

HUMAN TISSUE ACT 1985

No. 118 of 1985

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HUMAN TISSUE ACT 1985

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 No. 118 of 1985
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AN ACT to make provision for and in relation to the removal of human tissue for transplantation, and for related purposes.

[Royal Assent 21 November 1985]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I

PRELIMINARY

1—This Act may be cited as the *Human Tissue Act 1985*.

Short title.

2—(1) This section and section 1 shall commence on the day on which this Act receives the Royal assent.

**Commence-
ment.**

(2) Except as provided in subsection (1), this Act shall commence on such day as may be fixed by proclamation.

3—(1) In this Act, unless the contrary intention appears—
 “child” means a person who—

Interpretation.

- (a) has not attained the age of 18 years; and
- (b) is not married;

- “ coroner ” means a person holding office as a coroner under section 4 of the *Coroners Act* 1957;
- “ designated officer ”, in relation to a hospital, means a person appointed under section 4 to be a designated officer for that hospital;
- “ medical practitioner ” means a person who is registered or licensed under a law of a State or Territory of the Commonwealth relating to the registration or licensing of medical practitioners;
- “ next of kin ” means—
- (a) in relation to a deceased child—a person referred to in paragraph (a) (i), (ii), or (iii) of the definition of “ senior available next of kin ”; and
 - (b) in relation to any other deceased person—a person referred to in paragraph (b) (i), (ii), (iii), or (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;
- “ registered nurse ” means a nurse registered under the *Nurses’ Registration Act* 1952;
- “ senior available next of kin ” means—
- (a) in relation to a deceased child—
 - (i) where a parent of the child is available—a parent of the child;
 - (ii) where a parent of the child is not available—a brother or sister of the child who has attained the age of 18 years and is available; or
 - (iii) where no person referred to in subparagraph (i) or (ii) is available—a person who was the guardian of the child immediately before the death of the child and is available; and

(b) in relation to any other deceased person—

- (i) where the person, immediately before his death, was married and the person who was then his spouse is available—the person who was his spouse;
- (ii) where the person, immediately before his death, was not married or, if he was married, his spouse is not available—a son or daughter of the person who has attained the age of 18 years and is available;
- (iii) where no person referred to in subparagraph (i) or (ii) is available but a parent of the person is available—that parent; or
- (iv) where no person referred to in subparagraph (i), (ii), or (iii) is available—a brother or sister of the person who has attained the age of 18 years and is available;

“ tissue ” includes an organ, or part, of a human body or a substance extracted from, or from a part of, the human body.

(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.

4—The persons or body having the control and management of a hospital may, by instrument in writing, appoint such persons, being medical practitioners, as those persons or that body consider necessary to be, for the purposes of this Act, designated officers for that hospital.

Designated
officers.

PART II

DONATIONS OF TISSUE BY LIVING PERSONS

Division 1—Exclusion of certain tissue

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

Interpretation

Division 2—Donations by adults

Blood transfusions not subject to this Division.

6—Nothing in this Division prevents the removal in accordance with Division 5 of blood from the body of a person.

Consent by adult living donor to removal of regenerative tissue.

7—A person, other than a child, may give his consent in writing to the removal from his body of specified regenerative tissue (other than blood)—

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

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

8—(1) A person, other than a child, may give his consent in writing to the removal from his body, at any time after the expiration of 24 hours from the time at which the consent is given, of specified non-regenerative tissue 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.

Medical practitioner may give certificate in relation to consent.

9—A medical practitioner may certify in writing in relation to a consent given under section 7 or 8 by a person, being a consent the terms of which are set out in the certificate, that—

- (a) the consent was given in his presence;
- (b) he explained to the person before the consent was given the nature and effect of the removal from the body of the person of the tissue specified in the consent; and
- (c) he is satisfied that—
 - (i) at the time the consent was given, the person had attained the age of 18 years or, not having attained that age, was married;
 - (ii) at that time, the person was of sound mind; and
 - (iii) the consent was freely given.

Division 3—Donations by children

Blood transfusions not subject to this Division.

10—Nothing in this Division prevents the removal in accordance with Division 5 of blood from the body of a child.

11—In this Division, a reference to a parent of a child shall not be read as including a reference to a guardian of a child or to another person standing *in loco parentis* to the child.

References to parent not to include guardian, &c.

12—A child, and a parent of that child, may jointly give their consent in writing to the removal from the body of the child of specified regenerative tissue for the purpose of the transplantation of the tissue to the body of another member of the family of the child or to the body of a relative of the child.

