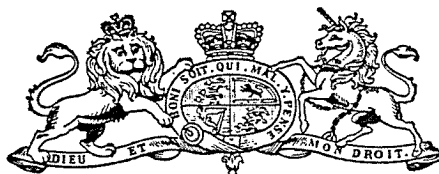


Queensland



ANNO VICESIMO OCTAVO

ELIZABETHAE SECUNDAE REGINAE

No. 74 of 1979

An Act to make provision for and in relation to the removal of human tissues for transplantation, for post-mortem examinations, for the definition of death, for the regulation of schools of anatomy, and for related purposes

[ASSENTED TO 21ST DECEMBER, 1979]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. Citation. This Act may be cited as the *Transplantation and Anatomy Act 1979*.

2. Commencement. (1) Except as provided in subsection (2), this Act shall commence on a date to be fixed by Proclamation.

(2) Notwithstanding subsection (1), the Governor in Council may, by Proclamation under subsection (1) or by a subsequent Proclamation or Proclamations fix a date or dates for the commencement of the several provisions of this Act later than the date fixed by the Proclamation under subsection (1) for the commencement of this Act.

3. Arrangement of Act. This Act is divided into Parts and Divisions as follows:—

- PART I—PRELIMINARY (ss. 1–7);
- PART II—DONATIONS OF TISSUE BY LIVING PERSONS (ss. 8–21);
Division 1—Exclusion of Certain Tissue;
Division 2—Donations by Adults;
Division 3—Effect of Consents and Authorities;
Division 4—Blood Transfusions;
Division 5—Revocation of Consent or Agreement;
- PART III—DONATIONS OF TISSUE AFTER DEATH (ss. 22–25);
- PART IV—POST-MORTEM EXAMINATIONS (ss. 26–30);
- PART V—DONATIONS FOR ANATOMICAL PURPOSES (ss. 31–36);
- PART VI—SCHOOLS OF ANATOMY (ss. 37–39);
- PART VII—PROHIBITION OF TRADING IN TISSUE (ss. 40–44);
- PART VIII—DEFINITION OF DEATH (s. 45);
- PART IX—MISCELLANEOUS (ss. 46–54).

4. Interpretation. (1) In this Act, save where a contrary intention appears—

- “child” means a person who has not attained the age of 18 years;
- “Coroner” means a Coroner within the meaning of the *Coroners Act 1958–1977*;
- “designated officer” means a person who pursuant to section 6 is declared to be or is appointed a designated officer;
- “Director-General” means the Director-General within the meaning of the *Health Act 1937–1979*;
- “hospital” means—
- (a) any premises for the reception and treatment of the sick which are subject to the *Hospitals Act 1936–1979*;
 - (b) a psychiatric hospital within the meaning of the *Mental Health Act 1974–1978*;
 - (c) a private hospital within the meaning of Division XI of Part III of the *Health Act 1937–1979* which pursuant to section 5 has been declared to be a hospital for the purposes of this Act;
- “medical practitioner” means a medical practitioner within the meaning of the *Medical Act 1939–1979*;
- “Minister” means the Minister for Health or other Minister of the Crown for the time being charged with the administration of this Act and includes any person for the time being performing the functions of the Minister;
- “next of kin” means—
- (a) in relation to a child—a person referred to in subparagraph (a) (i), (a) (ii), (a) (iii) or (a) (iv) of the definition “senior available next of kin”;
 - (b) in relation to any other person—a person referred to in subparagraph (b) (i), (b) (ii), (b) (iii) or (b) (iv) of that definition;

“ non-regenerative tissue ” means tissue other than regenerative tissue;

“ regenerative tissue ” means tissue that, after injury or removal, is replaced in the body of a living person by natural processes of growth or repair;

“ school of anatomy ” means a school of anatomy established or declared to be established under the authority of section 37;

“ senior available next of kin ” means—

(a) in relation to a child, the first of the following persons who in the following order of priority, is reasonably available:

- (i) the spouse of the child;
- (ii) a parent of the child;
- (iii) a brother or sister, who has attained the age of 18 years, of the child;
- (iv) a guardian of the child; and

(b) in relation to any other person, the first of the following persons who, in the following order of priority, is reasonably available:

- (i) the spouse of the person;
- (ii) a son or daughter, who has attained the age of 18 years, of the person;
- (iii) a parent of the person;
- (iv) a brother or sister, who has attained the age of 18 years, of the person;

“ tissue ” includes an organ, blood, or part, of a human body or a substance extracted from, or from a part of, the human body: but does not include a substance containing a fraction of tissue that the Governor in Council by Order in Council declares not to be tissue for the purposes of this Act.

(2) A reference in this Act to the transplantation of tissue shall be read as including a reference to the transplantation of any part of the tissue and to the transplantation of a substance obtained from the tissue.

5. Declaration of hospitals. The Governor in Council, by Order in Council, may from time to time declare any private hospital within the meaning of Division XI of Part III of the *Health Act* 1937–1979 in relation to which a licence under that Division is in force (if he is satisfied that the facilities at the hospital are adequate for the purposes of this Act), to be a hospital for the purposes of this Act and may at any time revoke any such declaration.

6. Designated officers. (1) The Director-General is a designated officer for the purposes of this Act in respect of all hospitals throughout the State.

(2) The medical superintendent of a hospital and his nominees (being medical practitioners) appointed by him in writing are, for the purposes of this Act, designated officers for that hospital.

