HEALTH LEGISLATION AMENDMENT BILL 2004

Second Reading

Resumed from an earlier stage of the sitting.

MRS C.L. EDWARDES (Kingsley) [7.20 pm]: One of the Acts that this Bill seeks to amend is the Health Services (Quality Improvement) Act, the aim of which is to encourage health service personnel to participate in quality improvement activities in order to promote the attainment and maintenance of high standards of health care. The changes to this Act are in terms of statutory protection and the extension of the statutory protection of immunity to personnel associated with the committee. In giving and/or extending immunity against common law action, there has to be a corresponding accountability. One cannot be given without the other. At the moment we have a health system in which doors are being closed, arms folded, and people are being refused full and comprehensive information on the basis that health service personnel may be sued. Although I do not have a problem with the extension of immunity against common law action, I do have a problem if that does not extend to an improvement in the level of accountability.

The Minister for Health and his office have been working with me on a case involving a family - a mother and father and their daughter - who lost their five-year-old son and brother in circumstances in which the parents will never know the cause of this young man's death. He attended Princess Margaret Hospital for Children after having been attended by his general practitioner for a few days. He was in Princess Margaret Hospital for eight days before being transferred to intensive care. He died in intensive care one month after entering hospital. The family feels that, in those circumstances, he lost his life in the first eight days of being in hospital, before he was transferred to the intensive care unit. Unfortunately, it was not until the Minister for Health's office got involved that the family received the very important information that it needed.

I will relate a little of the issue. The family needs some closure on this matter. The only instance in which they will get that closure at this stage is if the coroner inquires into and investigates this matter. When the matter was originally referred to the coroner's office, the coroner declined to investigate the death on the grounds that it was not considered to be unexpected after 25 days in intensive care. When the information on the actions and tests that were undertaken was put to the coroner, it represented a lot of detailed testing. However, that testing was undertaken at the time this young man was in the intensive care unit; it did not identify the level of work or support that this young man received in his first eight days in hospital. The inescapable fact is that very little occurred during the first eight days of this young man's hospitalisation, and it was in those first eight days that his life was possibly lost. That raises the question of whether the coroner, given his original comments when the matter was first referred to him, would have conducted an inquest if this young man had died earlier.

There are two reasons for the coroner to investigate this case. Firstly, no satisfactory answers have been given on the lack of focus on and coordination and control of this young man's condition when it deteriorated. Secondly, and this is the important issue that relates to the amendments before the House, the broader issue is one of clinical governance at Princess Margaret Hospital for Children, particularly in light of the acknowledgment that the recommendations of the Douglas inquiry are not being implemented at King Edward Memorial Hospital. As KEMH and Princess Margaret Hospital are jointly managed, there is a justifiable doubt about whether those recommendations are being implemented at Princess Margaret Hospital. As an external agency, the coroner could provide an effective and efficient investigatory agency.

When researching this matter I found a 1998 article by David Ranson on the coroner's role in medical treatment-related deaths. The article was based on an audit in Victoria and indicated that the level and depth of investigation into medical treatment-related deaths in coronial practice appeared, from the medical perspective, to be rather limited. The article went into some detail on the question of immunity, which is what we are talking about, and whether it would be more productive to allow the coroner to investigate medical treatment-related deaths more readily. I will also refer later to a case involving the Deputy State Coroner, which referred to the same matter earlier this year. The underlying premise of the article was that the coroner's office could be an effective agency to carry out an evaluation of health care services in selected cases and in a climate of ensuring outcome evaluation from both a financial and operational perspective. The article stated that in investigating reportable deaths, the coroner's office could give the community a level of satisfaction that the causes surrounding the death had been investigated thoroughly. This is even more crucial when a child has died in hospital following medical treatment. Although no blame is being attached in this case, it is evident that there were a number of irregularities in the treatment of this boy and in the reporting of that treatment and the facts surrounding the case, which warrant it being referred to the coroner for investigation. In the English case, R v Poplar Coroner, ex parte Thomas (1993) 2 All ER 381, Lord Justice Simon Brown found at pages 388 and 389 that -

> Although 'unnatural' is an ordinary word of the English language and there is nothing to suggest that in s 8(1) of the 1988 Act -

That is obviously a reference to the UK legislation -

> it is being used in any unusual sense, that is not to say that whether or not a particular death is properly to be regarded as unnatural is a pure question of fact. It is necessary to recognise that cases may well arise in which human fault can and properly should be found to turn what would otherwise be a natural death into an unnatural one.

