HEALTH LEGISLATION AMENDMENT BILL 2015

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

Mrs JILLIAN SKINNER (North Shore—Minister for Health) [8.20 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Health Legislation Amendment Bill 2015. This bill is part of the Government's regular review and monitoring of legislation to ensure that it remains up to date and relevant. To that end, the bill seeks to make a number of miscellaneous amendments to various health Acts: the Public Health Act 2010; the Health Care Complaints Act 1993; the Mental Health Act 2007; the Public Health (Tobacco) Act 2008; and the Private Health Facilities Act 2007.

I turn first to the amendments to the Health Care Complaints Act and the Public Health Act. The Acts together provide for a regulatory regime for non-registered health practitioners. The Public Health Act and Regulation set out a code of conduct for non-registered health practitioners. The Health Care Complaints Act allows the Health Care Complaints Commission to investigate complaints against a non-registered health practitioner who breaches the code of conduct. Under the Health Care Complaints Act, the commission can issue a prohibition order for breaches of the code where the practitioner poses a risk to the health or safety of the public. A prohibition order can either prevent a practitioner from practising or place conditions on their practice. Practising in breach of a prohibition order is an offence under the Public Health Act.

New South Wales was the first jurisdiction in Australia to establish a code of conduct for non-registered health practitioners in 2008. However, it has since been joined by South Australia and Queensland, which have both introduced similar legislative provisions. Further, there are moves to establish a code of conduct across all jurisdictions and to allow for prohibition orders to be issued for serious breaches of the code. These moves are welcomed. In light of this, it is important that New South Wales recognises and applies an interstate prohibition order as if it were made here. Accordingly, the bill proposes to amend the Public Health Act to recognise and apply in New South Wales a prohibition order made under a prescribed law of another jurisdiction. Once these changes commence, the relevant South Australian and Queensland legislation will be prescribed, as will any other similar legislation passed by another jurisdiction. This will mean, for example, that if a counsellor was issued with a prohibition order in South Australia, the prohibition order will be recognised in New South Wales and it will be an offence for the counsellor to provide services in New South Wales in breach of the order.

The bill also includes new section 41E in the Health Care Complaints Act that will require the commission to keep a public register of prohibition orders. These are sensible changes that will assist in protecting the public from practitioners who have been found unsafe to practice in other jurisdictions and will ensure that the public can find out which non-registered health practitioners are subject to a prohibition order. The bill also proposes to amend section 94A of the Health Care Complaints Act to allow the Health Care Complaints Commission to issue an interim public warning during an investigation. Currently, while the commission can issue a public warning if it is of the view that a treatment or health service poses a risk to public health or safety, this power can be exercised only after an investigation. There is no power to issue such a warning during an investigation.

The bill will rectify this situation and allow the commission to issue an interim public warning during an investigation if it considers it necessary to protect public health or safety and that any further delays will pose a risk to an individual or the public. This amendment follows on from a recommendation of the 2014 parliamentary Committee on the Health Care Complaints Commission "Report on the

Promotion of False and Misleading Health Related Information and Practices", and will ensure that the public can be put on notice of serious risks at any earlier stage. The bill also includes changes to the Public Health Act relating to the installation, operation and maintenance of regulated systems, which are systems such as water cooling systems or hotwater systems that can spread legionella organisms. Legionella organisms are capable of transmitting legionnaires' disease, which is a serious form of pneumonia.

The Public Health Act contains offences if the occupier, or a duly qualified person engaged by the occupier, fails to comply with the standards in the Public Health Act and Regulation relating to the installation, operation and maintenance of a regulated system. However, these offences do not extend to subcontractors engaged by a duly qualified person. The bill therefore amends sections 28, 29 and 30 of the Public Health Act to provide for specific offences subcontractors who fail to comply with the standards required by the Public Health Act and Regulation when installing, operating or maintaining regulated systems.

I turn to schedule 2 to the bill, which makes amendments to section 191 of the Mental Health Act. Section 191 provides a protection from personal liability for any police officer, healthcare professional or ambulance officer who, in good faith, exercises a function under the Mental Health Act or the Mental Health (Forensic Provisions) Act 1990. A healthcare professional is defined to mean a registered health practitioner. Staff of NSW Health other than registered health practitioners and ambulance officers may from time to time be called on to assist registered health practitioners in the exercise of their functions. For example, if a patient becomes agitated and violent, security staff or assistants in nursing may be required to assist a registered health practitioner in restraining the patient in order to protect the patient, other patients and staff of the facility. Because other staff of NSW Health may be involved in the care, treatment and detention of patients, the bill amends section 191 to extend the protection from personal liability to all staff who exercise functions under the Mental Health Act or the Mental Health (Forensic Provisions) Act, or who assist registered health practitioners and ambulance officers in the exercise of their functions.