(3) The persons or body having the control and management of a hospital may, in writing, appoint persons to be, for the purposes of this Act, designated officers for that hospital.

7. Administration. This Act shall be administered by the Minister and, subject to the Minister, by the Director-General.

PART II—DONATIONS OF TISSUE BY LIVING PERSONS

Division 1—Exclusion of Certain Tissue

8. Interpretation. In this Part, a reference to tissue shall not be read as including a reference to foetal tissue, spermatozoa or ova.

Division 2—Donations by Adults

9. Blood transfusions not subject to this Division. Nothing in this Division prevents the removal in accordance with Division 4 of blood from the body of a person.

10. Consent by adult living donor to removal of regenerative tissue. A person who—

- (a) has attained the age of 18 years;
- (b) is of sound mind; and
- (c) is, in the light of medical advice furnished to him by a medical practitioner, prepared to do so,

may, by writing signed by him in the presence of a designated officer, consent to the removal from his body of regenerative tissue specified in the consent—

- (d) for the purpose of the transplantation of the tissue to the body of another living person; or
- (e) for the purpose of using the tissue for other therapeutic purposes or for other medical or scientific purposes,

or for any such purposes.

11. Consent by adult living donor to removal of non-regenerative tissue for transplantation. (1) A person who—

- (a) has attained the age of 18 years;
- (b) is of sound mind; and
- (c) is, in the light of medical advice furnished to him by a medical practitioner, prepared to do so,

may, by writing signed by him in the presence of a designated officer, consent to the removal, after the expiration of 24 hours from the time at which the consent is signed, from his body of non-regenerative tissue specified in the consent, for the purpose of the transplantation of the tissue to the body of another living person.

(2) A consent given under subsection (1) shall specify the time at which the consent is given.

12. Designated officer to give certificate in relation to consent. The designated officer in whose presence a consent is given under this Division shall certify in writing—

- (a) that the consent in writing of the person giving the consent, the terms of which are set out in the certificate, was given in his presence;

(b) that he is satisfied—

- (i) that, at the time the consent was given the person had attained the age of 18 years;
- (ii) that, at that time, the person was of sound mind;
- (iii) that the consent was freely given; and
- (iv) that the medical advice referred in section 10 (c) or, as the case may be, 11 (1) (c) has been duly furnished to the person.

Division 3—Effect of Consents and Authorities

13. Consents under s. 10. Subject to section 15, consent under section 10 is, where a certificate has been given in accordance with section 12 in relation to that consent, sufficient authority for a medical practitioner, other than the medical practitioner by whom the medical advice referred to in section 10 was furnished, and other than the designated officer in whose presence the consent was signed, to remove the regenerative tissue referred to in the consent—

- (a) for the purpose of the transplantation of the tissue to the body of another living person; or
- (b) for the purpose of using the tissue for other therapeutic purposes or for other medical or scientific purposes,

or for any such purposes.

14. Consent under s. 11. Subject to section 15, a consent under section 11 is, where a certificate has been given in accordance with section 12 in relation to that consent, sufficient authority for a medical practitioner, other than the medical practitioner by whom the medical advice referred to in section 11 was furnished, and other than the designated officer in whose presence the consent was signed, to remove, at any time after the expiration of 24 hours from the time at which the latest relevant consent under section 11 was given, the non-regenerative tissue referred to in the consent for the purpose of the transplantation of the tissue to the body of the other person referred to in the consent.

15. When consent is not sufficient authority. A document that purports to be a consent given in accordance with section 10 or 11 is not sufficient authority for a medical practitioner to remove tissue if—

- (a) the medical practitioner has been informed that the consent has been revoked;
- (b) the medical practitioner knows or has reasonable grounds for suspecting that a certificate given for the purposes of section 12 in relation to that document contains a false statement.

Division 4—Blood Transfusions

16. Interpretation. (1) In this Division “blood transfusion” means the transfusion of human blood, or any of the constituents of human blood, into a person and includes the operation of removing all or part of the blood of a person and replacing it with blood taken from another person.

17. Consents by adults to removal of blood. A person who has attained the age of 18 years may consent to the removal of blood from his body—

- (a) for the purpose of a blood transfusion; or
- (b) for the purpose of using the blood or any of its constituents for other therapeutic purposes or for other medical or scientific purposes,

or for any such purposes.

18. Consents to removal of blood from children. A parent of a child may consent in writing to the removal of blood from the body of the child for any of the purposes referred to in section 17 if—

- (a) a medical practitioner advises that the removal is not likely to be prejudicial to the health of the child; and
- (b) the child agrees to the removal.

19. Consent to be sufficient authority for removal of blood. A consent under this Division is sufficient authority for the removal of blood from the body of the person who has given the consent or from the body of the child of the person who has given the consent, as the case may be.

20. Blood transfusions to children without consent. (1) Where a blood transfusion is administered by a medical practitioner to a child, the medical practitioner or any person acting in aid of the medical practitioner and under his supervision in administering such transfusion, shall not incur any criminal liability by reason only that the consent of a parent of the child or a person having authority to consent to the administration of the transfusion was refused or not obtained if—

- (a) in the opinion of the medical practitioner a blood transfusion was necessary to preserve the life of the child; and
- (b) either—
 - (i) upon and after in person examining the child, a second medical practitioner concurred in such opinion before the administration of the blood transfusion; or
 - (ii) the medical superintendent of a base hospital, being satisfied that a second medical practitioner is not available to examine the child and that a blood transfusion was necessary to preserve the life of the child, consented to the transfusion before it was administered (which consent may be obtained and given by any means of communication whatever).

