

HUMAN TISSUE ACT, 1983, No. 164

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 164, 1983.

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. [Assented to, 31st December, 1983.]

See also Anatomy (Human Tissue) Amendment Act, 1983; Tissue Grafting and Processing (Repeal) Act, 1983; Medical Practitioners (Emergency Medical Treatment) Amendment Act, 1983; Public Health (Emergency Medical Treatment) Amendment Act, 1983.

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "Human Tissue Act, 1983".

Commencement.

2. (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.

Arrangement.

3. This Act is divided as follows:—

PART I.—PRELIMINARY—ss. 1–5.

PART II.—DONATIONS OF TISSUE BY LIVING PERSONS—ss. 6–17.

DIVISION 1.—*Exclusion of certain tissue*—s. 6.

DIVISION 2.—*Donations by adults*—ss. 7–9.

DIVISION 3.—*Donations by children*—ss. 10, 11.

DIVISION 4.—*Effect of consent*—ss. 12–15.

DIVISION 5.—*Revocation of consent or agreement*—ss. 16, 17.

PART III.—BLOOD DONATIONS—ss. 18–21.

PART IV.—REMOVAL OF TISSUE AFTER DEATH—ss. 22–27.

PART V.—POST-MORTEM EXAMINATIONS—ss. 28–31.

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PART VI.—PROHIBITION OF TRADING IN TISSUE—s. 32.

PART VII.—DEFINITION OF DEATH—s. 33.

PART VIII.—MISCELLANEOUS—ss. 34–39.

Interpretation.

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

“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;

“governing body”, in relation to a hospital, means—

- (a) in the case of an incorporated hospital mentioned in the Second Schedule to the Public Hospitals Act, 1929—the Board of Directors of the hospital;
- (b) in the case of a separate institution mentioned in the Third Schedule to that Act—the governing authority of the institution;
- (c) in the case of a hospital mentioned in the Fifth Schedule to that Act—the Minister administering Part II of that Act; or
- (d) in the case of a private hospital within the meaning of the Private Hospitals Act, 1908—the licensee of the hospital;

“hospital” means—

- (a) an incorporated hospital mentioned in the Second Schedule to the Public Hospitals Act, 1929;

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- (b) a separate institution mentioned in the Third Schedule to that Act;
- (c) a hospital mentioned in the Fifth Schedule to that Act; or
- (d) a private hospital within the meaning of the Private Hospitals Act, 1908;

“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;

“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

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- (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, was not married or where the deceased person was married and 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;

“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) a reference to a spouse of a person is a reference to a person to whom the person is married.

(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.

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Designated officers and designated specialists.

5. (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 II.

DONATIONS OF TISSUE BY LIVING PERSONS.

DIVISION 1.—Exclusion of certain tissue.

Interpretation.

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

DIVISION 2.—Donations by adults.

Consents to removal of regenerative tissue from adults.

7. 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

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- (b) its use for other therapeutic purposes or for medical purposes or scientific purposes.

Consents to removal of non-regenerative tissue from adults.

8. (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.

Medical practitioners' certificates.

9. 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.**Consents to removal of regenerative tissue from children.**

10. 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.

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Medical practitioners' certificates.

- 11.** 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.

Effect of consent under section 7.

12. 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.

Effect of consent under section 8.

13. 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

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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.

Effect of consent under section 10.

14. 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.

Written consent not to be sufficient authority in certain circumstances.

15. 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.***Revocation of consent.**

16. (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

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(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.

Penalty: \$4,000 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.

Penalty: \$4,000 or imprisonment for 6 months, or both.

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- (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.

Penalty: \$4,000 or imprisonment for 6 months, or both.

Child no longer in agreement with removal and transplantation.

17. (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.

Penalty: \$4,000 or imprisonment for 6 months, or both.

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(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.

Penalty: \$4,000 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.

Penalty: \$4,000 or imprisonment for 6 months, or both.

PART III.

BLOOD DONATIONS.

Part II not to apply to removal of blood.

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

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Consents to removal of blood from adults.

19. 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.

Consents to removal of blood from children.

20. 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) 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; and
- (b) the child is in agreement with the proposed removal of blood.

Effect of consent under section 19 or 20.

21. 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, or in a vehicle, 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;
 - (c) at prescribed premises or in premises of a prescribed class or description; or
 - (d) in a prescribed vehicle or in a vehicle of a prescribed class or description.
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PART IV.

REMOVAL OF TISSUE AFTER DEATH.

De facto spouses.

22. For the purposes of this Part, where a deceased person is survived by a person who, although not married to the deceased person, was at the time of the deceased person's death living with the deceased person as the deceased person's spouse on a bona fide domestic basis, that surviving person shall be deemed to have been the spouse of the deceased person immediately before the deceased person's death.

Authority to remove tissue where body of deceased at a hospital.

23. (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

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- (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.

Authority to remove tissue where body of deceased not at a hospital.

24. (1) Where—

- (a) the body of a deceased person (other than a deceased child) is at a place other than a hospital;

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- (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.

Penalty for an offence against this subsection: \$1,000.

Consent by coroner.

25. (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.

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(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.

Penalty: \$4,000 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, shall be confirmed in the prescribed manner.

(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.

Certificates required in certain situations.

26. (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

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- (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.

Penalty: \$4,000 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.

Effect of authority under this Part.

27. (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.

(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.

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PART V.

POST-MORTEM EXAMINATIONS.

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

28. (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.

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(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.

Authority for post-mortem examination where body of deceased not at a hospital.

29. (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.

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(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.

Penalty for an offence against this subsection: \$1,000.

Consent by coroner.

30. (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.

Penalty: \$4,000 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.

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(5) A consent by a coroner under this section may be given orally and, if so given, shall be confirmed in the prescribed manner.

(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.

Effect of authority under this Part.

31. (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.

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PART VI.

PROHIBITION OF TRADING IN TISSUE.

Certain contracts, etc., not to be entered into.

32. (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.

Penalty: \$4,000 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.

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PART VII.

DEFINITION OF DEATH.

When death occurs.

33. 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 VIII.

MISCELLANEOUS.

Act does not prevent specified removals of tissue, etc.

34. 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;

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- (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.

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

Offences.

36. (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.

Penalty: \$4,000 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.

Penalty: \$4,000 or imprisonment for 6 months, or both.

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(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) make, in a certificate given for the purposes of this Act, a statement which is false or misleading in a material particular.

Penalty: \$4,000 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.

Disclosure of information.

37. (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 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;
- (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.

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(2) A person to whom this section applies shall not disclose or give to any other person any information or document 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.

Penalty: \$1,000.

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

- (a) with the consent of the person (not being a child) to whom the information 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.

Proceedings for offences.

38. Proceedings for an offence against this Act or the regulations may be taken before a court of petty sessions constituted by a stipendiary magistrate sitting alone.

Regulations.

39. (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.

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(2) A regulation may impose a penalty not exceeding \$500 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.
