

Queensland



# TRANSPLANTATION AND ANATOMY ACT 1979

**Reprinted as in force on 7 March 2002  
(includes amendments up to Act No. 78 of 2001)**

**Warning—see last endnote for uncommenced amendments**

**Reprint No. 2E**

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# Information about this reprint

This Act is reprinted as at 7 March 2002. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

# Queensland



## TRANSPLANTATION AND ANATOMY ACT 1979

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# TRANSPLANTATION AND ANATOMY ACT 1979

[as amended by all amendments that commenced on or before 7 March 2002]

**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**

## PART 1—PRELIMINARY

### 1 Short title

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

### 4 Interpretation

(1) In this Act—

“**chief health officer**” means the chief health officer under the *Health Act 1937*.

“**coroner**” means a coroner within the meaning of the *Coroners Act 1958*.

“**designated officer**” means a person who pursuant to section 6 is declared to be or is appointed a designated officer.

“**hospital**” means—

- (a) any public sector hospital under the *Health Services Act 1991*;
- (c) a private hospital under the *Private Health Facilities Act 1999* declared under section 5 to be a hospital under this Act; or
- (d) the Mater Misericordiae Public Hospital at Brisbane.

“**next of kin**” means—

- (a) in relation to a child—a person referred to in paragraph (a)(i) to (iv) of the definition “senior available next of kin”; or

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- (b) in relation to any other person—a person referred to in paragraph (b)(i) to (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”** means—

- (a) an organ, blood or part of—
- (i) a human body; or
  - (ii) a human foetus; or
- (b) a substance extracted from an organ, blood or part of—
- (i) a human body; or
  - (ii) a human foetus;

but does not include—



- (c) immunoglobulins; or
- (d) laboratory reagents, or reference and control materials, derived wholly or in part from pooled human plasma.

(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.

(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.

## **5 Declaration of hospitals**

The Governor in Council, by regulation, may declare a private hospital under the *Private Health Facilities Act 1999* for which a licence under that Act is in force (if the Governor in Council 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.

## **6 Designated officers**

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

(2) 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.

## **PART 2—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; and
- (b) is of sound mind;<sup>1</sup> and
- (c) is, in the light of medical advice furnished by a medical practitioner, prepared to do so;

may, by writing signed in the presence of a designated officer, consent to the removal from his or her 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

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<sup>1</sup> For an adult with impaired capacity, see the *Guardianship and Administration Act 2000*, section 69 which provides that, in particular circumstances, the Guardianship and Administration Tribunal may consent to removal of tissue from the adult for donation to another person.

- (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; and
- (b) is of sound mind;<sup>2</sup> and
- (c) is, in the light of medical advice furnished by a medical practitioner, prepared to do so;

may, by writing signed 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 or her 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 the designated officer's presence;
- (b) that the designated officer is satisfied—
  - (i) that, at the time the consent was given the person had attained the age of 18 years; and
  - (ii) that, at that time, the person was of sound mind; and

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2 For an adult with impaired capacity, see the *Guardianship and Administration Act 2000*, section 69 which provides that, in particular circumstances, the Guardianship and Administration Tribunal may consent to removal of tissue from the adult for donation to another person.

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

may, by writing signed 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 in the presence of a designated officer, certify that at the time of the certification—

- (a) the medical practitioner 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; and
- (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**

(1) Where a child referred to in section 12B, by reason of his or her 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 in the presence of a designated officer, certify that, at the time of certification—

- (a) the child, by reason of his or her age, was not capable of understanding the nature and effect of the removal and the nature of the transplantation; and
- (b) the brother, sister or parent of the child, in the medical practitioner's 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 the medical practitioner's opinion, is minimal.

(2) However, 1 of the 3 medical practitioners shall be a specialist paediatrician and another shall be a specialist anaesthetist.

(3) In this section—

**“specialist anaesthetist”** means a person registered under the *Medical Practitioners Registration Act 2001* as a specialist registrant in the speciality of anaesthetics.

**“specialist paediatrician”** means a person registered under the *Medical Practitioners Registration Act 2001* as a specialist registrant in the speciality of paediatrics.

## **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 the designated officer's presence;
- (b) that the designated officer is satisfied—
  - (i) that the person was a parent of the child referred to in the consent; and

- (ii) that, at that time, the person was of sound mind; and
- (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 the designated officer's presence; and
- (d) that the designated officer is satisfied that each medical practitioner who gave such a certificate did so after making such inquiries and examination as are necessary.

### *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.

#### **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.

#### **15 When consent is not sufficient authority**

A document that purports to be a consent given in accordance with section 10, 11 or 12B 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, 12C, 12D or 12E in relation to that document contains a false statement;
- (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.

