

# **NORTHERN TERRITORY OF AUSTRALIA**

## **HUMAN TISSUE TRANSPLANT ACT**

As in force at 17 March 2004

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 17 March 2004

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## HUMAN TISSUE TRANSPLANT ACT

**An Act to make provision for and in relation to the removal and use of human tissues, for post-mortem examinations, for the definition of death and for related purposes**

### Part I Preliminary

#### 1 Short title

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

#### 2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

#### 3 Repeal

- (1) The *Trading in Blood (Prohibition) Act 1974* (No. 29 of 1974) is repealed.
- (2) The *Anatomy Act* (No. 317 of 1884) of the State of South Australia ceases to apply in the Territory as a law of the Territory.

#### 4 Definitions

- (1) In this Act, unless the contrary intention appears:

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

**coroner** has the same meaning as in the *Coroners Act*.

**medical practitioner** means a person who is registered as a medical practitioner under the *Medical Act*.

**next of kin** means:

- (a) in relation to a child – a person referred to in paragraph (a)(i), (ii) or (iii) of the definition of **senior available next of kin**; and

- (b) in relation to any other person – a person referred to in paragraph (b)(i), (ii), (iii) or (iv) of that definition.

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

**person in charge**, in relation to a hospital, means a person appointed under section 7(2)(a) of the *Medical Services Act* to be the person for the time being in charge of the hospital.

**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.

**senior available next of kin** means:

- (a) in relation to a child, the first in order of priority of the following persons who is available at the time:
  - (i) a parent of the child;
  - (ii) a brother or sister, who has attained the age of 18 years, of the child;
  - (iii) a guardian of the child; and
- (b) in relation to any other person, the first in order of priority of the following persons who is available at the time:
  - (i) a spouse or de facto partner;
  - (ii) a son or daughter, who has attained the age of 18 years, of the person;
  - (iii) a parent of the person;
  - (iv) a brother or sister, who has attained the age of 18 years, of the person.

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

- (2) A reference in this Act to the transplantation of tissue shall be read as including a reference to the transplantation of any part of the tissue and to the transplantation of a substance obtained from the tissue.

**5                    Delegation by person in charge of a hospital**

- (1) The person in charge of a hospital may, by instrument in writing, either generally or in relation to a particular matter or class of matters, delegate to a person specified in the instrument of delegation all or any of his powers or functions under this Act, other than this power of delegation.
- (2) A power or function delegated in accordance with subsection (1) may be exercised by the delegate in accordance with the instrument of delegation.
- (3) A delegation under this section is revocable at will by the person in charge of a hospital and does not prevent the exercise of a power or the performance of a function by the person in charge of a hospital.

**Part II                Donations of tissue by living persons**

**Division 1           Exclusion of certain tissue**

**6                    Interpretation**

In this Part, a reference to tissue shall not be read as including a reference to foetal tissue, spermatozoa or ova.

**Division 2           Donations by adults**

**7                    Blood transfusions excluded**

Nothing in this Division prevents the removal in accordance with Division 4 of blood from the body of a person.

**8                    Consent by adult living donor to removal of regenerative tissue**

- (1) A person who:
  - (a) has attained the age of 18 years;
  - (b) is of sound mind; and
  - (c) is, in the light of medical advice furnished to him, prepared to do so,

may, by writing under his signature, consent to the removal from his body of regenerative tissue for the purpose of transplantation to the body of another person or for use for other therapeutic purposes or for medical or scientific purposes.

- (2) A person who has given a consent referred to in subsection (1) may, at any time before the removal of the regenerative tissue to which the consent applies, revoke, either orally or in writing, his consent to the removal.

## **9                      Consent by adult living donor to removal of non-regenerative tissue**

- (1) A person who:
- (a) has attained the age of 18 years;
  - (b) is of sound mind; and
  - (c) is, in the light of medical advice furnished to him, prepared to do so,

may, by writing under his signature, consent to the removal, after the expiration of a period of 24 hours from the time at which the consent is signed, from his body of non-regenerative tissue specified in the consent for the purposes of the transplantation of the tissue to the body of another living person.

- (2) A consent given under subsection (1) shall specify the time at which the consent is given.
- (3) A person who has given a consent referred to in subsection (1) may, at any time before the removal of the non-regenerative tissue to which the consent applies, revoke, either orally or in writing, his consent to the removal.

