

Human Tissue Bill 1982

EXPLANATORY NOTES

The purpose of this Bill is to express in statute the law relating to the donation of tissue by living persons, donations of tissue after death, post-mortem examinations, donations of bodies for anatomical purposes, schools of anatomy and the trading in human tissue.

CLAUSE NOTES

PART I.—PRELIMINARY

Clause 1 is the usual citation clause and provides for the Act to come into operation on a day or days to be fixed by proclamation.

Clause 2 has the effect of repealing the various Acts set out in the Schedule.

Clause 3 is the interpretation provision.

Clause 4 vests in the chief medical administrator or the committee of management of a scheduled hospital within the meaning of the *Hospitals and Charities Act 1958*, or the person, persons, or body having the control of any other hospital, a capacity to appoint designated officers for the hospital for the purposes of the Act.

Designated officers will be empowered, in subsequent clauses to authorize the removal of tissue from the body of a person in a hospital or the conduct of a post-mortem examination or the retention of a body for anatomical examination subject to the requirements of the Act.

PART II.—DONATIONS OF TISSUE BY LIVING PERSONS

Clause 5 excludes from the scope of the legislation, as it applies to donations of tissue by living persons, foetal tissue, spermatozoa and ova.

Clause 6 provides that nothing in Part II. prevents the removal of blood in accordance with Part III. of the Act.

Clause 7 deals with donations of regenerative tissue by adults. It provides that an adult may consent in writing to the removal of specified regenerative tissue for transplantation to another living person or for use for other therapeutic, medical or scientific purposes.

Clause 8 deals with donations of non-regenerative tissue by adults. It provides that an adult may consent to the removal of such tissue for transplantation to another living person after the expiration of 24 hours from the time the consent is given.

Clause 9 provides that a medical practitioner may certify in writing that the consent of the donor was given in his presence, that he explained the nature and effect of the removal, that the donor was not a child, was of sound mind and that the consent was freely given.

Clause 10 provides that a consent under section 7 and a certificate given under section 9 is sufficient authority for a medical practitioner other than the practitioner who gave the certificate to remove the regenerative tissue, and for the purpose or use specified in the consent.

Clause 11 provides that a consent under section 8 and a certificate under section 9 is sufficient authority for a medical practitioner other than the practitioner who gave the certificate to remove the non-regenerative tissue specified in the consent for transplantation after 24 hours from the time specified as the time the consent was given.

Clause 12 states that a consent under section 7 or 8 is not sufficient authority for the removal of tissue by a medical practitioner if he has been informed that the consent has been revoked or he knows or suspects that the relevant certificate contains a false statement.

Clause 13 relates to the donation of tissue by children. It excludes from any reference to a parent of a child in Division 3 a guardian or another person standing in *loco parentis*. The effect of the clause is to preclude guardians and similar persons consenting to the removal of tissue from a child.

Clause 14 prohibits absolutely the removal of non-regenerative tissue from a child. The removal of regenerative tissue is also prohibited except as provided for in the Part.

Clause 15 enables a parent of a child to consent to the removal of regenerative tissue from that child for transplantation in the body of an immediate member of the child's family.

The clause goes on to provide that a medical practitioner may certify that the consent of the parent was given in his presence, that he explained both to the parent and the child the nature and effect of the removal and the nature of the transplantation and that the child understood and agreed to the proposed removal and transplantation.

Clause 16 provides that a consent under section 15 (1) and a medical practitioner's certificate under section 15 (2) in relation to that consent is sufficient authority for the removal of regenerative tissue from a child by a medical practitioner, other than the practitioner who gave the certificate.

Clause 17 provides that any consent given under section 15 (1) is not sufficient authority for the removal of tissue from a child if the medical practitioner who proposes to remove tissue has been informed that the consent has been revoked or he knows or has reasonable grounds for suspecting that the medical certificate contains a false statement or he has been informed that the child is no longer in agreement with the removal and transplantation of the tissue.

Clause 18 sets out the various means by which a consent under the Act can be revoked and the responsibilities of the various persons who may be notified of such revocation.

Clause 19 sets out the procedure to be followed if a child, from whom tissue is to be removed, indicates that he is no longer in agreement with the proposed removal and transplantation of tissue.

PART III.—BLOOD DONATIONS AND BLOOD TRANSFUSIONS

Clause 20 to *clause 24*, inclusive, deal with blood donations and blood transfusions.

The purpose of this clause is to define “blood transfusion” as meaning the “transfusion of human blood or any of the constituents of human blood to a person”.

Clause 21 provides that an adult may consent to the removal of blood from his body for the purpose of a blood transfusion or for use for therapeutic, medical or scientific purposes.

Clause 22 authorizes a parent of a child to consent to the removal of blood from the child if a medical practitioner advises that the removal is not likely to be prejudicial to the health of the child and the child agrees to such removal.

Clause 23 provides that a consent under the part is sufficient authority for the removal of blood.

Clause 24 deals with emergency blood transfusions to children.

Under normal conditions, parental consent would be necessary for a blood transfusion to be given to a child but there are occasions where a blood transfusion is essential to preserve the life of the child but parental consent is refused or it is not possible to obtain parental consent.

The Bill will make it lawful in such circumstances for a medical practitioner to administer a blood transfusion to a child provided that, in the opinion of the medical practitioner, a blood transfusion is a reasonable and proper treatment for the condition from which the child is suffering and that without a transfusion, the child is likely to die.

However, before administering a transfusion under this provision, the practitioner will have to obtain a second and concurring medical opinion or, if the child is in a hospital and a second practitioner is not available, the approval of the chief medical administrator or medical superintendent to the transfusion.