***Division 4—Blood transfusions*****16 Interpretation**

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 or her 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.<sup>3</sup>

**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

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<sup>3</sup> For an adult with impaired capacity, see the *Guardianship and Administration Act 2000*, section 69 which provides that, in particular circumstances, the Guardianship and Administration Tribunal may consent to removal of tissue from the adult for donation to another person.



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 the medical practitioner's 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 the medical practitioner 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 or agrees with anything consented to for the purposes of this part may at any time thereafter revoke that consent or agreement by indicating, either orally or in writing—

- (a) where the donor, in relation to that consent or agreement, is a patient in a hospital—
  - (i) to a designated officer for that hospital; or
  - (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 or agreement is revoked.

(2) Where—

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

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

(3) Where a person revokes his or her consent or agreement 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 or her, after making such inquiries (if any) as are reasonable in the circumstances, that a medical practitioner is proposing to rely on the consent and agreement in connection with the removal of tissue

from the body of the donor, inform that medical practitioner forthwith that the consent or agreement has been revoked.

(4) Where a consent or agreement is revoked, a person who has in his or her possession the instrument of consent or the instrument of agreement (if any) 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 or agreement has been revoked, surrender—

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

to the person who gave the consent or agreement.

### **PART 3—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 or her lifetime, orally expressed the wish for, or orally consented to, the removal after death of tissue from his or her 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 signed writing, authorise 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 authorised by subsection (1) to give an authority in respect of the body of the deceased person;
- (b) the deceased person had not, during his or her lifetime, expressed an objection to the removal of tissue from his or her 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 signed writing, authorise 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 paragraph (c) were omitted.

(4) The senior available next of kin of a person if he or she has no reason to believe that the person has expressed an objection to the removal after the person's death of tissue from the person's 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 the senior available next of kin 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 2 or more persons of a description referred to in section 4, definition "senior available next of kin", paragraph (a)(i) to (iv) or (b)(i) to (iv), an objection by any 1 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 or her lifetime, by signed writing consented to the removal after death of tissue from his or her body for any of the purposes referred to in subsection (1) and the consent had not been revoked by the deceased person, the removal of tissue from the body of the deceased person in accordance with the consent for any of those purposes is hereby authorised.

## **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, a senior available next of kin of the deceased person

may, by signed writing, authorise 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 or her lifetime, expressed an objection to the removal of tissue from his or her body and had not withdrawn that objection; or
- (b) another next of kin of the same or a higher order of the classes in section 4, definition “senior available next of kin”, paragraph (a)(i) to (iv) or (b)(i) to (iv) 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), authorise the removal of tissue from the body of the deceased person.

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

## **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* is required to be reported;
- (b) in respect of whose death a coroner is directed by the Minister for the time being administering the *Coroners Act 1958* 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 authorise the removal of tissue from the body of a deceased person to whom this section applies unless a coroner has consented 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 consented 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 or her 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 7 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 7 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 1 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.

## **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 4—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 or her lifetime, orally expressed the wish for, or orally consented to, a post-mortem examination of his or her body; and

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

the designated officer may, by signed writing, authorise 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 authorised by subsection (1) to give an authority in respect of the body of the deceased person; and

(b) the deceased person had not, during his or her lifetime, expressed an objection to the post-mortem examination of his or her 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 signed writing, authorise 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 paragraph (c) were omitted.

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

(5) Where there are 2 or more persons having a description referred to in section 4, definition “senior available next of kin”, paragraph (a)(i) to (iv) or (b)(i) to (iv), an objection by any 1 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 or her lifetime, by signed writing consented to a post-mortem examination of his or her body and the consent had not been revoked by the deceased person, a post-mortem examination of the body of the deceased person in accordance with the consent is hereby authorised.

## **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 signed writing, authorise 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 or her lifetime, expressed an objection to a post-mortem examination of his or her body and had not withdrawn that objection; or
- (b) another next of kin of the same or a higher order of the classes in section 4, definition “senior available next of kin”, paragraph (a)(i) to (iv) or (b)(i) to (iv) 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), authorise the post-mortem examination of the body of the deceased person.

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

## **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* is required to be reported;
- (b) in respect of whose death a coroner is directed by the Minister for the time being administering the *Coroners Act 1958* 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 authorise a post-mortem examination of the body of a deceased person to whom this section applies unless a coroner has consented 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 consented 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 or her 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 7 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 authorised 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* 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 chief health officer 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 who is an intern under the *Medical Practitioners Registration Act 2001* 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 chief health officer 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 5—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 or her lifetime, expressed an objection to the retention after the person's death of his or her 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 signed writing consented to the retention of the body of the deceased person for any of the purposes referred to in paragraph (a);

the designated officer may, by signed writing, authorise the retention and use of the body of the deceased person for any of the purposes referred to in paragraph (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 paragraph (b) were omitted.