(2) Where a blood transfusion is administered to a child in accordance with this section, the transfusion shall, for all purposes, be deemed to have been administered with the consent of a parent of the child or a person having authority to consent to the administration.

(3) Nothing in this section relieves a medical practitioner from liability in respect of the administration of a blood transfusion to a child, being a liability to which he would have been subject if the transfusion had been administered with the consent of a parent of the child or a person having authority to consent to the administration of the transfusion.

Division 5—Revocation of Consent or Agreement

21. Revocation of consent. (1) A person who gives a consent for the purposes of this Part may at any time thereafter revoke that consent by indicating, either orally or in writing—

- (a) where the donor, in relation to that consent, is a patient in a hospital—
 - (i) to a designated officer for that hospital;
 - (ii) to a medical practitioner who is attending the donor in a professional capacity; or
 - (iii) to a nurse or any other person employed at that hospital; and
- (b) where the donor is not a patient in a hospital—to a medical practitioner who is attending the donor in a professional capacity,

that the consent is revoked.

(2) Where—

- (a) the donor is a patient in a hospital; and
- (b) the person who gave the consent for the purposes of this Part indicates to a person referred to in subparagraph (a) (ii) or (a) (iii) of subsection (1) that the consent is revoked,

that person shall inform a designated officer for that hospital forthwith of the revocation of the consent.

(3) Where a person revokes his consent in accordance with subsection (1)—

- (a) if the donor is a patient in a hospital at the time of the revocation—the designated officer for that hospital to whom the revocation is communicated in accordance with subsection (1) or (2); or
- (b) if the donor is not a patient in a hospital at that time—the medical practitioner to whom the revocation is communicated,

shall, if it appears to him, after making such inquiries (if any) as are reasonable in the circumstances, that a medical practitioner is proposing to rely on the consent in connexion with the removal of tissue from the body of the donor, inform that medical practitioner forthwith that the consent has been revoked.

(4) Where a consent is revoked, a person who has in his possession the instrument of consent shall, upon being informed by a designated officer for a hospital or by the medical practitioner to whom the revocation is communicated that the consent has been revoked, surrender—

- (a) that instrument; and
- (b) if a certificate given in accordance with section 12 is in his possession—that certificate,

to the person who gave the consent.

PART III—DONATIONS OF TISSUE AFTER DEATH

22. Authority to remove tissue where body of deceased in a hospital.

(1) Subject to this Part, where the body of a deceased person is in a hospital and it appears to a designated officer for the hospital, after making such inquiries as are reasonable in the circumstances, that the deceased person—

(a) had during his lifetime, orally expressed the wish for, or orally consented to, the removal after his death of tissue from his body—

(i) for the purpose of the transplantation of the tissue to the body of a living person; or

(ii) for the purpose of using the tissue for other therapeutic purposes or for other medical or scientific purposes; and

(b) had not withdrawn the wish or revoked the consent,

the designated officer may, by writing signed by him, authorize the removal of tissue from the body of the deceased person for any of the purposes referred to in subparagraph (a).

(2) Subject to this Part, where the body of a deceased person is in a hospital and it appears to a designated officer for the hospital, after making such inquiries as are reasonable in the circumstances, that—

(a) the designated officer is not authorized by subsection (1) to give an authority in respect of the body of the deceased person;

(b) the deceased person had not, during his lifetime, expressed an objection to the removal of tissue from his body;

(c) the senior available next of kin of the deceased person has consented to the removal of tissue from the body of the deceased person,

the designated officer may, by writing signed by him, authorize the removal of tissue from the body of the deceased person for any of the purposes referred to in subsection (1) (a).

(3) Where a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances, is unable to ascertain the existence or whereabouts of the next of kin of the deceased person, subsection (2) applies as if subparagraph (c) of that subsection were omitted.

(4) The senior available next of kin of a person if he has no reason to believe that the person has expressed an objection to the removal after his death of tissue from his body for any of the purposes referred to in subsection (1) (a), may make it known to a designated officer at any time before the death of the person that he has no objection to the removal, after the death of the person, of tissue from the body of the person for any of the purposes referred to in subsection (1) (a).

(5) Where there are two or more persons of a description referred to in a subparagraph of paragraph (a) or (b) of the definition "senior available next of kin" in section 4, an objection by any one of those persons has effect for the purposes of this section notwithstanding any indication to the contrary by the other or any other of those persons.

(6) Where a deceased person, during his lifetime, by writing signed by him consented to the removal after his death of tissue from his body for any of the purposes referred to in subsection (1) and the consent had

not been revoked by him, the removal of tissue from the body of the deceased person in accordance with the consent for any of those purposes is hereby authorized.

23. Authority to remove tissue where body of deceased not in hospital.

(1) Subject to this Part, where the body of a deceased person is in a place other than a hospital, the senior available next of kin of the deceased person may, by writing signed by him, authorize the removal of tissue from the body of the deceased person—

- (a) for the purpose of the transplantation of the tissue to the body of a living person; or
- (b) for the purpose of using the tissue for other therapeutic purposes or for other medical or scientific purposes,

or for any of those purposes.

