

# SECOND READING SPEECH

## *Health Service Establishments Amendment Bill 2011*

Mr Speaker

The purpose of this Bill is to make several amendments to the *Health Service Establishments Act 2006* prior to its commencement.

The *Health Service Establishments Act* was passed in 2006 but has not yet commenced pending the completion of the *Health Service Establishments Regulations*.

The regulations were released for public consultation and the Department is working with the private health establishment sector to finalise them. Once finalised, both the Act and Regulations are expected to commence later this year.

The purpose of the *Health Service Establishments Act* is to repeal the *Hospitals Act 1918* and implement the recommendations of the National Competition Policy review of private hospital licensing and residential aged care establishments.

Once commenced, the Act will provide a licensing regime for private hospitals and extends coverage to include residential aged care services that are not, or cease to be in receipt of Commonwealth funding, and day-procedure centres – or day surgeries as they are commonly called.

During the regulation preparation process, a number of changes for the Act were identified.

The Act provides for the issue of licences for health service establishments. The Secretary, in approving a licence, may impose conditions in relation to the design and construction of the buildings.

Section 20 currently requires the licensee to provide notice to the Secretary of any material alteration to or extension of a licensed establishment. The section is silent on what is meant by a “material alteration or extension” and the approval process for such alterations or extensions.

As worded, this may be likely to involve the Secretary and a licensee in debate about what qualifies as a material change unless the Act specifies a definition of a material alteration.

The Bill inserts a replacement section 20 that defines the phrase “material alteration to or extension of” with reference to any work that requires a building permit under the *Building Act 2000*.

Further, the intent of the original section was that a notification from a licensee that work was about to commence would trigger an amendment to the licence if required, by using the powers contained in section 22 of the Act, but this is not explicitly stated. For example, the number of beds could increase through an extension, requiring an appropriate licence amendment.

To facilitate this intention, the new section 20 requires an application to the Secretary for approval of the plans early in the planning phase. The section includes a step by step process for the application and the approval process.

The approvals are linked to planning requirements. For example, an application must be made for ‘in principle’ approval from the Secretary before formal application is made under either the *Land Use Planning and Approvals Act* or *Building Act* as appropriate for building approval.

The new section provides that the Secretary may give ‘in principle’ approval for an application and in doing so may amend the licence conditions if necessary during the building work. For example, as a result of building work being undertaken, a ward may need to be closed and the number of beds reduced.

Of course, the Secretary may also refuse an application in which case the applicant would be given a notice of refusal and has the right to appeal against that decision to the Magistrates Court (Administrative Appeals Division).

If 'in principle' approval is given, once the building work is completed, the licensee is to give the Secretary a copy of the certificate of completion for the building work. This certificate is issued by the relevant local government council and is only issued after a certificate of final inspection and all other necessary certificates, such as an occupancy certificate or a certificate of water and sewerage compliance have been issued.

If the completed building work substantially complies with the original application then the Secretary will endorse the licence and, if necessary, amend the licence to reflect the changes effected by the alteration or extension. For example, the licence could be amended to reflect an increased number of beds.

If a licensee carries out any material alterations or extensions without seeking prior 'in principle' approval, the Secretary may cancel the licence if the altered establishment no longer meets the requirements of the licence.

However, the new section 20 does give the Secretary the discretion to accept a late application if work on the alteration or extension has commenced without approval. A decision about a late application would still be subject to the approval processes in section 20 and in particular, compliance with local government processes under the *Building Act*.

The other main change proposed in the Bill by the proposed new section 55A is to include an option for dealing with offences under the Act by way of infringement notices rather than proceeding summarily in a Magistrates Court.

Under the Act as drafted, offences such as breaches of the licence conditions do not allow for the automatic imposition of penalties. Penalties for offences may only be imposed as a result of a successful prosecution through the Magistrates Court.

The power to issue infringement notices would give the Department the option to issue infringement notices for minor licence breaches rather than having to commence a prosecution. This would bring any penalties applied under the jurisdiction of the *Monetary Penalties Enforcement Act 2005*, which increases the effective enforcement of penalties. The penalty that would apply to an infringement notice would be a lesser penalty than would be incurred if a prosecution was undertaken.

In conclusion, the need for the amendments to the Act has been identified during the regulation making process. Without the changes to section 20, there would be potential for problems in the administration of the Act in relation to building alterations undertaken by licensees.

The private health establishment sector has been consulted on the Bill and the proposed amendments are supported.

It would be sensible if these minor matters were rectified before the Act commences later this year.

I commend the Bill to the House.