(3) The senior available next of kin of a person if the senior available next of kin has no reason to believe that the person has expressed an objection to the retention after the person's death of his or her 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 the senior available next of kin 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 2 or more persons of a description referred to in section 4, definition "senior available next of kin", paragraph (a)(i) to (iv) or (b)(i) to (iv), an objection by any 1 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 signed writing, authorise 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 or her lifetime, expressed an objection to the retention of the person's body for any of the

purposes referred to in subsection (1) and had not withdrawn his or her objection; or

- (b) another next of kin of the same or a higher order of the classes referred to in section 4, definition “senior available next of kin”, paragraph (a)(i) to (iv) or (b)(i) to (iv), 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), authorise the retention and use of the body for any such purpose.

### **33 Provisions applicable where deceased consents to retention of his or her body for anatomy**

Where a person, during his or her lifetime, by writing attested by 2 witnesses at the least, has consented to the retention after the person’s death of his or her body for any of the purposes referred to in section 31(1) and the consent had not been revoked by the person, the retention of the body of the deceased person in accordance with the consent is hereby authorised.

### **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* is required to be reported;
- (b) in respect of whose death a coroner is directed by the Minister for the time being administering the *Coroners Act 1958* 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 consented 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 the coroner’s 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 7 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 chief health officer 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 6—SCHOOLS OF ANATOMY**

### **37 Establishment of schools of anatomy**

(1) The Governor in Council may authorise the establishment of schools of anatomy where the study and practice of anatomy may be carried on in connection with a university or school of medicine in such places as the Governor in Council thinks fit.

(2) A school of anatomy established under authority granted under the *Medical Act 1939* 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.

**38 Inspectors of schools of anatomy**

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

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

(4) Every such inspector may inspect at any time any school of anatomy of which the inspector is appointed inspector.

**PART 7—PROHIBITION OF TRADING IN TISSUE****40 Unauthorised buying of tissue prohibited**

(1) Subject to this section, a person shall not buy, agree to buy, offer to buy, hold himself or herself 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.

Maximum penalty—20 penalty units or 6 months imprisonment.

(2) Where the Minister considers it desirable by reason of special circumstances so to do, the Minister may, by a permit in writing, authorise 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.

Maximum penalty—10 penalty units or 3 months imprisonment.

**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; or
- (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.

Maximum penalty—10 penalty units or 3 months imprisonment.

**42 Unauthorised selling of tissue prohibited**

(1) Subject to this section, a person shall not sell, agree to sell, offer to sell, hold himself or herself 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 or her own tissue);
- (b) the right to take tissue from his or her body or the body of that other person.

Maximum penalty—10 penalty units or 3 months imprisonment.

(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; or

- (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 of the matters contained therein.

## **PART 8—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 2 medical practitioners, each of whom has carried out a clinical examination of the person and 1 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 first mentioned person; or
- (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 the medical practitioner has carried out a clinical examination of the person who has died.

Maximum penalty—10 penalty units.

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



Maximum penalty—10 penalty units.

(5) In this section—

“**specialist neurologist**” means a person registered under the *Medical Practitioners Registration Act 2001* as a specialist registrant in the speciality of neurology.

“**specialist neurosurgeon**” means a person registered under the *Medical Practitioners Registration Act 2001* as a specialist registrant in the speciality of neurosurgery.

## PART 9—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 connection with exercising such authority; or
- (b) for any omission to do an act that might have been done under or in connection with an authority referred to in paragraph (a);

where the person has done the act or made the omission in good faith, save where negligence or breach of duty imposed by law on the person’s part is established in connection with doing the act or 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) the person 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) the person 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; or
- (b) the use or disposal of tissue so removed; or
- (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 part 2, division 3, 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 part 2, division 4, 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 3, 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;

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- (d) conduct a post-mortem examination of the body of a deceased person except in pursuance of an authority that is, under part 4, 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 5, 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.

Maximum penalty—10 penalty units.

(2) A person who—

- (a) gives an authority under this Act without having made the inquiries that the person is required by this Act to make; or
- (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 part 2, division 5;

is guilty of an offence against this Act.

Maximum penalty—10 penalty units.

(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*; or
- (b) any other act authorised by law.

