

Mr Jim McGinty; Speaker; Mrs Cheryl Edwardes; Mr Paul Omodei; Mr Jeremy Edwards; Deputy Speaker; Mr Mike Board

**STATE ADMINISTRATIVE TRIBUNAL (CONFERRAL OF JURISDICTION) AMENDMENT AND
REPEAL BILL 2003**

Consideration in Detail

Clause 1: Short title -

Mr J.A. McGINTY: I undertook to provide details of contractual obligations for the establishment of future headquarters. The document sets out the monetary cost and the nature of the contracts entered into for the rental, fit out and establishment of the State Administrative Tribunal.

Clause put and passed.

Clauses 2 to 144 put and passed.

Clause 145: Section 24 amended -

The SPEAKER: With the consent of the Chair, both amendments may be moved together.

Mr J.A. McGINTY: I move -

Page 60, line 19 - To insert before "this" the word "with".

Page 60, line 20 - To insert before "the" the word "with".

The amendments correct typographical errors in the original draft of the Bill. There is no significance attached to them.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 146 to 163 put and passed.

Clause 164: Section 62A amended -

Mr J.A. McGINTY: I move -

Page 68, line 1 - To delete "63" and substitute "62".

This amendment also will correct a typographical error.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 165 to 186 put and passed.

Clause 187: Section 12 amended -

Mrs C.L. EDWARDES: This clause amends the Credit (Administration) Act 1984. Given that uniform credit legislation has existed for a considerable period, what is being changed and how is it consistent with uniform legislation? Has the Attorney General not amended the Credit (Administration) Act previously to include these amendments? It appears that these amendments are purely to transfer the Commercial Tribunal of WA to the State Administrative Tribunal. This Bill includes other amendments such as refusal of a licensing application and fees and other sanctions that can be placed on a person. Clause 191 amends section 23 of the Credit (Administration) Act, which covers complaints and the like.

Mr J.A. McGINTY: This Bill will abolish the Commercial Tribunal. The Commissioner for Fair Trading will undertake the function of licensing credit providers. The State Administrative Tribunal will be able to review the decisions of the Commissioner for Fair Trading in relation to credit provider licences. These amendments seek to achieve only that.

Mrs C.L. Edwardes: Is nothing new being incorporated?

Mr J.A. McGINTY: No that is the totality of these amendments.

Clause put and passed.

Clauses 188 to 232 put and passed.

Clause 233: Section 14C amended -

Mrs C.L. EDWARDES: A number of amendments, which we will deal with shortly, relate to the medical profession. A number of other professionals, such as dentists and veterinarians, are very unhappy that the medical profession has been successful in achieving amendments that other professions have not been able to

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achieve. What is the process from here? In his response to the second reading, the Attorney General indicated that those professions must refer their recommendations to the appropriate minister to progress those recommendations. It seems inequitable. As it comprises a large body of people, the medical profession seems to have had undue influence in progressing amendments. However, other professions have not been treated equally and those professions are seeking the reason for that.

Mr J.A. McGINTY: The doctors had the advantage of having just completed a review of the Medical Act over a great number of years, which essentially recommended a two-tier structure for disciplinary matters. In fact, there were a number of components to it. It was recommended that there be a summary jurisdiction in the Medical Board of WA and an independent disciplinary tribunal to deal with more serious matters. It is fortuitous, from the point of view of the medical practitioners, that the review of their legislation has been completed before the State Administrative Tribunal will come into operation. I spoke with the representatives of the medical profession, who said that it would make more sense, given that they had had that review that recommended a structure that was compatible with SAT, if that were reflected in this legislation - at least a slimline version of it - rather than SAT coming into operation and early next year there being the disruption of yet another disciplinary system coming into operation. I agreed with that. It was not possible in the time available to fully reflect in this package of legislation the disciplinary provisions that were recommended in toto by the review of the Medical Act. That is why, as I have indicated, it is a slimline version, which essentially leaves summary jurisdiction over minor disciplinary matters with the Medical Board, and major matters will be referred to the State Administrative Tribunal to be dealt with.

It is also the case at the moment that there is a significant backlog of disciplinary matters affecting the medical profession in this State. Those that commence hearing before the Medical Board will remain within the jurisdiction of the Medical Board. Those that have not commenced on the date the State Administrative Tribunal comes into operation will be referred to the State Administrative Tribunal for hearing and determination.

My proposal - this is the policy of the Government - is that those professions or industry groupings that do not have a two-tier disciplinary structure will sit down and talk with the minister responsible for their Act. The Dental Act is my responsibility. I will talk with the various interest groups affecting dentists and agree on the structure for their disciplinary procedures. It is important that we do it that way because, depending upon the industry grouping or profession, there will be variations in how it wishes to address the matter. Doctors are different from lawyers. We want to make sure that we get these matters right. If dentists wish to retain a summary disciplinary jurisdiction, which some people may not wish to do, it may be thought in their case - I am not suggesting this is the case with dentists - that disciplinary matters are rare, and rather than maintain a disciplinary apparatus, it would be easier to have SAT deal with everything.

