

# Human Tissue Act 1983 No 164

[1983-164]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Human Tissue and Anatomy Legislation Amendment Act 2003 No 18](#) (not commenced — Sch 3.2 to commence on the commencement of Div 4 of Part 5 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#))
  - [Nurses Amendment Act 2003 No 45](#) (not commenced)

### Authorisation

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# Human Tissue Act 1983 No 164



New South Wales

An Act relating to the donation of tissue by living persons, the removal of tissue from deceased persons, the conduct of post-mortem examinations of deceased persons, and certain other matters.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Human Tissue Act 1983*.

### 2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

### 3 (Repealed)

### 4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**artificial insemination** includes the fertilisation of a woman's ovum outside the woman's body for the purpose of implanting the fertilised ovum in the body of the woman or another woman.

**authorised supplier** means a person who is the holder of an authorisation issued in accordance with section 21I authorising the person to carry on a business of supplying blood, blood products or semen.

**blood product** means a product or extract derived or extracted from blood by any process of manufacture.

**child** means a person who has not attained the age of 18 years and who is not married.

**dentist** means a person who is registered, or deemed to be registered, as a dentist under the [Dentists Act 1934](#).

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

**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.

**donor**, in relation to blood or semen, means the person from whom the blood has been removed or the semen obtained.

**exempt supplier:**

(a) in relation to the supply of blood or a blood product, means:

- (i) the Australian Red Cross Society,
- (ii) the governing body of a hospital,
- (iii) the Commonwealth Serum Laboratories Commission, or
- (iv) any other body declared by the regulations to be an exempt supplier of blood or blood products for the purposes of this Act, or

(b) in relation to the supply of semen, means:

- (i) the governing body of a hospital, or
- (ii) any other body declared by the regulations to be an exempt supplier of semen for the purposes of this Act.

**governing body**, in relation to a hospital, means:

- (a) in the case of a public hospital that is controlled by a public health organisation within the meaning of the [Health Services Act 1997](#)—the public health organisation, or
- (b) in the case of a public hospital within the meaning of the [Health Services Act 1997](#) that is controlled by the Crown (including the Minister or the Health Administration Corporation)—the Crown, or
- (c) in the case of a private hospital within the meaning of the [Private Hospitals and Day Procedure Centres Act 1988](#)—the licensee of the hospital.

**hospital** means:

- (a) a public hospital within the meaning of the [Health Services Act 1997](#), or
- (b) a private hospital within the meaning of the [Private Hospitals and Day Procedure](#)

*Centres Act 1988.*

**medical practitioner** means a person who is registered, or deemed to be registered, as a medical practitioner under the *Medical Practitioners Act 1938*.

**next of kin** means:

- (a) in relation to a deceased child—a person referred to in paragraph (a) of the definition of **senior available next of kin**, and
- (b) in relation to any other deceased person—a person referred to in paragraph (b) of that definition.

**nurse** means a person who is registered as a nurse under the *Nurses Registration Act 1953*.

**nursing aide** means a person who is enrolled as a nursing aide under the *Nurses Registration Act 1953*.

**non-regenerative tissue** means tissue other than regenerative tissue.

**premises** includes any means of vehicular transport.

**prescribed contaminant** means an organism or substance declared by the regulations to be a prescribed contaminant for the purposes of this Act.

**record** includes book, account, deed, writing, document and any other source of information compiled, recorded or stored in written form, or on micro-film, or by electronic process, or in any other manner or by any other means.

**regenerative tissue** means tissue that, after injury or removal, is replaced in the body of a living person by natural processes of growth or repair.

**regulation** means a regulation made under this Act.

**senior available next of kin** means:

- (a) in relation to a deceased child:
  - (i) a parent of the child,
  - (ii) where a parent of the child is not available—a brother or sister of the child, being a brother or sister who has attained the age of 18 years, or
  - (iii) where no person referred to in subparagraph (i) or (ii) is available—a person who was a guardian of the child immediately before the death of the child, and
- (b) in relation to any other deceased person:
  - (i) a person who was a spouse of the deceased person immediately before the

deceased person's death,

- (ii) where the deceased person, immediately before death, had no spouse or where the deceased person had a spouse but the person who was then the deceased person's spouse is not available—a son or daughter (if any) of the deceased person, being a son or daughter who has attained the age of 18 years,
- (iii) where no person referred to in subparagraph (i) or (ii) is available—a parent of the deceased person, or
- (iv) where no person referred to in subparagraph (i), (ii) or (iii) is available—a brother or sister of the deceased person, being a brother or sister who has attained the age of 18 years.

**spouse** means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship within the meaning of the [Property \(Relationships\) Act 1984](#),

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

**supply** means supply by way of sale, exchange or gift, and includes receive, keep or store for the purpose of supply.

**tissue** includes an organ, or part, of a human body and a substance extracted from, or from a part of, the human body.

(2) In this Act:

- (a) a reference to a parent of a person includes a reference to a step-parent or adoptive parent of the person,
- (b) a reference to a son or daughter of a person includes a reference to any person of whom the person is a parent,
- (c) a reference to a brother or sister of a person includes a reference to any person who is a son or daughter of a parent of the person, and
- (d) (Repealed)

(2A) In this Act, except in so far as the context or subject-matter otherwise indicates or requires, a reference to tissue includes a reference to:

- (aa) blood,



(a) ova and semen, and

(b) foetal tissue.

(3) In this Act, a reference to the transplantation of tissue includes a reference to:

(a) the transplantation of any part of the tissue, and

(b) the transplantation of any substance obtained from the tissue,

and, without limiting the generality of the foregoing, includes a reference to the transfusion of blood and the artificial insemination of semen.

(4) In this Act, a reference to the removal of blood (however expressed) for any specified purpose includes a reference to the removal of blood so that a product to be derived or extracted from that blood may be used for that purpose.

## **5 Designated officers and designated specialists**

(1) The governing body of a hospital may, by instrument in writing:

(a) appoint such persons as the governing body considers necessary to be designated officers for the hospital, and

(b) except as provided by subsection (2), appoint such persons as the governing body considers necessary to be designated specialists for the hospital.

(2) The governing body of a hospital shall not appoint a person to be a designated specialist for the hospital unless the person is a medical practitioner:

(a) whose appointment as a designated specialist for the hospital is for the time being approved by the Secretary of the Department of Health, or

(b) who is a member of a prescribed class of medical practitioners.

## **Part 2 Donations of tissue by living persons**

### **Division 1 Exclusion of certain tissue**

#### **6 Definition**

In this Part, a reference to tissue does not include a reference to ova, semen or foetal tissue.

### **Division 2 Donations by adults**

#### **7 Consents to removal of regenerative tissue from adults**

A person, other than a child, may give consent in writing to the removal from the person's body of specified regenerative tissue for the purpose of:

- (a) its transplantation to the body of another living person, or
- (b) its use for other therapeutic purposes or for medical purposes or scientific purposes.

### **8 Consents to removal of non-regenerative tissue from adults**

- (1) A person, other than a child, may give consent in writing to the removal from the person's body, at any time after the expiration of 24 hours after the consent is given, of specified non-regenerative tissue for the purpose of its transplantation to the body of another living person.
- (2) A consent given under subsection (1) shall specify the day on which, and the time at which, it is given.

### **9 Medical practitioners' certificates**

A medical practitioner may certify in writing:

- (a) that the consent in writing of a person, the terms of which consent are set out in the certificate, was given in the presence of the medical practitioner,
- (b) that the medical practitioner explained to the person, before the consent was given, the nature and effect of the removal from the body of that person of the tissue specified in the consent, and
- (c) that the medical practitioner is satisfied that, at the time the consent was given:
  - (i) the person was not a child,
  - (ii) the person was of sound mind, and
  - (iii) the consent was freely given.

