



Health Legislation Amendment Bill.

Second Reading

The Hon. HENRY TSANG [Parliamentary Secretary] [5.19 p.m.]: I move:

That this bill be now read a second time.

This bill amends a number of pieces of health legislation, namely the Dental Technicians Registration Act 1975, the Human Tissue Act 1983, the Mental Health Act 1990, the Nurses Act 1991, and the Poisons and Therapeutic Goods Act 1966. The amendments to the Dental Technicians Registration Act are relatively minor. The amendment to section 26 will permit a dental technician who is enrolled in an approved course of training in dental prosthetics to perform dental prosthetics under the supervision of a dentist or a dental prosthetist. This amendment is necessary to facilitate a new mechanism of distance education in dental prosthetics that has been developed by TAFE. This mode of distance education is primarily utilised by practitioners who live in non-metropolitan areas and who would otherwise have great difficulty in accessing appropriate training.

The amendment was proposed by both the Dental Technicians Registration Board and TAFE. Any relevant educational course in dental prosthetics must be approved by the Dental Technicians Registration Board before students enrolled in that course can undertake the practice of dental prosthetics, and the public interest will thereby be protected. The bill also makes a second amendment to section 26 of the Act to remove a redundant reference to the Apprentices Act 1969, which has been repealed. This will have no effect on the education of dental technicians as training has, for many years, been conducted by TAFE rather than by the apprenticeship system.

I turn now to the proposed amendments to the Human Tissue Act 1983. The Department of Health's review of the Human Tissue Act was undertaken as three separate reviews. The first review concerns the donation and use of organs and tissues, and post mortem examinations. That aspect of the review culminated in the passage by Parliament of the Human Tissue and Anatomy Legislation Amendment Act 2003, which commenced on 1 November 2003. The second part of the review concerned assisted reproductive technologies. As a result of that review, draft legislation for the regulation of assisted reproductive technologies has been released for public consultation. The third part of the review dealt with regulation of the supply of blood and blood products, and was undertaken as part of the Government's obligations under the Competition Principles Agreement. The recommendations of that part of the review are reflected in the current proposed amendments to the Human Tissue Act. I seek leave to have the remainder of the second reading speech incorporated in *Hansard*.

Leave granted.

The amendments will slightly restructure the relevant parts of the Act so that Part 3 of the Act regulates the donation of blood and semen, Part 3A regulates businesses that supply blood and blood products and Part 3B regulates businesses that supply semen.

The proposed revised section 18 inserts a statement of objectives for Part 3. The proposed objectives are:

- to provide for appropriate consents for the removal of blood, and
- to minimise the risks to the public that may arise from the receipt of blood and blood products, and
- to ensure the continued viability of the blood supply.

The proposed new section 18A will provide that the provisions regarding collection and supply of blood do not apply to autologous blood use, that is a situation where blood is collected from a person to be used in the treatment of that person. This is appropriate as concerns about the donation of blood and infectious disease transmission are not relevant in this context.

The proposed amendment to section 19 will enable a person over the age of 16 years to consent to donation of their own blood. Of course as with consent to medical and surgical treatment the common law would require that for the consent to be valid the young person must have capacity and the requisite degree of maturity.

The proposed new section 20A will allow a parent or guardian to consent to the removal of blood from a child who is unable to agree if that blood is to be used in the treatment of a parent or sibling of the child and:

1. a medical practitioner, who is not responsible for treating the intended recipient of the blood, certifies that there is minimal risk to the child's health; and

2. a separate medical practitioner certifies that the parent or sibling is likely to die or suffer serious damage to his or her health without the blood.

Section 21C as it currently stands is intended to provide that a person collecting a blood or semen donation commits an offence if the blood or semen is collected without the donor having signed a certificate as to their medical suitability to be a donor. It is proposed to redraft the section as section 20D to provide more clearly its intention and to increase the maximum penalty for non-compliance from the current paltry 2 penalty units to a more appropriate level of 100 penalty units.

Honourable members will be aware of the serious public health risk presented by improperly screened blood donations. While it is highly unlikely that contaminated blood would slip through the sophisticated and rigorous blood screening regime that applies to blood collected and used in NSW, the requirement for donors to complete a certificate as to their medical suitability is an important donor screening tool that greatly reduces the chances of contaminated blood finding its way into the system in the first place. The significant increase in the maximum penalty for non-compliance is therefore warranted given the extremely important role that the donor certificate plays in the screening process and the potentially extremely serious consequences that may flow from inappropriate donations.

Under the current provisions of the Act businesses that supply blood and blood products and businesses that supply semen are all regulated under a common set of provisions contained in Part 3B of the Act. The supply of blood and blood products is a separate undertaking from the supply of semen and instances of organisations undertaking both services are limited. Therefore the Bill proposes to separate the regulation of these distinct activities.

