

PHARMACISTS BILL 2006

Second Reading

Resumed from 22 March.

MR J.A. McGINTY (Fremantle - Minister for Health) [8.31 pm]: I thank members opposite for their contributions to the second reading debate. A number of issues were raised by members during the course of the debate. They related firstly to the question of friendly societies. The member for Dawesville referred to clause 58 of the bill, which provides for the ownership of, and interest in, a pharmacy business. The existing friendly societies will continue to be able to own and operate a pharmacy business. However, consistent with other persons who may own or have an interest in a pharmacy business, an existing friendly society will be able to own or have an interest in a maximum of four pharmacy businesses. It is proposed that new friendly societies will also be able to own pharmacy businesses and, as agreed with the Pharmacy Guild of Australia, the total number of pharmacy businesses in addition to those owned by the existing friendly societies that may be owned by new friendly societies will be eight. A new friendly society may not own more than 12 pharmacy businesses.

A question was then asked about private hospitals. This will obviously be a matter that will be given some consideration, as there are some amendments on the notice paper in relation to whether a private hospital ought to be able to run its own pharmacy department. Traditionally they have not, other than one grandfather arrangement in respect of St John of God Health Care hospital in Subiaco. That is a matter about which there are amendments on the notice paper, following representation from the Joondalup Health Campus, which wished to take the option of running its own pharmacy as part of the hospital at Joondalup. They are matters to which we will need to give some detailed consideration.

A question was also asked about the distribution of medication by medical practitioners in country areas. The arrangement for distribution of pharmaceuticals by non-chemists or non-pharmacists is covered by the Poisons Act 1964. Under section 23 of the Poisons Act, a medical practitioner is authorised, among other things, to sell medicines in the lawful practise of his or her profession. The Pharmacists Bill is not intended to affect this authorisation. It is intended that the relevant provisions of the bill in the Poisons Act should interact in a complementary manner. It is clear from the Poisons Act that authorised health professionals can use medicines only in the lawful practise of their profession and therefore there should be no potential breaches of the act by such a practitioner. However, in the light of the matter that was raised, we have given further consideration to the detailed provisions of the bill, and there is an amendment on the notice paper to place that issue beyond doubt. An amendment to the definition of the practice of pharmacy is proposed to ensure that authorised health practitioners under the Poisons Act can continue to use, sell or supply in accordance with the Poisons Act. Holders of a licence or permit under the Poisons Act have also been considered in drafting this bill. Prescribed permit and licence holders under the Poisons Act are to be exempt from the definition of "pharmacy business". This exemption is to ensure, for example, that nursing posts and Aboriginal health services are excluded from the definition of pharmacy business. So far as shopping centres are concerned, which was another point raised by the member for Dawesville, an amendment is proposed to the bill to expressly prohibit the location of a pharmacy within a supermarket. As the amendment is consistent with the position under the current act and legislation in New South Wales, South Australia and Tasmania, it is also consistent with the location rules in the Australian Community Pharmacy Agreement, which provide that a pharmacy cannot be approved where it is publicly accessible from within a supermarket. The Pharmacy Guild of Australia and the Pharmaceutical Council of Western Australia support this amendment.

The only other matter I have a note of relates to private hospitals, which will obviously need to be given some more detailed consideration. I thank members for their indication of support for this legislation.

Question put and passed.

Bill read a second time.

Consideration in Detail

Clauses 1 and 2 put and passed.

Clause 3: Terms used in this Act -

Mr J.A. McGINTY: I move -

Page 5, line 5 - To insert after "*Act 1964*" -

of a type prescribed by the regulations

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A “pharmacy business” is defined under this clause of the bill. The definition is fundamental to the operation of the bill because only specified persons may own a pharmacy business. There are two exemptions from the definition of pharmacy business: public hospitals and permit and licence holders under the Poisons Act. As the bill is currently drafted, all permit and licence holders under the Poisons Act are exempt from the definition of “pharmacy business” and therefore the registration requirements of the bill. The exemption is too broad; for example, it excludes pharmacists who hold a licence to sell medicines by retail. The amendment is intended to clarify in the regulations which licence and permit holders are to be exempt from the definition. Permit and licence holders under regulations 7, 10A and 10AA of the Poisons Regulations have been identified as the permit and licence holders that should be exempt from the definition of pharmacy business and be included in the new Pharmacists Act regulations.

Amendment put and passed.

Mr J.B. D’ORAZIO: There is no definition of “pharmacist controlled company”, which is fundamental to the whole question of ownership. It is in the act. Is it not appropriate to include the definition in clause 3?

Mr J.A. McGINTY: I am advised that the definition of a pharmacist controlled company is contained in part 5 because it is relevant only to part 5 rather than being relevant to other parts of the legislation. That is why, on page 36 of the bill, where part 5 commences, “pharmacist controlled company” is defined.

Mr J.B. D’Orazio: That is not quite correct because it actually affects ownership of private hospitals. It also affects pharmacies in other terminologies in relation to the act. I refer to a non-practising pharmacist, mention of which has been deleted from the old act. This bill does not make any mention of non-practising pharmacists in relation to ownership. It actually excludes them. I was going to make the point that you could have a non-practising pharmacist as part of the board of a company, when one is looking at the 51 per cent ownership aspect.

Mr J.A. McGINTY: I am finding it difficult to follow the argument.

Mr J.B. D’Orazio: Clause 56 refers to a pharmacist controlled company being one in which, among other things, a pharmacist is, or pharmacists are, entitled to control the exercise of not more than 50 per cent of the voting power. That also affects the clause relating to the ownership of pharmacies, and the registration.

Mr J.A. McGINTY: I am finding it difficult to understand the link.

Mr J.B. D’Orazio: I think at some point in the discussions on this bill the question of a non-practising pharmacist having ownership abilities within the pharmacy arrangement should arise. Under this bill that ownership ability cannot happen. The suggestion I make is that a non-practising pharmacist who has given up his registration may still be able to run a pharmacy on the basis that he could appoint a business pharmacist to manage the pharmacy. Therefore, what is to prevent him registering other than a clause that says that he has to be a practising pharmacist? For example, if I do not practise for another year and I am deregistered -

Mr J.A. McGINTY: That will be your three years up?

Mr J.B. D’Orazio: Yes. Then I might want to still be a non-practising pharmacist and own a business, under a manager, which the act says I can do. The only preclusion from my being a pharmacist owning a business is that I do not have a practising licence. I am asking why that is the case. Why can I not be a non-practising pharmacist owning a business with a pharmacist manager, which then would meet the definition, which needs to be somewhere else in the bill?

Mr J.A. McGINTY: How does that link up with a pharmacist controlled company?

Mr J.B. D’Orazio: Because I could have a share company with my wife, uncle, or aunt and I need to be able to control 50 per cent of the shares. The bill refers to a practising pharmacist, but I am saying a non-practising pharmacist might still be in that ballpark if the legislation were slightly different in one other respect.

Mr J.A. McGINTY: I do not yet follow the argument, but having said that, I do not mean any disrespect. It is more a reflection on me than on the member.

Mr J.B. D’Orazio: I don’t think it’s going to make any difference to the outcome. I just thought this was a definition you might want to include under “pharmacist controlled company”.

Mr J.A. McGINTY: If as we go through the bill the debate unravels in such a way that it becomes necessary that this definition be brought forward - and it is not apparent to me that that is the case at the moment - I give a commitment to reconsider this clause at the end of consideration in detail, when it will become apparent whether that is an issue or not.

Mr J.B. D’Orazio: Thank you.

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Mr J.A. McGINTY: I move -

Page 5, after line 7 - To insert -

“prescribed private hospital” means a private hospital, other than a day hospital facility, nursing home or nursing post, prescribed, or of a type prescribed, by the regulations;

“preserved company” means St John of God Health Care Incorporated, an association incorporated under the *Associations Incorporation Act 1987*;

Page 5, after line 9 - To insert -

“private hospital” means a natural person or a body corporate that is the holder of a licence to conduct a private hospital granted under the *Hospitals and Health Services Act 1927* Part IIIA;

We are proposing in these amendments to allow a private hospital to own a pharmacy business. I think this goes to the heart of the matter. This is the area in which we should have the substantive debate. A private hospital will be required to meet the same registration requirements as a pharmacist or any other person that may own or have an interest in a pharmacy business. A private hospital and a prescribed private hospital are defined. A private hospital may own a pharmacy, which will be prescribed in the regulations and will be defined as not including a day hospital facility, a nursing home or a nursing post.

Related to that, clause 36 provides who may apply for registration of premises as a pharmacy. The amendment includes a private hospital as a person that may apply for registration, subject to the pharmacy business being located at the premises approved under the Hospitals and Health Services Act 1927. Clause 37 provides that a pharmacy business owned by a private hospital may only be located at the premises approved under the Hospitals and Health Services Act 1927, which I think covers the point raised by the member for Ballajura in some of the earlier discussions on this issue, and I will be interested to see whether we have achieved that objective or not. Under clause 39 the Pharmacists Registration Board must refuse to grant an application for registration of premises if the location of the pharmacy business is not located as approved under the Hospitals and Health Services Act 1927. New clause 58 restricts the pharmaceutical services that a private hospital may provide to inpatients only. The existing clause 58 provides a list of persons who may own or hold a proprietary interest in a pharmacy business. “Prescribed private hospital” has been added to this list. Clause 59(4) says that a prescribed private hospital may own only one pharmacy business for each licence it holds to conduct a private hospital. The definition of a preserved company is part of this amendment. The definition has been moved from clause 34, in part 4, to the definitions section, and the preserved company has been identified by name. This means that the definition will apply to the entire act rather than just part 4, which is very much the argument the member for Ballajura was putting in a different context.

This is the place that I think we should have a debate about whether private hospitals should be able to have a pharmacy department as part of the provision of a private hospital or whether they are required essentially to contract with a private pharmacist to provide that service that is provided as part of the integral services within public hospitals.

Dr K.D. HAMES: I do not intend to do as the minister suggested and have a substantive debate at this point. We intend to argue against this amendment at this point and at every other point along the way. We will oppose the insertion of this amendment and any amendment relating to the ability of additional private hospitals to have pharmacies. When I first heard about this provision, and in view of the fact that we know that St John of God, Subiaco already has a pharmacy, we were quite happy with the legislation that allowed that situation to continue as it was. When the minister first mentioned in his second reading speech the concept of other hospitals having a pharmacy, I thought that that was not unreasonable either. However, we then started to receive feedback, and it was not until the member for Ballajura started to talk about the pharmacies that already exist within private hospitals that I realised we had a serious issue and one that was going to cause not only a lot of dissatisfaction for, but also a lot of potential damage to, businesses which are already established and which in many cases have been operating for many years. These businesses would suddenly be thrown into jeopardy, if not thrown out of existence.

While we are now debating particular amendments, I should say that there is nothing about the previous two amendments that we could object to, because those two provisions are just definitions, and those definitions are needed because of the clauses that appear later in the legislation. I understand that the minister is in the middle of very sensitive negotiations on the redevelopment of Joondalup hospital. I understand that those negotiations have been going on for a long time. In fact, in my view, they have been going for far too long. The minister is coming to conclusions and negotiating with Ramsay Health Care, I think, is he not?

Mr J.A. McGinty: That’s right.