## **Division 3 Donations by children**

### **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, brother or sister of the child.

### **11 Medical practitioners' certificates**

A medical practitioner may certify in writing:

- (a) that 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,
- (b) that the medical practitioner explained to the parent and to the child, 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) that the medical practitioner is satisfied that, at the time the consent was given:

(i) the parent and the child were each of sound mind,

(ii) the parent and the child each understood the nature and effect of the removal of the tissue and the intended effect of its proposed transplantation,

(iii) the consent was freely given, and

(iv) the child was in agreement with the proposed removal and transplantation of the tissue.

## **Division 4 Effect of consent**

### **12 Effect of consent under section 7**

Except as provided by section 15, a document that purports to be a consent given in accordance with section 7 is, where a certificate has been given in accordance with section 9 in relation to that consent, sufficient authority for a medical practitioner (other than the medical practitioner who gave the certificate) to remove the regenerative tissue specified in the consent for the purpose or purposes specified in the consent.

### **13 Effect of consent under section 8**

Except as provided by section 15, a document that purports to be a consent given in accordance with section 8 is, where a certificate has been given in accordance with section 9 in relation to that consent, sufficient authority for a medical practitioner (other than the medical practitioner who gave the certificate) to remove (at any time after the expiration of 24 hours after the date and time specified in the consent to be the date on which, and the time at which, the consent was given) the non-regenerative tissue specified in the consent for the purpose specified in the consent.

### **14 Effect of consent under section 10**

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 11 in relation to that consent, sufficient authority for a medical practitioner (other than the medical practitioner who gave the certificate) to remove the regenerative tissue specified in the consent for the purpose specified in the consent.

### **15 Written consent not to be sufficient authority in certain circumstances**

A document that purports to be a consent given in accordance with section 7, 8 or 10 is not sufficient authority for a medical practitioner to remove tissue if the medical practitioner knows or has reasonable grounds for suspecting:

- (a) that the consent is revoked,
- (b) that the certificate given for the purposes of section 9 or 11, as the case may be, in relation to that document contains a statement which is false or misleading in a material particular, or
- (c) in the case of a document that purports to be a consent given in accordance with section 10—that the child to whom the document relates is no longer in agreement with the proposed removal and transplantation of the tissue.

## **Division 5 Revocation of consent or agreement**

### **16 Revocation of consent**

- (1) A reference in this section, in relation to a consent given in accordance with a provision of this Act, to the donor:
  - (a) in a case in which the consent is given in respect of a child—is a reference to the child, and
  - (b) in any other case—is a reference to the person who gave the consent.
- (2) Where a medical practitioner has given a certificate in accordance with section 9 or 11 and the person by whom the consent the subject of the certificate was given indicates:
  - (a) if the donor is a patient in a hospital:
    - (i) to a designated officer for the hospital,
    - (ii) to a medical practitioner who is attending the donor in a professional capacity, or
    - (iii) to a nurse or nursing aide employed at the hospital, or
  - (b) if the donor is not a patient in a hospital—to a medical practitioner who is attending the donor in a professional capacity,that the consent is revoked, subsections (3), (4) and (5) have effect.
- (3) Where:
  - (a) the donor is a patient in a hospital, and
  - (b) the person who gave the consent for the purposes of this Act indicates to a person referred to in subsection (2) (a) (ii) or (iii) that the consent is revoked,the person to whom the indication is given shall forthwith inform a designated officer for the hospital of the revocation of the consent.

Maximum penalty: 40 penalty units or imprisonment for 6 months, or both.

- (4) The designated officer for the hospital or, where the donor is not a patient in a hospital, the medical practitioner who is attending the donor in a professional capacity shall, if it appears to the designated officer or medical practitioner, as the case may be, after making such inquiries (if any) as are reasonable in the circumstances, that any other medical practitioner is proposing to remove tissue from the body of the donor pursuant to the consent, inform that other medical practitioner forthwith that the consent is revoked.

Maximum penalty: 40 penalty units or imprisonment for 6 months, or both.

- (5) A medical practitioner who has possession of:
- (a) an instrument of consent, or
  - (b) a certificate given in accordance with section 9 or 11 in relation to the consent,
- or both, shall, as soon as practicable after becoming aware that the consent is revoked, furnish the instrument or certificate, or both, as the case may be, to the person who gave the consent.

Maximum penalty: 40 penalty units or imprisonment for 6 months, or both.

## **17 Child no longer in agreement with removal and transplantation**

- (1) Where a medical practitioner has given a certificate in accordance with section 11 and the child in relation to whom the certificate has been given indicates:
- (a) if the child is a patient in a hospital:
    - (i) to a designated officer for the hospital,
    - (ii) to a medical practitioner who is attending the child in a professional capacity,  
or
    - (iii) to a nurse or nursing aide employed at the hospital, or
  - (b) if the child is not a patient in a hospital—to a medical practitioner who is attending the child in a professional capacity,

that the child is no longer in agreement with the proposed removal and transplantation of tissue, subsections (2), (3) and (4) have effect.

- (2) Where:
- (a) the child is a patient in a hospital, and
  - (b) the child indicates to a person referred to in subsection (1) (a) (ii) or (iii) that the child is no longer in agreement with the proposed removal and transplantation of

tissue,

the person to whom the indication is given shall forthwith inform a designated officer for the hospital that the child is no longer in agreement with the proposed removal and transplantation of tissue.

Maximum penalty: 40 penalty units or imprisonment for 6 months, or both.

- (3) The designated officer for the hospital or, where the child is not a patient in a hospital, the medical practitioner who is attending the child in a professional capacity shall, if it appears to the designated officer or the medical practitioner, as the case may be, after making such inquiries (if any) as are reasonable in the circumstances, that any other medical practitioner is proposing to remove tissue from the body of the child pursuant to the consent, inform that other medical practitioner forthwith that the child is no longer in agreement with the proposed removal and transplantation of tissue.

Maximum penalty: 40 penalty units or imprisonment for 6 months, or both.

- (4) A medical practitioner who has possession of:

(a) an instrument of consent, or

(b) a certificate given in accordance with section 11 in relation to the consent,

or both, shall, as soon as practicable after becoming aware that the child to whom the consent relates is no longer in agreement with the proposed removal and transplantation of tissue, furnish the instrument or certificate, or both, as the case may be, to the person who gave the consent.

Maximum penalty: 40 penalty units or imprisonment for 6 months, or both.

## **Part 3 Blood donations**

### **18 Part 2 not to apply to removal of blood**

Part 2 does not apply to or in respect of the removal of blood from the body of a person in accordance with this Part.

### **19 Consents to removal of blood from adults**

A person, other than a child, may consent to the removal of blood from the person's body for the purpose of:

(a) its transfusion to another person, or

(b) its use, or the use of any of its constituents, for other therapeutic purposes or for medical purposes or scientific purposes.

## **20 Consents to removal of blood from children**

- (1) A parent or guardian of a child may consent to the removal of blood from the child's body for a purpose referred to in section 19 (a) or (b) if:
  - (a) the child is in agreement with the removal of blood from the child's body, and
  - (b) in the case of a child who is under 16 years of age, a medical practitioner advises the parent or guardian that the removal of blood is not likely to be prejudicial to the health of the child.
- (2) Such a consent given in relation to a child aged 16 or 17 years of age (unless given for the removal of blood on a particular occasion only) is ongoing but can be withdrawn either by the parent or guardian who gave it or by the child ceasing to be in agreement.