#### **48A Offence to give false or misleading information**

(1) A person shall not, in connection with a proposal to remove tissue from any body for the purpose of transplantation or transfusion or for use for other therapeutic, medical or scientific purposes, knowingly furnish information that is false or misleading concerning the suitability of the body for removal of the tissue for the purpose in question.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) It is immaterial for the purposes of subsection (1) whether the body from which tissue is to be removed is that of a living person or a deceased person.

#### **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; or
- (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.

Maximum penalty—10 penalty units.

(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; and
- (b) where an authority has been given in accordance with this Act by a designated officer for a hospital—to the designated officer; and
- (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; and
- (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) for the purpose of investigating whether an offence defined in section 48A has been committed;
- (e) when the circumstances in which the disclosure is made are such that the disclosure is or would be privileged.

## **50 Proceedings for offences**

Proceedings in respect of an offence against this Act may be commenced within 12 months after the commission of the offence or within 6 months after the commission of the offence comes to the knowledge of the complainant whichever period is the later to expire.

## **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 under this Act.
- (2) A regulation may be made for or about the following matters—
  - (a) the conditions under which transplantations of tissue from living persons may be carried out;

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- (b) the precautions to be taken for the removal or storage of tissue removed from living persons;
- (c) the regulation of premises where transplantations of tissue from living persons may be carried out;
- (d) how bodies are to be transported to a school of anatomy;
- (e) the conditions under which—
  - (i) the teaching, study and practice of anatomy; and
  - (ii) anatomical examinations;are to be carried out;
- (f) the giving of returns and other information by the person in charge of a school of anatomy;
- (g) the precautions to be taken for receiving and keeping bodies at a school of anatomy;
- (h) the inspection of schools of anatomy;
- (i) the regulation of schools of anatomy;
- (j) the disposal of bodies or parts of bodies by schools of anatomy;
- (k) prescribing offences for contraventions of the regulations and fixing a maximum penalty of not more than 10 penalty units for a contravention.

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 7 March 2002. Future amendments of the Transplantation and Anatomy Act 1979 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	proc	= proclamation
ch	= chapter	prov	= provision
def	= definition	pt	= part
div	= division	pubd	= published
exp	= expires/expired	R[X]	= Reprint No.[X]
gaz	= gazette	RA	= Reprints Act 1992
hdg	= heading	reloc	= relocated
ins	= inserted	renum	= renumbered
lap	= lapsed	rep	= repealed
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

## 4 Table of earlier reprints

### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 79 of 1993	22 November 1994
2	to Act No. 58 of 1995	20 December 1995
2A	to Act No. 41 of 1998	21 December 1998
2B	to Act No. 16 of 2000	21 July 2000
2C	to Act No. 16 of 2000	14 December 2000
2D	to Act No. 78 of 2001	28 February 2002

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	2
Obsolete and redundant provisions	1
Renumbered provisions	1

## 6 List of legislation

### **Transplantation and Anatomy Act 1979 No. 74**

date of assent 21 December 1979

commenced 12 April 1980 (proc pubd gaz 12 April 1980 p 1344)

amending legislation—

### **Transplantation and Anatomy Act Amendment Act 1984 No. 21**

date of assent 22 March 1984

commenced on date of assent

### **Transplantation and Anatomy Act Amendment Act 1984 (No. 2) No. 90**

date of assent 16 November 1984

commenced on date of assent

### **Statute Law (Miscellaneous Provisions) Act 1989 No. 103 s 3 sch**

date of assent 25 October 1989

commenced on date of assent (see s 2(1))

### **Health Services Act 1991 No. 24 s 7.3 sch 3**

date of assent 5 June 1991

commenced 1 July 1991 (proc pubd gaz 22 June 1991 p 974)



**Health Legislation Amendment Act 1993 No. 79 pts 1, 17**

date of assent 17 December 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 14 March 1994 (1994 SL No. 84)

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**Health and Other Legislation Amendment Act 1998 No. 41 ss 1, 2(2), 14(1) sch 1**

date of assent 27 November 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 21 December 1998 (1998 SL No. 346)

**Private Health Facilities Act 1999 No. 60 ss 1–2, 165 sch 2**

date of assent 29 November 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 30 November 2000 (automatic commencement under AIA s 15DA(2))

**Guardianship and Administration Act 2000 No. 8 ss 1–2, 263 sch 3**

date of assent 20 April 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (2000 SL No. 125)

**Mental Health Act 2000 No. 16 ss 1–2, 590 sch 1 pt 2**

date of assent 8 June 2000

ss 1–2, 590 commenced on date of assent (see s 2(1))

remaining provisions commenced 28 February 2002 (2002 SL No. 27) (provisions were to commence 8 June 2002 (automatic commencement under AIA s 15DA(2) (2001 SL No. 46 s 2)))

