

Serial 127
Human Tissue Transplant Amendment Bill 2010
Mr Vatskalis

A Bill for an Act to amend the *Human Tissue Transplant Act*, and for related purposes

NORTHERN TERRITORY OF AUSTRALIA

HUMAN TISSUE TRANSPLANT AMENDMENT ACT 2010

Act No. [] of 2010

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2010

An Act to amend the *Human Tissue Transplant Act*, and for related purposes

[Assented to [] 2010]
[Second reading [] 2010]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Human Tissue Transplant Amendment Act 2010*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of Human Tissue Transplant Act

3 Act amended

This Part amends the *Human Tissue Transplant Act*.

4 Long title replaced

Long title

repeal, insert

An Act to provide for the removal and use of human tissues, the regulation of schools of anatomy, when death occurs for the laws of the Territory, and for related purposes

5 Section 1 amended

Section 1

omit

Human Tissue Transplant

insert

Transplantation and Anatomy

6 Section 4 amended

(1) Section 4

omit

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

insert

In this Act:

(2) Section 4, definitions ***person in charge*** and ***tissue***

omit

(3) Section 4

insert (in alphabetical order)

anatomy authorisation means an authorisation under section 22B.

authorised purpose means:

(a) for regenerative tissue – the removal of the tissue from a person's body for any of the following:

(i) transplantation to another person's body;

(ii) use for other therapeutic purposes;

- (iii) use for other medical or scientific purposes; or
- (b) for non-regenerative tissue – the removal of the tissue from a person's body for transplantation to another person's body.

authorised school of anatomy means a school of anatomy of an educational institution for which an anatomy authorisation is in force.

code of practice means a code of practice in force under section 22D.

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

donor, for Part 2, Division 5, see section 16.

educational institution means a higher education institution, or interstate university, as defined in section 4 of the *Higher Education Act*.

holder, of an anatomy authorisation, means the governing body of the educational institution to which the authorisation applies.

tissue:

- (a) generally – includes:
 - (i) an organ; and
 - (ii) a part of a human body; and
 - (iii) a substance extracted from, or from a part of, a human body; but
- (b) for Part 2 – see section 6.

transplantation, of tissue, includes transplantation of:

- (a) a part of the tissue; and
- (b) a substance obtained from the tissue.

(4) Section 4(2)

omit

7 Section 5 replaced

Section 5

repeal, insert

4A Authorisation of retention of tissue

An authorisation under this Act to remove or use tissue for an authorised purpose also authorises the retention of the tissue to the extent the retention is reasonably necessary for the purpose.

5 Application of Part IIAA of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 5

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

8 Section 6 replaced

Section 6

repeal, insert

6 Meaning of *tissue* in Part 2

In this Part:

tissue does not include:

- (a) foetal tissue; or
- (b) spermatozoa or ova.

9 Sections 8 and 9 replaced

Sections 8 and 9

repeal, insert

8 Consent by adult living donor to removal of tissue

- (1) A person may, by signed writing, consent to the removal from his or her body of tissue for an authorised purpose if the person:
 - (a) is an adult; and

- (b) is of sound mind; and
 - (c) has been given medical advice about the removal of the tissue.
- (2) A consent for the removal of non-regenerative tissue:
 - (a) must specify the time when the consent is given; and
 - (b) does not have effect until 24 hours after it is signed.

Note for section 8

The donor may revoke the consent at any time, see section 16.

10 Sections 11 and 12 replaced

Sections 11 and 12

repeal, insert

11 When consent authorises removal of tissue

- (1) This section applies if a medical practitioner has given a certificate under section 10 for a person's consent given under section 8.
- (2) The consent authorises a medical practitioner, other than the medical practitioner who gave the certificate, to remove the tissue stated in the consent from the person's body for the authorised purpose stated in it.

Note for subsection (2)

A consent for the removal of non-regenerative tissue does not have effect until 24 hours after the consent is signed, see section 8(2).

11 Section 15 replaced

Section 15

repeal, insert

15 Effect of consent to removal of blood

A person's consent under section 14 authorises the removal of blood from the person's body:

- (a) at a hospital; or
- (b) at a place, or in a vehicle, used for the purpose by an entity approved by the Minister for this section.