There will be variations within each individual industry or professional grouping in how it wants those matters addressed. We are saying that the government policy is clear. We will negotiate new disciplinary arrangements in the light of SAT. There is no reason that that should be in any sense delayed. It will be the responsibility of the individual ministers to whom those professions or industries relate, or who have responsibility for the carriage of their legislation, to work through, get drafting done and bring legislation into the Parliament. There is no reason that that cannot be done fairly quickly, given that the model for the two-tier disciplinary structure for those who wish to pick it up is now well established. There is no in-principle argument. It is just a question of the details that suit the individual professions or industry groups concerned.

Mrs C.L. EDWARDES: The Attorney General has indicated that he, as the Minister for Health, will meet with the dental profession. I wonder whether the Attorney could perhaps alert all his ministerial colleagues to the fact that this legislation is now going through, and they might like to initiate the discussions with their respective boards. I suggest that because there has been considerable concern about the lack of consultation, the lack of knowledge and the lack of specific detail in their individual Acts. Far be it from me to tell the Attorney what might be a good thing to do, but it might be good to have the initiative come from the respective ministers.

Mr J.A. McGINTY: That is an eminently sensible proposition, and I will certainly take it up. I am aware that some ministers have already met with some of the interest groups to discuss this very issue, and my understanding is that they have relayed to those interest groups what I have essentially just relayed to the House. It is government policy, and the Government will expedite the changes as soon as it has either a review of or an agreement on what is required in respect of the new disciplinary procedures involved. I undertake to communicate with the ministers and suggest that they take the initiative in respect of any of the bodies that do not have a two-tier disciplinary structure to ascertain whether they want it and, if so, how they want it done.

Clause put and passed.

Clauses 234 to 252 put and passed.

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Clause 253: The Act amended -

Mr P.D. OMODEI: I expressed my concern about the Dog Act in the second reading debate. Maybe the minister can throw some light on the issue. These amendments are to the Dog Act 1976, which has been amended and reprinted since then. For the State Administrative Tribunal to be effective, it seems to me that there should be within that organisation people with expertise to give advice on matters relating to dog control etc; yet this legislation transfers only some of the appeals to local courts to the State Administrative Tribunal and leaves out certain sections. I refer in particular to section 26 of the Dog Act, which deals with the number of dogs that may be kept on any premises. As far as I can see, people with expertise in dog matters will have to be retained within the Department of Local Government and Regional Development, as well as there being people with similar expertise in the new State Administrative Tribunal. Will the minister tell the House why the whole appeals mechanism under the Dog Act will not be transferred to the State Administrative Tribunal.

Mr J.A. MCGINTY: The scheme of things in respect of the Dog Act is that the department will still make the original decision to license. A person may be aggrieved by a decision of the department. In areas in which there is currently a review right, that jurisdiction will be transferred to the State Administrative Tribunal. Was the member referring to section 26(5) of the Dog Act?

Mr P.D. Omodei: It is in relation to the keeping of dogs over the age of three months. Subsection (5)(b) refers to the appeal mechanism. My concern is that there will need to be expertise in two areas rather than in one, as was the case in the past.

Mr J.A. MCGINTY: The two areas being?

Mr P.D. Omodei: The two areas will be the Department of Local Government and Regional Development and the State Administrative Tribunal.

Mr J.A. MCGINTY: The purpose of this amendment is to separate the original decision maker from the appeal decision. We want to avoid the Caesar unto Caesar approach. The licensing decision, which is determined according to the Act, is made by the local government concerned. That is spelt out in section 26 of the Dog Act under the heading "Limitation as to numbers". Given his background, the member for Warren-Blackwood will be more familiar than I with this. The decision is made by the local government authority. Section 26(5) provides that any person who is aggrieved about those matters may appeal. Currently people appeal to the minister, who is the head of the Department of Local Government and Regional Development. The closeness of that relationship has been a worry. In future people will apply to the State Administrative Tribunal for a review of the decision. The State Administrative Tribunal will hear an appeal against the decision of the relevant local government authority regarding dogs. That is the scheme of things.

Local government will retain its expertise in dealing with dogs. It is an expertise that has been well built up in most local government authorities throughout the State. The reasonableness of the decision that has aggrieved the ratepayer will be tested. That will be dealt with by the State Administrative Tribunal. Does that cover the issue the member has raised?

Mr P.D. OMODEI: It does. I raise a further issue. I understand that clearly. It is probably a good idea to split the decision makers and for people to have recourse to an independent body. However, compared with going to an appeals tribunal, an appeal to the minister is an inexpensive process. What would be the process for appealing under sections 26, 17, 27 and 16A of the Dog Act? Will we create a body that will impose a burden on all the little people who own dogs? Dog ownership, whether a dog is a problem dog, whether someone can own one, two or three dogs and appeal mechanisms regarding kennels are not matters of state importance, but they are of very great importance to the individual. The likelihood of a heavy cost associated with an appeal to the tribunal needs to be taken into consideration. My understanding is that the appeal mechanism to the minister is straightforward: a departmental officer makes a report available to the minister, who considers it. That is done with virtually no cost to the appellant. Will the new structure result in significant costs?