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Dr K.D. HAMES: Those negotiations are about which services the government will provide as part of that public-private arrangement and which services the private hospital will provide. I understand that the minister is trying to squeeze out of Ramsay Health Care as much as he can in terms of making Ramsay Health Care put in significant dollars to build those private facilities in conjunction with the public facilities, and in fact give up part of its hospital for public facilities. I understand that the minister needs to do that and to have those negotiations. However, Ramsay has obviously gone to the minister and said that it is willing to do a bit of a rollover on certain issues that the minister is pushing it on, provided he changes the legislation and gives Ramsay the ability to run the private pharmacy.

Mr J.A. McGinty: I can assure you that that is not the case. The two are totally unrelated.

Dr K.D. HAMES: Therefore, Ramsay just said that it wants to have a pharmacy. Does the minister know what the turnover of the pharmacy there is per year?

Mr J.A. McGinty: No, I don't.

Dr K.D. HAMES: It is large.

Mr J.A. McGinty: I should imagine it would be. It would be like a public hospital pharmacy.

Dr K.D. HAMES: I do not want to state the exact figure for fear of getting it wrong, but I understand it is very large. Does the member for Ballajura know what it is?

Mr J.B. D'Orazio interjected.

Dr K.D. HAMES: What is that?

Mr J.B. D'Orazio: Millions.

Dr K.D. HAMES: Tens of millions?

Mr J.B. D'Orazio: It would be less than \$10 million.

Dr K.D. HAMES: It would be close to \$10 million just for the goodwill, let alone the turnover. Obviously, that is why Ramsay wants to get its hands on it. However, the minister must remember that a pharmacy business is already there, working and operating in good faith. We could look at the other hospitals in this state. I know that Mercy Hospital has a pharmacy that has been there for some time. I do not know for how long the pharmacy's lease is. I think it has four or five years to go. The Hollywood Private Hospital pharmacy has been operating for many years, and it has one year left on its lease. Under what the minister is planning to do in this legislation, those hospitals will just take over those pharmacies because they are good, up-and-running businesses. It will be just money for jam for them. They will get a pharmacist, put him in, and suddenly they will have all that turnover and all that revenue. Therefore, all those businesses that have been acting in good faith for all these years will suddenly be out on their ears because of this provision that the minister wants to bring in that will allow those pharmacies to be taken over by those private hospitals.

I do not think it is fair or reasonable that the minister should do that. It is not fair or reasonable that he should put those people who have been working for so long in those businesses at risk for nothing. Why? It is because a hospital has asked the minister. The minister said that it is not part of the negotiations and that Ramsay has not said that it will roll over on issues. However, why else would the minister do it? Why would he want to do that when there are perfectly adequate functioning pharmacy systems within those private hospitals now?

Dr G.G. JACOBS: I rise so that the member for Dawesville can continue his remarks.

Dr K.D. HAMES: This issue of taking away those pharmacies, for no adequate reason that I can see, has a large number of dollars attached to it. It also gets back to who owns pharmacies. We have been through the issue of who can own a pharmacy practice and who can own a medical practice. The member for Ballajura could own my medical practice, but if he were still a practising pharmacist, I could not have a share in his pharmacy business, even though we are directly opposite. That was set out by the competition watchdog. The competition watchdog said that a pharmacist is the only possible owner of a pharmacy, and he is allowed to own only four pharmacies. In addition, corporate bodies cannot get into the pharmacy business in the same way as they can get into the medical business. However, this turns all that on its head. Ramsay Health, which is a major corporate body that owns health developments in this state, will suddenly be allowed to own a pharmacy, and suddenly it will be allowed to own up to four pharmacies, and all those other corporate structures will be allowed to own pharmacies.

Mr J.B. D'Orazio interjected.

Dr K.D. HAMES: Therefore, they can have more than four; there we go. What is to stop these large corporate bodies buying little hospitals so that they can have another pharmacy, setting up new hospitals so that they can

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have a pharmacy, or buying country private hospitals so that they can have a pharmacy? What will stop them from suddenly having an inlet? We have seen that happen in corporate practice in other areas. We had that worry about Woolies and Coles; that is, big corporate bodies taking over other companies so that they can get access. Coles and Woolies are buying hotels everywhere so that they can get the liquor outlets. What is to stop Coles and Woolies buying private hospitals so that they can get a pharmacy business?

Mr J.B. D'Orazio: It's amazing. You've changed your tune.

Dr K.D. HAMES: It is. It was the member for Ballajura's words that convinced me. In the second reading debate, he said that it was okay. He said that as long as there were transition arrangements, so that people were not kicked out without some time to get their houses in order, it was all right. I do not want them to be kicked out at all. I do not want them to lose their business within the pharmacy, because they have that in good faith, and they have a pharmacist running the business within the hospital. I believe that system works very well. I do not believe the system will work well when corporate structures are allowed to suddenly get their hands on and start running pharmacy businesses. The legislation says that the pharmacy is allowed to provide medication only for inpatients. Nevertheless, the goodwill is worth \$10 million. I think someone made the point the other day - it might have been the member for Ballajura - that, under the pharmaceutical licence, if someone comes in off the street with a legitimate prescription supplied by the commonwealth, a pharmacist is obliged to fill that prescription. I do not know whether that is true. Maybe it is not under the clause that says that a pharmacy can provide medication only to inpatients. However, I would like the minister to comment on that when he responds. The opposition is strongly opposed to any clause relating to bringing in a private pharmacy, and we will divide on every single provision in which that appears in the legislation.

Dr G.G. JACOBS: I believe that the minister has got himself into difficulty with this bill because, as I said in my second reading contribution, this bill is inconsistent with all the other bills we have debated in this place regarding health-related professionals; that is, physiotherapists, osteopaths and podiatrists, all the way through to even medical practitioners in previous times. As the member for Dawesville has said, the inconsistency is that a medical practice can be sold to someone who is not a doctor, but under this bill the principle of pharmacist-only ownership of pharmacies will remain. That is what the minister said in his second reading speech. Everywhere else in the state, the controlling interest in pharmacies must be owned by pharmacists. Something that really escapes me is that, in order to avoid large-scale monopolies the maximum number of pharmacies that can be owned has been increased from two to four. If anybody can explain to me how that prevents large-scale monopolies, that would be great.

The issue now is that exceptions are being made in the form of prescribed private hospitals and preserved companies, allowing those institutions to run pharmacies, but they are not pharmacists. We have this great inconsistency in that we need to make exceptions for these. As the minister said in his second reading speech, under this bill the principle of pharmacist-only ownership of pharmacies will remain, with some limited exceptions, and these are them. This is a rule for all of Western Australia. All the pharmacist organisations, unlike any other groups, have retained the pharmacist-owned concept in the pharmacy industry. Now there is a problem with those pharmacies within prescribed private hospitals and preserved companies. All this has its origins in the inconsistency that has existed right from the start. Right from the start, there has been the issue of pharmacist-only ownership, and now we must make exceptions.

The member for Dawesville asked whether that was equitable or fair to those pharmacist services that have been contracted in these places and in these hospitals. Is it fair to devalue their business overnight? The businesses are being devalued overnight by allowing these provisions. I do not have any particular brief against it, other than that it is inconsistent, and we have devalued those pharmacies and contractors who already have businesses within those settings. I do not think it is fair, and I ask the minister to try to explain it to the house. It is an inconsistency that has been created right from the start, and now the minister is making exceptions for these settings. That to us is inequitable and, as the member for Dawesville said, we will not support it.

Mr J.A. MCGINTY: I take this opportunity to respond to some of the points that have been raised by members opposite. Firstly, the policy reason that underpins this amendment is that it enables a private hospital to own and operate its own pharmacy department, and not have to contract with a community pharmacy for pharmaceuticals. As the member for Dawesville has indicated, at first blush it seems like an eminently reasonable proposition. In the same way that a government hospital has its pharmacy department, the private hospital should be able to do the same. It enables parity with public hospitals to the extent that they do not have to contract with the community pharmacy for pharmaceuticals. It would treat a private hospital in the same way as pharmacists and non-pharmacists who are allowed under the bill to own pharmacy businesses.

The important issue here is that this proposal will have no impact on patients and there will be no change in the delivery of medicines to patients. It meets the operational culture of some private hospitals that wish to

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minimise the contracting out of hospital services. It is fair enough to be able to say to a hospital that if it has a particular operational culture, philosophy or business approach and wishes to provide certain services as part of its operations, it should be able to do so, rather than having an artificial constraint placed on it by saying that it cannot provide this traditional aspect of what makes up a hospital, such as a hospital pharmacy department.

It is interesting to look at the other major states on this issue. Each of them allow exactly what is being proposed here, or some variant on it. In New South Wales a private hospital can apply for a licence to conduct a dispensary for the hospital and its patients under private hospital regulations. Victoria allows a private hospital to own and operate a pharmacy department to dispense medicines for patients and staff. Queensland has a slightly different statutory regime from that in Victoria, but the effect is exactly the same - namely, that private hospitals are able to provide pharmacy services to patients. Although I understand that some concerns have been expressed here, the major states allow substantially what is proposed with this amendment. It is eminently reasonable to allow a private hospital to conduct its business without telling it that it cannot have an operating theatre, an imaging department or a pharmacy. It is all the same argument, and therefore I support it.

Private hospitals would meet the same registration and regulatory requirements as other pharmacist owners. Under the current Western Australian Pharmacy Act, a private hospital already provides a pharmacy service, albeit in a grandfathered way. There is nothing to suggest that the services at the St John of God hospital in Subiaco are not provided in a safe, competent and professional manner. This is an enabling provision. A private hospital may choose to continue a contract with a community pharmacy for the supply of its pharmacy services, regardless of whether it is able, through this legislation, to run its own pharmacy.

Two further points need to be made. Firstly, as I understand the existing arrangements for community pharmacies that provide services to private hospitals, it is generally under a lease arrangement within a private hospital. The member for Dawesville has indicated that one such lease comes up for renewal in 12 months' time. They are in a position no different from that of anyone else who has a lease that is due to expire. They would need to be negotiating with the provider for the continuation of that business. Its value would depend very much on the length of the lease.

Mr T.R. Sprigg: The difference is that another business might want to move in and take over the hospital. That is different from renegotiating the lease.

Mr J.A. McGINTY: It is no different from any other leases negotiated on a commercial basis.

The other thing I should say in the few seconds left to me is that the commonwealth government Medicare Australia website spells out the circumstances under which hospital authority approvals to conduct pharmacy businesses are to be undertaken. Section 94 enables a hospital to supply pharmaceutical benefits to patients receiving treatment in or at the hospital. I have run out of time, but I think I have made the point I wanted to make.

