



Transplantation and Anatomy Act 1979

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Queensland

Transplantation and Anatomy Act 1979

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Transplantation and Anatomy Act 1979

An Act to make provision for and in relation to the removal of human tissues for transplantation and other medical and scientific purposes, for post-mortem examinations, for the definition of death, for the regulation of schools of anatomy, and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Transplantation and Anatomy Act 1979*.

2 Act binds all persons

- (1) This Act binds all persons including the State.
- (2) Subsection (1) does not make the State liable to be prosecuted for an offence.

4 Interpretation

- (1) In this Act—

ante-mortem intervention, for part 3A, see section 25A.

chief health officer see the *Hospital and Health Boards Act 2011*, schedule 2.

child, if descendancy rather than age is relevant, includes—

- (a) a biological child; and
- (b) an adopted child; and

- (c) a stepchild; and
- (d) a foster child; and
- (e) a child through surrogacy; and
- (f) a person who, under Aboriginal tradition or Island custom, is regarded as a child; and
- (g) a person who, under the cultural traditions of their community, is regarded as a child.

coroner means a coroner under the *Coroners Act 1958* or *Coroners Act 2003*.

designated officer means a person who pursuant to section 6 is declared to be or is appointed a designated officer.

hospital means—

- (a) any public sector hospital under the *Hospital and Health Boards Act 2011*; or
- (b) a private hospital under the *Private Health Facilities Act 1999*; or
- (c) the Mater Misericordiae Public Hospital at Brisbane.

next of kin means—

- (a) in relation to a child—a person referred to in paragraph (a)(i) to (iv) of the definition *senior available next of kin*; or
- (b) in relation to any other person—a person referred to in paragraph (b)(i) to (iv) of that definition.

non-regenerative tissue means tissue other than regenerative tissue.

parent, of a child, includes—

- (a) a step-parent of the child; and
- (b) a person who, under Aboriginal tradition or Island custom, is regarded as a parent of the child; and
- (c) a person who, under the cultural traditions of their community, is regarded as a parent of the child; and

- (d) another person having or exercising parental responsibility for the child, whether or not the person is the legal guardian of the child.

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.

school of anatomy means a school of anatomy established or declared to be established under the authority of section 37.

senior available next of kin means—

- (a) in relation to a child—the first of the following persons who in the following order of priority, is reasonably available—
 - (i) the spouse of the child;
 - (ii) a parent of the child;
 - (iii) a sibling, who has attained the age of 18 years, of the child;
 - (iv) a guardian of the child; and
- (b) in relation to any other person—the first of the following persons who, in the following order of priority, is reasonably available—
 - (i) the spouse of the person;
 - (ii) a child, who has attained the age of 18 years, of the person;
 - (iii) a parent of the person;
 - (iv) a sibling, who has attained the age of 18 years, of the person.

sibling includes—

- (a) a biological sibling; and
- (b) an adopted sibling; and
- (c) a sibling by surrogacy; and
- (d) a stepbrother or stepsister; and

- (e) a person who, under Aboriginal tradition or Island custom, is regarded as a sibling; and
- (f) a person who, under the cultural traditions of their community, is regarded as a sibling.

tissue—

- (a) means—
 - (i) an organ, blood or part of—
 - (A) a human body; or
 - (B) a human fetus; or
 - (ii) a substance extracted from an organ, blood or part of—
 - (A) a human body; or
 - (B) a human fetus; but
- (b) does not include—
 - (i) immunoglobulins; or
 - (ii) laboratory reagents, or reference and control materials, derived wholly or in part from pooled human plasma; or
 - (iii) human milk.

tissue donation viability means the viability of tissue for transplanting from a person after death to the body of another living person.

trading, of tissue, for part 7, see section 39.

- (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.
- (3) A person who is acknowledged by general repute at the death of a deceased person to be a member of any of the classes of persons specified in the term *senior available next of kin* shall be deemed to be a member of that class without further inquiry.

- (4) If more than 1 person is a spouse of a deceased person, only the person who most recently became the deceased person's spouse is the deceased person's spouse for the definition *senior available next of kin*.

6 Designated officers

- (1) The medical superintendent of a hospital and his or her nominees (being medical practitioners) appointed by the medical superintendent in writing are, for the purposes of this Act, designated officers for that hospital.
- (2) The persons or body having the control and management of a hospital may, in writing, appoint persons to be, for the purposes of this Act, designated officers for that hospital.

Part 2 Donations of tissue by living persons

Division 1 Exclusion of certain tissue

8 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

9 Particular blood removal not subject to this division

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

10 Consent by adult living donor to removal of regenerative tissue

A person who—

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

Editor's note—

For an adult with impaired capacity, see the *Guardianship and Administration Act 2000*, section 69 which provides that, in particular circumstances, the Queensland Civil and Administration Tribunal may consent to removal of tissue from the adult for donation to another person.

- (c) is, in the light of medical advice furnished by a medical practitioner, prepared to do so;

may, by writing signed in the presence of a designated officer, consent to the removal from his or her body of regenerative tissue specified in the consent—

- (d) for the purpose of the transplantation of the tissue to the body of another living person; or
- (e) for the purpose of using the tissue for other therapeutic purposes or for other medical or scientific purposes;

or for any such purposes.

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

(1) A person who—

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

Editor's note—

For an adult with impaired capacity, see the *Guardianship and Administration Act 2000*, section 69 which provides that, in particular circumstances, the Queensland Civil and Administration Tribunal may consent to removal of tissue from the adult for donation to another person.

- (c) is, in the light of medical advice furnished by a medical practitioner, prepared to do so;
may, by writing signed in the presence of a designated officer, consent to the removal, after the expiration of 24 hours from the time at which the consent is signed, from his or her body of non-regenerative tissue specified in the consent, for the purpose 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.

12 Designated officer to give certificate in relation to consent

The designated officer in whose presence a consent is given under this division shall certify in writing—

- (a) that the consent in writing of the person giving the consent, the terms of which are set out in the certificate, was given in the designated officer's presence; and
- (b) that the designated officer is satisfied—
 - (i) that, at the time the consent was given the person had attained the age of 18 years; and
 - (ii) that, at that time, the person was of sound mind; and
 - (iii) that the consent was freely given; and
 - (iv) that the medical advice referred in section 10(c) or, as the case may be, 11(1)(c) has been duly furnished to the person.

Division 2A Donations by children

12A Particular blood removal and donations not subject to this division

Nothing in this division prevents—

[s 12B]

- (a) the removal under division 4 of blood from a child's body; or
- (b) the removal under division 6 of tissue from a child's body.

12B Consent by parent to removal of regenerative tissue for transplantation

A person who—

- (a) is a parent of a child; and
- (b) is of sound mind; and
- (c) is, in the light of medical advice furnished by a medical practitioner, prepared to do so;

may, by writing signed in the presence of a designated officer, consent to the removal from the body of the child of regenerative tissue specified in the consent, for the purpose of the transplantation of the tissue to the body of a brother, sister or parent of the child.

12C Certificate of agreement by a child who is capable of understanding

A medical practitioner may, by writing signed in the presence of a designated officer, certify that at the time of the certification—

- (a) the medical practitioner had explained to a child referred to in section 12B the nature and effect of the removal from the body of the child of tissue specified in the consent and the nature of the transplantation; and
- (b) the child understood the nature and effect of the removal of the tissue and the nature of the transplantation; and
- (c) the child was in agreement with the consent given under section 12B.

