Agreement in Principle

Dr ANDREW McDONALD (Macquarie Fields—Parliamentary Secretary) [12.28 p.m.]: I move:

That this bill be now agreed to in principle.

I am pleased to bring before the House the Health Legislation Amendment Bill 2009. The bill proposes a range of minor amendments to a number of pieces of health legislation—that is, the Drug and Alcohol Treatment Act 2007, the Health Administration Act 1982, the Health Care Complaints Act 1993, the Health Services Act 1997, the Medical Practice Act 1992 and the Mental Health Act 2007. I will firstly address the amendments to the Health Care Complaints Act 1993, which are set out in schedule 1.3 of the bill. In June 2008 the joint parliamentary Committee on the Health Care Complaints Commission issued a report entitled "Report on the Investigations by the Health Care Complaints Commission into the Complaints Made Against Mr Graeme Reeves".

The report followed an earlier review into the matter of Mr Reeves, which was conducted by retired Federal Court judge Ms Deidre O'Connor. The report noted that two of Ms O'Connor's recommended amendments to the Health Care Complaints Act had not yet been implemented. These recommendations related to strengthening the Health Care Complaints Commission's powers under sections 21A and 34A in relation to the assessment and investigation of complaints. The report supported Ms O'Connor's proposed changes and recommended they proceed.

The investigation of a complaint by the Health Care Complaints Commission has two distinct phases: the assessment phase, during which the commission determines if the complaint will be investigated, or managed in some other appropriate manner; and the investigation phase. During the assessment phase of a complaint, section 21A only gives the commission a limited power to obtain hospital and medical records and documents relating to a health practitioner's practice. During the investigation phase of a complaint, section 34A does not limit the documents and information the commission may obtain, but does provide that the commission is only able to obtain such information from a complainant, the person against whom the complaint was made or a health service provider.

Ms O'Connor recommended amending section 34A to give the Health Care Complaints Commission the power to compel any person to produce documents or information to the commission during the investigation phase of a complaint. In addition, Ms O'Connor recommended amending section 21A to allow the commission to exercise all of the powers under section 34A during the assessment phase of a complaint. This bill adopts the recommendations concerning sections 21A and 34A of both the joint parliamentary committee and Ms O'Connor. The amendments to sections 21A and 34A will assist the commission in the timely assessment and investigation of complaints and will help protect members of the public by ensuring the commission has the power to compel the production of evidence held by any person that may assist in the commission's assessment or investigation of a complaint.

The remaining amendments to the Health Care Complaints Act are of a mainly administrative nature and seek to ensure the efficient and smooth operation of the Health Care Complaints Commission. The first series of amendments concerns the power of the commission under sections 28 and 28A to provide information to the parties to a complaint and to persons whose treatment is the subject of a complaint. As sections 28 and 28A currently stand, different rules apply to the provision of information by the commission to a person who is a party to a complaint and a person whose treatment is the subject of a complaint. Under section 28 the commission must, unless an exemption applies, give the parties to a complaint notice of the action taken or decision made by the commission following an assessment of a complaint.

Under section 28A the commission is to use its best endeavours to notify a person whose treatment is the subject of a complaint of the outcomes of the assessment of the complaint. The bill amends section 28A of the Health Care Complaints Act to bring the relevant provisions into alignment and to ensure that the commission, on the same basis, can provide information to or withhold information from both a party to a complaint and a person whose treatment is the subject of a complaint. The bill also contains amendments to sections 41 and 45 of the Health Care Complaints Act to provide that the Health Care Complaints Commission may provide the outcomes of an investigation report to any person to whom it could have provided its assessment decision under section 28A and to any other relevant person or organisation. Section 45 has been amended also to allow the commission to provide a copy of its report to the complainant.

Section 41A of the Health Care Complaints Act is to be amended to ensure that the commission may issue a prohibition order against an unregistered health practitioner if the practitioner poses a risk to the health or safety of members of the public rather than just the health of members of the public, which is the case under the current wording of the section. The bill also sets out a series of amendments to part 6A of the Health Care Complaints Act. Part 6A establishes the position of the Director of Proceedings and sets out the powers, duties and functions

of the Director of Proceedings. The Director of Proceedings is the independent arbiter of whether complaints about health care practitioners are to be prosecuted before disciplinary bodies. When a decision is made to prosecute a complaint, the Director of Proceedings is also responsible for undertaking that prosecution.

The functions of the Director of Proceedings are in some ways analogous to the functions of the Director of Public Prosecutions. Part 6A was inserted in the Act by the Health Legislation Amendment (Complaints) Act 2004, which commenced operation in 2005. In the intervening four years a number of minor deficiencies with part 6A have been identified. The proposed minor amendments to part 6A will address these deficiencies by allowing the Director of Proceedings to refer matters back to the commission in instances where he or she declines to prosecute a complaint before a disciplinary body; to allow the director to notify parties of his or her decision regarding prosecution of a complaint; to allow the director to delegate his or her functions so as to avoid conflicts of interest; and to allow the director to exercise functions imposed on the commission by Acts other than the Health Care Complaints Act.