## **10                    Certificate of medical practitioner**

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 his presence;
- (b) that he 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 he is satisfied:
  - (i) that, at the time the consent was given, the person had attained the age of 18 years;
  - (ii) that, at that time, the person was of sound mind; and
  - (iii) that the consent was freely given.

### **Division 3                      Effect of consent**

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

Subject to section 13, 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 10 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 use, as the case may be, specified in the consent.

#### **12                      Effect of consent under section 9**

Subject to section 13, a document that purports to be a consent given in accordance with section 9 is, where a certificate has been given in accordance with section 10 in relation to that consent, sufficient authority for a medical practitioner, other than the medical practitioner who gave the certificate, to remove, at any time after the expiration of 24 hours from the time specified in the consent to be the time at which the consent was given, the non-regenerative tissue specified in the consent for the purpose of the transplantation of the tissue to the body of another living person.

#### **13                      Purported consent not sufficient in certain circumstances**

A document that purports to be a consent given in accordance with section 8 or 9 is not sufficient authority for a medical practitioner to remove tissue if:

- (a) the medical practitioner has been informed in accordance with section 16(2) or (4) that the consent has been revoked; or
- (b) the medical practitioner knows or has reasonable grounds for suspecting that a certificate given for the purpose of section 10 contains a false statement.

## **Division 4                Donations of blood**

### **14                Consent by adult to removal of blood**

A person who:

- (a) has attained the age of 18 years; and
- (b) is of sound mind,

may consent to the removal of blood from his body for transfusion to another person or for use of the blood or of any of its constituents for other therapeutic purposes or for medical or scientific purposes.

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

A consent under section 14 is sufficient authority for the removal of blood at:

- (a) a hospital; or
- (b) a place or in a vehicle used for the purpose by a person or body approved by the Minister for the purpose of this section,

from the body of the person who has given the consent.

## **Division 5                Revocation of consent**

### **16                Revocation of consent**

- (1) In relation to a consent given for the purposes of this Act, a reference in this section to the donor shall be read as a reference to the person who gave the consent.
- (2) A person who gives a consent for the purposes of this Act may, at any time thereafter, revoke that consent by indicating either orally or in writing:
  - (a) where the donor is a patient in a hospital:
    - (i) to the person in charge of that hospital;
    - (ii) to a medical practitioner who is attending the donor in a professional capacity; or
    - (iii) to a nurse within the meaning of the *Nursing Act* employed at that hospital; or



- (b) where 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.

- (3) Where the donor:

- (a) is a patient in a hospital; and
- (b) indicates to a person referred to in subsection (2)(a)(ii) or (iii) that his consent is revoked,

that person shall inform the person in charge of that hospital forthwith of the revocation of the consent.

- (4) Where a donor revokes his consent in accordance with subsection (2):

- (a) where the donor is a patient in a hospital at the time of the revocation – the person in charge of that hospital to whom the revocation is communicated in accordance with subsection (2) or (3); or
- (b) where the donor is not a patient in a hospital at that time – the medical practitioner to whom the revocation is communicated,

shall, if it appears to him, after such inquiries, if any, as are reasonable in the circumstances, that a medical practitioner is proposing to rely on the consent in connection with the removal of tissue from the body of the donor, inform that medical practitioner forthwith that the consent has been revoked.

- (5) Where a consent is revoked, a person who has in his possession the instrument of consent shall, upon being informed by the person in charge of a hospital or by the medical practitioner to whom the revocation is communicated that the consent has been revoked, surrender:

- (a) that instrument; and
- (b) if a certificate given in accordance with section 10 is in his possession, being a certificate relating to the consent - that certificate,

to the person who gave the consent.

