

# Human Tissue and Anatomy Legislation Amendment Act 2003 No 18

[2003-18]



New South Wales

## Status Information

### Currency of version

Repealed version for 7 July 2003 to 19 June 2006 (accessed 18 December 2024 at 19:40)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Repeal**

The Act was repealed by Sch 4 to the [Statute Law \(Miscellaneous Provisions\) Act 2006 No 58](#) with effect from 20.6.2006.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Human Tissue and Anatomy Legislation Amendment Act 2003 No 18



New South Wales

An Act to amend the *Anatomy Act 1977*, the *Human Tissue Act 1983* and other Acts to make further provision with respect to the removal, retention and use of human tissue, post-mortem examinations and anatomical examinations; and for other purposes.

## 1 Name of Act

This Act is the *Human Tissue and Anatomy Legislation Amendment Act 2003*.

## 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedule 3.2 and 3.3 commence on the commencement of Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

## 3 Amendment of *Anatomy Act 1977 No 126*

The *Anatomy Act 1977* is amended as set out in Schedule 1.

## 4 Amendment of *Human Tissue Act 1983 No 164*

The *Human Tissue Act 1983* is amended as set out in Schedule 2.

## 5 Amendment of other Acts

The Acts specified in Schedule 3 are amended as set out in that Schedule.

## Schedule 1 Amendment of *Anatomy Act 1977*

(Section 3)

### [1] Section 4 Definitions

Omit the definitions of ***anatomy***, ***designated officer*** and ***school of anatomy*** from section 4 (1).

Insert in alphabetical order:

**anatomical examination** of a body includes use of the body for medical or scientific purposes.

**Note—**

However, an anatomical examination does not include a post mortem examination that is required, directed or authorised as provided by section 5.

**designated officer** means:

- (a) in relation to a hospital, a person appointed for the time being under section 5 (1) (a) of the *Human Tissue Act 1983* to be a designated officer for the hospital, or
- (b) in relation to a forensic institution, a person appointed for the time being under section 5 (3) of the *Human Tissue Act 1983* to be a designated officer for the forensic institution.

**exercise** a function includes perform a duty.

**forensic institution** means:

- (a) an institution that is under the control of a public health organisation (within the meaning of the *Health Services Act 1997*), or
- (b) an accredited pathology laboratory under the *Health Insurance Act 1973* of the Commonwealth,

at which post mortem examinations of bodies are carried out, but does not include a hospital.

**function** includes a power, authority or duty.

**human tissue** means an organ or other part of a body.

**licensed premises** means a place specified in a licence at which the holder of the licence may conduct anatomical examinations.

**[2] Section 4 (3) and (4)**

Insert after section 4 (2):

- (3) In this Act, a reference to the use of a body for medical or scientific purposes includes carrying out any procedure on the body, or subjecting the body to an experiment, process or research, for medical or scientific purposes.
- (4) In this Act, a reference to medical or scientific purposes includes educational purposes connected with medicine or science.

**[3] Sections 4A and 4B**

Insert after section 4:

**4A Notes**

Notes included in this Act do not form part of this Act.

**4B Delegation of functions of next of kin**

- (1) A next of kin of a deceased person may from time to time, by instrument in writing, authorise a person to exercise his or her functions under this Act as a next of kin of the deceased person.
- (2) In such a case, the person so authorised:
  - (a) may exercise the functions of a next of kin of the deceased person under this Act (other than the function conferred by subsection (1)), in the place of the person who authorised him or her, and
  - (b) is taken, for the purposes of this Act, to be a next of kin of the deceased person, and
  - (c) for the purposes of the definition of **senior available next of kin** in section 4 (1), is taken to be a next of kin of the same order as the person who authorised him or her to exercise the functions of a next of kin.

**[4] Section 5**

Omit the section. Insert instead:

**5 Anatomical examination does not include post mortem examination**

In this Act, a reference to an anatomical examination, or to the possession of a body for the purposes of an anatomical examination, does not include a post mortem examination, or the possession of a body for the purposes of a post mortem examination, if that post mortem examination is:

- (a) required or directed to be made by a competent legal authority, or
- (b) made or to be made pursuant to an authority under Part 5 of the [Human Tissue Act 1983](#).

**Note—**

Accordingly, a licence under this Act is not required to conduct such a post mortem examination.

**[5] Part 2, heading**

Omit the heading. Insert instead:

Part 2 **Regulation of anatomical examinations**

**[6] Section 6 Director-General may issue licence to person to conduct anatomical examinations**

Omit “conduct the study and practice of anatomy” from section 6 (1).

Insert instead “conduct anatomical examinations”.

**[7] Section 6 (2)**

Omit “the study and practice of anatomy”.

Insert instead “the conduct of anatomical examinations”.

**[8] Section 7 Inspectors**

Omit “any school of anatomy” from section 7 (2).

Insert instead “any licensed premises”.

**[9] Sections 8 and 8A**

Omit the sections. Insert instead:

**8 Authority for anatomical examination where body of deceased at a hospital or forensic institution**

(1) If a designated officer for a hospital or forensic institution is satisfied, after making such inquiries as are reasonable in the circumstances in relation to a person whose body is at the hospital or forensic institution, that:

(a) the person had, during the person’s lifetime, given his or her consent in writing to the anatomical examination of the person’s body after the person’s death, and

(b) the consent had not been revoked,

the designated officer may, by instrument in writing, authorise the anatomical examination of that person’s body.

(2) An authority under subsection (1) is not to be given in relation to a deceased child.

(3) If the designated officer is not satisfied as to the matters referred to in subsection (1), or the deceased person is a deceased child, and the designated

officer is satisfied, after making such inquiries as are reasonable in the circumstances in relation to the deceased person, that:

- (a) the deceased person had not, during the person's lifetime, expressed an objection to the anatomical examination of the person's body after the person's death, and
- (b) a senior available next of kin has given his or her consent in writing to the anatomical examination of the person's body, and
- (c) there is no 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) who objects to the anatomical examination of the person's body,

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

- (4) An authority must be given in accordance with the terms and any conditions of the relevant consent (that is, the consent referred to in subsection (1) (a) or (3) (b)).

