NSW Legislative Council Hansard

Health Legislation Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 9 November 2005.

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [5.08 p.m.], on behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

[*Quorum formed*.]

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

Leave granted.

This bill proposes amendments to a number the Health Administration Act 1982, the Public Health Act 1991, the Human Tissue Act 1983, the Poisons and Therapeutic Goods Act 1966, and the Podiatrists Act 2003. Schedule 1 amends the Health Administration Act to extend the definition of relevant health services organisation to include the New South Wales Ambulance Service. The Health Legislation Amendment (Complaints) Act amended the Health Administration Act to establish a new statutory privilege for the proceedings of root cause analysis.

The privilege applies to root cause analysis conducted by relevant health services organisations. This is defined in section 20L as relevant health services organisation, which means any area health service, a statutory health corporation prescribed by the regulations, or an affiliated health organisation prescribed by the regulations. The intention was that the definition would cover all New South Wales public hospitals and the New South Wales Ambulance Service. However, the New South Wales Ambulance Service does not fall into any of the categories covered by section 20L. The amendment is needed to include the New South Wales Ambulance Service in the definition.

The proposed amendments to the Human Tissue Act in schedule 2 cover four areas: the use of technicians to remove donated musculoskeletal tissue, donation of regenerative tissue by young children, certification of brain death, and the use of tissue for quality assurance programs. Turning first to the use of technicians to remove donated musculoskeletal tissue, I point out that currently only medical practitioners may remove human tissue other than corneal tissue from a deceased person. Under the Act, corneal tissue may also be removed by a person authorised by the director general. In practice, trained technicians are employed to remove donated corneal tissue.
The proposed amendment will create a similar approach to that applied for the retrieval of musculoskeletal tissue by trained technicians. Musculoskeletal tissue includes muscles, bones and cartilage. The current requirements have reduced the amount of musculoskeletal tissue that is available for use in New South Wales. Tissue removal must be undertaken within a short time after death but medical practitioners are often unable to do this, due to their operating lists and attendance on other patients. Consequently New South Wales currently needs to obtain musculoskeletal tissue from interstate. Technicians are used to retrieve musculoskeletal tissues in Queensland, Victoria, Western Australia and overseas. The New South Wales Bone Bank proposes to offer specialist training to technicians, who will undertake tissue removal.

The second amendment to the Human Tissue Act relates to the current practical prohibition on the use of regenerative tissue provided by very young children. Under the Act, regenerative tissues, such as bone marrow, may be removed from the bodies of children for the purpose of transplantation to a sibling or parent only if a medical practitioner certifies that the child can understand the nature and effect of the donation and transplantation, and is in agreement with the proposal. This requires the child to have a certain level of intellectual and emotional development that is not present in the very young. The proposed amendment arises from a recommendation of the Department of Health's clinical ethics advisory panel. The amendment will allow the donation of regenerative tissue by children, including the very young, when the parent consents to the donation, two medical practitioners certify that the child's sibling or parent is likely to die or suffer serious irreversible damage to his or her health without the tissue, and the risk to the child from the procedure is minimal.

The proposed amendment will also require that one of the medical practitioners is a paediatric transplant specialist or a paediatric medical specialist from an institution other than the institution at which the transplant will occur. The Department of Health's clinical ethics advisory panel is of the view that certification by an independent specialist will ensure that there is an independent assessment and source of advice available to

the parents. The proposal provides a permanent life-saving benefit for recipients as opposed to minimal risks and temporary discomfort for the donor. Although there is no physical benefit for the donor child, there is the potential psychological benefit for the child to be later made aware that the child has helped to save the life of a sibling.

The third proposed amendment to the Human Tissue Act concerning certification of brain death arose out of exhaustive public consultation that was undertaken as part of a review of the Human Tissue Act. The Act requires that when a person is to be declared dead by the brain function criteria, two medical practitioners must certify that there has been irreversible cessation of all functions of the person's brain. The proposed amendment provides that when death is to be certified by the brain function criteria prior to the removal of organs, neither of the certifying medical practitioners may be part of the medical team responsible for transplanting the tissues into the body of the recipient or for the primary care of the recipient. This proposed amendment is designed to avoid any concerns of a perceived conflict of interest that may arise if a medical practitioner who is responsible for the care of the recipient were also to certify death of the donor.

The final amendment concerns the strict statutory controls on the use of tissue without the specific consent of the person from whom it was obtained. Currently, certain exemptions to the consent requirement are made for material in blocks and slides used in microscopic examination to be used for coronial, scientific, and educational purposes to improve diagnosis and medical treatment for the benefit of the community. The same overriding public interest requirement applies equally to the use of lawfully obtained bodily fluids for quality assurance, audit, and quality control purposes. It is therefore proposed to extend the exemptions in section 34 to allow lawfully obtained bodily fluid and tissue samples to be used for the purposes of a quality assurance program, audit, or quality control program, and other purposes reasonably incidental to the proper conduct of the facility or institution where treatment is provided.

Schedule 3 proposes an amendment to the Podiatrists Act to insert a regulation-making power in relation to infection control standards. This regulation-making power is in other health professional Acts in the health portfolio and will mean that podiatrists will be subject to the same standards and requirements to prevent infection that apply to other registered health professionals. I turn next to the proposed amendment to section 29 of the Poisons and Therapeutic Goods Act in schedule 4 that allows the director general to authorise the prescription or supply of drugs of addiction. Section 29 (5) (a) currently provides that the authority must specify the maximum quantity of the drug that may be supplied or prescribed. Section 29 (5) (b) requires the director general to specify, in the authority, the period for which the drug may be prescribed or supplied.

Whilst these restrictions are appropriate in many cases, there are circumstances in which prescribers need greater flexibility—for example, the management of severe pain in terminal patients, or long-term patients who may require escalating or continuing doses of drugs for an indeterminate period. It is inappropriate to fetter the appropriate palliative doses, and an administrative burden on medical practitioners to have to seek intermittent amendments to the authority as the condition and level of pain of their patients alters. It is therefore proposed to allow the director general a discretion in relation to whether to specify a maximum quantity of drug and a set time period in each specific case.

As an added safeguard, the amendments to section 28 are included to ensure that injectable drugs of addiction and other addictive drugs that may be susceptible to abuse are subject to more stringent restrictions. These drugs are listed in the regulation as type B drugs of addiction and an authority must be granted for them to be used for periods exceeding two months. The proposed amendment to the Public Health Act 1991 in schedule 5 recasts the exemption for registered nurses undertaking surgical debriding of hypertrophic tissue of the foot as a permissive provision rather than as a defence to prosecution. Currently the section provides a defence to prosecution if the treatment was necessary to provide immediate relief from pain and discomfort.

The proposed amendment will not change the type of foot care that registered nurses will be able to undertake, but it will be framed to provide clear and direct statutory authority to registered nurses so that they may undertake surgical debridement of feet in certain circumstances rather than the less direct authority conferred by a defence to prosecution. The Nurses Association requested the amendment and it is supported by the Australian Podiatry Association. These various amendments are designed to ensure the relevant pieces of health legislation are up to date, accord with current best practice and deliver improved health outcomes for the community. I commend the bill to the House.