

## DRAFT SECOND READING SPEECH

HON. MICHAEL FERGUSON MP

### *Health and Related Legislation (Miscellaneous Amendments) Bill 2017*

*\*check Hansard for delivery\**

Madam Speaker

The purpose of this Bill is to make a number of minor and technical amendments to the Ambulance Service Act 1982, the Disability Services Act 2011, the Health Act 1997, the Mental Health Act 2013, the Pharmacy Control Act 2001, the Poisons Act 1971, the Tasmanian Health Organisations Act 2011 and the Youth Justice Act 1997.

#### Ambulance Service Act 1982

A minor amendment to the *Ambulance Service Act 1982* is required to clarify the authorised officer and infringement notices provisions to reflect the two key statutory roles under the Act. Currently, these provisions only refer to the Commissioner of Ambulance Services and officers of the Ambulance Service. However, the Act now provides for the Secretary's responsibility for licensing of non-emergency patient transport. That responsibility requires the ability for the Secretary to appoint authorised officers, and for those officers to enforce the Act with infringement notices as required. Section 19 and 41B of the Act are amended accordingly.

A further minor correction is required to substitute "Commissioner of Ambulance Services" for "Director of Ambulance Services" in the long title of the Act. This required change was missed when the Act was amended to vary the title of Director to Commissioner.

#### Disability Services Act

During the phase in period for the National Disability Insurance Scheme (NDIS), powers of authorised officers under State and Territory legislation are still required in respect of NDIS providers. These powers apply to 'funded providers' which the Disability Services Act currently defines as state funded services. Therefore, an authorised officer could not enter a non-State funded NDIS provider's premises to ensure that persons with disability are receiving appropriate care. The Bill therefore allows the Secretary to extend the definition of funded provider to NDIS providers.

Further, a change is required to add a definition in the Disability Services Act for "therapeutic purposes" in respect of restrictive interventions approved under the Act by the Guardianship Board or Secretary.

The Disability Services Act 2011 provides that a restrictive intervention is any action that restricts the rights or freedom of movement of a person with disability, being an action taken primarily for behavioural control. The Act provides that this does not include actions taken for 'therapeutic purposes'.

The intention of this is that treatment of health conditions may have the effect of restricting the freedom of the patient for the purposes of treatment, but this does not require formal approval of the restriction. For example, a disability client with a broken leg may have a leg cast fitted which restricts their movement, but it would not require an approval as it serves a treatment purpose. However, if in future the disability provider wishes to stop the client leaving the home to avoid breaking a leg again, that is a restriction that should be considered to ensure it is the least restrictive option available. In such a case, one would think there are less restrictive options to consider!

However, a recent judicial review of a client's circumstances indicated that a definition of 'therapeutic purposes' could be interpreted as having a broader scope than intended. For example, it could in fact be taken to include things done for preventing an injury to the disability client. That is obviously a necessary restriction in some cases, but it is also the kind of restriction that is intended to be approved by the Secretary or Board.

The Bill therefore inserts a definition to clarify the intended scope, based on national best practice, for restrictive interventions and therapeutic purposes.

#### Health Act 1997

The *Health Act 1997* requires amendment to correct the current reference to the Medicare Principles which reference sections of the *Health Insurance Act 1973* that have been repealed.

A further amendment is proposed in the Bill in relation to the Hospitals and Ambulance Service Advisory Board (HASA Board). The HASA Board is established under the *Health Act 1997* as a statutory committee, but the HASA Board has not had a membership since 2002 and the function is redundant as the Tasmanian Health Service is now an independent statutory authority with its own Governing Council. It is proposed to repeal the relevant provisions concerning the HASA Board.

The Bill would replace these provisions with general advisory panel provisions where the Secretary requires advice on portfolio issues. Such a provision existed, although limited to child protection matters, until it was repealed under the former Government.

#### Mental Health Act 2013

Three small changes are proposed to correct terminology in the *Mental Health Act 2013*. These changes replace the incorrect term of "continuing care order" with the correct term of "treatment order".

#### Pharmacy Control Act 2001

Two technical issues have been identified with the *Pharmacy Control Act 2001*. The first relates to pharmacy depots, which was identified as a future amendment during earlier amendments to the Act, and the second to family trusts.

Pharmacy depots are places, such as a general retail shop in geographic areas without a pharmacy, where prescriptions (other than for narcotic substances) can be deposited and sent to a pharmacist who dispenses and return the medications to be collected.

