HEALTH LEGISLATION AMENDMENT BILL 2014

Bill introduced on motion by Ms Jillian Skinner, read a first time and printed.

Second Reading

Mrs JILLIAN SKINNER (North Shore—Minister for Health, and Minister for Medical Research) [4.10 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Health Legislation Amendment Bill 2014. The bill makes minor amendments to the Health Practitioner Regulation (Adoption of National Law) Act 2009, the Health Services Act 1997, the Private Health Facilities Act 2007, and the Public Health Act 2010. The amendments will help to ensure the continued smooth operation of these Acts. I will turn first to the amendments to the Health Practitioner Regulation (Adoption of National Law) Act 2009, which is set out in schedule 1 to the bill.

The Health Practitioner Regulation National Law (NSW) is set out in the schedule to the Adoption Act and provides for the implementation in New South Wales of the national accreditation and registration scheme for health professionals. In implementing the national registration and accreditation scheme, New South Wales agreed to adopt national registration for health practitioners, but elected to retain its own State-based complaints scheme involving health professional councils and tribunals, and the Independent Health Care Complaints Commission. It is to the New South Wales specific provisions relating to the complaints management scheme in the Adoption Act and the national law to which the bill makes a minor amendment.

The NSW Civil and Administrative Tribunal has the power to suspend or cancel a health practitioner's registration where complaints against registered health professionals are proved or admitted. If the tribunal is satisfied that the person poses a substantial risk to the health of members of the public, it may, by order, prohibit the person from providing health services or specified health services for a period or permanently, or place specified conditions on the provision of health services or specified health services by the person for a period or permanently.

A prohibition order would mean that, in addition to no longer being able to practise in his or her profession, the person cannot provide health services outside the scope of the health profession in which he or she was formerly registered, such as in another profession or service for which no registration is required. An example of where a prohibition order could be used would be to prohibit a deregistered medical practitioner or psychologist who has convictions for sexual offences against clients setting up to practise under titles such as psychotherapist or councillor.

Currently under the Health Practitioner Regulation National Law, the tribunal can only make a prohibition order where it has first suspended or cancelled the health practitioner's registration. There is a concern that some registered health practitioners are voluntarily deregistering in anticipation of a finding of a tribunal that they will have their registration suspended or cancelled. Where this happens, the deregistered person could avoid a prohibition order being placed on them, preventing them from providing any health service. On occasion, the tribunal has stated that a prohibition order would have been considered if that option were available to it. The amendment

will close this loophole and ensure that where a person poses a substantial risk to the health of members of the public, the tribunal can prohibit or restrict their provision of health service by way of a prohibition order.

I turn to the amendments to the Health Services Act, which are set out in schedule 2 to the bill. The amendments provide for the transfer of staff within the New South Wales health service. The amendment enables transfers of staff within the New South Wales health service who are employed under chapter 9 of the Health Services Act. Prior to the Government Sector Employment Act 2013, local health districts and specialty health networks relied on sections 86A and 87 of the Public Sector Employment and Management Act to transfer staff within an agency.

While the Government Sector Employment Act provides for rules to be made to address transfers between agencies, it did not replicate the provisions for transfers within an agency or establish a power to make rules to do so. The amendment is designed to address this oversight. It is important that NSW Health agencies such as local health districts and statutory health corporations have a statutory basis to transfer staff within the organisation as was formerly the case under the Public Sector Employment and Management Act. The amendments will, in effect, maintain the power in relation to transfers of staff that were in place under the Public Sector Employment and Management Act and are consistent with the powers of other Government agencies, such as those contained in the Teaching Service Act 1980.

I turn to the amendment to the Private Health Facilities Act, which is set out in schedule 3 to the bill. A private health facility is required to be operated by a person with a licence granted under the Private Health Facilities Act. The Private Health Facilities Act provides a number of grounds for refusing an application for a licence, one of which is that the approval will result in more than an adequate number of health services becoming available in a particular clinical or geographical area and will undermine the provision of viable, comprehensive and coordinated health services. The amendment arises from the recommendation of the report on the statutory review of the Private Health Facilities Act tabled in this House on 18 June 2013. This report concluded:

While this objective is a valid objective, s7(4)(c)(i) has the potential to be anti-competitive which may stifle new private health service initiatives and reduce innovation and efficiency in the health system. As such, the provision should not remain in the Act unless there are no other ways to ensure an appropriate oversight of the health system.

The view recommended that:

> ... general market principles and other provisions of the Private Health Facilities Act can help ensure the Director General has appropriate oversight of the entire health system.

The Director General referred to is now the Secretary. Comprehensive licensing standards relating to safety and quality of care provided to patients at licensed private health facilities have been published under the Private Health Facilities Regulation 2010. In terms of a coordinated health system, the licensing standards assist in ensuring relevant connections between the public and private systems by requiring all health facilities to have a sufficient number of qualified and experienced staff on duty at all times to carry out the services provided by the facility; all private health facilities to have procedures in place to transfer a patient to another health facility if the

private health facility cannot provide care for the patient; emergency class facilities to have effective communication arrangements with the Ambulance Service of NSW and written procedures for the transfer of patients requiring a higher level of care than is provided by the facility. Accordingly, the bill removes the ground for refusing an application for a licence under the Private Health Facilities Act where the approval would result in an adequate number of health services.

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Finally, I turn to the amendments to the Public Health Act set out in schedule 4 to the bill. The Public Health Act contains standards relating to the installation, operation and maintenance of regulated systems, including water cooling systems, hot water systems, warm water systems and air-handling systems developed to prevent the growth of legionella organisms, which are capable of transmitting Legionnaire's disease. The Public Health Act contains offences for the occupier of the premises where the regulated system is installed or a duly qualified person engaged by the occupier to install, operate and maintain the regulated system fails to comply with the standards in the Public Health Act.

It is a common occurrence within the industry for duly qualified persons engaged by an occupier to subcontract the installation, operation or maintenance of a regulated system. In these circumstances, where the subcontractor fails to install, maintain or operate the regulated system in accordance with the requirements in the Public Health Act, the duly qualified person may still be liable on the basis that they have failed to ensure compliance with the requirements of the Act. However, the Act does not create any separate offence in relation to the person engaged as subcontractor by the duly qualified person. The bill provides offences for subcontractors engaged to install, operate and maintain these regulated systems who fail to comply with the standards in the Public Health Act. I commend the bill to the House.

Debate adjourned on motion by Dr Andrew McDonald and set down as an order of the day for a future day.