

SECOND READING SPEECH

Poisons Amendment Bill (No. 2) 2009

Mr Speaker

This Bill inserts an enabling provision into the *Poisons Act 1971*. It allows regulations to be made to facilitate the administration of medication to persons by their carers. The regulations will require that particular classes of persons, who administer medication to persons in their care, do so under strict conditions.

In fact the Act already contains catch all provisions that could have allowed me to submit regulations to the Executive Council, but as this is a contentious and important issue, I felt it appropriate to prepare a stand-alone provision in the Act that sets out the intention clearly and have the issues debated by Parliament.

The proposed “section 47A” has been the subject of considerable debate and publicity in the last 12 months, both in this House and elsewhere, and I am pleased to be able to put on the record what the correct situation is and clear up some misinformation that has previously aired on the topic.

While it is a small amendment, I will go into some detail about the *Poisons Act* and the background to the provision. Members will see that as well as the Bill, I have also made available the draft regulations which set out the classes of persons, and the conditions that apply. You will note that section 47A defines ‘administer’ to include ‘making available for self-administration’. For ease, I will refer to ‘administer’ in this speech.

The purpose of the *Poisons Act* is to regulate the manufacture, preparation, sale, supply, use, possession and prescribing of substances listed in the Poisons List.

In section 47A, the relevant substances are medicinal poisons, potent substances, restricted substances and narcotic substances. These are also known as Schedule 2, Schedule 3, Schedule 4 and Schedule 8 substances respectively.

In layman's terms, Schedule 2 medicinal poisons are substances that can be bought over the counter from a pharmacy, such as cough and cold medicines, or quantities of the analgesic paracetamol greater than 24 tablets. Quantities less than 24 are available in places such as supermarkets.

Schedule 3 potent substances also include some analgesics, low strength hydrocortisone creams for eczema, and cough and cold medicine such as Demazin for children. These are 'behind the counter' medications that can only be obtained after consideration by a pharmacist.

Schedule 4 restricted substances are only available on prescription from a doctor or, in some cases, a dentist, optometrist or authorised nurse practitioner. These cover a range of drugs such as antibiotics, blood pressure and heart medications.

Schedule 8 narcotic substances are also only available on prescription, and are divided into two main groups; psycho-stimulants, which are used for treating attention deficit hyperactivity disorders; and opioids such as morphine, oxycodone and opioids in transdermal patches for pain relief. As the House will recall, we recently debated the *Poisons Amendment Bill 2009* which became law on 1 September 2009 which sets out strict controls relating to the prescribing of Schedule 8 substances.

The aim of the legislative package is to help persons who need assistance with the administration of their medication. These persons might need assistance for a variety of reasons. As you can see, the draft regulations cover a range of persons, including disabled persons, school children and persons in aged care.

I must emphasise that this package only allows the administration of any of these substances to a person if the substance has been obtained lawfully by or for the person and if the administration is done in accordance with relevant instructions or directions. This will be the manufacturers' instructions in the case of a medicinal poison, instructions from the dispensing pharmacist in the case of a potent substance or the directions of prescribing health practitioner in the case of a restricted or narcotic substance.

I should point out that the Act at sections 38 and 47 already specifically allows a number of classes of person to administer the substances. For example, a parent or guardian may administer medication to their child if the child is unable to care for him or herself, because of age or mental or physical disability. Registered nurses are allowed by the Act to administer substances, if they do so in accordance with the directions of a medical practitioner. Disability workers with appropriate training are allowed, by regulation 95, to administer Schedule 2, 3 and 4 medications subject to guidelines.

I should also point out that I am not suggesting that family members have been committing offences every time they help a relative or their spouse with their medication; or that a school teacher, acting with parental consent, should not have given a child his or her medication. The problem lies with the interpretation of the Act and the effect of changes made over the years.

As I understand the background, administration was not an issue in the *Poisons Act* until the 1980s, when the definition of 'supply' was amended to include 'administer'. I understand that an inadvertent consequence of the amendment was that it made it an offence for a range of persons to administer to others. In 1986, the Act was amended to rectify this problem by including section 38(1)(d), the provision I mentioned above which allows a parent or guardian to administer medication to a child. Hansard notes that the Deputy Leader in the Legislative Council, who made the second reading speech for that amendment said, in speaking of the purpose behind section 38(1)(d):

"Mr Chairman, the situation currently applying is that a parent has no right to administer a drug on the schedule to his children.....this amendment seeks to redress that to enable the parent to administer the drug to the child. The same applies to a guardian or anyone looking after an elderly person or an invalid. They assume the rights of a parent or guardian to look after the wellbeing and best interests of that person." (Hansard, 3 April 1986. page 266)

Looking at legal advice given over the years, it is clear that the meaning of 'guardian' in section 38 (and 47) was given a broad interpretation as suggested by the Deputy Leader so as to include persons who may not have been a legally appointed guardian, but who had a personal caring relationship for a particular person. However, in later years the meaning of guardian has been interpreted more narrowly.