Mr J.A. MCGINTY: I will answer that on two levels. I refer to section 26, which deals with numbers of dogs, the licensing of dogs, whether someone can own two dogs that are more than three months old and things of that nature. Although they are important matters for the individual, in my view, adjudicating on those sorts of matters ought not occupy the time of a minister of the State. They are appropriately dealt with by local government. Frankly, most ministers should be occupied with matters that affect a broader range of interests than those of an individual who is concerned about how many dogs of a particular age can be kept. That is my view of these matters. I do not know that the member would disagree.

Mr P.D. Omodei: I have a feeling you might be trying to do away with the Minister for Local Government and Regional Development!

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Mr J.A. McGINTY: I hope he does a bit more than regulate the ages and numbers of dogs.

Mr J.B. D'Orazio: Is that a reflection on what you used to do as Minister for Local Government?

Mr P.D. Omodei: I thought I was very gainfully employed on those matters of importance to the small people in the community.

Mr J.A. McGINTY: They are. I do not wish to diminish the importance of having those matters properly determined. In my view a matter involving an individual ratepayer with a grievance with a local government authority is best handled by a tribunal rather than the intervention of a minister of this State.

Mr P.D. Omodei: Who in the tribunal would consider an appeal like this?

Mr J.A. McGINTY: This is my second point. There is no fee associated with an appeal to the minister. This legislation will not change that, although I am not advised on what might happen further down the track. I can talk about only what happens at the moment and what will happen under this legislation. No fee is charged, and that will not be changed by this legislation. As soon as the application is received by the tribunal, the local government authority will do exactly as it does at the moment; that is, provide its side of the story. However, instead of providing the story to the minister, it will provide it to the State Administrative Tribunal. That part of the procedure will remain the same. The people in dispute will be called together and a mediation attempt will be made to identify exactly what the issues are and whether they can be resolved at that level. That is how that sort of matter should be resolved. It should not need to proceed to a full hearing and things of that nature. A person will get his day in court. I do not think a person gets his day in court before a minister. I would be surprised if the minister called the parties in to hear what they say about the matter. If anything, this legislation will enhance the right of an individual dog owner to put his point of view.

Mr P.D. Omodei: Would it get to the stage of legal representation?

Mr J.A. McGINTY: No, although there is no prohibition on that. Someone would need to have rocks in his head to employ a lawyer to put an argument about that matter before the State Administrative Tribunal.

Mr P.D. Omodei: How many dog owners do you know?

Mr J.A. McGINTY: That is another issue! The intention is informality and speed. The State Administrative Tribunal should be more easily accessible for the individual ratepayer than is the minister.

Mr J.B. D'Orazio: Can only the person with a dog go to the tribunal? If an aggrieved neighbour two doors down from the house with the dog did not like a local government decision relating to that dog, could he take the matter to the tribunal?

Mr J.A. McGINTY: There will be no changes to who has a right to challenge decisions relating to a licensing decision. That will continue to be the aggrieved person. There is no change to who has standing to bring matters before the tribunal.

Clause put and passed.

Clause 254: Section 7 amended -

Mr P.D. OMODEI: This is a very trivial question. What is the difference between bringing and making? I am sure it is a technical legal point. Will the Attorney General clarify the difference?

Mr J.A. McGINTY: It is purely grammatical. Section 7(3)(aa) of the Dog Act reads -

a dog kept during any period allowed for the bringing of an appeal . . .

Under this legislation, that will read the "making" of an application. It is a purely grammatical change. One makes, rather than brings, an application. One brings an appeal. It is a change in the standard wording that now applies throughout these sections.

Clause put and passed.

Clauses 255 to 257 put and passed.

Clause 258: Section 26 amended -

Mr P.D. OMODEI: Clause 258(1) states that subsection 26(5) is amended by deleting all of the subsection after "may" in the second place where it occurs and inserting instead "apply to the State Administrative Tribunal for a review of the decision". Section 26(5) of the Dog Act provides that if a person wants to keep on his premises more than two dogs over the age of three months but the local government refuses to grant him such an exemption, he may appeal in writing to the minister who may, after such inquiry as he thinks fit, give directions to the local government concerned and effect shall be given to any such direction. Under this clause such a

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person will now be able to apply to the State Administrative Tribunal for a review of the decision. What will the State Administrative Tribunal say in such a review, and will it be able to compel a local government to give effect to any direction that may come out of its review?

Mr J.A. MCGINTY: One of the things we have tried to do in all these Acts - it is consistent terminology - is make the process less formal. The current right of appeal to the minister has certain connotations of formality, because the person must make out the grounds for appeal and things of that nature. We want to change that to a review of the decision, which will have fewer connotations of formality. The State Administrative Tribunal will look at all the surrounding circumstances and determine whether the correct and preferable decision has been made. That will be the test that is applied. If it is a simple matter of right or wrong, it will have the power to make the correct decision; but if there is a discretion, it will have the power to determine what is the preferable approach to adopt on the issue. That is designed to bring about informality and let people put an argument as to the merit of their case rather than have to prove that an error has been made by the original decision maker. It will expand the discretion that is available to the appeal body, if I can use that word advisedly, by giving the review body the power to do what is right in the circumstances rather than be constrained by the notion of an appeal. In my view that will give individual citizens a greater chance of putting their side of the story than does the existing appeal mechanism.

