



New South Wales

Human Tissue Amendment (Children in Care of State) Act 2008 No 87

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New South Wales

Human Tissue Amendment (Children in Care of State) Act 2008 No 87

Act No 87, 2008

An Act to amend the *Human Tissue Act 1983* to make further provision for the removal of tissue from deceased children who were in the care of the State. [Assented to 19 November 2008]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Human Tissue Amendment (Children in Care of State) Act 2008*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Human Tissue Act 1983 No 164

The *Human Tissue Act 1983* is amended as set out in Schedule 1.

4 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments

(Section 3)

[1] Section 4 Definitions

Insert after section 4 (6):

- (7) For the purposes of this Act, a child is *in the care of the State* if:
 - (a) a Minister administering the *Children and Young Persons (Care and Protection) Act 1998* has sole parental responsibility in respect of the child (whether under that Act or otherwise), or
 - (b) the Director-General under the *Children and Young Persons (Care and Protection) Act 1998* has sole parental responsibility in respect of the child (whether under that Act or otherwise).
- (8) For the purposes of this Act, the *principal care officer*, in relation to a child in the care of the State, means the principal officer of a designated agency that has the supervisory responsibility for the child under the *Children and Young Persons (Care and Protection) Act 1998*.

[2] Section 23 Authority to remove tissue where body of deceased at a hospital

Insert after section 23 (3):

- (4) This section does not apply to a deceased child who, immediately before his or her death, was in the care of the State.

[3] Section 23A

Insert after section 23:

23A Authority to remove tissue where body of deceased child in care of State at a hospital

If a designated officer for a hospital is satisfied, after making such inquiries as are reasonable in the circumstances in relation to a child in the care of the State who has died in the hospital or whose dead body has been brought into the hospital, that:

- (a) the deceased child had not, during the child's lifetime, expressed an objection to the removal of tissue from the child's body for the purpose of its transplantation to the body of a living person, and

- (b) the principal care officer for the child has given his or her consent in writing, or in any other manner prescribed by the regulations, to the removal of tissue from the child's body for the purpose of its transplantation to the body of a living person,

the designated officer may, by instrument in writing, authorise the removal of tissue from the deceased child's body for the purpose of its transplantation to the body of a living person in accordance with the terms and any conditions of the consent referred to in paragraph (b).

[4] Section 24 Authority to remove tissue where body of deceased not at a hospital

Insert after section 24 (4):

- (5) This section does not apply to a deceased child who, immediately before his or her death, was in the care of the State.

[5] Sections 24A and 24B

Insert after section 24:

24A Authority to remove tissue where body of deceased child in care of State not at a hospital

If the body of a deceased child who, immediately before his or her death, was in the care of the State, is at a place other than a hospital, the principal care officer for the child may, by instrument in writing or in any other manner prescribed by the regulations, authorise the removal of tissue from the deceased child's body for the purpose of its transplantation to the body of a living person.

24B Consent and authorisation of principal care officer

- (1) A principal care officer must not give consent under section 23A or grant an authority under section 24A if:
- (a) it appears to the officer, after making such inquiries as are reasonable in the circumstances, that the deceased child had, during the child's lifetime, expressed an objection to the removal of tissue from the child's body and had not withdrawn that objection, or
 - (b) the officer has not undertaken the consultation and obtained the approvals required by the following subsections.

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- (2) Before determining whether or not to give consent under section 23A or grant an authority under section 24A, the principal care officer is to use reasonable efforts to consult with such persons as the officer considers might be appropriate.
 - (3) If any of the persons consulted is a person whose approval the principal care officer considers should be obtained before consent is given or an authority is granted, the officer must not give consent or grant an authority unless that person approves.
 - (4) The principal care officer may determine that more than one person's approval is required under subsection (3).

[6] Section 25 Consent by coroner

Omit "or a senior available next of kin" from section 25 (2).

Insert instead ", a senior available next of kin or a principal care officer".

[7] Section 34A Authority not to be given in respect of child in care of the State

Omit section 34A (1) (a). Insert instead:

- (a) authorise the removal of tissue from the body of a deceased child for any purpose (other than for the purpose of its transplantation to the body of a living person) if the child was, immediately before his or her death, in the care of the State, or

[8] Section 34A (4)

Omit the subsection.

[9] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

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[10] Schedule 1, Part 4

Insert after Part 3:

**Part 4 Provisions consequent on enactment of
Human Tissue Amendment (Children in
Care of State) Act 2008**

7 Authorities in respect of deceased children in care of State

An amendment made to this Act by the *Human Tissue Amendment (Children in Care of State) Act 2008* applies only in respect of the death of a child that occurs on or after the commencement of the amendment.

[Agreement in principle speech made in Legislative Assembly on 16 May 2008
Second reading speech made in Legislative Council on 12 November 2008]

BY AUTHORITY