Removal for transplantation of regenerative tissue from body of child.

13—A medical practitioner may certify in writing in relation to a consent given under section 12 by a child and a parent of that child, being a consent the terms of which are set out in the certificate, that—

Medical practitioner may give certificate in relation to consent.

- (a) the consent was given in his presence;
- (b) he explained to the child and to that parent of the child before the consent was given the nature and effect of the removal from the body of the child of the tissue specified in the consent and the nature of the transplantation of that tissue; and
- (c) he is satisfied that—
 - (i) at the time the consent was given, both the child and that parent of the child understood the nature and effect of the removal of the tissue and the nature of the transplantation; and
 - (ii) the consent was freely given by both the child and that parent of the child.

Division 4—Effect of consents

14—Subject to section 17, a document that purports to be a consent given in accordance with section 7 is, where a certificate has been given in accordance with section 9 in relation to that consent, sufficient authority for a medical practitioner, other than the medical practitioner who gave the certificate, to remove the regenerative tissue specified in the consent for the purpose or the use, as the case may be, specified in the consent.

Effect of consent under section 7.

15—Subject to section 17, a document that purports to be a consent given in accordance with section 8 is, where a certificate has been given in accordance with section 9 in relation to that consent, sufficient authority for a medical practitioner, other than the medical practitioner who gave the certificate, to remove, at any time after the

Effect of consent under section 8.

expiration of 24 hours from the time specified in the consent to be the time at which the consent was given, the non-regenerative tissue specified in the consent for the purpose of the transplantation of the tissue to the body of another living person.

Effect of consent under section 12.

16—Subject to section 17, a document that purports to be a consent given in accordance with section 12 is, where a certificate has been given in accordance with section 13 in relation to that consent, sufficient authority for a medical practitioner, other than the medical practitioner who gave the certificate, to remove the regenerative tissue specified in the consent for the purpose specified in the consent.

Written consent not to be sufficient authority in certain circumstances.

17—A document that purports to be a consent given in accordance with section 7, 8, or 12 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; or
- (b) the medical practitioner knows or has reasonable grounds for suspecting that a certificate given for the purpose of section 9 or 13, as the case may be, in relation to that document contains a false statement.

Division 5—Blood transfusions, &c.

Consents by adults to removal of blood.

18—A person, other than a child, who is of sound mind may consent to the removal of blood from his body—

- (a) for transfusion to another person; or
- (b) for the purpose of the use of the blood or of any of its constituents for other therapeutic purposes or for medical or scientific purposes.

Consents to removal of blood from children.

19—A parent of a child may consent to the removal of blood from the body of the child for a purpose referred to in section 18 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.

20—A consent duly given under section 18 or 19 is sufficient authority for the removal of blood from the body of the person who has given the consent, or from the body of the child in relation to whom the person has given the consent, as the case requires—

Consent to be sufficient authority for removal of blood at certain places.

- (a) at a hospital; or
- (b) at premises, or in a vehicle, used by the Australian Red Cross Society, or by another body approved by the Minister for the purpose of this Division, for the removal of blood from the bodies of persons.

21—(1) In this section—

“ blood transfusion ” means the transfusion of human blood or any of the constituents of human blood;

“ child ” means a person who has not attained the age of 18 years.

Administration of blood transfusions to children without parental consent.

(2) The operation of removing all or part of the blood of a person and replacing it with blood taken from another person shall, for the purposes of this section, be deemed to be a blood transfusion.

(3) Subject to subsection (4), a medical practitioner may administer a blood transfusion to a child without the consent of a parent of the child or a person having authority to consent to the administration of the transfusion if—

- (a) that medical practitioner and at least one other medical practitioner are of the opinion that the child is in danger of dying and that the administration of a blood transfusion to the child is the best means of preventing the death of the child; and
- (b) the first-mentioned medical practitioner has satisfied himself that the blood to be transfused is compatible with the blood of the child.

(4) A medical practitioner is not entitled to administer a blood transfusion to a child in pursuance of subsection (3) unless—

- (a) a parent of the child, or a person having authority to consent to the administration of the transfusion, upon being asked to consent to the administration of the transfusion, has failed to give his consent; or

(b) the medical practitioner is of the opinion that, in the circumstances, it is not practicable to delay the administration of the transfusion until the consent of a parent of the child or a person having authority to consent to the administration of the transfusion can be obtained.

(5) 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 of the transfusion.

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

Division 6—Revocation of consent

Revocation
of consent.

