

Queensland



ANNO TRICESIMO TERTIO

ELIZABETHAE SECUNDAE REGINAE



No. 21 of 1984

**An Act to amend the Transplantation and Anatomy Act
1979 in certain particulars**

[ASSENTED TO 22ND MARCH, 1984]

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:—

1. Short title and citation. (1) This Act may be cited as the *Transplantation and Anatomy Act Amendment Act 1984*.

(2) The *Transplantation and Anatomy Act 1979* is in this Act referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Transplantation and Anatomy Act 1979–1984*.

2. Amendment of s. 3. Arrangement of Act. Section 3 of the Principal Act is amended by—

(a) in the expression “(ss. 8–21)” omitting the expression “21” and substituting the expression “21A”;

(b) inserting after the heading “Division 2—Donations by Adults;” the heading “Division 2A—Donations by Children;”;

(c) inserting after the heading “Division 5—Revocation of Consent or Agreement;” the heading “Division 6—Regulations;”.

3. Amendment of s. 4. Interpretation. Section 4 of the Principal Act is amended by—

(a) in subsection (1), in the definition “hospital” inserting after subparagraph (c) the following subparagraph:—

“ (d) the Mater Misericordiae Public Hospital at Brisbane;”;

(b) inserting after subsection (2) the following subsection:—

“ (3) A person who is acknowledged by general repute at the death of a deceased person to be a member of any of the classes of persons specified in the term “senior available next of kin” shall be deemed to be a member of that class without further inquiry.”.

4. New Division 2A of Part II. The Principal Act is amended by inserting after section 12 the following heading and sections:—

Division 2A—Donations by Children

12A. 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 child.

12B. Consent by parent to removal of regenerative tissue for transplantation. A person who—

(a) is a parent of a child;

(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 the body of the child of regenerative tissue specified in the consent, for the purpose of the

transplantation of the tissue to the body of a brother, sister or parent of the child.

12C. Certificate of agreement by a child who is capable of understanding. A medical practitioner may, by writing signed by him in the presence of a designated officer, certify that at the time of the certification—

- (a) he had explained to a child referred to in section 12B the nature and effect of the removal from the body of the child of tissue specified in the consent and the nature of the transplantation;
- (b) the child understood the nature and effect of the removal of the tissue and the nature of the transplantation; and
- (c) the child was in agreement with the consent given under section 12B.

12D. Certifications where child is not capable of understanding by reason of age. Where a child referred to in section 12B, by reason of his age, is not capable of understanding the nature and effect of the removal of the tissue and the nature of the transplantation, each of 3 medical practitioners may, by writing signed by him in the presence of a designated officer, certify that, at the time of certification—

- (a) the child, by reason of his age, was not capable of understanding the nature and effect of the removal and the nature of the transplantation;
- (b) the brother, sister or parent of the child, in his opinion, is likely to die unless the tissue specified in the consent is transplanted to the body of that brother, sister or, as the case may be, parent; and
- (c) the risk to the child, in his opinion, is minimal:

Provided that one of the 3 medical practitioners shall be a specialist paediatrician and another shall be a specialist anaesthetist.

12E. Designated officer to give certificate. The designated officer in whose presence a consent and certificate or, as the case may be, certificates is or are 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 the person was a parent of the child referred to in the consent;
 - (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 to in section 12B (c) has been duly furnished to the person;

- (c) that each certificate given by a medical practitioner under this Division in respect of the consent was given in his presence; and
- (d) that he is satisfied that each medical practitioner who gave such a certificate did so after making such inquiries and examination as are necessary.”.

5. New s. 14A. Consent under s. 12B. The Principal Act is amended by inserting after section 14 the following section:—

“ **14A. Consent under s. 12B.** Subject to section 15, a consent under section 12B is, where a certificate has been given in accordance with section 12C or certificates have been given in accordance with section 12D and a certificate has been given in accordance with section 12E in relation to the consent, certificate or certificates, sufficient authority for a medical practitioner other than—

- (a) the medical practitioner by whom the medical advice referred to in section 12B (c) or the explanation referred to in section 12C (a) was furnished; and
- (b) the designated officer by whom the certificate referred to in section 12E was given,

to remove, at any time after the expiration of 24 hours from the time at which the latest relevant consent under section 12B was given, the regenerative tissue referred to in the consent for the purpose of the transplantation of the tissue to the body of the brother, sister or parent of the child referred to in the consent.”.

6. Amendment of s. 15. When consent is not sufficient authority. Section 15 of the Principal Act is amended by—

- (a) omitting the expression “ or 11 ” and substituting the expression “, 11 or 12B ”;
- (b) in subparagraph (b), inserting after the expression “ 12 ” the expression “, 12C, 12D or 12E ”;
- (c) inserting after the word “ statement ” in subparagraph (b), the following expression and subparagraph:—

“;

- (c) in the case of a document that purports to be a consent given in accordance with section 12B—the medical practitioner has been informed that a parent of the child or the child is not, or is no longer, in agreement with the removal and transplantation of the tissue”.

7. Amendment of s. 21. Revocation of consent. Section 21 of the Principal Act is amended by—

- (a) in subsection (1),

(i) inserting after the word “ consent ” where firstly occurring the words “ or agrees with anything consented to ”;

(ii) inserting after the word “ consent ” where secondly, thirdly and fourthly occurring the words “ or agreement ” in each case;

(b) in subsection (2), inserting after the word “ consent ” where thrice occurring the words “ or agreement ” in each case;

(c) in subsection (3),

(i) inserting after the word “ consent ” where firstly and thirdly occurring the words “ or agreement ” in each case;

(ii) inserting after the word “ consent ” where secondly occurring the words “ and agreement ”;

(d) in subsection (4),

(i) inserting after the word “ consent ” where firstly, thirdly and fourthly occurring the words “ or agreement ” in each case;

(ii) inserting after the word “ consent ” where secondly occurring the words “ or the instrument of agreement (if any) ”;

(iii) in subparagraph (b) inserting after the expression “ 12 ” the expressions “ 12c, 12d or 12e ”.

8. New Division 6 of Part II. Regulations. The Principal Act is amended by inserting after section 21 the following heading and section:—

“ Division 6—Regulations

21A. Regulations in respect of donations of tissue by living persons. The Governor in Council may make regulations for or with respect to—

(a) the conditions subject to which transplantations of tissue from living persons may be carried out;

(b) the precautions to be taken in regard to the removal or storage of tissue removed from living persons;

(c) the regulation and control of premises where transplantations of tissue from living persons may be carried out.”.

9. Amendment of s. 37. Establishment of schools of anatomy. Section 37 of the Principal Act is amended by omitting subsection (3).

10. Amendment of s. 42. Unauthorized selling of tissue prohibited. Section 42 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

“ (1) Subject to this section, a person shall not sell, agree to sell, offer to sell, hold himself out as being willing to sell, or inquire whether a person is willing to buy from the person or another person—

(a) tissue (including his own tissue);

(b) the right to take tissue from his body or the body of that other person.

Penalty: \$500.”.