12 Section 16 replaced

Section 16

repeal, insert

16 How consent revoked

A person (the *donor*) who gives a consent to the removal of tissue from the donor's body for this Act, may revoke the consent at any time by indicating, either orally or in writing, it is revoked to:

- (a) if the donor is a patient in a hospital:
 - (i) a designated officer for the hospital; or
 - (ii) a medical practitioner who is attending the donor in a professional capacity; or
 - (iii) a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse (other than as a student); or
- (b) otherwise – a medical practitioner who is attending the donor in a professional capacity.

16A Obligations of persons informed about revocation

- (1) The medical practitioner or nurse to whom the revocation of the consent is indicated under section 16(a)(ii) or (iii) must immediately inform the designated officer for the hospital that the donor has revoked the consent.
- (2) Subsection (3) applies to:
 - (a) the designated officer for the hospital:
 - (i) to whom the revocation of the consent is indicated under section 16(a)(i); or
 - (ii) who is informed about the revocation of the donor's consent under subsection (1); or
 - (b) the medical practitioner to whom the revocation of the consent is indicated under section 16(b).

(3) The medical practitioner or designated officer (the ***responsible person***) must make the inquiries that are reasonable in the circumstances to find out whether a medical practitioner is proposing to rely on the consent for the removal of tissue from the donor's body.

(4) If the responsible person finds out a medical practitioner is proposing to so rely on the consent, the responsible person must immediately inform the medical practitioner that the consent has been revoked.

Maximum penalty: 100 penalty units.

(5) An offence against subsection (4) is an offence of strict liability.

(6) It is a defence to a prosecution for an offence against subsection (4) if the defendant establishes a reasonable excuse.

17 Revoked consent and certificate to be given to donor

(1) This section applies if:

- (a) the donor's consent is revoked under section 16; and
- (b) a medical practitioner or designated officer for a hospital informs the person who has possession of the instrument of consent that it has been revoked.

(2) Immediately after being informed of the revocation, the person must give the donor:

- (a) the instrument of consent; and
- (b) if the person has possession of the certificate given under section 10 for the consent – the certificate.

Maximum penalty: 100 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

(4) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.

13 Sections 18 and 19 replaced

Sections 18 and 19

repeal, insert

18 Authorisation by designated officer for hospital

(1) Subject to this Part, a designated officer for a hospital may, by signed writing, authorise the removal of tissue from the body of a deceased person at the hospital for an authorised purpose if:

(a) the designated officer has no reason to believe the deceased:

- (i) had, during his or her lifetime, expressed the wish for, or consented to, the removal of tissue from his or her body for an authorised purpose after death; or
- (ii) had, during his or her lifetime, expressed an objection to the removal of tissue from his or her body for an authorised purpose after death; and

(b) the designated officer:

- (i) has no reason to believe the senior available next of kin of the deceased has an objection to the removal of tissue from the body of the deceased for an authorised purpose; or
- (ii) is unable to ascertain the existence or whereabouts of any of the next of kin of the deceased; or
- (iii) is unable to ascertain whether any of the next of kin of the deceased has an objection to the removal of tissue from the body of the deceased for an authorised purpose.

(2) The designated officer must not give the authorisation unless the designated officer makes the inquiries that are reasonable in the circumstances.

Maximum penalty: 100 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

19 Authorisation by senior available next of kin before death

- (1) The senior available next of kin of a person in a hospital (the *patient*) may advise the designated officer for the hospital at any time the patient is unconscious and before death that the next of kin has no objection to the removal of tissue from the patient's body for an authorised purpose after the patient's death.
- (2) The advice authorises the removal of the tissue from the patient's body for an authorised purpose after the patient's death.
- (3) However, subsection (2) does not apply if:
 - (a) there is more than one senior available next of kin of the patient; and
 - (b) one of them:
 - (i) has an objection to the removal of the tissue; and
 - (ii) advises the designated officer of the objection.
- (4) Also, the advice ceases to have effect if the patient regains consciousness.

19A Authorisation by senior available next of kin after death

- (1) This section applies if the body of a deceased person is not at a hospital.
- (2) Subject to this Part, the senior available next of kin of the deceased may, by signed writing, authorise the removal of tissue from the deceased's body for an authorised purpose.
- (3) However, subsection (2) does not apply if the senior available next of kin reasonably believes the deceased:
 - (a) had, during his or her lifetime, expressed an objection to the removal of the tissue from his or her body; and
 - (b) had not withdrawn the objection.
- (4) Also, subsection (2) does not apply if:
 - (a) there is more than one senior available next of kin of the deceased; and
 - (b) one of them has an objection to the removal of the tissue.

