

House of Representatives
Supplementary Order Paper

Wednesday, 14 November 2001

Health and Disability Services (Safety) Bill

Proposed amendments

Hon Annette King, in Committee, to move the following amendments:

Clauses 19 to 19B

To omit *clause 19* and the heading following it (lines 23 to 38 on page 22 and 1 to 8 on page 23), and substitute the following headings and clauses:

Part 4
Miscellaneous

Appeals

19 Rights of appeal

- (1) A person may appeal to a District Court against the cancellation under **section 5K** of the person's certification to provide health care services of any kind.
- (2) An auditing agency may appeal to a District Court against the cancellation under **section 8(1)** of the agency's designation.
- (3) A person in respect of whom a cessation order or a closing order is served may appeal to a District Court against it.
- (4) An appeal against a cessation order or a closing order must be brought within 14 days after it is served.
- (5) The Court's decision is final.

19A Suspension of cancellation or order

- (1) At any time after an appeal against the cancellation of a person's certification to provide health care services of any kind has been lodged, the District Court may suspend the cancellation until the appeal has been disposed of, if (and only if) it is satisfied that it is not necessary in the public interest for

the person to be prevented from providing health care services of that kind until then.

- (2) At any time after an appeal against a cessation order or a closing order has been lodged, the District Court may suspend the operation of the order until the appeal has been disposed of, if (and only if) it is satisfied that it is not necessary in the public interest for the person to be prevented from providing health care services of that kind concerned or (as the case may be) using the place concerned until then.
- (3) A suspension may be unconditional, or subject to any conditions the Court thinks fit.
- (4) The Court may at any time cancel the suspension.
- (5) Except as provided in **subsections (1) and (2)**,—
 - (a) the lodging of an appeal against the cancellation under **section 5K** of a person's certification to provide health care services of any kind does not affect the operation of the cancellation:
 - (b) the lodging of an appeal against a cessation order or a closing order does not affect the operation of the order.
- (6) The lodging of an appeal against the cancellation under **section 3(1)** of an auditing agency's designation does not affect the operation of the cancellation.

Regulations

19B Regulations

- (1) The Governor-General may, by Order in Council, make regulations for any or all of the following purposes:
 - (a) prescribing in respect of services that are rest home care, or geriatric services that are hospital care services, a means by which there can be ascertained—
 - (i) minimum numbers of nursing and other care staff who must be on duty (at any time, or at different times) in premises in which the care is being provided; and
 - (ii) any minimum qualifications any of them must have.
 - (b) prescribing fees for the purposes of this Act, or a means by which fees for the purposes of this Act may be calculated or ascertained:
 - (c) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) While there are in force service standards for providing health care services of any kind that state minimum levels of staffing in premises in which services of that kind are being provided, regulations under **subsection (1)(a)** do not apply in respect of services of that kind.

Offences

Schedule 1

To omit the expression “**section 13**” on page 30, and substitute the expression “**sections 13 to 13B**”.

Schedule 2

To omit the item relating to section 34(1) of the Nurses Act 1977 (on page 43), and substitute the following item:

Repeal section 34(1) and substitute:

“(1) In this section,—

“**hospital** means an institution that is—

“(a) a hospital care institution within the meaning of **section 22(3)** of the Health and Disability Services (Safety) Act 2001; or

“(b) an institution within the meaning of the Alcoholism and Drug Addiction Act 1966

“**Medical Superintendent**,—

“(a) in relation to a hospital care institution within the meaning of **section 22(3)** of the Health and Disability Services (Safety) Act 2001, means the person for the time being in charge of that institution acting on advice sought under subsection (6); and

“(b) in relation to an institution within the meaning of the Alcoholism and Drug Addiction Act 1966, means the manager of that institution if he or she is a medical practitioner.”

To omit the items relating to the Toxic Substances Act 1979 (on pages 45 and 46).

To omit the item relating to the Goods and Services Tax Act 1985 (on pages 47 and 48), and substitute the following item:

Goods and Services Tax Act 1985 (1985 No 141)

Repeal the definition in section 2(1) of **hospital** and substitute:

“**hospital**—

“(a) means an institution—

“(i) that is a hospital care institution within the meaning of **section 22(3)** of the Health and Disability Services (Safety) Act 2001; or

“(ii) whose principal purpose is to receive and treat people needing medical treatment or suffering from a disease; and

“(b) includes all clinics, dispensaries, offices, outpatient departments, services, and undertakings, maintained in connection with, or incidental to, such an institution”.

To omit from the item relating to the Child Support Act 1991 (on page 51) the expression “paragraph (a)”, and substitute the expression “paragraphs (a) and (b)”.

Schedule 3

To insert, after the item relating to the Medicines Regulations 1984 on page 56, the following item:

Obstetric Regulations 1986 (SR 1986/75)

Omit from the definition of **domiciliary practice** in regulation 2(1) the words “licensed hospital within the meaning of Part V of the Hospitals Act 1957” and substitute the words “hospital care institution within the meaning of **section 22(3)** of the Health and Disability Services (Safety) Act **2001**”.

To insert, after the item relating to the Dietitians Regulations 1987 on page 56, the following item:

Old People’s Homes Regulations 1987 (SR 1987/336)

Omit from the definition of **home** in regulation 2 the words “licensed hospital within the meaning of the Hospitals Act 1957 or a hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992”, and substitute the words “hospital care institution within the meaning of **section 22(3)** of the Health and Disability Services (Safety) Act **2001**”.

To omit the items relating to the Health Entitlement Cards Regulations 1993 on pages 55 and 57, and substitute the following item:

Health Entitlement Cards Regulations 1993 (SR 1993/169)

Omit from regulation 2(1) the definition of **licensed hospital**, and substitute:

licensed hospital means a hospital care institution within the meaning of **section 22(3)** of the Health and Disability Services (Safety) Act **2001**

To omit the item relating to regulation 3(2)(b) of the Medical Laboratory Technologists Regulations 1989 on page 57.

To insert, after the item relating to regulation 2 of the Medicines Regulations 1984 on page 56, the following item:

Omit from regulation 44(d) the words “licensed hospital, the licensee” and substitute the words “hospital, the hospital care operator (within the meaning of **section 22(3)** of the Health and Disability Services (Safety) Act **2001**)”.

To omit the item relating to the Broadcasting (Public Broadcasting Fees) Regulations 1998 on page 59.

Explanatory note

The proposed *new clauses 19 to 19B* are, with 2 modifications to proposed *new clause 19B*, identical to those in Supplementary Order Paper 209, and will be moved instead of those clauses. The 2 modifications are—

- the power to prescribe minimum staffing levels by regulation will apply only to rest home services and hospital services that are geriatric

services (rather than rest home services and all hospital services, as at present provided in proposed *new clause 19B(1)(a)* in Supplementary Order Paper 209):

- proposed *new clause 19B(2)* now provides that if both services standards and regulations prescribe minimum levels of staffing in premises in which health care services of any kind are being provided, the standards prevail and the regulations do not apply to services of that kind (whereas proposed *new clause 19B(2)* in Supplementary Order Paper 209 provides that the regulations prevail over the standards).

The amendment to *Schedule 1* remedies a minor inconsistency between the form it contains and the provisions to which that form relates. The other amendments are all to schedules of consequential amendments, and either remedy minor errors or omissions, or take account of legislative changes that have taken place since this Bill was introduced.

