

## Health Legislation Amendment Bill 2004

### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

#### Overview of Bill

The objects of this Bill are as follows:

(a) to amend the *Dental Technicians Registration Act 1975* to permit a dental technician to perform dental prosthetics as part of an approved course of training to become a dental prosthetist,

(b) to amend the *Human Tissue Act 1983*:

(i) to remove the requirement that businesses that supply blood back to the donor of the blood be authorised to supply blood by the Department of Health, and

(ii) to remove the requirement that the consent of a parent is required before a 16 or 17 year old can donate blood, and

(iii) to permit the removal of blood from a child under the age of 16 years without the agreement of the child in certain limited circumstances, and

(iv) to remove the restriction on the premises at which blood can be collected, and

(v) to permit the regulations to prescribe defences against offences or actions in tort or contract brought in relation to infections from prescribed contaminants in blood, and

(vi) to increase certain penalties and to make other minor amendments,

(c) to amend the *Mental Health Act 1990*:

(i) to make it a requirement that the assistance of the police should only be sought in relation to the involuntary admission of a person if there is a serious concern about a person's safety, and

(ii) to permit the Chief Health Officer to delegate his or her functions under the Act,

(d) to amend the *Nurses Act 1991* to permit the Director-General of the Department of Health to approve guidelines that provide for the possession, use, supply or prescription of drugs of addiction by nurse practitioners and midwife practitioners,

(e) to amend the *Poisons and Therapeutic Goods Act 1966* to permit the Director-General of the Department of Health to approve a nurse practitioner or a midwife practitioner as a prescriber of drugs of addiction.

#### Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation. However, a day must not be appointed for the commencement of a provision of Part 2 of Schedule 5 if that day is earlier than the day on which Schedule 1 [2] to the *Nurses Amendment Act 2003* commences.

**Clause 3** makes provision for an amendment to the proposed Act if Schedule 4 commences after the day on which Schedule 1 [207] to the *Nurses Amendment Act 2003* commences (Schedule 4 has been drafted to commence first and relies on subsequent amendment by Schedule 1 [207] to the *Nurses Amendment Act 2003*).

**Clause 4** is a formal provision that gives effect to the amendments to Acts and a Regulation as set out in Schedules 1–6.

### Schedule 1 Amendment of Dental Technicians Registration Act 1975 No 40

**Schedule 1 [2]** amends section 26 of the *Dental Technicians Registration Act 1975* to permit a dental technician to perform dental prosthetics under the supervision of a dentist or a dental prosthetist as part of an approved course of training to become a dental prosthetist. **Schedule 1 [1]** amends section 26 of the Act to remove a redundant reference to the *Apprentices Act 1969*.

#### **Schedule 2 Amendment of Human Tissue Act 1983 No 164**

**Schedule 2 [3]** restructures Parts 3 and 3A of the *Human Tissue Act 1983* into a single Part (Part 3) that deals with blood and semen donations. Part 3 applies, with respect to blood and blood products, only to blood donation and not to the removal of blood from a person for the purpose of using the blood in the treatment of that person. A new Part 3A is inserted into the Act to regulate businesses that supply blood or blood products. Proposed Part 3A only applies where some or all of the blood or blood products is to be used in relation to a person other than the donor (**homologous blood**). Only an **exempt supplier** as defined in section 4 of the Act is permitted to supply homologous blood. The proposed Part contains no requirement for businesses to be authorised by the Department of Health (currently Part 3B requires such businesses to be authorised) if those businesses only supply blood or blood products back to the donor. **Schedule 2 [13]–[17]** make consequential amendments. **Schedule 2 [4]–[10]** remove references to blood from Part 3B leaving that Part to apply only to businesses that supply semen. **Schedule 2 [1]** makes a consequential amendment to the definition of **authorised supplier** to remove references to blood.

**Schedule 2 [3]** also removes the restriction, found in the current Part 3, that limits the premises at which donated blood can be collected. The requirement in section 19 of the Act that parental consent be obtained in relation to the donation of blood by persons aged 16 and 17 years is also removed. Proposed sections 20–20B regulate the removal of blood from a child under the age of 16 years. Proposed section 20 permits blood to be removed from a child under the age of 16 years if the child agrees to the blood being removed and a parent or guardian consents in writing to the removal of the blood and a medical practitioner advises the parent or guardian that any risk to the child’s health is minimal. Proposed section 20A permits blood to be removed from a child under the age of 16 years who is unable to understand the nature and effect of blood donation. In such a case the parent or guardian of the child must consent in writing to the removal of the blood and the blood must be for the treatment of the child’s parent or sibling. A medical practitioner is required to certify in writing that any risk to the child’s health caused by the removal of the blood is minimal and a medical practitioner must also certify that the parent or sibling is likely to die or suffer serious damage to his or her health unless blood removed from the child is used in the treatment.

Proposed section 20D (based on the existing section 21C) includes a penalty of 100 penalty units (currently \$11,000) for removing or using a donor’s blood or semen if the donor has not signed a certificate relating to the medical suitability of the donor, currently the penalty is 2 penalty units (currently \$220). Proposed sections 20F and 20G have separated into 2 sections the matter that is currently found in section 21DA (proposed section 20F dealing with blood and proposed section 20G dealing with semen). The proposed sections clarify that the defences in those sections are available to employees of exempt suppliers in relation to blood and employees of authorised suppliers in relation to semen. Proposed section 20F permits regulations to be made to prescribe defences against prosecution for offences or actions in tort or contract brought in relation to infections from prescribed contaminants in blood.