19B Authorisation by deceased

- (1) This section applies if, during his or her lifetime, a deceased person:
- (a) by signed writing expressed the wish for, or consented to, the removal of tissue from his or her body after death for an authorised purpose; and
 - (b) had not withdrawn the wish or revoked the consent.
- (2) The removal of the tissue from the deceased's body in accordance with the wish or consent is authorised.

14 Section 20 amended

- (1) Section 20(1)(a), at the end
insert
or
- (2) Section 20(2)
omit, insert
- (2) If a designated officer for a hospital, or the senior available next of kin of the deceased, reasonably believes this section applies to the deceased, the designated officer or next of kin cannot authorise the removal of tissue from the deceased's body unless a coroner has given consent to the removal.
- (3) Section 20(3)
omit
19(3)
insert
19B
- (4) Section 20(3)
omit
his

(5) Section 20(4)

omit

to or

(6) Section 20(6)

omit

shall

insert

must

15 Sections 21 and 22 replaced

Sections 21 and 22

*repeal, insert***21 When medical certificates required**

- (1) If the respiration and circulation of the blood of a person are being artificially maintained, tissue must not be removed from the person's body for an authorised purpose unless:
 - (a) 2 medical practitioners, qualified as mentioned in subsection (2), have carried out a clinical examination of the person; and
 - (b) each of them has certified in writing that in his or her opinion, at the time of the examination, irreversible cessation of all function of the person's brain has occurred.
- (2) For subsection (1)(a):
 - (a) each of the medical practitioners must have been practising the medical profession for at least 5 years; and
 - (b) one of them must be a medical specialist.
- (3) For subsection (2)(a), a period a medical practitioner practised under the law of another country that provides for the registration of persons practising in the medical profession must be taken into account in working out the 5-year period.

(4) In this section:

medical specialist means a person registered under the Health Practitioner Regulation National Law in a recognised specialty stated in the following table and whose specialist title for the specialty is stated opposite:

Specialty	Specialist title
Anaesthesia	Specialist anaesthetist
Intensive care medicine	Specialist intensive care physician
Physician	Specialist physician
Physician	Specialist neurologist
Surgery	Specialist general surgeon
Surgery	Specialist neurosurgeon

22 Effect of authorisation under this Part

- (1) An authorisation under section 18, 19, 19A or 19B authorises a medical practitioner to remove the tissue from the body of the deceased stated in the authorisation for the authorised purpose stated in it.
- (2) However, subsection (1) does not authorise the removal of tissue by:
 - (a) a medical practitioner mentioned in section 21(1); or
 - (b) if the authorisation is given under section 18 by the designated officer for a hospital, or a delegate of the designated officer, who is a medical practitioner – the designated officer or delegate.

16 Parts IV and V replaced

Parts IV and V

repeal, insert

Part 4 Teaching, study and practice of anatomy

22A Offences relating to teaching, study and practice of anatomy

A person must not use the body, or a part of the body, of a

deceased person for any of the following purposes otherwise than at an authorised school of anatomy:

- (a) the teaching and study of anatomy;
- (b) the practice of anatomy.

Fault elements:

The person:

- (a) intentionally uses the body or body part for the purpose; and
- (b) is reckless as to whether it is used at an authorised school of anatomy or other place.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

Note for section 22A

A medical practitioner does not commit an offence against this section by performing an autopsy under the direction of a coroner under the Coroners Act, see section 43BE of the Criminal Code.

22B Anatomy authorisation

- (1) The Chief Health Officer may, by *Gazette* notice, authorise the conduct of the following at a school of anatomy of an educational institution:
 - (a) the teaching and study of anatomy;
 - (b) the practice of anatomy.

Note for subsection (1)

The authorisation may, under section 42 of the Interpretation Act, be limited to the conduct of specified activities, including for example, the teaching and study of anatomy, or anatomical examinations, of a specified part of the human body.

- (2) The Chief Health Officer may impose reasonable conditions on the authorisation.
- (3) The conditions must be stated in the *Gazette* notice.

22C Contravention of condition of anatomy authorisation

The holder of an anatomy authorisation must not engage in conduct that results in a contravention of a condition of the authorisation.

Fault elements:

The holder:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in a contravention of a condition of the authorisation.

Maximum penalty: 200 penalty units.

