



Western Australia

## **Human Tissue and Transplant Act 1982**

Compare between:

[25 Jul 2016, 02-i0-01] and [24 Jan 2017, 02-j0-00]



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## **Human Tissue and Transplant Act 1982**

**An Act to make provision for and in relation to the removal of human tissues for transplantation, other therapeutic purposes, or medical or scientific purposes, for post-mortem examinations, for the repeal of the *Tissue Grafting and Processing Act 1956*<sup>2</sup>, the *Sale of Human Blood Act 1963*<sup>2</sup> and section 338A of the *Health Act 1911*<sup>3</sup> and for related purposes.**

*[Long title amended by No. 18 of 2004 s. 11(2).]*

## **Part I — Preliminary**

### **1. Short title**

This Act may be cited as the *Human Tissue and Transplant Act 1982*<sup>1</sup>.

### **2. Commencement**

This Act shall come into operation on 1 March 1983.

### **3. Interpretation**

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

**blood** includes —

- (a) any substance derived from blood; and
- (b) any organ or tissue, including bone marrow and the placenta, of a kind that is suitable as a source from which to derive a constituent of blood for therapeutic use or for the preparation of a substance for therapeutic use;

**Chief Health Officer** has the meaning given in the *Public Health Act 2016* section 4(1);

**child** means a person who has not attained the age of 18 years;

**coroner** has the same meaning as in the *Coroners Act 1996*;

**designated officer** in relation to a hospital, means the person who is the designated officer for that hospital in accordance with section 4;

**Division** means Division of the Part of this Act in which the term is used;

~~**Executive Director** means the Executive Director, Public Health and Scientific Support Services of the department of the Public Service of the State principally assisting the Minister in the administration of this Act;~~

**medical practitioner** means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

**next of kin** —

- (a) in relation to a child, means a person referred to in paragraph (a)(i), (ia), (ii), (iii) or (iv) of the definition of “senior available next of kin”; and
- (b) in relation to a person other than a child, means a person referred to in paragraph (b)(i), (ia), (ii), (iii), or (iv) of the definition of “senior available next of kin”;

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

**regenerative tissue** means tissue that, after injury or removal, is replaced in the body of a living person by natural processes of growth or repair;

**reportable death** means a reportable death within the meaning of the *Coroners Act 1996*;

**section** means section of this Act;

**senior available next of kin** —

- (a) in relation to a child, means the first in order of priority of the following persons who is available at the time —
    - (i) if the child has both a spouse, and a de facto partner who has attained the age of 18 years, the spouse or de facto partner with whom the child is living as a spouse or de facto partner;
    - (ia) the spouse, or de facto partner who has attained the age of 18 years, of the child;
    - (ii) a parent of the child;
    - (iii) a brother or sister, who has attained the age of 18 years, of the child;
    - (iv) a guardian of the child;
- and

- (b) in relation to a person other than a child, means the first in order of priority of the following persons who is available at the time —
- (i) if the person has both a spouse, and a de facto partner who has attained the age of 18 years, the spouse or de facto partner with whom the person is living as a spouse or de facto partner;
  - (ia) the spouse, or de facto partner who has attained the age of 18 years, of the person;
  - (ii) a son or daughter, who has attained the age of 18 years, of the person;
  - (iii) a parent of the person;
  - (iv) a brother or sister, who has attained the age of 18 years, of the person;

**subsection** means subsection of the section in which the term is used;

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

- (2) For the purposes of this Act —

**hospital** includes a health service provider as defined in the *Health Services Act 2016* section 6 that has the conduct of pathological examinations as an area for which it is established.

- (3) 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.
- (4) Where in the case of a particular hospital there is doubt as to which medical practitioner is the chief medical administrator of the hospital, the ~~Executive Director~~ [Chief Health Officer](#) may nominate, either by name or by reference to office, a medical practitioner as the chief medical administrator of that hospital for the purposes of this Act.

