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) [4.40 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Health Legislation Amendment Bill 2013. As part of the Government's regular review of legislation, the bill seeks to make miscellaneous amendments to the Health Administration Act 1982, the Health Care Complaints Act 1993, the Health Practitioner Regulation National Law (New South Wales), the Health Services Act 1997, the Mental Health Act 2007 and the Mental Health (Forensic Provisions) Act 1990. I turn first to the amendments to the Health Care Complaints Act. As members will be aware, the Health Care Complaints Act established the Health Care Complaints Commission as an independent body to assess, investigate and prosecute complaints against health practitioners and health service providers. However, a 2012 Supreme Court decision, *Australian Vaccination Network Inc. v Health Care Complaints Commission*, has led to a limitation on when the Health Care Complaints Commission can investigate matters affecting public health or safety. The structure of the Health Care Complaints Act means the Health Care Complaints Commission has jurisdiction to investigate a matter only when a valid complaint has been made. Section 7 of the Act sets out whom a complaint can be made about and this list includes health service providers. However, the recent case in the Supreme Court found the Health Care Complaints Commission can investigate only if the complaint shows that the health service in question affects the clinical management or care of an individual client.

The judgement has created significant concern that a complaint cannot be investigated by the Health Care Complaints Commission if the matter raises a real likelihood of impacting on public health or safety: There must be a specific case where an individual client is affected, thereby limiting the capacity of the Health Care Complaints Commission to act in the public interest. The bill therefore amends section 7 of the Health Care Complaints Act to make clear that a complaint can be made against a health service if the health service affects, or is likely to affect, the clinical management or care of an individual client. Consequential amendments are also made to sections 25, 25A and 80 of the Act so as to ensure the language used is consistent. This important amendment will mean that if a health service provider is acting in a way that is likely to affect the clinical management or care of a client, even if there is no identified client who has been affected, then the Health Care Complaints Commission will have jurisdiction to investigate a complaint against the health service provider.

I turn to the other amendments to the Health Care Complaints Act, which generally follow the recommendations of the 2010 joint parliamentary committee's report, "Operation of the Health Care Complaints Act 1993". The 2010 report considered the operation of the Health Care Complaints Commission with a view to ensuring its continued effectiveness. The report recommended that the power of the Health Care Complaints Commission should be expanded to allow the commission to conduct "own motion" investigations so as to help safeguard the

public. The Government has adopted this recommendation in the bill. The bill amends section 8 of the Act to allow the Commissioner of the Health Care Complaints Commission to make a complaint, and therefore investigate a matter, if it appears to the commissioner that the subject of the complaint raises a significant issue of public health or safety, raises a significant question regarding a health service that affects, or is likely to affect, the clinical management or care of an individual client and, if substantiated, would be grounds for disciplinary action against a health practitioner or involves gross negligence on the part of the health practitioner. This important amendment will ensure that the Health Care Complaints Commission will be able to proactively initiate its own complaints in respect of serious matters affecting the health or safety of the public.

Another recommendation of the report was that a new section should be included in the Act that would set out the broad principles to govern the work of the Health Care Complaints Commission and other government agencies responsible for the healthcare complaints system. The Government supports this recommendation and the bill includes new section 3A (5B) that provides that the Health Care Complaints Commission and other government agencies are to have regard to a range of important principles in carrying out functions under the Act. These principles include accountability, maintaining an acceptable balance between the rights of clients and the rights of healthcare providers, efficiency and flexibility. The report also recommended, and this Government supports, amending the Act to expressly provide for the Health Care Complaints Commission to provide written reasons in relation to its post-assessment and post-investigation decisions. While it is the Health Care Complaints Commission's practice to provide written reasons, and the Act requires the Health Care Complaints Commission to do so, there are no current requirements to consistently provide information to parties to the complaint. Therefore, the bill amends sections 28 and 45 to expressly provide for the Health Care Complaints Commission to give written information to the parties to the complaint concerning the outcome of its assessment, investigation of the complaint and the reasons for the Health Care Complaints Commission's decision.