#### **8A Authority for anatomical examination where body of deceased not at a hospital or forensic institution**

- (1) If the body of a deceased person (other than a deceased child) is at a place other than a hospital or forensic institution, the anatomical examination of that person's body is authorised if:
  - (a) the deceased person had, during the person's lifetime, given his or her consent in writing to the anatomical examination of the person's body after the person's death, and
  - (b) the consent had not been revoked.
- (2) The authority conferred by subsection (1) is subject to the terms and any conditions of the consent referred to in that subsection.
- (3) If the body of a deceased person is at a place other than a hospital or forensic institution, a senior available next of kin of the person may, by instrument in writing, authorise the anatomical examination of the person's body.
- (4) A senior available next of kin must not grant an authority under subsection (3) if it appears to the senior available next of kin, after making such inquiries as are reasonable in the circumstances, that:
  - (a) the deceased person had, during the person's lifetime, expressed an objection to the anatomical examination of the person's body after the

person's death, or

- (b) another next of kin of the same or higher order of the classes in paragraph (a) or (b) of the definition of **senior available next of kin** in section 4 (1) objects to the anatomical examination of the person's body.

Maximum penalty: 10 penalty units.

**[10] Section 8B Consent by coroner**

Insert "or a forensic institution" after "hospital" in section 8B (2).

**[11] Section 8C Effect of authority**

Omit section 8C (1). Insert instead:

- (1) An authority under section 8 or 8A is sufficient authority:
  - (a) for a person who has lawful possession of a body to cause or permit the body to be used by a holder of a licence for anatomical examination in accordance with the authority, and
  - (b) for the holder of a licence, or a person authorised by the holder of a licence, to conduct an anatomical examination of the body, at licensed premises, in accordance with the authority, subject to the terms or conditions of the licence.

**[12] Section 11 Transfer of bodies**

Omit "any person who is in charge of the study and practice of anatomy at any place outside New South Wales" from section 11 (1) (b).

Insert instead "any person who is in charge of the conduct of anatomical examinations at any place outside New South Wales".

**[13] Section 11A**

Insert after section 11:

**11A Transfer of human tissue**

- (1) The holder of a licence may transfer human tissue from a body that is in the holder's possession for anatomical examination:
  - (a) to another holder of a licence, or
  - (b) to an authorised officer of a hospital, or
  - (c) to an authorised officer of an interstate hospital, or



(d) to any other person approved in writing by the Director-General, subject to such conditions as may be imposed by the Director-General,

for use for medical or scientific purposes, unless the holder has reason to believe that to do so would be contrary to the wishes of the deceased or the senior available next of kin of the deceased.

- (2) The holder of a licence must ensure that arrangements are made for the return of the human tissue to the holder of the licence as soon as practicable and by no later than the end of the period (if any) within which the human tissue is required to be disposed of under section 12.

Maximum penalty: 10 penalty units.

**Note—**

Section 12 requires a body that is retained for anatomical examination, and any human tissue from that body, to be disposed of within a certain period after the death of the person. Section 12 does not apply if a specific authority has been given to retain the human tissue.

- (3) The holder of a licence must, immediately after transferring human tissue under subsection (1), enter in the register kept by the holder opposite the particulars relating to the body concerned:

- (a) the fact that the human tissue was transferred, and
- (b) the date on which it was transferred, and
- (c) the name and address of the person to whom it was transferred and of the licensed premises, hospital or other place at which the human tissue is to be retained, and
- (d) details of the arrangements made with respect to the return of the human tissue.

Maximum penalty: 10 penalty units.

- (4) Subject to subsection (5), the following persons are authorised to use, for medical or scientific purposes, human tissue transferred under this section:

- (a) the person to whom the tissue was transferred,
- (b) any person authorised by that person.

- (5) A person who has possession of human tissue that has been transferred by the holder of a licence under this section must ensure that the human tissue is returned to the possession of the holder of the licence:

- (a) within the period specified in the arrangements referred to in subsection (2),  
or

- (b) if no period is specified, by the end of the period within which the human tissue must be disposed of under section 12.

Maximum penalty: 10 penalty units.

- (6) Subsections (2) and (5) do not apply in respect of any human tissue:
  - (a) that will be or has been wholly or substantially destroyed as a consequence of its use for medical or scientific purposes, or
  - (b) that is not required to be disposed of by section 12.

- (7) In this section:

**authorised officer** means an employee or officer of a hospital or interstate hospital who is authorised by the governing body of the hospital to take possession of human tissue on behalf of the hospital.

**interstate hospital** means a public or private hospital of another State or a Territory.

#### [14] Section 12 Disposal of bodies

Omit section 12 (1) and (2). Insert instead:

- (1) The holder of a licence must dispose of any body which is in the holder's possession for anatomical examination (including any human tissue from that body):
  - (a) within 4 years after the death of the deceased person, or
  - (b) in accordance with the terms of an authorisation granted under subsection (2).

Maximum penalty: 10 penalty units.

- (2) An inspector may, by instrument in writing, authorise the following:
  - (a) the retention of a body for anatomical examination for a period specified by the inspector, being a period that does not end more than 8 years after the death of the deceased person,
  - (b) the retention of human tissue from a body (whether for a specified period or otherwise).

- (2A) An inspector must, in exercising his or her functions under subsection (2):
  - (a) consider the purposes for which retention of the body, or human tissue, is sought, and
  - (b) ensure that any authorisation granted by the inspector complies with the terms

and any conditions of the authority under section 8 or 8A that initially authorised the retention of the body for anatomical examination.

(2B) The holder of a licence must:

- (a) comply with any terms or conditions that are imposed by an inspector in granting an authorisation under subsection (2), and
- (b) enter in the register kept by the holder opposite the particulars relating to the body the fact that the authority has been given and the terms and conditions to which the authority is subject.

Maximum penalty: 10 penalty units.

**[15] Section 12 (5) and (6)**

Insert after section 12 (4):

- (5) This section does not require the disposal of human tissue if the permanent retention of the tissue has been expressly authorised:
  - (a) by the consent in writing of the deceased person given during his or her lifetime (except in the case of a deceased child), or
  - (b) by the consent in writing of the senior available next of kin of the deceased person.
- (6) This section does not require the disposal of any small samples of human tissue that are retained in the form of tissue slides or tissue blocks that enable microscopic examination of the tissue.

**[16] Section 14 Offences**

Omit "other than a school of anatomy" from section 14 (1).

Insert instead "other than licensed premises".

**[17] Section 14 (2)-(3B)**

Omit section 14 (2) and (3) (including the maximum penalties).

Insert instead:

- (2) A person must not conduct an anatomical examination of a body at any place other than licensed premises.

Maximum penalty: 10 penalty units.

- (3) A person must not conduct an anatomical examination of a body unless the person

is the holder of a licence or is authorised to do so by the holder of a licence.

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

(3A) A person must not conduct an anatomical examination of a body except in accordance with an authority that is, under this Act, sufficient authority for the person to conduct the anatomical examination.

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

(3B) A person must not give an authority under this Act without having made the inquiries that the person is required by this Act to have made.

