

# LEGISLATIVE ASSEMBLY

Read 1° 17 July 1985

(Brought from the Legislative Council)

## A BILL

for

An Act to limit liability in respect of the transmission of acquired immune deficiency syndrome through the transfusion of blood, to amend the *Health Act 1958* and for other purposes.

5 BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

### Short title.

1. This Act may be cited as the *Health (Blood Donations) Act 1985*.

### Commencement.

- 10 2. This Act shall be deemed to have come into operation on 30 June 1985.

### Principal Act.

3. In this Act, the *Health Act 1958* is called the Principal Act.

No. 6270.  
Reprinted to No.  
9719 and  
amended by Nos.  
9720, 9737,  
9782, 9876,  
9889, 9895,  
9902, 9934,  
10016, 10032,  
10081, 10082,  
10087, 10142,  
10158, 10159,  
10167.

**New sections 139A–139D.**

4. After section 139 of the Principal Act there shall be inserted the following sections:

**Acquired immune deficiency syndrome.**

- ‘139A. (1) In this section and in sections 139C and 139D— 5
- “**Approved**” means approved by the Commission.
- “**Donor**” means a person who gives blood at premises or a vehicle of the Society or at a hospital.
- “**Hospital**” means—
- (a) a scheduled hospital within the meaning of the *Hospitals and Charities Act* 1958; or 10
- (b) a private hospital registered with the Commission under Division 3 of Part X of the *Health Act* 1958.
- “**Prescribed action**” means an action brought by or on behalf of— 15
- (a) a person who claims to have contracted the prescribed disease—
- (i) by reason of having been administered blood supplied by the Society or a hospital or a blood product derived from blood supplied by the Society or a hospital; 20
- (ii) by reason of having been involved in the taking, testing, handling, producing, supplying or administering to a patient of blood supplied by the Society or a hospital or a blood product derived from blood supplied by the Society or a hospital; or 25
- (iii) from a person who contracted the prescribed disease in a circumstance specified in subparagraph (i) or (ii); or 30
- (b) a dependant of a person who dies as a result of having contracted the prescribed disease in a circumstance specified in paragraph (a).
- “**Prescribed disease**” means the disease known as acquired immune deficiency syndrome in any of its stages. 35
- “**Prescribed form**” means a form prescribed for the purposes of this section or, until such a form is prescribed, a form prescribed under section 140.
- “**Society**” means the Society incorporated by Royal Charter under the name of the Australian Red Cross Society. 40
- (2) In a prescribed action against—
- (a) the Society or a hospital;

(b) an employee of, or person working without payment for, the Society or a hospital; or

(c) any other person or body who takes blood from a donor on behalf of the Society or a hospital—

5 it is a defence that the Society or the hospital complied with the prescribed requirements, or caused the prescribed requirements to be complied with, in respect of the taking of the relevant blood and the testing, processing and handling of that blood and of blood products derived from that blood.

10 (3) In a prescribed action against—

(a) a hospital or other body at whose premises blood supplied by the Society or a hospital, or a blood product derived from blood supplied by the Society or a hospital, is administered to a patient; or

15 (b) a medical practitioner or a person acting on behalf of a medical practitioner who administered to a patient, or authorized administration to a patient of, blood supplied by the Society or a hospital or a blood product derived from blood supplied by the Society or a hospital—

20 it is a defence that—

(c) at the time the blood or blood product was administered, there was attached to the container in which the blood or blood product was contained a certificate purporting to be issued at the laboratory at which a sample of the blood was tested and stating—

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(i) in the case of blood—that a sample of the blood; and

(ii) in the case of a blood product—that a sample of each unit of blood from which the blood product was derived—

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was tested, using approved equipment and in accordance with an approved method, for the presence of antibodies to the virus known as HTLV III and the result of the test was negative; or

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(d) the Society or the hospital complied with the prescribed requirements, or caused the prescribed requirements to be complied with, in respect of the taking of the relevant blood and the testing, processing and handling of that blood or blood products derived from that blood.

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(4) For the purposes of sub-sections (2) and (3), the prescribed requirements, in relation to the taking of blood from a donor, are—

(a) that, before taking blood from the donor, the Society or the hospital obtains from the donor a statement in the prescribed form; and

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(b) that, before supplying the blood to be administered to a person, or to be used in the preparation of blood products to be administered to a person, a sample of the blood is

tested, using approved equipment and in accordance with an approved method, for the presence of antibodies to the virus known as HTLV III and the Society or the hospital ascertains that the result of the test is negative.

(5) Sub-section (2) does not apply where, after the Society or a hospital has supplied blood to be administered to a person or to be used in the preparation of a blood product to be administered to a person, the Society or the hospital has reasonable grounds for believing that that blood or blood product is likely to contain antibodies to the virus known as HTLV III and— 5

(a) the Society or the hospital does not take all reasonable steps to ascertain whether the blood or blood product has been administered to a person; or 10

(b) having taken those steps and having reason to believe that that blood or blood product has not been so administered, the Society or the hospital does not take all reasonable steps to ensure that the blood or blood product is not administered to a person. 15

(6) Sub-section (3) does not apply where, at any time up to and including the time at which the blood or blood product was administered, the hospital or other body at whose premises the blood or blood product was administered— 20

(a) had been informed that that blood or blood product was likely to contain antibodies to the virus known as HTLV III; and 25

(b) did not take all reasonable steps to ensure that the blood or blood product was not administered to a person.

(7) Sub-section (3) does not apply in relation to a medical practitioner or person acting on behalf of a medical practitioner where, at the time the blood or blood product was administered, the medical practitioner or other person had been informed that that blood or blood product was likely to contain antibodies to the virus known as HTLV III. 30

#### **False statements.**

“139B. A person who in a statement referred to in section 139A (4) (a) makes a statement that is false in a material particular is guilty of an offence punishable, on conviction, by a fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.” 35

#### **Liability of donor.**

“139C. (1) No proceedings, civil or criminal, other than proceedings under section 139B, lie against a donor of blood by reason only of a person having contracted a prescribed disease from the administration to the person of blood given by, or of a blood product derived partly from blood given by, that donor. 40

(2) Sub-section (1) does not apply to or in relation to a donor who has been found guilty of an offence against section 139B.”.

**Evidentiary certificates.**

- 5 “139D. In a prescribed action of the kind referred to in section 139A (2) or (3), a certificate purporting to be issued at the laboratory at which a sample of blood was tested and stating—
- (a) that the blood sample was tested using approved equipment and in accordance with an approved method; and
  - (b) that the results specified in the certificate were obtained—
- 10 is evidence of the matters so stated and of the facts on which they are based.”.