HEALTH PRACTITIONER REGULATION LEGISLATION AMENDMENT BILL 2014

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

Second Reading

Mrs JILLIAN SKINNER (North Shore—Minister for Health, and Minister for Medical Research) [4.30 p.m.]: I move:

That this bill be now read a second time.

I am pleased to bring before the House the Health Practitioner Regulation Legislation Amendment Bill 2014. The bill makes minor amendments to the Health Practitioner Regulation (Adoption of National Law) Act 2009 so as to modify the Health Practitioner Regulation National Law (NSW). It also makes amendments to the Health Services Act 1997 and the Private Health Facilities Act 2007. The bill proposes amendments to make improvements to the New South Wales health practitioner regulatory processes in three respects: to enable greater oversight of impaired practitioners; to ensure that those practitioners who are deregistered following disciplinary proceedings are not able to circumvent the regulatory process and reregister themselves or practice in other health services without adequate oversight; and to improve the transparency of the complaints process by strengthening mechanisms for patients and complainants to obtain information about the outcome of their complaints.

New South Wales has a robust legislative regime for managing complaints, and oversighting the capacity and performance of registered health practitioners. The strength of the current legislation is due largely to a process of ongoing reform and improvement over more than 30 years through a number of royal commissions, special commissions of inquiry and independent reviews established by government. Each set of reforms introduced over the years has focussed on improving safe practice of clinicians and protecting the public. Until 2010 the regulation of health professionals—both accreditation, and registration and management of complaints—was conducted at the State level. In 2010 the National Regulation and Accreditation Scheme [NRAS] came into effect through the Health Practitioner Regulation National Law. This law was initially passed in Queensland then adopted by each State Parliament, sometimes with variations. The NRAS established National Health Practitioner Boards and the Australian Health Practitioner Regulation Agency to operate the system across Australia.

New South Wales joined NRAS as a "co-regulatory" jurisdiction. While it adopted the accreditation and registration parts of the National Law, it did not adopt the National Law provisions for complaints and performance. The New South Wales Parliament instead varied the National Law it adopted by adding a new part 8, which sets out the New South Wales regulatory provisions that apply to complaints and performance in New South Wales. The current bill involves amending those New South Wales-specific provisions in part 8. The New South Wales regulatory provisions retain the NSW Health practitioner councils, and New South Wales complaints programs and processes. New South Wales also retained the Health Care Complaints Act and the Health Care Complaints Commission. I will now turn to the proposed amendments.

The bill proposes a new section 176BA, which will impose a positive obligation on New South Wales health practitioner councils to notify the employer of both conditions imposed on a health

practitioner's registration after a disciplinary or complaints process and conditions imposed through an impaired registrant's process. Impaired practitioners are recognised in the Act as requiring additional assistance and oversight to ensure that where they continue to practice, it is with support and supervision to ensure that the safety of the public is protected. Health programs managed by NSW Health practitioner councils provide supervision and support to practitioners who are identified as having impaired performance as a result of anything from physical infirmity or mental illness to drug and alcohol abuse. They may come to the attention of the program via self-notification, reporting by colleagues of a concern about a possible impairment or where issues raised about their practice are not sufficiently serious to warrant formal investigation but have the potential to place them at risk.

Once referred to the program, any action necessary to protect the public is determined. This most commonly involves the imposition of conditions on the registrant's registration, but can include suspension for a period of time. Conditions may include urine drug testing—generally for at least 18 months—regular reviews and assessments. When the practitioner fails to comply with conditions or when other concerns about conduct are raised the practitioner can be referred into the complaints process. The details of conditions placed on a practitioner's registration are generally available publicly on the national health practitioner registers on the Australian Health Practitioner Registration Authority website. However, the details of health conditions are generally not available. The national registers simply state the registrant is subject to "health conditions", without providing detail as to the nature of the conditions. This was designed to ensure some protection for the practitioner of the release of sensitive information to the public.

The councils currently do not have an express statutory power to inform employers of health practitioners of the conditions imposed on the practitioner. However, where the conditions arise from a disciplinary process, they are effectively publicly available so the councils will provide information to a known employer from the register. For health conditions the publicly available information is limited, so employers will not necessarily receive the detail of any health conditions imposed. The amendments I am proposing recognise that to ensure the safety of patients, employers of health practitioners need to be aware of the detail of health conditions to assist them in the oversight or supervision of the practitioner.