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

**[18] Section 14 (6)**

Insert after section 14 (5):

(6) Subsections (1)–(3A) do not apply to or in respect of anything authorised by or under:

- (a) the *Coroners Act 1980*, or
- (b) the *Human Tissue Act 1983*, or
- (c) any other law.

**[19] Section 15**

Insert after section 14:

**15 Authority not to be given in respect of child in care of the State**

(1) A person must not authorise the anatomical examination of the body of a deceased child if the child was, immediately before his or her death, in the care of the State.

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

(2) Subsection (1) applies despite any other provision of this Act.

(3) This section does not apply to or in respect of anything done under the *Coroners Act 1980* or any other law.

(4) For the purposes of this section, a child is ***in the care of the State*** if:

- (a) the Minister administering the *Children and Young Persons (Care and Protection) Act 1998* has sole parental responsibility in respect of the child

(whether under that Act or otherwise), or

- (b) the Director-General under the *Children and Young Persons (Care and Protection) Act 1998* has sole parental responsibility in respect of the child (whether under that Act or otherwise).

**[20] Section 16A**

Insert after section 16:

**16A General**

In the conduct of an anatomical examination of a body under an authority conferred by this Act, regard is to be had to the dignity of the deceased person.

**[21] Section 17 Regulations**

Insert at the end of section 17 (2) (c):

, and

- (d) the standards to be complied with in connection with anything authorised by or under this Act, including by requiring those standards to be complied with as a condition of an authority conferred by or under this Act.

(2A) The regulations may apply, adopt or incorporate, wholly or in part and with or without modification, any guidelines or other document (such as a code of practice), as in force at a particular time or as in force from time to time, prescribed or published by the National Health and Medical Research Council or by any other person or body.

**[22] Section 19**

Omit the section. Insert instead:

**19 Savings, transitional and other provisions**

Schedule 2 has effect.

**[23] Schedule 2**

Insert after Schedule 1:

## Schedule 2 Savings, transitional and other provisions

(Section 19)

### Part 1 Preliminary

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Human Tissue and Anatomy Legislation Amendment Act 2003*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Provisions consequent on enactment of **Human Tissue and Anatomy Legislation Amendment Act 2003**

#### 2 Saving of licences

A licence issued under section 6 and in force immediately before the commencement of the amendments made to that section by the *Human Tissue and Anatomy Legislation Amendment Act 2003* is taken, on the commencement of those amendments, to authorise the conduct of anatomical examinations at the place specified in the licence as the place at which the study and practice of anatomy may be conducted.

#### 3 Application of amendments to section 12

- (1) The amendments made to section 12 by the *Human Tissue and Anatomy Legislation Amendment Act 2003* are taken to extend to a body that is in the possession of a holder of a licence for anatomical examination immediately before the commencement of those amendments, including any human tissue from that body.

(2) If such a body has been retained for more than 4 years after the death of the person (under an authority granted under former section 12 (2)), new section 12 (1) applies as if a reference in that subsection to the death of the deceased person were a reference to the commencement of new section 12 (1).

(3) In this clause:

**former section 12 (2)** means section 12 (2) as in force immediately before its substitution by the [Human Tissue and Anatomy Legislation Amendment Act 2003](#).

**new section 12 (1)** means section 12 (1) as substituted by the [Human Tissue and Anatomy Legislation Amendment Act 2003](#).

#### [24] Long title

Omit “to amend and re-enact the law relating to anatomy”.

Insert instead “to regulate the conduct of anatomical examinations”.

### Schedule 2 Amendment of [Human Tissue Act 1983](#)

(Section 4)

#### [1] Section 4 Definitions

Omit the definition of **designated officer** from section 4 (1). Insert instead:

**designated officer** means:

- (a) in relation to a hospital, a person appointed for the time being under section 5 (1)
  - (a) to be a designated officer for the hospital, or
- (b) in relation to a forensic institution, a person appointed for the time being under section 5 (3) to be a designated officer for the forensic institution.

#### [2] Section 4 (1)

Insert in alphabetical order:

**Director-General** means the Director-General of the Department of Health.

**exercise** a function includes perform a duty.

**forensic institution** means:

- (a) an institution that is under the control of a public health organisation (within the meaning of the [Health Services Act 1997](#)), or

(b) an accredited pathology laboratory under the *Health Insurance Act 1973* of the Commonwealth,

at which post-mortem examinations of human bodies are carried out, but does not include a hospital.

**function** includes a power, authority or duty.

**inspector** means a person appointed as an inspector under Part 7A.

**medical, dental or surgical treatment** means any medical, dental or surgical treatment carried out by, or under the supervision of, a medical practitioner or dentist with respect to a living person in the interests of the health of the person.

**[3] Section 4 (1), definition of “governing body”**

Omit the definition. Insert instead:

**governing body** means:

(a) in relation to a hospital:

(i) 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

(ii) 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

(iii) 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, or

(b) in relation to a forensic institution:

(i) in the case of a forensic institution that is controlled by a public health organisation within the meaning of the *Health Services Act 1997*—the public health organisation, or

(ii) in the case of an accredited pathology laboratory under the *Health Insurance Act 1973* of the Commonwealth—the person in charge of the laboratory (however designated).

**[4] Section 4 (1), definition of “next of kin”**

Insert before paragraph (a):

(aa) in relation to a child who is living—a person referred to in paragraph (aa) of the



definition of **senior available next of kin**, and

**[5] Section 4 (1), definition of “senior available next of kin”**

Insert before paragraph (a):

(aa) in relation to a child who is living:

(i) a parent of the child, or

(ii) if no person referred to in subparagraph (i) is available—a person who is a guardian of the child, and

**[6] Section 4 (5) and (6)**

Insert after section 4 (4):

(5) In this Act, a reference to tissue removed from the body of a living person in the course of medical, dental or surgical treatment includes:

(a) tissue expelled from the body of the person in the course of the treatment, and

(b) all tissue removed or expelled from the body of the person in the course of the treatment, even if the person dies during the course of the treatment.

(6) In this Act, a reference to medical or scientific purposes includes educational purposes connected with medicine or science.

**[7] Section 4A**

Insert after section 4:

**4A Notes**

Notes included in this Act do not form part of this Act.

**[8] Section 5 Designated officers and designated specialists**

Insert after section 5 (2):

(3) The governing body of a forensic institution may, by instrument in writing, appoint such persons as the governing body considers necessary to be designated officers for the forensic institution.