*[Section 3 amended by No. 28 of 1984 s. 58 and 59; No. 2 of 1996 s. 61; No. 25 of 1997 s. 4; No. 3 of 2002 s. 78; No. 22 of 2008 s. 162; No. 35 of 2010 s. 97; No. 11 of 2016 s. 294; [No. 19 of 2016 s. 102.](#)]*

#### 4. Designated officers

- (1) The chief medical administrator of a hospital may by writing signed by him nominate a medical practitioner as the designated officer of that hospital for the purposes of this Act.
- (2) A nomination under subsection (1) shall be submitted to the ~~Executive Director~~[Chief Health Officer](#) for his approval and, upon the grant of approval by the ~~Executive Director~~[Chief Health Officer](#), the person nominated shall be the designated officer for the hospital concerned and may exercise the powers and shall be subject to the duties conferred and imposed on designated officers by this Act.
- (3) The chief medical administrator of a hospital may revoke the nomination of a person as designated officer for the hospital by serving on that person a notice of the revocation signed by him.
- (4) As soon as practicable after revoking the nomination of a person as designated officer for a hospital, the chief medical administrator of the hospital shall inform the ~~Executive Director~~[Chief Health Officer](#) of the revocation.
- (4a) If in the case of a particular hospital there is no medical practitioner readily identifiable as the chief medical administrator of the hospital, the ~~Executive Director~~[Chief Health Officer](#) may nominate a medical practitioner as the designated officer of that hospital for the purposes of this Act.
- (4b) A person nominated under subsection (4a) shall be the designated officer for the hospital concerned and may exercise the powers and shall be subject to the duties conferred and imposed on designated officers by this Act.

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- (5) The ~~Executive Director~~ [Chief Health Officer](#) may revoke his approval or nomination of a person as designated officer for a hospital by serving on that person a notice of the revocation signed by him.

*[Section 4 amended by No. 28 of 1984 s. 59; No. 25 of 1997 s. ~~5~~; [No. 19 of 2016 s. 102.](#)]*

**5. Delegation by designated officers**

- (1) A designated officer may, subject to and in accordance with this section, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to one or more persons any of his powers or duties under this Act, other than this power of delegation.
- (2) A delegation under this section may be made to a specified medical practitioner by name or to a medical practitioner who is the holder for the time being of a specified office at the hospital concerned, being in every case an office relevant to the subject matter of this Act.
- (3) A delegation under this section —
- (a) may be made subject to such conditions, qualifications, and exceptions as are set out in the instrument of delegation;
  - (b) shall have immediate effect, unless the instrument of delegation provides otherwise, and shall continue in force until revoked by writing signed by the designated officer and served on the delegate.
- (4) A designated officer shall inform the ~~Executive Director~~ [Chief Health Officer](#) as soon as practicable of every delegation made by him under this section and where the delegation is to the holder of a specified office, the designated officer shall inform the ~~Executive Director~~ [Chief Health Officer](#) as soon as practicable of the name of each successive holder of that office and shall furnish further information in respect of such persons as the ~~Executive Director~~ [Chief Health Officer](#) may require.



- (5) The ~~Executive Director~~[Chief Health Officer](#) may, by writing signed by him and served on a designated officer, require the designated officer to revoke a delegation made by him and the designated officer shall immediately comply with such a requirement.
- (6) A designated officer may exercise a power and perform a duty under this Act notwithstanding that he has delegated its exercise or performance under this section.

*[Section 5 amended by No. 28 of 1984 s. ~~59~~59; No. 19 of 2016 s. 102.]*

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

### **Division 1 — Exclusion of certain tissue**

#### **6. Interpretation**

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

### **Division 2 — Donations by adults**

#### **7. Blood transfusions not subject to this Division**

Nothing in this Division prevents the removal in accordance with Division 5 of blood from the body of a person.

#### **8. Consent to removal of regenerative tissue**

(1) A person who —

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

may, by writing signed by him otherwise than in the presence of any member of his family or any of his friends, consent to the removal from his body of regenerative tissue, other than blood, specified in the consent —

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

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

**9. Consent to removal of non-regenerative tissue**

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

may, by writing signed by him otherwise than in the presence of any member of his family or any of his friends, consent to the removal, after the expiration of a period of 24 hours from the time at which the consent is signed, from his body of non-regenerative tissue specified in the consent for the purpose of the transplantation of the tissue to the body of another living person.

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

**Division 3 — Donations from children**

**10. Blood transfusions not subject to this Division**

Nothing in this Division prevents the removal in accordance with Division 5 of blood from the body of a child.

**11. References to parents**

In this Division, a reference to the parent of a child shall not be read as including a reference to the guardian of a child or to another person standing *in loco parentis* to the child.

**12. General prohibition of removal of tissue from children**

- (1) It is not lawful, except as provided by this Part, to remove regenerative tissue from the body of a living child for the purpose of the transplantation of the tissue to the body of another living person.

