First print

New South Wales

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.

First print

New South Wales

Health Legislation Amendment Bill 2004

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New South Wales

Health Legislation Amendment Bill 2004

No , 2004

A Bill for

An Act to make miscellaneous amendments to various Acts and a Regulation that relate to health and associated matters; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Health Legislation Amendment Act 2004*.

2 Commencement

(1) This Act commences on a day or days to be appointed by proclamation.

(2) A day appointed under this section for the commencement of a provision of Part 2 of Schedule 5 is not to be earlier than the day on which Schedule 1 [2] to the *Nurses Amendment Act 2003* commences.

3 Amendment of this Act consequent on commencement of Nurses Amendment Act 2003 No 45

If Schedule 4 commences after the day on which Schedule 1 [207] to the *Nurses Amendment Act 2003* commences, Schedule 4 is amended immediately before it commences by omitting the words "nurse practitioners" wherever occurring and by inserting instead "nurse practitioners or midwife practitioners".

4 Amendment of Acts and Regulation

Each Act and Regulation specified in Schedules 1–6 is amended as set out in those Schedules.

Schedule 1 Amendment of Dental Technicians Registration Act 1975 No 40

(Section 4)

[1] Section 26 Practice by unregistered persons

Omit section 26 (1) (b). Insert instead:

(b) a person undergoing a course of training, approved by the board, in technical work under the supervision of a dentist or dental technician, or

[2] Section 26 (2)

Omit the subsection. Insert instead:

(2) A person other than:

(a) a dental prosthetist, or

(b) a dental technician undergoing a course of training, approved by the board, in the practice of dental prosthetics under the supervision of a dentist or dental prosthetist,

is guilty of an offence if the person does any act that forms part of the practice of dental prosthetics, not being an act that is technical work or that consists of the insertion of mouthguards.

Schedule 2 Amendment of Human Tissue Act 1983 No 164

(Section 4)

[1] Section 4 Definitions

Omit "blood, blood products or" from the definition of ***authorised supplier*** in section 4 (1).

[2] Section 4 (1), definition of "exempt supplier"

Omit paragraph (a). Insert instead:

(a) in relation to the supply of blood or a blood product, means:

(i) the Australian Red Cross Society, or

(ii) the governing body of a hospital, or

(iii) any other body declared by the regulations to be an exempt supplier for the purposes of this Act, or

(a1) in relation to the supply of blood products that are therapeutic goods within the meaning of the *Therapeutic Goods Act 1989* of the Commonwealth and that are registered goods within the meaning of that Act—a body that supplies those goods, or

(a2) in relation to the supply of blood products that are therapeutic goods within the meaning of the *Therapeutic Goods Act 1989* of the Commonwealth and that are exempt goods for the purposes of Part 3–2 of that Act—a body that supplies those goods in compliance with the conditions (if any) of the relevant exemption, or

[3] Parts 3 and 3A

Omit the Parts. Insert instead:

Part 3 Blood and semen donations

Division 1 Preliminary

18 Objects of Part

The objects of this Part, with respect to blood and blood products, are:

(a) to provide for appropriate consents for the removal of blood, and

(b) to minimise the risks to the public that may arise from the receipt of blood and blood products, and

(c) to ensure the continued viability of the blood supply.

18A Application of Part

(1) This Part applies, with respect to blood and blood products, to the removal of blood from the body of a person for the purposes of:

(a) its transfusion into another person, or

(b) its use, or the use of any of its constituents, for other therapeutic purposes or for medical or scientific purposes, other than for the purpose of the treatment of the person from whom the blood is removed.

(2) This Part does not apply to the removal of blood from a person for the purpose of using the blood in the treatment of that person.

(3) Part 2 does not apply to or in respect of the removal of blood from the body of a person in accordance with this Part.

Division 2 Consent to removal of blood

19 Consent to removal of blood from adult

A person, other than a child who is under the age of 16 years, may consent in writing to the removal of blood from the person's body for the purpose of:

(a) its transfusion to another person, or

(b) its use, or the use of any of its constituents, for other therapeutic purposes or for medical or scientific purposes, other than for the purpose of the treatment of the person from whom the blood is removed.

