NEW ZEALAND LAW SOCIETY

NZLS EST 1869

THE HEALTH PRACTITIONERS (REPLACEMENT OF STATUTORY REFERENCES TO MEDICAL PRACTITIONERS) BILL

06/10/2015

SUBMISSION ON THE HEALTH PRACTITIONERS (REPLACEMENT OF STATUTORY REFERENCES TO MEDICAL PRACTITIONERS) BILL

1 Introduction and summary

1.1 The New Zealand Law Society welcomes the opportunity to comment on the Health Practitioners (Replacement of Statutory References to Medical Practitioners) Bill.

1.2 The Law Society does not raise any concerns with the policy intention of the omnibus Bill, which is to enable a wider range of health practitioners to perform certain statutory responsibilities. The Law Society does however wish to draw attention to substantive changes to the Accident Compensation Act 2001 and the Misuse of Drugs Act 1975 included in the omnibus Bill that are outside the scope of the policy of the Bill.

1.3 The Law Society is also concerned that one of the proposed changes to the Children, Young Persons and Their Families Act 1989 raises an issue under the New Zealand Bill of Rights Act 1990.

2 Comments

Amendments to Accident Compensation Act 2001

Clause 4: Restriction on participation of medical practitioners in preparation of individual rehabilitation plans

2.1 Clause 4(1) replaces the words "any medical practitioner providing treatment to the claimant" in existing clause 7(3)(b) of Schedule 1 to the Accident Compensation Act 2001 with "the lead health practitioner". The lead health practitioner is defined as "the health practitioner who is leading the co-ordination of the provision of treatment or rehabilitation (or both) to the claimant" (inserted by clause 4(2), as new clause 7(5) of the Schedule).

2.2 This appears to be a substantive change that is not related to the policy of the omnibus Bill, which could adversely affect claimants.

2.3 The effect of clause 4(1) is to remove the entitlement of medical practitioners providing treatment to a claimant to participate in the preparation of a claimant's individual rehabilitation plan, unless they are the health practitioner "leading the co-ordination" of their treatment or rehabilitation (or both).

2.4 Historically the treating GP has been responsible for the medical management of their patients, with others involved (such as specialists and hospitals) reporting to the GP. The proposed amendment may result in a situation where a health practitioner other than the claimant's GP is nominally leading the co-ordination of the provision of treatment or rehabilitation for an ACC claimant, with the result that the GP is not entitled to have input into the claimant's rehabilitation plan.

2.5 The proposed amendment is also unclear as to who nominates the lead health practitioner. If the Accident Compensation Corporation is to take a role in the nomination of the lead health practitioner (which the Bill would appear to allow), then the proposed change substantively alters the current balance of interests between the Corporation and the claimant under clause 7 of Schedule 1.

2.6 In addition, it is not clear what obligations the lead health practitioner would have to obtain and put forward the views of other health practitioners involved in providing services to the claimant. This uncertainty may cause complications in the application of this provision.

Recommendations:

2.7 The Law Society recommends:

- That clause 4(1) and (2) of the Bill be deleted. (The effect of this would be that clause 7(3)(b) of Schedule 1 to the Accident Compensation Act 2001 remains unchanged, so that all medical practitioners involved in providing treatment to the claimant are entitled to participate directly in preparing the claimant's rehabilitation plan.)
- Alternatively, that clause 4 be redrafted to amend clause 7(3)(b) of Schedule 1 to the Accident Compensation Act 2001, to replace "medical practitioner" with "health practitioner" and "treatment" with "services". (The effect of this would be to allow all health practitioners involved in providing services to the claimant to participate directly in the preparing the claimant's rehabilitation plan.)

Amendments to Children, Young Persons and Their Families Act 1989

Clause 19: social worker to decide if health practitioner suitably qualified to undertake medical examination of child

2.8 Clause 19 proposes to amend section 53 of the Children, Young Persons and Their Families Act 1989 to allow a social worker to arrange for a child to be medically examined by a health practitioner. The Act currently limits medical examinations to medical practitioners only. The proposed amendment provides that the social worker must "consider the health practitioner [to be] qualified for the purpose."