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**Part III                      Donations of tissue after death****18                      Authority to remove tissue where body of deceased at a hospital**

- (1) The person in charge of a hospital may, subject to and in accordance with this Part, by instrument in writing, authorize the removal of tissue from the body of

a person who has died in the hospital or whose body has been brought into the hospital:

- (a) for the purpose of the transplantation of the tissue to the body of a living person; or
  - (b) for use of the tissue for other therapeutic purposes or for medical or scientific purposes.
- (2) Where the person in charge of a hospital, after making such inquiries as are reasonable in the circumstances, has reason to believe that the deceased person had, during his lifetime, expressed the wish for, or consented to, the removal after his death of tissue from his body for the purpose referred to in subsection (1)(a) or for a use referred to in subsection (1)(b), or both, and had not withdrawn the wish or revoked the consent, the person in charge of the hospital may authorize under subsection (1) the removal of tissue from the body of the deceased person for that purpose or use, or both, as the case may be.
- (3) Where the person in charge of a hospital, after making such inquiries as are reasonable in the circumstances, has no reason to believe that the deceased person during his lifetime:
- (a) had expressed the wish for, or consented to, the removal after his death of tissue from his body for the purpose referred to in subsection (1)(a) or a use referred to in subsection (1)(b); or
  - (b) had expressed an objection to the removal after his death of tissue from his body for such a purpose or use,
- and, after making such further inquiries as are reasonable in the circumstances, the person in charge of the hospital:
- (c) has no reason to believe that the senior available next of kin of the deceased person has an objection to the removal of tissue from the body of the deceased person; or

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- (d) is unable to ascertain the existence or the whereabouts or is unable to ascertain whether any of the next of kin of the deceased person has an objection to the removal of tissue from the body of the deceased person,

the person in charge of the hospital may authorize under subsection (1) the removal of tissue from the body of the deceased person for the purpose referred to in subsection (1)(a) or a use referred to in subsection (1)(b).

- (4) The senior available next of kin of a person may make it known to the person in charge of a hospital at any time when the first-mentioned person is unconscious before death that he has no objection to the removal after the death of that person, of tissue from the body of that person for the purpose referred to in subsection (1)(a) or a use referred to in subsection (1)(b), but the person in charge of the hospital shall not act on such an indication if that unconscious person recovers consciousness.
- (5) Where there are 2 or more senior available next of kin, an objection by any one of those persons has effect for the purpose of this section notwithstanding any indication to the contrary by the other or any other of those persons.

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

- (1) Subject to this Part, where the body of a deceased person is in a place other than a hospital, the senior available next of kin of the deceased person may, by instrument in writing, authorize the removal of tissue from the body of the deceased person:
  - (a) for the purpose of the transplantation of the tissue to the body of a living person; or
  - (b) for use of the tissue for other therapeutic purposes or for medical or scientific purposes.
- (2) Subsection (1) does not apply where the senior available next of kin of the deceased person has reason to believe that:
  - (a) the deceased person had, during his lifetime, expressed an objection to the removal of tissue from his body and had not withdrawn his objection; or
  - (b) another next of kin of the same or a higher order of the classes listed in paragraph (a) or (b) of the definition of **senior available next of kin** has an objection to the removal of tissue from the body of the deceased person.

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- (3) Subject to this Part, where a deceased person, during his lifetime, expressed the wish for, or consented to, the removal after his death of tissue from his body for the purpose referred to in subsection (1)(a) or a use referred to in subsection (1)(b) and the wish had not been withdrawn or the consent revoked, the removal of tissue from the body of the deceased person in accordance with the wish or consent is, by force of this subsection, hereby authorized.

## **20 Consent by a coroner**

- (1) This section applies to a deceased person:
- (a) whose death is or may be a reportable death within the meaning of section 12 of the *Coroners Act*;
  - (b) in respect of whom a medical practitioner has not given a certificate as to the cause of death; or
  - (c) in respect of whose death the Supreme Court has made an order under section 16(3) of the *Coroners Act* that an inquest be held.
- (2) Where the person in charge of a hospital or, in a case to which section 19 applies, the senior available next of kin, has reason to believe that this section applies to a deceased person, that person in charge of the hospital or that senior available next of kin, as the case may be, shall not authorize the removal of tissue from the body of the deceased person unless a coroner has given his consent to the removal.
- (3) Section 19(3) does not apply in relation to a deceased person to whom this section applies unless a coroner has given his consent to the removal of tissue from the body of the deceased person.
- (4) A coroner may give a direction either before or after the death of a person to whom this section applies or may apply, that the coroner's consent to the removal of tissue from the body of the person after the death of the person is not required and, in that event, subsections (2) and (3) do not apply to or in relation to the removal of tissue from the body of the person.
- (5) A consent or direction by a coroner under this section may be expressed to be subject to such conditions as are specified in the consent or the direction.
- (6) A consent or direction may be given orally by a coroner and, where so given, shall be confirmed in writing.