Mr J.B. D'ORAZIO: I am glad I received the call immediately after the minister, because I must correct a couple of things he said. First of all, what is the difference between pharmacists competing in the commercial sense? Centro Galleria or Coles Myer do not have the option of opening pharmacies themselves. Ramsay Medical group, which runs the hospital, would have the option of opening one itself. It is a helluva commercial difference. In relation to this service being the same, one of the arguments being used by the community against having people other than pharmacists owning pharmacies is the fact that we want to break the nexus between the prescriber and the person dispensing. The private hospital situation is profit driven. It is not about providing the best service. Sure, that is part of the equation. However, those private hospital pharmacies are profit driven. Therefore, they will use the cheapest drugs possible to ensure that they optimise their profit margins. They will do deals with the drug companies. I made the comment when we were talking about doctors that the drug companies talk to the doctors and take them on fishing trips. I can tell members, as a pharmacist, that for the next two or three months, all their patients will get is the brands of drug that have been recommended by those companies. A private hospital that owns a pharmacy in a private hospital and is dispensing medicines will try to optimise its returns. I am not saying that the drugs are not scheduled drugs and are not approved. However, the efficacy of some of the generic drugs is not always the same as the efficacy of the other brands. That will be a major problem in the private hospitals.

Dr G.G. Jacobs: Pharmacists have to dispense what is written on the script.

Mr J.B. D'ORAZIO: If the hospital owns the pharmacy, the prescribing will be in accordance with the directions provided.

The minister made the comment that these pharmacies are just fly by night and can compete on the open market with their lease. Some of the people who have gone into private hospital pharmacies have put their souls into those operations. They have put their life savings into those pharmacies. I have been in the pharmacy industry

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for 30 years. I did not realise the scope and size of some of these operations. I spoke to a person the other day who employs 50 staff in his pharmacy. They have put in special computer systems so that they can work with the hospital. They have spent squillions of dollars to ensure that they operate according to best practice. Now, at the stroke of a pen, businesses that are worth in one case millions of dollars, and I am sure in most cases many hundreds of thousands of dollars, will be wiped out overnight. No-one will buy a business if at the end of eight or nine years the hospital will have the right to open a business in direct competition. Those people will lose their goodwill and their life savings overnight, at the stroke of a pen. What are we trying to do here? Are we trying to give corporate organisations a foot in the door to own pharmacies? I have looked at the definition of "pharmacy" in the bill. Even without going into the bill in great detail, I am sure there are many loopholes in the bill. If we were lawyers, I am sure we could find a way of getting around those loopholes. The minister used the argument that this is already being done at St John of God, Subiaco, so what is the difference? We could extend it to St John of God out the member's way -

Mr T.R. Sprigg: Murdoch. You should come south of the river some time!

Mr J.B. D'ORAZIO: I do not even know where south of the river is! We could then extend it to Joondalup. The next argument is that because St John of God, Subiaco is already delivering this service, and no-one is bitching about it, we should make it open slather for everyone. This is the foot in the door. As I said during the second reading debate, people are trying to corporatise the pharmacy industry. There is an agreement between the federal government and the states to stop that. The minister now has the opportunity to stop that. It is not a good option for the community that is receiving the service. It is different from the corporatisation of doctors. As I said also during the second reading debate, patients who visit a doctor do not get a product stuck in their mouths. Doctors are providing a service. Pharmacists are providing a product. However, if both those powers are given to the same individual, because the same corporatised entity owns the hospital, it will create a major problem. That is quite apart from the fact that it will destroy not only the retirement nest eggs but the lives of people who have dedicated their careers to hospital pharmacies. Hospital pharmacies are different from retail pharmacies. I would not go into a hospital pharmacy, because it would drive me nuts. Those people who have gone into that have made a lifelong commitment to work in hospitals. They are a special breed of people. We should not do this to them.

Mr T.R. SPRIGG: I wish to support my colleagues who have spoken on this bill. I particularly support them on behalf of Maher MacKenzie, which operates a pharmacy service at St John of God Hospital, Murdoch. I have been a customer of that pharmacy at various times. It is doing a fine job. I make the observation that this is yet another example of how this government just loves to get its boots into small business. That has been proved many times. Maher MacKenzie makes the point, in its correspondence to me, that there has been no consultation on this bill whatsoever. The minister may say that he has consulted the Pharmaceutical Council and the Pharmacy Guild. However, he has not consulted the people who will be directly affected by this bill. The minister should canvass the opinions of these small business people who, as the member for Ballajura has mentioned, have put their life savings into a business and have been providing a terrific service. However, these people will virtually be put out of business at the stroke of a pen. That is not morally correct.

Maher MacKenzie also made some comments about the independence that is required in dispensing. The member for Ballajura touched on that as well. Maher MacKenzie refers to the Wilkinson report, titled "National Competition Policy Review of Pharmacy, Final report of the Review, February 2000", which states -

It may not be desirable, for example, to have a medical practitioner as a shareholder, partner and/or director of a pharmacy business if it is possible that that person, as a prescriber of medicines, effectively can control the dispensing activities of that business.

That certainly sums up the independence that is required in dispensing. The member for Roe spoke about that as well. In all walks of life, the number one thing that the corporate owners of businesses focus on is, of course, profit and the bottom line. They are forced to do that by their shareholders and owners and so on. Maher MacKenzie makes the point that independence in dispensing will go out the window. My daughter happens to be a pharmacist. Good practice in pharmacy will also go out the window.

The minister made the point that this applies in other jurisdictions. I also take issue with that on behalf of Maher MacKenzie, which advises as follows -

- In NSW pharmacies in private hospitals must comply with the provisions of the current Act (Pharmacy Act 1964) including the terms relating to ownership, pecuniary interest and registration of premises. The new Act (Pharmacy Practice Act 2006) will continue to treat pharmacies located in private hospitals in the same manner as other pharmacies.

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- In the ACT, Tasmania, SA and the NT private hospital pharmacies must comply with the provisions of the relevant pharmacy Acts ie that pharmacies must be owned and operated by registered pharmacists.
- In Queensland private hospitals may own and operate pharmacies essentially by way of a loophole in the Pharmacy legislation. It does not appear to have been the intention of the legislation to specifically allow this, with the exception of one pre-existing hospital operator.

Dr G.G. Jacobs: That is putting a spin on it.

Mr T.R. SPRIGG: That is certainly putting a spin on it. It continues -

- The legislation in Victoria allows hospital pharmacies to be able to service patients and staff at the hospital only.

The minister may have managed to get that one right. It is unfair, as the member for Ballajura has mentioned, to tell pharmacy companies such as Maher MacKenzie, which is providing a service at St John of God, Murdoch, that within a period of time, virtually at the stroke of a pen, they will be put out of business. I thank Maher MacKenzie for giving me this information. The minister should withdraw this amendment.

Mr T.K. WALDRON: Although the Nationals support this bill, we cannot support this amendment. I will put our position. Many of the reasons for our position have been well put by other members. This amendment is of concern, because it will allow private hospitals to own their own pharmacies. That is contrary to existing Western Australian legislation. From my research, it is also contrary to the legislation in most other states, excluding Victoria. In Queensland, as I understand it, there is a loophole in the legislation. There is no doubt that this legislation will devalue some current pharmaceutical businesses that have invested a lot of money and employ a lot of people. No doubt it will open the door to corporate ownership in an industry that I believe is currently well regulated and independent in the prescribing and dispensing of drugs.

The problem of the lack of consultation has been raised with me. From what I have been told, there has been a lack of consultation. Although it is difficult for me to confirm that, having heard the comments of other members, I think my information is fairly accurate. There is no doubt that this legislation is a foot in the door for corporate ownership. The small businesses in this area should be supported for what they have done. I am not sure why this amendment has been proposed. I do not think it is fair. I do not think it is needed. Above all, I do not think this legislation will improve patient care. If it was going to improve patient care, I could understand it and I would look at it differently. We will definitely oppose the amendments.

Dr K.D. HAMES: I want to take up one issue that the minister spoke about. He tried to compare what happens in a public hospital with what happens in a private hospital. They are totally different. The pharmacy system run by a public hospital is not driven by profit; in fact, public hospitals do not make profits from the provision of pharmaceutical products. In general, when patients at a public hospital are supplied with medications, it is done for only the limited time that they are in hospital. I know that large supplies of medications used to be given to people by Royal Perth Hospital, and off they would go. That cost the state government a huge amount of money, so it restricted the amount of medication that patients were given so that once they left hospital, they would have to go to a pharmacist to get that medication.

Mr J.B. D'Orazio: It goes further than that. The medicines dispensed at public hospitals are paid for by the state, and the medicines dispensed at private hospitals under the national health scheme are paid for by the feds.

Dr K.D. HAMES: Yes, that is exactly right. I have already made the point that the state pays for the medications supplied at public hospitals. However, the point is that they are not making a profit; they are not selling those medications to patients and making a profit. There is no incentive for anyone within the public hospital system to give medication to a patient; in fact, there is a disincentive to do so.

The totally opposite system applies in a private hospital that is run by a corporate body. As the member for Ballajura said, Ramsay Health Care, which runs a private hospital system, is interested in making a profit through its health system. It is also interested in making a profit through the pharmacy system. It has a direct conflict of interest. The minister said earlier that doctors should not be allowed to own pharmacies because they write prescriptions and the doctors might feel a need to write more prescriptions to get more money out of the pharmacy. The doctors working in the private hospital system are working for a private corporate body and it would be in the interests of the corporate body to make sure that the doctors prescribed medications, particularly those for which they might have done a deal with pharmaceutical providers to supply at a cheaper rate. There is a total conflict of interest. The minister should not put in place a system that allows that conflict to be perpetuated.

Mr Jim McGinty; Mr John D'Orazio; Mr Trevor Sprigg; Mr Terry Waldron; Dr Graham Jacobs; Acting Speaker;
Dr Kim Hames; Deputy Speaker

The minister also spoke about leases and said that when people lose their lease, that is bad luck because they will lose the business. This is a regulated industry. The taxi industry is a good example of a regulated industry. The government would never say to taxi operators that it is bad luck when their leases expire on the taxis, and they are often worth \$100 000. It would put in place a compensation package for the deregulation of the industry. The Minister for Health is deregulating the pharmaceutical industry in private hospitals. If the minister does that and takes away a substantial amount of investment and the goodwill of pharmacies, he should compensate those businesses that he has changed the rules on. If someone had paid a large amount of money for a pharmacy with a four-year lease two or three years ago, the goodwill would no longer be there at the end of that period. The person would not get back any money for paying a substantial amount for the goodwill in a four-year lease; it would be impossible. What the minister is doing in a range of areas is totally unfair, and he should have a serious second look at what he is proposing. If we in this house cannot prevent the minister from doing this, we will work very hard to do so in the other place.

Mr J.B. D'ORAZIO: I will continue with my comments on this issue. The minister made the comment that if a person owns a private pharmacy and his lease renewal comes up, he can expect competition. There is a difference in that the pharmacies that operate in private hospitals have a totally different system from that of a normal pharmacy in a shopping centre. The capital outlay for, and the various operations that are set up in, those private pharmacies are totally different. It is very difficult for another pharmacy to compete against them. Pharmacies that are owned by hospitals have the infrastructure at their fingertips. Most of the pharmacies in private hospitals have not only a lease, but also a service agreement. I have said that a situation could arise in which a pharmacy could operate in a hospital in direct competition with a private pharmacy if there were no service agreement. Once this legislation is passed, a person could have a 10-year lease on a pharmacy, but, unless a service agreement was in place, a hospital could open a pharmacy and operate in direct competition. I am not sure whether all the private operators in hospitals have service agreements. Those that have service agreements have protection because the service agreement provides that they will dispense all the prescriptions listed in that agreement.

Dr G.G. Jacobs: They had better get one quickly, then.