(2) Where the senior available next of kin of the deceased person has reason to believe that—

- (a) the deceased person had, during his lifetime, expressed an objection to the removal of tissue from his body and had not withdrawn that objection; or
- (b) another next of kin of the same or a higher order of the classes in a subparagraph of paragraph (a) or (b) of the definition “senior available next of kin” in section 4 has an objection to the removal of tissue from the body of the deceased person,

the senior available next of kin shall not, under subsection (1), authorize the removal of tissue from the body of the deceased person.

(3) Where a deceased person, during his lifetime, by writing signed by him consented to the removal after his death of tissue from his body for any of the purposes referred to in subsection (1) and the consent had not been revoked by him, the removal of tissue from the body of the deceased person in accordance with the consent for any of those purposes is hereby authorized.

24. Consent by Coroner. (1) This section applies to a deceased person—

- (a) whose death pursuant to section 12 or 13 of the *Coroners Act* 1958–1977 is required to be reported;
- (b) in respect of whose death a Coroner is directed by the Minister of the Crown for the time being administering the *Coroners Act* 1958–1977 to inquire into the cause and circumstances of the death.

(2) A designated officer or a senior available next of kin, as the case may be, shall not authorize the removal of tissue from the body of a deceased person to whom this section applies unless a Coroner has given his consent to the removal of the tissue.

(3) Section 22 (6) or, as the case may be, 23 (3) does not apply in relation to a deceased person to whom this section applies unless a Coroner has given his consent to the removal of tissue from the body of the deceased person.

(4) A Coroner may give a direction, either before or after the death of a person to whom this section applies, that his consent to the removal of tissue from the body of the person after the death of the person is not required and, in that event, subsections (2) and (3) do not apply to or in relation to the removal of tissue from the body of the person.

(5) A consent or direction by a Coroner under this section may be expressed to be subject to such conditions as are specified in the consent or direction.

(6) A consent or direction may be given orally by a Coroner and, if so given, shall be confirmed in writing within seven days.

(7) Where a consent has been given under subsection (2), a report in writing on the condition of the tissue removed shall be furnished to the Coroner concerned within seven days—

- (a) by the medical practitioner who effected the removal; or
- (b) where there is a group of medical practitioners concerned in the removal, by one of the group designated by the leader of the group before the removal is effected or, failing such a designation, by the leader of the group himself.

25. Effect of authority under this Part. An authority under this Part is sufficient authority for the removal of tissue from the body of the deceased person referred to in the authority—

- (a) for the purpose of the transplantation of the tissue to the body of a living person; or
- (b) for the purpose of using the tissue for other therapeutic purposes or for other medical or scientific purposes,

or for any of those purposes.

PART IV—POST-MORTEM EXAMINATIONS

26. Authority for post-mortem where body of deceased in a hospital.

(1) Subject to this Part, where the body of a deceased person is in a hospital and it appears to a designated officer for the hospital, after making such inquiries as are reasonable in the circumstances, that the deceased person—

- (a) had, during his lifetime, orally expressed the wish for, or orally consented to, a post-mortem examination of his body; and

- (b) had not withdrawn the wish or revoked the consent,

the designated officer may, by writing signed by him, authorize a post-mortem examination of the body of the deceased person.

(2) Subject to this Part, where the body of a deceased person is in a hospital and it appears to a designated officer for the hospital after making such inquiries as are reasonable in the circumstances, that—

- (a) the designated officer is not authorized by subsection (1) to give an authority in respect of the body of the deceased person;
- (b) the deceased person had not, during his lifetime, expressed an objection to the post-mortem examination of his body; and
- (c) the senior available next of kin of the deceased person has consented to a post-mortem examination of the body of the deceased person,

the designated officer may, by writing signed by him, authorize a post-mortem examination of the body of the deceased person.

(3) Where a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances, is unable to ascertain the existence or whereabouts of the next of kin of the deceased person, subsection (2) applies as if subparagraph (c) of that subsection were omitted.

(4) The senior available next of kin of a person if he has no reason to believe that the person had expressed an objection to a post-mortem examination of his body, may make it known to a designated officer at any time before the death of the person that he has no objection to a post-mortem examination of the body of the person.

(5) Where there are two or more persons having a description referred to in a subparagraph of paragraph (a) or (b) of the definition "senior available next of kin" in section 4, an objection by any one of those persons has effect for the purposes of this section notwithstanding any indication to the contrary by the other or any other of those persons.

(6) Where a deceased person, during his lifetime, by writing signed by him consented to a post-mortem examination of his body and the consent had not been revoked by him, a post-mortem examination of the body of the deceased person in accordance with the consent is hereby authorized.

27. Authority for post-mortem where body of deceased not in hospital.

(1) Subject to this Part, where the body of a deceased person is in a place other than a hospital, the senior available next of kin of the deceased person may, by writing signed by him, authorize a post-mortem examination of the body of the deceased person.

(2) Where the senior available next of kin of the deceased person has reason to believe that—

- (a) the deceased person had, during his lifetime, expressed an objection to a post-mortem examination of his body and had not withdrawn that objection; or
- (b) another next of kin of the same or a higher order of the classes in a subparagraph of paragraph (a) or (b) of the definition "senior available next of kin" in section 4 has an objection to the post-mortem examination of the body of the deceased person,

the senior available next of kin shall not, under subsection (1), authorize the post-mortem examination of the body of the deceased person.

