

THE NORTHERN TERRITORY OF AUSTRALIA

HUMAN TISSUE TRANSPLANT ACT

No. 121 of 1979

TABLE OF PROVISIONS

Section

PART I - PRELIMINARY

1. Short title
2. Commencement
3. Repeal
4. Definitions
5. Delegation by person in charge of a hospital

PART II - DONATIONS OF TISSUE BY
LIVING PERSONS

Division 1 - Exclusion of Certain Tissue

6. Interpretation

Division 2 - Donations by Adults

7. Blood transfusions excluded
8. Consent by adult living donor to removal of regenerative tissue
9. Consent by adult living donor to removal of non-regenerative tissue
10. Certificate of medical practitioner

Division 3 - Effect of Consent

11. Effect of consent under section 8
12. Effect of consent under section 9
13. Purported consent not sufficient in certain circumstances

Division 4 - Donations of Blood

14. Consent by adult to removal of blood
15. Effect of consent under section 14

Division 5 - Revocation of Consent

16. Revocation of consent

PART III - DONATIONS OF TISSUE AFTER
DEATH

17. De facto spouses
18. Authority to remove tissue where body of deceased at a hospital
19. Authority to remove tissue where body of deceased not at a hospital
20. Consent by a coroner
21. Certificate of specialist, &c., required in certain circumstances
22. Effect of authority under this Part

PART IV - DEFINITION OF DEATH

23. When death occurs

PART V - PROHIBITION OF TRADING
IN TISSUE

24. Certain contracts and arrangements not to be entered into

PART VI - MISCELLANEOUS

25. Exclusion of liability
26. Act does not prevent specified removals of tissue, &c.
27. Offences
28. Disclosure of information
29. Regulations

THE NORTHERN TERRITORY OF AUSTRALIA

No. 121 of 1979

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

[Assented to 15 October 1979]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART I - PRELIMINARY

1. This Act may be cited as the Human Tissue Transplant Act 1979. Short title
2. This Act shall come into operation on a date to be fixed by the Administrator by notice in the Gazette. Commencement
- 3.(1) The Trading in Blood (Prohibition) Act 1974 (No. 29 of 1974) is repealed. Repeal
- (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.(1) In this Act, unless the contrary intention appears - Definitions
 - "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 a registered medical practitioner within the meaning of the Medical Practitioners Registration 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

Human Tissue Transplant

(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;

"nurse" means a person registered as a nurse under the provisions of the Nursing Act;

"nursing aide" means a person enrolled as a nursing aide under the provisions of the Nursing Act;

"person in charge", in relation to a hospital, means a person appointed under section 15 of the Hospitals and 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) the spouse of the person;

(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;

Human Tissue Transplant

"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.(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.

Delegation
by person
in charge of
a hospital

(2) A power or function delegated in accordance with sub-section (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. In this Part, a reference to tissue shall not be read as including a reference to foetal tissue, spermatozoa or ova.

Interpretation

Division 2 - Donations by Adults

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

Blood trans-
fusions ex-
cluded

8.(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,

Consent by
adult living
donor to
removal of
regenerative
tissue

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

Human Tissue Transplant

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 sub-section (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.

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

9.(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 sub-section (1) shall specify the time at which the consent is given.

(3) A person who has given a consent referred to in sub-section (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.

Certificate
of medical
practitioner

10. 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

Human Tissue Transplant

(iii) that the consent was freely given.

Division 3 - Effect of Consent

11. 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.

Effect of
consent under
section 8

12. 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.

Effect of
consent under
section 9

13. 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 -

Purported
consent not
sufficient
in certain
circumstances

- (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. A person who -

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

Consent by
adult to
removal of
blood

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.

Human Tissue Transplant

Effect of consent under section 14 15. 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

Revocation of consent 16.(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 or nursing aide 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 sub-section (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 sub-section (2) -

- (a) where the donor is a patient in a hospital at the time of the revocation - the person in

Human Tissue Transplant

charge of that hospital to whom the revocation is communicated in accordance with sub-section (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.

PART III - DONATIONS OF TISSUE AFTER DEATH

17. 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 death of the deceased person living with the deceased person as that person's husband or wife, as the case may be, on a permanent and bona fide domestic basis, that surviving person shall be taken -

De facto
spouses

- (a) to have been married to the deceased person; and
- (b) to have been the spouse of the deceased person immediately before his or her death.

18.(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 -

Authority to
remove tissue
where body of
deceased at a
hospital

- (a) for the purpose of the transplantation of the tissue to the body of a living person; or

Human Tissue Transplant

(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 sub-section (1)(a) or for a use referred to in sub-section (1)(b), or both, and had not withdrawn the wish or revoked the consent, the person in charge of the hospital may authorize under sub-section (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 sub-section (1)(a) or a use referred to in sub-section (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

(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 sub-section (1) the removal of tissue from the body of the deceased person for the purpose referred to in sub-section (1)(a) or a use referred to in sub-section (1)(b).

Human Tissue Transplant

(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 sub-section (1)(a) or a use referred to in sub-section (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.(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 -

Authority to
remove tissue
where body of
deceased not
at a 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) Sub-section (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.

(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 sub-section (1)(a) or a use referred to in sub-section (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 sub-section, hereby authorized.

Human Tissue Transplant

Consent by a coroner

20.(1) This section applies to a deceased person -

- (a) who has died in a manner or in circumstances referred to in section 10(1)(a) to (e) inclusive or section 10(g) to (i) inclusive 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 a coroner is required or has been directed by the Minister for the time being administering sections 10(1)(j) and 14 of the Coroners Act to hold an inquest.

(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, sub-sections (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.

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

21.(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)

Human Tissue Transplant

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 specialist neurologist or neurosurgeon, 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 sub-section (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 sub-section.

22. An authority under this Part is sufficient authority for a medical practitioner other than -

Effect of
authority
under this
Part

(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. For the purposes of the law of the Territory, a person has died when there has occurred -

When death
occurs

(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.(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

Certain con-
tracts and
arrangements
not to be

Human Tissue Transplant

entered
into

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 sub-section (2), and nothing in sub-section (1) or (2) applies to or in relation to a contract or arrangement entered into in accordance with an approval under this sub-section.

(4) Sub-section (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 sub-section (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.

(5) Sub-section (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

Exclusion of
liability

25.(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 sub-section (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

Human Tissue Transplant

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. 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
- (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.

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

27.(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.

Offences

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.

Human Tissue Transplant

(3) Nothing in sub-section (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.

Disclosure
of
information

28.(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) Sub-section (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.

Regulations

29. 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.