**Schedule 2 [2]** extends the definition of **exempt supplier** to include a body that

supplies blood products (such as certain pharmaceuticals that contain blood products) if those blood products are therapeutic goods and are regulated by the *Therapeutic Goods Act 1989* of the Commonwealth.

**Schedule 2 [11] and [12]** amend section 21U to expand the grounds on which the Director-General of the Department of Health can apply to the Supreme Court for an injunction in relation to contraventions of section 21G (unauthorised persons carrying on a business of supplying semen). The new grounds include knowingly being a party to a contravention of section 21G, conspiring to contravene that section and aiding and abetting such a contravention. Section 21U is also amended to prevent the Director-General from being required to give any undertaking as to damages or costs in respect of an application under that section. **Schedule 2 [3]** contains similar requirements in relation to injunctions under proposed section 21C, which relate to contraventions of proposed section 21 (unauthorised persons carrying on a business of supplying blood or blood products).

**Schedule 2 [18]** amends section 39 of the Act to confer a power to make regulations in relation to the safety of blood and blood products, including testing for prescribed contaminants.

**Schedule 2 [19]** amends Schedule 1 to the Act to enable the regulations to make provision for matters of a savings and transitional nature consequent on the amendments to the Act. **Schedule 2 [20]** inserts provisions of a savings and transitional nature.

#### **Schedule 3 Amendment of Mental Health Act 1990 No 9**

**Schedule 3 [1]** amends section 22 of the *Mental Health Act 1990* in relation to the involuntary admission of a mentally ill person or a mentally disordered person by a medical practitioner or an accredited person. The medical practitioner or accredited person must not endorse Part 2 of the certificate set out in Schedule 2 to the Act unless he or she is of the opinion that there are serious concerns relating to the safety of a person if the person being admitted is taken to a hospital without the assistance of a member of the Police Force. Part 2 of the certificate, if endorsed, authorises a member of the Police Force to apprehend and take the person to a hospital. **Schedule 3 [3] and [4]** make consequential amendments to the certificate.

**Schedule 3 [2]** permits the Chief Health Officer to delegate his or her functions under the Act.

**Schedule 3 [5]** amends Schedule 7 to the Act to enable the regulations to make provision for matters of a savings and transitional nature consequent on the amendment to the Act.

#### **Schedule 4 Amendment of Nurses Act 1991 No 9**

**Schedule 4** amends section 78A of the *Nurses Act 1991* as a consequence of the proposed amendments to the *Poisons and Therapeutic Goods Act 1966* in Schedule 5. The proposed amendment permits the Director-General of the Department of Health to approve guidelines that make provision for the possession, use, supply or prescription by a nurse practitioner of any drug of addiction. (Amendments contained in the *Nurses Amendment Act 2003* will amend this provision so that the Director-General may approve guidelines to cover the possession, use, supply or prescription of any drug of addiction by a midwife practitioner).

#### **Schedule 5 Amendment of Poisons and Therapeutic Goods Act 1966 No 31**

##### **Part 1 Amendments relating to nurse practitioners and other matters**

**Schedule 5 [2] and [3]** amend section 24 of the *Poisons and Therapeutic Goods Act 1966* to permit, subject to the regulations, a nurse practitioner to prescribe, dispense, possess and supply drugs of addiction. **Schedule 5 [1]** makes a

consequential amendment.

**Schedule 5 [5]–[7]** amend Division 2 of Part 4 of the Act to permit a nurse practitioner to be authorised, by the regulations under section 28 or by an authority of the Director-General of the Department of Health under section 29, to prescribe a drug of addiction in circumstances described in section 28 (prescribing or supplying a drug of addiction to a person for more than 2 months, to a drug dependent person or to any person if the drug is a prescribed drug).

**Schedule 5 [8]** permits the Director-General to refer an authority issued under section 29 to the Medical Committee for review. **Schedule 5 [9] and [10]** make consequential amendments.

**Schedule 5 [11]–[13]** permit the Medical Committee to obtain information from the Nurses Registration Board in cases where an authority under review relates to a nurse practitioner.

**Schedule 5 [14]** amends Schedule 3 to the Act to enable the regulations to make provision for matters of a savings and transitional nature consequent on the amendment to the Act.

**Schedule 5 [4]** removes a definition of **approved prescriber**, as that definition is no longer used in the Act.

#### **Part 2 Amendments relating to midwife practitioners**

**Schedule 5 [15]–[17]** amend the *Poisons and Therapeutic Goods Act 1966* to permit, subject to the regulations, a midwife practitioner to prescribe, dispense, possess and supply drugs of addiction. **Schedule 5 [18] and [19]** make amendments consequential on the commencement of the *Nurses Amendment Act 2003*.

#### **Schedule 6 Amendment of Poisons and Therapeutic Goods Regulation 2002**

**Schedule 6** makes consequential amendments to the *Poisons and Therapeutic Goods Regulation 2002* as a result of the removal of the definition of **approved prescriber** by the amendments to the *Poisons and Therapeutic Goods Act 1966* in Schedule 5.