- (2) It is not lawful to remove non-regenerative tissue from the body of a living child for the purpose of the transplantation of the tissue to the body of another living person.

**13. Parent may consent to removal of regenerative tissue from a child**

- (1) A parent of a child may, in the circumstances specified in subsection (2), consent in writing to the removal from the body of the child of specified regenerative tissue for the purpose of the transplantation of the tissue to the body of another member of the family of the child or to the body of a relative of the child.
- (2) The circumstances specified for the purposes of subsection (1) are that —
- (a) medical advice has been furnished to the parent and the child regarding the nature and effect of the removal and the nature of the transplantation;
  - (b) the child has the mental capacity to understand the nature and effect of the removal and the nature of the transplantation; and
  - (c) the child has agreed to the removal of the regenerative tissue for the purpose of its transplantation to the body of the person referred to in subsection (1).

**14. Revocation of consent**

A parent who has given a consent under this Division, or a child who has under this Division agreed to the removal of tissue from his body, may, at any time before the removal of the tissue to which the consent or agreement applies, revoke, either orally or in writing, his consent or agreement, as the case requires, to the removal.

**Division 4 — Effect of consents and authorities**

**15. Consents under section 8**

A consent under section 8 is, unless it has been revoked under section 8(2), sufficient authority for a medical practitioner, other than a medical practitioner by whom the medical advice referred to in that section was furnished, 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 use for other therapeutic purposes or for medical or scientific purposes.

**16. Consents under section 9**

A consent under section 9 is, unless it has been revoked under section 9(2), sufficient authority for a medical practitioner, other than a medical practitioner by whom the medical advice referred to in that section was furnished, to remove, after the expiration of a period of 24 hours after the time at which the consent was given, the non-regenerative tissue referred to in the consent for the purpose of the transplantation of the tissue to the body of another living person.

**17. Consents under section 13**

A consent under section 13 is, unless the parent who gave the consent has revoked his consent or the child has revoked his agreement under section 14, sufficient authority for a medical practitioner, other than a medical practitioner by whom the medical advice referred to in that section was furnished, to remove from the body of the child the regenerative tissue referred to in the consent for the purpose of the transplantation of the tissue to the body of another member of the family of the child or of a relative of the child.

**Division 5 — Blood transfusions**

**18. Consents by adult to removal of blood**

A person who —

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

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

**19. Parent may consent to removal of blood from child**

The parent of a child may consent to a removal of blood from the body of the child for a use referred to in section 18 if —

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

**20. Consent is sufficient authority for removal of blood**

A consent under this Division is sufficient authority for the removal of blood from the body of the person who has given the consent, or from the body of the child of the person who has given the consent, as the case requires.

**21. Blood transfusions upon children without parental consent**

- (1) A medical practitioner may perform a blood transfusion upon a child without the consent of any person who is legally entitled to authorise the blood transfusion if —
  - (a) such person —
    - (i) fails or refuses to so authorise the blood transfusion when requested to do so; or

- (ii) cannot be found after such search and enquiry as is reasonably practicable in the circumstances of the case;
  - and
  - (b) the medical practitioner and another medical practitioner agree —
    - (i) as to the condition from which the child is suffering;
    - (ii) that the blood transfusion is a reasonable and proper treatment for that condition; and
    - (iii) that without a blood transfusion the child is likely to die;
  - and
  - (c) the medical practitioner who performs the blood transfusion on the child —
    - (i) has had previous experience in performing blood transfusions; and
    - (ii) has, before commencing the transfusion, assured himself that the blood to be transfused is suitable for the child.
- (2) When a medical practitioner has performed a blood transfusion on a child without the consent of any person legally entitled to authorise it and in respect of that transfusion the requirements and conditions of this section have been complied with, the transfusion shall be deemed for all purposes to have been performed with the authority of a person legally entitled to authorise it.
- (3) Where a medical practitioner other than the medical practitioner who is to perform the blood transfusion on the child cannot be found after search or enquiry for such time as the last-mentioned medical practitioner considers reasonable in the circumstances of the case, having regard to the emergency arising from the condition

of the child, it is sufficient compliance with subsection (1)(b) if that last-mentioned practitioner satisfies himself —

- (a) as to the condition from which the child is suffering;
- (b) that a blood transfusion is a reasonable and proper treatment for that condition;
- (c) that to delay the blood transfusion until that other medical practitioner can be found and be available for consultation would cause a serious deterioration in the child's condition; and
- (d) that without a blood transfusion the child is likely to die.

