HEALTH LEGISLATION AMENDMENT BILL 2016

First Reading

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

Second Reading

Ms JILLIAN SKINNER (North Shore—Minister for Health) (10:14:4): I move:

That this bill be now read a second time.

I am pleased to introduce the Health Legislation Amendment Bill 2016. The bill repeals the New South Wales Institute of Psychiatry Act 1964 and seeks to make a number of miscellaneous amendments to various health Acts were being the Health Administration Act 1982, Health Services Act 1997, Mental Health Act 2007 and the Mental Health (Forensic Provisions) Act 1990. I will turn firstly to the New South Wales Institute of Psychiatry Act 1964, which establishes the Institute of Psychiatry. The institute has been a longstanding provider of quality mental health education and training and currently provides a number of higher education courses accredited through the Commonwealth regulatory body the Tertiary Education Quality Standards Agency, hereafter called TEQSA. In 2013, a review of the institute was undertaken on behalf of the Mental Health Commissioner. The review found that the institute's functions would be more effectively undertaken by the Health Education and Training Institute, known as HETI, which would better align mental health education with other health education.

The HETI is a statutory health corporation established under the Health Services Act to provide health education and training. These recommendations were accepted, and the institute's administrative and financial functions were transferred in a staged process to HETI in January 2014 and the educational staff were later transferred in September 2015. The transfer of the organisation's higher educational functions to HETI and the repeal of the New South Wales Institute of Psychiatry Act are critical aspects of the implementation of the recommendations of the review.

There has been ongoing monitoring of the transition by an oversight committee, which has been chaired by the New South Wales Mental Health Commissioner. A key element of the transition of the education functions from the institute to HETI is for HETI to be accredited as a higher education provider with TEQSA, which is the Commonwealth statutory authority established to regulate Australia's higher education sector. It registers entities as higher education providers and accredits the qualifications and courses provided by those entities. The Institute of Psychiatry has held accreditation as a higher education provider for a number of years. As part of the transition, HETI has applied to be registered as a higher education provider against redesigned institute courses.

Accreditation of HETI as a higher education provider is not only a key element of the transition of the institute's functions but will also be a huge asset for the broader health system in terms of other education opportunities to support identified workforce needs. To further the transition and recommendations of the review, the bill will repeal the New South Wales Institute of Psychiatry Act. However, the commencement of the repeal of the New South Wales Institute of Psychiatry Act will only take place once HETI has obtained TEQSA accreditation and the institute has completed all its obligations to students in the 2016 academic year as a current higher education provider.

It is expected that once the transition is complete, HETI will establish a new portfolio relating to mental health higher education, training and community education, which will assist in ensuring that quality mental health education and training continues to be a priority in New South Wales. The institute has provided a wonderful contribution to the people of New South Wales. I would like to take this opportunity to thank all past and current members of the institute for the dedication and hard work in the field of mental health education training and I look forward to HETI continuing to provide quality mental health education and training in New South Wales.

The bill also proposes other changes to mental health legislation. The Mental Health (Forensic Provisions) Act has a number of provisions relating to forensic patients. There are two categories of forensic patients: those who have been found not guilty of a crime by reason of mental illness, and those who are unfit to be tried for an offence and who are detained following a "special hearing". A special hearing determines whether, on the basis of the limited evidence before the court a person committed the offence. If found to have committed the offence, the person can be given be given a "limiting term" and detained. A limiting term is the maximum period for which the patient can be detained. However, the patient can be released earlier if the Mental Health Review Tribunal decides that they are not a risk to the public.

The tribunal must review all forensic patients at least every six months. Under section 53, six months before the expiry of a forensic patient's limiting term, if the tribunal considers that the patient will still need ongoing involuntary care, it can make the patient a civil patient. As a civil patient, the patient is subject to the Mental Health Act. Such a power is important to ensure that if a forensic patient requires ongoing care, such care can be provided in the civil system. However, occasionally a limiting term forensic patient will not only require ongoing care but also will continue to pose an unacceptable risk to the community.

As such, in 2013 schedule 1 was included in the Mental Health (Forensic Provisions) Act. Schedule 1 allows the Attorney General or the Minister for Health to make an application to the Supreme Court to extend a forensic patient's forensic status beyond their limiting term. The Minister and Attorney General can make such an application only six months before the expiry of the patient's limiting term. The court can make an order extending the patient's forensic status only if the patient poses an unacceptable risk of causing serious harm to others and the risk cannot be adequately managed by other less restrictive means.

The interaction between schedule 1 and section 53 can have unintended consequences. If the tribunal exercises its powers under section 53 and makes a person a civil patient, the patient ceases to be a forensic patient. This means that the Minister for Health and Attorney General cannot exercise their powers to make an application to the Supreme Court to extend the patient's forensic status. For public safety reasons, it is important to ensure that the tribunal cannot exercise its powers under section 53 until the Minister and Attorney General have considered whether or not to exercise their powers under schedule 1.

As such, the bill amends section 53 to provide that the tribunal cannot exercise its powers until it has been advised by the Minister and Attorney General that they will not be making an application under schedule 1. However, if such an application is made but not successful before the expiry of the patient's limiting term, the tribunal will be able to exercise its powers under section 53. Under schedule 1 of the Mental Health (Forensic Provisions) Act, if the Attorney General or Minister makes an application to extend the patient's status, the Court can make an interim order extending the patient's forensic status. The interim order allows sufficient time for the court to hear the matter and to make a final determination.