12D Certifications where child is not capable of understanding by reason of age

- (1) Where a child referred to in section 12B, by reason of his or her age, is not capable of understanding the nature and effect of the removal of the tissue and the nature of the transplantation, each of 3 medical practitioners may, by writing signed in the presence of a designated officer, certify that, at the time of certification—
 - (a) the child, by reason of his or her age, was not capable of understanding the nature and effect of the removal and the nature of the transplantation; and
 - (b) the brother, sister or parent of the child, in the medical practitioner's opinion, is likely to die unless the tissue specified in the consent is transplanted to the body of that brother, sister or, as the case may be, parent; and
 - (c) the risk to the child, in the medical practitioner's opinion, is minimal.
- (2) However, 1 of the 3 medical practitioners shall be a specialist paediatrician and another shall be a specialist anaesthetist.
- (3) In this section—

specialist anaesthetist means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession as a specialist registrant in the specialty of anaesthesia, other than as a student.

specialist paediatrician means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession as a specialist registrant in the specialty of paediatrics and child health, other than as a student.

12E Designated officer to give certificate

The designated officer in whose presence a consent and certificate or, as the case may be, certificates is or are given under this division shall certify in writing—

[s 13]

- (a) that the consent in writing of the person giving the consent, the terms of which are set out in the certificate, was given in the designated officer's presence; and
- (b) that the designated officer is satisfied—
 - (i) that the person was a parent of the child referred to in the consent; and
 - (ii) that, at that time, the person was of sound mind; and
 - (iii) that the consent was freely given; and
 - (iv) that the medical advice referred to in section 12B(c) has been duly furnished to the person; and
- (c) that each certificate given by a medical practitioner under this division in respect of the consent was given in the designated officer's presence; and
- (d) that the designated officer is satisfied that each medical practitioner who gave such a certificate did so after making such inquiries and examination as are necessary.

Division 3 Effect of consents and authorities

13 Consents under s 10

Subject to section 15, consent under section 10 is, where a certificate has been given in accordance with section 12 in relation to that consent, sufficient authority for a medical practitioner, other than the medical practitioner by whom the medical advice referred to in section 10 was furnished, and other than the designated officer in whose presence the consent was signed, to remove the regenerative tissue referred to in the consent—

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

- (b) for the purpose of using the tissue for other therapeutic purposes or for other medical or scientific purposes; or for any such purposes.

14 Consent under s 11

Subject to section 15, a consent under section 11 is, where a certificate has been given in accordance with section 12 in relation to that consent, sufficient authority for a medical practitioner, other than the medical practitioner by whom the medical advice referred to in section 11 was furnished, and other than the designated officer in whose presence the consent was signed, to remove, at any time after the expiration of 24 hours from the time at which the latest relevant consent under section 11 was given, the non-regenerative tissue referred to in the consent for the purpose of the transplantation of the tissue to the body of the other person referred to in the consent.

14A Consent under s 12B

Subject to section 15, a consent under section 12B is, where a certificate has been given in accordance with section 12C or certificates have been given in accordance with section 12D and a certificate has been given in accordance with section 12E in relation to the consent, certificate or certificates, sufficient authority for a medical practitioner other than—

- (a) the medical practitioner by whom the medical advice referred to in section 12B(c) or the explanation referred to in section 12C(a) was furnished; and
- (b) the designated officer by whom the certificate referred to in section 12E was given;

to remove, at any time after the expiration of 24 hours from the time at which the latest relevant consent under section 12B was given, the regenerative tissue referred to in the consent for the purpose of the transplantation of the tissue to the body of

the brother, sister or parent of the child referred to in the consent.

15 When consent is not sufficient authority

A document that purports to be a consent given in accordance with section 10, 11 or 12B is not sufficient authority for a medical practitioner to remove tissue if—

- (a) the medical practitioner has been informed that the consent has been revoked; or
- (b) the medical practitioner knows or has reasonable grounds for suspecting that a certificate given for the purposes of section 12, 12C, 12D or 12E in relation to that document contains a false statement; or
- (c) in the case of a document that purports to be a consent given in accordance with section 12B—the medical practitioner has been informed that a parent of the child or the child is not, or is no longer, in agreement with the removal and transplantation of the tissue.

Division 4 Removal of blood for particular purposes

16 Interpretation

In this division—

blood transfusion means the transfusion of human blood, or any of the constituents of human blood, into a person and includes the operation of removing all or part of the blood of a person and replacing it with blood taken from another person.

17 Consents by adults to removal of blood

A person who has attained the age of 18 years may consent to the removal of blood from his or her body—

- (a) for the purpose of a blood transfusion; or

- (b) for the purpose of using the blood or any of its constituents for other therapeutic purposes or for other medical or scientific purposes; or
- (c) for the purpose of determining tissue donation viability; or for any such purposes.

Editor's note—

For an adult with impaired capacity, see the *Guardianship and Administration Act 2000*, section 69 which provides that, in particular circumstances, the Queensland Civil and Administration Tribunal may consent to removal of tissue from the adult for donation to another person.

18 Consents to removal of blood from children for particular purposes

A parent of a child may consent in writing to the removal of blood from the body of the child for any of the purposes referred to in section 17, other than for the purpose of determining tissue donation viability, if—

- (a) a medical practitioner advises that the removal is not likely to be prejudicial to the health of the child; and
- (b) the child agrees to the removal.

18A Consents to removal of blood from children or adults with impaired capacity for determining tissue donation viability

- (1) This section applies in relation to a person who is—
 - (a) a child; or
 - (b) an adult who does not have capacity to consent to the removal of blood from the person's body.
- (2) The senior available next of kin of the person may consent in writing to the removal of blood from the body of the person for the purpose of determining tissue donation viability.

19 Consent to be sufficient authority for removal of blood

A consent given by or for a person under this division is sufficient authority for the removal of blood from the body of the person.

20 Blood transfusions to children without consent

- (1) Where a blood transfusion is administered by a medical practitioner to a child, the medical practitioner or any person acting in aid of the medical practitioner and under the medical practitioner's supervision in administering such transfusion, shall not incur any criminal liability by reason only that the consent of a parent of the child or a person having authority to consent to the administration of the transfusion was refused or not obtained if—
 - (a) in the opinion of the medical practitioner a blood transfusion was necessary to preserve the life of the child; and
 - (b) either—
 - (i) upon and after in person examining the child, a second medical practitioner concurred in such opinion before the administration of the blood transfusion; or
 - (ii) the medical superintendent of a base hospital, being satisfied that a second medical practitioner is not available to examine the child and that a blood transfusion was necessary to preserve the life of the child, consented to the transfusion before it was administered (which consent may be obtained and given by any means of communication whatever).
- (2) Where a blood transfusion is administered to a child in accordance with this section, the transfusion shall, for all purposes, be deemed to have been administered with the consent of a parent of the child or a person having authority to consent to the administration.

- (3) Nothing in this section relieves a medical practitioner from liability in respect of the administration of a blood transfusion to a child, being a liability to which the medical practitioner would have been subject if the transfusion had been administered with the consent of a parent of the child or a person having authority to consent to the administration of the transfusion.