Mr J.B. D'ORAZIO: Obviously, they will not now, because who would give them a service agreement?

I also have a concern with the definition in the amendment. The definition of "prescribed private hospital" states -

"prescribed private hospital" means a private hospital, other than a day hospital facility, -

I am glad that that loophole will be closed -

nursing home or nursing post, prescribed, or of a type prescribed, by the regulations;

Again, I am not sure what constitutes a nursing home. An example was given of a nursing home in Albany that is adjacent to a hospital. If it were a private hospital, would that nursing home qualify? Would all the people in the nursing home be treated as inpatients and have their medications supplied through the pharmacy that is owned by the hospital? I would have a problem if that were the case, because that would seem to defeat the whole purpose of the legislation. People who go into a nursing home are not inpatients. The minister is specifically ruling that out. The definition needs to be prescribed, and I cannot see in the bill a definition of "nursing home" or, for that matter, "nursing post". I note that the amendment provides that such a definition will be prescribed by the regulations. Does that mean that we will have to wait until the regulations are drawn up before we know how that is defined, or will the minister insert a definition of "nursing home"? Will a C-class hospital qualify as a nursing home or as a hospital? What are the different classifications? Will the 12-bed hospital in Corrigin qualify as a hospital? How many patients and what facilities would a hospital need to have to fall under this legislation? Where will we allow the licence to go? These are questions that I think need to be answered. The people who are involved in these operations feel quite nervous. However, in some cases the hospital provision could be quite helpful, because the private 12-bed hospitals in some country towns could provide pharmacy services. It might be of benefit. I am not sure whether that has been thought of. However, I would like to see the specific definitions before I agree to this clause.

The member for Dawesville made a comment when I spoke about a transition period. The only reason I spoke about a transition period was that I was told that this clause was not negotiable and would be included. The opposition did not seem to have too much interest in the cause, and I was the only person who raised the issue. I had hoped to get a transition period for those people whose business would be wiped out overnight. A practising pharmacist who has worked all his life and has all his money tied up in his business would be rather annoyed at this legislation and would be screaming and yelling and carrying on. We need to be fair. The government cannot just take people's livelihoods from them without giving them recourse to satisfaction in any way.

Extract from Hansard
[ASSEMBLY - Tuesday, 3 April 2007]
p1094b-1118a

Mr Jim McGinty; Mr John D'Orazio; Mr Trevor Sprigg; Mr Terry Waldron; Dr Graham Jacobs; Acting Speaker;
Dr Kim Hames; Deputy Speaker

Amendments put and a division taken with the following result -

Ayes (24)

Mr J.J.M. Bowler	Mr R.C. Kucera	Mrs C.A. Martin	Mr T.G. Stephens
Dr J.M. Edwards	Mr F.M. Logan	Mr P. Papalia	Mr D.A. Templeman
Mrs D.J. Guise	Ms A.J.G. MacTiernan	Mr J.R. Quigley	Mr P.B. Watson
Mrs J. Hughes	Mr J.A. McGinty	Ms M.M. Quirk	Mr M.P. Whitely
Mr J.N. Hyde	Mr M. McGowan	Ms J.A. Radisich	Mr B.S. Wyatt
Mr J.C. Kobelke	Mr A.D. McRae	Mrs M.H. Roberts	Mr S.R. Hill (<i>Teller</i>)

Noes (20)

Mr C.J. Barnett	Mr M.J. Cowper	Mr R.F. Johnson	Mr G. Snook
Mr D.F. Barron-Sullivan	Mr J.B. D'Orazio	Mr J.E. McGrath	Dr S.C. Thomas
Mr T.R. Buswell	Mr B.J. Grylls	Mr P.D. Omodei	Mr T.K. Waldron
Mr G.M. Castrilli	Dr K.D. Hames	Mr D.T. Redman	Ms S.E. Walker
Dr E. Constable	Dr G.G. Jacobs	Mr A.J. Simpson	Mr T.R. Sprigg (<i>Teller</i>)

Pairs

Ms S.M. McHale	Ms K. Hodson-Thomas
Mr P.W. Andrews	Mr G.A. Woodhams
Mr M.P. Murray	Mr M.W. Trenorden
Mr E.S. Ripper	Mr J.H.D. Day
Mr A.J. Carpenter	Mr M.J. Birney

Independent Pair

Dr J.M. Woollard

Amendments thus passed.

Mr J.A. McGINTY: I move -

Page 5, after line 17 - To insert -

and has a meaning affected by subsection (2);

This amendment is related to not the next but the following amendment, which concerns the definition of “proprietary interest”. The amendment has been requested by the Pharmacy Guild. The definition has been amended to include a provision to prevent non-pharmacists from having a direct or indirect pecuniary interest in a pharmacy. The provision is consistent with legislation in New South Wales, Queensland, South Australia and Victoria and provisions in the current act. The purpose of the amendment is to ensure that the parties cannot exert financial pressure on a pharmacy business to operate in a manner that may not be in the best interests of health care or patients.

Amendment put and passed.

Mr J.A. McGINTY: I move -

Page 5, line 31 - To insert after “drugs” -

but does not include to use, supply or sell a poison under the *Poisons Act 1964* section 23(2)(b), (c) or (e)

This amendment relates directly to the matter raised by the member for Dawesville during the second reading debate. Under section 23 of the Poisons Act a medical practitioner is authorised, among other things, to sell medicines in the lawful practise of his profession. The Pharmacists Bill is not intended to affect the authorisation. It is intended that the relevant provisions of the bill and the Poisons Act should interact in a complementary manner. It is clear from the Poisons Act that authorised health professionals can use medicines only in the lawful practise of their profession and therefore there should be no potential breaches of the bill by such a practitioner. However, to leave no doubt that such a practitioner could be in breach of the bill an amendment is proposed to the definition of “the practice of pharmacy” to ensure that authorised health practitioners under the Poisons Act can continue to use, supply or sell in accordance with the Poisons Act. That places beyond doubt the issue that was raised by the member for Dawesville. I thank him for raising that point during the course of the debate.

Amendment put and passed.

Extract from *Hansard*
[ASSEMBLY - Tuesday, 3 April 2007]
p1094b-1118a

Mr Jim McGinty; Mr John D'Orazio; Mr Trevor Sprigg; Mr Terry Waldron; Dr Graham Jacobs; Acting Speaker;
Dr Kim Hames; Deputy Speaker

Mr J.A. McGINTY: I move -

Page 6, after line 8 - To insert -

- (2) Without limiting the generality of the expression, a person will be taken to hold a proprietary interest in a pharmacy business if -
- (a) the person is a party to an arrangement of a kind prescribed by the regulations; or
 - (b) the person, in the course of carrying on a business, provides a benefit to another for which the person is entitled to receive the profits or income, or a share in the profits or income, of a pharmacy business; or
 - (c) the person has, under a franchise or other commercial arrangement, a right to receive consideration that varies according to the profits or income of a pharmacy business.

This amendment relates to the amendment before the last one. I have already addressed the reasons for it. I do not think it is necessary to repeat what I said on that occasion.

Amendment put and passed.

Clause, as amended, put and a division taken with the following result -

Ayes (24)

Mr J.J.M. Bowler	Mr R.C. Kucera	Mr C.A. Martin	Mr T.G. Stephens
Dr J.M. Edwards	Mr F.M. Logan	Mr P. Papalia	Mr D.A. Templeman
Mrs D.J. Guise	Ms A.J.G. MacTiernan	Mr J.R. Quigley	Mr P.B. Watson
Mrs J. Hughes	Mr J.A. McGinty	Ms M.M. Quirk	Mr M.P. Whitely
Mr J.N. Hyde	Mr M. McGowan	Ms J.A. Radisich	Mr B.S. Wyatt
Mr J.C. Kobelke	Mr A.D. McRae	Mrs M.H. Roberts	Mr S.R. Hill (<i>Teller</i>)

Noes (20)

Mr C.J. Barnett	Mr M.J. Cowper	Mr R.F. Johnson	Mr G. Snook
Mr D.F. Barron-Sullivan	Mr J.B. D'Orazio	Mr J.E. McGrath	Dr S.C. Thomas
Mr T.R. Buswell	Mr B.J. Grylls	Mr P.D. Omodei	Mr T.K. Waldron
Mr G.M. Castrilli	Dr K.D. Hames	Mr D.T. Redman	Ms S.E. Walker
Dr E. Constable	Dr G.G. Jacobs	Mr A.J. Simpson	Mr T.R. Sprigg (<i>Teller</i>)

Pairs

Mr A.J. Carpenter	Mr M.J. Birney
Ms S.M. McHale	Ms K. Hodson-Thomas
Mr P.W. Andrews	Mr G.A. Woodhams
Mr M.P. Murray	Mr M.W. Trenorden
Mr E.S. Ripper	Mr J.H.D. Day

Independent Pair

Dr J.M. Woollard

Clause, as amended, thus passed.

Clause 4 put and passed.

Clause 5: Membership of Board -

Dr G.G. JACOBS: On the issue of the membership of the board, will the minister tell me the situation as it stands today?

Mr J.A. McGINTY: In response to the member for Roe, there are currently seven members of the board, who are elected rather than appointed. Therefore, this clause will be quite a significant change; nonetheless, it is broadly consistent with each of the other health practitioner bills that have passed through the Parliament. The membership of the board has also been broadened to include legal and consumer representatives, which it did not include in the past.

Dr G.G. Jacobs: But consistent with the other legislation?

Mr Jim McGinty; Mr John D'Orazio; Mr Trevor Sprigg; Mr Terry Waldron; Dr Graham Jacobs; Acting Speaker;
Dr Kim Hames; Deputy Speaker

Mr J.A. McGINTY: Yes. There is a variance of members. As in the bill we were dealing with previously, the Medical Practitioners Bill, for which there are 12 members of the Medical Board, this one has eight but also has consumer and legal representatives, who are covered by the provisions in this clause.

Dr G.G. Jacobs: But are these actually appointed by you as the minister?

Mr J.A. McGINTY: Yes.

Dr G.G. Jacobs: Whereas previously they were elected by the profession.

Mr J.A. McGINTY: Yes, by the profession; that is right.

Clause put and passed.

Clauses 6 to 27 put and passed.

Clause 28: Registration as a non-practising pharmacist -

Mr J.A. McGINTY: I seek your guidance, Mr Acting Speaker (Mr A.P. O'Gorman). There are two amendments that both deal with the same issue; that is, amendments to clauses 28 and 32. Do they need to be taken separately?

The ACTING SPEAKER: They do have to be considered separately because they are separated by other clauses.

Mr J.A. McGINTY: I move -

Page 21, lines 28 to 31 - To delete the lines.

Perhaps I can address this amendment and the following amendment together. They relate to the registration of a non-practising registrant. The amendment was requested by the Pharmaceutical Council of Western Australia. The purpose of the amendment is to make the renewal date for non-practising registrants consistent with the renewal date for general registration. Clause 32(6) will be removed as a result of this amendment because it is no longer necessary. This is because as the renewal date for non-practising registrants and general registrants will be the same, the same clause for renewal - that is, clause 32(1) - will apply to both registration types. It is therefore not necessary to specify that registration may be renewed only under the same section as the registration was granted.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 29 to 31 put and passed.

