

HEALTH AND DISABILITY SERVICES LEGISLATION AMENDMENT BILL 2009

Introduction and First Reading

Bill introduced, on motion by **Dr K.D. Hames (Minister for Health)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

DR K.D. HAMES (Dawesville — Minister for Health) [12.26 pm]: I move —

That the bill be now read a second time.

The Office of Health Review is an independent statutory authority established under the Health Services (Conciliation and Review) Act 1995. In 2003 a review of the Office of Health Review was conducted pursuant to section 79 of the of the Health Services (Conciliation and Review) Act 1995. An independent reference group appointed by the minister conducted the review. The report of the review was tabled in Parliament in December 2003 and the government accepted 44 of the 47 recommendations. Of the recommendations that were accepted, 18 required amendments to either the Health Services (Conciliation and Review) Act 1995 or the Disability Services Act 1993. The recommendations of that review form the basis of the Health and Disability Services Legislation Amendment Bill 2009.

The Office of Health Review was created pursuant to the Health Services (Conciliation and Review) Act 1995 to provide consumers with a formal channel for complaints about health services and, since 1999, disability services in both the public and private sectors, and to allow clinicians and other health and disability service providers to respond in an environment of conciliation. Recommendations made by the reference group and accepted by the government include the continuation of the Office of Health Review as the principal independent complaints mechanism for health and disability in Western Australia, and its continued operation as an alternative dispute resolution agency within a broad conciliation framework. The bill provides for the change of name of the office. This will assist in making the office more visible and therefore more accessible to consumers, especially those with special needs that make them more vulnerable. The name change will better reflect the office's role as the principal health and disability complaints agency in Western Australia.

This bill will reduce the number of operational inconsistencies brought about by differences in the powers and processes between the Health Services (Conciliation and Review) Act 1995 and the Disability Services Act 1993. Several amendments proposed to part 6 of the Disability Services Act 1993 would ensure that people with disabilities have equal access to the complaint process with the rest of the community. This bill will enable people with disabilities to make a complaint that a provider has acted unreasonably by not properly investigating a complaint or causing it to be properly investigated, or not taking or causing to be taken, proper action on the complaint. People with disabilities will also be able to complain when a provider has acted unreasonably by charging an excessive fee or otherwise acting unreasonably with respect to a fee. These amendments remove inconsistencies between health and disability complaints.

Complaints are a form of feedback on the effectiveness or otherwise of organisations and systems. A careful analysis of complaints can provide vital information on why the activity causing the complaint occurs and how the situation at both an individual and systemic level can be rectified. This bill requires the director, when suggesting ways of removing and minimising the causes of complaints, to ensure that it is done in collaboration with groups of providers or users. These amendments will change the process by which complaints are managed at the Office of Health Review, which will streamline and simplify the processes of receipt, acceptance and resolution of complaints and make reporting more meaningful.

The bill provides the director with discretion to accept a complaint whether or not the complainant, or the person acting on behalf of the complainant, has taken steps to resolve the complaint with the provider. Whilst it is ideal that complainants should attempt to resolve their complaints with the disability or health service provider before approaching the OHR, there may be some cases in which this is neither practicable nor desirable. Examples could include situations in which a complainant alleges issues such as sexual impropriety or threatening behaviour and in which further contact with the provider may be traumatic, stressful or otherwise deleterious to the person's wellbeing.

The bill will expand the options available to the director in dealing with complaints to include a negotiated settlement. Once the director has accepted a complaint, he or she can, by negotiating with the complainant and the provider, attempt to bring about a settlement of the complaint that is acceptable to the parties. If the complaint is not settled by negotiation, the director must refer the complaint for conciliation if, in the director's

opinion, the complaint is suitable for conciliation, or investigate the complaint if in the director's opinion an investigation is warranted, taking into account the likely costs and benefits of an investigation.

The bill provides that evidence of anything said or admitted during a negotiated settlement or during conciliation for health or disability complaints will not be admissible in proceedings before a court or tribunal. These legislative changes will safeguard the integrity of the alternative resolution process, and will deter those whose real interest lies in litigation. The bill increases the time limit for making a health complaint from 12 months to 24 months. The time limits for health and disability complaints will now be consistent.

The bill enables a complainant to allege that any provider, not just a public provider, has acted unreasonably by not providing a health service for the user. Where ample choice of providers exists, this may not be a serious issue for health consumers. However, in rural or remote areas of the state, where choice of providers may be extremely limited, including a choice of one, the issue of refusal of service becomes more serious. There are undoubtedly many good and valid reasons for refusal of service—for example, threatening or unseemly behaviour by a client. However, there is no comparable exclusion of the right to complain against a private provider for refusing to provide a disability service. It would therefore appear inequitable to impose this distinction in the health sphere.

The bill enables a complainant to complain that a provider has acted unreasonably in the manner of providing a health or disability service for the user, whether the user or a third party requested the service. This amendment will enable people who undergo an examination for the purpose of workers' compensation or other insurance claims to be able to complain that a provider has acted unreasonably in the manner of providing a service for the user. This bill provides for the director to recognise as a user's representative a person who is not chosen by the user, and may allow that person to complain to the director on the user's behalf if the user has died and, in the director's opinion, the prospective advocate is a person who has sufficient interest in the subject matter of the complaint.

The bill provides greater encouragement to resolve complaints in a timelier manner. The director can request a written response to a complaint within a specified time period. If the provider fails to provide a response to the complaint concerned, the director must include in the office's annual report the details of any breach that, in the director's opinion, was committed without reasonable excuse. If, after a finding of unreasonable conduct, a notice is given that includes any action that the director considers ought to be taken by the provider to remedy the matter and the provider does not take the action within such time frame that in the director's opinion is reasonable, the director must give the minister a copy of the notice and a written report about the refusal or failure by the provider to take action.

This bill removes the operational inconsistencies between disability and health complaints in relation to penalties imposed for providing false or misleading information or statements. I commend the bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.