

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Tuesday, 27 April 1993

HEALTH AND DISABILITY SERVICES BILL

Proposed Amendment

Right Hon. W. F. BIRCH, in Committee, to move the following amendment:

New clause 102A: To insert on page 79, after *clause 102*, the following clause:

102A. New Part IIIA substituted—(1) The principal Act is hereby amended by repealing Part IIIA (as inserted by section 5 of the Health Amendment Act 1979), and substituting the following Part:

“PART IIIA

“TRADING IN HUMAN BLOOD

“92A. **Interpretation—**In this Part of this Act, unless the context otherwise requires, ‘blood’—

“(a) Includes—

“(i) Any substance derived from human blood; and

“(ii) Any human organ or human tissue, including the placenta, of a kind that is suitable as a source from which to derive a constituent of blood for therapeutic use or for the preparation of a substance for therapeutic use; but

“(b) Does not include—

“(i) Any substance derived from human blood that is intended for use in quality control or as a diagnostic product; or

“(ii) Any substance containing a fraction of human blood that the Minister of Health, by notice in the *Gazette*, declares not to be blood for the purposes of this Part of this Act.

“92B. **Trading in own blood prohibited—**(1) No person shall require or accept financial or other consideration for his or her own blood.

“(2) No person shall provide financial or other consideration for the taking of blood from the body of a person for administration to another person.

“(3) Every person commits an offence and is liable to a fine not exceeding \$1,000 who contravenes subsection (1) of this section.

“(4) Every person commits an offence and is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding \$5,000 who contravenes subsection (2) of this section.

“92C. **Collection of blood**—(1) Except as provided in subsection (2) of this section, no person shall take blood from the body of a person for the purpose of obtaining blood for administration to another person.

“(2) The Minister may, in his or her discretion and upon such terms and conditions (if any) as he or she thinks fit, by a permit in writing, permit any person or persons or class of persons to take blood for administration to another person, and may in like manner vary or revoke any such permit.

“(3) Every permit granted pursuant to subsection (2) of this section shall, in addition to any terms or conditions imposed by the Minister under that subsection, be subject to a condition requiring the person to whom it is granted to give due recognition to the fact that the blood taken under that permit has been donated.

“(4) For the avoidance of doubt it is hereby declared that a permit granted pursuant to subsection (2) of this section may contain terms and conditions imposed by the Minister with regard to the use or disposal of blood taken under the permit.

“(5) Every person commits an offence and is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding \$5,000 who contravenes subsection (1) of this section.

“92D. **Charging for administered blood**—(1) No person who administers blood to another person shall require or accept financial or other consideration for that blood from the person to whom it is administered.

“(2) Every person commits an offence and is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding \$5,000 who contravenes subsection (1) of this section.

“92E. **Exemptions**—(1) The Minister may in his or her discretion and upon such terms and conditions (if any) as the Minister thinks fit, by notice in writing, exempt any person or persons or class of persons from compliance with any or all of the provisions of subsections (1) and (2) of section 92B and of subsection (1) of section 92D of this Act, and may in like manner vary or revoke any such exemption.

“(2) Where a notice is given under subsection (1) of this section, the Minister shall as soon as practicable after the giving of the notice, publish in the *Gazette* and lay before the House of Representatives a copy of the notice.

“92F. **Delegation by Minister**—(1) The Minister may from time to time delegate to any person or persons the Minister's power to grant permits under section 92C of this Act.

“(2) Every delegation under this section—

“(a) Shall be in writing; and

“(b) Shall be revocable at will; and

“(c) May be made subject to such restrictions and conditions as the Minister thinks fit; and

“(d) May be made either generally or in relation to any particular case or class of cases.

“(3) No delegation under this section shall include the power to delegate under this section.

“(4) A delegate acting under any delegation under this section may, unless otherwise provided in the delegation, exercise the power in the same manner and with the same effect as if it had been conferred directly on the person by this Act.

“92G. **Unauthorised advertising prohibited**—(1) No person shall—

“(a) Publish or otherwise disseminate, by newspaper, magazine, periodical, book, billboard, radio, television, cinematograph film, or any other means whatever; or

“(b) Exhibit to public view in any premises or place; or

“(c) Deposit in any area, yard, garden, or enclosure comprising part of or appurtenant to any premises,—

an advertisement relating to the purchase or sale in New Zealand of human blood.