The Western Australian Coroner's Act includes in section 3 a definition of "reportable death", which includes the term "unnatural" in paragraph (a).

In the report on the investigation into the death of an infant, reference No 02/04, the Deputy State Coroner stated -

> It was very hard, in fact I would say impossible, for a coronial court in circumstances such as these to be clear about what should or should not have been done, or to make any constructive comments other than it is in everyone's interest events such as these are studied and an attempt made to understand what went wrong, in a constructive manner, to try and ensure a different outcome on another occasion, should it arise.

The Deputy State Coroner then referred to the dilemma facing health committees established under the Health Act.

Relating to the case I am assisting with, a meeting was arranged on 12 June 2003 with the chief executive officer and the chairman of the paediatric medicine clinical care unit. The parents were advised at that meeting that the hospital's mortality review committee had conducted a review. However, the findings were not available for this meeting. Subsequent correspondence was provided through the Minister for Health's office. I commend the minister's staff, as they have again proved to be outstanding in helping this family.

Mr J.A. McGinty: Thank you; I will pass it on to them.

Mrs C.L. EDWARDES: Subsequent correspondence through the Minister for Health's office confirmed that no review was conducted until 30 July 2003, some 11 months after their young son's death and one and a half months after they had been told that the inquiry had been held and that the findings were not available. That sequence of events has never properly been explained. It is about accountability. I do not have a problem with giving and extending indemnity against common law actions, particularly if one will receive a proper explanation about what happened in a hospital where a death has occurred. I particularly refer to the death of a child when no explanation is provided as to the cause of death. Further, the family has been advised - this is particularly important, minister, if immunity is to be extended - that no formal notes were kept on the committee's discussions. What level of accountability will be involved if immunity is provided and a committee can meet, make decisions, not explain them to the family and give wrong information to the family, and keep no formal notes on the committee's discussions?

The Deputy State Coroner stated the following in the case to which I referred earlier -

> There are committees established under the *Health Act* which provide for investigative review of certain outcomes. These committees are statutorily protected from discussion in any other forum, even to the extent of whether or not any particular adverse event has been investigated.

The Deputy State Coroner continued -

> While I accept concern with civil liability makes this necessary I am conscious it also prevents the larger community -

In this case, the family -

> from being confident situations perceived as an adverse event are examined and provide significant contribution to future scenarios with similar features. It adds to the conspiracy theory philosophy already at large.

I continue the Deputy State Coroner's remarks -

> It is a big "ask" to expect parents to "trust the system" when they have lost a child. It may be of benefit to consider making the outcomes of investigations (ie, the establishment of protocols) publishable, but protected from use in any related legal proceeding with a punitive or disciplinary element. That way bereaved families may be comforted there was some purpose behind their personal tragedy.

On the family's behalf, I submit to this Parliament that if members will continue to extend immunity concerning the use of that material in terms of prosecution and/or civil actions, they have a greater level of responsibility to the community to ensure that these committees will be accountable. The Douglas inquiry recommendations have not flowed through to this hospital. In fact, the lack of governance highlighted in this case is astounding.