Division 5 Revocation of consent or agreement

21 Revocation of consent

- (1) A person who gives a consent or agrees with anything consented to for the purposes of this part may at any time thereafter revoke that consent or agreement by indicating, either orally or in writing—
- (a) where the donor, in relation to that consent or agreement, is a patient in a hospital—
 - (i) to a designated officer for that hospital; or
 - (ii) to a medical practitioner who is attending the donor in a professional capacity; or
 - (iii) to a nurse or any other person employed at that hospital; and
 - (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 or agreement is revoked.
- (2) Where—
- (a) the donor is a patient in a hospital; and
 - (b) the person who gave the consent or agreement for the purposes of this part indicates to a person referred to in subsection (1)(a)(ii) or (iii) that the consent or agreement is revoked;

that person shall inform a designated officer for that hospital forthwith of the revocation of the consent or agreement.

- (3) Where a person revokes his or her consent or agreement in accordance with subsection (1)—
- (a) if the donor is a patient in a hospital at the time of the revocation—the designated officer for that hospital to whom the revocation is communicated in accordance with subsection (1) or (2); or
 - (b) if 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 or her, after making such inquiries (if any) as are reasonable in the circumstances, that a medical practitioner is proposing to rely on the consent and agreement in connection with the removal of tissue from the body of the donor, inform that medical practitioner forthwith that the consent or agreement has been revoked.

- (4) Where a consent or agreement is revoked, a person who has in his or her possession the instrument of consent or the instrument of agreement (if any) shall, upon being informed by a designated officer for a hospital or by the medical practitioner to whom the revocation is communicated that the consent or agreement has been revoked, surrender—
- (a) that instrument; and
 - (b) if a certificate given in accordance with section 12, 12C, 12D or 12E is in his or her possession—that certificate;
- to the person who gave the consent or agreement.

Division 6 Donations for approved research

21A Definitions for div 6

In this division—

approved research means research approved by a human research ethics committee in accordance with the Australian Code and the National Statement.

Australian Code means the Australian Code for the Responsible Conduct of Research, issued by the NHMRC in 2018, as in force from time to time.

human research ethics committee means a committee formed in accordance with the requirements stated in the National Statement.

National Statement means the National Statement on Ethical Conduct in Human Research, issued by the NHMRC in 2007, as in force from time to time.

Editor's note—

A copy of the National Statement is available on the website of the NHMRC.

NHMRC means the National Health and Medical Research Council established under the *National Health and Medical Research Council Act 1992* (Cwlth).

21B Authorised donation by adult

The removal of tissue from an adult's body is authorised if—

- (a) it is done for the purpose of approved research; and
- (b) consent is given as required under the National Statement.

21C Authorised donation by child

(1) The removal of tissue from a child's body is authorised if—

- (a) it is done for the purpose of approved research; and
- (b) consent is given as required under the National Statement; and
- (c) 1 or more of the following applies—

- (i) the approved research is for the benefit of the child;
 - (ii) the removal of the tissue occurs during a procedure that is for the benefit of the child and a medical practitioner is satisfied the removal of the tissue for approved research is not likely to prejudice the health of the child;
 - (iii) a medical practitioner is satisfied the removal of the tissue will involve a negligible or low risk of harm and minimal discomfort to the child.
- (2) For subsection (1)(c)(ii) and (iii), the medical practitioner must make a record of the practitioner's satisfaction.
- (3) For subsection (1)(c)(iii), the medical practitioner's satisfaction, and the record of that satisfaction, may relate to—
 - (a) a particular child or children; or
 - (b) a group of children that is or may be participating in stated approved research.

Part 3 Donations of tissue after death

22 Authority to remove tissue where body of deceased in a hospital

- (1) Subsection (2) applies if—
 - (a) the body of a deceased person is in a hospital; and
 - (b) it appears to a designated officer for the hospital, after making reasonable inquiries, that the deceased person had not, during his or her lifetime, expressed an objection to the removal after death of tissue from his or her body; and
 - (c) the senior available next of kin of the deceased person has consented to the removal of tissue from the body of the deceased person for—

- (i) transplanting it to the body of a living person; or
 - (ii) use of the tissue for other therapeutic purposes or for other medical or scientific purposes.
- (2) The designated officer may, by signed writing, authorise the removal of tissue from the body of the deceased person under the consent.
- (3) The senior available next of kin of a person if he or she has no reason to believe that the person has expressed an objection to the removal after the person's death of tissue from the person's body for any of the purposes referred to in subsection (1)(c), may make it known to a designated officer at any time before the death of the person that the senior available next of kin has no objection to the removal, after the death of the person, of tissue from the body of the person for any of the purposes referred to in subsection (1)(c).
- (3A) For subsections (1)(b) and (3), a deceased person is not to be taken as having expressed an objection to the removal after death of tissue if—
 - (a) the deceased person expressed an objection but subsequently withdrew it; and
 - (b) the designated officer, or the senior available next of kin of the deceased person, believes the withdrawal is the most recent and reliable indication of the deceased person's wishes.
- (4) Where there are 2 or more persons of a description referred to in section 4, definition *senior available next of kin*, paragraph (a)(i) to (iv) or (b)(i) to (iv), an objection by any 1 of those persons has effect for the purposes of this section notwithstanding any indication to the contrary by the other or any other of those persons.
- (5) Where a deceased person, during his or her lifetime, by signed writing consented to the removal after death of tissue from his or her body for any of the purposes referred to in subsection (1)(c) and the consent had not been revoked by the deceased person, the removal of tissue from the body of the

deceased person in accordance with the consent for any of those purposes is hereby authorised.

- (6) A consent under subsection (1)(c), and a communication under subsection (3) by the senior available next of kin, must be in writing.
- (7) However, if it is not practicable for the consent or communication to be given in writing because of the circumstances in which it is given, it may be given orally.
- (8) If the consent or communication is given orally under subsection (7), the designated officer must ensure that, as soon as practicable—
 - (a) the fact of the giving of the consent or communication and the details of the consent or communication are reduced to writing and placed on the deceased person's hospital records; and
 - (b) reasonable attempts are made to have the consent or communication confirmed in writing by the senior available next of kin.
- (9) The designated officer must ensure that a document obtained under subsection (6) or (8)(b) is placed on the deceased person's hospital records as soon as practicable.
- (10) Subsection (8) does not affect the operation of subsection (7).

23 Authority to remove tissue where body of deceased not in hospital

- (1) Subject to this part, where the body of a deceased person is in a place other than a hospital, a senior available next of kin of the deceased person may, by signed writing, authorise 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 the purpose of using the tissue for other therapeutic purposes or for other medical or scientific purposes;or for any of those purposes.

-
- (2) Where the senior available next of kin of the deceased person has reason to believe that—
- (a) the deceased person had, during his or her lifetime, expressed an objection to the removal of tissue from his or her body and had not withdrawn that objection; or
 - (b) another next of kin of the same or a higher order of the classes in section 4, definition *senior available next of kin*, paragraph (a)(i) to (iv) or (b)(i) to (iv) has an objection to the removal of tissue from the body of the deceased person;

the senior available next of kin shall not, under subsection (1), authorise the removal of tissue from the body of the deceased person.

