Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [9.07 p.m.], on behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

Over the last few years Australian governments have been engaged in a project to significantly restructure the way that health professionals are registered and regulated.

This process has been complex and difficult and, not surprisingly, it has taken a long time. The complexity of the process, and therefore its length, is understandable given the wide range of professions involved and the large number of stakeholders who are involved in each profession. These stakeholders include governments; health service providers; practitioners; educational institutions; professional associations; and, most importantly, health care consumers.

Stakeholders have freely given of their time and expertise to assist governments in developing the scheme and the legislation and the result is all the better for their involvement. I congratulate them for their commitment, energy and foresight.

As I have already noted the development of this scheme has been a lengthy process. The legislative milestones on the path have included

the initial bill establishing the scheme's administrative arrangements which passed through the Queensland Parliament in November 2008;

the passage of the National Law template through the Queensland Parliament in October 2009;

passage of the Health Practitioner Regulation Act 2009 through this Parliament in November 2009; and

the consideration of the current bill which establishes the New South Wales specific complaints, performance and health processes; establishes each of the health professional councils in New South Wales to administer those systems; and makes consequential amendments to a range of other New South Wales Acts including the Health Care Complaints Act, the Poisons and Therapeutic Goods Act and the Public Health Act.

As honourable members will therefore be aware there has been a significant amount of parliamentary time devoted to consideration of the National Registration and Accreditation Scheme in this Parliament as well as in the parliaments of other States and Territories. The devotion of significant amounts of time to this matter is appropriate given that it is of critical importance that effective regulatory and accountability systems exist for health professionals.

In considering the amendments to the National Law that are contained in the bill currently before the Parliament it will be valuable to recap on a number of the important matters that are addressed in the Health Practitioner Regulation Act 2009.

The Health Practitioner Regulation Act provides for the implementation in New South Wales of the Health Practitioner Regulation National Law. The National Law sets out the regulatory framework for the National Registration and Accreditation Scheme for Health Professionals. It implements the agreement signed in 2008 by the Council of Australian Governments to establish the National Registration Scheme by 1 July 2010.

The National Law provides for the registration at a national level of 10 health professions: chiropractic, dentistry—including dental hygienists, dental therapists and dental prosthetists—medicine, nursing and midwifery, optometry, osteopathy, pharmacy, physiotherapy, podiatry and psychology. Four further professions will be added to the national scheme in July 2012: Aboriginal and Torres Strait Islander health practice, Chinese medicine, medical radiation practice and occupational therapy.

The National Law will ensure that nationally uniform processes and criteria exist for registering practitioners and accrediting educational programs. The establishment of these uniform processes and standards will mean that uniformly high standards will be applied nationwide and that the public can have increased confidence that all registered health practitioners meet appropriately high standards.

Members will be aware that all national systems are, necessarily, the result of negotiation and compromise to reach outcomes acceptable to all jurisdictions. This national system is no different. Therefore, practitioners and regulators in New South Wales will find some differences in how registration, accreditation and other processes will be managed under the national scheme.

As I have indicated already, there are some areas where compromises have been made to reach agreement on a

national system. However, there are some areas where the protection of the public demands that compromise is not possible. For this reason this Government has argued consistently that there can be no compromise in ensuring the maintenance of a strong, accountable and transparent disciplinary and complaints systems in New South Wales.

Members will be aware that the health care complaints system in New South Wales is virtually unique in Australia. The system divides the complaints and disciplinary roles between the health professional boards and the independent Health Care Complaints Commission. This structure evolved over many years, starting in response to the Chelmsford Hospital scandals in the 1980s through to the establishment of Australia's first fully independent health complaints investigator in 1993. The changes made to the New South Wales system over the last 20 years have focused consistently on enhancing the public accountability of health service providers and improving the capacity of the complaints system to protect the public.

The National Law's complaints model adopts processes similar to those that currently apply in most other States and Territories. It is markedly different from the current New South Wales model in relying primarily on the health professional boards to undertake disciplinary functions without the involvement of an independent investigator and prosecutor, such as the Health Care Complaints Commission. This Government remains committed to the Health Care Complaints Commission as an integral element in complaints management in New South Wales. For this reason the Government brokered an agreement with the other States and Territories, which will enable New South Wales to maintain the current New South Wales health complaints system and functions of the Health Care Complaints Commission.

New South Wales will therefore participate in national registration as a co-regulatory jurisdiction. As a result of being a co-regulatory jurisdiction New South Wales has not adopted the National Law complaints model, as set out in divisions 3 to 12 of part 8 of the National Law. Under the New South Wales approach the national registration boards will not deal with complaints about matters occurring in New South Wales and those matters must be referred to the New South Wales authorities, including the Health Care Complaints Commission, to be managed.