Clause 32: Renewal of registration -

Mr J.A. McGINTY: I move -

Page 23, lines 28 and 29 - To delete the lines.

I move the amendment for the reasons I explained for the amendment to clause 28.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 33 put and passed.

Clause 34: Definition -

Mr J.A. McGINTY: I move -

Page 24, lines 26 to 29 - To delete the lines and substitute -

“supermarket” means a retail store or market the primary business of which is the sale of a range of food, beverages, groceries and other domestic goods.

This is an amendment to the definition of “supermarket”. It was requested by the Pharmacy Guild of Australia and the Pharmaceutical Council of Western Australia. Clause 34 defines a supermarket. The amendment to clause 39 provides that the registration board must refuse to grant an application for the registration of pharmacy premises if the board is satisfied that the premises will be located in a supermarket. This is consistent with the current position under the Pharmacy Act 1964 and the Australian Community Pharmacy Agreement location

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Dr Kim Hames; Deputy Speaker

rules, which provide that a pharmacy cannot be approved if it is publicly accessible from a supermarket. It is also consistent with legislation in New South Wales, South Australia and Tasmania.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 35 put and passed.

Clause 36: Who may apply for registration -

Mr J.A. McGINTY: I move -

Page 25, line 17 - To insert after "37" -

(1)

This is to make sure the numbering is consistent throughout.

Dr G.G. JACOBS: The problem with that is that when we get to clause 37, there is no subclause (1), so the minister will have to change that as well.

Mr J.A. McGINTY: There is a provision under standing orders for the Clerk to renumber a clause without the need for a formal amendment. The Clerk will delete the heading in clause 37 at page 25, line 18 and insert instead "Preserved company and prescribed private hospitals to carry on pharmacy business only in certain circumstances". In clause 37, page 25, line 19, the designation "(1)" will be inserted. The Clerk is nodding that that is correct. Certain minor drafting matters like that are attended to by the Clerk. It was necessary to formally move this amendment but the rest will flow consequentially.

Dr G.G. JACOBS: Someone has tried to explain this to me very quickly but I am not across it. Further down on the notice paper there is reference to clause 37(2). Where does that fit in in relation to a prescribed hospital?

Mr J.A. McGINTY: Currently in the bill, clause 37 is one clause. Under an amendment coming up after two further amendments, we will seek to insert subclause (2) in clause 37. That therefore requires the existing clause be given a number to make sense of (2).

Mr J.B. D'ORAZIO: Are we on clause 36 or clause 37?

The ACTING SPEAKER (Mr A.P. O'Gorman): We are on clause 36 and we are dealing with the amendment on page 15 of the notice paper.

Mr J.A. McGINTY: Clause 36 contains a reference to clause 37. Clause 37 will be amended by inserting a new subclause (2). That means that the existing clause will need to be referred to as clause 37(1). In clause 36, where it refers to clause 37, it now needs to refer to clause 37(1). Consequently we are seeking to insert "(1)" in clause 36.

Amendment put and passed.

Mr J.A. McGINTY: I move -

Page 25, after line 17 - To insert -

(c) subject to section 37(2), a prescribed private hospital.

This clause provides for who may apply for registration of premises as a pharmacy. The amendment includes a private hospital as a person that may apply for registration, subject to the pharmacy business being located at the premises approved under the Hospitals and Health Services Act 1927.

Dr K.D. HAMES: As previously indicated, we strongly oppose the concept of new private hospitals, other than the one existing private hospital, having access to running pharmacies within the private hospital. We will oppose this every step of the way.

Mr J.B. D'ORAZIO: There are two problems with this. Clause 37 applies to pharmacies registered by preserved companies. We are now proposing to add something to the clause that has nothing to do with a preserved company.

Mr J.A. McGinty: We are still on clause 36.

Mr J.B. D'ORAZIO: I apologise. I assumed we had moved on to clause 37.

Amendment put and a division taken with the following result -

Extract from Hansard
[ASSEMBLY - Tuesday, 3 April 2007]
p1094b-1118a

Mr Jim McGinty; Mr John D'Orazio; Mr Trevor Sprigg; Mr Terry Waldron; Dr Graham Jacobs; Acting Speaker;
Dr Kim Hames; Deputy Speaker

Ayes (24)

Mr J.J.M. Bowler
Dr J.M. Edwards
Mrs D.J. Guise
Mrs J. Hughes
Mr J.N. Hyde
Mr J.C. Kobelke

Mr R.C. Kucera
Mr F.M. Logan
Ms A.J.G. MacTiernan
Mr J.A. McGinty
Mr M. McGowan
Mr A.D. McRae

Mrs C.A. Martin
Mr P. Papalia
Mr J.R. Quigley
Ms M.M. Quirk
Ms J.A. Radisich
Mrs M.H. Roberts

Mr T.G. Stephens
Mr D.A. Templeman
Mr P.B. Watson
Mr M.P. Whitely
Mr B.S. Wyatt
Mr S.R. Hill (*Teller*)

Noes (20)

Mr C.J. Barnett
Mr D.F. Barron-Sullivan
Mr T.R. Buswell
Mr G.M. Castrilli
Dr E. Constable

Mr M.J. Cowper
Mr J.B. D'Orazio
Mr B.J. Grylls
Dr K.D. Hames
Dr G.G. Jacobs

Mr R.F. Johnson
Mr J.E. McGrath
Mr P.D. Omodei
Mr D.T. Redman
Mr A.J. Simpson

Mr G. Snook
Dr S.C. Thomas
Mr T.K. Waldron
Ms S.E. Walker
Mr T.R. Sprigg (*Teller*)

Pairs

Ms S.M. McHale
Mr P.W. Andrews
Mr M.P. Murray
Mr A.J. Carpenter
Mr E.S. Ripper

Ms K. Hodson-Thomas
Mr G.A. Woodhams
Mr M.W. Trenorden
Mr M.J. Birney
Mr J.H.D. Day

Independent Pair

Dr J.M. Woollard

Amendment thus passed.

Clause, as amended, put and passed.

The ACTING SPEAKER (Mr A.P. O’Gorman): I remind members and ministers that they are not allowed to pass through the area between the Chair and the table. They must go around the other end of the table or around the back of the Chair. I ask members to remember that in future.

Clause 37: Pharmacy registered by preserved company -

Mr J.A. McGINTY: I move -

Page 25, after line 28 - To insert -

- (2) A prescribed private hospital may not carry on a pharmacy business at any premises other than the premises approved as premises for the hospital under the *Hospitals and Health Services Act 1927* Part IIIA.

This subclause provides that a pharmacy business owned by a private hospital can be located only at the hospital.

Mr J.B. D’ORAZIO: As I said earlier when I spoke on this legislation, the heading of this clause is “Pharmacy registered by preserved company”. It has nothing to do with private pharmacies in private hospitals. Therefore, I suggest that if the minister wants this amendment, he should change the heading of this clause. That is the first point.

Mr J.A. McGinty: Member for Ballajura, again that is something that is done automatically, I understand, by the Clerks. They will delete the heading and insert this as the heading: “Preserved company and prescribed private hospitals to carry on pharmacy business only at certain premises”. I think that covers the point that you raised.

Mr J.B. D’ORAZIO: Yes. Paragraph (b) of clause 37 states -

premises which the Board has approved as being in the immediate vicinity of that place, . . .

That refers to the preserved company, and we understand what the preserved company is. This relates to the operation of the pharmacy at St John of God, Subiaco. If we are to have a clause in the legislation for that, which means that a pharmacy can operate in the near vicinity, why would that provision not be extended to any other pharmacy in a private hospital, because the principle is the same? I am not suggesting that the minister should do it, but I have an objection to paragraph (b), because I do not believe that that should be in the legislation either. In other words, if the rule is that a private pharmacy in a private hospital can operate only in the hospital, then paragraph (b), in my opinion, is superfluous when we are talking about the preserved company,

Mr Jim McGinty; Mr John D'Orazio; Mr Trevor Sprigg; Mr Terry Waldron; Dr Graham Jacobs; Acting Speaker;
Dr Kim Hames; Deputy Speaker

which is St John of God Health Care at Subiaco. If it is good enough for the private pharmacy owned by Joondalup hospital, the private pharmacy owned by Hollywood Private Hospital or the private pharmacy owned by Mercy Hospital, why are we making an exception under this clause and adding the words "in the immediate vicinity" for the preserved company? I believe that the minister should delete paragraph (b).

Mr J.A. McGINTY: I will endeavour to address the point raised by the member for Ballajura. The amendment that we are debating at the moment, which is to insert a provision in relation to a private hospital, is that the pharmacy business can be carried on only at premises that are approved as premises for a hospital under the Hospitals and Health Services Act. We are trying to make sure that there is harmony between the two pieces of legislation in addressing the same place. I do not think there is a problem with that. I understand that the member's point relates to paragraph (b).

Mr J.B. D'Orazio: That applies to the preserved company, which is St John of God Health Care.

Mr J.A. McGINTY: That is right.

Mr J.B. D'Orazio: You are saying that that pharmacy can move and operate near the hospital if that is approved by the board.

Mr J.A. McGINTY: Yes.

Mr J.B. D'Orazio: However, in the next breath you are saying that the pharmacies at Joondalup Private Hospital, Hollywood Private Hospital and Mercy Hospital can't do that; they have to stay in the hospitals. What is the difference?

Mr J.A. McGINTY: Paragraph (b) reflects the existing provisions in the Pharmacy Act. The act makes provision for that preserved company to operate on that basis. We are saying that approval would be given for the same premises as the private hospital. In other words, we are maintaining harmony with the act. We have simply left the St John of God Health Care pharmacy under its current regulatory regime, but any other private hospital pharmacy department needs to be part of the hospital. That is the regime we are proposing.

Mr J.B. D'Orazio: Are you saying that this paragraph exists in the current act?

Mr J.A. McGINTY: Yes. The wording is marginally different, but the thrust is the same.

Mr J.B. D'Orazio: The principal is the same.

Mr J.A. McGINTY: Yes; exactly.

Mr J.B. D'Orazio: So the private pharmacy at St John of God Health Care can move and operate outside the hospital, but that cannot occur for any other private hospital.

Mr J.A. McGINTY: Yes.

Mr J.B. D'Orazio: That is unfair. They should be the same. If the words are from the current act, it supports your argument. If they are not in the act, there is a fairness argument that they should both be the same - they should both be in or both be out.

Mr J.A. McGINTY: I refer to section 36(2)(b), under part V, "Miscellaneous provisions", of the Pharmacy Act 1964, which states -

Every company or friendly society which is at the date of the commencement of this Act carrying on the practice of a pharmaceutical chemist under any Act repealed by this Act, is by force of this paragraph limited to the carrying on of that practice at the place where the practice was carried on at that date; but where the Minister is satisfied, having regard to the circumstances of the case, that sufficient necessity exists for the company or friendly society to vacate that place, that company or friendly society, as the case may be, may carry on that practice at such other place in the immediate vicinity of the place so vacated, as the Minister may, from time to time, approve.

That is the existing provision. We are saying that every private hospital other than St John of God Health Care must conduct its pharmacy in the hospital.