Prior to this illness, this young man was a fit and healthy five-year-old boy who had been fully vaccinated. A serious issue of concern arose regarding the treatment and case management of him while in hospital. There appeared to be no clear diagnosis, no care plan to progress and no proactive intervention strategy, and the case priority was not elevated. The severity of this young man's condition was missed. No evidence indicates structured and programmed reviews of mortality at Princess Margaret Hospital. The mortality review committee did not conduct a review until 30 July 2003, some 11 months after the young man's death. The family was told incorrectly on 12 June 2003 that the case had already been assessed, but the outcomes were not yet available. Again, it raises the question of the hospital's procedures and how the family was given incorrect information. There is no framework to manage proper reviews and no reporting required under statutory requirements. Recommendations from the Douglas inquiry have not been implemented: I refer to matters such as new organisational and clinical governance committee structures; improved reporting and review processes for incidents and deaths; improved communication between staff and between staff and patients; and improved quality of medical case notes and records, including the rationale for decisions. This is very important. The House is considering extending immunity further to committees and to the support staff of those committees, yet no proper clinical governance is in place. No confidence is provided that this will not happen again to another family. To date, these family members have received no adequate answers to their personal tragedy, which occurred almost two years ago. I hope that the minister will strongly consider this matter and refer it to the State Coroner for an inquest. That will at least give the family members some confidence and comfort knowing that all the circumstances surrounding the death will have been investigated thoroughly. Also, the quality of care and case review can be investigated as a separate issue to ensure that matters are attended to; I refer to accountability and clear ownership and responsibility to investigate deaths of this nature. Requests to hospitals by this family indicate that there are no policy processes or procedures to address the concerns directed to the hospital. At this stage, family members are still waiting for this information, after having been reassured in December last year that some further documentation would be forwarded to them. It still has not been received as of this afternoon. There is no timely, structured or programmed review of mortalities at Princess Margaret Hospital. The Douglas inquiry parallels are enormous: this case highlighted concerns previously identified by the Douglas inquiry. As I have outlined, although the Opposition is happy to support the extension of immunity to further health committees and their support staff, it strongly urges that a level of accountability and responsibility be recognised as going hand in hand with the extension of that immunity.

MR J.L. BRADSHAW (Murray-Wellington) [7.38 pm]: I will outline several issues. I refer firstly to smoking in public buildings - an issue that has generated a lot of debate. When a former Minister for Health spoke about banning smoking in places such as hotels, clubs etc, it caused great controversy. A back-off occurred. We now have a step forward concerning a smoking ban in public buildings at the Burswood International Resort Casino. I find it ironic that the Government is prepared to exclude only the international room from that ban.

I am not a smoker; I certainly cannot stand smoking. Regulations were put in place regarding smoking in public places such as hotels, but I do not think anyone goes to the right spots and controls them or investigates whether they are being complied with. I choose not to go into hotels because I cannot stand the smoke caused by people smoking in them. They are supposed to be smoke-free areas but, in the past few years, I have not found that. It is all very well to place those sorts of responsibilities with local government; however, let us face it, local governments do not want another job to do unless they are likely to receive some remuneration for it. If they try to control smoking in hotels and clubs, they will upset their ratepayers. To a large extent, the regulations banning smoking in hotels, clubs etc amount to a non-event.

A few years ago the Totalisator Agency Board banned smoking in its betting agencies. Members who have been into a TAB will be aware that a large number of people who frequent them are smokers. However, the ban does not appear to have affected the TAB turnover; it seems to continually increase. If smoking were banned totally in hotels, clubs and the casino, would that have the effect that the Australian Hotels Association claims it would have? The AHA feels strongly about Parliament banning smoking in some of those establishments. However, people continue to frequent TABs even though they are not allowed to smoke in them.

The Bill also contains some consequential amendments to the Queen Elizabeth II Medical Centre Act to rectify some anomalies that occurred when the boards were abolished a couple of years ago. The south west hospital boards were very near and dear to the local communities. When I asked a question about the abolition of a local hospital board, I was told that it had not been abolished. Everyone else thought it had been. However, the minister at the time, who has since been sacked from that position, said that they had not been abolished;

nonetheless, the hospital boards in the south west disappeared. I do not know the difference between the meaning of "disappearance" and "abolition" in this case. Perhaps I am being pedantic. The removal of the hospital boards has impinged on people's ability to maintain a relationship with the hospital staff. The minister is aware of the situation in Harvey and Yarloop because he was there a few weeks ago, at which time he made a commitment to write to the shire within a couple of weeks. As far as I know, that has not happened.

Mr J.A. McGinty: That is right, but I can assure you it is a top priority among the matters I am dealing with. I will write very soon. Obviously, I need to get reports and find out what is possible. It will be attended to as a priority.

Mr J.L. BRADSHAW: The minister made a commitment to respond within two weeks.

Mr J.A. McGinty: I apologise for not meeting that time frame.