(4) In this section —

**blood transfusion** means the transfusion of human blood, any constituent of human blood or saline solution or other liquid, into a child and includes the exchange of the whole or any part of the blood of a child and all medical and surgical procedures necessary to perform the transfusion or exchange; and

**child** means a person who is or appears to be under the age of 18 years.

(5) 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 he 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.



### **Part III — Donations of tissue after death**

**22. Designated officer may authorise removal of tissue from bodies in hospital**

- (1) A designated officer for a hospital may, subject to and in accordance with this Part, authorise the removal of tissue from the body of a person who has died in hospital or whose dead body has been brought into the hospital —
  - (a) for the purpose of the transplantation of the tissue to the body of a living person; or
  - (b) for use of the tissue for other therapeutic purposes or for medical or scientific purposes.
  
- (2) A designated officer for a hospital may authorise the removal of tissue from the body of a person who has died in the hospital or whose dead body has been brought into the hospital —
  - (a) where, after making inquiries, the designated officer is satisfied that the deceased person during his lifetime expressed the wish for, or consented to, the removal after his death of tissue from his body for the purpose or a use referred to in subsection (1) and had not withdrawn the wish or revoked the consent; or
  - (b) where, after making inquiries, the designated officer has no reason to believe that the deceased person had expressed an objection to the removal after his death of tissue from his body for the purpose or a use referred to in subsection (1) and the designated officer is satisfied that the senior available next of kin consents to the removal of tissue from the body of the deceased person for the purpose or a use referred to in subsection (1).

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- (3) The authority of a designated officer to authorise the removal of tissue from the body of a deceased person under this section is restricted —
- (a) in the case of the circumstances referred to in subsection (2)(a), by the expressed terms of the wishes or consent of the deceased person;
  - (b) in the case of the circumstances referred to in subsection (2)(b), by the consent of the senior available next of kin,

both as to the tissue which may be removed and as to the purpose or use of the tissue.

- (4) The senior available next of kin of a person may make it known to a designated officer at any time when the person is unconscious before death that he consents to the removal, after the death of the person, of tissue from the body of the person for the purpose or a use referred to in subsection (1), but the designated officer shall not act on such an indication if the person recovers consciousness.
- (5) Where there are 2 or more persons having a description referred to in a subparagraph of paragraph (a) or (b) of the definition of “senior available next of kin” in section 3, an objection by any one 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.

*[Section 22 amended by No. 25 of 1997 s. 6.]*

**23. Coroner’s consent to removal of tissue required in some cases**

- (1) If the designated officer for a hospital has reason to believe that the death of a person is or may be a reportable death, the designated officer shall not, under and in accordance with section 22, authorise the removal of tissue from the body of the deceased person unless the coroner has given his consent to the removal.

- (2) A coroner may give a direction either before or after the death of a person that his 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, subsection (1) does not apply to or in relation to the removal of tissue from the body of the person.
- (3) A consent or direction by a coroner under this section may be expressed to be subject to such conditions as are specified in the consent or the direction.
- (4) A consent or direction may be given orally by a coroner, and if so given, shall be confirmed in writing.

*[Section 23 amended by No. 2 of 1996 s. 61.]*

**24. Effect of authority under this Part**

- (1) Subject to subsection (2), an authority under this Part is sufficient authority for —
  - (a) a medical practitioner other than —
    - (i) a medical practitioner referred to in subsection (2); and
    - (ii) the designated officer for the hospital or a person who has lawfully exercised his powers under section 22;
  - or
  - (b) where the tissue is to be removed for the purpose of corneal transplantation — an authorised person or a medical practitioner entitled under paragraph (a) to carry out the removal,  
to remove tissue from the body of the deceased person referred to in the authority —
  - (c) for the purpose of the transplantation of the tissue to the body of the living person; or

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- (d) for use for other therapeutic purposes or for medical or scientific purposes,

but subject in every case to any limitations or restrictions that may be expressed in the authority given under section 22(3).

- (2) Where the respiration and the circulation of the blood of a person are being maintained by artificial means, tissue shall not be removed from the body of the person for the purpose or a use specified in subsection (1) unless 2 medical practitioners (each of whom has carried out a clinical examination of the person, each of whom has been for a period of not less than 5 years a medical practitioner and one of whom holds specialist qualifications in general medicine, neurology or neurosurgery or has such other qualifications as are accepted by the ~~Executive Director~~ [Chief Health Officer](#)) have declared that irreversible cessation of all function of the brain of the person has occurred.
- (3) For the purposes of subsection (2), any period during which a person who is a medical practitioner practised as a medical practitioner, however described, under the law in force in a country outside Australia shall be taken into account in calculating the period of 5 years referred to in that subsection.
- (4) In subsection (1) —  
**authorised person** means a person, not being a medical practitioner, appointed by the Minister to be an authorised person for the purposes of this section.