20 Consent to removal of blood from child with agreement of child

A parent or guardian of a child who is under the age of 16 years may consent in writing to the removal of blood from the child's body for a purpose referred to in section 19 (a) or (b), but that consent is only effective if at the time the consent is given:

(a) the child is in agreement with the removal of the blood from the child's body, and

(b) a medical practitioner advises the parent or guardian that any risk to the child's health (including psychological and emotional health) caused by the removal of the blood is minimal.

20A Consent to removal of blood from child if child unable to agree

A parent or guardian of a child who is under the age of 16 years may consent in writing to the removal of blood from the child's body without the consent of the child for the purpose of using the blood in the treatment of the child's parent, brother or sister, but that consent is only effective if:

(a) a medical practitioner (other than the medical practitioner responsible for treating the child's parent, brother or sister) certifies in writing that, in the opinion of the medical practitioner:

(i) the child is unable to understand the nature and effect of the removal of blood from the child's body, and

(ii) any risk to the child's health (including psychological and emotional health) caused by the removal of the blood is minimal, and

(b) a medical practitioner certifies in writing that the parent, brother or sister is likely to die or suffer serious damage to his or her health unless blood removed from the child is used in the treatment.

20B Effect of consent under Division

An effective consent under section 19, 20 or 20A is sufficient authority for the removal of blood from the body of the person who has given the consent, or from the body of the child to whom the consent relates, as the case may be.

Division 3 Special provisions concerning donors

20C Application of Division

This Division applies:

(a) to blood that is removed from a donor's body for the purpose of:

(i) its transfusion to another person, or

(ii) its use, or the use of any of its constituents, for other therapeutic purposes or for medical or scientific purposes involving the treatment of a person other than the donor, and

(b) to blood products derived or extracted from blood of the kind referred to in paragraph (a), and

(c) to semen obtained or received from a donor for the purpose of using some or all of the semen for the artificial insemination of a woman.

20D Certificates by donors

(1) In this section:

certificate means a certificate relating to the medical suitability of the donor, being a certificate in a form prescribed by the regulations.

(2) A person must not:

(a) remove or use a donor's blood for a purpose referred to in section 20C (a), or

(b) obtain, receive or use a donor's semen for a purpose referred to in section 20C (c),

unless the donor has signed a certificate and had the signature witnessed by a person (or a person belonging to a class of persons) (the ***prescribed witness***) prescribed by the regulations.

Maximum penalty: 100 penalty units.

(3) A requirement in this section that a donor sign a certificate is satisfied if:

(a) in the case of a donor who is illiterate but not physically incapable of signing—the donor makes his or her mark on the certificate and the prescribed witness certifies on

the certificate that, before the mark was made, the nature and effect of the certificate were explained to the donor, or

(b) in the case of a donor who is physically incapable of signing—a person authorised to do so by the donor signs the certificate, or

(c) in the case of a donor who is a child under the age of 16 years—the child's parent or guardian signs the certificate.

(4) This section does not apply in respect of semen obtained or received from a donor solely for the purpose of its use for the artificial insemination of the donor's spouse.

20E False or misleading statements

A person must not, for the purposes of this Division, sign a certificate that contains any statement that, to that person's knowledge, is false or misleading in a material particular.

Maximum penalty: 50 penalty units or imprisonment for one year, or both.

20F Restrictions as to legal proceedings involving infection by a prescribed contaminant involving blood

(1) If:

(a) a person has become infected with a prescribed contaminant, or a disease that is attributable to a prescribed contaminant, and

(b) the contaminant was or may have been transmitted to that person as a result of a transfusion of blood or a blood product or of any other treatment involving the use of blood or a blood product,

the provisions of subsection (3), (4) or (5) apply according to the circumstances of the case.