**Medical Practitioners Registration Act 2001 No. 7 ss 1–2, 302 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2002 (2002 SL No. 30)

**Health Legislation Amendment Act 2001 No. 78 pts 1–2, 222 sch 3**

date of assent 15 November 2001

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (see s 2)

## 7 List of annotations

**Act binds all persons**

s 2           prev s 2 om R2 (see RA s 37)  
               pres s 2 ins 2001 No. 78 s 223

**Arrangement of Act**

s 3           amd 1984 No. 21 s 2  
               om R1 (see RA s 36)

**Interpretation**

- s 4**            amd 1984 No. 21 s 3(b)  
                  def “**chief health officer**” ins 1995 No. 58 s 4 sch 1  
                  def “**child**” om 1995 No. 58 s 4 sch 1  
                  def “**Director-General**” om 1995 No. 58 s 4 sch 1  
                  def “**hospital**” amd 1984 No. 21 s 3(a); 1991 No. 24 s 7.3 sch 3; 1999 No. 60  
    s 165 sch 2; 2000 No. 16 s 590 sch 1 pt 2  
                  def “**medical practitioner**” om 1993 No. 79 s 110(1)  
                  def “**Minister**” om 1993 No. 79 s 110(1)  
                  def “**next of kin**” amd 1999 No. 60 s 165 sch 2  
                  def “**tissue**” sub 1993 No. 79 s 110

**Declaration of hospitals**

- s 5**            amd 1993 No. 79 s 111; 1999 No. 60 s 165 sch 2

**Designated officers**

- s 6**            amd 1995 No. 58 s 4 sch 1; 1998 No. 41 s 14(1) sch 1

**Administration**

- s 7**            om 1993 No. 79 s 112

**Consent by adult living donor to removal of regenerative tissue**

- s 10**            amd 2000 No. 8 s 263 sch 3

**Consent by adult living donor to removal of non-regenerative tissue for transplantation**

- s 11**            amd 2000 No. 8 s 263 sch 3

**Designated officer to give certificate in relation to consent**

- s 12**            amd 2001 No. 78 s 222 sch 3

**Division 2A—Donations by children**

- div hdg**        ins 1984 No. 21 s 4

**Blood transfusions not subject to this division**

- s 12A**          ins 1984 No. 21 s 4

**Consent by parent to removal of regenerative tissue for transplantation**

- s 12B**          ins 1984 No. 21 s 4

**Certificate of agreement by a child who is capable of understanding**

- s 12C**          ins 1984 No. 21 s 4

**Certifications where child is not capable of understanding by reason of age**

- s 12D**          ins 1984 No. 21 s 4  
    amd 2001 No. 7 s 302 sch 2

**Designated officer to give certificate**

- s 12E**          ins 1984 No. 21 s 4

**Consent under s 12B**

- s 14A**          ins 1984 No. 21 s 5

**When consent is not sufficient authority**

- s 15**            amd 1984 No. 21 s 6

**Consents by adults to removal of blood**

s 17      amd 2000 No. 8 s 263 sch 3

**Revocation of consent**

s 21      amd 1984 No. 21 s 7; 1989 No. 103 s 3 sch

**Division 6—Regulations**div hdg    ins 1984 No. 21 s 8  
            om 1993 No. 79 s 113**Regulations in respect of donations of tissue by living persons**s 21A     ins 1984 No. 21 s 8  
            om 1993 No. 79 s 113**Authority to remove tissue where body of deceased in a hospital**s 22      amd 2001 No. 78 s 224**Consent by coroner**s 24      amd 2001 No. 78 ss 225, 222 sch 3**Effect of authority under this part**s 25      amd 2001 No. 78 s 226**Authority for post-mortem where body of deceased in a hospital**s 26      amd 2001 No. 78 s 227**Consent by coroner**s 28      amd 2001 No. 78 ss 228, 222 sch 3**Effect of authority under this part**s 29      amd 2001 No. 78 s 229**Conditions of performance of post-mortem**

s 30      amd 1995 No. 58 s 4 sch 1; 2001 No. 7 s 302 sch 2

**Authority for anatomy where body of deceased in a hospital**s 31      amd 2001 No. 78 s 230**Consent by coroner**s 34      amd 2001 No. 78 ss 231, 222 sch 2**Effect of authority under this part**s 35      amd 2001 No. 78 s 232**Conditions of performance of anatomical examination**