[Section 24 amended by No. 28 of 1984 s. 59; No. 5 of 1987 s. ~~33~~; [No. 19 of 2016 s. 102.](#)]

## **Part IV — Post-mortem examinations**

### **25. Designated officer may authorise post-mortems of bodies in hospital**

- (1) A designated officer for a hospital may, subject to and in accordance with this Part, authorise a post-mortem examination of the body of a person who has died in the hospital, or whose dead body has been brought into the hospital, for the purpose of —
  - (a) ascertaining the cause or extent of disease or any pathological condition that may be present in that person;
  - (b) ascertaining whether the health of that person was affected by any condition of health that is prescribed for the purposes of this paragraph; or
  - (c) teaching pathology.
- (2) Where the designated officer, after making such inquiries as are reasonable in the circumstances, has reason to believe that the deceased person had, during his lifetime, expressed the wish for, or consented to, a post-mortem examination of his body and had not withdrawn the wish or revoked the consent, the designated officer may authorise under subsection (1) a post-mortem examination of the body.
- (3) Where the designated officer, after making such inquiries as are reasonable in the circumstances, has no reason to believe that the deceased person during his lifetime —
  - (a) had expressed the wish for, or consented to, a post-mortem examination of his body; or
  - (b) had expressed an objection to the post-mortem examination of his body,

and after making those inquiries and such further inquiries as are reasonable in the circumstances, the designated officer —

- (c) has no reason to believe that the senior available next of kin of the deceased person has an objection to a

post-mortem examination of the body of the deceased person; or

- (d) is unable to ascertain the existence or the whereabouts of the next of kin of the deceased person or is unable to ascertain whether any of the next of kin of the deceased person has an objection to a post-mortem examination of the body of the deceased person,

the designated officer may authorise under subsection (1) a post-mortem examination of the body of the deceased person for the purpose referred to in that subsection.

- (4) The senior available next of kin of a person may make it known to a designated officer at any time when the person is unconscious before death that he has no objection to a post-mortem examination of the body of the person, but the designated officer shall not act on such an indication if the person recovers consciousness.
- (5) Where there are 2 or more persons having a description referred to in a subparagraph of paragraph (a) or (b) of the definition of “senior available next of kin” in section 3, an objection by any one 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.

*[Section 25 amended by No. 25 of 1997 s. 7.]*

**26. Next of kin may authorise post-mortem of body not in hospital**

- (1) 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, subject to and in accordance with this Part, authorise a post-mortem examination of the body of the deceased person for the purpose of —
- (a) ascertaining the cause or extent of disease or any pathological condition that may be present in that person;

- (b) ascertaining whether the health of that person was affected by any condition of health that is prescribed for the purposes of this paragraph; or
  - (c) teaching pathology.
- (2) Subsection (1) does not apply where the senior available next of kin of the deceased person has reason to believe that —
  - (a) the deceased person had, during his lifetime, expressed an objection to a post-mortem examination of his body and had not withdrawn his objection; or
  - (b) another next of kin of the same or a higher order of the classes in paragraph (a) or (b) of the definition of “senior available next of kin” in section 3 has an objection to the post-mortem examination of the body of the deceased person.
- (3) Where a deceased person, during his lifetime, expressed the wish for, or consented to, a post-mortem examination of his body and the wish had not been withdrawn or the consent revoked, a post-mortem examination of the body of the deceased person in accordance with the wish or consent is, by force of this subsection, authorised.

*[Section 26 amended by No. 25 of 1997 s. 8.]*

**27. Coroner’s consent to post-mortem required in some cases**

- (1) If the designated officer for a hospital or, in a case to which section 26 applies, the senior available next of kin, has reason to believe that the death of a person is or may be a reportable death, the designated officer or the senior available next of kin, as the case may be, shall not authorise a post-mortem examination of the body of the deceased person unless the coroner has given his consent to the examination.
- (2) Section 26(3) does not operate in a case where the death of a person is or may be a reportable death unless a coroner has given his consent to the post-mortem examination.