Mr P.D. OMODEI: I understand what the Attorney General is saying. Complaints under sections 16A, 17 and 27 of the Dog Act will be referred to the State Administrative Tribunal. Why not add section 26 as well? It seems as though the Attorney General is going only halfway, because the Minister for Local Government will deal with some appeals under the Dog Act and the State Administrative Tribunal will deal with similar matters, when all these appeal-type matters under the Dog Act should go straight to the State Administrative Tribunal.

Mr J.A. MCGINTY: The Barker review - and I use that term advisedly given the subject matter that we are talking about here - recommended that some appeals go to SAT and others remain at a ministerial level. That is one element of that report that we did not accept. In future, whenever there is a right of appeal under the Dog Act, that appeal will be to the State Administrative Tribunal.

Mr P.D. Omodei: This says "review" rather than "appeal".

Mr J.A. MCGINTY: Yes. That is because a review of a decision is an individual person exercising his or her right to challenge the original decision. An appeal has narrower connotations. We wanted the review to be broader, and the test will be what is the correct and preferable decision. It is the same notion as an appeal, but it will be somewhat broader. It carries forward the idea that the State Administrative Tribunal will be able to substitute for the decision of the original decision maker what in its mind is the correct and preferable decision. The appeal right that existed in sections 16A, 17 and 27 of the Dog Act will now be an appeal right to the State Administrative Tribunal, but it will be in the broader context of a review of the decision. That means that the State Administrative Tribunal will look at the original decision on its merits, but it will not be confined to the evidence and matters raised in the initial decision and to whether an error has been made by the original decision maker. It is a broadening of the concept of appeal, and it will be standard across all the pieces of legislation that are to be amended by this Bill.

Mr P.D. OMODEI: The Attorney General has made a good point, but it still seems to me, based on the Attorney General's first comment about the Caesar unto Caesar arrangement, that we are doing this for those other sections but we are not doing it for section 26, because we are putting in something that is in between the -

Mr J.A. McGinty: I do not quite understand.

Mr P.D. OMODEI: Under section 26(5)(b) of the Dog Act there is a right to appeal in writing to the minister. The Attorney General is now saying that it will be a review rather than an appeal. If this will be a review why not do that for sections 16A, 17 and 27 as well?

Mr J.A. MCGINTY: Each of the other sections will be a review as well. A review will encompass every right that a person had to an appeal, and more. The only minor qualification is that if an offence has been committed, the person will still be prosecuted in a court. However, that is a different proposition from giving a person the right to appeal a decision based on the merits of the case.

Clause put and passed.

Clauses 259 to 300 put and passed.

Clause 301: Section 4 amended -

Mrs C.L. EDWARDES: This clause deals with amendments to the Equal Opportunity Act. Earlier this year there was a delay in some of the cases being heard by the Equal Opportunity Tribunal. Can the Attorney General update us on the number of cases before the tribunal at the moment? Have those cases progressed since the

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delay earlier this year? How many cases remain to be heard by the tribunal? How many cases are likely to go to the State Administrative Tribunal?

Mr J.A. McGINTY: I will undertake to provide that information perhaps later during this debate. I do not have the information with me. The Equal Opportunity Tribunal has undergone significant change in personnel in recent times. Earlier this year Mr Dharmananda resigned as a member of the tribunal and was replaced by Mr Robert Mazza. It was thought that from that there might be a more expeditious hearing of a number of matters that were backing up before the tribunal. Most recently, as the member would be aware, the president of the tribunal, Norelle Johnson, was appointed a Supreme Court judge and in her place one of two remaining women silks in this State, Jane Chrisford SC, was appointed President of the Equal Opportunity Tribunal until the State Administrative Tribunal comes into operation, if it does. We have moved quickly to make sure the personnel who can deal with the backlog are in place. I will undertake to get that information for the member and provide it most probably this afternoon.

Clause put and passed.

Clauses 302 to 412 put and passed.

Clause 413: The Act amended -

Mrs C.L. EDWARDES: The whole of division 57 deals with the Guardianship and Administration Act. The Guardianship and Administration Board has proved to be a very effective body for dealing with very sensitive cases and also dealing with people very much on a one-on-one basis. A very close environment has been able to be established. The Barker report, which the Attorney General quotes, recommended that the Guardianship and Administration Board not be incorporated into SAT. We raised this in the second reading debate. The Attorney General responded that although the board will not be collocated, it will be incorporated; there will be a separate stream. The problem is that once there is a huge organisation such as that and economies of scale and efficiency are introduced, unless there is to be a separate stream which will replicate collocation, the people who would use the Guardianship and Administration Board will lose a very close liaison and contact with people with whom sensitive decisions will be made. That is one of the concerns that individuals have raised with us. It has also been raised by professions. As the Attorney General has indicated, the majority of applications come from social workers. They do not want to be caught up in a bureaucratic system either, and they are very concerned that is exactly what will be the case.

Mr J.A. McGINTY: The provisions of the Guardianship and Administration Act and the operations of the Guardianship and Administration Board is one of those very sensitive areas of government endeavours. The board deals with people who are no longer capable of managing their own affairs, confidentiality, sensitivity and all those issues that are the essence of a successful tribunal dealing with these matters. The Department of Justice engaged an independent consultant to make sure that everything done in relation to the Guardianship and Administration Board retained all those highly desirable features associated with it. For instance, all the staff of the Guardianship and Administration Board will be transferred to the State Administrative Tribunal. Guardianship and administrative matters will have a dedicated floor in the building at 12 St Georges Terrace which will be the State Administrative Tribunal headquarters. It is intended that the sensitive way in which clients are dealt with and confidentiality issues will not change in any way, shape or form.