(2) The regulations may make provision for or with respect to prescribing defences (in addition to those provided for in subsections (4) and (5)) as defences to proceedings of the kind referred to in subsections (4) and (5).

(3) Proceedings for an offence (except an offence against section 20E) or in tort or for a breach of contract arising out of the transmission of a prescribed contaminant as referred to in subsection (1) may not be brought against the donor of the blood concerned in the infection, unless it is proved in the proceedings:

(a) that the donor has previously been found guilty of an offence against section 20E or of an offence against a law of another State or a Territory that corresponds to that section, or

(b) that the donor would have been found guilty of such an offence had the donor been charged with such an offence.

(4) If proceedings for an offence or in tort or for a breach of contract arising out of the transmission of a prescribed contaminant as referred to in subsection (1) are brought against a person (other than the donor) in respect of a supply by that person, or an employee of that person, of blood or a blood product, it is a defence in those proceedings for the defendant to prove that:

(a) at the time of supply, the defendant was an exempt supplier or an employee of an exempt supplier, and

(b) if the defendant or an employee of the defendant removed the blood or the blood from which the blood product was derived or extracted from the donor—the defendant or that employee had, before supply, ensured that:

(i) the donor had signed either a certificate of the kind referred to in section 20D or a similar document as to the medical suitability of the donor to provide blood for a purpose referred to in section 20C (a), and

(ii) the blood or the blood from which the blood product was derived or extracted had been subjected to tests of a kind approved by the Minister for the purposes of this section and those tests had indicated that no prescribed contaminant was present in that blood, and

(c) if the defendant or an employee of the defendant obtained the blood or blood product from another person—that other person was an exempt supplier or an employee of an exempt supplier, and

(d) before the time when the blood or blood product was used for transfusion to, or for otherwise treating, the infected person, the defendant had not become aware that the blood or blood product was or was likely to have been contaminated with the prescribed contaminant concerned or, if before that time the defendant had become aware of that fact, the defendant had taken all reasonably practicable steps to ensure that the blood or blood product was not so used.

(5) If proceedings for an offence or in tort or for a breach of contract arising out of the transmission of a prescribed contaminant as referred to in subsection (1) are brought against the person who carried out the transfusion or treatment or the employer or any supervisor of that person, it is a defence in those proceedings for the defendant to prove that:

(a) if the defendant or an employee of the defendant removed the blood or the blood from which the blood product was derived or extracted from the donor directly, the defendant or that employee had ensured that:

(i) the donor had signed either a certificate of the kind referred to in section 20D or a similar document as to the medical suitability of the donor to provide blood for a purpose referred to in section 20C (a), and

(ii) the blood or the blood from which the blood product was derived or extracted had been subjected to tests of a kind approved by the Minister for the purposes of this section and those tests had indicated that no prescribed contaminant was present in that blood, and

(b) if the defendant or an employee of the defendant obtained the blood or blood product from another person—that other person was an exempt supplier or an employee of an exempt supplier, and

(c) when the transfusion or treatment was carried out, the defendant was not aware that the blood or blood product was or was likely to have been contaminated with the prescribed contaminant concerned.

(6) In this section:

prescribed contaminant means a contaminant prescribed by the regulations for the purposes of this section.

20G Restrictions as to legal proceedings involving infection by a prescribed contaminant involving semen

(1) If:

(a) a person has become infected with a prescribed contaminant, or a disease that is attributable to a prescribed contaminant, and

(b) the contaminant was or may have been transmitted to that person as a result of the artificial insemination of a woman,

the provisions of subsection (2), (3) or (4) apply according to the circumstances of the case.

(2) Proceedings for an offence (except an offence against section 20E) or in tort or for a breach of contract arising out of the transmission of a prescribed contaminant as referred to in subsection (1) may not be brought against the donor of the semen concerned in the infection, unless it is proved in the proceedings:

(a) that the donor has previously been found guilty of an offence against section 20E or of an offence against a law of another State or a Territory that corresponds to that section, or

(b) that the donor would have been found guilty of such an offence had the donor been charged with such an offence.