Following the recommendations of the report, the bill also inserts a new section 16A into the Act in order to allow the Health Care Complaints Commission to give written notice of the making of a complaint to the employer of a health practitioner. Currently, notification to employers is given only following the assessment of a complaint if the Health Care Complaints Commission decides to investigate the complaint. However, as noted in the report, there will be times when early notification to employers is necessary to assist the Health Care Complaints Commission in assessing the complaint properly, or is necessary to protect the health and safety of the public. The report also recognised that notifying employers before a complaint has even been assessed may negatively affect health practitioners, such as in the case of vexatious complaints that may compromise a practitioner's employment. In order to appropriately balance those two interests, the new section requires the Health Care Complaints Commission to notify employers following the making of a complaint against a health practitioner if the Health Care Complaints Commission considers it necessary in order to assess the complaint effectively or to protect the health or safety of the public. However, the mandatory requirement will become discretionary if it appears to the Health Care Complaints Commission that notification would place the complainant or another person at risk of intimidation or harassment or unreasonably prejudice the employment or engagement of the health practitioner.

Another amendment to the Act has been included, which is unrelated to the recommendations of the joint parliamentary committee. The amendment relates to section 90B regarding the

power of the Director of Proceedings. Following an investigation of a complaint, the Health Care Complaints Commission can refer a complaint to the Director of Proceedings, who determines whether to prosecute a complaint against a health practitioner before a health professional tribunal. Currently there is no power to refer the matter back for further investigation if the Director of Proceedings determines that further information is required before deciding whether to prosecute a matter. The bill will rectify this problem by amending section 90B to allow the Director of Proceedings to refer a matter back to the Health Care Complaints Commission for further investigation if the director cannot determine whether a complaint should be prosecuted, or is of the opinion that further evidence is required in order to enable a prosecution to occur.

Amendments are also made to the Health Practitioner Regulation National Law (New South Wales) (National Law) regarding the Health Care Complaints Commission's duty to investigate matters. Section 150 of the national law sets out the emergency suspension powers of New South Wales health professional councils with respect to registered health practitioners who are a risk to public health or safety. Section 150D provides that if such an emergency power is exercised under section 150, the matter must be referred to the Health Care Complaints Commission for investigation. Section 150D also provides that such a referral is to be treated as a complaint and must be investigated by the Health Care Complaints Commission.

However, there will be times when a complaint in respect of the same practitioner or matter has already been made to the Health Care Complaints Commission prior to the referral and an investigation may be underway or completed. Therefore, the amendment to section 150D of the national law will remove an unnecessary administrative burden so further investigation is not required if the matter is already in the process of being investigated or has been investigated. The bill also includes an amendment to schedule 5C of the national law to allow the Minister, rather than the Governor, to appoint a person as an acting member of a health professional council, which will ease the administrative burden of appointing acting members at short notice, such as when a member becomes unwell.

I turn now to the other amendments set out in the bill. Schedule 4 to the bill seeks to amend the Health Services Act to allow staff of the New South Wales Health Service to be suspended from duty without pay in limited circumstances. Staff are employed in the New South Wales health system under the Health Services Act, which is generally silent as to whether staff can be suspended from duty without pay, although the Health Services Regulation allows staff in the Ambulance Service to be suspended from duty without pay in limited circumstances. In order to bring the New South Wales health system into line with other public sector staff employed under the Public Sector Employment and Management Act 2002, such as teachers and police, regarding suspension without pay, the bill inserts a new section 120A into the Health Services Act to allow staff to be suspended without pay in limited circumstances.

The bill limits those circumstances to where an employee has been charged with a serious criminal offence punishable by imprisonment for five years or more; where a staff member who is a registered health practitioner has had their registration suspended or conditions imposed on their registration under section 150 of the Health Practitioner Regulation National Law; or, in the case of an unregistered health practitioner, where the Health Care Complaints Commission has imposed an interim prohibition order or placed interim conditions on the unregistered health practitioner under section 41AA of the Health Care Complaints Act.

These limited circumstances may suggest that there would be a significant risk in permitting that person to continue in their employment or being paid while suspended from duty while criminal proceedings are underway. Further, in the case of a registered health practitioner who has had an interim suspension order placed on their registration, it may be inappropriate for a public body to use public funds to continue to pay the officer who could not perform their employment role due to a health professional council suspending their registration.