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**21 Certificate of specialist, &c., required in certain circumstances**

- (1) Where the respiration and the circulation of the blood of a person are being maintained by artificial means, tissue shall not be removed from the body of the person for the purpose referred to in section 22(c) or a use referred to in section 22(d) unless 2 medical practitioners, each of whom has been for a period of not less than 5 years a medical practitioner, each of whom has carried out a clinical examination of the person and one of whom is a medical specialist, have each certified in writing that, in his opinion, at the time of the examination, irreversible cessation of all function of the brain of the person has occurred.
- (2) For the purposes of subsection (1), any period during which a person who is a medical practitioner practised as a medical practitioner, however described, under a law in force in a State or Territory, not being the Northern Territory, of Australia or in a country outside Australia shall be taken into account in calculating the period of 5 years referred to in that subsection.
- (3) In this section **medical specialist** means an anaesthetist, a general surgeon, neurologist, neurosurgeon or physician.

**22 Effect of authority under this Part**

An authority under this Part is sufficient authority for a medical practitioner other than:

- (a) a medical practitioner referred to in section 21(1); or
- (b) in a case to which section 18 applies, the person in charge of a hospital who gave the authority,

to remove tissue from the body of the deceased person referred to in the authority:

- (c) for the purpose of the transplantation of the tissue to the body of a living person; or
- (d) for use for other therapeutic purposes or for medical or scientific purposes.

**Part IV                      Definition of death****23                      When death occurs**

For the purposes of the law of the Territory, a person has died when there has occurred:

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

**Part V                      Prohibition of trading in tissue****24                      Certain contracts and arrangements not to be entered into**

- (1) Subject to this section, no person shall enter, agree to enter, offer to enter, hold himself out as being willing to enter or inquire whether a person is willing to enter, into a contract or arrangement under which a person agrees, for valuable consideration, whether given or to be given to himself or to another person, for the sale or supply of tissue from his body or from the body of another person, whether before or after his death or the death of the other person, as the case may be.

Penalty:            \$500 or imprisonment for 3 months.

- (2) A contract or arrangement entered into in contravention of this section is void.
- (3) Where he considers it desirable by reason of special circumstances so to do, the Minister may, by instrument in writing, authorize a person, subject to such conditions and restrictions as are specified in the instrument, to enter into a contract or arrangement that would, but for the approval, be void by virtue of subsection (2), and nothing in subsection (1) or (2) applies to or in relation to a contract or arrangement entered into in accordance with an approval under this subsection.
- (4) Subsection (1) does not apply to or in relation to the sale or supply of tissue, not being tissue obtained under a contract or arrangement that is by subsection (2) void, if the tissue has been subjected to processing or treatment and the sale or supply is made for use, in accordance with the directions of a medical practitioner, for therapeutic or scientific purposes.

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- (5) Subsection (1) does not apply to or in relation to 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.

## **Part VI                      Miscellaneous**

### **25                      Exclusion of liability**

- (1) Subject to this Act, a person is not liable in any proceedings, whether civil or criminal, for any act done in pursuance of, by reason of, or as a result of, a consent, agreement or authority given, or purporting to have been given, in pursuance of this Act where the act is done without negligence and in good faith.
- (2) Without limiting the generality of the expression ***in good faith***, a person shall be regarded as having done an act referred to in subsection (1) in good faith if the person establishes that:
- (a) he had an honest and reasonable belief that a consent, agreement or authority required by this Act for the doing of the act had been given; or
  - (b) he had no reason to doubt that a consent, agreement or authority purporting to have been given in accordance with this Act for the doing of the act was a consent, agreement or authority given in accordance with this Act.

### **26                      Act does not prevent specified removals of tissue, &c.**

Nothing in this Act applies to or in relation to:

- (a) the removal of tissue from the body of a living person in the course of a procedure or operation carried out, in the interests of the health of the person, by a medical practitioner:
  - (i) with the consent, express or implied, given by or on behalf of the person; or
  - (ii) in accordance with the *Emergency Medical Operations Act*;
- (b) the use of tissue so removed;
- (c) the embalming of the body of a deceased person; or

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- (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.

## **27 Offences**

- (1) No person shall remove tissue from the body of a person, whether living or dead, except in accordance with a consent or authority that is, under this Act, sufficient authority for the removal of the tissue by that first-mentioned person.