(3) If proceedings for an offence or in tort or for a breach of contract arising out of the transmission of a prescribed contaminant as referred to in subsection (1) are brought against a person (other than the donor) in respect of a supply by that person, or an employee of that person, of semen, it is a defence in those proceedings for the defendant to prove that:

(a) at the time of supply, the defendant was an authorised supplier or an employee of an authorised supplier, and

(b) if the defendant or an employee of the defendant had obtained or received the semen from the donor—the defendant or that employee had, before supply, ensured that:

(i) the donor had signed either a certificate of the kind referred to in section 20D or a similar document as to the medical suitability of the donor to provide semen for the purpose referred to in section 20C (c), and

(ii) the blood of the donor of the semen had been subjected to tests of a kind approved by the Minister for the purposes of this section and those tests had indicated that no prescribed contaminant was present in that blood, and

(c) if the defendant or an employee of the defendant obtained the semen from another person—that other person was an authorised supplier or an employee of an authorised supplier, and

(d) before the time when the semen was used for the artificial insemination of the infected woman, the defendant had not become aware that the semen was or was likely to have been contaminated with the prescribed contaminant concerned or, if before that time the defendant had become aware of that fact, the defendant had taken all reasonably practicable steps to ensure that the semen was not so used.

(4) If proceedings for an offence or in tort or for a breach of contract arising out of the transmission of a prescribed contaminant as referred to in subsection (1) are brought against the person who carried out the artificial insemination or the employer or any supervisor of that person, it is a defence in those proceedings for the defendant to prove that:

(a) if the defendant or an employee of the defendant obtained or received the semen, from the donor directly, the defendant or that employee had ensured that:

(i) the donor had signed either a certificate of the kind referred to in section 20D or a similar document as to the medical suitability of the

donor to provide semen for the purpose referred to in section 20C (c), and

(ii) the blood of the donor of the semen had been subjected to tests of a kind approved by the Minister for the purposes of this section and those tests had indicated that no prescribed contaminant was present in that blood, and

(b) if the defendant or an employee of the defendant obtained the semen from another person—that other person was an authorised supplier or an employee of an authorised supplier, and

(c) when the transfusion, treatment or artificial insemination was carried out, the defendant was not aware that the semen was or was likely to have been contaminated with the prescribed contaminant concerned.

(5) In this section:

prescribed contaminant means a contaminant prescribed by the regulations for the purposes of this section.

20H Records

The regulations may provide for the keeping of certificates given for the purposes of this Division and for the making and keeping of records in respect of those certificates.

Part 3A Regulation of businesses supplying blood and blood products

21 Unauthorised persons prohibited from carrying on a business of supplying blood or blood products

(1) A person, other than an exempt supplier, must not carry on a business of supplying homologous blood or blood products.

Maximum penalty: 100 penalty units.

(2) A person must not participate in the management of a business of supplying homologous blood or blood products unless that business is an exempt supplier.

Maximum penalty: 100 penalty units.

(3) In this section, a reference to carrying on a business of supplying homologous blood or blood products is a reference to carrying on a business or undertaking of supplying blood or blood products to medical institutions and other persons:

(a) for the purpose of transfusing to persons other than the donor some or all of the blood or blood products, or

(b) for the purpose of using some or all of the blood or blood products for other therapeutic purposes, or for medical or scientific purposes, involving the treatment of persons other than the donor.

21A Presumptions in certain legal proceedings

If in any legal proceedings relating to an alleged contravention of this Part it is proved that:

(a) a person, other than the donor, has supplied blood or blood products on at least 2 occasions to one or more persons for the purpose of transfusion to other persons or for other therapeutic purposes, or for medical or scientific purposes, involving the treatment of persons, or

(b) a person, other than the donor, has kept on premises occupied by that person blood or blood products in excess of the prescribed quantity,

it is to be presumed for the purposes of those proceedings, unless the contrary is proved, that the person was carrying on a business of supplying homologous blood or blood products within the meaning of section 21.