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- (3) A coroner may give a direction either before or after the death of a person that his consent to a post-mortem examination of the body of the person is not required and, in that event, subsection (1) does not apply to or in relation to a post-mortem examination of the body of the deceased person.
- (4) A consent or direction by a coroner under this section may be expressed to be subject to such conditions as are specified in the consent or the direction.
- (5) A consent or direction may be given orally by a coroner, and if so given, shall be confirmed in writing.

*[Section 27 amended by No. 2 of 1996 s. 61.]*

**28. 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 25 applies, the designated officer for the hospital or a person who has lawfully exercised the powers of the designated officer under that section) —
  - (a) to conduct such examination of the body of the deceased person as is necessary for a purpose referred to in section 25(1) or 26(1); and
  - (b) to remove from the body of the person such tissue as is necessary for the purpose of the post-mortem examination.
- (2) An authority under this Part is authority for the use, for therapeutic, medical, teaching or scientific purposes, of tissue removed from the body of the deceased person as part of the post-mortem examination.

*[Section 28 amended by No. 2 of 1996 s. 61; No. 25 of 1997 s. 9.]*



## **Part V — Prohibition on trading in tissue**

### **29. Trading in tissue, legal consequences**

- (1) Subject to this section, a contract or arrangement under which a person agrees, for valuable consideration, whether given or to be given to himself or to another person —
  - (a) to the sale or supply of tissue from his body or from the body of another person, whether before or after his death or the death of the other person, as the case may be; or
  - (b) to the post-mortem examination or anatomical examination of his body after his death or of the body of another person after the death of the other person,is void.
- (2) A person who enters into a contract or arrangement of the kind referred to in subsection (1) and to which that subsection applies commits an offence.  
Penalty: \$1 000.
- (3) Subsection (1) does not apply to or in relation to a contract or arrangement providing only for the reimbursement of any expenses necessarily incurred by a person in relation to the removal of tissue in accordance with this Act.
- (4) The Governor may, by Order in Council published in the *Gazette*, declare that subsection (1) does not apply to the sale or supply of a specified class or classes of product derived from tissue that has been subjected to processing or treatment.
- (4a) Where the Minister considers it desirable by reason of special circumstances so to do, the Minister may, in writing, approve the entering into of a contract or arrangement that would, but for the approval, be void under subsection (1), and nothing in subsection (1) or (2) applies to or in relation to a contract or arrangement entered into in accordance with an approval under this subsection.

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- (4b) The Minister must not give an approval under subsection (4a) unless —
- (a) the entering into of the contract or arrangement has been recommended by a body of medical practitioners prescribed by the regulations for the purposes of this subsection; and
  - (b) the Minister is reasonably satisfied that no monetary payment or reward will be made, given or received for or in consideration of the contract or arrangement.
- (5) A person who as vendor or supplier enters into a contract or arrangement for the sale or supply of a product of a class specified in an order made under subsection (4) commits an offence if the tissue from which the product was derived was obtained under a contract or arrangement that is void by reason of subsection (1).  
Penalty: \$1 000.
- (6) Nothing in this section renders inoperative a consent or authority given or purporting to have been given under this Act in relation to tissue from the body of a person or in relation to the body of a person if a person acting in pursuance of the consent or authority did not know and had no reason to know that the tissue or the body was the subject matter of a contract or arrangement referred to in subsection (1).

*[Section 29 amended by No. 14 of 2006 s. 4.]*

**30. Advertisements relating to buying human tissue prohibited**

A person shall not —

- (a) publish or disseminate by newspaper, book, broadcasting, television, cinematograph or other means whatever;
- (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 in Australia of human tissue or of the right to take tissue from the bodies of persons.

Penalty: \$1 000.

*[Section 30 amended by No. 78 of 1995 s. 147.]*

**Part VA — Prohibition on the use of embryonic stem cell lines**

*[Heading inserted by No. 18 of 2004 s. 11(3).]*

**30A. Interpretation**

In this Part —

**human embryonic stem cell line** means cultured stem cells derived by isolation of cells from an excess ART embryo as defined in section 53T of the *Human Reproductive Technology Act 1991*;

**therapeutic use**, in relation to a human embryonic stem cell line, means —

- (a) its use in, or in connection with —
  - (i) preventing, diagnosing, curing or alleviating a disease, ailment, defect or injury in persons;
  - (ii) influencing, inhibiting or modifying a physiological process in persons;
  - (iii) testing the susceptibility of persons to a disease or ailment;
  - (iv) influencing, controlling or preventing conception in persons;
  - (v) testing for pregnancy in persons; or
  - (vi) the replacement or modification of parts of the anatomy of persons;
- (b) a use of it that is prescribed in the regulations and is not inconsistent with a use referred to in paragraph (a); or
- (c) its use in training or research for the purposes of a use referred to in paragraph (a) or (b).

