



Human Tissue Amendment (Consent) Regulation 2003

under the

Human Tissue Act 1983

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Human Tissue Act 1983*.

MORRIS IEMMA, M.P.,

Minister for Health

Explanatory note

The object of this Regulation is to permit a senior available next of kin of a deceased person to give verbal consent to the removal of tissue from the deceased person for transplant purposes or other purposes if an audio or audio visual recording is made of the consent. This provides an alternative to obtaining the written consent of the next of kin to the removal of tissue in cases where a delay caused by the need to obtain written evidence of consent could render the transplant ineffective.

This Regulation also prescribes the period and the circumstances in which tissue lawfully removed from the body of a person may be retained for the purposes of obtaining an authority under the *Human Tissue Act 1983* to use the tissue for therapeutic, medical or scientific purposes. Tissue may be retained for a period not exceeding 72 hours if the tissue was removed from the body of a person during medical, dental or surgical treatment performed as a matter of urgency in order to save the life of the person or to prevent serious damage to the health of the person.

This Regulation also provides for a savings provision consequent on the enactment of the *Human Tissue and Anatomy Legislation Amendment Act 2003* (the **amending Act**). The savings provision permits an authorisation or consent validly given before the commencement of the amending Act in relation to tissue removed from a person, to continue to have effect in relation to the tissue. The savings provision also provides that Part 3C of the *Human Tissue Act 1983* (as inserted by the amending Act) does not apply

2003 No 796

Human Tissue Amendment (Consent) Regulation 2003

Explanatory note

in relation to tissue removed from the body of a living person before the commencement of the amending Act if the tissue was removed during medical, dental or surgical treatment carried out in the interests of the health of the person.

This Regulation is made under the *Human Tissue Act 1983*, including sections 23 (3) (b), 24 (3), 34 (1) (b2) and 39 (the general regulation-making power) and clause 1 (1) of Schedule 1.

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1 Name of Regulation

This Regulation is the *Human Tissue Amendment (Consent) Regulation 2003*.

2 Commencement

This Regulation commences on 1 November 2003.

3 Amendment of Human Tissue Regulation 2000

The *Human Tissue Regulation 2000* is amended as set out in Schedule 1.

2003 No 796

Human Tissue Amendment (Consent) Regulation 2003

Schedule 1 Amendments

Schedule 1 Amendments

(Clause 3)

[1] Part 5A

Insert after Part 5:

Part 5A Removal of tissue after death

14A Consent to removal of tissue

For the purposes of sections 23 (3) (b) and 24 (3) of the Act, the consent of a senior available next of kin of a deceased person may be given verbally if:

- (a) an audio or audio visual recording is made of the consent, and
- (b) the senior available next of kin has consented to the making of that audio or audio visual recording.

Note. This clause allows a senior available next of kin of a deceased person to consent verbally to the removal of tissue from the deceased person for transplant purposes or other purposes. Under the Act, consent may also be given in writing (for example, by facsimile or other means).

14B Retention of tissue lawfully removed

For the purposes of section 34 (1) (b2) of the Act, tissue may be retained for a period not exceeding 72 hours if the tissue was removed from the body of a person during medical, dental or surgical treatment performed as a matter of urgency in order to save the life of the person or to prevent serious damage to the health of the person.

[2] Clause 16

Insert after clause 15:

16 Provision consequent on enactment of Human Tissue and Anatomy Legislation Amendment Act 2003

- (1) An authorisation or consent validly given before the commencement of the *Human Tissue and Anatomy Legislation Amendment Act 2003* in relation to tissue removed from a person before that commencement, continues to have

effect in relation to the tissue as if that Act had not been enacted and the tissue may be used in accordance with that authorisation or consent.

- (2) Part 3C of the Act does not apply in relation to tissue removed from the body of a living person before the commencement of the *Human Tissue and Anatomy Legislation Amendment Act 2003* if the tissue was removed during medical, dental or surgical treatment carried out in the interests of the health of the person.