“(2) Every person commits an offence and is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,500 who contravenes subsection (1) of this section.

“92H. **Liability of principals and agents**—(1) If an offence is committed against any of the provisions of this Part of this Act by any person acting as the agent or employee of another person, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under this Act, in the same manner and to the same extent as if he or she had personally committed the offence, if it is proved that the act that constituted the offence took place with his or her authority, permission, or consent, or that he or she knew the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

“(2) Where any body corporate is convicted of an offence against this Act, every person, being a director or a person concerned in the management of the body corporate, shall be guilty of the same offence if it is proved that the act that constituted the offence took place with that person's authority, permission, or consent, or that that person knew the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

“92I. **Certain documents to be prima facie evidence**—A document purporting to be—

“(a) A permit granted under section 92c, or under sections 92c and 92f, of this Act; or

“(b) A notice under section 92e of this Act; or

“(c) A delegation under section 92f of this Act—

shall, in any proceedings, be prima facie evidence of that permit, notice, or delegation.

“92J. **Blood transfusion trust**—(1) The Minister, acting on behalf of the Crown, may by deed establish, on such terms and conditions as the Minister thinks fit, a trust for the purposes of—

“(a) Receiving blood donated in New Zealand; and

“(b) Authorising the processing and supply of such blood for therapeutic and other purposes; and

“(c) Such other purposes as the Minister thinks fit.

“(2) As soon as practicable after establishing a trust under subsection (1) of this section, the Minister shall lay a copy of the deed before the House of Representatives.

“92K. **Exemption from Part II of Commerce Act 1986**—
Nothing in Part II of the Commerce Act 1986 shall apply to—

“(a) Any contract, arrangement, understanding, or covenant in relation to blood that—

“(i) At the time it is entered into is, or is of a class that is, approved; or

“(ii) Is entered into by a person who (at the time it is entered into) is, or is of a class that is, approved—
for the purposes of this section, by the Governor-General by Order in Council; or

“(b) Any act done to give effect to a provision of any contract, arrangement, understanding, or covenant to which paragraph (a) of this section applies.”

(2) Section 5 of the Health Amendment Act 1979 is hereby consequentially repealed.

(3) The Public Finance Act 1989 is hereby amended by inserting in the Fourth, Fifth, and Sixth Schedules (as added by section 41 of the Public Finance Amendment Act 1982), in its appropriate alphabetical order, the following item:

“The blood transfusion trust established under section 92J of the Health Act 1956.”

(4) Part II of the First Schedule to the Ombudsmen Act 1975 is hereby amended by inserting, in its appropriate alphabetical order, the following item:

“The blood transfusion trust established under section 92J of the Health Act 1956.”

(5) Nothing in section 13 (7) (b) of the Ombudsmen Act 1975 shall prevent an Ombudsman from investigating any decision, recommendation, act, or omission of any person in that person's capacity as a trustee of the blood transfusion trust established under section 92J of the Health Act 1956.

EXPLANATORY NOTE

Clause 102A repeals Part IIIA of the Health Act 1956 (which relates to trading in human blood), and substitutes a new Part. The new Part provides that it is an offence for—

- (a) A person to accept payment for his or her own blood (*section 92B (1)*);
- (b) A person to pay to take blood from the body of a person for administration to another person (*section 92B (2)*);
- (c) A person to collect blood, except under a permit granted by the Minister of Health (*section 92C*);
- (d) A person who administers blood to another person to charge the person to whom the blood is administered for that blood (*section 92D*);
- (e) A person to advertise the purchase or sale of human blood in New Zealand (*section 92G*).

A permit to collect blood that is granted under the *new section 92C (2)* may contain terms and conditions imposed with regard to the use or disposal of blood taken under the permit (*section 92C (4)*). Such permits are to be granted by the Minister of Health or his or her delegate (*section 92F*).

The *new section 92E* provides that the Minister of Health may exempt any person or persons from compliance with any or all of the provisions of the *new sections 92B and 92D*.

The *new section 92J* provides for the establishment of a blood transfusion trust. The trust is to be subject to the Public Finance Act 1989, the Ombudsmen Act 1975, and (by virtue of the inclusion of its name in the First Schedule to the Ombudsmen Act 1975) to the Official Information Act 1982.

The *new section 92k* ensures that arrangements made to co-ordinate blood transfusion services, donor availability, and regional access to blood and blood products are not invalidated by the Commerce Act 1986.