**[9] Section 5A**

Insert after section 5:

## **5A Delegation of functions of next of kin**

- (1) A next of kin of a deceased person may from time to time, by instrument in writing, authorise a person to exercise his or her functions under this Act as a next of kin of the deceased person.
- (2) In such a case, the person so authorised:
  - (a) may exercise the functions of a next of kin of the deceased person under this Act (other than the function conferred by subsection (1)), in the place of the person who authorised him or her, and
  - (b) is taken, for the purposes of this Act, to be a next of kin of the deceased person, and
  - (c) for the purposes of the definition of **senior available next of kin** in section 4 (1), is taken to be a next of kin of the same order as the person who authorised him or her to exercise the functions of a next of kin.

### **[10] Section 21F Definitions**

Omit the definition of **inspector** from section 21F (2).

### **[11] Sections 21P-21T**

Omit the sections.

### **[12] Part 3C**

Insert after Part 3B:

## **Part 3C Use of tissue removed during medical, dental or surgical treatment**

### **21W Application**

- (1) This Part applies with respect to the use of tissue removed from the body of a living person during medical, dental or surgical treatment carried out in the interests of the health of the person. This Part does not authorise the removal of tissue from the body of a person after that person's death or the use of any tissue so removed.

#### **Note—**

See Parts 4 and 5 in relation to the removal of tissue after a person's death and the use of that tissue.

- (2) This Part does not apply to or in respect of the following:
- (a) tissue that is removed in accordance with Part 2,
  - (b) blood that is removed in accordance with Part 3 or 3A,
  - (c) semen obtained or received from a donor in accordance with Part 3A.

**21X Authority to use tissue removed from adult**

- (1) The use, for therapeutic, medical or scientific purposes, of tissue removed from the body of a person during medical, dental or surgical treatment, is authorised if:
- (a) the person has given his or her consent in writing to the use of the tissue for that purpose, and
  - (b) the consent has not been revoked.
- (2) The authority conferred by subsection (1) is subject to the terms and any conditions of the consent referred to in that subsection.
- (3) This section does not apply if the person:
- (a) is a child, or
  - (b) is a patient to whom Part 5 of the *Guardianship Act 1987* applies.

**21Y Authority to use tissue removed from child**

- (1) A senior available next of kin of a child may, by instrument in writing, authorise the use, for therapeutic, medical or scientific purposes, of any tissue removed from the body of the child during medical, dental or surgical treatment.
- (2) A senior available next of kin must not grant an authority under subsection (1) if it appears to the senior available next of kin, after making such inquiries as are reasonable in the circumstances, that:
- (a) the child objects to the use of the tissue for the purposes to be authorised, or
  - (b) there is another next of kin of the same or higher order of the classes in paragraph (aa) of the definition of **senior available next of kin** in section 4 (1) who objects to the use of the tissue for the purposes to be authorised.

Maximum penalty: 10 penalty units.

- (3) This section does not apply if the child is deceased.

**Note—**

Section 21ZA may apply if the child is deceased.

## **21Z Authority to use tissue removed from person under guardianship**

- (1) A person responsible for a person who is a patient to whom Part 5 of the *Guardianship Act 1987* applies may, by instrument in writing, authorise the use, for therapeutic, medical or scientific purposes, of any tissue removed from the body of the patient during medical, dental or surgical treatment.
- (2) This section does not apply if:
  - (a) the patient is a child and the Minister administering the *Children and Young Persons (Care and Protection) Act 1998* has sole parental responsibility in respect of the child (whether under that Act or otherwise), or
  - (b) the patient is a child and the Director-General under the *Children and Young Persons (Care and Protection) Act 1998* has sole parental responsibility in respect of the child (whether under that Act or otherwise), or
  - (c) the patient (whether or not a child) is deceased.

- (3) In this section:

**person responsible** for a person has the meaning given by Part 5 of the *Guardianship Act 1987*.

## **21ZA Authority to use tissue removed from deceased person**

- (1) A senior available next of kin of a person who is deceased may, by instrument in writing, authorise the use, for therapeutic, medical or scientific purposes, of any tissue that was removed from the body of the deceased person, before that person's death, during medical, dental or surgical treatment.
- (2) A senior available next of kin must not grant an authority under subsection (1) if it appears to the senior available next of kin, after making such inquiries as are reasonable in the circumstances, that:
  - (a) the deceased person had, during the person's lifetime, expressed an objection to the use of tissue removed from the person's body for the purposes to be authorised and had not withdrawn that objection, or
  - (b) there is another next of kin of the same or higher order of the classes in paragraph (a) or (b) of the definition of **senior available next of kin** in section 4 (1) who objects to the use of the tissue for the purposes to be authorised.

Maximum penalty: 10 penalty units.

### **21ZB Effect of authority under this Part**

- (1) An authority under this Part is sufficient authority for the use, for therapeutic, medical or scientific purposes, of tissue removed from the body of a person during medical, dental or surgical treatment, if the tissue is used in accordance with the terms and any conditions of the authority.
- (2) An authority under this Part does not authorise the removal of tissue from the body of a person.

**Note—**

Parts 2, 3 and 3A provide authority to remove tissue (including blood and semen) from the body of a living person for purposes such as transplantation and transfusion, and other therapeutic, scientific, and medical purposes. Parts 4 and 5 provide authority to remove tissue from the body of a person who is deceased. In certain cases, an authority under this Act to remove tissue is not required (see section 34 (1) (a)).

### **[13] Sections 23 and 24**

Omit the sections. Insert instead:

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

- (1) If a designated officer for a hospital is satisfied, 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 person had, during the person's lifetime, given his or her consent in writing 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) the consent had not been revoked,the designated officer may, by instrument in writing, authorise the removal of tissue from that person's body in accordance with the terms and any conditions of the consent.
- (2) An authority under subsection (1) is not to be given in respect of a deceased child.
- (3) If the designated officer is not satisfied as to the matters referred to in subsection (1), or the deceased person is a deceased child, and the designated officer is satisfied, after making such inquiries as are reasonable in the

circumstances in relation to the deceased person, that:

- (a) the deceased person had not, during the person's lifetime, expressed an objection to the removal of tissue from the person's body, and
- (b) a senior available next of kin has given his or her consent in writing, or in any other manner prescribed by the regulations, to the removal of tissue from the person's body, and
- (c) there is no 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) who objects 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 deceased person's body in accordance with the terms and any conditions of the consent referred to in paragraph (b).