(3) Where a deceased person, during his lifetime, by writing signed by him consented to a post-mortem examination of his body and the consent had not been revoked by him, a post-mortem examination of the body of the deceased person in accordance with the consent is hereby authorized.

28. Consent by Coroner. (1) This section applies to a deceased person—

- (a) whose death pursuant to section 12 or 13 of the *Coroners Act* 1958–1977 is required to be reported;
- (b) in respect of whose death a Coroner is directed by the Minister of the Crown for the time being administering the *Coroners Act* 1958–1977 to inquire into the cause and circumstances of the death.

(2) A designated officer or a senior available next of kin, as the case may be, shall not authorize a post-mortem examination of the body of a deceased person to whom this section applies unless a Coroner has given his consent to the examination.

(3) Section 26 (6) or, as the case may be, 27 (3) does not apply in relation to a deceased person to whom this section applies unless a Coroner has given his consent to the post-mortem examination of the body of the deceased person.

(4) A Coroner may give a direction, either before or after the death of a person to whom this section applies, that his consent to a post-mortem examination of the body of the person is not required and, in that event, subsections (2) and (3) do not apply to or in relation to a post-mortem examination of the body of the deceased person.

(5) A consent or direction by a Coroner under this section may be expressed to be subject to such conditions as are specified in the consent or direction.

(6) A consent or direction may be given orally by a Coroner and, if so given, shall be confirmed in writing within seven days.

29. Effect of authority under this Part. (1) An authority under this Part is sufficient authority for a medical practitioner (other than, in a case to which section 26 applies, the designated officer who authorized the examination)—

- (a) to conduct an examination of the body of the deceased person; and
- (b) to remove tissue from the body of the deceased person.

(2) An authority under this Part is sufficient authority for the use, for therapeutic or other medical or scientific purposes, of tissue removed from the body of the deceased person.

(3) An order by a Coroner under the *Coroners Act* 1958–1977 directing a post-mortem examination is, subject to any order to the contrary by the Coroner, authority for the use, for therapeutic or other medical or scientific purposes, of tissue removed from the body of the deceased person.

30. Conditions of performance of post-mortem. (1) A post-mortem examination under this Act shall not be made upon a body where the Director-General has forbidden its performance.

(2) Where a post-mortem examination under this Act is to be made upon a body which is in any part of a hospital in the charge of a medical superintendent, the examination shall be made in the mortuary of the hospital by a medical practitioner or a person deemed to be a medical practitioner for the purpose of service as an intern at that hospital and, if it is to be made by the latter, shall be made only with the approval of the medical superintendent first had and obtained.

(3) Where a post-mortem examination under this Act is to be made upon a body which is in a place other than a hospital in the charge of a medical superintendent, the examination shall be made by a medical practitioner in a place approved by the Director-General which approval may be general with respect to specified places or particular to meet a particular case.

(4) A person who makes a post-mortem examination upon a body shall do so in a quiet, orderly and decent manner.

PART V—DONATIONS FOR ANATOMICAL PURPOSES

31. Authority for anatomy where body of deceased in a hospital. (1) Subject to this Part, where the body of a deceased person is in a hospital and it appears to a designated officer for the hospital, after making such inquiries as are reasonable in the circumstances, that—

- (a) the deceased person had not, during his lifetime, expressed an objection to the retention after his death of his body—
 - (i) for the purpose of anatomical examination; or
 - (ii) for the purpose of using the body for the study and teaching of the anatomy of the human body; and
- (b) the senior available next of kin of the deceased person has by writing signed by him consented to the retention of the body of the deceased person for any of the purposes referred to in subparagraph (a),

the designated officer may, by writing signed by him, authorize the retention and use of the body of the deceased person for any of the purposes referred to in subparagraph (a).

(2) Where a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances, is unable to ascertain the existence or whereabouts of the next of kin of the deceased person, subsection (1) applies as if subparagraph (b) of that subsection were omitted.

(3) The senior available next of kin of a person if he has no reason to believe that the person has expressed an objection to the retention after his death of his body for any of the purposes referred to in subsection (1) (a), may make it known to a designated officer at any time before the death of the person that he has no objection to the retention after the death of the person of the body of the person for any of such purposes.

(4) Where there are two or more persons of a description referred to in a subparagraph of paragraph (a) or (b) of the definition “senior available next of kin” in section 4, an objection by any one of those persons has effect for the purposes of this section notwithstanding any indication to the contrary by the other or any other of those persons.

32. Authority for anatomy where body of deceased not in a hospital. (1) Subject to this Part, where the body of a deceased person is in a place other than a hospital, the senior available next of kin may, by writing signed by him, authorize the retention of the body of the deceased person—

- (a) for the purpose of anatomical examination; or
- (b) for the purpose of using the body for the study and teaching of the anatomy of the human body,

or for any such purposes.

(2) Where the senior available next of kin of the deceased person has reason to believe that—

- (a) the deceased person had, during his lifetime, expressed an objection to the retention of his body for any of the purposes referred to in subsection (1) and had not withdrawn his objection; or

- (b) another next of kin of the same or a higher order of the classes referred to in a subparagraph of paragraph (a) or (b) of the definition "senior available next of kin" in section 4 has an objection to the retention of the body of the deceased person for any of the purposes referred to in subsection (1),

the senior available next of kin shall not, under subsection (1), authorize the retention and use of the body for any such purpose.