*[Section 30A inserted by No. 18 of 2004 s. 11(3).]*

**30B.    Restriction on use of human embryonic stem cells lines**

A person who uses a human embryonic stem cell line except for a therapeutic use commits a crime.

Penalty: Imprisonment for 5 years.

Summary conviction penalty: Imprisonment for 12 months.

*[Section 30B inserted by No. 18 of 2004 s. 11(3).]*

## Part VI — Miscellaneous

**31. 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, for any act done in pursuance of, by reason of, or as a result of, a consent, agreement or authority given, or purporting to have been given, in pursuance of this Act where the act is done without negligence and in good faith.
- (2) Without limiting the generality of the expression “in good faith”, a person shall be regarded as having done an act referred to in subsection (1) in good faith if the person establishes that —
  - (a) he had an honest and reasonable belief that a consent, agreement or authority required by this Act for the doing of the act had been given; or
  - (b) he had no reason to doubt that a consent, agreement or authority purporting to have been given in accordance with this Act for the doing of the act was a consent, agreement or authority given in accordance with this Act.

**32. Act does not prevent specified removals of tissue etc.**

- (1) Nothing in this Act applies to or in relation to —
  - (a) the removal of tissue from the body of a living person in the course of a procedure or operation carried out, in the interests of the health of the person, by a medical practitioner with the consent, express or implied, given by or on behalf of the person or in circumstances necessary for the preservation of the life of the person;
  - (b) the use of tissue so removed;
  - (c) the embalming of the body of a deceased person; or
  - (d) the preparation, including the restoration of any disfigurement or mutilation, of the body of a deceased person for the purpose of interment or cremation.

- (2) In this section, *tissue* has the same meaning as in Part II.

**32A. Codes of practice**

- (1) The ~~Executive Director~~[Chief Health Officer](#) may, with the approval of the Minister, issue codes of practice setting out directions and guidelines for the purposes of facilitating the operation of any of the provisions of this Act.
- (2) Sections 41, 42, 43 and 44 of the *Interpretation Act 1984* apply to a code of practice as if it were a regulation.
- (3) A code of practice may adopt, wholly or partly, any standard, rule, requirement or other provision contained in a text specified in the code but published by some other person or body —
- (a) subject to any modification specified in the code; and
  - (b) as in force at the time of adoption or as amended from time to time, as may be specified in the code.
- (4) A code of practice shall have effect —
- (a) as if a text adopted under subsection (3), identified by reference to the person or body responsible for its original publication and modified by any modification specified in the code, had been set out in full in the code; and
  - (b) where a text adopted is to be applied as from time to time amended, as if any modification specified in the code at the time the text was adopted prevailed (subject to any amendment of that modification itself under this Act) over any subsequent amendment to that text made by the originating person or body that is inconsistent with that modification.

*[Section 32A inserted by No. 25 of 1997 s. ~~10~~10; amended by [No. 19 of 2016 s. 102.](#)]*

**s. 32B**

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**32B. Enforcement of directions contained in a code of practice**

- (1) Where it appears to the ~~Executive Director~~[Chief Health Officer](#) that a person has by act or omission contravened a direction contained in a code of practice the ~~Executive Director~~[Chief Health Officer](#) may require the person to enter into a written undertaking —
- (a) to discontinue the conduct giving rise to the contravention;
  - (b) as to the person's future conduct; and
  - (c) regarding the action the person will be required to take to ensure that the objects of the code of practice are attained.
- (2) Where a person enters into a written undertaking under subsection (1) the ~~Executive Director~~[Chief Health Officer](#) shall —
- (a) retain a copy of the document evidencing the undertaking;
  - (b) give a copy of that document to the person who executed it; and
  - (c) register the document in a Register of Undertakings, to contain the prescribed particulars and to be kept in a prescribed manner and place.
- (3) The Register of Undertakings may, at any reasonable time, be inspected by any person free of charge.
- (4) A person who fails —
- (a) to enter into a written undertaking when requested under this section to do so by the ~~Executive Director~~[Chief Health Officer](#); or
  - (b) to observe such an undertaking entered into by that person,

commits an offence.