I turn now to the changes to the Public Health (Tobacco) Act, which are set out in schedule 6 to the bill. Sections 6 and 7 of the Act make it illegal to sell tobacco in a product which is not in the original packaging or which does not have appropriate health warnings. Such tobacco is often known as "illegal tobacco". The availability of illegal tobacco in New South Wales is a community concern. Illegal tobacco is harmful to the health of the user because it may contain impurities not normally found in legal tobacco products. The lower cost of illegal tobacco makes it more appealing and affordable to young people and low-income groups, thereby encouraging uptake of smoking by these groups. Further, tobacco products without a health warning mean that people are not warned of the dangers of smoking.

In 2014 the Ministry of Health conducted a statutory review into the Act. A report on the review noted anecdotal evidence and concerns about increases in the sale of illegal tobacco. Further, the report identified difficulties associated with prosecuting breaches because retailers found with illegal tobacco would claim it was for personal use and not intended for sale. This is true even when tobacco is found in quantities in which it is difficult to believe that is was not intended for sale.

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Further, the report identified difficulties associated with prosecuting breaches as retailers found with illegal tobacco would claim it was for personal use and not intended for sale. This is so even when tobacco is found in quantities in which it is difficult to believe it was not intended for sale. The report also noted that there are limited powers to seize illegal tobacco. In order to address these issues, the bill amends sections 6 and 7 to create a rebuttable presumption that prescribed quantities of tobacco are for sale. Further, a new section 8A will be included in the Act to give inspectors a power to seize

illegal tobacco found in retail tobacco shops over the prescribed quantities. Any such tobacco seized will be returned only if the retailer can demonstrate that the tobacco was for not for sale.

The bill also includes a new section 39A in the Act to require a tobacco retailer notification number to be provided before tobacco products are sold by wholesale. Currently, before a person can engage in tobacco retailing they must notify the Ministry of Health, which can then provide a tobacco retailer notification [TRN] number. This allows the Ministry to know where tobacco retailers are located and ensure that inspections can take place. There is no current requirement in the Act to require a wholesaler to be provided with a TRN before supplying tobacco. This creates a potential loophole that allows a person who does not have a TRN number to be supplied with tobacco products by a wholesaler. The bill will rectify this situation by including the new section 39A that will make it an offence for a person to obtain tobacco products from a wholesaler without providing a tobacco retailer notification number and for a wholesaler to supply tobacco products without first obtaining a tobacco retailer notification number.

I turn finally to the amendments to the Private Health Facilities Act, which are set out in schedule 4 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, including section 7 (4) (c) (i). This section allows the secretary to refuse an application for a licence if, after considering any approved developmental guidelines, the secretary considers 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.

Section 7 (4) (c) (i) has not been used as a basis to refuse an application for a licence. A report on the statutory review of the Private Health Facilities Act tabled in this House on 18 June 2013 found that the provision has the potential to be anti-competitive and that there were other mechanisms to ensure the provision of viable, comprehensive and coordinated health services. Accordingly, the report recommended that section 7 (4) (c) (i) be removed from the Act. The bill will implement this recommendation and remove that section from the Private Health Facilities Act.

Ensuring that a robust process is in place when granting private health facility licences is absolutely paramount. That is why the current protections, such as allowing a licence application to be refused if an applicant is not a fit and proper person or if the applicant is a bankrupt and requiring private health facilities to comply with the standards in the Private Health Facilities Regulation—including that all facilities have a sufficient number of qualified and experienced staff on duty and have procedures in place to transfer patients if the facility cannot provide care—will continue to be monitored and enforced. Further, general market conditions mean that a private operator is unlikely to seek to establish a financially unviable health service. The amendments contained in the bill are all sensible amendments that will ensure the continued smooth operation of the various health Acts. I commend the bill to the House.

Debate adjourned on motion by Mr Clayton Barr and set down as an order of the day for a future day.