



New South Wales

Human Tissue Amendment (Ante-mortem Interventions) Bill 2023

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Human Tissue Act 1983* (*the Act*) to provide for ante-mortem procedures to be carried out on persons to facilitate post-mortem tissue donation.

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 day that is 4 months after the date of assent to this Act.

Schedule 1 Amendment of Human Tissue Act 1983 No 164

Schedule 1[2] inserts proposed Part 4A to establish a scheme to allow ante-mortem procedures to be carried out to facilitate post-mortem tissue donation.

Proposed section 27B defines certain terms used in proposed Part 4A, including *senior available next of kin*.

Proposed section 27C enables a designated officer for a hospital to authorise the carrying out of an ante-mortem procedure if—

- (a) the potential tissue donor provides consent to the ante-mortem procedure, or
- (b) a senior available next of kin of the potential tissue donor provides consent, or
- (c) after making reasonable inquiries, the designated officer—
 - (i) is unable to locate a senior available next of kin, and

- (ii) is satisfied the potential tissue donor has consented to the removal of tissue for donation, the consent has not been revoked and the potential donor has not expressed an objection to the carrying out of an ante-mortem procedure.

The Act, section 4 also defines—

- (a) **designated officer**, in relation to a hospital, as a person appointed for the time being under the Act, section 5(1)(a) to be a designated officer for the hospital, and
- (b) **designated specialist**, in relation to a hospital, means a person appointed for the time being under section 5(1)(b) to be a designated specialist for the hospital.

Proposed section 27C also provides that a designated officer must not give an authorisation unless—

- (a) the designated officer is reasonably satisfied an authorisation to remove tissue after the death of the potential tissue donor under the Act, Part 4 will be given, and
- (b) a designated specialist not involved in the care of the tissue donor, or where not reasonably available, an experienced medical practitioner, has certified in writing that the designated specialist or medical practitioner is reasonably satisfied—
 - (i) the death of the potential tissue donor is expected, and
 - (ii) the carrying out of an ante-mortem procedure on the potential tissue donor will not hasten the death or cause any more than minimal harm to a potential tissue donor.

Proposed section 27D provides the circumstances under which the senior available next of kin may consent to the carrying out of an ante-mortem procedure on a potential tissue donor.

Proposed section 27E provides that an authority under proposed section 27C is sufficient authority for the carrying out of an ante-mortem procedure on a potential tissue donor.

Proposed section 27F provides that the authority under proposed section 27C applies despite the *Guardianship Act 1987*. The authority does not have effect if—

- (a) a person responsible has given consent to treatment on the potential tissue donor under the *Guardianship Act 1987*, Part 5, and
- (b) the treatment is incompatible with the ante-mortem procedure.

Schedule 1[1] makes a consequential amendment.



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Contents

		Page
	1 Name of Act	2
	2 Commencement	2
Schedule 1	Amendment of Human Tissue Act 1983 No 164	3



New South Wales

Human Tissue Amendment (Ante-mortem Interventions) Bill 2023

No. , 2023

A Bill for

An Act to amend the *Human Tissue Act 1983* to allow ante-mortem procedures to be carried out to facilitate post-mortem tissue donation; and for related purposes.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Human Tissue Amendment (Ante-mortem Interventions) Act 2023*.

3

2 Commencement

4

This Act commences on the day that is 4 months after the date of assent to this Act.

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Schedule 1 Amendment of Human Tissue Act 1983 No 164

[1] Section 4 Definitions

Omit “*senior available next of kin* means—” from section 4(1), definition of *senior available next of kin*.

Insert instead “*senior available next of kin*, other than in Part 4A, means—”.