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

- (1) If the body of a deceased person (other than a deceased child) is at a place other than a hospital, the removal of tissue from the body of the deceased person for the purpose of its transplantation to the body of a living person, or its use for other therapeutic purposes or for medical purposes or scientific purposes, is authorised if:
  - (a) the deceased person had, during the person's lifetime, given his or her consent in writing to the removal of tissue from the person's body for that purpose, and
  - (b) the consent had not been revoked.
- (2) The authority conferred by subsection (1) is subject to the terms and any conditions of the consent referred to in that subsection.
- (3) If 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 or in any other manner prescribed by the regulations, authorise the removal of tissue from the deceased person's body for the purpose of its transplantation to the body of a living person, or its use for other therapeutic purposes or for medical purposes or scientific purposes.
- (4) A senior available next of kin must not grant an authority under subsection (3) if it appears to the senior available next of kin, after making such inquiries as are reasonable in the circumstances, that:
  - (a) the deceased 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 higher order of the classes in paragraph (a) or (b) of the definition of **senior available next of kin** in section 4 (1) objects to the removal of tissue from the person's body.

Maximum penalty: 10 penalty units.

**[14] Section 27 Effect of authority under this Part**

Insert after section 27 (2):

- (3) An authority under this Part does not authorise the use, for therapeutic, medical or scientific purposes, of any tissue removed from the body of a deceased person:
  - (a) in the course of the medical, dental or surgical treatment performed while the person was still living, or
  - (b) for the purposes of a post-mortem examination.

**Note—**

An authority under Part 3C may be given to authorise the use, for therapeutic, medical or scientific purposes, of any tissue removed in the course of medical, dental or surgical treatment while the person was still living. An authority under Division 2 of Part 5 may be given to authorise the use, for therapeutic, medical or scientific purposes, of any tissue removed for the purposes of a post-mortem examination.

**[15] Part 5, Division 1, heading**

Insert before section 28:

Division 1 **Authority to conduct post-mortem examinations**

**[16] Sections 28 and 29**

Omit the sections. Insert instead:

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

- (1) If a designated officer for a hospital is satisfied, 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 person had, during the person's lifetime, given his or her consent in writing to the post-mortem examination of that person's body, and
  - (b) the consent had not been revoked,

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

- (2) An authority under subsection (1) is not to be given in respect of a deceased child.
- (3) If the designated officer is not satisfied as to the matters referred to in subsection (1), or the deceased person is a deceased child, and the designated officer is satisfied, after making such inquiries as are reasonable in the circumstances in relation to the deceased person, that:
  - (a) the deceased person had not, during the person's lifetime, expressed an objection to the post-mortem examination of the person's body, and
  - (b) a senior available next of kin has given his or her consent in writing to the post-mortem examination of the person's body, and
  - (c) there is no 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) who objects 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 in accordance with the terms and any conditions of the consent referred to in paragraph (b).

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

- (1) If the body of a deceased person (other than a deceased child) is at a place other than a hospital, the post-mortem examination of that person's body is authorised if:
  - (a) the deceased person had, during the person's lifetime, given his or her consent in writing to the post-mortem examination of the person's body after the person's death, and
  - (b) the consent had not been revoked.
- (2) The authority conferred by subsection (1) is subject to the terms and any conditions of the consent referred to in that subsection.
- (3) If 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.
- (4) A senior available next of kin must not grant an authority under subsection (3) if it appears to the senior available next of kin, after making such inquiries as are reasonable in the circumstances, that:
  - (a) the deceased 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 higher order of the classes in paragraph (a) or (b) of the definition of **senior available next of kin** in section 4 (1) objects to the post-mortem examination of the person's body.

Maximum penalty: 10 penalty units.

**[17] Section 31 Effect of authority under this Division**

Omit "this Part" from section 31 (1). Insert instead "this Division".

**[18] Section 31 (2) and (3)**

Omit the subsections. Insert instead:

- (2) An authority under this Division does not authorise any person to use any tissue removed from a person's body for any therapeutic, medical or scientific purposes other than the purposes of the post-mortem examination.

**Note—**

An authority under this Division is not required in respect of anything authorised by or under the [Coroners Act 1980](#) (see section 36 (4) of this Act). An authority under Division 2 of Part 5 may be given to authorise the use, for therapeutic, medical or scientific purposes, of any tissue removed for the purposes of a post-mortem examination. An authority to use, for therapeutic, medical or scientific purposes, tissue removed for the purposes of a post-mortem examination is not required in respect of small samples of tissue that are retained in the form of tissue slides or tissue blocks (see section 34).

**[19] Part 5, Divisions 2 and 3**

Insert after section 31:

**Division 2 Use of tissue removed for post-mortem examination for other purposes**

**31A Authority to use tissue removed for post-mortem examination for other purposes**

- (1) If a designated officer for a hospital or forensic institution is satisfied, after making such inquiries as are reasonable in the circumstances in relation to a deceased person whose body is being retained at a hospital or forensic institution for the purposes of a post-mortem examination or has been the subject of a post-mortem examination at a hospital or forensic institution, that:
- (a) the person had, during the person's lifetime, given his or her consent in writing to the use after the person's death of tissue from the person's body

for therapeutic, medical or scientific purposes, and

(b) the consent had not been revoked,

the designated officer may, by instrument in writing, authorise the use for therapeutic, medical or scientific purposes of any tissue removed from the body of the deceased person for the purposes of the post-mortem examination in accordance with the terms and any conditions of the consent.

(2) An authority under subsection (1) is not to be given in respect of a deceased child.

(3) If the designated officer is not satisfied as to the matters referred to in subsection (1), or the deceased person is a deceased child, and the designated officer is satisfied, after making such inquiries as are reasonable in the circumstances in relation to the deceased person, that:

(a) the deceased person had not, during the person's lifetime, expressed an objection to the use after the person's death of tissue from the person's body for therapeutic, medical or scientific purposes, and

(b) a senior available next of kin has given his or her consent in writing to the use of tissue from the body of the deceased person for therapeutic, medical or scientific purposes, and

(c) there is no 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) who objects to the use of tissue for those purposes,

the designated officer may, by instrument in writing, authorise the use for therapeutic, medical or scientific purposes of any tissue removed from the body of the deceased person for the purposes of the post-mortem examination in accordance with the terms of the consent referred to in paragraph (b).

### **31B Consent by coroner**

(1) If a coroner has jurisdiction to hold an inquest under the [Coroners Act 1980](#) in respect of the death of a person, a designated officer for a hospital or forensic institution must not authorise the use of any tissue removed from the person's body under section 31A unless a coroner has given consent to the use of the tissue.

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

(2) A consent by a coroner under this section may be expressed to be subject to such conditions as are specified in the consent.

(3) The designated officer is to ensure that an authority given under section 31A

gives effect to any such conditions.

- (4) 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.

