Speech by

# Hon. R. WELFORD

## MEMBER FOR EVERTON

Hansard 6 December 2001

### GUARDIANSHIP AND ADMINISTRATION AND OTHER ACTS AMENDMENT BILL

**Hon. R. J. WELFORD** (Everton—ALP) (Attorney-General and Minister for Justice) (2.41 p.m.), in reply: I thank honourable members for their contributions to this debate. I simply reiterate the general proposition that this bill does a very simple thing to the legislation. The Guardianship and Administration Act, when it was originally introduced, provided for the withholding or withdrawal of life-sustaining measures by order of the guardianship tribunal. That meant that contrary to established and time-honoured practice family members, in consultation with their doctor, were unable basically to exercise their responsibilities for a loved one who was facing death without first going to the tribunal.

The amendment that is before the House today does nothing more than reinstate the situation that existed prior to the Guardianship and Administration Act. That is, all this amendment is intended to do is reinstate the position whereby, without having to go to the tribunal in every case, family members can, in consultation with and taking advice from their doctor, act in accordance with good medical practice to withdraw life-sustaining measures where they believe their loved one has no realistic prospects of living.

There were matters legitimately raised by the Right to Life organisation and others as to how these amendments might be reinterpreted to give effect to something beyond what I have just indicated. But let me be absolutely clear that these provisions do nothing of the sort. I will make a number of comments in relation to that specifically. Firstly, I want to table amended explanatory notes which specifically address some of the issues that have been raised. In particular, the amended explanatory notes that I am tabling remove the reference to the case of Airedale NHS Trust v. Bland from the explanatory notes originally circulated in relation to clause 5 on pages 5 and 6 of those original explanatory notes.

The purpose of the amendment is to ensure that the phrase 'in all the circumstances is in the best interests of the adult' is not read as an endorsement of all the interpretations that the phrase 'best interests' was given in the case of Bland. In other words, we are not, by this legislation, in any way adopting the interpretation of 'best interests' that was canvassed by the court in the English case of Bland. Rather, the phrase 'in relation to withholding or withdrawing life-sustaining measures' reflects the proposition that when death is inevitable, regardless of the treatment administered, the administration of futile measures that only secure a precarious and burdensome prolongation of life may not be in the best interests of the adult. That assessment is best made, as it has always been—prior to the act originally being legislated—by the family in consultation with their doctor.

I have also included a statement in these amended explanatory notes to draw attention to section 238 of the Guardianship and Administration Act 2000 that declares that nothing in the act authorises euthanasia or affects the operation of the Criminal Code. This bill in no way is to be seen as reading down or derogating from the effective operation of section 238. Copies of the amended explanatory notes have been provided to the Clerk and are available to honourable members and the public to reinforce this point.

I believe that the member for Gladstone did refer to similar comments that I made in my second reading speech. Those comments have now been specifically included in the explanatory notes. In particular, at the bottom of page 2 of the amended explanatory notes it says—

Nothing in this Bill will affect the operation of the criminal law or in any way provides authorisation for euthanasia. Section 238 of the Guardianship and Administration Act 2000 provides that nothing in the Act authorises, justifies or excuses killing a person or affects the Criminal Code…

So I think that ought to put to rest the concerns that have circulated with some fervour amongst some sections of the community, including the local Catholic parish in my electorate, which I think was scared by some of the comments that were circulating suggesting that this bill somehow dramatically changed those arrangements.

I might just address a couple of issues raised by the member for Beaudesert. Firstly, in relation to the issue of consent in acute emergency situations, there may be circumstances, for example, where an aged person receiving hospital treatment suddenly suffers a coronary attack. In virtually all cases a doctor will in those circumstances make an assessment and commence CPR. But there may be cases where a person is very elderly and in—on any measure—terminal decline where the doctor will, without specifically obtaining the consent of the family, have canvassed the issue generally with the family previously. This happened in the case of my own grandmother. Those general discussions may well lead the doctor to know that in the event that the elderly person ceases to breathe and ceases to have a pulse, in those circumstances they may not start CPR for that person. That is an appropriate and proper decision to make for an elderly person who quietly passes away. It is those situations where the bill contemplates that the doctor may make that decision without again racing off and obtaining a formal consent of the kind that is normally obtained in other circumstances.

The definition of good medical practice is provided in the act because, although I guess it could be a matter for the tribunal to assess in any case where a dispute arises, it is desirable, I believe, to provide some guidelines and set some parameters for what factors should be taken into account in determining what constitutes good medical practice. That is why the definition of good medical practice is provided.

The member for Gladstone made a comment about euthanasia by omission. I reassure the member for Gladstone and those who have made representations to her that nothing in the legislation allows this to occur. Euthanasia by omission is in some respects an emotional description because, of course, euthanasia is a deliberate thing—a step that is taken to terminate life—not the result of a step that is failed to be taken. In any event, I think I have made it abundantly clear that this legislation is not designed to in any way seek to address the euthanasia debate whatsoever, regardless of what individual members may believe about that issue.

I think I have already made some comment about the issue of best interest, but the reason for that paragraph being added is that obviously there are some circumstances in which we cannot talk of someone's health and wellbeing being enhanced. If there is nothing that can be done for a person who is about to die, then the option of doing something to enhance their health and wellbeing obviously does not arise. There has to be some other way of describing how it can be appropriate to, say, not conduct intrusive surgery or conduct CPR in a way that might end up breaking a person's ribs, if they are elderly and frail. Not undertaking intrusive intervention at a time when it would be futile and unlikely to have any effective benefit to the person is what I think would be regarded as in their best interest. That is why 'best interest' needed to be added. I reiterate that it is not added to give effect to any interpretation of the kind that was raised in the English case of Bland.

I thank honourable members for their contributions. If there are any other particular issues members wish to raise in the committee stage, I would be happy to respond.

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