Penalty: \$1,000 or imprisonment for 6 months.

- (2) No person:
  - (a) shall give an authority under this Act without having made the inquiries that he is required by this Act to make;
  - (b) shall make a false statement in a certificate given for the purposes of this Act; or
  - (c) shall contravene or fail to comply with a provision of section 16.

Penalty: \$1,000 or imprisonment for 6 months.

- (3) Nothing in subsection (1) applies to or in relation to:
  - (a) anything done in pursuance of an order by a coroner under the *Coroners Act*; or
  - (b) any other act authorized by law.

## **28 Disclosure of information**

- (1) Subject to this section, no person shall disclose or give to any other person any information or document whereby the identity of a person:
  - (a) from whose body tissue has been removed for the purpose of transplantation or for use for other therapeutic purposes or for medical 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: \$500 or imprisonment for 3 months.

- (2) Subsection (1) does not apply to or in relation to any information disclosed:
- (a) in pursuance of an order of a court or when otherwise required by law;
  - (b) for the purposes of hospital administration or bona fide medical research;
  - (c) with the consent of the person to whom the information relates; or
  - (d) when the circumstances in which the disclosure is made are such that the disclosure is or would be privileged.

## **29 Regulations**

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted to be prescribed by this Act or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and in particular for prescribing penalties not exceeding a fine of \$200 for offences against the regulations.

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## ENDNOTES

### 1 KEY

Key to abbreviations

<b>amd</b> = amended	<b>od</b> = order
<b>app</b> = appendix	<b>om</b> = omitted
<b>bl</b> = by-law	<b>pt</b> = Part
<b>ch</b> = Chapter	<b>r</b> = regulation/rule
<b>cl</b> = clause	<b>rem</b> = remainder
<b>div</b> = Division	<b>renum</b> = renumbered
<b>exp</b> = expires/expired	<b>rep</b> = repealed
<b>f</b> = forms	<b>s</b> = section
<b>Gaz</b> = <i>Gazette</i>	<b>sch</b> = Schedule
<b>hdg</b> = heading	<b>sdiv</b> = Subdivision
<b>ins</b> = inserted	<b>SL</b> = Subordinate Legislation
<b>lt</b> = long title	<b>sub</b> = substituted
<b>nc</b> = not commenced	

### 2 LIST OF LEGISLATION

***Human Tissue Transplant Act 1979 (Act No. 121, 1979)***

Assent date	15 October 1979
Commenced	1 December 1979 ( <i>Gaz</i> G48, 30 November 1979, p 1)

***Human Tissue Transplant Amendment Act 1989 (Act No. 50, 1989)***

Assent date	20 September 1989
Commenced	20 September 1989

***De Facto Relationships (Miscellaneous Amendments) Act 1991 (Act No. 82, 1991)***

Assent date	24 December 1991
Commenced	1 January 1992 (s 2)

***Medical (Consequential Amendments) Act 1995 (Act No. 8, 1995)***

Assent date	10 April 1995
Commenced	1 June 1995 (s 2, s 2, <i>Medical Act 1995</i> (Act No. 7, 1995) and <i>Gaz</i> S21, 1 June 1995)

***Statute Law Revision Act 1995 (Act No. 14, 1995)***

Assent date	23 June 1995
Commenced	23 June 1995

***Statute Law Revision Act 1997 (Act No. 17, 1997)***

Assent date	11 April 1997
Commenced	1 May 1997 ( <i>Gaz</i> G17, 30 April 1997, p 2)

***Statute Law Revision Act 1999 (Act No. 27, 1999)***

Assent date	18 June 1999
Commenced	18 June 1999

***Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 (Act No. 1, 2004)***

Assent date	7 January 2004
Commenced	17 March 2004 ( <i>Gaz</i> G11, 17 March 2004, p 8)

**3 LIST OF AMENDMENTS**

s 4	amd No. 8, 1995, s 4; No. 14, 1995, s 12; No. 27, 1999, s 15; No. 1, 2004, s 62
s 16	amd No. 27, 1999, s 15
s 17	amd No. 82, 1991, s 11 rep No. 1, 2004, s 62
s 20	amd No. 17, 1997, s 11
s 21	amd No. 50, 1989, s 2