

Passed by both Houses



New South Wales

Health Legislation Amendment Bill 2005

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2005*



New South Wales

Health Legislation Amendment Bill 2005

Act No , 2005

An Act to make miscellaneous amendments to various Acts and a regulation that relate to health and associated matters; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Health Legislation Amendment Act 2005*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedule 6 commences on the date of assent to this Act or the commencement of section 10AH of the *Public Health Act 1991* (as inserted by the *Podiatrists Act 2003*), whichever is the later.

3 Amendment of Acts and regulation

The Acts and regulation specified in Schedules 1–6 are amended as set out in those Schedules.

**Schedule 1 Amendment of Health Administration
Act 1982 No 135**

(Section 3)

Section 20L Definitions

Insert “, the Ambulance Service of New South Wales” after “area health service” in the definition of *relevant health services organisation*.

Schedule 2 Amendment of Human Tissue Act 1983 No 164

(Section 3)

[1] Section 4 Definitions

Omit section 4 (2) (a). Insert instead:

- (a) a reference to a parent of a person includes a reference to the following:
 - (i) a step-parent of the person,
 - (ii) an adoptive parent of the person,
 - (iii) the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*, if the Minister has sole parental responsibility in respect of the person (whether under that Act or otherwise),

[2] Section 10

Omit the section. Insert instead:

10 Consents to removal of regenerative tissue from children

A parent of a child may give consent in writing to the removal from the child's body of specified regenerative tissue for the purpose of its transplantation to the body of a parent (being a biological parent, step-parent or adoptive parent), brother or sister of the child.

Note. A child must understand the nature and effect of the removal of tissue if a medical practitioner's certificate is to be issued under section 11. If a child is not capable of such understanding, a medical practitioner's certificate must be issued under section 11A and only transplantation to the body of a brother or sister is allowed.

[3] Section 11A

Insert after section 11:

11A Medical practitioners' certificate—child not capable of understanding

- (1) A medical practitioner who is of the opinion that a child is not, by reason of his or her age, capable of understanding the nature and effect of the removal of tissue from his or her body and the intended effect of its proposed transplantation, may certify in writing that:

-
- (a) the consent in writing of a parent of a child, the terms of which consent are set out in the certificate, was given in the presence of the medical practitioner, and
 - (b) the medical practitioner explained to the parent, before the consent was given, the nature and effect of the removal from the child's body of the tissue specified in the consent and the intended effect of its proposed transplantation, and
 - (c) the medical practitioner is satisfied that:
 - (i) at the time the consent was given, the parent was of sound mind, and
 - (ii) at the time the consent was given, the parent understood the nature and effect of the removal of the tissue and the intended effect of its proposed transplantation, and
 - (iii) the consent was freely given, and
 - (d) the medical practitioner is of the opinion that the following conditions (*the pre-conditions for child tissue donation*) are satisfied:
 - (i) the child, by reason of his or her age, is not capable of understanding the nature and effect of the removal of the tissue and the intended effect of its proposed transplantation,
 - (ii) the brother or sister of the child is likely to die or suffer serious and irreversible damage to his or her health unless the tissue intended to be removed from the child is used in the treatment of that brother or sister,
 - (iii) any risk to the child's health (including psychological and emotional health) caused by the removal of the tissue is minimal.
- (2) A certificate by a medical practitioner to the effect that the pre-conditions for child tissue donation are satisfied is effective only if a second medical practitioner, who is a specialist in paediatric medicine or paediatric transplants, also certifies in the certificate that:
- (a) he or she is of the opinion that those pre-conditions are satisfied, and
 - (b) he or she provides that opinion as an independent medical practitioner, being a medical practitioner:
 - (i) whose primary role in providing an opinion in the case is to ensure the health of the child from whom the tissue is to be removed, and

- (ii) who is not responsible for the care of the brother or sister in whose treatment the tissue is to be used.

[4] Section 14 Effect of consent under section 10

Insert at the end of the section:

- (2) Except as provided by section 15, a document that purports to be a consent given in accordance with section 10 is, where a certificate has been given in accordance with section 11A in relation to that consent, sufficient authority for a medical practitioner (other than either of the medical practitioners who gave the certificate) to remove the regenerative tissue specified in the consent for the purpose specified in the consent.

[5] Section 15 Written consent not to be sufficient authority in certain circumstances

Insert “or” at the end of section 15 (a).

[6] Section 15 (b)

Omit “or 11”. Insert instead “, 11 or 11A”.

[7] Section 15 (c) and (d)

Omit section 15 (c). Insert instead:

- (c) if a certificate was given for the purposes of section 11— that the child is no longer in agreement with the proposed removal and transplantation of the tissue, or
- (d) if a certificate was given for the purposes of section 11A— that the child has at least some understanding of the procedures involved in the removal of tissue from his or her body and has repeatedly and consistently expressed an unwillingness to undergo any such procedure.

[8] Section 16 Revocation of consent

Omit “or 11” from section 16 (2) and (5) (b) wherever occurring.

Insert instead “, 11 or 11A”.

[9] Section 20A Consent to removal of blood from child if child unable to agree

Insert “(being the biological parent, step-parent or adoptive parent)” after “treatment of the child’s parent”.