The proposed revised Part 3A of the Act contains provisions concerning the regulation of businesses that supply blood and blood products, while the proposed amendments to Part 3B will ensure that that Part applies solely to the regulation of businesses supplying semen.

Passage of the revised Part 3A and of the proposed amendments to Part 3B will not result in any practical changes to the mechanisms by which these types of businesses are regulated. The only important change is that the operation and effect of the injunction power in section 21U, which is mirrored in the revised section 21C, has been clarified and expanded to ensure that it also covers other people involved in the relevant activities such as the directors and managers of corporations.

The proposed amendments to the Human Tissue Act will address potential problems in the current administration of the Act, ensure that mechanisms are in place to allow for appropriate blood donation by children, help to maintain the safety of the blood supply, and ensure that businesses that engage in the supply of blood, blood products and semen are effectively regulated.

I turn now to the amendments to the **Mental Health Act**, which are contained in schedule 3 of the Bill.

The first of the proposed amendments is to section 22 (1) of the Act. Section 22 concerns the obtaining of the police assistance in taking a mentally ill or mentally disordered person to hospital. The current wording of the section provides that police assistance can be requested where it is considered necessary by the medical practitioner authorising the detention. NSW Police has raised concerns that this wording is too broad and can allow police assistance to be required when it is convenient rather than strictly necessary. The unfortunate result of seeking assistance in these circumstances can be that police resources are diverted from other priority activities.

The proposed amendment changes the wording to limit the use of police assistance to situations when there are serious concerns about the safety of the person being detained or other persons.

The second proposed amendment to the Mental Health Act will provide for the Chief Health Officer to delegate his or her functions under the Act.

Under the Act the Chief Health Officer has functions in respect of authorising the transfer of forensic patients between hospitals and prisons. Section 100A of the Act provides that the Chief Health Officer may delegate the function of authorising the transfer of patients back from a hospital to a prison but no such power of delegation exists for the power to authorise transfer of a patient from prison to a hospital. In most cases senior medical staff of Corrections Health Service are likely to be much better placed to determine whether or not such a transfer is clinically indicated. Therefore the proposed section 287B provides the Chief Health Officer with a general power of delegation.

The above amendments, although of a relatively minor nature, will if passed contribute to more efficient use of health and police resources and are therefore being presented at this time rather than as part of the comprehensive review of the Mental Health Act that is currently under way.

I turn now to the amendments to the **Nurses Act** and the **Poisons and Therapeutic Goods Act**.

The Nurses Act establishes the structures for the registration and regulation of nurses and midwives in New South Wales. As part of this structure the Act makes provision for the accreditation of senior nurses with extensive experience, and who practice at an advanced level, as nurse practitioners. Midwives may also be accredited as nurse practitioners and on commencement of recent amendments to the Nurses Act will be able to seek accreditation as

midwife practitioners.

Nurse practitioners are currently authorised to prescribe drugs listed in schedule 4 of the Uniform Schedule of Drugs and Poisons, to initiate diagnostic tests and to refer patients to other health professionals. The scope of practice of nurse practitioners, including the drugs they may prescribe, is determined by practice oversight guidelines approved by the Director-General of Health and an authority under the Poisons and Therapeutic Goods Act. The nurse practitioner program has to date been successful in helping to deliver high quality health care to people in New South Wales who in many cases would otherwise experience difficulty in accessing services.

The Poisons and Therapeutic Goods Act and Regulation establish the legislative structure for the control of poisons and therapeutic drugs in New South Wales.

The proposed amendments to the Acts will enable expansion of the role of nurse practitioners and, on commencement of the Nurses Amendment Act 2003, midwife practitioners by authorising those practitioners to prescribe schedule 8 drugs in identified circumstances. The specific schedule 8 drugs and the circumstances in which they may be prescribed will again be governed by practice oversight guidelines approved by the Director-General of Health and the scope of any drug authority issued under the Poisons and Therapeutic Goods Act.

It is envisaged that the proposed amendments will allow nurse practitioners to participate more actively in the NSW Methadone Program. Nurse practitioner participation in the methadone program is particularly important in those areas of the State where there is a shortage of medical practitioners available to become approved methadone prescribers. This is particularly the case in a number of rural areas. Only suitably qualified nurse practitioners who have completed an appropriate methadone prescribers course would be approved to prescribe methadone. It is also envisaged that nurse practitioners and midwife practitioners will be able to prescribe schedule 8 drugs for the purposes of pain relief in clinical situations such as palliative care and childbirth.

The development of practice oversight guidelines will be undertaken in consultation with medical groups including the AMA and the Rural Doctors Association as well as methadone prescriber groups.

I commend these amendments to the House.

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