22—(1) A reference in this section, in relation to a consent given for the purposes of this Act, to the donor shall be read—

- (a) in a case in which the consent is given in respect of a child—as a reference to the child;
- (b) in any other case—as a reference to the person who gave the consent.

(2) A person who gives, or either or both of the persons who jointly give, a consent for the purposes of this Act may at any time thereafter revoke that consent by indicating, either orally or in writing—

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

that the consent is revoked.

(3) Where—

- (a) the donor is a patient in a hospital; and
- (b) a person, being the person who gave, or one of the persons who jointly gave, the consent for the purposes of this Act, indicates to a person referred to in subsection (2) (a) (ii) or (iii) that the consent is revoked,

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

(4) Where a person revokes a consent in accordance with subsection (2)—

- (a) if the donor is a patient in a hospital at the time of the revocation—the designated officer for the hospital to whom the revocation is communicated in accordance with subsection (2) or (3); or
- (b) if the donor is not a patient in a hospital at that time—the medical practitioner to whom the revocation is communicated,

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

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

- (a) that instrument; and
- (b) if a certificate given in accordance with section 9 or 13 is in his possession, being a certificate relating to the consent—that certificate,

to the person, or one of the persons, who revoked the consent.

PART III

DONATIONS OF TISSUE AFTER DEATH

Authority to
remove tissue
where body of
deceased at
a hospital.

23—(1) Subject to this Part, where it appears to a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances, that a deceased person who has died in the hospital or whose dead body has been brought into the hospital—

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

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

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

(b) had not withdrawn the wish or revoked the consent, the designated officer may, by instrument in writing, authorize the removal of tissue from the body of the deceased person for that purpose.

(2) Subject to this Part, where, in relation to a deceased person who has died in a hospital or whose dead body has been brought to a hospital—

(a) the senior available next of kin of the deceased person has consented, in writing, to the removal of tissue from the body of the deceased person for any of the purposes referred to in subsection (1) (a); and

(b) it appears to a designated officer for that hospital, after making such inquiries as are reasonable in the circumstances, that—

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

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

(iii) the consent referred to in paragraph (a) has not been revoked; and

- (iv) no objection has been made by any other next of kin of the same or a higher order of the classes referred to in paragraphs (a) and (b) of the definition of "senior available next of kin" in section 3 (1) to the removal of tissue from the body of the deceased person for any purpose including the purpose, or any of the purposes, specified in that consent,

the designated officer may, by instrument in writing, authorize the removal of tissue from the body of the deceased person for that purpose or those purposes.

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

Authority to remove tissue where body of deceased not at a hospital.

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

(2) Where it appears to the senior available next of kin of the deceased person, after making such inquiries (if any) as are reasonable in the circumstances, that—

- (a) the deceased person had, during his lifetime, expressed an objection to the removal of tissue from his body and had not withdrawn that objection; or
- (b) another next of kin of the same or a higher order of the classes in paragraph (a) or (b) of the definition of "senior available next of kin" in section 3 (1) has an objection to the removal of tissue from the body of the deceased person,

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

(3) Subject to this Part, where, during his lifetime, a deceased person whose body is at a place other than a hospital expressed the wish for, or consented to, the removal after his death of tissue from his body for a purpose referred to in subsection (1) and the wish had not been withdrawn or the consent revoked, the removal of tissue from the body of the deceased person in accordance with the wish or consent is, by force of this subsection, hereby authorized.

Consent by
the coroner.

25—(1) This section applies to a deceased person—

- (a) who has died in a manner or in circumstances referred to in section 7 (1) of the *Coroners Act 1957*; or
- (b) in respect of whom a medical practitioner has not given a certificate as to the cause of death.

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

(3) Section 24 (3) does not apply in relation to a deceased person to whom this section applies unless a coroner has given his consent to the removal of tissue from the body of the deceased person.

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

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

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

26—An authority under this Part is sufficient authority for a medical practitioner (other than, in a case to which section 23 applies, the designated officer for the hospital who gave the authority) to remove tissue from the body of the deceased person referred to in the authority for the purpose referred to in the authority.

Effect of authority under this Part.

PART IV

PROHIBITION OF TRADING IN TISSUE

27—(1) Subject to this section, a person shall not enter into a contract or arrangement under which a person agrees, for valuable consideration, whether given or to be given to himself or to another person, to the sale or supply of tissue from his body or from the body of another person, whether before or after his death or the death of the other person, as the case may be.

Certain contracts not to be entered into.

Penalty: \$500 or imprisonment for 3 months, or both.