21B Offences by corporations

(1) If a corporation contravenes, whether by act or omission, any provision of this Part or a regulation made for the purposes of this Part, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Part or a regulation made for the purposes of this Part.

21C Injunctions

(1) If, on the application of the Director-General, the Supreme Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute one or more of the following:

(a) a contravention of section 21,

(b) attempting to contravene section 21,

(c) aiding, abetting, counselling or procuring a person to contravene section 21,

(d) inducing, or attempting to induce, whether by threats or promises or otherwise, a person to contravene section 21,

(e) being, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of section 21,

(f) conspiring with others to contravene section 21,

the Court may grant an injunction in such terms as the Court determines to be appropriate.

(2) If an application is made to the Supreme Court for an injunction under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) pending the determination of the application.

(3) The Supreme Court may rescind or vary an injunction granted under subsection (1) or (2).

(4) If an application is made to the Supreme Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Court to grant the injunction may be exercised:

(a) where the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in that conduct, or

(b) where it appears to the Court that, in the event of the injunction not being granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind.

(5) The Director-General is not to be required to give any undertaking as to damages or costs in respect of an application under this section.

[4] Part 3B, heading

Omit the heading. Insert instead:

Part 3B Regulation of businesses supplying semen

[5] Section 21F Definitions

Omit section 21F (1). Insert instead:

(1) In this Part, a reference to carrying on a business of supplying semen is a reference to carrying on a business or undertaking of supplying semen to medical institutions and other persons for the purpose of using some or all of the semen for the artificial insemination of women.

[6] Section 21G Unauthorised persons prohibited from carrying on a business of supplying semen

Omit "blood, blood products or" from section 21G (1) (a).

[7] Sections 21H (1) and (2) (b), 21I (1) (b) and 21V (1) (a) (ii)

Omit "blood, blood products or" wherever occurring.

[8] Section 21M Presumptions in certain legal proceedings

Omit section 21M (a). Insert instead:

(a) a person, other than the donor, has supplied semen on at least 2 occasions to one or more persons for the purpose of artificially inseminating women, or

[9] Section 21M (b)

Omit "blood or blood products or, as the case may be,".

[10] Section 21M

Omit "blood or blood products or of supplying".

[11] Section 21U Injunctions

Omit section 21U (1). Insert instead:

(1) If, on the application of the Director-General, the Supreme Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute one or more of the following:

(a) a contravention of section 21G,

(b) attempting to contravene section 21G,

(c) aiding, abetting, counselling or procuring a person to contravene section 21G,

(d) inducing, or attempting to induce, whether by threats or promises or otherwise, a person to contravene section 21G,

(e) being, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of section 21G,

(f) conspiring with others to contravene section 21G,

the Court may grant an injunction in such terms as the Court determines to be appropriate.

[12] Section 21U (5)

Insert after section 21U (4):

(5) The Director-General is not to be required to give any undertaking as to damages or costs in respect of an application under this section.

[13] Section 21W Application

Omit "or 3A" from section 21W (2) (b).

[14] Section 21W (2) (c)

Omit "Part 3A". Insert instead "Part 3".

[15] Section 21ZB Effect of authority under this Part

Omit ", 3 and 3A" from the note to the section. Insert instead "and 3".

[16] Section 34 Act does not prevent specified removals of tissue

Omit "Part 3A" from section 34 (2). Insert instead "Part 3".

[17] Section 36 Offences

Omit "Part 3A excepted" from section 36 (3) (b).

Insert instead "Division 3 of Part 3 excepted".

[18] Section 39 Regulations

Insert after section 39 (1A) (d):

(e) the safety of blood and blood products, including testing for prescribed contaminants.

[19] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Health Legislation Amendment Act 2004 (but only to the extent that it amends this Act)

[20] Schedule 1, Part 3

Insert after Part 2:

Part 3 Provisions consequent on enactment of Health Legislation Amendment Act 2004

3 Consent

A consent to the removal of blood from a person that was obtained from a person in accordance with Part 3 of the Act before the commencement of Schedule 2 [3] to the *Health Legislation Amendment Act 2004* does not authorise the removal of blood from a person after that commencement.

