

DRAFT SECOND READING SPEECH

HON. MICHAEL FERGUSON MP

Community, Health, Human Services and Related Legislation (Miscellaneous Amendments) Bill 2018

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Madam Speaker, from time to time legislation requires amendment to ensure it remains up-to-date and to correct minor errors that may become apparent after legislation has been operational for some time.

A number of such minor amendments have been identified in legislation administered by the community, health and human services portfolios.

This Bill makes minor and technical amendments to eight Acts, being the *Ambulance Service Act 1982*, *Disability Services Act 2011*, *Health Act 1997*, *Mental Health Act 2013*, *Pharmacy Control Act 2001*, *Poisons Act 1971*, *Right to Information Act 2009* and the *Youth Justice Act 1997*.

The amendments result from requests by various stakeholders to clarify or improve the operation of particular Acts.

I will now briefly outline the reason behind each of the changes.

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.

Disability Services Act 2011

The Bill also provides for an amendment relating to 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 monitoring NDIS funded services. These powers apply to 'funded providers', which the *Disability Services Act 2011* currently defines as state funded providers.

Therefore, an authorised officer could not monitor a non-State funded NDIS service to ensure that persons with disability are receiving appropriate care.

The Bill therefore allows the Secretary to extend the definition of funded provider so that it captures services provided with NDIS funding.

Further, a change is required to add a definition in the *Disability Services Act 2011* for "therapeutic purposes" in respect of restrictive interventions approved under the Act by the Guardianship Board or Secretary.

The Act provides that a restrictive intervention is any action that restricts the rights or freedom of movement of a person with disability.

The Secretary can approve restrictions for up to 90 days that involve restrictions of a client's environment for behavioural control. The Board can also approve those restrictions for a longer period, but has further powers to approve restrictions that involve restricting the client's liberty.

The Act provides that restrictive interventions do not include actions taken for 'therapeutic purposes'.

'Therapeutic purposes' are intended to relate to the treatment of health conditions. For example, a client with a broken leg may have a leg cast fitted which restricts their movement, which would not require an approval as it serves a treatment purpose.

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 in the future.

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.

The Bill also amends the period for which a restrictive intervention may be approved by the Board after a hearing. Currently the period is 6 months or a shorter period.

The amendment retains the default period as 6 months, but allows for a shorter or longer period up to 2 years, where agreed to by the Senior Practitioner who is appointed under the Act.

This is to prevent the burden on persons with a disability of having their long-term care arrangements subject to a full Board hearing every 6 months.

Health Act 1997

The *Health Act 1997* requires amendment to correct the current reference to the Medicare Principles and Commitments.

These principles and commitments are both defined by reference to Schedule 1 of the Tasmanian Act, and section 26(2) of the Commonwealth *Health Insurance Act 1973*.

Section 26 of the Commonwealth Act was repealed in 2007, and correcting this definition is well overdue.

The Principles and Commitments remain defined as they currently are in Schedule 1 of the Tasmanian Act.

A related amendment to section 5 of that Act corrects the reference so that it refers specifically to the *Federal Financial Relations Act 2009*. That is now the Act that provides for the funding agreements which provide for the manner in which the principles and commitments are met.

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 Secretary has the power under the *Tasmanian Health Service Act 2018* to appoint advisory panels as required.

The Bill repeals the relevant provisions concerning the HASA Board.

Mental Health Act 2013

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.

Poisons Act 1971

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

Under section 54E, it is currently 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.

This assists with adequate compliance activity to be undertaken under the new 5-year licensing regime.

This amendment was not included in the previous amending legislation as the final requirements for the proposed Notice to Grow were not finalised at that time.

A further change is made to section 47 (10) (a) of the Act to insert cross references to new sections of the Act that were not included in the initial drafting of these amendments.

Right to Information Act 2009

The Bill adds the statutory position of Commissioner for Children and Young People to the list of statutory offices generally excluded from the *Right to Information Act 2009*.

This is consistent with exclusions for other similar statutory positions such as the Ombudsman, the Health Complaints Commissioner and the Anti-Discrimination Commissioner.

This amendment was not progressed when the Commissioner for Children and Young People Act was developed, as the office of Commissioner was not considered a 'public authority' of the kind captured by the RTI Act.

This amendment gives certainty to that position.

Like other statutory offices generally excluded from right to information, people can still make right to information requests of the Commissioner if the information relates to the administration of that office.

In other words, administrative information about how the office functions can be sought under right to information, but not the sensitive information gathered by the Commissioner pursuant to that office's functions.

The Commissioner for Children and Young People often holds information supplied by other Government agencies. Right to Information requests may still be made to these agencies for the source information.

Youth Justice Act

The Youth Justice Act provides for the statutory role of "detention centre manager".

The 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 under the Act are significant. This makes it appropriate to identify who holds the detention centre manager role with a greater degree of certainty.

The detention centre manager's functions are performed in practice by a senior State Service Officer.

The performance and exercise of the powers, functions and obligations of the detention centre manager under the Act are included in that officer's statement of duties.

The amendments provide for the formal statutory appointment of the officer as detention centre manager.

The inclusion of standalone appointment provisions for the detention centre manager's appointment reinforce the statutory powers of the role, and enable the incumbent to the role to be clearly identified.

There is no additional remuneration for the officer arising from this amendment.

Another amendment clarifies the delegation provisions for this officer. The detention centre manager's current 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 that Director.

This was a legacy of the Act's original operation when it was thought that the manager would only wish to delegate to staff of the adult prison.

In modern 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 the operation of a number of Acts within the Community, Health and Human Services legislative portfolios and I commend the Bill to the House.