(2) Subsection (1) does not apply to or in relation to the sale or supply of tissue other than blood or any of its constituents if the tissue has been subjected to processing or treatment and the sale or supply is made for use, in accordance with the directions of a medical practitioner, for therapeutic or scientific purposes.

(3) Subsection (1) does not apply to or in relation to a contract or arrangement providing only for the reimbursement of any expenses necessarily incurred by a person in relation to the removal of tissue in accordance with this Act.

(4) Where he considers it desirable by reasons of special circumstances so to do, the Minister may, by instrument in writing, approve the entering into of a contract or arrangement that would, but for the approval, be void by virtue of subsection (5) and nothing in subsection (1) or (5) applies to and in relation to a contract or arrangement entered into in accordance with an approval under this subsection.

(5) A contract or arrangement entered into in contravention of this section is void.

PART V

MISCELLANEOUS

Act does not prevent specified removals of tissue, &c.

28—(1) Nothing in this Act applies to or in relation to—

- (a) the removal of tissue from the body of a living person in the course of a procedure or operation carried out, in the interests of the health of the person, by a medical practitioner with the consent, express or implied, given by or on behalf of the person or in circumstances necessary for the preservation of the life of the person;
- (b) the use of tissue so removed;
- (c) anything done in pursuance of the *Anatomy Act 1964*;
- (d) the embalming of the body of a deceased person; or
- (e) the preparation, including the restoration of any disfigurement or mutilation, of the body of a deceased person for the purpose of interment or cremation.

(2) In subsection (1), “tissue” has the same meaning as in Part II.

Exclusion of liability of person acting in pursuance of consent or authority.

29—(1) Subject to subsection (2), where—

- (a) a person carries out a procedure; and
- (b) a consent or authority given under this Act is sufficient authority under this Act for that person to carry out that procedure,

that person is not liable to any other person in respect of anything done or omitted to be done by that first-mentioned person in the carrying out of that procedure.

(2) Nothing in this section relieves a person from liability for negligence in respect of anything done or omitted to be done by him in the carrying out of a procedure.

Offences.

30—(1) A person shall not remove tissue from the body of a person, whether living or dead, except in accordance with a consent or authority that is, under this Act, sufficient authority for the removal of the tissue by that person.

Penalty: \$1 000 or imprisonment for 6 months, or both.

(2) A person shall not, in connection with a proposal to remove tissue from the body of a person, whether living or dead, for the purpose of transplantation 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 that purpose.

Penalty: \$10 000 or imprisonment for 2 years, or both.

(3) A person who—

- (a) gives an authority under this Act without having made the inquiries that he is required by this Act to make;
- (b) makes a false statement in a certificate given for the purposes of this Act; or
- (c) contravenes or fails to comply with a provision of Division 6 of Part II,

is guilty of an offence and is punishable upon conviction by a fine not exceeding \$1 000 or imprisonment for a term not exceeding 6 months, or both such fine and imprisonment.

(4) Nothing in subsection (1) applies to or in relation to—

- (a) anything done in pursuance of an order by a coroner under the *Coroners Act 1957*; or
- (b) any other act authorized by law.

31—(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—

Disclosure of
information.

- (a) from whose body tissue other than blood has been removed for the purpose of transplantation or for the purpose of the use of the tissue for other therapeutic purposes or for medical or scientific purposes;
- (b) with respect to whom or with respect to whose body a consent, other than a consent under section 18, or authority has been given under this Act; or
- (c) into whose body tissue other than blood has been, is being, or may be, transplanted,

may become publicly known.

Penalty: \$500 or imprisonment for 3 months, or both.

(2) 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 child from whose body blood has been removed for a purpose referred to in section 18 may become publicly known.

Penalty: \$500 or imprisonment for 3 months, or both.

(3) This section applies—

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

(4) Subsections (1) and (2) do 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; or

- (d) when the circumstances in which the disclosure is made are such that the disclosure is or would be privileged.

32—The Governor may make regulations for the purposes of this Act and, in particular, may make regulations providing for it to be an offence for a person to contravene, or fail to comply with, any of the regulations and prescribing a penalty, not exceeding \$250, for any such offence. Regulations.

33—(1) Section 10 of the *Anatomy Act* 1964 is repealed.

(2) Section 14 of the *Anatomy Act* 1964 is amended by omitting paragraph (a) of subsection (2). Consequential amendment, &c., of other Acts.

(3) Section 36A of the *Medical Act* 1959 is repealed.

(4) The *Sale of Blood Act* 1964 and the *Sale of Blood Act* 1978 are repealed.