- (3) Where a deceased person, during his or her lifetime, by signed writing consented to the removal after death of tissue from his or her body for any of the purposes referred to in subsection (1) and the consent had not been revoked by the deceased person, the removal of tissue from the body of the deceased person in accordance with the consent for any of those purposes is hereby authorised.

23A Authority to access deceased person's medical records

- (1) This section applies if, under section 22 or 23, the removal of tissue from the body of a deceased person for transplanting to the body of a living person is authorised.
- (2) The senior available next of kin may consent to the disclosure of the deceased person's health record to a health professional for the purposes of the transplantation of the tissue.
- (3) Also, for the purposes of obtaining the consent under subsection (2), a designated person may disclose information in the deceased person's health record about the deceased person's next of kin and the next of kin's contact details to another designated person.
- (4) This section applies despite the *Hospital and Health Boards Act 2011*, section 142(1).

- (5) In this section—

designated person see the *Hospital and Health Boards Act 2011*, schedule 2.

health professional see the *Hospital and Health Boards Act 2011*, schedule 2.

health record, for a deceased person, means the deceased person's hospital record or another document recording the deceased person's health history, condition and treatment.

24 Consent by coroner

- (1) This section applies to a deceased person—
- (a) whose death must be reported under the *Coroners Act 1958*, section 12 or 13 or the *Coroners Act 2003*, section 7; or
 - (b) in respect of whose death a coroner is directed by the Minister for the time being administering the *Coroners Act 1958* to inquire into the cause and circumstances of the death or is directed by the Minister under the *Coroners Act 2003*, section 11 to investigate.
- (2) A designated officer or a senior available next of kin, as the case may be, shall not authorise the removal of tissue from the body of a deceased person to whom this section applies unless a coroner has consented to the removal of the tissue.
- (3) Section 22(5) or, as the case may be, 23(3) does not apply in relation to a deceased person to whom this section applies unless a coroner has consented 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, that his or her 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 direction.
- (6) A consent or direction may be given orally by a coroner and, if so given, shall be confirmed in writing within 7 days.
- (7) Where a consent has been given under subsection (2), a report in writing on the condition of the tissue removed shall be furnished to the coroner concerned within 7 days—
 - (a) by the medical practitioner who effected the removal; or
 - (b) where there is a group of medical practitioners concerned in the removal—by 1 of the group designated by the leader of the group before the removal is effected or, failing such a designation, by the leader of the group.

25 Effect of authority under this part

An authority under this part is sufficient authority for the removal of tissue from the body of the deceased person referred to in the authority for the purpose stated in the authority.

Part 3A Ante-mortem interventions

25A What is an *ante-mortem intervention*

- (1) An *ante-mortem intervention* is a medical procedure that is carried out on a living person to determine, maintain or improve the viability of tissue for transplanting, after the person's death, to the body of another living person.
- (2) However, removing blood from the body of a living person for the purpose of determining tissue donation viability is not an *ante-mortem intervention*.

Note—

See section 18A in relation to removing blood for determining tissue donation viability.

25B Authority for ante-mortem intervention—adult with capacity

- (1) A person who is an adult may consent to the carrying out of an ante-mortem intervention on the person.
- (2) A consent under subsection (1) is sufficient authority to carry out the ante-mortem intervention on the person.

25C Authority for ante-mortem intervention—child or adult with impaired capacity

- (1) This section applies if—
 - (a) a person is in a hospital; and
 - (b) the person is—
 - (i) a child; or
 - (ii) an adult who does not have capacity to consent to the carrying out of an ante-mortem intervention on the person; and
 - (c) a decision or direction has been lawfully made to withhold or withdraw life-sustaining measures for the person; and

Note—

See the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998* in relation to withholding or withdrawing life-sustaining measures for an adult who has impaired capacity.

- (d) before the withholding or withdrawal of life-sustaining measures, a decision or direction mentioned in paragraph (c) has not been revoked.
- (2) A designated officer may, in writing, authorise the carrying out of an ante-mortem intervention on the person if—
 - (a) the senior available next of kin of the person gives written consent for the carrying out of the ante-mortem intervention; and
 - (b) the consent is not revoked before the ante-mortem intervention is carried out.

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- (3) However, if it is not practicable for the consent to be given in writing, it may be given orally.
 - (4) If the consent is given orally under subsection (3), the designated officer must ensure that, as soon as practicable—
 - (a) the fact of the giving of the consent and the details of the consent are reduced to writing and placed on the person's hospital records; and
 - (b) reasonable attempts are made to have the consent confirmed in writing by the senior available next of kin.
 - (5) The designated officer must ensure that a written consent obtained under subsection (2)(a) or (4)(b) is placed on the person's hospital records as soon as practicable.
 - (6) An authority under subsection (2) is sufficient authority to carry out the ante-mortem intervention on the person.

Part 4 Post-mortem examinations

26 Authority for post-mortem where body of deceased in a hospital

- (1) Subsection (2) applies if—
 - (a) the body of a deceased person is in a hospital; and
 - (b) it appears to a designated officer for the hospital, after making reasonable inquiries, that the deceased person had not during, his or her lifetime, expressed an objection to a post-mortem examination of his or her body; and
 - (c) the senior available next of kin of the deceased person has consented to a post-mortem examination of the body of the deceased person.
- (2) The designated officer may, by signed writing, authorise a post-mortem examination of the body of the deceased person.
- (3) The senior available next of kin of a person if he or she has no reason to believe that the person had expressed an objection to

a post-mortem examination of his or her body, may make it known to a designated officer at any time before the death of the person that the senior available next of kin has no objection to a post-mortem examination of the body of the person.

- (4) Where there are 2 or more persons having a description referred to in section 4, definition *senior available next of kin*, paragraph (a)(i) to (iv) or (b)(i) to (iv), an objection by any 1 of those persons has effect for the purposes of this section notwithstanding any indication to the contrary by the other or any other of those persons.
- (5) Where a deceased person, during his or her lifetime, by signed writing consented to a post-mortem examination of his or her body and the consent had not been revoked by the deceased person, a post-mortem examination of the body of the deceased person in accordance with the consent is hereby authorised.
- (6) A consent under subsection (1)(c), and a communication under subsection (3) by the senior available next of kin, must be in writing.
- (7) However, if it is not practicable for the consent or communication to be given in writing because of the circumstances in which it is given, it may be given orally.
- (8) If the consent or communication is given orally under subsection (7), the designated officer must ensure that, as soon as practicable—
 - (a) the fact of the giving of the consent or communication and the details of the consent or communication are reduced to writing and placed on the deceased person's hospital records; and
 - (b) reasonable attempts are made to have the consent or communication confirmed in writing by the senior available next of kin.
- (9) The designated officer must ensure that a document obtained under subsection (6) or (8)(b) is placed on the deceased person's hospital records as soon as practicable.

- (10) Subsection (8) does not affect the operation of subsection (7).