The final amendments to the Health Care Complaints Act are intended to ensure that the officers of the Health Care Complaints Commission may not be compelled in any legal proceedings to give evidence or produce documents in respect of any information obtained in exercising a function under the Health Care Complaints Act. The amendments to section 99A of the Health Care Complaints Act afford the commission an exemption from being required to produce documents and information in legal proceedings, similar to those enjoyed by other investigative bodies, including the Legal Services Commission, the Ombudsman, the Police Integrity Commission and the Independent Commission Against Corruption.

Importantly, however, the commission will still be required to produce documents and information in respect of proceedings under the Royal Commissions Act, an inquiry under the Ombudsman Act, proceedings before the Independent Commission Against Corruption or proceedings under part 3 of the Special Commissions of Inquiry Act. While the amendments will ensure that the commission is not compellable in legal proceedings, the bill inserts a new section 99B to give the commission a discretion to disclose information obtained in exercising a function under the Act to a number of relevant persons and bodies, such as the Minister for Health, a court or tribunal, the police or a prosecuting authority, any body regulating health service providers in Australia, a health practitioner the subject of a complaint, or the complainant. Importantly, the proposed section 99B only allows the commission to exercise its discretion if it is satisfied that the public interest in disclosing the information outweighs the public interest in protecting the confidentiality of the information and the privacy of the person to whom the information relates.

Schedule 1.1 to the bill amends the Drug and Alcohol Treatment Act 2007. Section 21 of the Drug and Alcohol Treatment Act allows an accredited medical practitioner to grant a leave of absence to a person detained in a treatment centre under the Act if the person is medically fit. Unfortunately, section 21 currently prevents a person being given a leave of absence for medical purposes. The bill rectifies this by amending section 21 so as to ensure that a leave of absence can be granted for the purpose of obtaining medical treatment. The bill also inserts a new transitional provision into the Drug and Alcohol Treatment Act. The Drug and Alcohol Treatment Act allows for the short-term involuntary detention and treatment of a person with a substance dependence in a declared treatment centre.

The Act is being trialled as an alternative to the Inebriates Act 1912 in treating persons with a substance dependence. The Drug and Alcohol Treatment Act applies only to the area prescribed by the regulations and the Inebriates Act will not apply to the prescribed area. The Drug and Alcohol Treatment Act currently applies to the catchment area, apart from Cumberland Hospital, of Sydney West Area Health Service. Cumberland Hospital has been excluded from the prescribed area to allow those patients receiving treatment under the Inebriates Act prior to the commencement of the Drug and Alcohol Treatment Act to continue their treatment.

However, if in the future the prescribed area is expanded it is important to ensure that patients who will be receiving current treatment under the Inebriates Act are not prevented from continuing their treatment under that Act. As such, the new bill inserts proposed new section 55A into the Drug and Alcohol Treatment Act, which will allow for people who have been detained for treatment under the Inebriates Act within an area subsequently prescribed to continue to be treated in accordance with that Act rather than the Drug and Alcohol Treatment Act. This will ensure that patients receive continuity of care.

Schedule 1.2 to the bill makes a number of amendments to the Health Administration Act 1982 relating to the appointment of members of the Medical Services Committee. The Medical Services Committee is established under section 20B of the Health Administration Act to provide advice to the Minister for Health and the department relating to matters affecting the practice of medicine in New South Wales, including existing and proposed legislation and administrative arrangements. Section 4 of the Health Administration Act provides that members of the Medical Services Committee may be appointed to a maximum of five two-year terms of office.

The nomination and appointment process for appointment to the committee can take up to 12 months and the requirement to undertake this process every two years means there is almost a perpetual cycle of appointments underway. The proposed amendments to the Health Administration Act allow members of the Medical Services Committee to be appointed for a maximum of three four-year terms. These amendments will reduce the

administrative burden associated with the appointment of members of the committee to allow for a more stable membership and to bring the terms of office of the committee into line with other similarly appointed bodies, such as the New South Wales Medical Board.

Schedule 1.4 to the bill amends provisions of the Health Services Act 1997 in relation to board-governed health corporations and to protections offered to experts who assist in performance and conduct reviews within New South Wales Health. The Health Services Act establishes a number of board-governed health corporations, being the Clinical Excellence Committee, HealthQuest and Justice Health. Section 49 of the Act provides that the Minister for Health must appoint a member of staff of New South Wales Health, who is employed in connection with a health corporation, to the board of that board-governed health corporation. However, there are a number of difficulties in the smaller board-governed health corporations in requiring a member of the staff to be appointed to the board.