Dr K.D. HAMES: This is obviously inconsistent. I guess the point the member is going to make is that there is one rule for one hospital and a different rule for other hospitals, but frankly I do not care, because we do not support the second concept anyway, and we will continue our practice of strongly opposing any clause that mentions other private hospitals having control over pharmacies, and divide on that each time.

Mr J.B. D'ORAZIO: The member might think it is unimportant, but I will tell him what will happen if this clause is passed. That is why I highlight it. The previous act talks mainly about friendly societies and their private pharmacies operating in main streets, providing services. The danger with the preserved operation at

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[ASSEMBLY - Tuesday, 3 April 2007]
p1094b-1118a

Mr Jim McGinty; Mr John D'Orazio; Mr Trevor Sprigg; Mr Terry Waldron; Dr Graham Jacobs; Acting Speaker;
Dr Kim Hames; Deputy Speaker

St John of God is that it can actually be shifted across the road to compete directly with the pharmacy at the bottom of the medical suites. St John of God hospital already has a facility that no-one else has - a preserved company. It is opportune at this point in time to change the legislation so that all hospital pharmacies that only supply to patients in the hospital operate only in the hospital. If they cannot do that, they should not be allowed to operate.

Mr J.A. McGINTY: I take on board the point made by the member for Ballajura. If he wishes to move to delete the provision in paragraph (b), that would ensure consistency. I cannot see a problem with doing that. That would mean that every private hospital conducting a pharmacy would operate under the same set of rules, including St John of God's pharmacy. Does the member wish to move that?

Mr J.B. D'ORAZIO: I am happy to do so.

Dr K.D. HAMES: The opposition will support this amendment even though it will divide on the total clause once it is amended. We will support the amendment of the member for Ballajura, which will create consistency in the treatment of different hospitals, so that all hospitals are treated the same.

The DEPUTY SPEAKER: In fact, we have a procedural difficulty, because we cannot go backwards. We would need a motion to have the clause recommitted for further consideration at the completion of the bill. The minister needs to formally move that.

Point of Order

Dr K.D. HAMES: You say we have moved on, beyond that paragraph, Madam Deputy Speaker, but as far as I understand, we have not voted on any part of that clause.

The DEPUTY SPEAKER: The amendment has been moved beyond where the member wants to go, that is the point. We need to make sure that going back to before the point at which this amendment was moved is done in reconsideration, after the completion of consideration in detail. The minister needs to note that, so that we can move on and move it at the end.

Debate Resumed

Amendment put and a division taken with the following result -

Ayes (25)

Mr J.J.M. Bowler
Mr J.B. D'Orazio
Dr J.M. Edwards
Mrs J. Hughes
Mr J.N. Hyde
Mr J.C. Kobelke
Mr R.C. Kucera

Mr F.M. Logan
Ms A.J.G. MacTiernan
Mr J.A. McGinty
Mr M. McGowan
Mr A.D. McRae
Mrs C.A. Martin
Mr A.P. O'Gorman

Mr P. Papalia
Mr J.R. Quigley
Ms M.M. Quirk
Ms J.A. Radisich
Mrs M.H. Roberts
Mr T.G. Stephens
Mr D.A. Templeman

Mr P.B. Watson
Mr M.P. Whitely
Mr B.S. Wyatt
Mr S.R. Hill (*Teller*)

Noes (18)

Mr C.J. Barnett
Mr D.F. Barron-Sullivan
Mr T.R. Buswell
Mr G.M. Castrilli
Dr E. Constable

Mr M.J. Cowper
Mr B.J. Grylls
Dr K.D. Hames
Dr G.G. Jacobs
Mr R.F. Johnson

Mr J.E. McGrath
Mr P.D. Omodei
Mr D.T. Redman
Mr A.J. Simpson
Mr G. Snook

Dr S.C. Thomas
Ms S.E. Walker
Mr T.R. Sprigg (*Teller*)

Pairs

Ms S.M. McHale
Mr A.J. Carpenter
Mr E.S. Ripper
Mr P.W. Andrews
Mr M.P. Murray

Ms K. Hodson-Thomas
Mr M.J. Birney
Mr J.H.D. Day
Mr G.A. Woodhams
Mr M.W. Trenorden

Independent Pair

Dr J.M. Woollard

Amendment thus passed.

Clause, as amended, put and passed.

Clause 38 put and passed.

Clause 39: Grounds for refusal -

Extract from *Hansard*
[ASSEMBLY - Tuesday, 3 April 2007]
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Mr Jim McGinty; Mr John D'Orazio; Mr Trevor Sprigg; Mr Terry Waldron; Dr Graham Jacobs; Acting Speaker;
Dr Kim Hames; Deputy Speaker

Mr J.A. McGINTY: I move -

Page 27, after line 24 - To insert -

- (e) the Board is satisfied that the premises are -
 - (i) located wholly or partly within a supermarket; or
 - (ii) capable of being entered from a supermarket; or
 - (iii) capable of being used to gain entry to a supermarket; or

The amendment provides that the Pharmacists Registration Board of Western Australia must refuse to grant an application for the registration of a pharmacy premises if the board is satisfied that the premises will be located within a supermarket.

Amendment put and passed.

Mr J.A. McGINTY: I move -

Page 27, line 25 - To insert after "company" -

or a prescribed private hospital

The effect of the amendment is that the Pharmacists Registration Board of Western Australia must refuse to grant registration for the premises if the location of the pharmacy business is not in a location approved under the Hospital and Health Services Act.

Amendment put and a division taken with the following result -

Ayes (25)

Mr J.J.M. Bowler	Mr F.M. Logan	Mr P. Papalia	Mr P.B. Watson
Mr J.B. D'Orazio	Ms A.J.G. MacTiernan	Mr J.R. Quigley	Mr M.P. Whitely
Dr J.M. Edwards	Mr J.A. McGinty	Ms M.M. Quirk	Mr B.S. Wyatt
Mrs J. Hughes	Mr M. McGowan	Ms J.A. Radisich	Mr S.R. Hill (<i>Teller</i>)
Mr J.N. Hyde	Mr A.D. McRae	Mrs M.H. Roberts	
Mr J.C. Kobelke	Mrs C.A. Martin	Mr T.G. Stephens	
Mr R.C. Kucera	Mr A.P. O'Gorman	Mr D.A. Templeman	

Noes (18)

Mr C.J. Barnett	Mr M.J. Cowper	Mr J.E. McGrath	Dr S.C. Thomas
Mr D.F. Barron-Sullivan	Mr B.J. Grylls	Mr P.D. Omodei	Ms S.E. Walker
Mr T.R. Buswell	Dr K.D. Hames	Mr D.T. Redman	Mr T.R. Sprigg (<i>Teller</i>)
Mr G.M. Castrilli	Dr G.G. Jacobs	Mr A.J. Simpson	
Dr E. Constable	Mr R.F. Johnson	Mr G. Snook	

Pairs

Ms S.M. McHale	Ms K. Hodson-Thomas
Mr A.J. Carpenter	Mr M.J. Birney
Mr E.S. Ripper	Mr J.H.D. Day
Mr M.P. Murray	Mr M.W. Trenorden
Mr P.W. Andrews	Mr G.A. Woodhams

Independent Pair

Dr J.M. Woollard

Amendment thus passed.

Clause, as amended, put and passed.

Clauses 40 and 41 put and passed.

Clause 42: Cancellation and non-renewal of registration -

Mr J.A. McGINTY: I move -

Page 28, line 24 to page 29, line 3 - To delete the lines and substitute -

- (c) a person who owns, or holds a proprietary interest in, the pharmacy business carried on at the premises -

Extract from *Hansard*
[ASSEMBLY - Tuesday, 3 April 2007]
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Mr Jim McGinty; Mr John D'Orazio; Mr Trevor Sprigg; Mr Terry Waldron; Dr Graham Jacobs; Acting Speaker;
Dr Kim Hames; Deputy Speaker

- (i) is not, or has ceased to be, a person who is entitled to own, or hold a proprietary interest in, a pharmacy business under section 58; or
- (ii) is in breach of section 59;
- or
- (d) the person in whose name the premises are registered no longer carries on a pharmacy business at the premises; or
- (e) the Board is satisfied that the premises are -
 - (i) located wholly or partly within a supermarket; or
 - (ii) capable of being entered from a supermarket; or
 - (iii) capable of being used to gain entry to a supermarket;
- or
- (f) where the premises are registered in the name of the preserved company or a prescribed private hospital, the premises are not in compliance with section 37.

The amendment proposes to delete paragraphs (c) and (d) of subclause (1). The replacement subclauses will have the effect of enabling the Pharmacists Registration Board to cancel the registration of premises in the following circumstances: firstly, when the person is not, or has ceased to be, entitled to own a pharmacy business, or when the person exceeds the ownership limit of four pharmacy businesses - as the clause is currently drafted, it applies only to pharmacists and friendly societies, and the subclause has been expanded to ensure that it covers a person who may not be entitled to own a pharmacy business; secondly, when the person in whose name the premises is registered no longer carries on a pharmacy business at the premises; thirdly, where the board is satisfied the premises are located within a supermarket; and fourthly, when the premises of a preserved company or a private hospital are not in compliance with section 37; that is, a preserved company and a private company may operate only from an approved location.

Amendment (deletion of words) put and passed.

Amendment (insertion of words) put and a division taken with the following result -

Ayes (25)

Mr J.J.M. Bowler
Mr J.B. D'Orazio
Dr J.M. Edwards
Mrs J. Hughes
Mr J.N. Hyde
Mr J.C. Kobelke
Mr R.C. Kucera

Mr F.M. Logan
Ms A.J.G. MacTiernan
Mr J.A. McGinty
Mr M. McGowan
Mr A.D. McRae
Mrs C.A. Martin
Mr A.P. O'Gorman

Mr P. Papalia
Mr J.R. Quigley
Ms M.M. Quirk
Ms J.A. Radisich
Mrs M.H. Roberts
Mr T.G. Stephens
Mr D.A. Templeman

Mr P.B. Watson
Mr M.P. Whitely
Mr B.S. Wyatt
Mr S.R. Hill (*Teller*)

Noes (18)

Mr C.J. Barnett
Mr D.F. Barron-Sullivan
Mr T.R. Buswell
Mr G.M. Castrilli
Dr E. Constable

Mr M.J. Cowper
Mr B.J. Grylls
Dr K.D. Hames
Dr G.G. Jacobs
Mr R.F. Johnson

Mr J.E. McGrath
Mr P.D. Omodei
Mr D.T. Redman
Mr A.J. Simpson
Mr G. Snook

Dr S.C. Thomas
Ms S.E. Walker
Mr T.R. Sprigg (*Teller*)

Pairs

Ms S.M. McHale
Mr P.W. Andrews
Mr M.P. Murray
Mr A.J. Carpenter
Mr E.S. Ripper

Ms K. Hodson-Thomas
Mr G.A. Woodhams
Mr M.W. Trenorden
Mr M.J. Birney
Mr J.H.D. Day

Independent Pair

Dr J.M. Woollard

Amendment thus passed.

Clause, as amended, put and passed.

Mr Jim McGinty; Mr John D'Orazio; Mr Trevor Sprigg; Mr Terry Waldron; Dr Graham Jacobs; Acting Speaker;
Dr Kim Hames; Deputy Speaker

Clauses 43 to 48 put and passed.