s 36      amd 1995 No. 58 s 4 sch 1

**Establishment of schools of anatomy**

s 37      amd 1984 No. 21 s 9; 1993 No. 79 s 114

**Inspectors of schools of anatomy**

s 38      amd 2001 No. 7 s 302 sch 2

**Regulations in respect of schools of anatomy**

s 39      om 1993 No. 79 s 115

**Unauthorised buying of tissue prohibited**

s 40      amd 1993 No. 79 s 116

**Advertisements relating to buying of tissue restricted**

s 41      amd 1993 No. 79 s 117

**Unauthorised selling of tissue prohibited**s 42      amd 1984 No. 21 s 10; 1993 No. 79 s 118; 2001 No. 78 s 222 sch 3**Person who owns a prescribed tissue bank may charge amount to recover certain costs**s 42A     ins 2001 No. 78 s 233**Evidentiary provisions**

s 44      amd 1993 No. 79 s 119

**When death occurs**

s 45      amd 1993 No. 79 s 120; 2001 No. 7 s 302 sch 2

**Offences in relation to removal of tissue**s 48      amd 1993 No. 79 s 121; 2001 No. 78 ss 234, 222 sch 3**Offence to give false or misleading information**s 48A     ins 1984 No. 94 s 2  
amd 1993 No. 79 s 122**Disclosure of information**s 49      amd 1984 No. 90 s 3; 1993 No. 79 s 123; 2001 No. 78 s 222 sch 3**Reprisal and grounds for reprisals**s 49A     ins 2001 No. 78 s 235**Offence for taking reprisal**s 49B     ins 2001 No. 78 s 235**Damages entitlement for reprisal**s 49C     ins 2001 No. 78 s 235**Proceedings for offences**

s 50      amd 1993 No. 79 s 124

**Regulations**s 52      sub 1993 No. 79 s 125  
amd 1995 No. 58 s 4 sch 1**PART 10—TRANSITIONAL PROVISION FOR HEALTH LEGISLATION  
AMENDMENT ACT 2001**pt hdg    ins 2001 No. 78 s 236**Dealing with certain bodies and tissue from commencement of this section**s 53      prev s 53 om 1993 No. 79 s 126  
pres s 53 ins 2001 No. 78 s 236**Repeal and amendments**

s 54      om 1993 No. 79 s 127

## **8 Provisions that have not commenced and are not incorporated into reprint**

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

**Health Legislation Amendment Act 2001 No. 78 pt 21, s 222 sch 3 reads as follows—**

### **PART 21—AMENDMENT OF TRANSPLANTATION AND ANATOMY ACT 1979**

#### **222 Act amended in pt 21 and sch 3**

This part and schedule 3 amend the *Transplantation and Anatomy Act 1979*.

#### **223 Insertion of new s 2**

After section 1—

*insert—*

#### **‘2 Act binds all persons**

‘(1) This Act binds all persons including the State.

‘(2) Subsection (1) does not make the State liable to be prosecuted for an offence.’.

#### **224 Amendment of s 22 (Authority to remove tissue where body of deceased in a hospital)**

(1) Section 22(1) to (3)—

*omit, insert—*

‘(1) Subsection (2) applies if—

- (a) the body of a deceased person is in a hospital; and
- (b) it appears to a designated officer for the hospital, after making reasonable inquiries, that the deceased person had not, during his or her lifetime, expressed an objection to the removal after death of tissue from his or her body; and

- (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 for—
  - (i) transplanting it to the body of a living person; or
  - (ii) use of the tissue for other therapeutic purposes or for other medical or scientific purposes.

‘(2) The designated officer may, by signed writing, authorise the removal of tissue from the body of the deceased person under the consent.’

(2) Section 22(4), ‘(1)(a)’—

*omit, insert—*

‘(1)(c)’.

(3) Section 22(6), ‘(1)’—

*omit, insert—*

‘(1)(c)’.

(4) Section 22(4) to (6)—

*renumber* as section 22(3) to (5).

(5) After section 22(5), as renumbered—

*insert—*

‘(6) A consent under subsection (1)(c), and a communication under subsection (3) by the senior available next of kin, must be in writing.

‘(7) However, if it is not practicable for the consent or communication to be given in writing because of the circumstances in which it is given, it may be given orally.

‘(8) If the consent or communication is given orally under subsection (7), the designated officer must ensure that, as soon as practicable—

- (a) the fact of the giving of the consent or communication and the details of the consent or communication are reduced to writing and placed on the deceased person’s hospital records; and
- (b) reasonable attempts are made to have the consent or communication confirmed in writing by the senior available next of kin.

‘(9) The designated officer must ensure that a document obtained under subsection (6) or (8)(b) is placed on the deceased person’s hospital records as soon as practicable.

‘(10) Subsection (8) does not affect the operation of subsection (7).’.

## **225 Amendment of s 24 (Consent by coroner)**

Section 24(3), ‘22(6)’—

*omit, insert—*

‘22(5)’.