In the smaller corporations there may not be a staff member with both the skills and expertise to perform as an effective board member. A staff member may encounter difficulties in maintaining the strict confidentiality of board business and may experience a conflict of interests between their responsibilities as a board member and their responsibilities as an employee. As such, the bill amends section 49 of the Act to provide that in the case of a board-governed health corporation with less than 50 staff members, the Minister is not required to appoint a member of staff of New South Wales Health. Despite this amendment, it will still be open to the Minister, if appropriate, to appoint a staff member to the board of a board-governed health corporation. The bill also amends section 51 of the Health Services Act to clarify that where the position of chief executive for a board-governed health corporation is an executive position within the meaning of part 3 of chapter 9 of the Act, all provisions of part 3 of chapter 9 apply to the appointment and employment of the chief executive.

The final amendment to the Health Services Act relates to section 139. That section was inserted into the Health Services Act in December 2007 and provides protection from personal liability for any person who in good faith assists in a review of the performance or conduct of a member of New South Wales Health or a visiting practitioner. Any liability that arises attaches to the public health organisation concerned, or the director general of the Department of Health. Section 139 assists public health organisations in obtaining the assistance of health practitioners and other experts in assessing and reviewing the professional performance or conduct of visiting practitioners and employees within the public health system. However, section 139 currently does not apply to a person who in good faith assists in the review of the performance or conduct of an employee of a non-declared affiliated health organisation. This is because while non-declared affiliated health organisations are part of the public health system, their employees are not members of New South Wales Health. The bill rectifies this by amending section 139 to extend the protection afforded in section 139 to persons who are employed by non-declared affiliated health organisations.

Schedule 1.5 to the bill amends section 177 of the Medical Practice Act. Section 177 deals with issues relating to representation of a medical practitioner and a complainant at proceedings before a professional standards committee. The professional standard committee is a body established under the Medical Practice Act to inquire into complaints of unsatisfactory professional conduct not amounting to professional misconduct against medical practitioners. Proceedings before a committee are inquisitorial, and following an inquiry a committee may take a variety of actions, including reprimanding a practitioner or imposing conditions on a practitioner's licence, but may not cancel or suspend a practitioner's registration.

Under section 177 of the Act neither the complainant, being the Health Care Complaints Commission, nor the medical practitioner the subject of a complaint may be represented by a legal practitioner at an inquiry, although a legal practitioner is entitled to be present at the inquiry and may advise the practitioner. The Health Care Complaints Commission is generally represented by a person who has legal training but who is not a legal practitioner. The lack of legal representation before a professional standards committee has caused some concern among the medical profession, particularly in light of the 2008 amendments to the Medical Practice Act which, among other things, amended that Act to require hearings of a professional standards committee to be held in public and decisions of the committee to be published unless a committee forms the view that it is not in the public interest to do so. As hearings of a professional standards committee are now held in public and decisions are published, there is a greater need for medical practitioners and the commission to be able to seek legal representation if required.

The proposed amendments to section 177 will achieve this by allowing a practitioner or a complainant before a professional standards committee to be represented by a legal practitioner. The proposed amendment assists in protecting people's rights and will bring section 177 into line with section 162, which allows a practitioner or complainant to be legally represented in proceedings before the medical tribunal. However, the Government is keen to ensure that proceedings before the professional standards committee do not become overly legalistic and process driven. Therefore, proposed section 1.55 of the bill will commence on proclamation rather than assent to allow for a code of conduct regarding the use of legal practitioners in proceedings before the professional standards committee to be developed.

The final amendments in the bill are contained in schedule 1.6 and concern sections 52 and 142 of the Mental Health Act. Section 52 of the Act relates to applications for community treatment orders. When an application for

a community treatment order is made, section 52 requires an affected person to be given written notice of the application and a copy of the proposed treatment plan. It also provides that the application must be heard no earlier than 14 days after the notice is given. Section 52 (2) currently provides that, where an application is made in respect of a person the subject of a current community treatment order, section 52 does not apply. The bill amends section 52 (2) to make it clear that when an affected person is the subject of a current community treatment order, the requirement to give the person written notice of the application and a copy of the treatment plan applies, but a 14-day notice period does not apply.

This amendment has been made because when an affected person is the subject of a current community treatment order, the requirement to give a 14-day notice period before determining the application may prevent continuity of care where, for example, an administrative oversight or error results in the 14-day notice period not being complied with. However, regardless of whether the person is the subject of a current community treatment order or not, it is appropriate to provide the person with written notice of the application and to provide a copy of the proposed treatment plan.

The proposed amendments to section 141 of the Mental Health Act provide that the President of the Mental Health Review Tribunal may be employed as a full-time or part-time member, which will bring the position of the president into line with the position of the deputy president, who may be appointed on a full-time or part-time basis. As a result of the amendments to section 141, the bill also makes a consequential amendment to the Statutory and Other Offices Remuneration Act 1975. I commend the bill to the House.