



Speech by

Hon. Cameron Dick

MEMBER FOR GREENSLOPES

Hansard Thursday, 3 September 2009

CRIMINAL CODE (MEDICAL TREATMENT) AMENDMENT BILL

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (12.31 pm), in reply: I thank all honourable members for their contributions to this important debate on the Criminal Code (Medical Treatment) Amendment Bill 2009. I recognise the support given by members on both sides of the House to the bill and the way in which all members discharged their duties as parliamentarians during the debate. It is a credit to the parliament that such an important matter can be discussed in such a mature, sophisticated and creditable manner.

The amendments contained in the bill clarify that section 282 of the Criminal Code, which currently applies expressly 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.

Concerns have been raised that the current provision in the code may not provide a legal protection for persons providing medical treatments. This has been noted by a number of speakers and commentators. The drafters of the Criminal Code could not have foreseen many of the technological or medical advances that have occurred across the last century and, therefore, the provisions necessitate revision from time to time to ensure that they remain clear. It would seem incongruous in this day and age—in the 21st century—that a health professional providing medical treatment to a patient may be liable for criminal prosecution due to the treatment they provide, but if they were to achieve the same ends through surgical means, which may be more invasive and invoke more risk to the patient, that they might be protected.

The effect of new section 282 is to excuse from criminal responsibility a person who performs or provides a surgical operation or medical treatment in good faith and with reasonable care and skill under two different limbs. These are clearly set out in the amending bill and I reiterate them to clarify any issues or concern raised by others, including the Scrutiny of Legislation Committee. The first limb covers circumstances where the operation or treatment of a person is for the patient's benefit and where the medical treatment is not intended to adversely affect an unborn child, or it is of an unborn child and it is for the unborn child's benefit.

The second limb concerns circumstances where the surgical operation on or medical treatment is of a person or an unborn child to preserve the mother's life. This is drafted such that any surgical operation or medical treatment that is intended to adversely affect an unborn child will be lawful under this section only if it is for the preservation of the mother's life. This reflects the accepted law in Queensland as it currently stands and no change is being made to that position.

It is important to understand that the current law with respect to the scope of section 282 has been accepted to be that which was described in the case of the Queen v Bayliss and Cullen—a decision determined by the District Court of Queensland in 1986. I will not seek to reinterpret that law in this place, except to say that the amendment bill will adopt the previous and current understanding of the law.

There are a number of issues included in this amended section, reflecting the same issues that exist presently at law. In particular, I would like to emphasise the question of who may be protected by the

excuse in section 282. The current defence may be sought to be relied upon by any person so long as they can satisfy the criteria set out in the code, namely, that they undertook the surgical operation or the medical treatment in good faith with reasonable care and skill and, if providing the treatment or operation was reasonable, having regard to the patient's state at the time and to all the circumstances of the case. This is the criteria in the current Criminal Code and it is the criteria that has been retained verbatim in the amending bill. Therefore, while the range of persons who may theoretically be covered is broad, the protection will be available only in relation to treatments that they may administer in good faith with reasonable care and skill and which, in all the circumstances, is reasonable. It would not be reasonable, for example, for a social worker to purport to provide a medical or surgical cancer treatment. Nor could that person provide the treatment while taking reasonable care and skill, or in good faith.

During the course of the debate the member for Gladstone made comment about a briefing provided to her by the Deputy Premier and Minister for Health and me. Can I indicate to the member for Gladstone that it was never the intention of the Deputy Premier and the Minister for Health or me to imply in any way, shape or form that the member for Gladstone may have in any way supported the amendments to the Criminal Code that came before and were voted through this parliament in 1995. That was not the intention; it was merely a briefing of factual matters that occurred before the parliament at that time and I would like to express that view here today.

Finally, the bill also makes it clear that a person acting on the direction of a health practitioner may benefit from the excuse provision. This reflects simply the difference between how a surgical and medical treatment are delivered to a patient. Where a surgical operation is, of necessity, performed by a person on the patient, a medical treatment may be delivered by the health practitioner to the patient for their subsequent self-administration. It would not be consistent for a medicine, for example, to be legally taken if delivered directly by the doctor, but to be illegal if taken on direct instruction a day later at home as necessary under a prescription.

The purpose of this bill has been clear from the outset: to clarify section 282, such that it applies to both surgical and medical treatments. It was not to make more broad or more narrow the circumstances in which the excuse might be applied to a pregnancy termination. The amendments have been drafted carefully to ensure just that. They are a clarification to allow doctors to treat their patients across our great state in the most appropriate and most effective manner that their medical judgement dictates.

There are strong and varied views on both sides of this House about the scope of laws relating to the termination of pregnancy in this state. This bill does not seek to change the law in that regard. The bill sets out solely and specifically to clarify the law, to update our Criminal Code and to ensure that those Queenslanders who need treatment can receive the most appropriate and effective treatment, be it surgical or medical, from their doctor in this state.

In conclusion, I would again like to thank all honourable members for their contributions to this debate. This is an issue that raises difficult and important questions for all members of this parliament. But this is a bill that does not change the law relating to those other issues. The debate has been conducted in that spirit and it is a credit to the elected members of the Queensland parliament. I would also like to thank the officers from the Department of Justice and Attorney-General, from Queensland Health and, in particular, from the Office of the Queensland Parliamentary Counsel for their assistance in developing the bill. I commend the bill to the House.