It should be noted that the clause will exempt the practitioner administering the transfusion and any person acting in aid from any criminal liability to the extent that parental consent was not given but not from any liability to which he would otherwise be subject if such consent was given.

PART IV.—DONATIONS OF TISSUE AFTER DEATH

Clause 25 has the effect of providing that an authority given under the Part is sufficient authority for the removal of tissue for transplantation or for other therapeutic, medical or scientific purposes from the body of a deceased person by a medical practitioner other than the designated officer who gives the authority or a medical practitioner who has certified that death, or brain death has occurred under *clause 26 (7)*.

Clause 26 enables tissue to be removed from the body of a deceased person by a medical practitioner for transplantation to a living person or for other therapeutic, medical or scientific purposes provided that the deceased had either

expressed the wish for or consented to removal either in writing or, during his last illness, orally before two witnesses and provided that, if the body is in a hospital, the removal of tissue is authorized by the designated officer.

If there is no known next of kin, tissue may be removed or its removal authorized if there is no reason to believe that the deceased had objected to removal during his lifetime.

In any other case, removal may be authorized with the consent of the senior available next of kin.

However, the removal of tissue is not authorized if the deceased expressed a contrary wish in writing during his lifetime, or orally before two witnesses during his terminal illness.

The Bill will enable the senior available next of kin to consent to removal when a person is unconscious before death but such consent may not be acted upon if the person recovers consciousness.

The clause prohibits the authorization or the removal of tissue unless a medical practitioner who has been a practitioner for at least five years has first certified that death has occurred within the meaning of clause 44 or, if respiration or blood circulation are being artificially maintained, two such practitioners have first certified that brain death has occurred.

Clause 27 prohibits the removal of tissue if there is reason to believe that the coroner has jurisdiction to hold an inquest.

However, the coroner may consent to the removal of tissue or give a direction that his consent is not required.

PART V.—POST-MORTEM EXAMINATIONS

Clause 28 empowers the designated officer of a hospital to authorize a post-mortem examination where the body of a deceased person is in a hospital and, where the body is elsewhere than a hospital, empowers a medical practitioner to conduct a post-mortem examination.

The clause contains the same requirements regarding authorizations as specified in clause 26 for the removal of tissue from a deceased person.

Clause 29 prohibits a post-mortem where the coroner has jurisdiction unless the coroner consents, or gives a direction that his consent is not required.

Clause 30 provides that an authority under Part V. is sufficient authority for a medical practitioner, other than a designated officer of a hospital who gives the authorization, to conduct a post-mortem examination and to remove tissue from the body of the deceased person.

Clause 31 requires an anatomical examination, and the handling of the body, to be undertaken in a proper and decent manner.

PART VI.—DONATIONS FOR ANATOMICAL PURPOSES

Clause 32 deals with the donation of bodies for anatomical purposes. It empowers a designated officer of a hospital, if the body is in a hospital, or a medical practitioner if the body is elsewhere than a hospital, to authorize the

retention of the body for anatomical purposes subject to the same consents or lack of objections as apply in respect to donations of tissue from deceased persons and post-mortem examinations referred to in the notes on Clause 26.

Clause 33 prohibits the retention of a body for anatomical purposes if there is reason to believe the coroner has jurisdiction, unless the coroner consents to the retention or gives a direction that his consent is not required.

Clause 34 provides that an authority under Part VI. is sufficient authority for the removal of the body to, and its use by, a school of anatomy.

PART VII.—SCHOOLS OF ANATOMY

Clause 35 empowers the Minister to authorize the conduct of a school of anatomy within a prescribed institution by notice published in the *Government Gazette* and in like manner to authorize the carrying out of anatomical examinations at a place other than a prescribed institution.

Clause 36 provides for the appointment by the Governor in Council of inspectors of schools of anatomy and contains a continuing provision in respect of inspectors appointed under section 28 of the *Medical Act 1958*.

Clause 37 contains a head of power for the making of regulations in regard to various matters such as the transport of bodies to such schools of anatomy, the conditions under which anatomical examinations may be carried out, inspections of schools of anatomy and the disposal of bodies or parts of bodies.

PART VIII.—PROHIBITION OF TRADING IN TISSUE

Clause 38 prohibits the selling of tissue, or the right to take tissue except in accordance with a permit granted under section 39 (2).

Clause 39 makes it an offence for a person to buy, or offer to buy tissue unless, because of the special circumstances, a permit has been granted by the Minister.

Clause 40 prohibits advertising relating to the selling or buying of tissue unless the advertisement is approved by the Minister and contains a statement to that effect.

PART IX.—DEFINITION OF DEATH

Clause 41 provides that, for the purposes of the law in Victoria, a person has died when there has occurred irreversible cessation of circulation of blood in the body of the person or irreversible cessation of all function of the brain of the person.

PART X.—MISCELLANEOUS

Clause 42 exempts from the Act the removal of tissue from a person in the course of a medical procedure in the interests of the health of the person with the consent of the person, or in circumstances necessary for the preservation of the life of the person or for embalment or the preparation of a body for interment or cremation.

Clause 43 exempts from liability any person carrying out a procedure for which a consent or authority under the Act is sufficient authority for the person to carry out that procedure.

Clause 44 makes it an offence to remove tissue, or conduct a post-mortem examination, or remove a body to a school of anatomy, except in accordance with an authority under the Act.

The clause also makes it an offence to give an authority without making the inquiries required by the Act or to make a false statement in a certificate given for the purposes of the Act.

Clause 45 establishes various offences in regard to the disclosure of information relating to donors of tissue or in respect of whose body a consent or authority has been given under the Act or into whose body tissue is, or is being or may be transplanted.

Clause 46 provides a head of power for the making of regulations under the Act.