2.9 Section 53 permits the social worker to arrange for a medical examination without the consent of the child's parent or guardian if despite reasonable efforts to do so, the social worker has been unable to obtain consent. The provision may engage section 11 of the New Zealand Bill of Rights Act 1990 (the right to refuse to undergo medical treatment) as potentially authorising medical treatment contrary to the wishes of the child's parent or guardian. Even if a medical examination does not constitute treatment per se, a medical examination is a significant intrusion on the privacy and bodily integrity of the child. On either basis, the boundaries within which this power can be exercised must be both clearly and reasonably drawn.

2.10 The Law Society is concerned that a social worker is not the appropriate person to assess whether a health practitioner other than a medical practitioner is qualified to undertake a medical examination. Further, there is no provision in the Bill for the child's parent or guardian or usual medical practitioner to contest the social worker's assessment.

2.11 It would be more consistent with the child's rights for medical examinations to be conducted only by medical practitioners or statutorily prescribed categories of other health practitioners who are objectively assessed as being qualified in terms of their scope of practice under the Health Professionals Competence Assurance Act 2003.

Recommendations:

2.12 The Law Society recommends that either:

- Section 53 not be amended; or
- If it is considered appropriate to specify other categories of health practitioners as authorised to conduct medical examinations of children under section 53, that clause 19 of the Bill be changed to amend section 53(2) and (3) to replace "medical practitioner" with "medical practitioner or [specified categories of other health practitioners]."

Amendments to Misuse of Drugs Act 1975

Clause 54: Change to definition of offence of importing or exporting controlled drugs

2.13 There appears to be a change to the definition of the offence of importing or exporting controlled drugs in section 6(1)(a) of the Misuse of Drugs Act 1974 that is not related to the policy of the omnibus Bill.

2.14 Clause 54 proposes to change the definition of the offence of importing or exporting a controlled drug in section 6(1)(a) by removing the exemption for importing or exporting a controlled drug specified in Part 6 of Schedule 3 from section 6. The exemption is instead set out in proposed new section 8(4). Under new sections 8(5) and (6) the exemption will be subject to "any prohibitions, limitations, or conditions imposed by any regulations made under the Act", and to the Minister's powers under section 22 to prohibit importation of controlled drugs.

2.15 The effect of this is to substantively change the definition of the offence and significantly increase the potential penalty in relation to drugs specified in Part 6 of Schedule 3. Under the current Act, a person who imports or exports controlled drugs in Part 6 of Schedule 3 does not commit an offence under section 6. If there is any regulatory control or notice under s 22 imposing restrictions on the import or export of those drugs, and the person contravenes those restrictions, they will be liable for the relevant penalty for contravening the regulations or the notice. In the case of a notice under s 22, the penalty would be a fine of $500 or imprisonment of up to three months. Under the proposed amendment a person who contravened a notice under section 22 in relation to a drug in Part 6 of Schedule C would instead be liable to prosecution under section 6, which is a more serious criminal offence punishable by imprisonment for maximum terms ranging from 7 to 14 years.

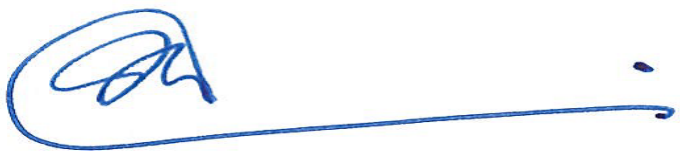
2.16 This change is not made clear in the explanatory note to the Bill.

Recommendation:

2.17 The Law Society recommends that consideration be given to retaining the current offence definition in section 6(1)(a).

3 Conclusion

3.1 The Law Society does not wish to appear in support of this submission, but is happy to do so or to meet with officials advising the Committee if that would be of assistance.



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6 October 2015