33. Provisions applicable where deceased consents to retention of his body for anatomy. Where a person, during his lifetime, by writing attested by two witnesses at the least, has consented to the retention after his death of his body for any of the purposes referred to in section 31 (1) and the consent had not been revoked by him, the retention of the body of the deceased person in accordance with the consent is hereby authorized.

34. Consent by Coroner. (1) This section applies to a deceased person—

- (a) whose death pursuant to section 12 or 13 of the *Coroners Act* 1958–1977 is required to be reported;
- (b) in respect of whose death a Coroner is directed by the Minister of the Crown for the time being administering the *Coroners Act* 1958–1977 to inquire into the cause and circumstances of the death.

(2) A designated officer for a hospital or a senior available next of kin shall not, in relation to the body of a deceased person to whom this section applies, give an authority under section 31 (1) or 32 (1), as the case may be, except with the consent of a Coroner.

(3) Section 33 does not apply in relation to a deceased person to whom this section applies unless a Coroner has given his consent to the retention of the body of the person.

(4) A Coroner may give a direction, either before or after the death of a person to whom this section applies, that his consent to the retention of the body of the person after the death of the person is not required and, in that event, subsections (2) and (3) do not apply to or in relation to the retention of the body.

(5) A consent or direction by a Coroner under this section may be expressed to be subject to such conditions as are specified in the consent or direction.

(6) A consent or direction may be given orally by a Coroner and, if so given, shall be confirmed in writing within seven days.

35. Effect of authority under this Part. An authority under this Part is sufficient authority for the removal of the body of the deceased person to a school of anatomy, for its acceptance by the school of anatomy and for its retention and use, subject to the regulations made for the purposes of section 39, by the school of anatomy for any of the purposes referred to in section 31 (1).

36. Conditions of performance of anatomical examination. (1) An anatomical examination shall not be performed upon a body where the Director-General has forbidden its performance.

(2) A person who performs an anatomical examination upon a body shall do so in a quiet, orderly and decent manner.

PART VI—SCHOOLS OF ANATOMY

37. Establishment of schools of anatomy. (1) The Governor in Council, by Order in Council, may authorize the establishment of schools of anatomy where the study and practice of anatomy may be carried on in connexion with a university or school of medicine in such places as he thinks fit, and may at any time revoke such authority.

(2) A school of anatomy established under authority granted under the *Medical Act* 1939–1979 which authority, at the commencement of this Part, has not been revoked is hereby declared to be a school of anatomy established under the authority of this section.

(3) The person in charge of a school of anatomy shall, upon receipt at the school of each body removed to the school for anatomical examination, notify the Registrar-General thereof in writing and shall specify therein the sex and, as far as is known, the name and age of the person whose body is the subject of the notification.

38. Inspectors of schools of anatomy. (1) The Governor in Council may appoint inspectors of schools of anatomy.

(2) Any person who, at the commencement of this Part, is an inspector of schools of anatomy appointed under the *Medical Act* 1939–1979 is hereby declared to be an inspector of schools of anatomy appointed under this section.

(3) The Governor in Council may direct the schools of anatomy that every inspector referred to in subsection (1) or (2) is to superintend.

Every such inspector may inspect at any time any school of anatomy of which he is appointed inspector.

39. Regulations in respect of schools of anatomy. The Governor in Council may make regulations for or with respect to—

- (a) the manner in which bodies may be transported to a school of anatomy;
- (b) the conditions subject to which anatomical examinations and the teaching and study of anatomy and the practice of anatomy may be carried out;
- (c) the furnishing of returns and other information by the person in charge of a school of anatomy;
- (d) the precautions to be taken in regard to the receipt and custody of bodies;
- (e) the inspection of schools of anatomy;
- (f) the regulation and control of schools of anatomy;
- (g) the disposal of bodies or any parts thereof.

PART VII—PROHIBITION OF TRADING IN TISSUE

40. Unauthorized buying of tissue prohibited. (1) Subject to this section, a person shall not buy, agree to buy, offer to buy, hold himself out as being willing to buy, or inquire whether a person is willing to sell to the person or another person—

- (a) tissue; or
- (b) the right to take tissue from the body of another person.

Penalty: \$1 000 or imprisonment for six months, or both.

(2) Where he considers it desirable by reason of special circumstances so to do, the Minister may, by a permit in writing, authorize a person, subject to such conditions and restrictions as may be specified in the permit, to buy tissue or the right to take tissue from the body of another person.

(3) Nothing in subsection (1) applies to anything done under and in accordance with a permit granted under subsection (2).

(4) The Minister may at any time, by notice in writing given to a person to whom a permit has been granted under this section, cancel the permit.

(5) Where a permit has been granted under subsection (2) subject to any conditions or restrictions specified therein, a person shall not act on the authority of the permit unless the conditions or restrictions, as the case may be, are or have been complied with.

Penalty: \$500 or imprisonment for three months, or both.

41. Advertisements relating to buying of tissue restricted. A person shall not—

- (a) publish or disseminate by newspaper, other periodical, book, broadcasting, television, cinematograph or other means whatever;
- (b) exhibit to public view in a house, shop or place; or
- (c) deposit in the area, yard, garden or enclosure of a house, shop or place,

an advertisement relating to the buying of tissue or of the right to take tissue from the bodies of persons unless the proposed advertisement has been approved by the Minister and contains a statement to that effect.