Clause 49: Removal of name and cancellation of registration of pharmacist in certain circumstances -

Mr J.B. D'ORAZIO: This same situation came up in the Medical Practitioners Bill, in which the period of five years has been changed to three years. There needs to be consistency right around Australia. Will the minister give the same commitment as he did to the Medical Practitioners Board that this will be looked at to make sure it is consistent?

Mr J.A. McGINTY: I am happy to give the same undertaking as I did on the Medical Practitioners Bill. Clause 30 of this bill, which we have already dealt with, provides that the registration of a pharmacist has effect for the period prescribed by the regulations. That is the same provision as that in the Medical Practitioners Bill, which we have just debated. This additional provision at clause 49 does not appear in the Medical Practitioners Bill. It gives the board the express power to cancel the registration of a pharmacist if the board is satisfied that the pharmacist has not practised pharmacy in the preceding three years. The member for Dawesville, having not practised medicine for a number of years because he has been in Parliament, would not automatically be struck off in the same way as would a pharmacist who did not practise for three years.

Mr J.B. D'Orazio: Under the previous act it was five years, because that is where I got the five years from.

Mr J.A. McGINTY: I do not think it was in the previous act.

Mr J.B. D'Orazio: It might have been a draft. I definitely have it on my desk. I do not have it with me, but it was definitely five years.

Mr J.A. McGINTY: I will double-check that. There are two issues. The first is a pharmacist being automatically struck off if he does not practise for a period. If this clause is agreed to, a pharmacist who does not practise for three years will be struck off. That is for good public policy reasons. If a pharmacist did not practise for three years, and with the constant change in the nature of pharmaceuticals, it would be a very different world for him to face. Of course, a pharmacist can apply to be re-registered, but it will not be automatic. That is quite separate from the period for which registration applies. That will be provided for in the regulations, and I am happy to receive, after the passage of this bill, further submissions on whether that should be one, two or three years or longer, and subject to annual renewal. If there is a view from the pharmacy council, the guild and other people that a particular period is appropriate, I am more than happy to make sure that we consider those submissions in making the regulation. However, that relates not to the automatic period that a pharmacist is struck off for if he does not practise pharmacy, but to the period for which registration is applicable.

Mr J.B. D'ORAZIO: The issue, then, is similar to the member for Dawesville's argument about doctors. Does the phrase "has not practised pharmacy" mean practising one day a week or one day a year? The problem is with the definition. For a pharmacist with 30 years' experience, three years is not a long time.

Mr J.A. McGINTY: In response to the member for Ballajura, the board must be satisfied that the pharmacist has not practised any pharmacy in the preceding three years. It is not a question of one day a week. If the pharmacist has practised at all as a pharmacist in that three-year period, he is entitled to maintain his registration. Clause 49 has two parts. First, a pharmacist will be struck off if he has not practised pharmacy at all in the preceding three years and has not maintained current knowledge and skills in the practice of pharmacy at an approved level. The pharmacist needs to do both. I should have pointed out earlier that it might well be that a person has not practised for three years and he also might not have maintained his knowledge in that time. That is an important qualification on it. If a person can satisfy both conditions, he is struck off.

Clause put and passed.

Clauses 50 to 55 put and passed.

New clause 56 -

Mr J.A. McGINTY: I move -

Page 35, after clause 55, line 27 - To insert -

56. Notification of intended change of ownership of, or interests held in, pharmacy business

A person who intends to acquire, or dispose of, ownership of, or a proprietary interest in, a pharmacy business must give the registrar written advice of the intended acquisition or disposal at least 14 days before the acquisition or disposal occurs.

Mr Jim McGinty; Mr John D'Orazio; Mr Trevor Sprigg; Mr Terry Waldron; Dr Graham Jacobs; Acting Speaker;
Dr Kim Hames; Deputy Speaker

Penalty:

- (i) for an individual, a fine of \$5 000;
- (ii) for a body corporate, a fine of \$10 000.

This is a new clause and this provision will assist the Pharmacists Registration Board in fulfilling its role in ensuring compliance with ownership provisions, in particular how many pharmacy businesses a person owns or has an interest in. The reason for that is that the notification provision requires a person who intends to acquire or dispose of an interest in a pharmacy business to notify the board.

New clause put and passed.

Clauses 56 and 57 put and passed.

New clause 58 -

Mr J.A. McGINTY: I move -

Page 37, after clause 57, after line 10 - To insert -

58. Pharmacy business carried on by prescribed private hospital

- (1) In subsection (2) -

“**in-patient**”, in respect of a prescribed private hospital, means a patient who is admitted to the hospital for the purpose of receiving treatment in a bed in the hospital.

- (2) A prescribed private hospital must not own, or hold a proprietary interest in, a pharmacy business other than a business -

- (a) consisting of the provision of pharmaceutical services for in-patients of the hospital only; and
- (b) from which goods and services relating to the provision of pharmaceutical services may be available for such patients only.

Penalty:

- (a) for an individual, a fine of \$5 000;
- (b) for a body corporate, a fine of \$10 000;
- (c) for each separate and further offence committed by the person under the *Interpretation Act 1984* section 71, a fine of \$400.

The purpose of this clause is to restrict the pharmaceutical services that a private hospital may provide to inpatients only. This new clause defines an inpatient and prescribes that a private hospital must not own or hold a proprietary interest in a pharmacy business other than a business consisting of pharmaceutical services for inpatients, and it then provides a penalty.

Dr K.D. HAMES: We have had a brief discussion on this proposed new clause and we will let it go through to the keeper in the sense of not calling for a division. If there is to be a pharmaceutical practice within a private hospital, although we strongly disagree with that, it should be for inpatients only and not outpatients. We will not oppose this clause.

Mr J.B. D'ORAZIO: Subclause (2) of the proposed new clause states that a prescribed private hospital must not own or hold a proprietary interest in a pharmacy business other than for specific purposes. A prescribed private hospital is not defined as an individual. The actual fine is \$5 000 or \$10 000. What is the definition of a “prescribed private hospital”?

Mr J.A. McGINTY: Page 14 of the notice paper contains the earlier amendments, which were definitions. A prescribed private hospital is defined to mean a private hospital etc. A private hospital is defined to mean a natural person or a body corporate conducting the business of a private hospital. That is where it picks up the penalty for an individual or a corporation.

Dr G.G. JACOBS: The Pharmacists Bill allows exceptions for pharmacy businesses in prescribed private hospitals, private hospitals and preserved businesses. I hope the minister understands that every time they are mentioned we will bring them into contention.

Mr Jim McGinty; Mr John D'Orazio; Mr Trevor Sprigg; Mr Terry Waldron; Dr Graham Jacobs; Acting Speaker;
Dr Kim Hames; Deputy Speaker

Mr J.A. McGinty: Yes.

Dr G.G. JACOBS: This is taking an awful lot of time in this place. Has the minister asked the Greens in the upper house whether they will support these exceptions in the bill? If they are not going to, I suggest to the minister that we are wasting a lot of time this evening resisting amendments every time there is a reference to prescribed hospitals. There is an inconsistency here. If this is not supported by the Greens in the upper house, we are wasting our time tonight, because we are going through a lot of process. Will the minister get support for these exceptions in the other place?

Mr J.A. McGINTY: I hope the member is not suggesting that I would have discussions with the Greens about the passage of legislation through the Parliament! I am shocked. The answer to the member's question is that I have no idea what the view of the Greens is. I rarely make a habit of inquiring until such time as legislation gets to the other house. However, there has been the odd exception to that - one that I think members here will be very familiar with.

Mr R.F. Johnson: Which one is that?

Mr J.A. McGINTY: The one that will see the member for Roe's electorate expanded so that he represents the same number of people as I do in Fremantle.

Mr G. Snook: The crucifying the bush bill!

Mr J.A. McGINTY: Is that the one? Of course, democracy is based on the representation of people -

Several members interjected.

Mr J.B. D'ORAZIO: I wish to bring to the attention of the chamber the penalties contained in the bill. The penalty for an individual is \$5 000 if he contravenes the clause about not having a proprietary interest. I tell the minister that that is a joke. Interests in pharmacies run into millions of dollars; we are not talking about a few dollars. That does not apply just to the private hospitals. The penalties are way out of whack with what they should be. I suggest that the minister should look at other penalties he has prescribed in the bill, one of which is for \$50 000. That is contained in clause 59. The penalty in this clause should also be in that vicinity. A penalty for not complying with these two clauses is fundamental to the ownership of pharmacies. A penalty for an individual of \$5 000 is very small. I have been involved in the sector for many years and there are all sorts of scams to get around the ownership rules in the Pharmacy Act. I do not want to dob anybody in, but there are some people around who have a lot of interest in a number of pharmacies and nobody seems to understand how it all works. If we are passing legislation with these sorts of penalties, they will certainly not be a deterrent - although they should be.

If these penalties are to stay in the legislation, there should be the power under the regulations to vary the penalties without having to amend the act. As it is, we have penalties that will be prescribed in the act. The minister should have the power to increase penalties by regulation and to make them severe for any contraventions. We are now talking about a person who does not declare a private interest in a prescribed hospital as well as other pharmacies under clause 58, "Ownership of, and interests in, pharmacy business", as well as this amendment. I suggest both are inadequate.

Mr J.A. McGINTY: The point the member for Ballajura makes is eminently reasonable. However, of course, the consequence of conducting a business like this will be for the pharmacist to lose his registration and therefore his business, so the penalty is in fact far greater. This provides a monetary penalty for a private hospital conducting itself in a way that is not approved. The consequences of that extend much further and the penalty will be very real and significantly greater than the monetary penalties prescribed here.

Mr J.B. D'ORAZIO: That is true. However, equally, if it is a person who has the hospital and the licence, that person will be penalised. There is nothing in this bill to stop that person or another corporate body from applying for the same registration. They will have nothing to hide and no connection to the previous person. They could apply and nothing would change. Even if the minister does not amend the legislation, he should include a clause to enable him to change it by regulation once it is required to be increased. Those penalties are way out of kilter; they are too low.

New clause put and passed.

Clause 58: Ownership of, and interests in, pharmacy business -

Mr J.A. McGINTY: I move -

Mr Jim McGinty; Mr John D'Orazio; Mr Trevor Sprigg; Mr Terry Waldron; Dr Graham Jacobs; Acting Speaker;
Dr Kim Hames; Deputy Speaker

Page 37, after line 23 - To insert -

or

(f) a prescribed private hospital.

Clause 58 provides a list of persons who may own or hold a proprietary interest in a pharmacy business. A prescribed private hospital is to be added to the list. I appreciate that this is a matter opposed by the opposition.