22D Codes of practice

- (1) The Chief Health Officer may make a code of practice relating to the conduct of activities under an anatomy authorisation.
- (2) Without limiting subsection (1), the code of practice may be made about the following matters:
 - (a) the way in which bodies, or parts of bodies, are transported to authorised schools of anatomy;
 - (b) how the teaching, study and practice of anatomy are conducted;
 - (c) the giving of returns and other information by the holders of anatomy authorisations;
 - (d) the procedures for receiving and keeping bodies, or parts of bodies, at authorised schools of anatomy;
 - (e) the inspection of authorised schools of anatomy;
 - (f) the disposal of bodies, or parts of bodies, by the holder of an anatomy authorisation.
- (3) Also, the code of practice may apply, adopt or incorporate (with or without changes) a matter contained in another document or instrument as in force or existing at a particular time or from time to time.
- (4) The Minister must publish notice in the *Gazette* of the making of the code of practice.
- (5) The code of practice has no effect until publication of the notice.
- (6) The CHO must publish the code of practice on the Agency's website.

- (7) A person commits an offence if the person engages in conduct that results in a contravention of a provision of the code of practice.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in a contravention of the provision.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

Part 5 Prohibition of trading in tissue

22E Unauthorised contracts and arrangements

- (1) A person commits an offence if:

- (a) the person:
 - (i) enters, or agrees or offers to enter, into a contract or arrangement; or
 - (ii) holds himself or herself out as being willing to enter into a contract or arrangement; or
 - (iii) inquires whether someone is willing to enter into a contract or arrangement; and
- (b) under the contract or arrangement, the person agrees, for valuable consideration (whether given or to be given to the person or anyone else), for the supply of tissue from the person's body or another person's body (whether before or after the death of the person or other person).

Fault element: The person intentionally engages in conduct mentioned in subsection (1)(a).

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (2) However, subsection (1) does not apply if the contract or arrangement:

- (a) is entered into in accordance with an authorisation under section 22F; or

- (b) provides only for the reimbursement of expenses necessarily incurred by the person for the removal of tissue under this Act.
- (3) Also, subsection (1) does not apply in relation to the supply of tissue if:
 - (a) the tissue is obtained under a contract or arrangement authorised under section 22F; and
 - (b) the tissue has been subjected to processing or treatment; and
 - (c) the tissue is supplied for use, in accordance with the directions of a medical practitioner, for therapeutic or scientific purposes.
- (4) A contract or arrangement mentioned subsection (1)(b) is void unless it is entered into in accordance with an authorisation under section 22F.
- (5) In this section:
supply includes sale.

22F Authorisation to enter into contract or arrangement

- (1) The Minister may, by signed writing, authorise a person to enter into a contract or arrangement of a kind mentioned in section 22E(1)(b) if the Minister is satisfied there are special circumstances to do so.
- (2) The authorisation is subject to the conditions imposed by the Minister and stated in it.

Part 6 When death occurs for Territory laws

23 When death occurs

For a law of the Territory, 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.

17 Section 27 replaced

Section 27

repeal, insert

27 Offence to remove tissue without consent or authorisation

A person must not remove tissue from the body of a person (whether living or dead) unless the removal is done in accordance with an authorisation under this Act.

Fault elements:

The person:

- (a) intentionally removes the tissue; and
- (b) is reckless as to whether the removal is done in accordance with the authorisation.

Maximum penalty: 400 penalty units or imprisonment for 4 years.

Note for section 27

A medical practitioner does not commit an offence against this section by performing an autopsy under the direction of a coroner under the Coroners Act, see section 43BE of the Criminal Code.

27A Offence to make misleading statement

- (1) A person must not make a misleading statement in a certificate given for this Act.

Fault elements:

The person:

- (a) intentionally makes the statement; and
- (b) knows the statement is misleading; and
- (c) knows the certificate is made for this Act.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (2) In this section:

misleading means misleading in a material particular or because of the omission of a material particular.

18 Section 28 amended

- (1) Section 28, heading

omit, insert

28 Unlawful disclosure of confidential information

- (2) Section 28(1)

omit, insert

- (1) A person commits an offence if the person engages in conduct that results in the disclosure of confidential information to someone else.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in the disclosure of the information; and
- (c) is reckless as to whether the information is confidential information.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (3) Section 28(2)

omit

to or in relation to any

insert

in relation to confidential

- (4) Section 28(2)(a) and (b), at the end

insert

or

- (5) After section 28(2)

insert

- (3) In this section:

confidential information means information that identifies, or is likely to identify the person:

- (a) from whose body tissue has been removed for an authorised purpose; or
- (b) in relation to whom or whose body a consent or authorisation has been given under this Act; or
- (c) into whose body tissue has been, is being, or may be, transplanted.