27 Authority for post-mortem where body of deceased not in 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 signed writing, authorise a post-mortem examination of the body of the deceased person.
- (2) Where the senior available next of kin of the deceased person has reason to believe that—
 - (a) the deceased person had, during his or her lifetime, expressed an objection to a post-mortem examination of his or her body and had not withdrawn that objection; or
 - (b) another next of kin of the same or a higher order of the classes in section 4, definition *senior available next of kin*, paragraph (a)(i) to (iv) or (b)(i) to (iv) has an objection to the post-mortem examination of the body of the deceased person;

the senior available next of kin shall not, under subsection (1), authorise the post-mortem examination of the body of the deceased person.

- (3) Where a deceased person, during his or her lifetime, by signed writing consented to a post-mortem examination of his or her body and the consent had not been revoked by the deceased person, a post-mortem examination of the body of the deceased person in accordance with the consent is hereby authorised.

28 Consent by coroner

- (1) This section applies to a deceased person—
 - (a) whose death must be reported under the *Coroners Act 1958*, section 12 or 13 or the *Coroners Act 2003*, section 7; or

- (b) in respect of whose death a coroner is directed by the Minister for the time being administering the *Coroners Act 1958* to inquire into the cause and circumstances of the death or is directed by the Minister under the *Coroners Act 2003*, section 11 to investigate.
- (2) A designated officer or a senior available next of kin, as the case may be, shall not authorise a post-mortem examination of the body of a deceased person to whom this section applies unless a coroner has consented to the examination.
- (3) Section 26(5) or, as the case may be, 27(3) does not apply in relation to a deceased person to whom this section applies unless a coroner has consented to the post-mortem examination of 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, that his or her consent to a post-mortem examination of the body of the person is not required and, in that event, subsections (2) and (3) do not apply to or in relation to a post-mortem examination of the body of the deceased 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 direction.
- (6) A consent or direction may be given orally by a coroner and, if so given, shall be confirmed in writing within 7 days.

29 Effect of authority under this part

- (1) An authority under this part is sufficient authority for a medical practitioner (other than, in a case to which section 26 applies, the designated officer who authorised the examination)—
 - (a) to conduct an examination of the body of the deceased person; and
 - (b) for that purpose, to remove tissue from the body of the deceased person.

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- (2) An authority under this part is sufficient authority for the use, for medical purposes or scientific purposes, of tissue removed from the body of the deceased person for the examination, if the tissue is specimen tissue.
 - (3) An examination order made by a coroner is authority for the use, for medical purposes or scientific purposes, of tissue removed from the body of the deceased person for the examination, if the tissue is specimen tissue.
 - (4) Subsection (3) does not apply if a coroner orders that specimen tissue must not be used under the subsection.
 - (5) Subsections (3) and (4) apply despite any provision of the *Coroners Act 1958* that has the effect of requiring specimen tissue to be preserved for any period, but apply subject to the *Coroners Act 2003*, section 24.
 - (6) Subsections (3) to (5) do not prevent a coroner deciding, under the *Coroners Act 1958*, when material that is specimen tissue need no longer be preserved for that Act.
 - (7) This section does not prevent tissue removed from the body of a deceased person for the purpose of an examination conducted under subsection (1), or under an examination order, being used for the purpose of the examination.
 - (8) In this section—

coroner means a coroner under the *Coroners Act 1958* or *Coroners Act 2003*.

examination order means an order made under—

- (a) the *Coroners Act 1958*, section 18(1), (2) or (3), requiring the making of a post mortem examination of the body, or a special examination of parts or contents of the body, of a deceased person; or
- (b) the *Coroners Act 2003*, section 19 or 23.

medical purposes does not include therapeutic purposes.

specimen tissue—

- (a) means—

- (i) a small sample of tissue kept in the form of a tissue block or tissue slide prepared to enable the microscopic examination of the tissue; or
 - (ii) tissue taken from the tissue block; and
- (b) does not include tissue that is, or is a large proportion of the totality of, an organ of a human body or human fetus.

30 Conditions of performance of post-mortem

- (1) A post-mortem examination of the body of a deceased person must not be made if the chief health officer has forbidden the examination.
- (2) A post-mortem examination of the body of a deceased person in a hospital must be—
 - (a) made in—
 - (i) the mortuary of the hospital; or
 - (ii) another place in the hospital approved by the medical superintendent of the hospital as being suitable for the making of the examination; or
 - (iii) the mortuary of another hospital that is suitable for the making of the examination; and
 - (b) made by—
 - (i) a medical practitioner; or
 - (ii) a person who—
 - (A) is registered under the Health Practitioner Regulation National Law to practise in the medical profession as a provisional registrant, other than as a student; and
 - (B) has the approval of the medical superintendent of the hospital to make the examination.
- (3) A post-mortem examination of the body of a deceased person in a place other than a hospital must be—

- (a) made in a place approved by the chief health officer; and
- (b) made by a medical practitioner.
- (4) A person who makes a post-mortem examination of the body of a deceased person must do so in a quiet, orderly and decent manner.
- (5) In this section—
hospital means a hospital in the charge of a medical superintendent.

Part 5 Donations for anatomical purposes

31 Authority for anatomy where body of deceased in a hospital

- (1) Subsection (2) applies if—
 - (a) the body of a deceased person is in a hospital; and
 - (b) it appears to a designated officer for the hospital, after making reasonable inquiries, that the deceased person had not, during his or her lifetime, expressed an objection to the retention after the person's death of his or her body for—
 - (i) anatomical examination; or
 - (ii) use of the body for the study and teaching of the anatomy of the human body; and
 - (c) the senior available next of kin of the deceased person has consented to the retention of the body of the deceased person for any of the purposes mentioned in paragraph (b).
- (2) The designated officer may, by signed writing, authorise the retention and use of the body of the deceased person under the consent.

- (3) The senior available next of kin of a person if the senior available next of kin has no reason to believe that the person has expressed an objection to the retention after the person's death of his or her body for any of the purposes referred to in subsection (1)(b), may make it known to a designated officer at any time before the death of the person that the senior available next of kin has no objection to the retention after the death of the person of the body of the person for any of such purposes.
- (4) Where there are 2 or more persons of a description referred to in section 4, definition *senior available next of kin*, paragraph (a)(i) to (iv) or (b)(i) to (iv), an objection by any 1 of those persons has effect for the purposes of this section notwithstanding any indication to the contrary by the other or any other of those persons.
- (5) A consent under subsection (1)(c), and a communication under subsection (3) by the senior available next of kin, must be in writing.
- (6) The designated officer must ensure that a document obtained under subsection (5) is placed on the deceased person's hospital records as soon as practicable.

32 Authority for anatomy where body of deceased not in 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 may, by signed writing, authorise the retention of the body of the deceased person—
 - (a) for the purpose of anatomical examination; or
 - (b) for the purpose of using the body for the study and teaching of the anatomy of the human body;or for any such purposes.
- (2) Where the senior available next of kin of the deceased person has reason to believe that—

- (a) the deceased person had, during his or her lifetime, expressed an objection to the retention of the person's body for any of the purposes referred to in subsection (1) and had not withdrawn his or her objection; or
- (b) another next of kin of the same or a higher order of the classes referred to in section 4, definition *senior available next of kin*, paragraph (a)(i) to (iv) or (b)(i) to (iv), has an objection to the retention of the body of the deceased person for any of the purposes referred to in subsection (1);

the senior available next of kin shall not, under subsection (1), authorise the retention and use of the body for any such purpose.