Stakeholders in New South Wales have uniformly welcomed the commitment of the Government to retain the existing complaints system and recognise the benefits that a robust, independent and transparent system delivers to the public, health practitioners and the health system as a whole. In terms of funding the New South Wales complaints system, health Ministers have agreed that the practitioners of other jurisdictions will not be called on to fund the complaints system in New South Wales and that practitioners in New South Wales equally will not be called on to fund the complaints system established under the National Law.

Because New South Wales is not adopting the national complaints model the bill currently before the House contains the New South Wales provisions that will replace divisions 3 to 12 of part 8 of the National Law. This bill reflects the Government's commitment to retain the Health Care Complaints Commission as a separate entity and extends many of the recent reforms to the Medical Practice Act to other professional groups.

Before I turn to discussing particular aspects of the bill I can advise members that in addition to tabling the bill I have also tabled a draft consolidation of the bill and the Health Practitioner Regulation Act 2009. This consolidation will assist honourable members and other stakeholders in clearly understanding the way that the legislative scheme is intended to operate.

I turn now to the specific provisions of the bill.

Amendment 3 of the bill includes a range of amendments to the front end of the Act to recognise the various regulatory structures and bodies that will operate under the New South Wales provisions.

Amendment 5 in the bill provides for the extensive amendments to the National Law.

The amendments to the National Law broadly fall into three separate categories:

amendments to provide for the establishment and functions of the New South Wales professional councils;

amendments to provide for the New South Wales specific complaints, performance and impairment systems; and

amendments to provide for the ongoing regulation of pharmacy businesses and premises.

As the New South Wales Government has determined to maintain the New South Wales specific complaints performance and impairment systems it is essential that regulatory bodies are established to administer those systems. Accordingly the bill incorporates in the Act a new part 5A, which establishes a professional council for each profession.

Members will note that section 41B establishes a council for each profession that is currently included in the national scheme and provides that the list of councils may be amended by an order of the Governor. The reason for allowing amendment by Governor's order is to facilitate the inclusion of additional professions in the scheme including those professions which will be included on 1 July 2012.

Section 41E in conjunction with part 1 of schedule 2 sets out the composition of each of the professional councils. Members will note that a council composition has been set for each of the following councils:

the Dental Council;

the Medical Council;

the Nursing and Midwifery Council;

the Pharmacy Council;

the Physiotherapy Council; and

the Psychology Council.

Members will also note that those compositions reflect the current compositions of the relevant state registration boards, with the addition of a dental prosthetist to the Dental Council to acknowledge the inclusion of dental prosthetists within the regulatory oversight of the Dental Council.

The membership of these councils is set out in the legislation, as these are the professions for which the relevant national board has determined there will be a New South Wales State committee with those committees initially comprising the current members of the State board. Similarly the transitional provisions in the bill provide for the existing members of the relevant boards to become the members of the State councils for those professions.

However after 12 months the size and composition of the State committees of the national boards may change based on an analysis of the work that those committees undertake and the cost of maintaining them. In line with those changes the size and composition of the councils may also change. Therefore section 41E allows for the composition of the councils to be varied by regulation. Any variation will be undertaken only after consultation with all stakeholders including the councils, relevant professional associations and specialist colleges, and the national boards.

For the other four professions:

chiropractic;

optometry;

osteopathy; and

podiatry

the compositions of the councils will be set by regulation. In each of these professions the relevant national board has determined that there will be no State or Territory committee. Furthermore the numbers of complaints and other notifications that are made about members of these professions are at levels, which indicate that the costs associated with maintaining large councils cannot be justified. Accordingly the regulations will establish smaller councils, much like the boards' existing complaints screening committees, to undertake the relevant functions. I expect that the relevant councils will comprise three or four members made up of practitioners from the relevant profession and a legal practitioner. The effected professions will be consulted as the regulations are developed.

I would now like to focus on the most substantial and important part of this bill, that is the amendments to provide for the New South Wales specific complaints, performance and impairment systems.

As honourable members will recall the New South Wales Government has consistently stated that the sophisticated approach to managing complaints about health practitioners in New South Wales must be retained. That position was confirmed when this Parliament voted to adopt the National Law without the relevant aspects of part 8. At the time I indicated that further legislation would be necessary to establish the New South Wales complaints system.

New South Wales has for many years had an extremely sophisticated complaints and disciplinary system and a substantial amount of law and precedent has built up around that system. Much of that precedent has been established by the Medical Tribunal and relates to the definitions of unsatisfactory professional conduct and professional misconduct. In order that this body of precedent is not lost the existing conduct definitions from the Medical Practice Act are being retained and adapted for use by all professions. The principal definition of unsatisfactory professional conduct in the bill is in the proposed section 139B. Sections 139C and 1390 go on to set out additional matters relevant to medical practitioners and pharmacists respectively.