19 Section 29 replaced

Section 29

repeal, insert

29 Delegation by designated officer for hospital

- (1) The designated officer for a hospital may delegate any of the designated officer's powers and functions under this Act to a health practitioner employed or engaged by the hospital.
- (2) However, the designated officer may do so only if satisfied the health practitioner has appropriate qualifications or experience for the delegation.
- (3) In this section:

health practitioner means a person:

- (a) registered under the Health Practitioner Regulation National Law to practise a health profession (other than as a student); or
- (b) a health practitioner who has a right of practice under the *Health Practitioners Act*.

30 Regulations

- (1) The Administrator may make regulations under this Act.

-
- (2) A regulation may provide for the following:
- (a) the conditions under which transplantations of tissue from living persons may be conducted;
 - (b) the procedures for the removal or storage of tissue removed from living persons;
 - (c) the regulation of premises where transplantations of tissue from living persons may be conducted;
 - (d) the regulation of authorised schools of anatomy;
 - (e) fees payable under this Act;
 - (f) the enforcement of a code of practice, including by providing that a contravention of the code of practice is an offence against a regulation;
 - (g) an offence against a regulation to be an offence of strict or absolute liability but not with a penalty exceeding 100 penalty units.

20 Part 8 inserted

After section 30

insert

Part 8 Transitional matters for Human Tissue Transplant Amendment Act 2010

31 Definitions

In this Part:

amending Act means the *Human Tissue Transplant Amendment Act 2010*.

commencement means the commencement of section 20 of the amending Act.

re-enacted, for a provision of this Act, means the provision as re-enacted by the amending Act.

32 References to consents and documents given under Act

A reference in this Part to a consent, approval, authorisation or certificate given under a provision of this Act is a reference to a consent, approval, authorisation or certificate that:

- (a) was given under the provision before the commencement; and
- (b) immediately before the commencement, had not been revoked.

33 Consent to removal of tissue

A consent given under section 8 or 9 continues to have effect, or has effect, as if it were given under the section as re-enacted.

34 Approval of place for blood donation

An approval given under section 15(b) has effect as if it were given under the section as re-enacted.

35 Revocation of consent to removal of tissue

This Act, as in force immediately before the commencement, continues to apply in relation to the revocation of a consent under section 16 before the commencement as if the amending Act had not been enacted.

36 Authorisation to remove tissue after death

- (1) An authorisation mentioned in section 18(2) given by the person in charge of a hospital continues to have effect as if the amending Act had not been enacted.
- (2) Another authorisation given under section 18 or an authorisation given under 19 continues to have effect, or has effect, as if it had been given under the section as re-enacted.

37 Medical certificate as to irreversible cessation of brain function

A certificate given under section 21 continues to have effect as if it had been given under the section as re-enacted.

38 Authorised contract or arrangement for supply of tissue

An authorisation given under section 24 continues to have effect as if it had been given under the section as re-enacted.

39 *Interpretation Act* not affected

This Part does not limit Part III of the *Interpretation Act*.

21 Act further amended

The Schedule has effect.

Part 3 Amendment of Information Act

22 *Information Act* amended

This Part amends the *Information Act*.

23 Schedule 1 amended

Schedule 1

omit

Human Tissue Transplant Act

insert

Transplantation and Anatomy Act

Schedule Human Tissue Transplant Act further amended

section 21

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
Part I, heading	whole heading	Part 1 Preliminary matters
Part II, heading	whole heading	Part 2 Donation of tissue by living persons
section 10(a)	his presence;	the medical practitioner's presence; and
section 10(b) and (c)	he	the medical practitioner
section 10(c)(i), at the end		and
section 13, heading	whole heading	13 When consent does not authorise removal of tissue
section 13	A document that purports to be a consent given in accordance with section 8 or 9 is not sufficient authority for	Despite sections 11 and 12, a consent given in accordance with section 8 does not authorise
section 13(a)	16(2) or (4)	16 or 16A(6)
Part III, heading	whole heading	Part 3 Donation of tissue after death
Part VI, heading	whole heading	Part 7 Miscellaneous matters
section 25(1) and (2)	authority (<i>all references</i>)	authorisation

section 25(2)	the generality of the expression <i>in good faith</i>	subsection (1)
	shall be	
	he (<i>all references</i>)	is the person
section 26, heading	, &c.	etc.
section 26	to or	
section 26(a)(ii) and (b), at the end		or