[2] Part 4A

Insert after Part 4—

Part 4A Ante-mortem procedures for donation of tissue after death

27B Definitions

In this part—

ante-mortem procedure means a medical procedure carried out to determine, maintain or improve the viability of tissue for a relevant purpose, including the following procedures—

- (a) the administration of medication,
- (b) the removal of blood for testing,
- (c) medical imaging.

potential tissue donor means the person on whom an ante-mortem procedure is to be carried out.

relevant purpose means the expected transplantation of tissue, excluding gametes, from a potential tissue donor’s body, after the potential tissue donor’s death, to the body of another living person.

senior available next of kin, of a potential tissue donor, means—

- (a) in relation to a child who is a potential tissue donor—
 - (i) a parent of the child, or
 - (ii) if a parent of the child is not available—a brother or sister of the child who is at least 18 years of age, or
 - (iii) if no person referred to in subparagraph (i) or (ii) is available—a guardian of the child, and
- (b) otherwise—
 - (i) the potential tissue donor’s spouse, or
 - (ii) if the potential tissue donor does not have a spouse or the potential tissue donor’s spouse is not available—a child of the potential tissue donor who is at least 18 years of age, or
 - (iii) if no person referred to in subparagraph (i) or (ii) is available—a parent of the potential tissue donor, or
 - (iv) if no person referred to in subparagraph (i), (ii) or (iii) is available—a brother or sister of the potential tissue donor who is at least 18 years of age.

27C Authority to carry out ante-mortem procedures

- (1) A designated officer in relation to a hospital may authorise the carrying out of an ante-mortem procedure if the potential tissue donor provides consent.

(2)	If the potential tissue donor lacks the capacity to provide consent under subsection (1), the designated officer may authorise the carrying out of an ante-mortem procedure if—	1 2 3
(a)	a senior available next of kin of the potential tissue donor provides consent under section 27D, or	4 5
(b)	after making reasonable inquiries, the designated officer is unable to locate a senior available next of kin and is satisfied that—	6 7
(i)	the potential tissue donor has, during the potential tissue donor's lifetime, provided consent in writing to the removal of tissue for a relevant purpose, and	8 9 10
(ii)	the consent has not been revoked, and	11
(iii)	the potential tissue donor has not expressed an objection to the carrying out of an ante-mortem procedure on the potential tissue donor.	12 13 14
(3)	Despite subsections (1) and (2), a designated officer must not give an authorisation unless—	15 16
(a)	the designated officer is reasonably satisfied an authorisation to remove tissue after the death of the potential tissue donor under the Act, Part 4 will be given, and	17 18 19
(b)	a prescribed practitioner has certified in writing that the prescribed practitioner is reasonably satisfied—	20 21
(i)	the death of the potential tissue donor is expected, and	22
(ii)	the carrying out of an ante-mortem procedure on the potential tissue donor will not hasten the death or cause any more than minimal harm to the potential tissue donor.	23 24 25
(4)	In this section—	26
	<i>experienced medical practitioner</i> means a medical practitioner who has been a registered medical practitioner for at least 5 years.	27 28
	<i>prescribed practitioner</i> means—	29
(a)	a designated specialist who is not involved in the care of the potential tissue donor, or	30 31
(b)	if a designated specialist is not available—an experienced medical practitioner not involved in the care of the potential tissue donor.	32 33
27D	Senior available next of kin may consent to ante-mortem procedures	34
(1)	A senior available next of kin may consent to the carrying out of an ante-mortem procedure on a potential tissue donor.	35 36
(2)	The senior available next of kin must not provide consent under subsection (1) unless the senior available next of kin is satisfied that there is no reason to believe the potential tissue donor has expressed an objection to the carrying out of an ante-mortem procedure on the potential tissue donor.	37 38 39 40
27E	Effect of an authority	41
	An authority under section 27C is sufficient authority for the carrying out of an ante-mortem procedure on a potential tissue donor.	42 43
27F	Relationship with Guardianship Act 1987	44
(1)	An authority under section 27C has effect despite the <i>Guardianship Act 1987</i> .	45

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| (2) | Despite subsection (1), an authority under section 27C does not have effect if— | 1 |
| | | 2 |
| | (a) a person responsible has given consent to treatment on the potential tissue donor under the <i>Guardianship Act 1987</i> , Part 5, and | 3 |
| | | 4 |
| | (b) the treatment is incompatible with the ante-mortem procedure. | 5 |
| (3) | In this section— | 6 |
| | <i>person responsible</i> has the same meaning as in the <i>Guardianship Act 1987</i> , Part 5. | 7 |
| | | 8 |
| | <i>treatment</i> has the same meaning as in the <i>Guardianship Act 1987</i> , Part 5. | 9 |