## **21 Effect of consent under section 19 or 20**

A consent given under section 19 or 20 is sufficient authority for the removal of blood from the body of the person who has given the consent, or from the body of the child to whom the consent relates, as the case may be:

- (a) at a hospital,
- (b) at premises, used by the Australian Red Cross Society, or by any other body approved by the Minister for the purposes of this paragraph, in connection with the removal of blood from the bodies of persons, or
- (c) at prescribed premises or in premises of a prescribed class or description.
- (d) (Repealed)

## **Part 3A Special provisions concerning donations of blood or semen**

### **21A (Repealed)**

### **21B Application of Part**

This Part applies:

- (a) to blood that is removed from a donor:
  - (i) for the purpose of transfusing some or all of the blood to a person other than the donor, or
  - (ii) for the purpose of using some or all of the blood for other therapeutic purposes, or for medical or scientific purposes, involving the treatment of a person other than the donor,
- (b) to blood products derived or extracted from blood of the kind referred to in paragraph

(a), and

- (c) to semen obtained or received from a donor for the purpose of using some or all of the semen for the artificial insemination of a woman.

### **21C Certificates by donors**

(1) A person shall not:

(a) remove any donor's blood intended:

(i) for the purpose of its transfusion, or

(ii) for the purpose of its use, or the use of any of its constituents, for therapeutic purposes, or for medical purposes or scientific purposes, or

(b) obtain or receive any donor's semen intended for use for the artificial insemination of a woman,

unless the donor has signed a certificate relating to the medical suitability of the donor, being a certificate in or to the effect of the prescribed form, and had the signature witnessed by a prescribed person or a person of a prescribed class, at the time of the removal of the blood, or the obtaining or receipt of the semen, as the case may be.

Maximum penalty: 2 penalty units.

(2) Where:

(a) blood has been removed solely for a purpose other than a purpose referred to in section 21B (a), or

(b) semen has been obtained or received solely for a purpose other than the purpose referred to in section 21B (c),

a person shall not subsequently use the blood for any purpose referred to in section 21B (a) or use semen for the purpose referred to in section 21B (c) unless the donor has signed a certificate relating to the medical suitability of the donor, being a certificate in or to the effect of the prescribed form, and had the signature witnessed by a prescribed person or a person of a prescribed class, at the time of, or at any time after, the removal of the blood, or the obtaining or receipt of the semen, as the case may be, and before the use of the blood or semen.

Maximum penalty: 2 penalty units.

(3) Where a donor is required by subsection (1) or (2) to sign a certificate and have the signature witnessed and the donor is, by reason of illiteracy or physical incapacity, incapable of signing the certificate, the donor shall be deemed to have signed the certificate and had the signature witnessed in accordance with that requirement if:



- (a) in the case of a donor who is illiterate but not physically incapable of signing—the donor makes his or her mark on the certificate and a prescribed person or a person of a prescribed class witnesses the making of the mark and certifies on the certificate that, before the mark was made, the nature and effect of the certificate were explained to the donor, or
  - (b) in the case of a donor who is physically incapable of signing—a person authorised to do so by the donor has signed the certificate on the donor's behalf and a prescribed person or a person of a prescribed class witnesses that signature.
- (4) This section does not apply in respect of semen obtained or received from a donor solely for the purpose of its use for the artificial insemination of the donor's spouse.

**21D False or misleading statements**

A person shall not, for the purposes of this Part, sign a certificate which contains any statement which, to that person's knowledge, is false or misleading in a material particular.

Maximum penalty: 50 penalty units or imprisonment for one year, or both.

**21DA Restrictions as to legal proceedings involving infection by a prescribed contaminant etc**

(1) If:

- (a) a person has become infected with a prescribed contaminant, or a disease that is attributable to a prescribed contaminant, and
- (b) the contaminant was or may have been transmitted to that person:
  - (i) as a result of a transfusion of blood or a blood product or of any other treatment involving the use of blood or a blood product, or
  - (ii) in the case of a woman who has been artificially inseminated—as a result of the artificial insemination,

the provisions of subsection (2), (3) or (4) apply according to the circumstances of the case.

- (2) Proceedings for an offence (except an offence against section 21D) or in tort or for a breach of contract arising out of the transmission of a prescribed contaminant as referred to in subsection (1) may not be brought against the donor of the blood or semen concerned in the infection, unless it is proved in the proceedings:
- (a) that the donor has previously been found guilty of an offence against section 21D or of an offence against a law of another State or a Territory that corresponds to that section, or

- (b) that the donor would have been found guilty of such an offence had the donor been charged with such an offence.
- (3) If proceedings for an offence or in tort or for a breach of contract arising out of the transmission of a prescribed contaminant as referred to in subsection (1) are brought against a person (other than the donor) in respect of a supply by that person, or an employee of that person, of blood, a blood product or semen, it is a defence in those proceedings for the defendant to prove that:
- (a) at the time of supply, the defendant was an authorised supplier or an exempt supplier,
  - (b) if the defendant or an employee of the defendant removed the blood or the blood from which the blood product was derived or extracted, or had obtained or received the semen, from the donor—the defendant or that employee had, before supply, ensured that:
    - (i) the donor had signed either a certificate of the kind referred to in section 21C or a similar document as to the medical suitability of the donor to provide blood for a purpose referred to in section 21B (a) or to provide semen for the purpose referred to in section 21B (c), and
    - (ii) the blood, the blood from which the blood product was derived or extracted or, as the case may be, the blood of the donor of the semen had been subjected to tests of a kind approved by the Minister for the purposes of this section and those tests had indicated that no prescribed contaminant was present in that blood,
  - (c) if the defendant or an employee of the defendant obtained the blood, blood product or semen from another person—that other person was an authorised supplier or an exempt supplier, and
  - (d) before the time when the blood or blood product used for transfusion to, or for otherwise treating, the infected person, or the time when the semen was used for the artificial insemination of the infected woman, the defendant had not become aware that the blood, blood product or semen was or was likely to have been contaminated with the prescribed contaminant concerned or, if, before that time, the defendant had become aware of that fact, the defendant had taken all reasonably practicable steps to ensure that the blood, blood product or semen was not so used.
- (4) If proceedings for an offence or in tort or for a breach of contract arising out of the transmission of a prescribed contaminant as referred to in subsection (1) are brought against the person who carried out the transfusion, treatment or artificial insemination or the employer or any supervisor of that person, it is a defence in those proceedings for the defendant to prove that:

- (a) if the defendant or an employee of the defendant removed the blood or the blood from which the blood product was derived or extracted, or obtained or received the semen, from the donor directly, the defendant or that employee had ensured that:
  - (i) the donor had signed either a certificate of the kind referred to in section 21C or a similar document as to the medical suitability of the donor to provide blood for a purpose referred to in section 21B (a) or to provide semen for the purpose referred to in section 21B (c), and
  - (ii) the blood, the blood from which the blood product was derived or extracted or, as the case may be, the blood of the donor of the semen had been subjected to tests of a kind approved by the Minister for the purposes of this section and those tests had indicated that no prescribed contaminant was present in that blood,
- (b) if the defendant or an employee of the defendant obtained the blood, blood product or semen from another person—that other person was an authorised supplier or an exempt supplier, and
- (c) when the transfusion, treatment or artificial insemination was carried out, the defendant was not aware that the blood, blood product or semen was or was likely to have been contaminated with the prescribed contaminant concerned.