## **226 Amendment of s 25 (Effect of authority under this part)**

Section 25, from ‘authority—’—

*omit, insert—*

‘authority for the purpose stated in the authority.’.

## **227 Amendment of s 26 (Authority for post-mortem where body of deceased in hospital)**

(1) Section 26(1) to (3)—

*omit, insert—*

‘(1) Subsection (2) applies if—

- (a) the body of a deceased person is in a hospital; and
- (b) it appears to a designated officer for the hospital, after making reasonable inquiries, that the deceased person had not during, his or her lifetime, expressed an objection to a post-mortem examination of his or her 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.

‘(2) The designated officer may, by signed writing, authorise a post-mortem examination of the body of the deceased person.’.

(2) Section 26(4) to (6)—

*renumber* as section 26(3) to (5).

(3) After section 26(5), as renumbered—

*insert—*

‘(6) A consent under subsection (1)(c), and a communication under subsection (3) by the senior available next of kin, must be in writing.

‘(7) However, if it is not practicable for the consent or communication to be given in writing because of the circumstances in which it is given, it may be given orally.

‘(8) If the consent or communication is given orally under subsection (7), the designated officer must ensure that, as soon as practicable—

- (a) the fact of the giving of the consent or communication and the details of the consent or communication are reduced to writing and placed on the deceased person’s hospital records; and
- (b) reasonable attempts are made to have the consent or communication confirmed in writing by the senior available next of kin.

‘(9) The designated officer must ensure that a document obtained under subsection (6) or (8)(b) is placed on the deceased person’s hospital records as soon as practicable.

‘(10) Subsection (8) does not affect the operation of subsection (7).’.

## **228 Amendment of s 28 (Consent by coroner)**

Section 28(3), ‘26(6)’—

*omit, insert—*

‘26(5)’.

## **229 Amendment of s 29 (Effect of authority under this part)**

(1) Section 29(1)(b), before ‘to remove’—

*insert—*

‘for that purpose.’.

(2) Section 29(2) and (3)—

*omit, insert—*



‘(2) An authority under this part is sufficient authority for the use, for medical purposes or scientific purposes, of tissue removed from the body of the deceased person for the examination, if the tissue is specimen tissue.

‘(3) An examination order made by a coroner is authority for the use, for medical purposes or scientific purposes, of tissue removed from the body of the deceased person for the examination, if the tissue is specimen tissue.

‘(4) Subsection (3) does not apply if a coroner orders that specimen tissue must not be used under the subsection.

‘(5) Subsections (3) and (4) apply despite any provision of the *Coroners Act 1958* that has the effect of requiring specimen tissue to be preserved for any period.

‘(6) Subsections (3) to (5) do not prevent a coroner deciding, under the *Coroners Act 1958*, when material that is specimen tissue need no longer be preserved for that Act.

‘(7) This section does not prevent tissue removed from the body of a deceased person for the purpose of an examination conducted under subsection (1), or under an examination order, being used for the purpose of the examination.

‘(8) In this section—

“**coroner**” means a coroner under the *Coroners Act 1958*.

“**examination order**” means an order made under the *Coroners Act 1958*, section 18(1), (2) or (3), requiring the making of a post mortem examination of the body, or a special examination of parts or contents of the body, of a deceased person.

“**medical purposes**” does not include therapeutic purposes.

“**specimen tissue**”—

(a) means—

(i) a small sample of tissue kept in the form of a tissue block or tissue slide prepared to enable the microscopic examination of the tissue; or

(ii) tissue taken from the tissue block; and

(b) does not include tissue that is, or is a large proportion of the totality of, an organ of a human body or human foetus.’.

**230 Amendment of s 31 (Authority for anatomy where body of deceased in a hospital)**

(1) Section 31(1) and (2)—

*omit, insert—*

‘(1) Subsection (2) applies if—

- (a) the body of a deceased person is in a hospital; and
- (b) it appears to a designated officer for the hospital, after making reasonable inquiries, that the deceased person had not, during his or her lifetime, expressed an objection to the retention after the person’s death of his or her body for—
  - (i) anatomical examination; or
  - (ii) use of the body for the study and teaching of the anatomy of the human body; and
- (c) the senior available next of kin of the deceased person has consented to the retention of the body of the deceased person for any of the purposes mentioned in paragraph (b).

‘(2) The designated officer may, by signed writing, authorise the retention and use of the body of the deceased person under the consent.’.

(2) Section 31(3), ‘subsection (1)(a)’—

*omit, insert—*

‘subsection (1)(b)’.

