assessment completed for the national code scheme in Western Australia. The preliminary impact assessment prepared by HADSCO was provided to the Department of Treasury on 6 July 2018. We had provided the year but not the month. Approval of the preliminary impact assessment was provided by the Department of Treasury on 11 July 2018.

The honourable member also raised a question about the review clause. The honourable member asked that we consider a different review clause. I can confirm that we will not be bringing forward a different review clause at this time and we will be accepting the clause as proposed by the standing committee.

I am not sure whether the honourable member had finished his line of questioning last night when we rose. Is he still halfway through his questioning?

**Hon NICK GOIRAN:** Yes, parliamentary secretary, there are a number of questions that ought to be asked about clause 28. This is the substantive clause in the bill before us, starting at page 13 and continuing through to page 24. We had just commenced our consideration of clause 28 yesterday. One of those things was the regulatory impact assessment process. It is a curiosity, if you like, that the authors of this Western Australian consultation report in June 2018 suggested that a regulatory impact assessment should be completed. That was in June 2018. The curiosity arose because we found out last night that a regulatory impact assessment was completed in April 2013 at the commonwealth level, and we knew last night that a Western Australian regulatory impact assessment or a similar type of assessment had been conducted in 2018. We did not necessarily know when, but we now know that was 6 July 2018. We will rapidly move off this point and there is no need for a response to that. It remains a curiosity that the Health and Disability Services Complaints Office, which I understand prepared this consultation report in June 2018, saw fit to ask government to determine whether a regulatory impact assessment should be completed; however, on 6 July—within a month—one has been done. I think the parliamentary secretary might have mentioned that it had been approved by Treasury as far back as 2017. It is a curiosity. One possible explanation that I think the parliamentary secretary foreshadowed last night that might —

**Hon Samantha Rowe:** It was 2018 for Treasury.

**Hon NICK GOIRAN:** Does the parliamentary secretary have a date for that?

**Hon Samantha Rowe:** It was 11 July 2018. That is what I just read out.

**Hon NICK GOIRAN:** The regulatory impact assessment was done on 6 July 2018.

**Hon Samantha Rowe:** It was provided to the Department of Treasury on 6 July.

**Hon NICK GOIRAN:** Okay. I thought the parliamentary secretary mentioned earlier something about Treasury approving that regulatory impact statement to be done, and I thought it was 2017, but not too much flows from that, other than to say that the parliamentary secretary's proposal last night that perhaps the authors of this report were unaware that this process was underway might be the best explanation. That seems to be the case. It is just a mere curiosity. Nevertheless, we are now looking more substantively at the issuing of prohibition orders.

The question that I asked last night—I think we got interrupted; I think the parliamentary secretary was taking advice at the time—was: what will be the grounds for issuing a prohibition order? I am particularly interested to know whether the grounds will include breaches of this code. We established last night that HADSCO will only be concerned with this one national code. Will any breach of the code warrant the issuing of a prohibition order? Once we establish the framework for that, I flag that I will ask some questions on criminal proceedings, whether there might be charges laid or convictions and the like.

**Hon SAMANTHA ROWE:** We dealt with the interim prohibition orders last night. The short answer to the member's question is yes. POs can be issued at the conclusion of an investigation when the director is satisfied that the healthcare worker has failed to comply with the national code or the healthcare worker has been convicted of a prescribed offence, plus the director needs to be satisfied that it is necessary to make the PO to avoid a serious risk to the life, health, safety or welfare of a person or the public.

**Hon NICK GOIRAN:** Will that final element constrain the director from issuing a prohibition order for every breach? Not every breach warrants a prohibition order. Perhaps a warning might be appropriate or simply the mere finding that a breach has occurred would be sufficient to reprimand the relevant person. It is helpful to know that there is that extra constraint on the director that they must be satisfied of that final element.

The parliamentary secretary has helpfully already taken us into the area of criminal convictions. I think the parliamentary secretary mentioned that that would be pursuant to a schedule.

**Hon Samantha Rowe:** To a prescribed offence.

**Hon NICK GOIRAN:** It will be pursuant to a prescribed offence. Can the parliamentary secretary give us an indication of what those prescribed offences will be?

**Hon SAMANTHA ROWE:** The simple definition is an offence that is prescribed under the regulations. There are implied limitations on what kinds of offences can be prescribed. In order for a conviction for a prescribed offence to be used to justify the making of a prohibition order or public warning statement, the commission of the offence must have either involved harm to the life, health, safety or welfare of a person, or the health, safety or welfare of the public, or gave rise to, or was capable of giving rise to, a serious risk to the life, health, safety or welfare of a person or the health, safety or welfare of the public. The offences that will be prescribed will be finalised during the drafting of the regulations, following the passage of the amendment bill through Parliament. It is anticipated that the prescribed offences will include offences under the Criminal Code Act Compilation Act 1913, among others. The prescribed offences will be those that indicate that a healthcare worker poses a risk to the health, safety or welfare of an individual or the public through the provision of health services; for example, a conviction for sexual assault.

**Hon NICK GOIRAN:** That is dealing with convictions. What will be the position for charges? If a person being complained of is on a charge for one of those prescribed offences, will they be subject to an interim prohibition order?

**Committee interrupted, pursuant to standing orders.**

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