Mr J.L. BRADSHAW: It has been at least three weeks, if not four weeks. People are very anxious because, over the past 10 years, various reviews have recommended certain steps be taken. As a result, people have become very wary. The Yarloop and Harvey District Hospitals are suffering as a result of the removal of their management. It is a shame to see the system in its present state. During the 21 years I have been a member of Parliament, the Department of Health has suggested various new, super schemes on how to run the health system. I have said previously that the worst thing that has ever happened to the health system occurred in the 1980s when the Burke Government amalgamated the services of psychiatry, hospital and allied health and public health. They had been separately run, each with its own management. Ever since they have been run as one monolith, it has been chaos. Nobody knows what is happening or how anything is done. Management of the health system has gone to pot. As I have pointed out on several occasions, we need to get good management back into the system. The administration side of it has ballooned out of control and is consuming all the money and people are being deprived of services such as physiotherapy, psychiatry and speech therapy. People must queue up and wait long periods for those services. They are not getting the services they should be getting because of what I believe is bad administration. I hope Dr Neale Fong will do the right thing. He should be made chief executive officer of the Department of Health. I have a lot of time for Dr Fong, as do many other people. As I have pointed out on a couple of occasions, he will be rearranging the deckchairs by putting the beds somewhere else. Rather than using the existing services of Royal Perth Hospital, Sir Charles Gairdner Hospital, Fremantle Hospital etc, the Government intends to build new hospitals here and there. It will amount to nothing more than moving beds around. That might do some good but it will not fix the health system. The system will improve as a result of good administration and that will enable it to provide better services. We need to put more money into the system because we have an ageing and growing population. Even though the amount of time people spend in hospital is often much shorter and, with day surgery, operations are quicker, a growing and ageing population will place the system under greater pressure. I find that I go to the doctor more often than I did 20 years ago. As we get older, we tend to visit the doctor more frequently for some reason.

The health system is one of those systems that needs good administration. I find it disgraceful that the administration has been taken out of the hands of the people working in the Harvey and Yarloop hospitals. Someone must be on site to run the show and do the hiring, firing, ordering, buying and all the other things that used to be done on site 20 or 30 years ago. Now the Harvey and Yarloop hospitals are run by information technology, human resources and finance people who live somewhere else. The people at Harvey District Hospital cannot even order toner for the fax machine; they must put in a request for it.

The Government has a buy-back scheme for domestic wood burners in certain areas. The City of Melville, for example, is in the scheme and the Government has approached some other councils. Sometimes when we take a walk in the metropolitan area at night, we can hardly breathe because of the smoke emissions in the atmosphere. These days, the same happens in country towns. It is nice to have a nice wood fire but I suspect that it is not doing our health much good. Reports have indicated that nasties that are harmful to our bodies are in the smoke that comes out of wood fires. The Government has taken the right approach to this issue by seeking to ban tile fires and pot-belly stoves, which, when dampened down at night, emit harmful smoke into the atmosphere. It is probably a pity that we cannot eliminate household wood fires altogether. They are causing our streets at night, whether they be in country towns or the city, to be rather unpleasant places in which to walk. Surely the smoke penetrates rooms within people's houses. However, the Government is once again expecting local government to be the smoke police. I wonder how local government will be able to implement that role. It is a difficult issue. How can someone determine that smoke emissions are unacceptable? The smoke emissions from green wood are often thicker than those from dry wood. As I said, when people damp down their fire, unhealthy fumes are emitted. The problem will be difficult to police. I am not sure how local governments will handle it. I think they will take the same approach as they take to people smoking in hotels - they will ignore it. I guess if people complain, they will have to investigate. When they do so, will they assess it on the basis of the fire being lit the night of the complaint, for instance? That is the difficulty I perceive with monitoring smoke that is unacceptable

in the community. It is difficult to determine whether smoke emissions from one person's residence are worse than the emissions from someone else's residence. I think the provision to control wood fires will be ignored to a large extent by local government. Will local government get more funding to control them? Again, it will be a cost to local government if it has to investigate those issues. Some provisions in the Bill are very wishy-washy and very difficult to support; however, I will support them.