4 Previous offences

A reference in sections 20F and 20G to an offence against section 20E includes a reference to an offence against section 21D as in force before its repeal by the *Health Legislation Amendment Act 2004*.

5 Certificates

A certificate signed by a donor in accordance with section 21C before the repeal of that section by the *Health Legislation Amendment Act 2004* is taken to be a certificate signed by a donor in accordance with section 20D.

6 Regulations

This Part has effect subject to any regulations made pursuant to clause 1.

Schedule 3 Amendment of Mental Health Act 1990 No 9

(Section 4)

[1] Section 22 Assistance by police

Omit section 22 (1). Insert instead:

(1) A medical practitioner or an accredited person who gives a certificate under section 21 in relation to a person, and who is of the opinion that there are serious concerns relating to the safety of the person or other persons if the person is taken to a hospital (other than an authorised hospital) without the assistance of a member of the Police Force, may endorse the certificate in the form set out in Part 2 of Schedule 2.

[2] Section 287B

Insert after section 287A:

287B Chief Health Officer may delegate functions

(1) The Chief Health Officer may delegate to an authorised person any of the functions of the Chief Health Officer under this Act, other than this power of delegation.

(2) A delegate may sub-delegate to an authorised person any function delegated by the Chief Health Officer if the delegate is authorised in writing to do so by the Chief Health Officer.

(3) In this section:

authorised person means:

(a) a member of staff of the Department of Health, or

(b) any person (or person belonging to a class of persons) prescribed by the regulations.

[3] Schedule 2 Medical certificate as to examination or observation of person

Omit from Part 2:

YOU SHOULD NOT REQUEST THIS ASSISTANCE UNLESS IT IS NECESSARY AND THERE ARE NO OTHER MEANS OF TAKING THE PERSON TO HOSPITAL REASONABLY AVAILABLE

Insert instead:

YOU SHOULD NOT REQUEST THIS ASSISTANCE UNLESS THERE ARE SERIOUS CONCERNS RELATING TO THE SAFETY OF THE PERSON OR OTHER PERSONS IF THE PERSON IS TAKEN TO A HOSPITAL WITHOUT THE ASSISTANCE OF A MEMBER OF THE POLICE FORCE

[4] Schedule 2, Part 2

Omit paragraphs (a) and (b). Insert instead:

that there are serious concerns relating to the safety of the person or other persons if the person is taken to a hospital without the assistance of a member of the Police Force. The reason for me being of this opinion is .....
.....

[5] Schedule 7 Savings, transitional and other provisions

Insert at the end of clause 2 (1A):

Health Legislation Amendment Act 2004 (but only to the extent that it amends this Act)

Schedule 4 Amendment of Nurses Act 1991 No 9

(Section 4)

[1] Section 78A Guidelines relating to functions of nurse practitioners

Insert after section 78A (2):

(2A) The guidelines may make provision for the possession, use, supply or prescription by nurse practitioners of any drug of addiction, including by specifying:

(a) the drugs of addiction (if any) that may be possessed, used, supplied or prescribed by nurse practitioners, and

(b) the circumstances (if any) in which a drug of addiction may be so possessed, used, supplied or prescribed.

[2] Section 78A (6)

Insert in alphabetical order:

drug of addiction has the same meaning as in the *Poisons and Therapeutic Goods Act 1966*.

[3] Section 78A, note

Omit the note. Insert instead:

Note. This provision allows the Director-General to approve guidelines for the possession, use, supply and prescription by nurse practitioners of any substance specified in the Poisons List (as proclaimed under the *Poisons and Therapeutic Goods Act 1966*). Authorisation for nurse practitioners to actually possess, use, supply or prescribe any such substance is dealt with under the *Poisons and Therapeutic Goods Act 1966*.