The bill makes minor amendments to section 11 of the Health Administration Act 1982 to allow land held by the Health Administration Corporation to be disposed of notwithstanding a Crown grant if approval has been given by the Minister. This will allow the Health Administration Corporation to dispose of surplus land, notwithstanding Crown grant conditions, and use the proceeds for other health capital works projects that are more suited to the health service needs of the community. This will bring the Health Administration Corporation into line with existing provisions under the Health Services Act for land held by local health districts. The bill also amends the Health Administration Act to change the membership of the Medical Services Committee, which is a ministerial advisory body established to provide advice to the Minister on matters affecting the practice of medicine.

Currently, schedule 4 to the Act states that members may hold office for a period of four years and can be appointed for up to three consecutive terms. While this is generally appropriate, it is often appropriate to appoint a chairperson with experience. However, if a chairperson is appointed as chair while in their third consecutive term, that person can only serve out the remainder of their term. The current restriction has the potential to result in a loss of experienced members to act as chairperson of the committee. In order to ensure that the committee can have access to an experienced member as chair for a reasonable period, the bill amends schedule 4 to allow a person to serve four consecutive terms but only if that person is appointed as chairperson during their third consecutive term.

I turn finally to the amendments to the Mental Health Act and the Mental Health (Forensic Provisions) Act, which are set out in schedules 5 and 6 to the bill. These amendments are generally minor amendments aimed at tidying up or clarifying a number of existing provisions. For example, the bill inserts a new section 76HA into the Mental Health (Forensic Provisions) Act to expressly provide that a forensic patient who is on leave or on conditional release can be detained under the Mental Health Act as a civil patient. Forensic patients on conditional release are released into the community subject to certain conditions and are still subject to a degree of oversight by the Mental Health Review Tribunal and its treating team. However, such patients may become unwell while living in the community such that they need to be scheduled and detained under the Mental Health Act for treatment, as with any other person with a mental illness. There is nothing expressly in the Act that would preclude a forensic patient from being scheduled and detained under the Mental Health Act.

However, there has been some concern that the Mental Health Act does not apply to forensic patients. This would clearly not be appropriate as all persons in the community are entitled to appropriate mental care and treatment if and when required. Therefore new section 76HA makes it expressly clear that a forensic patient on leave or release can be detained and scheduled under the Mental Health Act. Of course, if a forensic patient is detained as a civil patient, the patient will continue to be a forensic patient and subject to the ongoing oversight of the Mental Health Review Tribunal. The bill amends section 69 of the Mental Health (Forensic Provisions) Act to clarify that if the tribunal issues an order for apprehension of a forensic patient who has breached their conditions of release or leave, that order authorises

the apprehension and detention of the patient.

Amendments are also made to section 67 to enable the tribunal to make a community treatment order with respect to a forensic patient at the same time the tribunal is considering releasing the patient and for that community treatment order to continue in effect under the Mental Health Act. This change is aimed at lessening the administrative burden of the tribunal rather than changing practice. Currently, if the tribunal is proposing to release a forensic patient but is also considering imposing a community treatment order, the tribunal must hold two hearings—one in respect of the release order under the Mental Health (Forensic Provisions) Act and one in respect of the community treatment order under the Mental Health Act. This process is time consuming and administratively burdensome. The amendments to section 67 will overcome this administrative burden and make it easier for the tribunal to consider and make community treatment orders with respect to forensic patients.

The amendment in the bill to section 77A of the Mental Health (Forensic Provisions) Act relates to the power of the Supreme Court on appeal from a decision of the tribunal with respect to forensic patients. Under section 77A a patient and the Minister for Health may appeal a decision of the tribunal on a question of law or fact. The Attorney General also has a right of appeal but only with respect to questions of law. Under section 77A if an appeal is made on a ground of law, the court or the tribunal may suspend the operation of the order until the court resolves the appeal.

The ability to suspend orders does not currently apply with respect to appeals on a question of fact. Should an appeal against a tribunal decision be made, it should be open to the court to suspend the operation of that tribunal order until the court resolves the appeal, regardless of whether the appeal is made on a ground of law or fact. Therefore, the bill amends section 77A to ensure that the court and the tribunal can suspend the operation of an order if an appeal is made on a question of law or fact. Of course, should an appeal be lodged, it will remain a discretion of the court or the tribunal to consider whether to suspend the operation of the order while the appeal is heard. The bill before the House seeks to make minor but important amendments to various health Acts. These amendments are aimed not only at ensuring the continued smooth operations of the Act, but also at protecting the health and safety of the public. 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.