MR J.H.D. DAY (Darling Range) [7.50 pm]: I am happy to support the Bill in general terms, in particular the amendments that will enable local government to more effectively deal with the problem of smoke in residential areas. Provisions to deal with smoke that is emitted from domestic chimneys are worthy of support. I make that comment because I have had contact from a couple of constituents who have suffered to a large extent from smoke that has been emitted from neighbours' chimneys. They have, in fact, gone to quite substantial lengths to encourage their neighbours to reduce the impact of the smoke that is emitted from their chimneys, but have not received what most people would regard as a reasonable response from those neighbours. It is therefore important that local government, or some authority at least, have the ability to more effectively control such smoke, as it is unable to do so currently.

I recall that the neighbour of a constituent of mine burned on a continuing basis green wood that had been derived from orchard cuttings. The burning produced quite an acrid, heavy output of smoke and affected my constituent to a significant extent. It was really quite an intolerable situation. There is no legislative ability at the moment for a local government authority to apply any control or degree of pressure on offenders. That must be changed.

The ACTING SPEAKER (Mr A.P. O'Gorman): I ask members to take their conversations outside the Chamber, as they are distracting to the member on his feet and making it quite difficult for Hansard staff to hear.

Mr J.H.D. DAY: It is important that when these provisions are in effect the powers are not used in an excessively heavy-handed or over-zealous manner. Many residents of the hills, including me, depend on wood fires for heating. I think wood fires are a reasonable form of heating, as long as they are used in a responsible and appropriate manner. I would be very loath to support legislation that would prevent residents in the Perth metropolitan area from using wood for heating in a responsible manner. Unfortunately, some people are not as considerate of their neighbours as they should be and the powers that will be put in place through these provisions are needed so that local governments can take action when it is justified.

Another provision in the legislation will increase the general ability to control smoking in public places, in particular at the Burswood International Resort Casino. I was the Minister for Health when the existing smoking regulations came into effect in 1999. The debate on those amendments to the Health Act occurred in late 1998. Very major changes were made at that time. We moved forward as much as any Government possibly could have to substantially control smoking in public places. Members will recall that smoking in most public places in Western Australia was prohibited as from March 1999. The current Government has been very timid with the changes it is now putting in place. I am supportive of the amendments in the Bill. However, as I said, other amendments to the regulations under the Health Act are timid. They could have gone a long way further than they have. I very much recall the debates in this Chamber in late 1998 when the then Labor Opposition was critical of the then Government for not going far enough to control and regulate smoking in public places, particularly in hotels. The rhetoric that we heard in 1998 led us to believe that the current Labor Government would have gone a long way further to control smoking in public places than it has done. The time has come to move a long way further. We all must acknowledge that although some people enjoy tobacco smoke - I make no criticism of them on an individual basis - it is a toxic and carcinogenic substance. Tobacco smoke is potentially harmful, and in some cases very harmful, to people who may not directly inhale it but may be exposed to it and inhale it on a passive basis. As I said, these amendments that the Government is making to the legislation do not go far enough. I make these comments, but I know they will not be accepted by any means by everyone on my side of the Parliament. However, I have no doubt that the day will come in this State, throughout Australia, probably throughout most of the western world eventually and, hopefully, throughout the whole world, when the proliferation of tobacco smoke will be far less than it is now and there will be far greater controls and even a complete prohibition on smoking in any public place, simply because of the potential harm that can result from inhaling tobacco smoke. As I said, for all the rhetoric that the Labor Party uttered when it was in opposition in 1998, it has the opportunity, now that it is in government, to go a long way further to control smoking in public places, particularly in hotels. However, that opportunity has not been taken.

I will be interested to hear the response from the Minister for Health. I understand that it has been decided that a review will be undertaken sooner rather than later after the next election in 2005. I question, therefore, why the Bill provides for an obligation to review the legislation in 2007. It may be that the date will be brought forward.

Mr J.A. McGinty: There is an amendment to the Bill, as the Bill was brought into the Parliament prior to the agreement in the upper House, to enable the date to come forward. I will therefore move that amendment in the consideration in detail stage to bring the date forward to ensure that the review takes place next year.

Mr J.H.D. DAY: That is pleasing to hear.

There is another aspect to the issue of smoking in public places and the proposed amendments to the legislation, minor as they are in some respects. Nightclubs are concerned that they are not being treated in an even-handed manner with hotels, and I think they have a valid point. I believe a lot of hotel operators in the State would be happy to see a level playing field established so that the same rules applied to everyone. They would then be able to say that the law requires that smoking cannot occur in hotels. I do not pretend that everybody attending a hotel will suddenly stop smoking. Obviously, some arrangements will need to be established so that smoking can occur in an outdoor setting or an area where there is a large degree of ventilation by natural means in some form or other. I have no doubt that will come in time as more and more people acknowledge, on the basis of good scientific evidence, the harmful impact of tobacco smoke.