33 Provisions applicable where deceased consents to retention of his or her body for anatomy

Where a person, during his or her lifetime, by writing attested by 2 witnesses at the least, has consented to the retention after the person's death of his or her body for any of the purposes referred to in section 31(1) and the consent had not been revoked by the person, the retention of the body of the deceased person in accordance with the consent is hereby authorised.

34 Consent by coroner

- (1) This section applies to a deceased person—
 - (a) whose death must be reported under the *Coroners Act 1958*, section 12 or 13 or the *Coroners Act 2003*, section 7; or
 - (b) in respect of whose death a coroner is directed by the Minister for the time being administering the *Coroners Act 1958* to inquire into the cause and circumstances of the death or is directed by the Minister under the *Coroners Act 2003*, section 11 to investigate.

- (2) A designated officer for a hospital or a senior available next of kin shall not, in relation to the body of a deceased person to whom this section applies, give an authority under section 31(2) or 32(1), as the case may be, except with the consent of a coroner.
- (3) Section 33 does not apply in relation to a deceased person to whom this section applies unless a coroner has consented to the retention of the body of the person.
- (4) A coroner may give a direction, either before or after the death of a person to whom this section applies, that the coroner's consent to the retention of 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 retention of the body.
- (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 direction.
- (6) A consent or direction may be given orally by a coroner and, if so given, shall be confirmed in writing within 7 days.

35 Effect of authority under this part

An authority under this part is sufficient authority for the removal of the body of the deceased person to a school of anatomy, for its loan by a school of anatomy to another school of anatomy, for its acceptance by a school of anatomy and for its retention and use, subject to the regulations, by a school of anatomy for the purpose stated in the authority.

36 Conditions of performance of anatomical examination

- (1) An anatomical examination shall not be performed upon a body where the chief health officer has forbidden its performance.
- (2) A person who performs an anatomical examination upon a body shall do so in a quiet, orderly and decent manner.

Part 6 Schools of anatomy

37 Establishment of schools of anatomy

- (1) The chief executive may authorise the establishment of schools of anatomy where the study and practice of anatomy may be carried on in connection with a university or school of medicine in such places as the chief executive thinks fit.
- (2) A school of anatomy established under authority granted under the *Medical Act 1939* which authority, at the commencement of this part, has not been revoked is hereby declared to be a school of anatomy established under the authority of this section.

38 Inspectors of schools of anatomy

- (1) The chief executive may appoint inspectors of schools of anatomy.
- (3) The chief executive may direct the schools of anatomy that every inspector referred to in subsection (1) is to superintend.
- (4) Every such inspector may inspect at any time any school of anatomy of which the inspector is appointed inspector.

Part 7 Prohibition of trading in tissue

39 Definition for pt 7

In this part—

trading, of tissue, includes any of the following—

- (a) buying, agreeing to buy, offering to buy, holding out as being willing to buy, or inquiring whether a person is willing to sell the tissue;
- (b) selling, agreeing to sell, offering to sell, holding out as being willing to sell, or inquiring whether a person is willing to buy the tissue;

- (c) any act mentioned in section 41(a), (b) or (c) for an advertisement relating to the buying of the tissue.

40 Unauthorised buying of tissue prohibited

- (1) Subject to this section, a person shall not buy, agree to buy, offer to buy, hold himself or herself out as being willing to buy, or inquire whether a person is willing to sell to the person or another person—

- (a) tissue; or
- (b) the right to take tissue from the body of another person.

Maximum penalty—20 penalty units or 6 months imprisonment.

- (2) Where the Minister considers it desirable by reason of special circumstances so to do, the Minister may, by a permit in writing, authorise a person, subject to such conditions and restrictions as may be specified in the permit, to buy tissue or the right to take tissue from the body of another person.
- (3) Nothing in subsection (1) applies to anything done under and in accordance with a permit granted under subsection (2).
- (4) The Minister may at any time, by notice in writing given to a person to whom a permit has been granted under this section, cancel the permit.
- (5) Where a permit has been granted under subsection (2) subject to any conditions or restrictions specified therein, a person shall not act on the authority of the permit unless the conditions or restrictions, as the case may be, are or have been complied with.

Maximum penalty—10 penalty units or 3 months imprisonment.

41 Advertisements relating to buying of tissue restricted

A person shall not—

- (a) publish or disseminate by newspaper, other periodical, book, broadcasting, television, cinematograph or other means whatever; or
- (b) exhibit to public view in a house, shop or place; or
- (c) deposit in the area, yard, garden or enclosure of a house, shop or place;

an advertisement relating to the buying of tissue or of the right to take tissue from the bodies of persons unless the proposed advertisement has been approved by the Minister and contains a statement to that effect.

Maximum penalty—10 penalty units or 3 months imprisonment.

42 Unauthorised selling of tissue prohibited

- (1) Subject to this section, a person shall not sell, agree to sell, offer to sell, hold himself or herself out as being willing to sell, or inquire whether a person is willing to buy from the person or another person—

- (a) tissue (including his or her own tissue); or
- (b) the right to take tissue from his or her body or the body of that other person.

Maximum penalty—10 penalty units or 3 months imprisonment.

- (2) Nothing in subsection (1) applies to a sale, or an agreement to sell, to a person who is, or is reasonably believed by the vendor to be, acting subject to, and in accordance with a permit granted under section 40(2).

42A Person who owns a prescribed tissue bank may charge amount to recover certain costs etc.

- (1) A person who owns a tissue bank may—
- (a) charge an amount (a *cost-recovery amount*) to recover the person's reasonable costs associated with removing,

evaluating, processing, storing or distributing donated tissue; or

- (b) sell, agree to sell, offer to sell or hold himself or herself out as being willing to sell donated tissue for a cost-recovery amount; or
 - (c) inquire whether a person is willing to buy from the person or another person donated tissue for a cost-recovery amount.
- (2) A person does not commit an offence against section 42(1) merely by doing something that is permitted under subsection (1).
- (3) A person does not commit an offence against section 40(1) merely by—
- (a) paying a cost-recovery amount charged under subsection (1); or
 - (b) buying, agreeing to buy, offering to buy or holding himself or herself out as being willing to buy donated tissue from a tissue bank for a cost-recovery amount; or
 - (c) inquiring whether a person who owns a tissue bank is willing to sell to the person or another person donated tissue for a cost-recovery amount.
- (4) A regulation may regulate the charging of a cost-recovery amount.
- (5) An amount charged contrary to the regulation is taken not to be a cost-recovery amount.
- (6) In this section—

corresponding law means a law of another State or country corresponding, or substantially corresponding, to this Act.

distributing means distributing from the tissue bank.

donated tissue means tissue removed under a consent or authority under this Act or a corresponding law.

owns includes controls.

processing means processing at or for the tissue bank.

storing means storing at the tissue bank.

tissue bank means a facility prescribed by regulation at which donated tissue is stored.

42AA Trading of tissue for particular purposes

(1) Sections 40, 41 and 42 do not apply to the trading of tissue if—

- (a) the tissue has been subjected to processing or treatment; and
- (b) the trading of the tissue is for a therapeutic purpose, medical purpose or scientific purpose; and
- (c) the tissue is—
 - (i) a biological or a medical device included in the register under the *Therapeutic Goods Act 1989* (Cwlth); or
 - (ii) a registered good under the *Therapeutic Goods Act 1989* (Cwlth); or
 - (iii) any exempt material derived wholly or in part from tissue; or
 - (iv) obtained under the scheme known as the ‘Special Access Scheme’ administered by the Therapeutic Goods Administration; and
- (d) the tissue is not relevant tissue.