#### **21E Records**

The regulations may provide for the keeping of certificates given for the purposes of this Part and for the making and keeping of records in respect of those certificates.

### **Part 3B Regulation of businesses supplying blood, blood products or semen**

#### **21F Definitions**

- (1) In this Part:
  - (a) a reference to carrying on a business of supplying blood or blood products is a reference to carrying on a business or undertaking of supplying blood or blood products to medical institutions and other persons:
    - (i) with a view to transfusing some or all of the blood or blood products to persons, or
    - (ii) with a view to using some or all of the blood or blood products for other therapeutic purposes, or for medical or scientific purposes, involving the treatment of persons, and
  - (b) a reference to carrying on a business of supplying semen is a reference to

carrying on a business or undertaking of supplying semen to medical institutions and other persons for the purpose of using some or all of the semen for the artificial insemination of women.

(2) In this Part:

**authorisation** means an authorisation issued by the Secretary under section 21I.

**inspector** means a person holding office as an inspector under section 21P.

**Secretary** means the Secretary of the Department of Health or a person acting in that position.

**21G Unauthorised persons prohibited from carrying on a business of supplying blood, blood products or semen**

(1) A person shall not:

- (a) carry on a business of supplying blood, blood products or semen, or
- (b) participate in the management of such a business,

unless there is in force in respect of that business an authorisation in writing issued under section 21I.

(2) Subsection (1) does not apply to an exempt supplier.

**21H Applications for authorisations**

(1) Any person who wishes to carry on a business of supplying blood, blood products or semen may make an application in writing to the Secretary for an authorisation.

(2) An application under subsection (1) must contain or be accompanied by such particulars as may be prescribed with respect to:

- (a) the applicant,
- (b) the business of supplying blood, blood products or semen proposed to be carried on by the applicant,
- (c) the persons who are to be employed in that business, and
- (d) the premises at which it is proposed to carry on the business.

(3) As soon as practicable after receiving an application made under subsection (1), the Secretary shall proceed to consider and dispose of the application.

**21I Issue of authorisations etc**

(1) The Secretary may refuse to issue an authorisation applied for under section 21H on the ground that:

- (a) the application does not contain or is not accompanied by the prescribed particulars,
- (b) the applicant, or any person who is to be concerned in the management of the business proposed to be carried on by the applicant, is not a fit and proper person to carry on or be concerned in the management of the business of supplying blood, blood products or semen,
- (c) the persons or any of the persons proposed to be employed in the business proposed to be carried on by the applicant do not hold the prescribed qualifications in relation to particular functions to be performed in connection with that business,
- (d) the premises at which it is proposed to carry on the business do not satisfy the prescribed requirements or will contravene prescribed restrictions,
- (e) the Secretary is of the opinion that the health of the community would be jeopardised, or
- (f) the Secretary is of the opinion that the applicant would, if issued with an authorisation, be unable to comply with the prescribed conditions applicable to the authorisation,

but otherwise the Secretary must issue an authorisation.

- (2) If the Secretary refuses to issue an authorisation applied for under section 21H, the Secretary must notify the applicant in writing of the refusal and the grounds on which it is based.
- (3) An authorisation is subject to such conditions and restrictions as are prescribed or as are imposed under subsection (4).
- (4) In issuing an authorisation, the Secretary may impose such conditions and restrictions, not inconsistent with this Part or the regulations, as appear to be necessary to maintain the health of the community.
- (5) An authorisation shall remain in force on and from the date of its issue until revoked by the Secretary.
- (6) The Secretary shall not refuse to issue an authorisation without giving the applicant for the authorisation an opportunity to be heard.

## **21J Variation and revocation of conditions and restrictions of authorisation**

The Secretary may from time to time, by notice in writing served on the holder of an authorisation:

- (a) vary a condition or restriction imposed in respect of the authorisation under section

21I (4) or paragraph (b),

- (b) impose in respect of the authorisation such additional conditions and restrictions on that holder as appear to the Secretary necessary to preserve the health of the community, or
- (c) revoke a condition or restriction imposed in respect of the authorisation under section 21I (4) or paragraph (b).

#### **21K Revocation or suspension of authorisations**

- (1) If the Secretary is satisfied that the holder of an authorisation is failing or has failed to comply with or is contravening or has contravened a condition or restriction to which the authorisation is subject, the Secretary may, by notice in writing served on the holder of the authorisation, either revoke the authorisation or suspend its operation for a period not exceeding 90 days.
- (2) An authorisation may be revoked under subsection (1) even though its operation is suspended at the relevant time.
- (3) If the operation of an authorisation is suspended under subsection (1), the authorisation shall, for the purposes of section 21G, be deemed to have been revoked.
- (4) The Secretary shall not revoke an authorisation without giving the holder of the authorisation an opportunity to be heard.
- (5) If the holder of an authorisation surrenders the authorisation to the Secretary with a request for revocation, the Secretary must immediately revoke the authorisation.

#### **21L Offences under Part 3B**

A person who:

- (a) contravenes section 21G, or
- (b) fails to comply with or contravenes a condition or restriction to which an authorisation is subject,

is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

#### **21M Presumptions in certain legal proceedings**

If in any legal proceedings relating to an alleged contravention of section 21G it is proved that:

- (a) a person, other than the donor:
  - (i) has supplied blood or blood products on at least 2 occasions to one or more persons for the purpose of transfusion to other persons or for other therapeutic purposes, or for medical or scientific purposes, involving the treatment of persons,

or

(ii) has supplied semen on at least 2 occasions to one or more persons for the purpose of artificially inseminating women, or

(b) a person, other than the donor, has kept on premises occupied by that person blood or blood products or, as the case may be, semen in excess of the prescribed quantity,

it shall, until the contrary is proved, be presumed for the purposes of those proceedings that the person was carrying on a business of supplying blood or blood products or of supplying semen.

### **21N Offences by directors of corporations etc**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Part or a regulation made for the purposes of this Part, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Part or a regulation made for the purposes of this Part.

### **21O Time at which decision of the Secretary under section 21J or 21K is to have effect**

A decision of the Secretary under section 21J or 21K takes effect on the day after the day on which notice of the decision is served on the authorised supplier concerned or at such later time as may be specified in the notice.

### **21P Inspectors**

- (1) The Secretary may appoint any officer of the Department of Health, or any person whom the Secretary considers to be suitably qualified for the purpose, to be an inspector for the purposes of this Part.
- (2) On appointing an inspector under subsection (1), the Secretary shall issue to the inspector a certificate of authority authorising the inspector to exercise the powers conferred by section 21Q.