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

(Section 4)

Part 1 Amendments relating to nurse practitioners and other matters

[1] Sections 23 and 24 (1) (h1)

Insert ", nurse practitioner" after "medical practitioner" wherever occurring.

[2] Section 24 Regulations under Division 1 of Part 4

Insert "nurse practitioners," after "medical practitioners," wherever occurring in section 24 (1) (c) and (d).

[3] Section 24 (2) (b1)

Insert after section 24 (2) (b):

(b1) authorising nurse practitioners employed in dispensing medicines at any public hospital or other institution to be in possession of and to supply, in the lawful practice of their professions as such, any drug of addiction, subject to such conditions and restrictions as may be prescribed,

[4] Section 27 Definition

Omit the definition of ***approved prescriber***.

[5] Section 28 Prohibition on prescribing drugs of addiction in certain cases

Insert "or nurse practitioner" after "medical practitioner" wherever occurring.

[6] Section 28 (b)

Insert "or nurse practitioner's" after "medical practitioner's".

[7] Section 29 Director-General may authorise prescription or supply of drugs of addiction

Insert "or nurse practitioner" after "medical practitioner" wherever occurring in section 29 (3) and (5) (a).

[8] Section 29 (8)

Insert after 29 (7):

(8) The Director-General may arrange for an authority to be referred from time to time to the Medical Committee for review and a report and recommendation to the Director-General as a result of the review.

[9] Section 30AA Power of Medical Committee to obtain information

Omit section 30AA (1) (a). Insert instead:

(a) under section 28A (8) or 29 (8) the Director-General refers an approval or an authority to the Medical Committee for review, and

[10] Section 30AA (1) (b)

Insert "or authority" after "approval" wherever occurring.

[11] Section 30AA (2) and (4)

Omit "or New South Wales Medical Board" wherever occurring.

Insert instead ", New South Wales Medical Board or Nurses Registration Board".

[12] Section 30AA (5)

Insert at the end of section 30AA (5) (b):

, or

(c) the *Nurses Act 1991*.

[13] Section 30AA (6)

Insert after section 30AA (5):

(6) In this section:

Nurses Registration Board means the Nurses Registration Board constituted under section 8 of the *Nurses Act 1991*.

[14] Schedule 3 Savings and transitional provisions

Insert at the end of clause 1 (1):

Health Legislation Amendment Act 2004 (but only to the extent that it amends this Act)

Part 2 Amendments relating to midwife practitioners

[15] Sections 23 and 24 (1) (h1)

Insert ", midwife practitioner" before "or dentist" wherever occurring.

[16] Section 24 Regulations under Division 1 of Part 4

Insert "midwife practitioners," before "dentists" wherever occurring in section 24 (1) (c) and (d).

[17] Section 24 (2) (b1) (as inserted by the Health Legislation Amendment Act 2004)

Insert "or midwife practitioners" after "nurse practitioners".

[18] Section 30AA Power of Medical Committee to obtain information (as amended by the Health Legislation Amendment Act 2004)

Omit "Nurses Registration Board" and "***Nurses Registration Board***" wherever occurring in section 30AA (2), (4) and (6).

Insert instead "Nurses and Midwives Board" and "***Nurses and Midwives Board***" respectively.

[19] Section 30AA (5) and (6) (as amended by the Health Legislation Amendment Act 2004)

Omit "*Nurses Act 1991*" wherever occurring.

Insert instead "*Nurses and Midwives Act 1991*".

Schedule 6 Amendment of Poisons and Therapeutic Goods Regulation 2002

(Section 4)

[1] Clause 82 Exceptions to section 28: prescriptions generally

Omit "an approved prescriber" from clause 82 (4) (a).

Insert instead "a person approved under section 28A of the Act as a prescriber of drugs of addiction".

[2] Clause 94 Exceptions to section 28: supply

Omit "an approved prescriber" from clause 94 (4) (a).

Insert instead "a person approved under section 28A of the Act as a prescriber of drugs of addiction".