

CRIMINAL CODE (MEDICAL TREATMENT) AMENDMENT BILL

First Reading

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (7.37 pm): I present a bill for an act to amend the Criminal Code to ensure the lawfulness of particular medical matters. I present the explanatory notes, and I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Tabled paper: Criminal Code (Medical Treatment) Amendment Bill 2009

Tabled paper: Criminal Code (Medical Treatment) Amendment Bill 2009, explanatory notes.

Second Reading

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (7.38 pm): I move—

That the bill be now read a second time.

The purpose of the bill before the House is to ensure that our Criminal Code remains relevant to the realities of life in Queensland today and into the foreseeable future. The amendments contained in the bill clarify that the section of the Criminal Code that applies to surgical procedures should also apply to medical procedures. The government's overriding policy prescription is to clarify the law. It is not to alter the current law with respect to abortion, either to increase or decrease its prevalence or availability.

I fully accept that members of parliament from either side of the House and Independent members of parliament have varying views on the substantive issue of abortion, and that these views are honestly and legitimately held. This legislation is not about seeking to alter the current law, which has been clear in Queensland since 1986. It is about making sure that the law is, as far as is possible, certain for both health professionals and the public.

047

There can be little doubt that when Sir Samuel Griffith drafted the Criminal Code he could not have foreseen many of the technological or medical advances that have occurred over the last century, and therefore the provisions necessitate revision from time to time to ensure they remain clear. Section 282 of the Criminal Code is one such section. This section relieves a person from criminal responsibility where they perform an operation on a person for the patient's benefit or where the operation is performed upon an unborn child for the preservation of the mother's life. To obtain protection currently under section 282, the surgical operation must be (a) performed in good faith; (b) performed with reasonable care and skill; and (c) reasonable having regard to the patient's state at the time and all of the circumstances of the case. The section has operated since the inception of the code as a general excuse for a range of surgical procedures that, but for the operation of the section, would be a criminal offence.

Historically medicine concerned itself with the diagnosis of illness with limited tools for treatment or care. Surgery grew from responding to emergencies such as a trauma, injury and tumours large enough to disrupt normal physiological functions. The 20th century saw a phenomenal growth in the range of medical and surgical interventions including antibiotics, chemotherapy, radiotherapy, safer anaesthesia, ventilation, cardiac surgery and laparoscopic surgery. Fifty years ago the concept of a cardiologist being able to stent a coronary artery or replace an aortic valve without a surgical operation was unheard of. Now, daily, patients have heart arteries unblocked through catheters passed from an arm or a leg. Similarly, radiologists will unblock a renal artery without the need for surgery. The historical distinction between medicine and surgery is being challenged.

Moreover, increasing best practice in the treatment of many conditions requires a combination of surgical and medical treatment. Cancer patients will often have initial surgical treatment and the combination of radiotherapy and chemotherapy depending on various prognostic factors. In some cases medical approaches have become the first line of approach, with surgery reserved for those unsuitable for medical treatment or who fail medical therapy.

When the Criminal Code was originally written the only safe approach to terminations of pregnancy to preserve the life of a mother was surgical. In some cases this remains the best approach. But in the overwhelming majority of cases, termination of pregnancy is now undertaken using a combination of medications. This is the world standard resulting in fewer long-term complications and removing the need for anaesthesia. It makes no logical sense for the protection that section 282 offers for surgical interventions not to apply equally for drug interventions for the same procedure in the same circumstances. It makes no sense that a cardiologist, radiologist or gastrologist would not have the

same defence in law available to them as a surgeon when they carry out procedures that are not usually defined as surgery but achieve a similar outcome.

Should there be a difference in law between surgical removal of a tumour, the embolisation of the tumour or the implications of radioactive pellets or local infusion of a toxic drug? It does not make sense. However, the current section 282 excuse does not explicitly state that it applies to non-surgical medical treatment—for example, prescribing or administering a drug, as well as surgical operations.

The government's amendments clarify this situation to make it clear that the same protection, under the existing law, applies to medical as well as surgical treatments. This protection for surgical and medical procedures is a general defence for proper medical practice and is not specific to terminations. As I noted at the outset, medical science has advanced since the inception of the code. There are a range of medical treatments that now provide an alternative to more traditional surgical methods. Such medical alternatives are frequently less invasive, involve fewer risks to the patient and do not necessitate an act upon the patient that could otherwise constitute a wounding or grievous assault.

Gastric and duodenal ulcers were traditionally treated surgically, but medical developments now mean that they can be effectively treated through the use of antibiotics and anti-ulcer medications. Likewise, benign prostatic hypertrophy, voluntary castration or behaviour-altering brain surgery now have medical alternatives.

Another common example of medical treatment would be modern cancer treatment, where radiation and chemotherapy are commonly used in treatment. In relation to terminations, the amendments reflect the development of medical treatment—namely, the use of drugs—which provide alternatives to traditional surgical procedures. Bearing these medical advancements in mind, there is no substantive reason to distinguish between surgical and medical actions for the purposes of the excuse. The core policy goal remains to ensure that doctors who are lawfully providing a treatment can do so in the way that is best for the patient without fear they will be prosecuted because they administered a pill rather than an operation.

Were a doctor to be presented with a patient in need of treatment, it would seem incongruous for a treating doctor to be criminally liable for treating the person with a pharmaceutical or other medical treatment but be protected from criminal liability for achieving the same result through what may be a more risky and painful surgical procedure. Doctors and others need to be certain of the legal protection they enjoy when administering appropriate medical treatment to patients. Clarification that the same legal protection applies to both forms of procedure is consistent with both good public policy and responsible medical practice.

