

HEALTH AMENDMENT BILL

EXPLANATORY NOTE

THE purpose of this Bill is to give protection to medical practitioners and Hospital Boards in respect of blood transfusions that are given to a minor and are necessary for the purpose of saving his life or preventing permanent injury to his physical or mental health, or of saving him from prolonged and avoidable pain and suffering.

For this purpose, *clause 2* inserts a new section 126B in the principal Act.

Subsection (1) of the new section defines the term "blood transfusion".

Subsection (2) provides that except by leave of a Judge no proceedings may be brought against anyone, in respect of a blood transfusion administered by a medical practitioner to a patient under 21 years of age, by reason of the lack of consent of any person whose consent is required by law.

Subsection (3) provides that leave will be refused if the Judge is satisfied—

- (a) That the medical practitioner was of opinion that the transfusion was necessary for any of the purposes mentioned at the beginning of this note, and that the opinion was reasonable; and
- (b) That reasonable attempts were made to obtain the consent of the person appearing to be legally entitled to consent, or that the transfusion was urgently needed and there was no time to attempt to obtain such consent; and
- (c) That in the circumstances it was reasonable to administer the transfusion.

Subsection (4) sets out the considerations that the Judge is to take into account in considering the reasonableness of the medical practitioner's opinion under *subclause (3) (a)*, namely, the condition of the patient, the circumstances in which the transfusion was given, the question whether it was reasonably practicable to consult another medical practitioner, any opinion given by a medical practitioner who was consulted, and all other circumstances that the Judge considers relevant.

Hon. Mr Shelton

HEALTH AMENDMENT

ANALYSIS

Title

1. Short Title
2. Blood transfusions

A BILL INTITULED

An Act to amend the Health Act 1956

BE IT ENACTED by the General Assembly of New Zealand
in Parliament assembled, and by the authority of the same, as
5 follows:

1. **Short Title**—This Act may be cited as the Health
Amendment Act 1961, and shall be read together with and
deemed part of the Health Act 1956* (hereinafter referred
to as the principal Act).

10 2. **Blood transfusions**—The principal Act is hereby amended
by inserting, after section 126A (as inserted by section 6 of
the Health Amendment Act 1960), the following section:
“126B. (1) In this section, the term ‘blood transfusion’,
or ‘transfusion’, means the injection of whole human blood,
15 or any constituent part or parts thereof, into the bloodstream
of any person.

*1957 Reprint, Vol. 6, p. 1
Amendments: 1958, No. 68; 1959, No. 67; 1960, No. 96

“(2) Except by leave of a Judge of the Supreme Court, no proceedings, civil or criminal, shall be brought against any person, in respect of the administration by any medical practitioner of any blood transfusion to any person under the age of twenty-one years (in this section referred to as the patient), by reason of the lack of consent of any person whose consent is required by law. 5

“(3) The Judge shall not grant such leave if he is satisfied—

“(a) That the transfusion was, in the opinion of the medical practitioner who administered it, necessary to save the life of the patient or to prevent permanent injury to his physical or mental health, or to save him from prolonged and avoidable pain and suffering, and that such opinion was reasonable; and 10

“(b) That— 15

“(i) Reasonable attempts were made to obtain the consent of the person appearing to be legally entitled to consent to the transfusion; or

“(ii) The circumstances were such that it was necessary to administer the transfusion promptly and it was impracticable, in the time available, to attempt to obtain the consent of the person appearing to be legally entitled to consent; and 20

“(c) That in all the circumstances it was reasonable to administer the transfusion. 25

“(4) In considering the reasonableness of the opinion of the medical practitioner, referred to in paragraph (a) of subsection (3) of this section, the Judge shall take into account the condition of the patient before the transfusion, the circumstances in which it was administered, the question whether in the circumstances it was reasonably practicable for the medical practitioner to consult any other medical practitioner before administering the transfusion, any opinion given by any medical practitioner who was so consulted, and all other circumstances that in the opinion of the Judge are relevant. 30

“(5) Nothing in this section shall limit or affect the provisions of any enactment or rule of law relating to the protection of any person from liability, whether civil or criminal, or relating to any matter of justification or excuse, in respect of the performance of any operation.” 35 40