### **21Q Powers of inspectors**

- (1) An inspector may exercise all or any of the following powers for the purposes of this Part:
  - (a) the power at all reasonable times to enter and inspect all premises for the purpose

of ascertaining whether or not a provision of this Part or a regulation made for the purposes of this Part is not being or has not been complied with or is being or has been contravened,

- (b) the power to inspect:
  - (i) all blood, blood products or semen kept on those premises,
  - (ii) all containers that the inspector reasonably believes to contain or to have contained blood, blood products or semen, and
  - (iii) all equipment kept on the premises that the inspector reasonably believes to be or to have been used for processing, packing or storing blood, blood products or semen,
- (c) the power to take and remove for analysis or testing a sample of any blood, blood product or semen kept on the premises,
- (d) the power to inspect all records kept on those premises and the power to require any person whom the inspector reasonably believes to have custody or control of those records to produce them for inspection,
- (e) without limiting paragraph (d), the power to inspect, and the power to require a person to produce for inspection, any records in the custody or under the control of the person, being records which relate:
  - (i) to the question of whether or not a provision of this Part or a regulation made for the purposes of this Part is not being or has not been complied with or is being or has been contravened, or
  - (ii) to financial transactions relating to a business of supplying blood, blood products or semen,
- (f) if any records inspected, produced or required to be produced in accordance with paragraph (d) or (e):
  - (i) are not in writing,
  - (ii) are not written in the English language, or
  - (iii) are not decipherable on sight,

the power to require the person who has custody or control of those records to produce a statement in the English language and decipherable on sight setting out the contents of those records,
- (g) the power to make and take away copies of the whole or any part of a record inspected or produced in accordance with paragraph (d) or (e) or a statement produced in accordance with paragraph (f),



- (h) the power to seize and detain:
    - (i) any blood, blood product or semen in relation to which the inspector reasonably believes an offence against this Part or against a regulation made for the purposes of this Part is being or has been committed,
    - (ii) any container in which any such blood, blood product or semen is kept, and
    - (iii) any equipment which the inspector reasonably believes is being or has been used in connection with any such offence,
  - (i) the power:
    - (i) to place any blood, blood product or semen, referred to in paragraph (h), in a container,
    - (ii) where any blood, blood product, semen, container or equipment referred to in that paragraph has been seized on premises entered in accordance with paragraph (a), to place the blood, blood product, semen, container or equipment in a room, compartment or cabinet located on those premises, and
    - (iii) to mark, fasten and seal that container or, as the case may be, the door or opening providing access to that room, compartment or cabinet,
  - (j) in order to make copies of records or of parts of records which may be inspected in accordance with paragraph (d) or (e) or of statements produced in accordance with paragraph (f), the power to take away and retain, for such period as may be reasonably necessary, any such records or statements,
  - (k) if the inspector concerned reasonably believes that any such records or statements are evidence of an offence against this Part or a regulation made for the purposes of this Part, the power to take away and retain those records or statements until proceedings for the offence have been disposed of.
- (2) Subsection (1) (a) does not authorise an inspector to effect an entry to premises by the use of force or to enter a part of premises that is used for residential purposes without the consent of the occupier of that part.
- (3) Before taking away a record or statement under subsection (1), an inspector must tender an appropriate receipt to the person from whom it is taken.
- (4) Any blood, blood product, semen, container or equipment seized under subsection (1) (h) may, at the option of the inspector who made the seizure or another inspector acting in place of that inspector, be detained on the premises where it was found or be removed to other premises and detained there.
- (5) If any information whatever is given to an inspector by an officer of a corporation which is carrying on or has carried on a business of supplying blood, blood products or

semen, the information is, for the purposes of any proceedings against the corporation for an offence against this Part or a regulation made for the purposes of this Part, binding on and admissible in evidence against the corporation, unless it is proved that the information was given in relation to a matter in respect of which the officer had no authority to bind the corporation.

- (6) The provisions of subsection (5) are in addition to any enactment or rule of law relating to the binding effect and admissibility in evidence of statements made by an officer of a corporation.
- (7) In subsections (5) and (6), **officer**, in relation to a corporation, has the same meaning as that expression has in the *Corporations Act 2001* of the Commonwealth.

### **21R Obstruction etc of inspectors**

- (1) A person who:
  - (a) prevents or attempts to prevent an inspector from exercising the power conferred by section 21Q (1) (a),
  - (b) hinders or obstructs an inspector in the exercise of any of the other powers conferred by section 21Q, or
  - (c) fails or refuses to comply with a requirement made under that section,is guilty of an offence and liable to a penalty not exceeding 10 penalty units or to imprisonment for a term not exceeding 3 months.
- (2) A person is not guilty of an offence under subsection (1) unless:
  - (a) it is established by the prosecutor that the inspector concerned produced at the relevant time the certificate of authority issued to the inspector under section 21P (2),
  - (b) where the offence arises under subsection (1) (a) or (b)—it is established by the prosecutor that the person was informed by the inspector concerned, or otherwise knew, that that inspector was empowered to exercise the power to which the offence relates, or
  - (c) where the offence arises under subsection (1) (c)—it is established by the prosecutor that the inspector concerned warned the person that a failure or refusal to comply with the requirement was an offence.

### **21S Disposal of seized articles**

- (1) If:
  - (a) any blood, blood product, semen, container or equipment seized under section 21Q (1) (h):

- (i) has not been disposed of as referred to in subsection (2), or
  - (ii) in the case of blood, a blood product or semen, has not been destroyed under subsection (5),
- and no application for disallowance of the seizure has been made within the period allowed by section 21T (1), or
- (b) any such application has been made within that period and the application has been refused or withdrawn before a decision in respect of the application has been made,

the blood, blood product, semen, container or equipment shall be forfeited to the Crown and may be destroyed or disposed of in such manner as the Secretary directs.

(2) If:

- (a) any blood, blood product, semen, container or equipment seized under section 21Q (1) (h):
  - (i) has not been forfeited by virtue of subsection (1), or
  - (ii) in the case of blood, a blood product or semen, has not been destroyed under subsection (5), and
- (b) the Secretary is satisfied that no failure to comply with or contravention of any of the provisions of this Part or of the regulations made for the purposes of this Part has been committed in relation to the blood, blood product, semen, container or equipment,

the Secretary shall immediately cause the blood, blood product, semen, container or equipment to be delivered to such person as appears to the Secretary to be entitled to it.

(3) If:

- (a) any blood, blood product, semen, container or equipment seized under section 21Q (1) (h) is forfeited to the Crown by virtue of subsection (1) because no application for disallowance of the seizure was made within the period allowed by section 21T (1),
- (b) the Secretary is satisfied that no failure to comply with or contravention of any of the provisions of this Part or of any regulations made for the purposes of this Part has been committed in relation to the blood, blood product, semen, container or equipment, and
- (c) the blood, blood product, semen, container or equipment has not been destroyed or disposed of in a manner that would prevent it from being dealt with in

accordance with this subsection,

the Secretary shall immediately cause the blood, blood product, semen, container or equipment to be delivered to such person as appears to the Secretary to be the person who would, but for the forfeiture, have been entitled to it.

(4) If any blood, blood product, semen, container or equipment is delivered to a person in accordance with subsection (3), such proprietary and other interests as existed immediately before the forfeiture are revived.

(5) If:

(a) an inspector who has seized any blood, blood product or semen under section 21Q (1) (h) is satisfied on reasonable grounds that the blood, blood product or semen contains a prescribed contaminant, and

(b) the blood, blood product or semen is not required or is no longer required to be retained for the purposes of any legal proceedings,

the inspector shall cause the blood, blood product or semen to be destroyed.

#### **21T Disallowance of seizure**

(1) Any person claiming to be entitled to any blood, blood product, semen, container or equipment seized under section 21Q (1) (h) may, within 10 days after the date on which the seizure took place, make an application to the District Court for an order disallowing the seizure of the blood, blood product, semen, container or equipment.

(2) An application made under subsection (1) shall not be heard unless the applicant has previously served a copy of the application on the Secretary.

(3) The Secretary is entitled to appear as respondent at the hearing of an application made under subsection (1).

(4) The District Court shall, on the hearing of an application made under subsection (1), make an order disallowing the seizure:

(a) if it is proved by or on behalf of the applicant that the applicant would, but for the seizure, be entitled to the blood, blood product, semen, container or equipment and if it is not proved by or on behalf of the respondent beyond all reasonable doubt that an offence was being or had been at the time of the seizure, committed in relation to the blood, blood product, semen, container or equipment, or

(b) if, in the opinion of the Court, there are exceptional circumstances justifying the making of an order disallowing the seizure,

but otherwise the Court must refuse the application.

