

Health (Blood Donations) Bill

EXPLANATORY MEMORANDUM

Outline

The aim of this Bill is to limit the liability of the Red Cross Society, hospitals and persons administering blood or a blood product with respect to the transmission of AIDS (Acquired Immune Deficiency Syndrome) through blood supplied by the Society or by a hospital.

The Bill specifically absolves *bona fide* blood donors from any civil or criminal responsibility as a consequence of the transmission of AIDS.

The protection afforded by the Bill will only be available to the Society or any hospital conducting a blood bank operation if a statement is first obtained from the potential blood donor, and a test of the blood for the AIDS virus shows a negative result.

Doctors and hospitals will be protected provided the blood or blood product used carries a certificate stating that the test for AIDS was negative.

The Bill will not indemnify the Society or hospitals supplying blood from action on other grounds such as negligence, or in performing screening tests for other diseases.

CLAUSE NOTES

Clause 1 is the usual citation clause.

Clause 2 deems the Act to have come into operation on 30 June 1985.

Clause 3 identifies the *Health Act 1958* as being the Principal Act.

Clause 4 inserts four new sections into the Principal Act as follows—

Proposed section 139A establishes a defence to any action taken against the Red Cross Society or a hospital with respect to the transmission of AIDS though the administration of blood or a blood product derived from blood supplied by the Society or that hospital. The proposed section will protect the Society or hospital if a statement is obtained in the prescribed form from the donor and a test of a sample of the blood for the AIDS virus proved negative. It will also be a defence for a hospital, medical practitioner or person acting on a practitioner's behalf that the container of any blood or blood product administered to a patient carried a certificate that the test for AIDS was negative.

- (i) These defences will not be available if the Society or hospital which has supplied blood has reasonable grounds for believing that the blood or blood product is contaminated by AIDS;
- (ii) The section does not indemnify the Society or hospital which does not take steps to ensure that the blood or blood product is not administered, or a hospital or medical practitioner who had been informed of likely contamination at the time of administration.

Proposed section 139B makes it an offence to make a statement as referred to in proposed section 139A that is false in a material particular.

Proposed section 139C bars civil or criminal proceedings against a donor of blood with respect to the transmission of AIDS unless the donor had been found guilty of an offence against proposed section 139B.

Proposed section 139D provides that in any proceedings against the Red Cross Society, a hospital or medical practitioner, a certificate issued at the laboratory at which a sample of blood was tested, stating that the sample was tested using approved equipment and in accordance with an approved method, and that the results specified in the certificate were obtained, is evidence of the matters so stated and of the facts on which they are based.