HEALTH AND DISABILITY SERVICES LEGISLATION AMENDMENT BILL 2009

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Simon O'Brien (Minister for Disability Services)**, read a first time.

Second Reading

HON SIMON O'BRIEN (South Metropolitan — Minister for Disability Services) [10.15 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. A review of the Office of Health Review was conducted in 2003 pursuant to section 79 of the Health Services (Conciliation and Review) Act 1995. An independent reference group appointed by the Minister for Health conducted the review. The report of the review was tabled in Parliament in December 2003, and the then 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 this Health and Disability Services Legislation Amendment Bill 2009.

The Office of Health Review was established to provide consumers with a formal channel for health complaints and disability complaints since 1999, 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 then 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.

The bill will reduce the number of operational inconsistencies brought about by differences between the powers and processes of 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 will ensure that people with disabilities have equal access to the complaints 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 useful source of feedback on the effectiveness or otherwise of organisations and systems. A careful analysis of complaints will 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. The bill requires the director to collaborate with groups of providers or users when suggesting ways of removing and minimising the causes of complaints and to bring them to the notice of the public. These amendments will change the process by which complaints are managed by the office, 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 office, 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 would 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. When 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, the issue of refusal of service becomes more serious. There may be valid reasons for refusal of service, such as 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 be inequitable to impose this distinction in relation to health complaints.

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 authorises 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. The bill ensures that evidence of anything said in a provider's written response is not admissible in proceedings before a court or tribunal. This protection is consistent with the statutory protection afforded to parties in conciliation and is intended to encourage candour between the parties to facilitate the successful resolution of complaints. 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.

The bill introduces a new requirement that, in deciding what remedial action should be taken to remedy the matter in circumstances in which unreasonable conduct is found to have occurred, the director must first consult the relevant provider. Furthermore, if the action that the director considers ought to be taken to remedy the matter is likely to have an impact on other providers, the director will be required to consult a group of those providers.

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

Finally, the bill provides for the minister to conduct a further legislative review five years after the bill has been passed and to report the findings of the review to Parliament.

I commend the bill to the house.

Debate adjourned, pursuant to standing orders.

House adjourned at 10.23 pm