### **31C Effect of authority under this Division**

An authority given by a designated officer under this Division is sufficient authority for a person to use, for therapeutic, medical or scientific purposes, tissue removed from the body of a deceased person for the purposes of a post-mortem examination if:

- (a) the tissue is used in accordance with the terms and any conditions of the authority, and
- (b) the person who uses the tissue is not the designated officer who gave the authority.

#### **Note—**

An authority under this Division is not required in respect of anything authorised by or under the [Coroners Act 1980](#) (see section 36 (4) of this Act).

## **Division 3 General**

### **31D General**

In the conduct of a post-mortem examination under an authority conferred by this Act, regard is to be had to the dignity of the deceased person.

#### **[20] Section 32 Trading in tissue prohibited**

Omit “A person shall not enter into a contract or arrangement” from section 32 (1).

Insert instead “A person must not enter into, or offer to enter into, a contract or arrangement”.

#### **[21] Section 32 (2)**

Omit “, in accordance with the directions of a medical practitioner,”.

#### **[22] Part 7A**

Insert after Part 7:

## Part 7A Enforcement

### 33A Appointment of inspectors

- (1) The Director-General may appoint any officer of the Department of Health, or any person who the Director-General considers is suitably qualified for the purpose, to be an inspector for the purposes of this Act.
- (2) On appointing an inspector under subsection (1), the Director-General must issue to the inspector a certificate of authority that authorises the inspector to exercise the powers conferred on an inspector by this Act.
- (3) A certificate of authority must:
  - (a) state that it is issued under the *Human Tissue Act 1983*, and
  - (b) give the name of the person to whom it is issued, and
  - (c) state the date, if any, on which it expires, and
  - (d) describe the nature of the powers conferred and the source of the powers.

### 33B Powers of inspectors

- (1) An inspector may at any reasonable time enter and inspect any premises for the purpose of ascertaining whether or not a provision of this Act, or any regulation made under this Act, is being or has been complied with or contravened.
- (2) While on premises entered under this section or under the authority of a search warrant under section 33G, an inspector may do one or more of the following:
  - (a) inspect:
    - (i) all tissue and blood products kept on those premises, or anything the inspector reasonably believes to be tissue or blood products, and
    - (ii) all containers that the inspector reasonably believes to contain or to have contained tissue or blood products, 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 tissue or blood products,
  - (b) take and remove for analysis or testing a sample of any tissue or blood product kept on the premises, or anything the inspector reasonably believes to be tissue or blood products,
  - (c) inspect any records kept on those premises and require any person whom the inspector reasonably believes to have custody or control of those records

- to produce them for inspection,
- (d) require any person on those premises to answer questions or otherwise furnish information in relation to a contravention of a provision of this Act or the regulations,
  - (e) make and take away copies of the whole or any part of any records or other information,
  - (f) take away and retain, for such period as may be reasonably necessary, any records or other information, or any part of them, in order to make copies of them,
  - (g) take away and retain any records or other information, if the inspector concerned reasonably believes that the records or information are evidence of an offence against this Act or a regulation made under this Act, until proceedings for the offence have been disposed of,
  - (h) seize and detain:
    - (i) any tissue or blood product, or anything the inspector reasonably believes to be tissue or a blood product, in relation to which the inspector reasonably believes an offence against this Act or against a regulation under this Act is being or has been committed, and
    - (ii) any container in which any such tissue or blood product, or other thing, is kept, and
    - (iii) any equipment which the inspector reasonably believes is being or has been used in connection with any such offence,
  - (i) place anything seized as referred to in paragraph (h) in a container, or in a room, compartment or cabinet located on the premises where they were seized, and 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) take such photographs, films, audio, video and other recordings as the inspector considers necessary.
- (3) Any thing seized under this section 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.
- (4) Before taking away a record or statement or any thing seized under this section, an inspector must tender an appropriate receipt to the person from whom it is taken.

- (5) This section does not authorise an inspector to enter any part of premises that is being used for residential purposes except:
  - (a) with the consent of the occupier, or
  - (b) under the authority of a search warrant.
- (6) An inspector must, when exercising on any premises any function of an inspector under this section, produce the inspector's certificate of authority if required to do so by the occupier of the premises.

### **33C Provisions relating to exercise of powers**

- (1) A power conferred by this Act to enter premises, or to make an inspection or take other action on premises, may not be exercised unless the inspector proposing to exercise the power:
  - (a) is in possession of a certificate of authority, and
  - (b) gives reasonable notice to the occupier of the premises of the intention to exercise the power, unless the giving of notice would defeat the purpose for which it is intended to exercise the power, and
  - (c) exercises the power at a reasonable time, unless it is being exercised in an emergency, and
  - (d) uses no more force than is reasonably necessary to effect the entry or make the inspection.
- (2) If damage is caused by an inspector exercising a power to enter premises, a reasonable amount of compensation is recoverable as a debt owed by the Crown to the owner of the premises unless the occupier obstructed the exercise of the power.
- (3) This section does not apply to a power conferred by a search warrant issued under the [Search Warrants Act 1985](#).

### **33D Requirement to provide information and records**

- (1) An inspector may, by notice in writing given to a person, require the person to furnish to the inspector such information or records (or both) as the inspector requires by the notice, being information that relates to the question of whether or not a provision of this Act, or any regulation made under this Act, is being or has been complied with or contravened.
- (2) A notice under this section:
  - (a) must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are

required to be furnished, and

- (b) may only require a person to furnish existing records that are in the person's possession or that are within the person's power to obtain lawfully.
- (3) The inspector to whom any record is furnished under this Part may take copies of it.
- (4) If any record required to be furnished under this Part is in electronic, mechanical or other form, the notice requires the record to be furnished in written form, unless the notice otherwise provides.
- (5) This section applies whether or not a power of entry under this Act is being or has been exercised.

### **33E Power of inspectors to require answers**

- (1) An inspector may require a person whom the inspector suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for the purposes of this Act to answer questions in relation to those matters.
- (2) An inspector may, by notice in writing, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation's representative for the purpose of answering questions under this section.
- (3) Answers given by a person nominated under subsection (2) bind the corporation.

### **33F Power to demand name and address**

An inspector may require a person whom the inspector suspects on reasonable grounds to have contravened or to be contravening this Act or the regulations to state his or her full name and residential address.