(5) If on the hearing of an application made under subsection (1) it appears to the District

Court that the blood, blood product, semen, container or equipment that is the subject of the application is required to be produced in evidence in any pending proceedings in connection with an offence against this Part or against any regulation made for the purposes of this Part, the Court may, either on the application of the respondent or on its own motion, adjourn the hearing until the conclusion of those proceedings.

- (6) If the District Court makes an order under subsection (4) disallowing the seizure of any blood, blood product, semen, container or equipment, the Court must also make one or both of the following orders:
  - (a) an order directing the respondent to cause the blood, blood product, semen, container or equipment to be delivered to the applicant or to such other person as appears to the Court to be entitled to it,
  - (b) where the blood, blood product, semen, container or equipment cannot for any reason be so delivered or has in consequence of the seizure depreciated in value, an order directing the Secretary to pay to the applicant such amount by way of compensation as the Court considers to be just and reasonable.
- (7) The award of costs with respect to the hearing of an application made under subsection (1) is in the discretion of the District Court.
- (8) If the District Court makes an order for the payment of any amount as compensation under subsection (6) (b) or awards any amount as costs under subsection (7), that order is enforceable as a judgment of the Court.

## **21U Injunctions**

- (1) If a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of section 21G, the Supreme Court may, on the application of the Secretary, grant an injunction restraining the person from engaging in that conduct and, if in the opinion of the Court it is desirable to do so, requiring the person to do any act or thing.
- (2) If an application is made to the Supreme Court for an injunction under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) pending the determination of the application.
- (3) The Supreme Court may rescind or vary an injunction granted under subsection (1) or (2).
- (4) If an application is made to the Supreme Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Court to grant the injunction may be exercised:

- (a) where the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in that conduct, or
- (b) where it appears to the Court that, in the event of the injunction not being granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind.

#### **21V Service of notices**

- (1) A notice required under this Part to be served on an authorised supplier may be served:
  - (a) if the authorised supplier is a person other than a body corporate:
    - (i) by delivering it to that person personally, or
    - (ii) by sending it by post addressed to that person at the supplier’s residence or at any place at which the supplier carries on business, whether of supplying blood, blood products or semen or not, or
  - (b) if the authorised supplier is a body corporate:
    - (i) by leaving it with a director or the secretary of the body corporate, or
    - (ii) by sending it by post addressed to the body corporate at its registered office or, if its registered office is not located in New South Wales, to the principal place of business of the body corporate in New South Wales.
- (2) Subsection (1) does not affect the operation of any law authorising a document to be served in a manner not provided for by that subsection.

### **Part 4 Removal of tissue after death**

#### **22 (Repealed)**

#### **23 Authority to remove tissue where body of deceased at a hospital**

- (1) Where it appears to a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances in relation to a person who has died in the hospital or whose dead body has been brought into the hospital, that the person:
  - (a) had, during that person’s lifetime, expressed the wish for, or consented to, the removal after that person’s death of tissue from that person’s body for the purpose of:
    - (i) its transplantation to the body of a living person, or
    - (ii) its use for other therapeutic purposes or for medical purposes or scientific purposes, and

(b) had not withdrawn the wish or revoked the consent,

the designated officer may, by instrument in writing, authorise the removal of tissue from that person's body in accordance with the wish or consent.

(2) Where it appears to a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances in relation to a person who has died in the hospital or whose dead body has been brought into the hospital, that:

(a) the designated officer is not authorised by subsection (1) to give an authority in respect of the person,

(b) the person had not, during the person's lifetime, expressed an objection to the removal of tissue from the person's body, and

(c) a senior available next of kin of the person has not objected to the removal of tissue from the person's body,

the designated officer may, by instrument in writing, authorise the removal of tissue from the person's body for any of the purposes referred to in subsection (1) (a) (i) or (ii).

(3) Where a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances (which shall include inquiries addressed to the Commissioner of Police), is unable to ascertain the existence or whereabouts of a next of kin of a deceased person, subsection (2) applies as if paragraph (c) of that subsection were omitted.

(4) Where, in relation to a deceased person:

(a) a next of kin of the person indicated to a designated officer for a hospital, when the person was unconscious before death, that the next of kin had no objection to the removal, after the person's death, of tissue from the person's body for a purpose referred to in subsection (1) (a) (i) or (ii),

(b) the person did not subsequently recover consciousness before dying, and

(c) the next of kin has not subsequently indicated to the designated officer that the next of kin objects to the removal of tissue from the person's body,

the designated officer may, for the purposes of any inquiry the designated officer is required to make by subsection (2), rely on that indication without further inquiry of that next of kin.

(5) Where there are 2 or more persons having a description referred to in a subparagraph of paragraph (a) or (b) of the definition of **senior available next of kin** in section 4 (1), an objection by any one of those persons has effect for the purposes of subsection (2) (c) notwithstanding any indication to the contrary by the other or any other of

those persons.

## **24 Authority to remove tissue where body of deceased not at a hospital**

(1) Where:

- (a) the body of a deceased person (other than a deceased child) is at a place other than a hospital,
- (b) the deceased person had, during the person's lifetime, expressed the wish for, or consented to, the removal after the person's death of tissue from the person's body for the purpose of:

- (i) its transplantation to the body of a living person, or
- (ii) its use for other therapeutic purposes or for medical purposes or scientific purposes, and

(c) the wish had not been withdrawn or the consent revoked,

the removal of tissue from the person's body in accordance with the wish or consent is hereby authorised.

(2) Where the body of a deceased person is at a place other than a hospital, a senior available next of kin of the person may, by instrument in writing, authorise the removal of tissue from the person's body for the purpose of:

- (a) its transplantation to the body of a living person, or
- (b) its use for other therapeutic purposes or for medical purposes or scientific purposes.

(3) Notwithstanding subsection (2), where it appears to a senior available next of kin of a deceased person, after making such inquiries (if any) as are reasonable in the circumstances, that:

- (a) the person had, during the person's lifetime, expressed an objection to the removal of tissue from the person's body and had not withdrawn that objection, or
- (b) another next of kin of the same or a higher order of the classes in paragraph (a) or (b) of the definition of **senior available next of kin** in section 4 (1) has an objection to the removal of tissue from the person's body,

the senior available next of kin shall not authorise the removal of tissue from the person's body.

Maximum penalty for an offence against this subsection: 10 penalty units.



## 25 Consent by coroner

- (1) This section applies to a person in respect of whose death a coroner has jurisdiction to hold an inquest under the *Coroners Act 1980*.
- (2) A designated officer for a hospital or a senior available next of kin shall not authorise the removal of tissue from the body of a person to whom this section applies unless a coroner has given consent to the removal of the tissue.  
  
Maximum penalty: 40 penalty units or imprisonment for 6 months, or both.
- (3) Section 24 (1) does not apply in relation to a person to whom this section applies unless a coroner has given consent to the removal of tissue from the person's body.
- (4) A consent by a coroner under this section may be expressed to be subject to such conditions as are specified in the consent.
- (5) A consent by a coroner under this section may be given orally and, if so given, is to be confirmed in writing as soon as practicable.
- (6) A coroner shall, in determining the conditions (if any) to which a consent shall be subject, have regard only to the effect which the removal of tissue from the body of the person to whom the consent relates may have in relation to the conduct of any inquest which a coroner has jurisdiction to hold in respect of that person's death.

