HEALTH PRACTITIONER REGULATION NATIONAL LAW (NSW) AMENDMENT (REVIEW) BILL 2016

Bill introduced on motion by Ms Pru Goward, read a first time and printed.

Second Reading

Ms PRU GOWARD (Goulburn—Minister for Mental Health, Minister for Medical Research, Assistant Minister for Health, Minister for Women, and Minister for the Prevention of Domestic Violence and Sexual Assault) [4.04 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Health Practitioner Regulation National Law (NSW) Amendment (Review) Bill 2016. The bill makes minor amendments to the Health Practitioner Regulation (Adoption of National Law) Act 2009 (Adoption Act) so as to amend the specific provisions of the Health Practitioner Regulation National Law (NSW). The Adoption Act implements the National Accreditation and Registration Scheme [NRAS] for health professionals in New South Wales. This was done in New South Wales by adopting the schedule to the Health Practitioner Regulation National Law Act 2009 of Queensland as a law of New South Wales, subject to various modifications set out in the Adoption Act. The applied Queensland schedule, as modified by the New South Wales specific provision, is known as the Health Practitioner Regulation National Law (NSW)—or NSW National Law.

All States and Territories have implemented the NRAS, generally by applying or adopting the Queensland schedule, which ensures a nationally consistent scheme across Australia in relation to registration and accreditation. While the NRAS operates as a national registration and accreditation scheme, it was established to allow jurisdictions to decide whether to adopt the national provisions relating to conduct, health and performance and complaints handling. If a jurisdiction decided not to adopt those provisions, it would become a "co-regulatory" jurisdiction. New South Wales has been a co-regulatory jurisdiction since the inception of NRAS, with Queensland following suit in 2014. The New South Wales specific provisions relating to conduct, health and performance and complaints handling, which include the New South Wales health professional councils, the NSW Civil and Administrative Tribunal [NCAT] and the independent New South Wales Health Care Complaints Commission, are mostly set out in parts 5A and 8 of the NSW National Law.

In 2014-2015 the ministry conducted a statutory review of the NSW National Law in accordance with the requirements in the Adoption Act. The review focused on the New South Wales specific provisions of parts 5A and 8. A report on the review was tabled in Parliament in late 2015. The report on the review found that the objectives of the NSW National Law remain valid and that overall the NSW National Law operates effectively. However, it made a number of recommendations for legislative change, which the bill before the House seeks to implement. These changes are minor and are designed to promote consistency in the legislation, to give more flexibility and to ensure the smooth operation of the complaints handling processes.

The NSW National Law establishes 14 health professional councils, such as the Medical Council of New South Wales, to hear complaints in respect of the 14 different registered health professions. Each individual council is an independent statutory body that has its own statutory obligations. These councils are intended to be self-funded through registrants' fees. However, there is no ability in the legislation to respond if a council becomes financially unviable. To that end, and following on from a recommendation in the review, the bill includes a new section 41NA in the NSW National Law. This new section will allow the Minister to issue directions requiring that a financially unviable council

delegate its functions to another council or person and that it allow regulations to be made modifying the functions of a council. The new provisions will "futureproof" the legislation by allowing for appropriate action to be undertaken in respect of a financially unviable council.

The bill makes a number of changes to the provisions relating to professional standards committees. Under the bill, the chairperson of professional standards committees will be able to make interlocutory decisions, such as adjourning matters, which will increase flexibility of the committee. Further, the chairperson will have the deciding vote if the four-person committee is evenly split in its decision. This will ensure that matters do not need to be heard again should the committee be evenly split.

The bill includes a new section 171G, which requires all professional standards committee hearings to be audio recorded. This will assist parties should decisions be appealed. The bill amends section 152F to allow an Impaired Registrants Panel, which considers complaints that raise health issues in respect of a practitioner, to continue to investigate or take action in respect of a matter that the Health Care Complaints Commission [HCCC] is investigating but only if the HCCC consents. Currently, an Impaired Registrants Panel is prevented from investigating or taking action in a matter that is before the HCCC, and this can cause delays. Allowing a matter to be considered by the panel as well as the HCCC, but only with the consent of the HCCC, will reduce delays and increase flexibility.

The bill amends section 155C to allow a health professional council to impose conditions, with the consent of a practitioner, following the receipt of a performance assessor's report. Currently, a council cannot impose conditions following a performance assessor's report but instead must refer the matter to a performance review panel. The amendment will help reduce costs and inefficiencies. The bill makes a number of changes in respect of assessment committees, which play a role in relation to conduct and performance matters. The bill will require members of an assessment committee to be appointed by a health professional council rather than by the Minister. This will bring assessment committee members into line with the appointment of professional standard committee members.

Further, the bill removes section 147B (1) (b) from the New South Wales national law. This section currently requires an assessment committee to encourage a complainant and practitioner to attempt to resolve the complaint by consent. Part 8 of the New South Wales national law is a complaints handling system for the protection of the public and is not aimed at resolving individual disputes. As such, complaints should be handled by bodies established under the national law for the protection of the public. The bill also makes a number of changes in relation to the role of the NSW Civil and Administrative Tribunal [NCAT]. The tribunal hears serious matters involving allegations of professional misconduct and has the power to, among other things, cancel a practitioner's registration.

The report on the review recommended a number of changes in relation to the role of NCAT. In particular, the report recommended that NCAT should have the power to make an interim suspension order in limited circumstances. The bill implements this recommendation by amending section 165L to allow NCAT to issue an interim suspension order if particulars of a complaint have been proven and NCAT considers that such an order is necessary to protect the public. This will allow a practitioner, when the particulars of a complaint against the practitioner have been proven, to be suspended while giving NCAT appropriate time to consider the final order that should be imposed.

Clarifying amendments are also included in the bill to require NCAT to provide written reasons when making orders in circumstances when a complaint has been admitted. Written reasons will assist the practitioner and the public in understanding why a particular order was imposed. The bill also amends section 151 of the New South Wales national law. Currently, this section requires the medical superintendent of a mental health facility to notify the relevant health professional council if a registered health practitioner is detained under the Mental Health Act.

The report on the review found that section 151 required a mandatory report to the council at too early a stage and prior to any independent review of the patient under the Mental Health Act. In line with the recommendation in the report, the bill amends section 151 to require a report to be made if the practitioner is found to be a mentally ill person following review of the practitioner under section 27 of Mental Health Act. Of course, if it is clear that the practitioner poses a serious risk to the public before the reviews in section 27 then a notification could be made to the council at an earlier stage.

The bill also makes a number of minor amendments that are aimed at ensuring transparency and consistency of language between similar provisions. For example, the bill amends the various provisions setting out the appeal rights of individuals to ensure that the same language is used throughout part 8 of the New South Wales national law. In addition, the bill amends schedule 5F to require fees in relation to pharmacy premises applications to be set out in the regulations. Currently, the fees are set by the Pharmacy Council of New South Wales. Requiring the fees to be set out in the regulations will increase transparency and regulatory oversight.

The New South Wales national law is an important Act relating to the registration, accreditation and complaints handling processes in relation to registered health practitioners. Part 8 of the New South Wales national law sets out the New South Wales specific complaints handling processes. Under part 8, New South Wales has retained its own independent complaints processes which involve the HCCC, the health professional councils and NCAT. Part 8 provides a strong and fair framework for hearing and addressing complaints. The report on the review found that part 8 was working well but that minor amendments should be made to ensure that it continued to operate to protect the public. The bill before the House implements these recommendations. I commend the bill to the House.

Debate adjourned on motion by the member for Cabramatta and set down as an order of the day for a future day.