Penalty: \$500 or imprisonment for three months, or both.

42. Unauthorized selling of tissue prohibited. (1) Subject to this section, a person shall not sell or agree to sell tissue (including his own tissue) or the right to take tissue from his body.

Penalty: \$500.

(2) Nothing in subsection (1) applies to a sale, or an agreement to sell, to a person who is, or is reasonably believed by the vendor to be, acting subject to, and in accordance with a permit granted under section 40 (2).

43. Proceedings, how taken. Proceedings for an offence against this Part shall not be taken without the written consent of the Minister.

44. Evidentiary provision. A document purporting to be—

- (a) a consent of the Minister to the taking of proceedings for an offence against this Part;
- (b) a permit granted under section 40 (2); or
- (c) an approval referred to in section 41,

shall upon its production in any proceedings be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

PART VIII—DEFINITION OF DEATH

45. When death occurs. (1) For the purposes of this Act, a person has died when there has occurred—

- (a) irreversible cessation of circulation of blood in the body of the person; or
- (b) irreversible cessation of all function of the brain of the person certified in accordance with subsection (2).

(2) The irreversible cessation referred to in subsection (1) (b) shall be certified by two medical practitioners, each of whom has carried out a clinical examination of the person and one of whom is a specialist neurologist or neurosurgeon or has such other qualifications as are prescribed for the purposes of this section, and neither of whom is—

- (a) the medical practitioner who is attending a person who is to be the recipient of tissue from the body of the firstmentioned person;
- (b) the designated officer who gives an authority for the purposes of this Act; or
- (c) a medical practitioner who is proposing to remove tissue from the body of a deceased person.

(3) A medical practitioner shall not give a certificate in accordance with subsection (2) unless he has carried out a clinical examination of the person who has died.

Penalty: \$500.

(4) A person who is of a description referred to in subparagraph (a), (b) or (c) of subsection (2) shall not issue a certificate referred to in that subsection.

Penalty: \$500.

PART IX—MISCELLANEOUS

46. Exclusion of liability of persons acting in pursuance of consent, etc. (1) Subject to this Act, a person is not liable in any proceedings whether civil or criminal—

- (a) for any act done under authority conferred or purporting to have been conferred by any consent or agreement given for the purposes of this Act or by or under this Act, or done in connexion with exercising such authority; or
- (b) for any omission to do an act that might have been done under or in connexion with an authority referred to in subparagraph (a),

where he has done the act or made the omission in good faith, save where negligence or breach of duty imposed by law on his part is established in connexion with his doing the act or his making the omission.

(2) Without limiting the generality of the expression “ in good faith ”, a person shall be regarded as having done an act referred to in subsection (1) in good faith if the person establishes that—

- (a) he had an honest and reasonable belief that a consent or an agreement or authority required by this Act for the doing of the act had been given; or

- (b) he had no reason to doubt that a consent or an agreement or authority purporting to have been given in accordance with this Act for the doing of the act was a consent or an agreement or authority given in accordance with this Act.

47. Act does not prevent specified removals of tissue, etc. (1) Nothing in this Act (other than section 46) applies to or in relation to—

- (a) the removal of tissue from the body of a living person—
- (i) in the course of a procedure or operation carried out, for the benefit of the person, by a medical practitioner with the consent, express or implied, given by or on behalf of the person; or
 - (ii) in circumstances such that the removal of the tissue is necessary for the preservation of the life of the person;
- (b) the use or disposal of tissue so removed;
- (c) the embalming of the body of a deceased person; or
- (d) the preparation, including the restoration of any disfigurement or mutilation, of the body of a deceased person for the purpose of interment or cremation.

48. Offences in relation to removal of tissue. (1) A person shall not—

- (a) remove tissue (other than blood) from the body of a living person for use for any of the purposes referred to in section 10 or 11 except in pursuance of a consent or an authority that is, under Division 3 of Part II, sufficient authority for the person to remove the tissue;
- (b) remove blood from the body of a living person for any of the purposes referred to in section 17 except in pursuance of a consent that is, under Division 4 of Part II, sufficient authority for the removal of the blood;
- (c) remove tissue from the body of a deceased person for any of the purposes referred to in section 22 (1) or 23 (1)—
- (i) except in pursuance of an authority that is, under Part III, sufficient authority for the person to remove the tissue; and
 - (ii) if the deceased person is one in relation to whom section 45 (1) (b) is relevant—except where a certificate given in relation to that person in accordance with section 45 (2) is in existence;
- (d) conduct a post-mortem examination of the body of a deceased person except in pursuance of an authority that is, under Part IV, sufficient authority for the person to conduct the post-mortem;
- (e) —
- (i) remove the body of a deceased person to a school of anatomy;
 - (ii) retain or use the body of a deceased person for any of the purposes referred to in section 31 (1),
except in pursuance of an authority that is, under Part V, sufficient authority for the removal, retention or use of the body;
- (f) carry out an anatomical examination of the body of a deceased person otherwise than at a school of anatomy.

Penalty: \$500.

- (2) A person who—
 - (a) gives an authority under this Act without having made the inquiries that he is required by this Act to make;
 - (b) makes a false statement in a certificate given for the purposes of this Act; or
 - (c) contravenes or fails to comply with a provision of Division 5 of Part II,

is guilty of an offence against this Act.