## 26 Certificates required in certain situations

- (1) Where:
  - (a) a person has died in a hospital or the body of a deceased person has been brought into a hospital, and
  - (b) at the time when the person died or at any time thereafter the person's respiration or the circulation of the person's blood was being maintained by artificial means,

a designated officer for the hospital shall not give an authority under this Part in respect of the person unless each of 2 medical practitioners (not including the designated officer) has certified in writing:

- (c) that the medical practitioner carried out a clinical examination of the person while the person's respiration or the circulation of the person's blood was being maintained by artificial means, and
- (d) that, at the time of that examination, irreversible cessation of all function of the person's brain had, in the opinion of the medical practitioner, already occurred.

Maximum penalty: 40 penalty units or imprisonment for 6 months, or both.

- (2) At the time when the clinical examination referred to in subsection (1) is carried out:
  - (a) each of the 2 medical practitioners referred to in that subsection shall have practised medicine for a period or periods totalling not less than 5 years during the 8 years immediately preceding that time, and
  - (b) at least one of those medical practitioners shall be a designated specialist for the hospital referred to in that subsection.
- (3) For the purposes of subsection (2) (a), any period during which a person has practised medicine in a place outside New South Wales in accordance with the law in force in that place shall be taken into account in calculating the period of 5 years referred to in that paragraph.

## **27 Effect of authority under this Part**

- (1) An authority under this Part is sufficient authority for a medical practitioner other than:
  - (a) a medical practitioner referred to in section 26 (1), or
  - (b) where the authority was given by a medical practitioner, the medical practitioner by whom the authority was given,to remove tissue from the body of the deceased person referred to in the authority for the purpose or purposes specified in the authority.
- (1A) Without limiting subsection (1), an authority under this Part which authorises the removal of tissue for the purpose of corneal transplantation (whether or not it authorises the removal of tissue for any other purpose) is sufficient authority for a person other than a medical practitioner to remove tissue from the body of the deceased person referred to in the authority for the purpose of corneal transplantation if the person removing the tissue:
  - (a) is appointed, in writing, by the Secretary of the Department of Health to remove tissue under this section for the purpose of corneal transplantation, and
  - (b) is not the person by whom the authority was given.
- (2) A contravention by a designated officer of section 26 (1) in relation to the giving of an authority does not affect the validity of the authority.

## **Part 5 Post-mortem examinations**

### **28 Authority for post-mortem examination where body of deceased at a hospital**

- (1) Where it appears to a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances in relation to a person who has died in the hospital or whose dead body has been brought into the hospital, that the person:

(a) had, during that person's lifetime, expressed the wish for, or consented to, the post-mortem examination of that person's body, and

(b) had not withdrawn the wish or revoked the consent,

the designated officer may, by instrument in writing, authorise the post-mortem examination of that person's body in accordance with the wish or consent.

(2) Where it appears to a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances in relation to a person who has died in the hospital or whose dead body has been brought into the hospital, that:

(a) the designated officer is not authorised by subsection (1) to give an authority in respect of the person,

(b) the person had not, during the person's lifetime, expressed an objection to the post-mortem examination of the person's body, and

(c) a senior available next of kin of the person has not objected to the post-mortem examination of the person's body,

the designated officer may, by instrument in writing, authorise the post-mortem examination of the person's body.

(3) Where a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances (which shall include inquiries addressed to the Commissioner of Police), is unable to ascertain the existence or whereabouts of a next of kin of a deceased person, subsection (2) applies as if paragraph (c) of that subsection were omitted.

(4) Where, in relation to a deceased person:

(a) a next of kin of the person indicated to a designated officer for a hospital, when the person was unconscious before death, that the next of kin had no objection to the post-mortem examination of the person's body,

(b) the person did not subsequently recover consciousness before dying, and

(c) the next of kin has not subsequently indicated to the designated officer that the next of kin objects to the post-mortem examination of the person's body,

the designated officer may, for the purposes of any inquiry the designated officer is required to make by subsection (2), rely on that indication without further inquiry of that next of kin.

(5) Where there are 2 or more persons having a description referred to in a subparagraph of paragraph (a) or (b) of the definition of **senior available next of kin** in section 4 (1), an objection by any one of those persons has effect for the purposes of subsection

(2) (c) notwithstanding any indication to the contrary by the other or any other of those persons.

## **29 Authority for post-mortem examination where body of deceased not at a hospital**

(1) Where:

- (a) the body of a deceased person (other than a deceased child) is at a place other than a hospital,
- (b) the deceased person had, during the person's lifetime, expressed the wish for, or consented to, the post-mortem examination of the person's body, and
- (c) the wish had not been withdrawn or the consent revoked,

the post-mortem examination of the person's body in accordance with the wish or consent is hereby authorised.

(2) Where the body of a deceased person is at a place other than a hospital, a senior available next of kin of the person may, by instrument in writing, authorise the post-mortem examination of the person's body.

(3) Notwithstanding subsection (2), where it appears to a senior available next of kin of a deceased person, after making such inquiries (if any) as are reasonable in the circumstances, that:

- (a) the person had, during the person's lifetime, expressed an objection to the post-mortem examination of the person's body and had not withdrawn that objection, or
- (b) another next of kin of the same or a higher order of the classes in paragraph (a) or (b) of the definition of **senior available next of kin** in section 4 (1) has an objection to the post-mortem examination of the person's body,

the senior available next of kin shall not authorise the post-mortem examination of the person's body.

Maximum penalty for an offence against this subsection: 10 penalty units.

## **30 Consent by coroner**

(1) This section applies to a person in respect of whose death a coroner has jurisdiction to hold an inquest under the [Coroners Act 1980](#).

(2) A designated officer for a hospital or a senior available next of kin shall not authorise the post-mortem examination of the body of a person to whom this section applies unless a coroner has given consent to the examination.

Maximum penalty: 40 penalty units or imprisonment for 6 months, or both.

- (3) Section 29 (1) does not apply in relation to a person to whom this section applies unless a coroner has given consent to the post-mortem examination of the person's body.
- (4) A consent by a coroner under this section may be expressed to be subject to such conditions as are specified in the consent.
- (5) A consent by a coroner under this section may be given orally and, if so given, is to be confirmed in writing as soon as practicable.
- (6) A coroner shall, in determining the conditions (if any) to which a consent shall be subject, have regard only to the effect which the conduct of a post-mortem examination of the body of the person to whom the consent relates may have in relation to the conduct of any inquest which a coroner has jurisdiction to hold in respect of that person's death.

### **31 Effect of authority under this Part**

- (1) An authority under this Part is sufficient authority for a medical practitioner (other than, where the authority was given by a medical practitioner, the medical practitioner by whom the authority was given):
  - (a) to conduct a post-mortem examination of the body of the deceased person referred to in the authority, and
  - (b) to remove from that person's body such tissue as is necessary for the purpose of any such examination.
- (2) An authority under this Part is sufficient authority for the use, for therapeutic purposes, medical purposes or scientific purposes, of tissue removed from the body of a deceased person for the purpose of the post-mortem examination of the person's body.
- (3) An order by a coroner under section 48 or 49 of the *Coroners Act 1980* directing the performance of a post-mortem examination of the body of a deceased person is, subject to any order under this subsection to the contrary by the coroner (which order a coroner is hereby authorised to make), sufficient authority for the use, for therapeutic purposes, medical purposes or scientific purposes, of tissue removed from the body of the deceased person for the purpose of the post-mortem examination of the person's body.