### **33G Search warrants**

- (1) An inspector may apply to an authorised justice for a search warrant for premises if the inspector believes on reasonable grounds:
  - (a) that a provision of this Act or the regulations is being or has been contravened on the premises, or
  - (b) that there is on the premises evidence of a contravention of a provision of this Act or the regulations.
- (2) An authorised justice to whom such an application is made may, if satisfied that

there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant:

- (a) to enter and inspect any premises, and
  - (b) to exercise the powers, or any specified powers, of an inspector under this Part.
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.
- (4) In this section:

**authorised justice** has the meaning it has in the *Search Warrants Act 1985*.

### **33H Offences**

- (1) A person who, without lawful excuse, neglects or fails to comply with a requirement made of the person by an inspector under this Act is guilty of an offence.
- (2) A person who furnishes any information or does any other thing in purported compliance with a requirement made by an inspector under this Act, knowing that it is false or misleading in a material respect, is guilty of an offence.
- (3) A person who hinders or obstructs an inspector in the exercise of any of the powers conferred by this Act is guilty of an offence.
- (4) A person is not guilty of an offence of failing to comply with a requirement made by an inspector unless 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.
- (5) A person is not guilty of an offence of hindering or obstructing an inspector in the exercise of the inspector's powers at any premises unless it is established by the prosecutor that:
  - (a) the inspector concerned produced at the relevant time the certificate of authority issued to the inspector under this Part, and
  - (b) the person was informed by the inspector concerned, or otherwise knew, that the inspector was empowered to exercise the power to which the offence relates.

Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.

### **33I Disallowance of seizure**

- (1) Any person claiming to be entitled to any seized item 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.

- (2) An application made under subsection (1) must not be heard unless the applicant has previously served a copy of the application on the Director-General.
- (3) The Director-General is entitled to appear as respondent at the hearing of an application made under subsection (1).
- (4) The District Court must, 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 seized item 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 seized item, or
  - (b) if, in the opinion of the Court, there are exceptional circumstances justifying the making of an order disallowing the seizure.
- (5) In any other case, the District Court must refuse the application.
- (6) If on the hearing of an application made under subsection (1) it appears to the District Court that the seized item 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 Act or the regulations, the Court may, either on the application of the respondent or on its own motion, adjourn the hearing until the conclusion of those proceedings.
- (7) If the District Court makes an order under subsection (4) disallowing the seizure of any seized item, the Court must also make one or both of the following orders:
  - (a) an order directing the respondent to cause the seized item to be delivered to the applicant or to such other person as appears to the Court to be entitled to it,
  - (b) if the seized item cannot for any reason be so delivered or has in consequence of the seizure depreciated in value, an order directing the Director-General to pay to the applicant such amount by way of compensation as the Court considers to be just and reasonable.
- (8) The award of costs with respect to the hearing of an application made under subsection (1) is at the discretion of the District Court.
- (9) If the District Court makes an order for the payment of any amount as

compensation under subsection (7) (b) or awards any amount as costs under subsection (8), that order is enforceable as a judgment of the Court.

(10) In this section:

**seized item** means anything seized by an inspector under section 33B (2) (h).

### **33J Disposal of seized items**

(1) If:

- (a) no application for disallowance of the seizure of a seized item has been made within the period allowed by section 33I (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 seized item is forfeited to the Crown and may be destroyed or disposed of in such manner as the Director-General directs.

- (2) Subsection (1) does not apply in respect of any seized item that has been disposed of or destroyed as referred to in subsection (3) or (7).
- (3) If the Director-General is satisfied that there has been no failure to comply with or contravention of this Act or the regulations in relation to any seized item, the Director-General must immediately cause the seized item to be delivered to such person as appears to the Director-General to be entitled to it.
- (4) Subsection (3) does not apply in respect of any seized item that has been forfeited or destroyed as referred to in subsection (1) or (7).
- (5) If:
  - (a) any seized item is forfeited to the Crown under this section because no application for disallowance of the seizure was made within the period allowed by section 33I (1), and
  - (b) the Director-General is satisfied that there has been no failure to comply with or contravention of this Act or the regulations in relation to the seized item, and
  - (c) the seized item has not been disposed of or destroyed in a manner that would prevent it from being dealt with in accordance with this subsection,

the Director-General must immediately cause the seized item to be delivered to such person as appears to the Director-General to be the person who would, but for the forfeiture, have been entitled to it.

- (6) If any seized item is delivered to a person in accordance with subsection (5), such proprietary and other interests as existed immediately before the forfeiture are revived.
- (7) If an inspector who has seized any tissue or blood product under section 33B (2) (h) is satisfied on reasonable grounds that the tissue or blood product contains a prescribed contaminant, and the tissue or blood product is not required or is no longer required to be retained for the purposes of any legal proceedings, the inspector is to cause the tissue or blood product to be destroyed.

(8) In this section:

***seized item*** means anything seized by an inspector under section 33B (2) (h).

**[23] Section 34 Act does not prevent specified removals of tissue etc**

Omit “medical or surgical treatment” from section 34 (1) (a).

Insert instead “medical, dental or surgical treatment”.

**[24] Section 34 (1) (b)**

Omit section 34 (1) (b). Insert instead:

- (b) the use of tissue so removed for the purposes of the medical, dental or surgical treatment,

**[25] Section 34 (1) (b1) and (b2)**

Insert after section 34 (1) (b):

- (b1) the use, for therapeutic, medical or scientific purposes, of small samples of any tissue that is lawfully removed from the body of a person (whether living or deceased) and retained in the form of a tissue slide or tissue block which enables microscopic examination of the tissue,
- (b2) the retention of tissue lawfully removed from the body of a person (whether living or deceased) in prescribed circumstances for such period as the regulations authorise for the purpose of obtaining an authority under this Act to use the tissue for therapeutic, medical or scientific purposes,

**[26] Section 34A**

Insert after section 34:

### **34A Authority not to be given in respect of child in care of the State**

- (1) A person must not:
- (a) authorise the removal of tissue from the body of a deceased child for any purpose if the child was, immediately before his or her death, in the care of the State, or
  - (b) authorise the post-mortem examination of the body of a deceased child if the child was, immediately before his or her death, in the care of the State, or
  - (c) authorise the use of tissue removed during the post-mortem examination of the body of a deceased child for any purpose (other than the purposes of the post-mortem examination) if the child was, immediately before his or her death, in the care of the State.

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

- (2) Subsection (1) applies despite any other provision of this Act.
- (3) This section does not apply to or in respect of anything done under the *Coroners Act 1980* or any other law.
- (4) For the purposes of this section, a child is ***in the care of the State*** if:
- (a) the Minister administering the *Children and Young Persons (Care and Protection) Act 1998* has sole parental responsibility in respect of the child (whether under that Act or otherwise), or
  - (b) the Director-General under the *Children and Young Persons (Care and Protection) Act 1998* has sole parental responsibility in respect of the child (whether under that Act or otherwise).