If the court's final order is after the patient's limiting term expires and the court does not extend the patient's forensic status, the patient will be automatically released as the person will no longer be a forensic patient. However, the patient may continue to be unwell, even if they do not pose an unacceptable risk to the community. An automatic release that does not allow for an assessment as to whether or not the patient requires involuntary care or treatment as a civil patient may not meet the therapeutic needs of the patient. Accordingly, the bill amends schedule 1 to allow the Supreme Court, when it dismisses an application, to order that the patient be detained for 24 hours to allow for the patient to be assessed to determine if the patient requires involuntary care or treatment as a civil patient under the Mental Health Act.

Appropriate safeguards have been included in the amendments to protect patients: detention for the purpose of an assessment can only occur for 24 hours;the detention can only occur where the Supreme Court makes an order; and the patient must be released if the assessment finds that the patient is not a mentally ill person or a mentally disordered person. If the assessment finds that the

patient is a mentally ill person or a mentally disordered person, the patient will be subject to the Mental Health Act, and all of the safeguards in that Act. Other amendments to the Mental Health (Forensic Provisions) Act included in the bill are more administrative in nature.

The bill updates the old references to the Department of Human Services; allows the powers of Ministers and Secretary to be delegated; clarifies that the Minister for Health and Attorney General can appear before the tribunal when the tribunal is reviewing a patient following an apprehension of the patient under section 68; clarifies the period in which appeals under section 77A can be made; and ensures that information between the Minister for Health and Attorney General can be appropriately shared.

The bill also amends the Mental Health Act to provide that if a sitting judicial officer is appointed as president of the Mental Health Review Tribunal, the president will maintain their judicial status and continue to receive their judicial salary and entitlements while serving as president. This will bring the Mental Health Review Tribunal into line with other similar bodies, such as the Civil and Administrative Tribunal of NSW. Schedule 1 makes minor administrative changes to the Health Administration Act by updating the references to the Health Secretary and the Ministry of Health.

I turn now to the amendments to the Health Services Act, which are set out in schedule 2 of the bill. The Health Services Act provides for the establishment of a number of different health entities, particularly local health districts [LHDs] and specialty health networks [SHNs], which run hospitals and other health services, and the health "pillars", which are the statutory health corporations [SHCs] that provide statewide expertise to support LHDs and SHNs. While SHNs are statutory health corporations, the Health Services Act provides that generally the same governance arrangements that apply to LHDs apply to the SHNs.

There are inconsistencies in the governance arrangements for the boards of LHDs and SHCs in both structure and content. For example, the governance provisions for LHD boards are set out in the Health Services Regulation, while the governance arrangements for SHC boards are set out in the Act. In addition, there are differences in relation to the appointment of board deputy chairs and the power of the board to rescind or vary board resolutions. The bill moves the board governance provisions relating to LHDs from the regulation into the Act. This will ensure that the key governance provisions relating to the health system are set out in primary legislation.

The bill also seeks to align, where appropriate, the board governance arrangements for the different bodies. For example, the bill gives the Minister the power to appoint a deputy chairperson to the board of an SHC, clarifies that a board of an SHC can vary or rescind resolutions of the board, and extends the pecuniary interest requirements to any committee of an SHC board. The bill also includes a new board governance provision for local health districts. On the commencement of the Government Sector Employment Legislation Amendment Act 2016, the board of a local health district will exercise employer functions in respect of the chief executive, including appointment of the chief executive.

Board members may include an employee of the local health district, in respect of whom the chief executive in turn exercises employer functions, or a person with a clinical appointment made by the chief executive. This dual role of those board members—of being employed or appointed by the chief executive whilst at the same time exercising employer functions in respect of the chief executive—has the potential to create a real or perceived conflict of interest. To deal with conflict, the bill provides that a board member who is employed, or otherwise holds a clinical or other prescribed appointment, with the local health district must not sit on any deliberations or participate in any decisions relating to the board's exercise of the employer functions in respect of the chief executive, including appointment. However, the bill will allow employee board members or persons with a clinical appointment to provide advice to the board about employment matters affecting the chief executive. As noted earlier, these changes will also apply to specialty health networks.

The bill also makes changes relating to the process for making by-laws for local health districts and SHCs. Currently, while the Health secretary or the Minister can make model by-laws, the approval of the secretary or Minister is still required before these bodies can make by-laws, even where the model by-laws are adopted. The bill simplifies this process for making by-laws while retaining the existing consultation requirements. The bill amends section 39 to allow the Health secretary to make model by-laws for local health districts. A local health district will then be able to either adopt the model by-laws; modify the model by-laws with the approval of the secretary; or, where a model by-law does not cover a particular matter, the local health district will be able to make a by-law on that matter provided that the additional by-law is not inconsistent with the model by-laws and the Health secretary is notified. Similar changes will be made to section 60 in respect of SHCs.

The bill also makes other changes to the Health Services Act: extending the possible term of office for local health district board members from four to five years, with a maximum period of 10 years, and including a new section 116H to clarify that the Health secretary is the respondent in any industrial relations proceedings involving NSW Health staff. The bill updates the protection from personal liability provision in section 139 to cover all reviews and inquiries conducted in relation to the operation of the public health system rather than the existing narrow protection provided only in respect of reviews into conduct, performance or disciplinary matters.

The bill also includes a new section 139A in the Health Services Act. Section 139A will provide a protection from personal liability to staff of the NSW Health service who in good faith assist a registered health practitioner in providing treatment under the Guardianship Act or the Children and Young Persons (Care and Protection) Act. This will ensure that individual staff members such as assistants in nursing or security staff who assist in good faith registered health practitioners in providing lawful treatment are not personally liable in the event harm to the patient occurs. Rather, the bill clarifies existing common law principles to make clear that any liability arising from the treatment will be borne by the relevant public health organisation and not the individual staff member. This bill is part of the Government's regular review of legislation and will assist in ensuring that legislation falling within the Health portfolio remains up to date and relevant. I commend the bill to the House.

Debate adjourned.