## **Part 6 Prohibition of trading in tissue**

### **32 Certain contracts etc not to be entered into**

- (1) A person shall not enter into a contract or arrangement under which any person agrees, for valuable consideration, whether given or to be given to any such person or

to any other person:

- (a) to the sale or supply of tissue from any such person's body or from the body of any other person, whether before or after that person's death or the death of that other person, as the case may be, or
- (b) to the post-mortem examination of any such person's body after that person's death or of the body of any other person after the death of that other person.

Maximum penalty: 40 penalty units or imprisonment for 6 months, or both.

- (2) Subsection (1) does not apply to or in respect of the sale or supply of tissue if the tissue has been subjected to processing or treatment and the sale or supply is made for the purpose of enabling the tissue to be used, in accordance with the directions of a medical practitioner, for therapeutic purposes, medical purposes or scientific purposes.
- (3) Subsection (1) does not apply to or in respect of a contract or arrangement providing only for the reimbursement of any expenses necessarily incurred by a person in relation to the removal of tissue in accordance with this Act.
- (4) Where the Minister considers it desirable by reason of special circumstances so to do, the Minister may, by instrument in writing, approve the entering into of a contract or arrangement that would, but for the approval, be void by virtue of subsection (5), and nothing in subsection (1) or (5) applies to or in respect of a contract or arrangement entered into in accordance with such an approval.
- (5) A contract or arrangement entered into in contravention of this section is void.

## **Part 7 Definition of death**

### **33 When death occurs**

For the purposes of the law of New South Wales, a person has died when there has occurred:

- (a) irreversible cessation of all function of the person's brain, or
- (b) irreversible cessation of circulation of blood in the person's body.

## **Part 8 Miscellaneous**

### **34 Act does not prevent specified removals of tissue etc**

- (1) Without affecting the operation of any other Act or law, this Act does not operate so as to prohibit:
  - (a) the removal of tissue from the body of a living person in the course of medical or surgical treatment carried out by a dentist or a medical practitioner in the

interests of the health of the person and:

- (i) except as provided by subparagraphs (ii) and (iii)—with the consent (express or implied) given by or on behalf of the person,
- (ii) where it is not reasonably practicable for the dentist or medical practitioner to seek that consent and the dentist or medical practitioner is not aware that that consent has been refused—without that consent, or
- (iii) in circumstances in which the dentist or medical practitioner is of the opinion that the person is in imminent danger of dying and that the removal of the tissue is necessary for the preservation of the life of the person,

(b) the use of tissue so removed,

(c) the embalming of the body of a deceased person, or

(d) the preparation (including the restoration of any disfigurement or mutilation) of the body of a deceased person for the purpose of interment or cremation.

(2) Nothing in subsection (1) allows the removal of blood or the obtaining or receipt of semen from a person in contravention of Part 3A.

### **35 Exclusion of liability of persons acting in pursuance of consent or authority**

(1) Where:

(a) a person carries out a procedure, and

(b) a consent or authority under this Act is sufficient authority under this Act for the person to carry out the procedure,

the person is not liable to any other person in respect of anything done or omitted to be done by the firstmentioned person in the carrying out of the procedure.

(2) Subsection (1) does not relieve a person from liability for negligence in respect of anything done or omitted to be done by the person in the carrying out of a procedure.

### **36 Offences**

(1) A person shall not remove tissue from the body of any other person (whether living or deceased) except in accordance with a consent or authority that is, under this Act, sufficient authority for the removal of the tissue by the firstmentioned person.

Maximum penalty: 40 penalty units or imprisonment for 6 months, or both.

(2) A person shall not conduct a post-mortem examination of the body of a person except in accordance with an authority that is, under this Act, sufficient authority for the firstmentioned person to conduct the post-mortem examination.

Maximum penalty: 40 penalty units or imprisonment for 6 months, or both.

(3) A person shall not:

- (a) give an authority under this Act without having made the inquiries that the person is required by this Act to have made, or
- (b) for the purposes of this Act (Part 3A excepted), sign a certificate which contains any statement which to that person's knowledge, is false or misleading in a material particular.

Maximum penalty: 40 penalty units or imprisonment for 6 months, or both.

(4) Subsections (1) and (2) do not apply to or in respect of:

- (a) anything done in pursuance of an order by a coroner under the *Coroners Act 1980*, or
- (b) any other act authorised by law.

### **37 Disclosure of information**

(1) This section applies:

- (a) where a consent has been given pursuant to this Act—to a medical practitioner who has given a certificate in relation to the consent,
- (b) where an authority has been given pursuant to this Act by a designated officer for a hospital—to the designated officer,
- (c) where tissue other than blood has been removed from the body of a person (whether living or deceased)—to the medical practitioner who removed the tissue and, if the tissue was removed at a hospital, to each person who was employed at the hospital when the tissue was removed or who has since been employed at the hospital,
- (ca) where blood has been removed from the body of a person (whether living or deceased):
  - (i) by a medical practitioner,
  - (ii) by an employee or member of the Australian Red Cross Society or of a body prescribed for the purpose of this subparagraph, or
  - (iii) by any other person of a class prescribed for the purpose of this subparagraph,

to:

- (iv) the medical practitioner, any person who was the employer or partner of that



practitioner when the blood was removed and any person who was an employee of that practitioner when the blood was removed or who has since been employed by that practitioner,

- (v) the Australian Red Cross Society or body so prescribed and any person who was an employee or member of that Society or body when the blood was removed or who has since been employed by that society or body, or
- (vi) that other person, any person who was the employer or partner of that other person when the blood was removed and any person who was an employee of that other person when the blood was removed or has since been employed by that other person,

(cb) where blood has been removed from the body of a person (whether living or deceased) at a hospital or at premises prescribed, or at premises of a class prescribed, for the purposes of this paragraph—to any person who was employed at the hospital or premises when the blood was removed or who has since been employed at the hospital or premises,

(d) where tissue has been transplanted into the body of a person—to the medical practitioner who performed the transplantation and, if the tissue was transplanted at a hospital, to each person who was employed at the hospital when the transplantation was performed or who has since been employed at the hospital, and

(e) where it is proposed that tissue be transplanted into the body of a person—to a medical practitioner who proposes to perform the transplantation and, if the tissue is to be transplanted at a hospital, to each person who is employed at the hospital or who is subsequently employed at the hospital.

(2) A person to whom this section applies shall not disclose information or publish a record whereby the identity of a person (whether living or deceased):

(a) from whose body tissue has been, is being or may be removed for the purpose of its transplantation or its use for other therapeutic purposes or for medical purposes or scientific purposes,

(b) with respect to whom or with respect to whose body a consent or authority has been given under this Act, or

(c) into whose body tissue has been, is being or may be transplanted,

may become publicly known.

Maximum penalty: 10 penalty units.

(3) Subsections (1) and (2) do not apply to or in respect of the disclosure of information or

the publication of a record:

- (a) with the consent of the person (not being a child) to whom the information or record relates,
  - (b) in connection with the administration or execution of this Act,
  - (c) in connection with bona fide medical research,
  - (d) for the purposes of any legal proceedings or of any report of any such proceedings, or
  - (e) with other lawful excuse.
- (4) For the purposes of this section, a person shall be deemed to have published a record if that person permits or facilitates access to that record by another person.

### **38 Proceedings for offences**

Proceedings for an offence against this Act or the regulations may be dealt with before a Local Court constituted by a Magistrate sitting alone.

### **39 Regulations**

- (1) The Governor may make regulations not inconsistent with this Act for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may impose a penalty not exceeding 5 penalty units for any breach thereof.
- (3) A provision of a regulation may:
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,or may do any combination of those things.