Amendment put and a division taken with the following result -

Ayes (24)

Mr J.J.M. Bowler
Dr J.M. Edwards
Mrs J. Hughes
Mr J.N. Hyde
Mr J.C. Kobelke
Mr R.C. Kucera

Mr F.M. Logan
Ms A.J.G. MacTiernan
Mr J.A. McGinty
Mr M. McGowan
Mr A.D. McRae
Mrs C.A. Martin

Mr A.P. O'Gorman
Mr P. Papalia
Mr J.R. Quigley
Ms M.M. Quirk
Ms J.A. Radisich
Mrs M.H. Roberts

Mr T.G. Stephens
Mr D.A. Templeman
Mr P.B. Watson
Mr M.P. Whitely
Mr B.S. Wyatt
Mr S.R. Hill (*Teller*)

Noes (19)

Mr C.J. Barnett
Mr D.F. Barron-Sullivan
Mr T.R. Buswell
Mr G.M. Castrilli
Dr E. Constable

Mr M.J. Cowper
Mr J.B. D'Orazio
Mr B.J. Grylls
Dr K.D. Hames
Dr G.G. Jacobs

Mr R.F. Johnson
Mr J.E. McGrath
Mr P.D. Omodei
Mr D.T. Redman
Mr A.J. Simpson

Mr G. Snook
Dr S.C. Thomas
Ms S.E. Walker
Mr T.R. Sprigg (*Teller*)

Pairs

Ms S.M. McHale
Mr P.W. Andrews
Mr M.P. Murray
Mr A.J. Carpenter
Mr E.S. Ripper

Ms K. Hodson-Thomas
Mr G.A. Woodhams
Mr M.W. Trenorden
Mr M.J. Birney
Mr J.H.D. Day

Independent Pair

Dr J.M. Woollard

Amendment thus passed.

Mr J.A. McGINTY: I move -

Page 37, line 26 - To delete “or (e)” and substitute -
, (e) or (f)

This amendment is simply a numbering change.

Amendment put and passed.

Mr J.A. McGINTY: I move -

Page 37, line 27 - To insert after “director,” -
officer, trustee,

This amendment is to ensure we encompass all the parties to a company.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 59: Limit on ownership of, and interests in, pharmacy businesses -

Mr J.A. McGINTY: I move -

Page 38, line 9 - To insert after “own” -
 , or hold a proprietary interest in,

Again this is just tidying up the question of proprietary interest.

Mr J.B. D’ORAZIO: I just want to put this on the record. This amendment states -

Mr Jim McGinty; Mr John D'Orazio; Mr Trevor Sprigg; Mr Terry Waldron; Dr Graham Jacobs; Acting Speaker;
Dr Kim Hames; Deputy Speaker

A prescribed private hospital must not, at any one time own more than one pharmacy business for each licence to conduct a private hospital . . .

. . . a pharmacist must not hold a proprietary interest in more than 4 pharmacy businesses at any one time.

Mr J.A. McGinty: I am sorry, I have not moved that amendment yet.

Mr J.B. D'ORAZIO: Has the minister not?

Mr J.A. McGinty: That is the next amendment the member for Ballajura is referring to now.

Amendment put and passed.

Mr J.A. McGINTY: I move -

Page 38, after line 12 - to insert -

- (4) A prescribed private hospital must not, at any one time, own more than one pharmacy business for each licence to conduct a private hospital held by it.
- (5) A close family member of a pharmacist must not hold a proprietary interest in more than 4 pharmacy businesses at any one time.
- (6) A new friendly society must not acquire, or acquire a proprietary interest in, a pharmacy business, if the total number of pharmacy businesses which are owned by a new friendly society, or in which a new friendly society holds a proprietary interest, is not less than 8.
- (7) In subsection (6) -
 “new friendly society” means a friendly society that did not own, or hold a proprietary interest in, a pharmacy business in this State immediately before the commencement of this Act.

Under the bill, a prescribed private hospital may own only one pharmacy business for each licence it holds to conduct a private hospital. The second amendment relates to new friendly societies. Currently, one friendly society in Western Australia owns one pharmacy business. Under the bill, new friendly societies will be allowed to own or have an interest in a total of up to eight pharmacy businesses, and no new friendly society will be permitted to own more than four pharmacy businesses. The amendment was agreed to by the guild and the restriction on the number of new friendly societies reflects a national legislative trend. The other amendment to clause 59, which is related to clause 62, arose out of a concern by the guild that the bill was not clear that a close family member must not hold a proprietary interest in more than four pharmacy businesses at any one time.

Dr K.D. HAMES: This clause relates to private hospitals. We have divided on each of the preceding amendments. If this clause is passed and it relates to private hospitals, we will support the concept. Therefore, we will allow it to go through.

Mr J.B. D'ORAZIO: The member has seen the light. I have been telling him that for two hours.

Dr K.D. Hames: You're the one who keeps standing and talking, not me.

Mr R.F. Johnson: We don't want you on this side any more after tonight!

Mr J.B. D'ORAZIO: Good. Can we go home? I want to make clear what the minister's intentions are. This amendment provides that a hospital is permitted to have only one pharmacy in each hospital for which it has a licence to operate a privately owned hospital. The next proposed subclause states -

A close family member of a pharmacist must not hold a proprietary interest in more than 4 pharmacy businesses at any one time.

Does that include the private hospital business? In other words, is a pharmacist not permitted to own four pharmacies in the private practice, and his wife, through the corporations clause, unable to own five or six pharmacies in a private hospital? Could a situation apply whereby a pharmacist owns four pharmacies and the wife, who is not a pharmacist, owns several pharmacies in the private hospitals?

Mr J.A. McGinty: No, only a private hospital can own a private pharmacy.

Mr J.B. D'ORAZIO: Under this amendment, an individual can be the owner of a private hospital. It is not a great point.

Mr Jim McGinty; Mr John D'Orazio; Mr Trevor Sprigg; Mr Terry Waldron; Dr Graham Jacobs; Acting Speaker;
Dr Kim Hames; Deputy Speaker

Mr J.A. McGinty: It is possible that if an individual owned a private hospital, he could also independently own pharmacies.

Mr J.B. D'ORAZIO: I was hoping that the Minister for Health would say that. The minister has tried through this legislation to restrict the amount of ownership of pharmacies by a pharmacist and the pharmacist's spouses to a maximum of four. Under that scenario envisaged by the amendment, a pharmacist could own a maximum of eight or 10 pharmacies and was only limited by money. Some of the big players in the pharmacy game would try to do that. That comes back to the point I made earlier about the size of hospitals and who owns them. A pharmacist and his wife could own up to 10 pharmacies. Again, that would break down the attempt, through this bill, to restrict the number of pharmacies that a person can own.

Mr J.A. McGinty: That is not right, because only a private hospital can own a private hospital pharmacy.

Mr J.B. D'ORAZIO: But an individual could own a private hospital and apply for a licence.

Mr J.A. McGinty: He might own shares in it or something like that.

Mr J.B. D'ORAZIO: If we are talking about Joondalup Private Hospital, that is okay, but if we are talking about a small hospital with 50 beds that is owned by a private individual, the individual would have great ownership. Commercially it does not make much difference. However, it is breaking down the ownership argument. The government has tried to restrict the number of pharmacies an individual can own to four and stopping the ability of family members to own pharmacies. The government has generated a loophole regarding private hospitals, and in the process has overturned the ownership provision too. A pharmacist can own more than four pharmacies if he owns four and his wife owns a licence for two small private hospitals. I said at the beginning of this debate that this amendment opens the door for corporatised pharmacies. It is about the principle that we in the industry have been fighting for over the past 30 years.

Dr G.G. JACOBS: However much it grieves me, I must agree with the member for Ballajura. In the minister's second reading speech he talked about intending to deter any large-scale monopolies in the pharmacy industry. This amendment allows close family members to hold an interest in up to four pharmacy businesses and the part relating to new friendly societies refers to having a proprietary interest in not less than eight pharmacies. I suggest to the minister that there has been a tendency in the industry towards large-scale monopolies and this amendment goes against what the minister was saying about deterring this practice. I have a lot of trouble supporting this amendment because it will make the situation worse in relation to close family interests and new friendly society interests.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 60 and 61 put and passed.

Clause 62: Death or bankruptcy of pharmacist, etc. -

Mr J.A. McGINTY: I move -

Page 40, after line 30 - To insert -

- (4) On a person ceasing to be a close family member of a pharmacist due to death, divorce or separation -
 - (a) a proprietary interest held by that person in a pharmacy business is to be dealt with in accordance with the regulations; and
 - (b) for such period as the Board approves in writing, being not longer than 12 months, section 58 does not apply in respect of the proprietary interest held by that person.

This amendment enables more realistic consideration of the pharmaceutical ownership where there has been a death, divorce or separation - a death or a family breakdown - and it allows a time frame within which those matters can be considered.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 63 to 102 put and passed.

Clause 103: Use of restricted titles, or pretending to be registered -

Mr J.A. McGINTY: I move -

Mr Jim McGinty; Mr John D'Orazio; Mr Trevor Sprigg; Mr Terry Waldron; Dr Graham Jacobs; Acting Speaker;
Dr Kim Hames; Deputy Speaker

Page 70, line 8 - To insert after "prohibit" -

—

(a) a person who holds a qualification in chemistry, obtained from a university or other tertiary institution, from using the title "chemist"; or

(b)

Clause 103 provides for the titles that only a registered pharmacist may use. "Chemist" is one of those titles that is restricted to registered pharmacists. However, there are clearly other persons who should be able to use the title "chemist". The amendment is to ensure that a qualified chemist is not prevented from using the title "chemist".

Mr J.B. D'ORAZIO: Is the minister saying we are now removing the ability for certain people to call themselves a chemist, so that a guy with an industrial degree can call himself a chemist?

Mr J.A. McGinty: Yes, that is right.

Mr J.B. D'ORAZIO: Or the reverse?

Mr J.A. McGinty: No.

Mr J.B. D'ORAZIO: The amendment states -

To insert after "prohibit" -

—

(a) a person who holds a qualification in chemistry, obtained from a university or other tertiary institution, from using the title "chemist";

I read that as meaning that somebody with a qualification in chemistry will be prohibited from calling himself a chemist.

Mr J.A. McGinty: No, it does not prohibit that.

Mr J.B. D'ORAZIO: It says, "To insert after 'prohibit'".

Mr J.A. McGinty: Yes. It will read -

Subsection (2)(a) does not prohibit -

(a) a person who holds a qualification in chemistry, obtained from a university or other tertiary institution, from using the title "chemist";

Mr J.B. D'ORAZIO: Yes.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 104 to 129 put and passed.

Schedule 1: Constitution and proceedings of the Board -

Mr J.A. McGINTY: I move -

Page 90, line 20 - To delete "3" and substitute -

5

This is a quorum for the meetings of the board only.

Amendment put and passed.

Mr J.A. McGINTY: I move -

Page 90, line 21 - To delete "3" and substitute -

5

That amendment deals with the same subject matter.

Amendment put and passed.

Schedule, as amended, put and passed.

Schedules 2 and 3 put and passed.

Mr Jim McGinty; Mr John D'Orazio; Mr Trevor Sprigg; Mr Terry Waldron; Dr Graham Jacobs; Acting Speaker;
Dr Kim Hames; Deputy Speaker

Title put and passed.

Reconsideration in Detail - Motion

On motion by **Mr J.A. McGinty (Minister for Health)**, resolved -

That the bill be reconsidered in detail for the purpose of considering an amendment to clause 37.

Reconsideration in Detail

Clause 37: Pharmacy registered by preserved company -

Mr J.A. McGINTY: An amendment was foreshadowed by the member for Ballajura, but it is most probably easier if I move it. I move -

Page 25, lines 24 to 28 - To delete the lines.

Amendment put and passed.

Clause, as further amended, put and passed.

House adjourned at 11.10 pm