### **[27] Section 36 Offences**

Insert after section 36 (1):

- (1A) A person must not use any tissue that is removed from the body of a living person in the course of medical, dental or surgical treatment carried out in the interests of the health of the person for any purpose (other than for the purposes of treating the person) except in accordance with an authority that is, under this Act, sufficient authority for the firstmentioned person to use the tissue for that purpose.

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

**[28] Section 36 (2A)**

Insert after section 36 (2):

(2A) A person must not use any tissue that is removed from the body of a deceased person for the purposes of a post-mortem examination for any purpose (other than the purposes of that examination) except in accordance with an authority that is, under this Act, sufficient authority for the firstmentioned person to use the tissue for that purpose.

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

**[29] Section 36 (4)**

Omit section 36 (4). Insert instead:

- (4) Subsections (1), (2) and (2A) do not apply to or in respect of anything authorised by or under:
- (a) the *Coroners Act 1980*, or
  - (b) the *Anatomy Act 1977*, or
  - (c) any other law.

**[30] Section 39 Regulations**

Insert after section 39 (1):

- (1A) In particular, the regulations may make provision for or with respect to the following:
- (a) the making and keeping of records in connection with the removal of tissue from the body of a person (whether living or deceased), including the removal of tissue in the course of medical, dental or surgical treatment, and the retention or use of the tissue for any purposes,
  - (b) the making and keeping of records in connection with the use of any deceased person's body for any therapeutic, medical or scientific purposes under an authority under this Act,
  - (c) the information to be provided to the Director-General of the Department of Health, or to any other specified person concerned in the administration of this Act, about any removal, retention or use of tissue from the body of a person, or any use of a deceased person's body for any therapeutic, medical or scientific purposes under an authority under this Act,

- (d) the standards to be complied with in connection with anything authorised by this Act, including by requiring those standards to be complied with as a condition of an authority conferred by or under this Act.

**[31] Section 39 (4)**

Insert after section 39 (3):

- (4) The regulations may apply, adopt or incorporate, wholly or in part and with or without modification, any guidelines or other document (such as a code of practice), as in force at a particular time or as in force from time to time, prescribed or published by the National Health and Medical Research Council or by any other person or body.

**[32] Section 40 and Schedule 1**

Insert after section 39:

**40 Savings, transitional and other provisions**

Schedule 1 has effect.

**Schedule 1 Savings, transitional and other provisions**

(Section 40)

**Part 1 Preliminary**

**1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Human Tissue and Anatomy Legislation Amendment Act 2003*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of

the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of Human Tissue and Anatomy Legislation Amendment Act 2003**

### **2 Appointment of inspectors**

An inspector appointed under section 21P before its repeal by the *Human Tissue and Anatomy Legislation Amendment Act 2003* and whose appointment was in force under that section immediately before that repeal is taken to have been appointed under section 33A.

### **Schedule 3 Amendment of other Acts**

(Section 5)

#### **3.1 Coroners Act 1980 No 27**

##### **[1] Section 48 Post mortem or other examination may be ordered by coroner**

Insert after section 48 (1):

(1A) The purpose of the post mortem examination, or other examination or test, is to assist in the investigation of any of the following matters, subject to any limitations specified in the coroner's order:

- (a) the identity of the deceased person,
- (b) the date and place of death of the deceased person,
- (c) the manner or cause of death of the deceased person.

##### **[2] Section 48A Objection to post mortem examination by senior next of kin**

Insert after section 48A (8):

(9) A senior next of kin of a deceased person may, by instrument in writing, authorise another person to exercise his or her functions as senior next of kin under this section.

(10) In such a case, the person so authorised:

- (a) may make a request referred to in subsection (1) if a copy of his or her authority to exercise the functions of the senior next of kin is provided to the coroner or assistant coroner concerned with that request, and

- (b) is taken, for the purposes of this section (other than subsection (9)), to be the senior next of kin of the deceased person.

**[3] Section 48AA**

Insert after section 48A:

**48AA Retention and use of human tissue**

- (1) An order for a post mortem examination, or other examination or test, under section 48 or 49 is taken to authorise the removal and use of tissue from the body of the deceased person for any of the following purposes:
- (a) an investigation by a coroner of the person's death,
  - (b) an investigation of any offence,
  - (c) proceedings for any offence.
- (2) Such an order is also taken to authorise the following:
- (a) the retention of small samples of any of the following tissue removed from the body of the deceased person under subsection (1):
    - (i) bodily fluid,
    - (ii) skin, hair and nails,
    - (iii) any other tissue retained in the form of a tissue slide or tissue block which enables microscopic examination of the tissue,
    - (iv) such tissue as may be directed in writing by a coroner in any particular case,
  - (b) the use of any sample retained under paragraph (a) for any of the following purposes:
    - (i) the exercise by a coroner of his or her functions under this Act,
    - (ii) an investigation of any offence,
    - (iii) any legal proceedings (whether or not in connection with an offence),
    - (iv) a purpose authorised by an authority given under the [Human Tissue Act 1983](#) that is sufficient authority to use the tissue for that purpose,
    - (v) in relation to a sample referred to in paragraph (a) (iii), any medical, therapeutic or scientific purpose,
    - (vi) such other purposes as may be prescribed by the regulations.



(3) This section does not limit the rights of a coroner under section 24 and does not affect anything authorised by or under any other law.

(4) In this section:

**tissue** includes an organ, or part, of a human body and a substance extracted from, or from a part of, a human body (including bodily fluid).

#### [4] Section 53AA

Insert after section 53:

##### **53AA General**

In the performance of any post mortem examination, or other examination or test, under this Part in respect of the remains of a person, regard is to be had to the dignity of the deceased person.

### **3.2 Human Tissue Act 1983 No 164**

#### [1] Section 33C Provisions relating to exercise of powers

Omit "*Search Warrants Act 1985*" from section 33C (3).

Insert instead "*Law Enforcement (Powers and Responsibilities) Act 2002*".

#### [2] Section 33G Search warrants

Omit "authorised justice" wherever occurring from section 33G (1) and (2).

Insert instead "authorised officer".

#### [3] Section 33G (3)

Omit "Part 3 of the *Search Warrants Act 1985*".

Insert instead "Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*".

#### [4] Section 33G (4)

Omit the subsection. Insert instead:

(4) In this section:

**authorised officer** has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

### **3.3 Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

#### **Schedule 2 Search warrants under other Acts**

Insert in alphabetical order of Acts “*Human Tissue Act 1983*, section 33G”.

### **3.4 Search Warrants Act 1985 No 37**

#### **Section 10 Definitions**

Insert in the definition of **search warrant** in alphabetical order of Acts:

section 33G of the *Human Tissue Act 1983*,