(2) In this section—

exempt material means any of the following—

- (a) laboratory reagents;
- (b) quality assurance material;
- (c) reference and control material.

register means the Australian Register of Therapeutic Goods kept under the *Therapeutic Goods Act 1989* (Cwlth), section 9A.

relevant tissue means—

- (a) tissue stored at a tissue bank under section 42A; or
- (b) tissue mentioned in section 42AB(1).

Therapeutic Goods Administration means the entity known as the ‘Therapeutic Goods Administration’ within the Commonwealth department responsible for administration of the *Therapeutic Goods Act 1989* (Cwlth).

42AB Trading of tissue by, with or for exempt entity

- (1) Sections 40, 41 and 42 do not apply to the trading of tissue if—

- (a) the trading of the tissue is carried out by or with—
 - (i) an exempt entity; or
 - (ii) the Commonwealth for the benefit of an exempt entity; and
- (b) the tissue is the subject of an agreement between the exempt entity and the Commonwealth or the State.

- (2) In this section—

blood products—

- (a) means blood products under the *National Blood Authority Act 2003* (Cwlth), section 3, definition *blood products and services*, paragraph (a); and
- (b) does not include cord blood.

exempt entity means—

- (a) for blood products, an entity mentioned in the national products price list as a supplier; or
- (b) for tissue other than blood products, an entity that—
 - (i) is a party to an agreement with the Commonwealth or the State for the buying or selling of the tissue; and
 - (ii) is prescribed under a regulation.

National Blood Agreement see the *National Blood Authority Act 2003* (Cwlth), section 3.

national products price list means the annual national products price list approved by the Ministerial Council under the National Blood Agreement.

42AC Donation of human eggs and human sperm by individuals

(1) Section 41 does not apply to a donation of human eggs or human sperm within the meaning of the *Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003* if—

- (a) an individual (the *recipient*), as mentioned in that section, publishes, disseminates, exhibits or deposits an advertisement stating that the recipient seeks another individual (the *donor*) to donate human eggs or human sperm to the recipient; and
- (b) the human eggs or human sperm are to be used with assisted reproductive technology for the recipient's personal use; and
- (c) the recipient does not give the donor valuable consideration for the donation.

(2) In this section—

valuable consideration, or a donation of human eggs or human sperm by an individual, means any form of payment, reward or other material benefit or advantage, but does not include the payment of the individual's reasonable expenses in connection with the donation.

42B Recovery of particular costs by school of anatomy

(1) A school of anatomy may charge an amount to recover the reasonable costs associated with the loan of the body of a deceased person to another school of anatomy, including costs associated with receiving, embalming, storing, maintaining or disposing of the body or a part of the body.

- (2) A person does not commit an offence against section 40(1) only by paying an amount charged under subsection (1).
- (3) A person does not commit an offence against section 42(1) only by charging an amount under subsection (1).

43 Proceedings, how taken

Proceedings for an offence against this part shall not be taken without the written consent of the Minister.

44 Evidentiary provision

A document purporting to be—

- (a) a consent of the Minister to the taking of proceedings for an offence against this part; or
- (b) a permit granted under section 40(2); or
- (c) an approval referred to in section 41;

shall upon its production in any proceedings be evidence of the matters contained therein.

44A Relationship of pt 7 with Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003, s 17

- (1) This section applies to human eggs, human sperm and human embryos within the meaning of the *Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003*.
- (2) To the extent of an inconsistency between this part and the *Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003*, section 17, that section prevails.

Part 8 Definition of death

45 When death occurs

- (1) For the purposes of this Act, a person has died when there has occurred—
 - (a) irreversible cessation of circulation of blood in the body of the person; or
 - (b) irreversible cessation of all function of the brain of the person certified in accordance with subsection (2).
- (2) The irreversible cessation referred to in subsection (1)(b) shall be certified by 2 medical practitioners, each of whom has carried out a clinical examination of the person and 1 of whom is a specialist neurologist or neurosurgeon or has such other qualifications as are prescribed for the purposes of this section, and neither of whom is—
 - (a) the medical practitioner who is attending a person who is to be the recipient of tissue from the body of the first mentioned person; or
 - (b) the designated officer who gives an authority for the purposes of this Act; or
 - (c) a medical practitioner who is proposing to remove tissue from the body of a deceased person.
- (3) A medical practitioner shall not give a certificate in accordance with subsection (2) unless the medical practitioner has carried out a clinical examination of the person who has died.

Maximum penalty—10 penalty units.

- (4) A person who is of a description referred to in subsection (2)(a), (b) or (c) shall not issue a certificate referred to in that subsection.

Maximum penalty—10 penalty units.

- (5) In this section—

specialist neurologist means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession as a specialist registrant in the specialty of neurology, other than as a student.

specialist neurosurgeon person registered under the Health Practitioner Regulation National Law to practise in the medical profession as a specialist registrant in the specialty of neurosurgery, other than as a student.

Part 9 Miscellaneous

46 Exclusion of liability of persons acting in pursuance of consent etc.

- (1) Subject to this Act, a person is not liable in any proceedings whether civil or criminal—
 - (a) for any act done under authority conferred or purporting to have been conferred by any consent or agreement given for the purposes of this Act or by or under this Act, or done in connection with exercising such authority; or
 - (b) for any omission to do an act that might have been done under or in connection with an authority referred to in paragraph (a);

where the person has done the act or made the omission in good faith, save where negligence or breach of duty imposed by law on the person's part is established in connection with doing the act or making the omission.

- (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) the person had an honest and reasonable belief that a consent or an agreement or authority required by this Act for the doing of the act had been given; or

- (b) the person had no reason to doubt that a consent or an agreement or authority purporting to have been given in accordance with this Act for the doing of the act was a consent or an agreement or authority given in accordance with this Act.

47 Act does not prevent specified removals of tissue etc.

Nothing in this Act (other than section 46) applies to or in relation to—

- (a) the removal of tissue from the body of a living person—
 - (i) in the course of a procedure or operation carried out, for the benefit of the person, by a medical practitioner with the consent, express or implied, given by or on behalf of the person; or
 - (ii) in circumstances such that the removal of the tissue is necessary for the preservation of the life of the person; or
- (b) the use or disposal of tissue so removed; or
- (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.

48 Offences in relation to removal of tissue

- (1) A person shall not—
 - (a) remove tissue (other than blood) from the body of a living person for use for any of the purposes referred to in section 10 or 11 except in pursuance of a consent or an authority that is, under part 2, division 3, sufficient authority for the person to remove the tissue or as authorised under part 2, division 6; or
 - (b) remove blood from the body of a living person for any of the purposes referred to in section 17 except in

- pursuance of a consent that is, under part 2, division 4, sufficient authority for the removal of the blood; or
- (c) remove tissue from the body of a deceased person for any of the purposes referred to in section 22(1) or 23(1)—
 - (i) except in pursuance of an authority that is, under part 3, sufficient authority for the person to remove the tissue; and
 - (ii) if the deceased person is one in relation to whom section 45(1)(b) is relevant—except where a certificate given in relation to that person in accordance with section 45(2) is in existence; or
 - (d) conduct a post-mortem examination of the body of a deceased person except in pursuance of an authority that is, under part 4, sufficient authority for the person to conduct the post-mortem; or
 - (e) —
 - (i) remove the body of a deceased person to a school of anatomy; or
 - (ii) retain or use the body of a deceased person for any of the purposes referred to in section 31(1);except in pursuance of an authority that is, under part 5, sufficient authority for the removal, retention or use of the body; or
 - (f) carry out an anatomical examination of the body of a deceased person otherwise than at a school of anatomy.