The proposed amendments to the Criminal Code will extend the operation of the section 282 excuse to the provision of medical treatment. Section 282 applies to a person who performs in good faith and with reasonable care and skill a surgical operation upon a patient for the patient's benefit or upon an unborn child for the preservation of the mother's life. The defence will be amended by mirroring the 'performance of a surgical operation' with the concept of 'providing medical treatment' for both parts.

The bill also introduces an amendment to the Criminal Code to insert a subsection which clarifies that a person does not commit an offence under the code where that person allows a treatment to be delivered to them or who self-administers a treatment if the treatment is administered, conducted, prescribed or otherwise delivered under the protection of section 282, as amended—that is, if the treatment falls within the excuse in section 282, then the patient will be relieved of criminal responsibility. This will also apply where a person acts upon the reasonable belief that the direction of a health professional to self-administer a medical treatment is lawful. A patient, therefore, will not be charged with a criminal offence where they have followed a reasonable direction, albeit one they could not have known was unlawful. In the context of medical treatment, this provision is important because such treatments often involve a component of self-administered prescription drugs. Therefore, it is necessary to clarify that a patient does not commit an offence by self-administering a treatment in compliance with a prescription.

Section 11 of the Criminal Code already provides that a person is not criminally responsible for conduct unless the conduct constituted an offence when it occurred and at the time the person is charged with the offence. The final aspect to the amendments of note is that, in addition to the section 11 provisions already within the code, it will apply retrospectively to any proceedings already commenced. It should be noted in this context that no such proceedings exist. It was, however, important to ensure that the medical community in Queensland were given the highest possible certainty as to the implications for these amendments to ensure that business as usual in hospitals across the state was not affected.

There is little doubt that there are many that will view these amendments through the single issue of terminations of pregnancies. It would be naïve to suggest that this issue has not been a key consideration in the reform of this provision of the code. However, the proposed amendments should not be misinterpreted as doing anything to alter the current position at law of abortion within the state.

Section 282 is a general excuse at law. Whilst limb 2 of the section may make clear provision for the situations in which the operation of the excuse will intersect with procedures involving an unborn child, limb 1 has a far more general application. The current amendments are intended to clarify the excuse to ensure it allows medical practitioners and others who provide surgical and medical treatment to patients with the certainty to do their job.

I conclude by reiterating that the government's overriding policy prescription in introducing this bill into the parliament is to clarify the operation of the criminal law in Queensland. It is not to alter the current law with respect to abortion. As I noted earlier, members of parliament from either side of the House and Independent members of parliament have varying views on the substantive issue of abortion. The law in Queensland has been clear since 1986 and these amendments are intended to make sure that the law is, as far as is possible, certain for both health professionals and the public. This bill is not about altering the substantive law concerning abortion; it is about clarifying the current law in our state. I commend the bill to the House.

Debate, on motion of Mr Springborg, adjourned.

~~JUVENILE JUSTICE AND OTHER ACTS AMENDMENT BILL~~

~~JUVENILE JUSTICE (SENTENCING PRINCIPLES) AMENDMENT BILL~~

~~Second Reading (Cognate Debate)~~

~~Juvenile Justice and Other Acts Amendment Bill resumed from p. 1775, on the motion of Ms Struthers, and the Juvenile Justice (Sentencing Principles) Amendment Bill resumed from p. 1775, on the motion of Mr Springborg~~

That the bills be now read a second time.

048

~~Ms GRACE (Brisbane Central ALP) (7.48 pm): I rise to support the Juvenile Justice and Other Acts Amendment Bill and participate in this cognate debate. As many speakers before me have said in this House, juvenile justice is indeed a difficult issue and one that has to be addressed sensibly, bearing in mind that we are talking about children aged 10 to 16 who commit or are alleged to have committed offences.~~

~~Currently in this state the youth justice system comprises a range of prevention, detention, supervision, rehabilitation, diversion, police and court services to deal with young offenders. However and I do not know if other members of the House saw the *Four Corners* program recently the *Four Corners* program on juvenile detention interventions stressed that interventions must be strengthened if we are to achieve any real changes and improvements in this difficult area. It was clearly portrayed in that program that simply detaining young people without the added support is not working and we need to change the manner in which we view the detention of young people in our society. We must recognise, for example, that many of these offenders have dysfunctional families, a situation which I find hard to understand coming from a very loving Italian family. They have poor educational attainment. Some have mental health needs, drug and alcohol problems and limited access to health, legal and social services, particularly young Indigenous people who are 15 times more likely to be detained than non-Indigenous young people.~~

~~Community input is essential if we are to strike the right balance. I was very glad to have seen many submissions on the issues paper with regard to this issue and, in particular, early intervention, prevention and assistance. I commend the workers in this area who do a wonderful and dedicated job. I refute the comments made by the member for Southern Downs when he said that a lot of these programs are not working. I see them firsthand. Go and visit the Youth Emergency Services, the Brisbane Youth Service, Open Doors, CityCare, PCYC and Mission Australia in Fortitude Valley and see the work that these dedicated community based organisations do with young people. They do a marvellous job. They have turned many of these young people's lives around. Without their assistance and without their work in the community the rate of youth detention would be far worse than it currently is in this state. Any time the member for Southern Downs would like to come into the Brisbane Central electorate I will gladly show him around. He will have the ability to look at some of these organisations at work and see how they are assisting the young people at risk in our community.~~

~~I also welcome in this bill the honouring of this government's 2009 election commitments in the following areas: firstly, giving courts specific powers to place curfews on juvenile offenders. This is aimed at reducing the chance of them reoffending. The main issue in this bill is to reduce the chances of young people reoffending. We have heard speaker after speaker say that it is like a revolving door, that the same people are caught up in the system. We have to look at ways in which we can break that cycle and assist these young people out of that revolving door system.~~