I can further advise the House that, as with the definitions of unsatisfactory professional conduct, the other aspects of the existing complaints processes are to be carried over with little change. This lack of significant change reflects the view that is widely held amongst the professions and the regulators that the current systems work well.

There are a small number of areas where there is to be change and many of these changes reflect changes brought about by the national registration system. These areas of change include:

changes required to reflect the registration of students in all professions; and

changes to the councils' powers regarding emergency suspensions.

In terms of the registration of students, which in New South Wales has previously been limited to medical and dental students, the relevant provisions have been updated to allow complaints to be made and action to be taken against a

student in limited circumstances. Those circumstances are:

where a student has impairment;

where the student has been convicted or charged with a serious offence; or

where the student has breached a condition of their registration.

Action may be taken against a student where the matter or matters giving rise to the complaint demonstrate that the student should not undertake clinical training involving contact with patients, or should only undertake such training subject to conditions.

These provisions reflect similar arrangements that will apply in all other jurisdictions.

In terms of the changes to provisions concerning emergency suspensions I can advise the House that the changes proposed involve not more than 8 weeks in suspension may apply for a review of that suspension at any time and as frequently as he or she wishes. Of course a council will be able to decline to accept an application that is frivolous or vexatious but the professional and board representatives who have considered this matter agree that it is appropriate and that the right to apply for a review at any time meets any concerns about procedural fairness.

The bill also contains a range of transitional provisions that will ensure that the transition to the national scheme does not render the investigation or prosecution of any current complaints void. The transitional provisions also provide for existing approvals for pharmacy premises and owners to carry over as well as relevant appointments in terms of pharmacy premises and inspections.

The transitional provisions also retain the exiting appointments to tribunals and committees as well as the appointments of performance assessors.

I turn now to those provisions dealing with the regulation of pharmacies. Those provisions are to become schedule SF of the Act.

The intergovernmental agreement establishing the national registration and accreditation scheme expressly excluded the regulation of pharmacies from the national process and left this matter to be dealt with at State and Territory level. Therefore the bill incorporates the existing provisions of the Pharmacy Practice Act and the Pharmacy Practice Regulation with respect to the ownership and control of pharmacies and with respect to the standards for the approval of pharmacy premises.

Of course the wording of a number of provisions dealing with pharmacies has varied slightly in order to accommodate national registration of practitioners and the consolidation in the Act of a number of matters that have previously been dealt with by regulation. Officers of the Department of Health have consulted with the Pharmacy Board, the Pharmacy Guild and the Pharmaceutical Society on these matters and those stakeholders have acknowledged that the provisions in the bill achieve the Government's goal to maintaining the status quo.

It is important to recognise that the absence of any material change in the legislative restrictions relating to pharmacy ownership means that any pecuniary interest in a pharmacy that was unlawful under the previous pharmacy legislation will remain unlawful under this legislation. There is no sleight-of-hand that will render previously unlawful interests lawful. The Pharmacy Practice Act 2006 includes a transitional provision to the effect that a person who lawfully held a pecuniary interest under previous pharmacy legislation is not precluded from continuing to hold that interest under the 2006 Act. This transitional provision was included tor the sake of clarity due to the fact that the 2006 Act incorporated a reasonably substantial updating of the pharmacy ownership provisions. As this Act does not include any such update the transitional provision is unnecessary.

A number of matters relating to the standards for the approval of pharmacy premises are currently dealt with in regulation. These matters, relating to equipment and publications, will continue to be dealt with by regulation and I give a commitment that the substance of the existing regulations will be retained.

Finally the bill also contains a range of consequential amendments to other state legislation. These amendments include:

amendments to the Health Care Complaints Act to update that Act to fit in with the changes that have been implemented by the national registration scheme;

amendments to the Poisons and Therapeutic Goods Act and Regulation to accommodate the shift to national registration;

amendments to the Health Care Liability Act to reflect the requirement under the National Law that all practitioners hold appropriate professional indemnity insurance; and

amendments to the Public Health Act to reflect that all relevant restrictions on the use of core restricted health practices, such as spinal manipulation, are now addressed in the National Law.

The development of this legislation has been complex and drawn out and has required a significant investment of time and energy by all stakeholders. Once again I extend the Government's thanks to all of the health practitioners who

have freely given of their time and expertise to help develop this bill and whose commitment to high standards of practice and professionalism reflect positively on all health practitioners in this State.

I also wish to commend the Parliamentary Counsel and his staff for their efforts in bringing this complex piece of legislation to fruition.

I commend the bill to the House.