



New South Wales

Human Tissue Legislation Amendment Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Human Tissue Act 1983* (***the Human Tissue Act***):
 - (i) to require that the most recent views expressed by a deceased person are considered in determining whether or not authority should be given for the removal of tissue from the person's body, and
 - (ii) to allow a person appointed by the Director-General of the Ministry of Health, who is not a medical practitioner, to retrieve cardiovascular tissue where an authority is granted under the Human Tissue Act for the removal of such tissue (except in the case of removal of a heart for the purposes of a heart transplant), and
 - (iii) to allow for the making of guidelines by the Director-General of the Ministry of Health in relation to organ donation, including guidelines relating to the recording of reasons for not proceeding with the removal of tissue from a person in cases where the person has given consent, but the family has objected, and

- (b) to amend the *Anatomy Act 1977* (***the Anatomy Act***) to require that the most recent views expressed by a deceased person are considered in determining whether or not authority should be given for the anatomical examination of that person's body.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Human Tissue Act 1983 No 164

Schedule 1 [1] amends the Human Tissue Act to allow the authorisation of the removal of tissue from the body of a deceased person at a hospital if the person had expressed an objection to the removal of tissue, but subsequently indicated that he or she no longer objected. Presently, the removal of tissue from the body of a deceased person cannot be authorised under the Human Tissue Act if the person had, at any time, expressed an objection to such a removal (unless the person subsequently granted consent, in writing, to the removal of the tissue). **Schedule 1 [2]** makes an equivalent amendment with respect to the removal of tissue from the body of a deceased person where the body is not at a hospital.

Schedule 1 [3] amends section 27 of the Human Tissue Act to provide that an authority to remove cardiovascular tissue from the body of a deceased person is sufficient authority for a person other than a medical practitioner, appointed by the Director-General, to remove the tissue. Presently, that section only authorises the removal of tissue for corneal transplantation or the transplantation of musculoskeletal tissue by such appointed persons.

Schedule 1 [4] limits the authority for the removal of cardiovascular tissue by a person other than a medical practitioner to cases other than those in which the whole of the heart is being removed for the purposes of a heart transplant.

Schedule 1 [5] gives effect to paragraph (a) (iii) of the Overview above.

Schedule 1 [6] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 1 [7] makes transitional arrangements in relation to objections or views expressed prior to the enactment of the proposed Act.

Schedule 2 Amendment of Anatomy Act 1977 No 126

Schedule 2 [1] amends the Anatomy Act to allow the authorisation of the anatomical examination of the body of a deceased person at a hospital or forensic institution if the person had expressed an objection to the anatomical examination, but

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subsequently indicated that he or she no longer objected. Presently, the anatomical examination of the body of a deceased person cannot be authorised under the Anatomy Act if the person had, at any time, expressed an objection to such an examination (unless the person subsequently granted consent, in writing, to the anatomical examination). **Schedule 2 [2]** makes an equivalent amendment with respect to the anatomical examination of the body of a deceased person where the deceased person is not at a hospital or forensic institution.

Schedule 2 [3] makes transitional arrangements in relation to objections or views expressed prior to the enactment of the proposed Act.

First print



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No. , 2012

A Bill for

An Act to amend the *Human Tissue Act 1983* to make further provision with respect to the removal of tissue from a deceased person; and to amend the *Anatomy Act 1977* to make further provision with respect to the authorisation of anatomical examinations.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Human Tissue Legislation Amendment Act 2012</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5

Schedule 1	Amendment of Human Tissue Act 1983	1
	No 164	2
[1]	Section 23 Authority to remove tissues where body of deceased at hospital	3
	Omit section 23 (3) (a). Insert instead:	4
	(a) the deceased person had not, during the person's lifetime, expressed an objection to the removal of tissue from the person's body after the person's death or, if the person had expressed such an objection, based on the most recent views expressed by the deceased person, the person no longer had an objection to the removal of tissue from the person's body, and	5
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[2]	Section 24 Authority to remove tissue where body of deceased not at a hospital	13
	Omit section 24 (4) (a). Insert instead:	14
	(a) the deceased person had, during the person's lifetime, expressed an objection to the removal of tissue from the person's body after the person's death unless, based on the most recent views expressed by the deceased person, it appears that the person no longer had an objection to the removal of tissue from the person's body, or	15
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		21
[3]	Section 27 Effect of authority under this Part	22
	Insert "cardiovascular or" before "musculoskeletal tissue" in section 27 (1A) wherever occurring.	23
		24
[4]	Section 27 (1B)	25
	Insert after section 27 (1A):	26
	(1B) Despite subsection (1A), an authority under this Part which authorises the removal of tissue for the purpose of the transplantation of cardiovascular tissue is not sufficient authority for a person other than a medical practitioner to remove the whole of a heart for the purpose of a heart transplant.	27
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		31
[5]	Section 27A	32
	Insert after section 27:	33
	27A Guidelines for removal of tissue after death	34
	The Director-General may issue guidelines relating to the removal of tissue after death, including in relation to recording	35
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Schedule 1 Amendment of Human Tissue Act 1983 No 164

	reasons for not proceeding with the removal of tissue from the body of a deceased person, where the deceased person has given consent but the family has objected.	1 2 3
[6]	Schedule 1 Savings, transitional and other provisions	4
	Insert at the end of clause 1 (1):	5
	<i>Human Tissue Legislation Amendment Act 2012</i>	6
[7]	Schedule 1	7
	Insert at the end of the Schedule with appropriate Part and clause numbering:	8
Part	Provision consequent on enactment of Human Tissue Legislation Amendment Act 2012	9 10 11
	Authority to remove tissue where prior objection or views expressed	12 13
	Sections 23 and 24, as amended by the <i>Human Tissue Legislation Amendment Act 2012</i> , extend to any relevant expression of objection or views that occurred before the commencement of that Act.	14 15 16 17

Schedule 2 Amendment of Anatomy Act 1977 No 126

[1] Section 8 Authority for anatomical examination where body of deceased at a hospital or forensic institution

Omit section 8 (3) (a). Insert instead:

- (a) the deceased person had not, during the person's lifetime, expressed an objection to the anatomical examination of the person's body after the person's death or, if the person had expressed such an objection, based on the most recent views expressed by the deceased person, the person no longer had an objection to the anatomical examination of the person's body, and

[2] Section 8A Authority for anatomical examination where body of deceased not at a hospital or forensic institution

Omit section 8A (4) (a). Insert instead:

- (a) the deceased person had, during the person's lifetime, expressed an objection to the anatomical examination of the person's body after the person's death unless, based on the most recent views expressed by the deceased person, it appears that the person no longer had an objection to the anatomical examination of the person's body, or

[3] Schedule 2 Savings, transitional and other provisions	1
Insert at the end of the Schedule with appropriate Part and clause numbering:	2
Part Provision consequent on enactment of Human Tissue Legislation Amendment Act 2012	3 4 5
Authority for anatomical examination where prior objection or views expressed	6 7
Sections 8 and 8A, as amended by the <i>Human Tissue Legislation Amendment Act 2012</i> , extend to any relevant expression of objection or views that occurred before the commencement of that Act.	8 9 10 11