Mrs C.L. Edwardes: Is confidential information to be separately computerised?

Mr J.A. McGINTY: I am advised there will be closed access and it will not be able to be accessed other than by those associated with the Guardianship and Administration Board part of SAT. This area has obviously caused some concern. The Law Society has raised this with me as a matter of concern to it. A member of the Law Society Council was taken through and shown the facilities as they are proposed to be. She conveyed to me her contentment with everything that had been done, even down to details like parking bays for the disabled in the vicinity of or adjacent to the building, to ensure safe access given the nature of the people who are in that area.

We have correspondence from some of the interest groups that raised these concerns initially. I would not be so bold as to say that I am sure everyone is 100 per cent happy. Any time there is a change, there will be a measure of concern that the change might detrimentally affect clients. Certainly our commitment is that there will be no detrimental effect on the clients. As a result of discussions with the Chief Justice and other people, we are very tuned in to making sure that what we do is very much client focused.

The collocation model was that the Guardianship and Administration Board would move from its current facilities in the Hyatt Centre at the far end of Adelaide Terrace into the SAT building. It was always proposed that that would happen. It always intended under the collocation model that the president of SAT would be the president of the Guardianship and Administration Board; that is, a Supreme Court judge would assume that function, but would somehow or other remain separate in that context. Frankly, I could not see the point in that.

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Once the stage had been reached of being in the same building with the same staff and the same president, why not take the extra step and make it part of the one body? As I have indicated, the name of State Administrative Tribunal will be the only difference. I hope that will be the case. It is certainly something we are extremely sensitive to and we want to make sure it works. A lot of work has been put into the physical layout questions associated with the new headquarters to make sure that it does work.

Clause put and passed.

Clauses 414 to 438 put and passed.

Clause 439: Section 80 amended -

Mr J.A. McGINTY: I move -

Page 188, after line 22 - To insert the following -

- (4) Section 80(6) is amended by deleting “executive officer” and inserting instead -
“ Public Trustee ”.
- (5) After section 80(6) the following subsection is inserted -
“
 - (6a) A person aggrieved by a decision of the Public Trustee under subsection (3) may apply to the State Administrative Tribunal for a review of the decision.”.

Clause 439 amends the Guardianship and Administration Act. The amendment will provide for the Public Trustee to recover any shortfall in accounts under administration, as SAT will not have the facilities for debt collection, and for a review by SAT of a decision by the Public Trustee to allow or disallow accounts.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 440 to 460 put and passed.

Clause 461: Various references to “Board” amended -

Mr J.A. McGINTY: I move -

Page 195, in the table after line 15 - To delete “s.Pt.” and substitute “Pt.”.

The amendment deals purely with a typographical matter and has no significance attached to it.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 462 to 466 put and passed.

Clause 467: Section 14C amended -

Mrs C.L. EDWARDES: This is an amendment to section 14C(1) of the Hairdressers Registration Act 1846, and includes several matters that must be incorporated in the board’s annual report. Numerous debates have been held in this place concerning the Hairdressers Registration Act during which some concerns were raised about the board’s operations. I wonder whether this is a separate amendment from those needed for other Acts for the establishment of the State Administrative Tribunal. I cannot see where - the Attorney General might be able to point them out - other registration boards’ annual reports must incorporate this information. Is this something new that was requested and not required elsewhere; if so, why?

Mr J.A. McGINTY: I may be missing something in the question posed by the member. The Government intends that each of the registration Acts will have the same reporting requirements in their annual reports. Those matters are set out. To give another example, clause 822 is the same provision concerning motor vehicle dealers. The same provision appears for each board.

Mrs C.L. Edwardes: What about the Painters’ Registration Board?

Mr J.A. McGINTY: Clause 929 of the Bill relates to the Painters’ Registration Act. It is an attempt to standardise the reporting requirements. One of the great benefits of this process is that there will be certainty about what boards will be required to do and report upon. Uniformity will exist among the boards. By and

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large, there was a little uniformity, but the boards have grown in an ad hoc manner. This process will standardise not only the disciplinary functions, but the reporting functions as well.

Clause put and passed.

Clauses 468 to 524 put and passed.

Clause 525: Section 36 amended -

Mr J.A. McGINTY: I move -

Page 224, lines 14 and 15 - To delete -

, for a period of not more than 30 days,

This amendment will remove some possible uncertainty as to the time frame within which certain things are required to be done under the Human Reproductive Technology Act. Proposed subsection (2a) reads -

The Commissioner of Health may by notice suspend, for a period of not more than 30 days, the operation of any licence . . .

Proposed subsection (2b) reads -

A notice under subsection (2a) is to state that the Commissioner of Health will refer the matter to the State Administrative Tribunal within 14 days of giving the notice.

The Government seeks to avoid any possible conflict between the 30-day and 14-day references to ensure that no possible misunderstanding or conflict arises in the provision.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 526 to 580 put and passed.