(3) After section 31(4)—

*insert—*

‘(5) A consent under subsection (1)(c), and a communication under subsection (3) by the senior available next of kin, must be in writing.

‘(6) The designated officer must ensure that a document obtained under subsection (5) is placed on the deceased person’s hospital records as soon as practicable.’.

**231 Amendment of s 34 (Consent by coroner)**

Section 34(2), ‘31(1)’—

*omit, insert—*

‘31(2)’.

### **232 Amendment of s 35 (Effect of authority under this part)**

Section 35, from ‘made for’—

*omit, insert—*

‘, by the school of anatomy for the purpose stated in the authority.’.

### **233 Insertion of new s 42A**

After section 42—

*insert—*

#### **‘42A Person who owns a prescribed tissue bank may charge amount to recover certain costs**

‘(1) A person who owns a tissue bank prescribed under a regulation may charge an amount to recover the person’s reasonable costs associated with removing, evaluating, processing, storing and distributing donated tissue.

‘(2) A person does not commit an offence against section 42(1) merely by charging an amount under subsection (1).

‘(3) A person does not commit an offence against section 40(1) merely by paying an amount charged under subsection (1).

‘(4) A regulation may regulate the charging of an amount under subsection (1).

‘(5) An amount charged contrary to the regulation is not charged under subsection (1).

‘(6) In this section—

“**distributing**” means distributing from the tissue bank.

“**donated tissue**” means tissue removed under a consent or authority under this Act.

“**owns**” includes controls.

“**processing**” means processing at the tissue bank.

“**storing**” means storing at the tissue bank.

“**tissue bank**” means a facility at which donated tissue is stored.’.

**234 Amendment of s 48 (Offences in relation to removal of tissue)**

(1) Section 48(1), penalty—

*omit, insert—*

‘Maximum penalty—100 penalty units or 1 year’s imprisonment.’

(2) Section 48(2), penalty—

*omit, insert—*

‘Maximum penalty—100 penalty units or 1 year’s imprisonment.’

**235 Insertion of new ss 49A to 49C**

After section 49—

*insert—*

**‘49A Reprisal and grounds for reprisals**

‘(1) A person must not cause, or attempt or conspire to cause, detriment to another person in retaliation because, or in the belief that—

(a) anybody has provided information about an alleged offence against this Act to a person for the purpose of having the alleged offence investigated or prosecuted; or

(b) anybody has given, or may give, evidence to a court in proceedings for an offence against this Act.

‘(2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.

‘(3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.

‘(4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.

‘(5) For the contravention to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.

**‘49B Offence for taking reprisal**

‘A person who takes a reprisal commits an offence.

Maximum penalty—167 penalty units or 2 years imprisonment.’

**‘49C Damages entitlement for reprisal**

‘(1) A reprisal is a tort and a person who takes a reprisal is liable in damages to any person who suffers detriment as a result.

‘(2) Any appropriate remedy that may be granted by a court for a tort may be granted by a court for the taking of a reprisal.

‘(3) If the claim for damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.’

**236 Insertion of new pt 10**

After section 52—

*insert—*

**‘PART 10—TRANSITIONAL PROVISION FOR HEALTH LEGISLATION AMENDMENT ACT 2001****‘53 Dealing with certain bodies and tissue from commencement of this section**

‘(1) This section applies if, immediately before the commencement of this section—

- (a) an authority mentioned in section 25, 29(1) or 35 of the pre-amended Act was in force in relation to the body of a person who was deceased at that time or tissue removed from the body; or
- (b) an authority mentioned in section 29(2), or an authority under section 29(3), of the pre-amended Act applied to tissue that had been removed from the body of a deceased person.

‘(2) From the commencement of this section, the body or tissue may only be used under this Act to the extent it could lawfully have been used under the post-amended Act if the post-amended Act were in force at the time the authority first had effect.

‘(3) In this section—

**“post-amended Act”** means this Act as in force from the commencement of this section.

**“pre-amended Act”** means this Act as in force before the commencement of this section.’

**SCHEDULE 3****AMENDMENT OF TRANSPLANTATION AND  
ANATOMY ACT 1979****1 Section 12(a), at the end—***insert—*

‘and’.

**2 Section 24(1)(a), at the end—***insert—*

‘or’.

**3 Section 28(1)(a), at the end—***insert—*

‘or’.

**4 Section 34(1)(a), at the end—***insert—*

‘or’.

**5 Section 42(1)(a), at the end—***insert—*

‘or’.

**6 Section 48(1)(a), (b), (c)(ii), (d), (e)(i) and (e), at the end—***insert—*

‘or’.

- 7 Section 49(3)(a), (b), (c) and (d), at the end—**  
*insert—*  
*‘or’.*