I am supportive of the changes to the Health Services (Quality Improvement) Act 1994. It is important that health professionals be provided with immunity so that they can discuss in a fearless and frank manner adverse events that might have occurred in hospitals in Western Australia. This provision has existed in general terms for some years now and the amendments will establish a greater degree of protection for these people than they have at the moment. I equally support the comments of the member for Kingsley to the extent that it is important that families who are affected by adverse events be given, in an appropriate way, information about the cause of such an event and what went wrong. It is now well recognised that when people are given clear and effective information about what went wrong and there is frank discussion with the clinicians involved, there is less likelihood of litigation ensuing. People have a right to that sort of information. What is most important is that clinicians learn from the mistakes that have occurred. No-one will pretend that mistakes are completely preventable in a health setting, whether it be a private practice clinic in the community or a major public hospital. There needs to be an exchange of information so that people can learn from these adverse events.

I again make the observation, as I have done on at least two previous occasions in this Chamber since the election in 2001, that the inquiry into clinical services at King Edward Memorial Hospital for Women was effectively not completed as it should have been. I think that the 96 cases which were summarised in a non-identifying way by the members of the Douglas inquiry in their report should be made public. In particular, they should be made available to clinical staff - doctors and also members of the nursing profession - so they can learn from what went wrong. There is a way in which that inquiry could have been finished off so that all the information was made available. I have outlined that in this place and I am sure that the Minister for Health has a good understanding of how that could have been done. I know that advice was given to the Government that it might theoretically be possible to identify some cases or some clinicians from the material that was prepared in the report but, unfortunately, not made public. I think that is debatable; nevertheless, as that legal advice was given by the Solicitor General, I can understand that the Government would listen to it. However, it would have been possible to complete the inquiry in a way that ensured that due process was followed, that all the provisions of natural justice were applied to the clinicians, and that the families were happy for the information to be made available in a non-identifying way. It is well over four years since the inquiry was established and almost three years since it was completed. However, the Government has still not taken the opportunity to ensure that clinicians and members of the public of Western Australia, and indeed of Australia and the rest of the world, have access to that material so they can learn from some of the serious tragedies that have occurred at King Edward Memorial Hospital in the past. I support the changes that are being put in place here. I guess I have digressed to a small extent from the direct intention of the legislation with respect to amending the Health Services (Quality Improvement) Act, but it was important to make that point once again.

Coming back to the effects of tobacco in the community, I will also talk about point-of-sale advertising. We need only go into any retail outlet in Western Australia these days to be confronted with a large amount of advertising at the point of sale of tobacco. Unfortunately, that has proliferated over the past eight years or so as tobacco companies have sought to get around the quite strict controls that have been put in place on tobacco advertising. Given that they are not allowed to advertise on television, radio or in the newspapers, they now seek to advertise to the extent that they can at the point of sale. Before the last election, a commitment was given by both major parties - it was certainly given by the coalition when we were in government and I know the Labor Party also gave a commitment - that more effective controls would be put in place on point-of-sale advertising. However, we have not seen any action in that regard from the current Government. Obviously, the coalition has not been in government to put those controls into effect. If I had continued as Minister for Health, I would have been keen to ensure that those controls were put in place. A lot of work was done in this area when we were in government. A review was chaired by, I think, Barry MacKinnon, and a fair bit of progress was made in getting

to the stage that we could put in place amendments to the legislation. We need to see more progress on that front as well. I know that that issue is not directly related to this Bill, but it is in an indirect sense, and I would be interested to hear a response from the Minister for Health.

MR J.A. McGINTY (Fremantle - Minister for Health) [8.05 pm]: I thank members opposite for their various contributions by way of support for this legislation, some more wholehearted than others. I would like to respond in some detail to a number of points raised by members opposite, and for that reason I seek leave to continue my remarks at a later stage.

[Leave granted for the member's speech to be continued.]

Debate thus adjourned.