Clause 581: Section 41 amended -

Mrs C.L. EDWARDES: This clause is a very significant amendment concerning a review of tax decisions under the administrative appeals body. I am surprised that this matter has not been blown up in lights far more than has been the case. I understand that this provision will allow a review of decisions relating to land tax assessments, and will save people going to court. Can the Attorney General explain this provision?

Mr J.A. McGINTY: Some amendments were made to the Land Tax Assessment Act last year, particularly in the upper House, providing that certain matters may be reviewed in the Small Claims Tribunal. Those provisions have not been proclaimed. The intention is to provide that decisions made by the Commissioner for State Taxation may be reviewed in the State Administrative Tribunal. I am not sure where the member's question leads from there.

Mrs C.L. Edwardes: I was not aware that the provisions had not been proclaimed.

Mr J.A. McGINTY: This amendment gives effect to the determination of the upper House that decisions should be reviewable. Therefore, previous non-reviewable decisions will now be reviewable in the State Administrative Tribunal, rather than decisions being reviewable in the interim in the Small Claims Tribunal and subsequently inter-SAT.

Mrs C.L. Edwardes: Are there any other changes to the Small Claims Tribunal jurisdiction?

Mr J.A. McGINTY: There are no other changes, other than the taxation provisions that were not proclaimed.

Clause put and passed.

Clauses 582 to 674 put and passed.

Clause 675: Section 21 amended -

Mr J.A. McGINTY: I move -

Page 295, line 18 - To insert after "(7)" the paragraph designation "(a)".

Page 295, line 19 - To delete "(a)" and substitute "(h)".

These amendments, again, are housekeeping issues and purely typographical amendments.

Amendments put and passed.

Clause, as amended, put and passed.

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Clauses 676 to 679 put and passed.

Clause 680: Section 26 amended -

Mr J.A. McGINTY: This amendment is about the difference between the figure “1” and the lower case letter “l”.

Mrs C.L. Edwardes: That was not the amendment on the Notice Paper that I wanted the Attorney General to explain; it was the proposed new clause.

Mr J.A. McGINTY: I thought the member was plumbing new intellectual depths; I am sorry about that.

Mrs C.L. Edwardes: I am sorry I made the Attorney General look for it.

Mr J.A. McGINTY: I move -

Page 298, line 2 - To insert after “(1)” the following -

(l)

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 681 to 702 put and passed.

Clause 703: Section 6.78 amended -

Mr J.P.D. EDWARDS: Will the Attorney General enlighten me on this clause, which appears to be a play on words. The clause amends section 6.78 of the Local Government Act, which requires a local government authority to refer a decision to a land valuation tribunal as an appeal. The amendment will insert instead -

may apply to the State Administrative Tribunal for a review of the decision

Whereas previously it was a referred decision, it will now be a review of a decision. Will the Attorney General explain that process to me?

Mr J.A. McGINTY: The purpose of this amendment is to ensure that an individual ratepayer is the appellant. Currently section 6.78 of the Local Government Act states -

A person who is dissatisfied with a decision of the local government to refuse to extend the time for making an objection against the rate record or for service of a notice requiring it to treat an objection to the rate record as an appeal against the rate record may give to the local government a notice requiring it to refer the decision to a Land Valuation Tribunal as an appeal.

Currently a duty is cast on the local government authority to refer the matter to be dealt with as an appeal. That will now change so that it will no longer be a duty on the local government authority. Affected ratepayers will have the right to apply to the State Administrative Tribunal for a review of a decision so that ratepayers will have control of the process rather than have to ask the local government authority to refer a decision on their behalf.

Clause put and passed.

Clauses 704 to 727 put and passed.

Mr J.A. McGINTY: If members are agreeable, it seems that the best way to proceed would be to deal with all the medical and disciplinary matters in toto, in which case -

Mr M.F. Board: Rather than go through every clause - because what has been proposed is more complicated than the original amendment - could you spend five minutes explaining what you are proposing to put in place now compared with the previous proposal? We would then get a full picture of exactly what is transpiring, which could save us some time.

Mr J.A. McGINTY: Indeed.

The DEPUTY SPEAKER: We need a question before the House. Would you move your amendment, Attorney General. If there is agreement for an all-encompassing debate, we can then deal with the question after that.

Mr J.A. McGINTY: A series of amendments all deal with the one subject matter. I do not know whether I can move amendments to a number of consecutive clauses taken together.

The DEPUTY SPEAKER: No, the minister cannot. There must be a question before the House.

New clauses 728 and 729 -

Mr J.A. McGINTY: I move -

Page 316, after line 14 - To insert the following new clauses -

728. Section 3 amended

Section 3(1) is amended by inserting the following definition in the appropriate alphabetical position -

“

“professional standards committee” means the professional standards committee appointed under section 8AA;”

729. Part II heading amended

The Part II heading is amended by inserting after “Medical Board” -

“and professional standards committee”.