Maximum penalty—100 penalty units or 1 year's imprisonment.

- (2) A person who—
 - (a) gives an authority under this Act without having made the inquiries that the person is required by this Act to make; or
 - (b) makes a false statement in a certificate given for the purposes of this Act; or

- (c) contravenes or fails to comply with a provision of part 2, division 5;

is guilty of an offence against this Act.

Maximum penalty—100 penalty units or 1 year's imprisonment.

- (3) Nothing in subsection (1) or (2) applies to or in relation to—
 - (a) anything done in pursuance of an order by a coroner under the *Coroners Act 1958* or the *Coroners Act 2003*; or
 - (b) any other act authorised by law.

48A Offence to give false or misleading information

- (1) A person shall not, in connection with a proposal to remove tissue from any body for the purpose of transplantation or transfusion or for use for other therapeutic, medical or scientific purposes, knowingly furnish information that is false or misleading concerning the suitability of the body for removal of the tissue for the purpose in question.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) It is immaterial for the purposes of subsection (1) whether the body from which tissue is to be removed is that of a living person or a deceased person.

49 Disclosure of information

- (1) Subject to this section, 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 or a deceased person—
 - (a) from whose body tissue has been removed for the purpose of transplantation or for use for other therapeutic purposes or for other medical or scientific purposes; or

- (b) with respect to whom or with respect to whose body a consent or an 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.

Maximum penalty—10 penalty units.

(2) This section applies—

- (a) where a consent has been given in accordance with this Act—to the designated officer who gave a certificate in relation to the consent; and
- (b) where an authority has been given in accordance with this Act by a designated officer for a hospital—to the designated officer; and
- (c) where tissue has been removed from the body of a person or a deceased person—to the person who removed the tissue and, if the tissue was removed at a hospital, each person who was employed at the hospital at the time of the removal of the tissue or has since been employed at the hospital; and
- (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, each person who was employed at the hospital at the time of the transplantation or has since been employed at the hospital; and
- (e) where it is proposed that tissue will be transplanted into the body of a person—to the medical practitioner who is to perform the transplantation and, if the tissue is to be transplanted at a hospital, each person who is employed at the hospital or who becomes so employed.

(3) Subsection (1) does not apply to or in relation to information disclosed—

- (a) in pursuance of an order of a court or when otherwise required by law; or

- (b) for the purposes of hospital administration or bona fide medical research; or
- (c) with the consent of the person to whom the information relates; or
- (d) for the purpose of investigating whether an offence defined in section 48A has been committed; or
- (e) when the circumstances in which the disclosure is made are such that the disclosure is or would be privileged.

49A Reprisal and grounds for reprisals

- (1) A person must not cause, or attempt or conspire to cause, detriment to another person in retaliation because, or in the belief that—
 - (a) anybody has provided information about an alleged offence against this Act to a person for the purpose of having the alleged offence investigated or prosecuted; or
 - (b) anybody has given, or may give, evidence to a court in proceedings for an offence against this Act.
- (2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.
- (3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.
- (4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.
- (5) For the contravention to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.

49B Offence for taking reprisal

A person who takes a reprisal commits an offence.

Maximum penalty—167 penalty units or 2 years imprisonment.

49C Damages entitlement for reprisal

- (1) A reprisal is a tort and a person who takes a reprisal is liable in damages to any person who suffers detriment as a result.
- (2) Any appropriate remedy that may be granted by a court for a tort may be granted by a court for the taking of a reprisal.
- (3) If the claim for damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.

50 Proceedings for offences

Proceedings in respect of an offence against this Act may be commenced within 12 months after the commission of the offence or within 6 months after the commission of the offence comes to the knowledge of the complainant whichever period is the later to expire.

51 Offence provisions of the Criminal Code not affected

The provisions of this Act relating to offences are in addition to and not in substitution for or derogation of the provisions of the Criminal Code or any other Act.

51A Delegation by Minister

- (1) The Minister may delegate the Minister's functions under this Act to an appropriately qualified public service employee or health service employee.
- (2) In this section—
functions includes powers.

health service employee see the *Hospital and Health Boards Act 2011*, schedule 2.

52 Regulations

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made for or about the following matters—
 - (a) the conditions under which transplantations of tissue from living persons may be carried out;
 - (b) the precautions to be taken 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 carried out;
 - (d) how bodies are to be transported to a school of anatomy;
 - (e) the conditions under which—
 - (i) the teaching, study and practice of anatomy; and
 - (ii) anatomical examinations;are to be carried out;
 - (f) the giving of returns and other information by the person in charge of a school of anatomy;
 - (g) the precautions to be taken for receiving and keeping bodies at a school of anatomy;
 - (h) the inspection of schools of anatomy;
 - (i) the regulation of schools of anatomy;
 - (j) the disposal of bodies or parts of bodies by schools of anatomy;
 - (k) prescribing offences for contraventions of the regulations and fixing a maximum penalty of not more than 20 penalty units for a contravention.

Part 10 Transitional provisions

Division 1 Transitional provision for Health Legislation Amendment Act 2001

53 Dealing with certain bodies and tissue from commencement of this section

- (1) This section applies if, immediately before the commencement of this section—
 - (a) an authority mentioned in section 25, 29(1) or 35 of the pre-amended Act was in force in relation to the body of a person who was deceased at that time or tissue removed from the body; or
 - (b) an authority mentioned in section 29(2), or an authority under section 29(3), of the pre-amended Act applied to tissue that had been removed from the body of a deceased person.
- (2) From the commencement of this section, the body or tissue may only be used under this Act to the extent it could lawfully have been used under the post-amended Act if the post-amended Act were in force at the time the authority first had effect.
- (3) In this section—

post-amended Act means this Act as in force from the commencement of this section.

pre-amended Act means this Act as in force before the commencement of this section.

Division 2 Transitional provisions for Health Legislation Amendment Act 2013

54 Schools of anatomy

- (1) This section applies to a school of anatomy established under previous section 37 and in existence immediately before the commencement.
- (2) The school of anatomy is taken to be established under amended section 37.
- (3) In this section—

amended section 37 means section 37 as in force immediately after the commencement.

commencement means the commencement of this section.

previous section 37 means section 37 as in force immediately before the commencement.

55 Inspectors of schools of anatomy

- (1) This section applies to an inspector of a school of anatomy appointed under previous section 38.
- (2) The inspector is taken to be appointed under amended section 38.
- (3) In this section—

amended section 38 means section 38 as in force immediately after the commencement.

commencement means the commencement of this section.

previous section 38 means section 38 as in force immediately before the commencement.