Pharmacy depots were previously regulated in Tasmania's legislation through the Pharmacy Code made under the Act. Amendments made through the introduction of the *Pharmacy Control Act 2001* in 2010 meant a Code was considered unnecessary at the time, and the provision was repealed.

The Bill provides a head of power under the Act for regulations to be developed to regulate pharmacy depots as appropriate in future, subject to the usual regulatory impact assessment process. This would be to ensure that any growth in pharmacy depot arrangements is done in an appropriately safe manner for consumers.

For example, there may be powers prescribed to inspect depots to ensure the storage and supply of dispensed medicines is done properly, securely and safely.

There is also an issue with the treatment of family trusts under the *Pharmacy Control Act 2001*. Recent changes to the Act addressed this issue in most circumstances but Crown Law advises there is a further situation where a pharmacist shareholder of a company is holding those shares as a trustee of a family trust, unit trust or other body corporate. Such a person is then exempt from needing to hold an 'eligibility certificate', as the certificate is held by the body corporate and the requirement for a trust to comply with the limitations relating to beneficiaries does not apply.

At present, in a situation where a company applies to the Authority for an eligibility certificate to hold an interest in a pharmacy business and a pharmacist holds shares in that company on trust for other persons (i.e. beneficiaries) the Authority cannot refuse to issue an eligibility certificate solely on the basis that one or more of those beneficiaries are not pharmacists or close relatives of pharmacists.

The Bill includes amendments to ensure that both the legal interest and the beneficial interest in each share in an applicant company is held by a pharmacist or a close relative of a pharmacist.

#### The Poisons Act 1971

The Bill includes a minor amendment in respect of poppy grower's licence conditions under the *Poisons Act 1971*.

Under section 54E, it is a condition of a poppy grower's licence that they must have a valid contract with a manufacturing chemist before growing can commence.

Amendment is required to extend this condition to require the poppy grower to also have a Notice to Grow (in respect of paddock location, and size for each season) issued by the Poppy Advisory and Control Board so that adequate compliance activity can be undertaken under new 5-year licensing regime.

The amendment is recommended by the Solicitor-General. It was not included in the previous amending legislation as the requirements for the proposed Notice to Grow were not finalised.

A further small amendment to the Poisons Act is included in the Bill to correct a cross-reference not included in the *Poisons (Miscellaneous Amendments) Act 2017*. The proposed amendments are to Section 47 (10) (a) to add references to the new sections 25C, 25D and 25E inserted by the previous amending Act.

#### The Tasmanian Health Organisations Act 2011

An issue with the *Tasmanian Health Organisations Act 2011* (THO Act) was identified in relation to extra-territorial services. This arose as the Tasmanian Health Service (THS) and the Australian Antarctic Division (AAD) plan to enter into a formal arrangement. The arrangement would include support for the THS in providing medical retrieval services for AAD personnel at Macquarie Island and mainland Antarctic bases.

The Bill contains an amendment to clarify the Tasmanian Health Service (THS) may provide services external to Tasmania. As with other significant issues for the jurisdiction of the THS in the current Act, this is subject to the approval of the Responsible Ministers, being the Minister for Health and Treasurer.

#### Youth Justice Act

The Youth Justice Act defines “detention centre manager” to mean the person in charge of a detention centre. It does not however contain any supporting appointment provisions. The detention centre manager’s powers and functions are significant; and this makes it necessary to be able to identify who the detention centre manager is with a greater degree of certainty.

The detention centre manager’s functions have been performed in practice by the Director – Custodial Youth Justice and Reform and included in that position’s statement of duties. The amendments would recognise the appointment of such an officer as detention centre manager. The inclusion of standalone appointment provisions for the Detention Centre Manager’s appointment would reinforce the statutory powers of the role and would enable the incumbent to the role to be clearly identified.

Further, the detention centre manager’s power to delegate is limited as the detention centre manager can only delegate his or her functions or powers to either the Director of Corrective Services, or a person nominated by the same. This was a legacy of the Act’s original operation when it was only conceived that the manager may wish to delegate to staff of the adult prison. In practice, the detention centre manager requires the ability to delegate powers to the manager’s senior staff; to provide for the proper exercise of the manager’s statutory functions when the manager is away or otherwise unavailable. The Bill therefore provides for an amendment to remove the limitation on delegation

Madam Speaker, the Bill contains a number of small but important amendments to clarify both the operation of a number of Acts within the Health and Human Services legislative portfolios and I commend the Bill to the House.