In 2002, regulation 95 was made to apply to disability workers, and now, in 2009, this Bill and the accompanying regulations will make clear once and for all that persons who care for and have a responsibility for another, may administer legally supplied and prescribed medications, in accordance with strict conditions.

I will now discuss the draft regulations in detail.

As indicated above, all the regulations require that the medication has been lawfully supplied and is administered in accordance with the relevant instructions or directions. For example, the person's doctor has prescribed the medication for the person, it has been dispensed by the pharmacist and it is taken in accordance with the directions. It is no different to you or I going to the doctor, getting a prescription, having it filled by a pharmacist and taking the medication according to the doctor's directions as written on the label. The issue in this case is that the person needs help with the actual administration.

The regulations propose several care situations where the administration of medications is common. These situations arise, for example, in disability services, educational facilities, child care, foster care and aged care.

Many complex issues have been raised in over a year of consultation to formulate these regulations. They have been prepared taking into account many of the suggestions raised during this time.

In the disability services area, workers have, for many years, been administering medication to persons in their care. This has been done under comprehensive guidelines that were developed following wide consultation with health professionals and the unions and endorsed by the Secretary of the Department of Health and Human Services.

The only change in the proposed regulations is that disability services workers will now be able to administer psychostimulant medication prescribed for persons in their care. The psychostimulants will be listed in the regulations as "specified narcotic substances" and will be those used for treatment of attention deficit hyperactivity syndrome in children and young adults. These medications are generally required by clients attending respite care and this administration allows for continuity when these people are in care and not in their own home under the care of their parents.

The regulations ensure that there are tight protocols in place surrounding the storage and recording of these psychostimulants.

Similarly, in education facilities and child care, teachers and child care workers will be able, with parental or medical authority, to store and give children their medications while they are at school or in child care. The regulations require that this administration and storage be carried out under specific guidelines that are endorsed by the Secretary of the Department of Education or, in the case of private schools, the governing body of the school.

Aged Care has been divided into two categories: community care (care in a person's own home) and residential care (care in a nursing home). The definitions are in line with those used by the Commonwealth under their *Aged Care Act 1997*. The Commonwealth is responsible for the accreditation and funding of many of these services and the providers have an obligation to comply with the principles of the *Aged Care Act*.

Persons employed by a community aged carer service provider will be able to assist in the administration of all legally supplied and prescribed medication to the person they are caring for. This is of course in the person's own home and the carer will be required to have up-to-date appropriate training. Further, this care of the aged person, apart from the medical practitioner's assessments, will still be required to come under the general supervision of a nurse. This will ensure that elderly people, who are able to remain in their own home, receive assistance with their medication, while ensuring that their overall health management is monitored by health professionals.

In residential care only the administration of the certain schedule 8 medications by carers will be allowed in the regulations. This has been limited to what is referred to as a declared narcotic substance. This will be buprenorphine transdermal patches. Transdermal patches are placed directly onto a patient's skin and deliver slow release opioid pain medication for seven days. They are used widely in the elderly and have a well established safety profile.

The regulations do not relate to impress medication. That is medication held by a medical institution for administration to any patient on the order to a nurse by a medical practitioner. The medication that carers can administer or assist with has been prescribed on a prescription and dispensed or supplied by a pharmacist.

Following representation from the Commissioner for Children an additional regulation to cover children under the Secretary of the Department of Health and Human Service's guardianship or custody who are in foster care has been included. It was intended that they would be covered by the generic carer regulation but the Commissioner requested that the foster parents should be required to comply with guidelines similar to those applying to disability workers. Foster carers will be required to comply with the Departmental guidelines.

Finally, the regulations provide a general carer category as a catch all provision to cover situations not otherwise covered. The regulations remove ambiguity so that, for example, a husband assisting his wife with medication is not at risk of being at odds with regulatory requirements.

Clauses 7 to 11 of the Bill are about remedying an anomaly that has occurred in the *Poisons Act* in relation to numbering. It seems that some earlier amendments to the Act were given duplicate numbering, and these provisions simply renumber certain sections of the Act to prevent any confusion when referring to the Act.

The proposed amendments have been the subject of lengthy consultation and discussion. The Bill itself is fairly non-contentious. It is about ensuring that there is a clear legislative statement permitting the administration of medication by carers to persons who are unable to do so without assistance.

The regulations strike a fair balance between ensuring a person gets the assistance they require, while ensuring the highest levels of public safety. Significant time has gone into the development of tight conditions with respect to the administration of medication by carers to ensure that people in our community who require care and assistance have ongoing access to these services.

I commend the Bill to the House.