Professor Bryant Stokes conducted a review of the Medical Act during the term of the previous Government. Someone else chaired the review previously. The review was conducted over a long period and it has reported to the Government. By and large, the Government has accepted the outcome of the review. With regard to the disciplining of doctors, it was suggested that an independent disciplinary panel be established to deal with serious matters against doctors. It was recommended that three bodies be created, essentially within the Medical Board, to deal with lesser disciplinary matters. One of the three bodies the Medical Board recommended establishing was the complaints assessment committee. That committee would conduct preliminary assessments of complaints against doctors, assess matters referred to it from the Office of Health Review, and consider matters that warranted possible action that were identified by the Medical Board. The intention was that the complaints assessment committee would advise the Medical Board on complaint management. That committee could notify the relevant medical practitioner of the complaint or other matter and conduct a preliminary assessment of the complaint or matter. It could recommend to the board that further action be taken.

Mr M.F. Board: Was the complaints assessment committee intended to be a first port of call for all complaints?

Mr J.A. McGINTY: Yes. Essentially, complaints would go to the complaints assessment committee and, as I indicated, it would conduct a preliminary assessment of the complaint or matter and recommend to the Medical Board whether further action should be taken or whether the complaint should be referred to another body. It could also attempt to conciliate between the complainant and the medical practitioner. The committee would comprise up to four persons appointed by the Medical Board, of whom a majority would be medical practitioners, and one person would be a lay person representing the community. The Medical Board would appoint the chairperson. That was recommended as the first of the three bodies.

The second body had a narrower focus, as the name suggests, which was to establish the impaired registrants panel. It would examine complaints or matters of concern referred to it by the Medical Board about the impact of a registered medical practitioner's health status on his or her medical practice, and it would advise the board as appropriate. It would comprise two people, including a medical practitioner and one other person, both of whom would be appointed to the panel by the Medical Board.

The third body that the review suggested be set up is the professional standards committee. That committee would inquire into complaints or matters of concern referred to it by the Medical Board in relation to the competence or professional conduct of registered medical practitioners. That committee would comprise two medical practitioners and one lay person.

That is the outcome of the review of the Medical Act. Those three bodies would have their own areas of expertise. It was proposed that a body other than the Medical Board be established to deal with more serious matters - the medical tribunal. In a sense, the review followed the provisions that then applied to lawyers, whereby a legal practice committee - the Legal Practitioners Complaints Committee - would initially deal with matters of a minor nature. The matter would then be referred to a tribunal, which would hear the full disciplinary matter against a recalcitrant lawyer, for example, and deal with that person. The proposal for the complaints committee against doctors is somewhat more complicated. Therefore, it was proposed to establish those three preliminary bodies to deal with different matters. The Government had discussions with the Australian Medical Association and the Medical Board about the State Administrative Tribunal legislation. Both organisations indicated their preparedness for the disciplining of doctors to be dealt with within SAT.

Mr M.F. BOARD: I ask for the Attorney General to continue.

Mr J.A. McGINTY: The tribunal, as proposed in the review of the Medical Act, would become the State Administrative Tribunal. An issue arose regarding the composition of the tribunal when it deals with disciplining doctors for serious matters. The AMA put its view to the Government that it was inappropriate for a tribunal of three people, only one of whom would be a medical practitioner, to sit in judgment of matters in

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which a possible outcome could be the revocation of a practitioner's licence to practise medicine in this State. It sought to ensure that the panel comprised five people, two of whom would be doctors; an independent, legally qualified chairperson; and two other people. Therefore, the responsibility of making the assessment on the doctor's future livelihood would be fairly shared because of the greater input of a larger tribunal. We have agreed with that. The amendments before the House today reflect the agreement we entered into with the AMA to achieve that. However, in the time we had available to bring together the SAT legislation and the review of the Medical Act, it was not possible to comprehensively rewrite the provisions in the Medical Act concerning complaints against doctors. We have discussed and reached agreement with the AMA on a slimline approach to give a summary jurisdiction of minor disciplinary matters to the Medical Board through the professional standards committee. That would ensure that lesser disciplinary matters continued to be dealt with in a summary way but the major matters would be referred to the disciplinary tribunal. The Medical Board could then deal with matters in a way that was envisaged by the review of the Medical Act, without comprehensively rewriting all the provisions. We are legislating for the professional standards committee to enable that to occur, and we are also legislating, through the State Administrative Tribunal, with the intention that we will come back when the more comprehensive Medical Act rewrite is done - and I expect that to be early in the new year, or maybe later this year - to pick up the totality of the changes. We are picking the heart out of it to provide for the two-tiered disciplinary functions on terms that are broadly acceptable to the medical profession.

Mr M.F. BOARD: We are dealing with this in a general way - that is the best way to deal with it - and the review of the Medical Act was brought about not only by the fact that the board needed some additional powers of support, but also, from a community point of view, because the board through its deliberations were to some degree not seen as transparent, and the speed at which deliberations were made left the community floundering. Issues that were before the board for quite some years were often not closed. I think that frustrated the board as much as it did the community. Is the Attorney General convinced that the changes flowing from the professional standards committee and the State Administrative Tribunal will address both of those issues?