Under the changes, councils will be required to notify a nominated recipient of the employer or accreditor in the private sector when health conditions are imposed on an impaired practitioner, when changes are made to those conditions and when the practitioner has breached the conditions. However, I am mindful that some of the information relating to health conditions is sensitive—personal information to the practitioner, including possibly that the practitioner has a mental illness. Therefore the amendments incorporate strong protections, including an offence, to ensure that the nominated recipient of the information can only use and disclose that information for the supervision or oversight of the practitioner or ensuring the safety of patients.

In order to underline the seriousness with which we consider that compliance with health conditions imposed on a practitioner should be viewed, the bill proposes a new section 150FA, which provides for an NSW Health practitioner council to designate specific impairment conditions to be "critical impairment conditions". A breach of a critical impairment condition would result in automatic

referral to the Health Care Complaints Commission for investigation. While a critical compliance order could attach to any condition, it is likely to focus on those relating to drug and/or alcohol testing.

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I am also proposing to improve the transparency of the complaints process by strengthening mechanisms for patients and complainants to obtain information about the outcome of complaints, including where matters have been referred to a council from the Health Care Complaints Commission. The proposed amendment at section 145BA of the national law requires councils to provide a notice to a complainant of an outcome of a complaint. The council may include such information in the notice of the outcome as it considers appropriate but must not disclose confidential information, unless it considers that the public interest in disclosing the information outweighs the public interest in protecting the confidentiality of the information and the privacy of any person to whom it relates.

The bill also includes two provisions to deal with recent interpretations of the law which, to a degree, have undermined its effectiveness and provided grounds on which a health practitioner who has faced disciplinary proceedings may seek to avoid the intent of the national law. The proposed amendment to section 149C of the Act will close a loophole whereby registered health practitioners are voluntarily deregistering themselves in anticipation of a finding of the 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 by a tribunal preventing them from providing any "health service".

Under a prohibition order, 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 themselves up to practise under titles such as psychotherapist or counsellor. Please excuse my voice; I have laryngitis.

Dr Andrew McDonald: Stay away from hospitals; they are very bad for you.

Mrs JILLIAN SKINNER: I am sure the member for Macquarie Fields would treat me if I went to hospital. I know I would be in very good hands with Dr McDonald. He is a very good doctor, much better than he is as the shadow Minster for Health. He is a very good doctor and I am pleased he is joining the health workforce again.

As the law currently stands, if they remove themselves from the register prior to a finding a prohibition order is not available. On occasion, the tribunal has stated that a prohibition order would have been considered if that option was available to it. The amendment will 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 a health service by way of a prohibition order.

I also have proposed amendments to the national law in light of a recent Court of Appeal decision to ensure that any practitioner who is subject to a disqualification period or has had their registration cancelled must apply to the tribunal for a reinstatement order before being able to directly seek re-registration from a national board. Although the national board can conduct an investigation into an applicant for registration, an investigation of the practitioner is not automatic. As such, there are concerns that the process of applying for registration is not as robust as applying for a reinstatement order and that public safety may be jeopardised.

Further, this was the original intent and application of the legislation. It is only as a result of the Court of Appeal case of *Health Care Complaints Commission v Do* in September of this year that the requirement for a reinstatement order was confined to situations where a practitioner wishes to re-register during a "disqualification period". The purpose of the legislation was that this process would apply even after such disqualification periods expire. This amendment will commence on assent and transitional provisions are included in the bill to capture those practitioners who have already had their registration cancelled or disqualified.

Finally, the bill proposes amendments to the Health Services Act to permit public health organisations to share and exchange certain information about health practitioners with private health facilities if the public health organisation reasonably considers the practitioner is practising at the facility that they are sharing information with and that the disclosure is necessary because it raises serious concerns about the safety of patients. The information that can be disclosed is information about the variation, suspension or termination of a practitioner's clinical privileges where that practitioner is a former employee or contractor of the public health organisation. An equivalent amendment is also made to the Private Health Facilities Act to permit private health facilities to share and exchange information with other private health facilities or a public health organisation if the same requirements are met.

The Ministry of Health has consulted widely on the content of this bill, including discussions with the Health Care Complaints Commission and the Health Professional Councils Authority, which provides administrative and policy support to all the NSW professional councils and operates the impairment programs on their behalf. These agencies are supportive of the changes. There has also been consultation with the Australian Medical Association (NSW), the NSW Nurses and Midwives Association, the Australian Salaried Medical Officers Federation, the Health Services Union and the Australian Private Hospitals Association. I consider the current drafting provides a good balance between ensuring the safety of patients and the transparency of the complaints process without unduly overriding the rights of practitioners to a degree of privacy to deal with sensitive personal issues. 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.