

Transplantation and Anatomy (Tissue Banks) Amendment Regulation 2020

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, the Honourable Yvette D’Ath MP, Minister for Health and Ambulance Services provide this Human Rights Certificate with respect to the *Transplantation and Anatomy (Tissue Banks) Amendment Regulation 2020* made under the *Transplantation and Anatomy Act 1979*.

In my opinion, the *Transplantation and Anatomy (Tissue Banks) Amendment Regulation 2020*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The *Transplantation and Anatomy Act 1979* allows tissue banks to recover costs associated with removing, evaluating, processing, storing or distributing donated tissue and to sell donated tissue for a cost-recovery amount.

Metro South Hospital and Health Service (HHS) operates an Organ and Tissue Donation Service, which trades in various types of tissue products under the separate trading entities of, the Queensland Bone Bank, Queensland Eye Bank and Queensland Heart Valve Bank. Metro South HHS has committed to the Queensland Tissue Bank becoming the single tissue bank for Queensland, combining the capabilities of the Queensland Bone Bank, Queensland Eye Bank and Queensland Heart Valve Bank.

The purpose of the *Transplantation and Anatomy (Tissue Banks) Amendment Regulation 2020* (the Amendment Regulation) is to amend the *Transplantation and Anatomy Regulation 2017* (the Regulation) to prescribe the Queensland Tissue Bank as an entity that can recover costs under section 42A of the *Transplantation and Anatomy Act*.

A *tissue bank* is defined under section 42A of the *Transplantation and Anatomy Act* as a facility prescribed by regulation at which donated tissue is stored. Section 12 of the Regulation prescribes the following tissue banks:

- Queensland Bone Bank;
- Queensland Eye Bank;
- Queensland Heart Valve Bank; and
- Australian Red Cross Lifeblood – for blood and products derived from blood, for medical or scientific purposes.

In 2018, the Australian Commission on Safety and Quality in Health Care released a report of a health service investigation into the Queensland Heart Valve Bank. The Director-General of Queensland Health accepted all the recommendations in the report, including the recommendation to combine all existing tissue banks in Queensland into a single structure.

To enable the Queensland Tissue Bank to deal with tissue, a licence to manufacture therapeutic goods is required under the *Therapeutic Goods Act 1989* (Cth). The process for obtaining a licence variation from the Queensland Bone Bank to the Queensland Tissue Bank has commenced. The licence will allow for the current tissue banks to amalgamate under the Queensland Tissue Bank. The Therapeutic Goods Administration licence is expected to be issued in early December 2020 for the Queensland Tissue Bank. It is expected that the tissue products held by the Queensland Eye Bank will fully transition under the licence in 2021.

Once arrangements to amalgamate the existing tissue banks to the Queensland Tissue Bank are completed, a further amendment regulation will be progressed to remove the existing tissue banks from the Regulation.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The Amendment Regulation engages the following human rights protected by the *Human Rights Act 2019* (Human Rights Act):

- Right to life (section 16);
- Protection from torture and cruel, inhuman or degrading treatment (section 17(c));
- Privacy and reputation (section 25); and
- Right to health services (section 37).

Right to life

Section 16 of the Human Rights Act provides that a person has the right to life and has the right not to be arbitrarily deprived of life.

The Amendment Regulation provides amendments to enable the Queensland Tissue Bank to recover costs associated with removing, evaluating, processing, storing or distributing donated tissue and to sell donated tissue for a cost-recovery amount, which are exempt from the general prohibition on trading in tissue under the Act.

The amendments reflect positive measures taken to promote the protection of a person's life by prescribing the Queensland Tissue Bank to enable cost recovery of tissue products. The tissue trading indirectly facilitates the needs of people that require lifesaving tissue transplants, such as skin or cardiovascular tissue transplants, or tissue implantation for improved health and wellbeing, such as to assist sight (ocular tissue transplant) or enable mobility (bone tissue transplant). As the amendment does not arbitrarily interfere with a person's right to life, it does not limit the rights described in section 16 of the Human Rights Act.

Protection from medical or scientific experimentation or treatment without consent

Section 17(c) of the Human Rights Act provides that a person must not be subjected to medical or scientific experimentation or treatment without the person's full, free and informed consent.

The Amendment Regulation provides amendments to enable the Queensland Tissue Bank to recover costs associated with removing, evaluating, processing, storing or distributing donated tissue and to sell donated tissue for a cost-recovery amount, which are exempt from the general prohibition on trading in tissue in the Transplantation and Anatomy Act.

Donated tissue must be obtained in accordance with consent and authority powers under the Transplantation and Anatomy Act or a corresponding law. The amendments only affect the cost recovery mechanism that allows a tissue bank to charge for trading donated tissue. It does not change the consent requirements. Therefore, there is no limit on the right to protection from medical or scientific experimentation or treatment without consent under the Human Rights Act.

Privacy and reputation

Section 25 of the Human Rights Act provides that a person has the right to not have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

The Amendment Regulation provides amendments to enable the Queensland Tissue Bank to recover costs associated with removing, evaluating, processing, storing or distributing donated tissue and to sell donated tissue for a cost-recovery amount, which are exempt from the general prohibition on trading in tissue in the Act.

The right to privacy is broadly construed, it encompasses personal information, data collection and correspondence. As the amendments enable cost recovery processes for trading donated tissues, it will include the need to collect data and personal information to support the management of donated tissue. However, the cost recovery process does not arbitrarily interfere with a person's right to privacy in an unreasonable, unnecessary or disproportionate manner under the Human Rights Act.

Right to Health Services

Section 37 of the Human Rights Act provides that every person has a right to access health services without discrimination.

The Amendment Regulation provides amendments to enable the Queensland Tissue Bank to recover costs associated with removing, evaluating, processing, storing or distributing donated tissue and to sell donated tissue for a cost-recovery amount, which are exempt from the general prohibition on trading in tissue in the Act.

The Amendment Regulation aligns with recommendations of the Australian Commission on Safety and Quality in Healthcare by supporting the national process of moving tissue banks from isolated local concerns on to a more professional, transparent and business-like basis.

The amendments streamline health services by enabling the Queensland Tissue Bank to recover costs which will support the merger of the existing tissue banks to a single and accountable management structure. The amalgamation of the cost recovery processes for these tissue banks trading donated tissue, has an indirect positive impact on the lives of people that require life-saving tissue transplants or a graft from tissue. The amendments therefore promote the right to access health services.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

As the Amendment Regulation does not limit human rights, it is not necessary to consider section 13 of the Human Rights Act.

Conclusion

I consider that the *Transplantation and Anatomy (Tissue Banks) Amendment Regulation 2020* is compatible with the *Human Rights Act 2019* although it raises human rights issues, it does not limit human rights.

YVETTE D'ATH MP
MINISTER FOR HEALTH and AMBULANCE SERVICES
and LEADER OF THE HOUSE

© The State of Queensland 2020