



New South Wales

Human Tissue Amendment (Children in Care of State) Bill 2008

Explanatory note

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

Overview of Bill

The object of this Bill is to allow for the removal of tissue from the body of a deceased child who was in the care of the State for the purpose of its transplantation to the body of a living person if the principal care officer in relation to the child has consented. The Bill sets out the procedures to be followed in determining whether such consent should be given, including consultation with relevant interested parties.

Currently, the *Human Tissue Act 1983* (the *Principal Act*) prohibits a person from authorising the removal of tissue for any purpose from the body of a deceased child who was in the care of the State. The *Principal Act* also prohibits a person from authorising the post-mortem examination of a deceased child who was in the care of the State or the use of tissue removed during a post-mortem examination of such a child. These prohibitions are subject to an authorisation under the *Coroners Act 1980* or another law.

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 a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Human Tissue Act 1983* set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Section 34A of the Principal Act currently prohibits a person from authorising the removal of tissue for any purpose from a deceased child who was in the care of the State, that is, where either the Minister for Community Services or the Director-General of the Department of Community Services has sole parental responsibility for the child. That section also prohibits the authorisation of a post-mortem examination and the use of tissue removed during a post-mortem examination in respect of such a child. The prohibitions are subject to anything done under the *Coroners Act 1980* or any other law.

Schedule 1 [7] amends section 34A of the Principal Act to enable a person to authorise the removal of tissue from the body of a deceased child who was in the care of the State only for the purpose of its transplantation to the body of a living person.

Schedule 1 [3] and [5] insert proposed sections 23A, and 24A and 24B, respectively, to provide for the authorisation process for the removal of tissue from the body of a deceased child who was in the care of the State. The proposed sections are consistent with the current requirements in respect of the removal of tissue from other deceased children, except in relation to who gives consent.

Proposed section 23A enables a designated officer for a hospital to authorise the removal of tissue from the body of a deceased child who was in the care of the State, and whose body is at or is brought to a hospital, for the purpose of its transplantation to the body of a living person. Such an authorisation may only be given if:

- (a) it appears that the deceased child had not (during his or her lifetime) objected to the removal of tissue from the child's body, and
- (b) the principal officer of a designated agency that has supervisory responsibility for the child under the *Children and Young Persons (Care and Protection) Act 1998* (the **principal care officer**) has consented to the removal.

Proposed section 24A enables a principal care officer for a deceased child who was in the care of the State, whose body is not at a hospital, to authorise the removal of tissue from the body of the deceased child for the purpose of its transplantation to the body of a living person.

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Proposed section 24B provides that a principal care officer may give a consent or grant an authority referred to above only if:

- (a) it appears that the deceased child had not (during his or her lifetime) objected to the removal of tissue from the child's body, and
- (b) the officer has used reasonable efforts to consult with such persons as the officer considers might be appropriate and, where the officer considers such a person's approval should be obtained, has obtained that approval.

Schedule 1 [2], [4] and [6] make consequential amendments.

Schedule 1 [1] inserts definitions into the Principal Act of a child *in the care of the State* (currently set out in section 34A) and *principal care officer*. **Schedule 1 [8]** makes a consequential amendment.

Schedule 1 [9] enables savings and transitional regulations to be made as a consequence of the proposed Act.

Schedule 1 [10] inserts a savings and transitional provision as a consequence of the enactment of the proposed Act to provide that the proposed amendments only apply in respect of the death of a child on or after the commencement of the amendments.

First print



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New South Wales

Human Tissue Amendment (Children in Care of State) Bill 2008

No. , 2008

A Bill for

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.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Human Tissue Amendment (Children in Care of State) Act 2008</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Amendment of Human Tissue Act 1983 No 164	7
The <i>Human Tissue Act 1983</i> is amended as set out in Schedule 1.	8
4 Repeal of Act	9
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	10 11
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	12 13

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 4 Definitions	3
	Insert after section 4 (6):	4
	(7) For the purposes of this Act, a child is <i>in the care of the State</i> if:	5
	(a) a Minister administering the <i>Children and Young Persons (Care and Protection) Act 1998</i> has sole parental responsibility in respect of the child (whether under that Act or otherwise), or	6 7 8 9
	(b) the Director-General under the <i>Children and Young Persons (Care and Protection) Act 1998</i> has sole parental responsibility in respect of the child (whether under that Act or otherwise).	10 11 12 13
	(8) For the purposes of this Act, the <i>principal care officer</i> , 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 <i>Children and Young Persons (Care and Protection) Act 1998</i> .	14 15 16 17 18
[2]	Section 23 Authority to remove tissue where body of deceased at a hospital	19 20
	Insert after section 23 (3):	21
	(4) This section does not apply to a deceased child who, immediately before his or her death, was in the care of the State.	22 23
[3]	Section 23A	24
	Insert after section 23:	25
23A	Authority to remove tissue where body of deceased child in care of State at a hospital	26 27
	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:	28 29 30 31
	(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	32 33 34 35

(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,	1 2 3 4 5
	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).	6 7 8 9 10
[4]	Section 24 Authority to remove tissue where body of deceased not at a hospital	11 12
	Insert after section 24 (4):	13
(5)	This section does not apply to a deceased child who, immediately before his or her death, was in the care of the State.	14 15
[5]	Sections 24A and 24B	16
	Insert after section 24:	17
24A	Authority to remove tissue where body of deceased child in care of State not at a hospital	18 19
	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.	20 21 22 23 24 25 26
24B	Consent and authorisation of principal care officer	27
(1)	A principal care officer must not give consent under section 23A or grant an authority under section 24A if:	28 29
(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	30 31 32 33 34
(b)	the officer has not undertaken the consultation and obtained the approvals required by the following subsections.	35 36 37

(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.	1 2 3 4
(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.	5 6 7 8
(4)	The principal care officer may determine that more than one person's approval is required under subsection (3).	9 10
[6]	Section 25 Consent by coroner	11
	Omit "or a senior available next of kin" from section 25 (2).	12
	Insert instead ", a senior available next of kin or a principal care officer".	13
[7]	Section 34A Authority not to be given in respect of child in care of the State	14 15
	Omit section 34A (1) (a). Insert instead:	16
	(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	17 18 19 20 21
[8]	Section 34A (4)	22
	Omit the subsection.	23
[9]	Schedule 1 Savings, transitional and other provisions	24
	Insert at the end of clause 1 (1):	25
	<i>Human Tissue Amendment (Children in Care of State) Act 2008</i>	26

[10] Schedule 1, Part 4	1
Insert after Part 3:	2
Part 4 Provisions consequent on enactment of Human Tissue Amendment (Children in Care of State) Act 2008	3 4 5
7 Authorities in respect of deceased children in care of State	6
An amendment made to this Act by the <i>Human Tissue Amendment (Children in Care of State) Act 2008</i> applies only in respect of the death of a child that occurs on or after the commencement of the amendment.	7 8 9 10