Mr J.A. McGINTY: Yes, I am. I occasionally exchange notes in the lift of the building we share with one of the members of the Medical Board of WA, and the point has been made that currently a significant number of disciplinary matters against doctors are still to be addressed. The Medical Board is part time; it cannot list matters with a full-time board to run right through them to properly clear that backlog. I am sure that the State Administrative Tribunal will deal in a more timely way with disciplinary matters against doctors. The second issue, as I understood the point the member was making, concerned public confidence in the system. Across the board, one of the major changes we are making with this legislation is to pick up the recommendations of Gunning, Temby and others of not having a committee consisting of peers sitting in judgment upon their fellows. We need input at that level, but not a majority. That has been one of the perceived difficulties with the Medical Board in the past, and time has moved on to the stage where we now need independence. Police do not determine complaints against police any more. Generally speaking, the need for that independence has emerged. I am confident that this model, given that it has been broadly endorsed by the Australian Medical Association and the Medical Board, will meet those perceived shortcomings in the current system.

Mr M.F. BOARD: I wish to explore a couple of other areas, one from the community point of view and one concerning the Office of Health Review. When a complaint initiated by an aggrieved person in the community comes before the board, is the process by which that complaint ends up before the tribunal left entirely with the board?

Mr J.A. McGinty: Yes.

Mr M.F. BOARD: If an individual is not satisfied that the board has dealt with the process adequately through one of those committees, what is the avenue for appeal under these new arrangements?

Mr J.A. McGINTY: I should first of all put one qualification on the issue. I was looking at the matter from a consumer perspective. If a person complains about his or her medical treatment, that person will go to the Medical Board with that complaint, and the Medical Board will then place the matter before SAT. The one exception to that comes from the other side. If the doctor feels that he or she will not get a fair hearing before the Medical Board, the doctor might request that the matter go to SAT. That is the one qualification, but I understand the member was putting the question from a consumer point of view.

Mr M.F. Board: That is correct.

Mr J.A. McGINTY: In which case, my answer was correct from that perspective. The issue of how the matter is then dealt with -

Mr M.F. Board: If an individual is not satisfied, what is his right of appeal and what is the process?

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Mr J.A. McGINTY: It is the same as it is now; that is, he will go to the Ombudsman or raise the matter with his member of Parliament. We are not seeking to change the role of the Medical Board in determining how matters are progressed. A person could go to the Office of Health Review, which is often where he would go.

Mr M.F. Board: That is the next question I wanted to raise. I was never quite clear where the Office of Health Review started and finished in terms of its relationship with the board. What is its relationship now with the tribunal? It might be a good thing if the Attorney outlined where the jurisdiction of the Office of Health Review starts and finishes when complaints come before it.

Mr J.A. McGINTY: Nothing is proposed to be changed from the way in which things currently operate. The Office of Health Review, soon to be renamed to pick up the disability component - I think the proposition is to rename it the office of health and disability complaints - will still raise matters. Once the Medical Board commences dealing with a disciplinary matter, currently the Office of Health Review stops dealing with it. That will be exactly the same under the new scheme. Once the State Administrative Tribunal starts to deal with a matter, it will no longer be investigated by the Office of Health Review. No change is proposed in the interaction of the two at the moment.

New clauses put and passed.

Clause 728: Section 6 amended -

Mr J.A. McGINTY: I seek leave to deal with my two amendments at lines 17 and 20 on page 316.

The DEPUTY SPEAKER (Mrs D.J. Guise): Is leave granted to deal with those amendments together?

Mr M.F. Board: Absolutely. We are happy with those amendments.

Mr J.A. McGINTY: I move -

Page 316, line 17 - To delete the full stop and substitute the following -

and inserting instead -

“ and handling ”.

Page 316, line 20 - To delete the full stop and substitute the following -

and inserting instead -

“ . . . create an offence and specify a fine of not more than \$2 000 by which the offence is punishable and may . . . ”

Amendments put and passed.

Clause, as amended, put and passed.

Clause 729 put and passed.

New clauses 730 and 731 -

Mr J.A. McGINTY: I move -

Page 316, after line 24 - To insert the following new clauses -

730. Section 8AA inserted

After section 8 the following section is inserted -

“

8AA. Professional standards committee

- (1) The Board is to appoint persons to be members of a committee to be known as the professional standards committee.
- (2) Each member of the committee is to be a natural person chosen by the Board, and a member of the Board is not precluded from being a member of the committee.
- (3) The Board is to appoint one of the members of the committee to preside at a meeting of the committee and, if

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that person is unable to preside, a member chosen by the members present at the meeting is to preside.

- (4) The committee is to comply with any direction that the Board gives it about the conduct of its proceedings but otherwise is to determine its own procedures.
- (5) The committee is to ensure that -
 - (a) accurate records are made of the proceedings at its meetings, including details of each decision it makes; and
 - (b) those records are retained. ”.

731. Section 8A amended

Section 8A is amended as follows -

- (a) by inserting after “done by the Board” -
“ or the professional standards committee ”;
- (b) by inserting after “any member of the Board” -
“ or the professional standards committee ”;
- (c) by inserting after “subject the Board or any member” -
“ of the Board or committee ”.

Mr M.F. BOARD: For the record, will the Attorney General outline the membership of that professional standards committee and whether it will call upon other expertise for particular cases? In other words, will there be a repository of experts who may be brought to the committee for the purposes of its deliberation?

Mr J.A. McGINTY: Yes, the committee will have available to it external expertise. As the amendment suggests, the professional standards committee is to be appointed by the Medical Board at this time, which will determine its composition.

New clauses put and passed.

Debate interrupted, pursuant to standing orders.

[Continued on page 10289.]