Penalty: \$500.

- (3) Nothing in subsection (1) or (2) applies to or in relation to—
 - (a) anything done in pursuance of an order by a Coroner under the *Coroners Act 1958–1977*; or
 - (b) any other act authorized by law.

49. Disclosure of information. (1) Subject to this section, a person to whom this section applies shall not disclose or give to any other person any information or document whereby the identity of a person or a deceased person—

- (a) from whose body tissue has been removed for the purpose of transplantation or for use for other therapeutic purposes or for other medical or scientific purposes;
- (b) with respect to whom or with respect to whose body a consent or an authority has been given under this Act; or
- (c) into whose body tissue has been, is being, or may be, transplanted,

may become publicly known.

Penalty: \$500.

- (2) This section applies—
 - (a) where a consent has been given in accordance with this Act—to the designated officer who gave a certificate in relation to the consent;
 - (b) where an authority has been given in accordance with this Act by a designated officer for a hospital—to the designated officer;
 - (c) where tissue has been removed from the body of a person or a deceased person—the medical practitioner who removed the tissue and, if the tissue was removed at a hospital, each person who was employed at the hospital at the time of the removal of the tissue or has since been employed at the hospital;
 - (d) where tissue has been transplanted into the body of a person—to the medical practitioner who performed the transplantation and, if the tissue was transplanted at a hospital, each person who was employed at the hospital at the time of the transplantation or has since been employed at the hospital; and
 - (e) where it is proposed that tissue will be transplanted into the body of a person—to the medical practitioner who is to perform the transplantation and, if the tissue is to be transplanted at a hospital, each person who is employed at the hospital or who becomes so employed.

(3) Subsection (1) does not apply to or in relation to information disclosed—

- (a) in pursuance of an order of a Court or when otherwise required by law;
- (b) for the purposes of hospital administration or bona fide medical research;
- (c) with the consent of the person to whom the information relates;
- (d) when the circumstances in which the disclosure is made are such that the disclosure is or would be privileged.

50. Proceedings for offences. (1) A person who contravenes or fails to comply with a provision of this Act is guilty of an offence against this Act.

(2) Proceedings in respect of offences against this Act shall be by way of summary proceedings under the *Justices Act* 1886–1979.

(3) Proceedings in respect of an offence against this Act may be commenced within 12 months after the commission of the offence or within six months after the commission of the offence comes to the knowledge of the complainant whichever period is the later to expire.

(4) A person who is guilty of an offence against this Act is liable, if a specific penalty is not otherwise prescribed, to a penalty of \$1 000.

51. Offence provisions of The Criminal Code not affected. The provisions of this Act relating to offences are in addition to and not in substitution for or derogation of the provisions of *The Criminal Code* or any other Act.

52. Regulations. (1) The Governor in Council may make regulations, not inconsistent with this Act, for or with respect to all matters required or permitted by this Act to be prescribed and all matters that, in the opinion of the Governor in Council are necessary or convenient for the proper administration of this Act or to achieve the objects and purposes of this Act.

(2) The regulations may impose penalties and punishments for any breach thereof and, where a pecuniary penalty is imposed, may be recovered by way of summary proceedings under the *Justices Act* 1886–1979 and in any other case may be enforced in such manner as may be provided for in the regulations.

(3) A regulation may impose a penalty not exceeding \$500 for a breach of that regulation or any other regulation.

53. Savings. (1) If at the commencement of this Act there is in existence a writing executed by a person for the purpose of section 59 of the *Medical Act* 1939–1979, which writing, at the death of that person, has not been cancelled or revoked, then, save where the nearest surviving relative of that person has informed the person who has lawful possession of the body of that person that he does not desire an anatomical examination to be performed on the body, such writing shall be sufficient authority for the removal of the body to a school of anatomy, for its acceptance by the school of anatomy and for its retention and use, subject to the regulations made for the purposes of section 39, by the school of anatomy for any of the purposes referred to in section 31 (1).

(2) The provisions of sections 59 (3) and 60 (2) of the *Medical Act 1939-1979* shall continue to have effect in relation to a deceased person who had executed a writing referred to in subsection (1) as if those sections had not been repealed by this Act.

54. Repeal and amendments. (1) The *Sale of Human Blood Act 1974* is hereby repealed.

(2) The *Medical Act 1939-1979* is amended by—

(a) in section 2,

(i) omitting the expression “PART VIII—REGULATED PRACTICES (Section 51)” and substituting the expression “PART VIII—MISCELLANEOUS PROVISIONS (Sections 51, 70B, 71)—”;

(ii) omitting the expression “PART IX—ANATOMY (Sections 54-71)” and substituting the following expressions:—

“Section 70B—Operations when patient incapable of consenting;

Section 71—“Medical practitioner” to include specialist;”;

(b) in the heading appearing immediately before section 51, omitting the word “Practices” and substituting the word “Provisions”;

(c) omitting the heading “PART IX—ANATOMY” appearing immediately before section 54;

(d) repealing sections 54-70A, both inclusive.

(3) The *Medical Act 1939-1979*, as amended by this Act may be cited as the *Medical Act 1939-1979*.

(4) The *Health Act 1937-1979* is amended by repealing section 168B.

(5) The *Health Act 1937-1979*, as amended by this Act, may be cited as the *Health Act 1937-1979*.