[10] Section 26 Certificates required in certain situations

Insert after section 26 (1):

- (1A) The 2 medical practitioners referred to in subsection (1) must not include:
- (a) any medical practitioner who is responsible for, or involved in, the removal of tissue from the person's body for the purpose of its transplantation to the body of another person, or
 - (b) any medical practitioner who is responsible for the care of the person who is the intended recipient of the tissue.

[11] Section 27 Effect of authority under this Part

Insert "or the transplantation of musculoskeletal tissue" after "corneal transplantation" wherever occurring in section 27 (1A).

[12] Section 27 (1A) (a)

Omit "Secretary". Insert instead "Director-General".

[13] Section 34 Act does not prevent specified removals of tissue

Insert after section 34 (1) (b2):

- (b3) the use of small samples of any tissue that is lawfully removed from the body of a person (whether living or deceased) for the purpose of carrying out analyses or tests:
- (i) that are part of a program (including any quality assurance program, quality control program, audit or evaluation) to ensure, or improve, the quality of services carried out at or by a hospital, a forensic institution, a laboratory, an educational or research institution or a supplier of blood or blood products, or
 - (ii) that are necessary for the delivery of services carried out at or by a hospital, a forensic institution, a laboratory, an educational or research institution or a supplier of blood or blood products or for the accreditation under any Act of a hospital, a forensic institution, a laboratory, an educational or research institution or a supplier of blood or blood products,

**Schedule 3 Amendment of Podiatrists Act 2003
No 69**

(Section 3)

Section 132 Regulations

Insert after section 132 (2) (m):

- (n) infection control standards to be followed by podiatrists in the practice of podiatry.

Schedule 4 Amendment of Poisons and Therapeutic Goods Act 1966 No 31

(Section 3)

[1] **Section 28**

Omit the section. Insert instead:

28 Prohibition on prescribing drugs of addiction in certain cases

- (1) A medical practitioner or nurse practitioner must not, without the proper authority, prescribe for or supply to any person a type A drug of addiction.
- (2) A medical practitioner or nurse practitioner must not, without the proper authority, prescribe or supply a type B drug of addiction:
 - (a) for continuous therapeutic use by a person for a period exceeding 2 months, or
 - (b) for a period that, together with any other period for which that drug or any other type B drug of addiction has been prescribed or supplied by the medical practitioner or nurse practitioner or has, to the medical practitioner's or nurse practitioner's knowledge, been prescribed or supplied by any other medical practitioner or nurse practitioner, would result in that drug, or that drug together with any other such drug, being prescribed or supplied for continuous therapeutic use for a period exceeding 2 months.
- (3) A medical practitioner or nurse practitioner must not, without the proper authority, prescribe for or supply to a person who, in the opinion of the medical practitioner or nurse practitioner, is a drug dependent person a type C drug of addiction.
- (4) For the purposes of this section, *the proper authority* means an authority under section 29 that authorises the medical practitioner or nurse practitioner to prescribe or supply the drug of addiction to the person concerned.
- (5) A drug of addiction may be prescribed for or supplied to a person by a medical practitioner or nurse practitioner without the proper authority if the medical practitioner or nurse practitioner is authorised by the regulations to prescribe or supply the drug without an authority under section 29.

(6) In this section:

type A drug of addiction means a drug of addiction prescribed by the regulations under this section as a type A drug of addiction.

type B drug of addiction means a drug of addiction prescribed by the regulations under this section as a type B drug of addiction.

type C drug of addiction means any drug of addiction (other than a type A drug of addiction).

[2] Section 29 Director-General may authorise prescription or supply of drugs of addiction

Omit “shall” wherever occurring in section 29 (5) (a) and (b).

Insert instead “may”.

Schedule 5 Amendment of Poisons and Therapeutic Goods Regulation 2002

(Section 3)

Clauses 121 and 121A

Omit clause 121. Insert instead:

121 Prescribed type A drugs of addiction

For the purposes of section 28 of the Act, each of the following is prescribed as a type A drug of addiction:

- (a) amphetamine,
- (b) dexamphetamine,
- (c) methylamphetamine,
- (d) methylphenidate,
- (e) phendimetrazine,
- (f) phenmetrazine.

121A Prescribed type B drugs of addiction

For the purposes of section 28 of the Act, each of the following is prescribed as a type B drug of addiction:

- (a) a drug of addiction that is packaged and labelled in a manner that is consistent with the drug being intended for administration by injection,
- (b) buprenorphine,
- (c) dextromoramide,
- (d) flunitrazepam,
- (e) hydromorphone,
- (f) methadone.

**Schedule 6 Amendment of Public Health Act 1991
No 10**

(Section 3)

**[1] Section 10AH Certain foot care services not to be provided by
unregistered persons (as inserted by the Podiatrists Act 2003)**

Insert at the end of section 10AH (2) (b):

, or

- (c) registered nurse and the debridement is carried out to the extent necessary to provide immediate relief from pain or discomfort.

[2] Section 10AH (5) (as inserted by the Podiatrists Act 2003)

Omit the subsection.