Penalty: \$1 000.



- (5) A prosecution for an offence under subsection (4) shall not be commenced without the approval of the ~~Executive Director~~ Chief Health Officer.
- (6) The ~~Executive Director~~ Chief Health Officer may, whether or not a person has been convicted of an offence under subsection (4), report a breach of any undertaking given under subsection (1) to any relevant registration board or licensing authority and that registration board or licensing authority may take into account the report of the breach when performing its functions.

*[Section 32B inserted by No. 25 of 1997 s. 10; amended by No. 19 of 2016 s. 102.]*

### 33. 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 a purpose specified in sections 8, 9 or 13 except in pursuance of a consent or authority that is under Division 4 of Part II sufficient authority for the person to remove the tissue for use for that purpose;
  - (b) remove blood from the body of a living person for transfusion or a use specified in section 18 except in pursuance of a consent that is under Division 5 of Part II sufficient authority for the removal of the blood;
  - (c) remove tissue from the body of a deceased person for a purpose or use referred to in section 22(1) except in pursuance of an authority that is under Part III sufficient authority for the person to remove the tissue for that purpose or use;
  - (d) conduct a post-mortem examination of the body of a deceased person unless the post-mortem examination is made in pursuance of an authority that is under Part IV sufficient authority for the person to conduct the post-mortem examination; or

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- (e) in conducting a post-mortem examination of the body of a deceased person, remove tissue from the body of a person unless the removal is necessary as part of the post-mortem examination.

Penalty: \$500.

- (2) A designated officer for a hospital or a person to whom a designated officer has lawfully delegated any of his powers or duties under this Act who issues an authority under this Act —
  - (a) without having made any of the inquiries that a designated officer is required to make under this Act; or
  - (b) without making such inquiries as are reasonable in the circumstance of the case,

is guilty of an offence.

Penalty: \$1 000.

- (3) Nothing in subsection (1) applies to or in relation to —
  - (a) any act for which a person is not, by reason of section 31, criminally liable;
  - (b) anything done in pursuance of an order by a coroner under the *Coroners Act 1996*; or
  - (c) any other act authorised by law.

*[Section 33 amended by No. 2 of 1996 s. 61.]*

**34. Disclosure of information**

- (1) Subject to this section, a person shall not disclose or give to any other person any information or document whereby the identity of a person —
  - (a) from whose body tissue has been removed for the purpose of transplantation or for use for other therapeutic purposes or for medical, teaching or scientific purposes;
  - (b) with respect to whom or with respect to whose body a consent or authority has been given under this Act; or

- (c) into whose body tissue has been, is being, or may be, transplanted,

may become publicly known.

Penalty: \$500.

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

### **35. Regulations**

The Governor may make regulations prescribing all matters that are required or permitted to be prescribed by this Act or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

[36. *Omitted under the Reprints Act 1984 s. 7(4)(f).*]

### Notes

- <sup>1</sup> This is a compilation of the *Human Tissue and Transplant Act 1982* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>Human Tissue and Transplant Act 1982</i>	116 of 1982	8 Dec 1982	1 Mar 1983 (see s. 2)
<i>Health Legislation Amendment Act 1984</i> Pt. XI	28 of 1984	31 May 1984	1 Jul 1984 (see s. 2 and <i>Gazette</i> 15 Jun 1984 p. 1629)
<i>Human Tissue and Transplant Amendment Act 1987</i>	5 of 1987	29 May 1987	29 May 1987 (see s. 2)
<i>Sentencing (Consequential Provisions) Act 1995</i> s. 147	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Coroners Act 1996</i> s. 61	2 of 1996	24 May 1996	7 Apr 1997 (see s. 2 and <i>Gazette</i> 18 Mar 1997 p. 1529)
<i>Human Tissue and Transplant Amendment Act 1997</i>	25 of 1997	24 Sep 1997	24 Sep 1997 (see s. 2)
<b>Reprint of the <i>Human Tissue and Transplant Act 1982</i> as at 29 Oct 1999</b> (includes amendments listed above)			
<i>Acts Amendment (Lesbian and Gay Law Reform) Act 2002</i> Pt. 12	3 of 2002	17 Apr 2002	21 Sep 2002 (see s. 2 and <i>Gazette</i> 20 Sep 2002 p. 4693)
<i>Acts Amendment (Prohibition of Human Cloning and Other Practices) Act 2004</i> s. 11	18 of 2004	16 Jul 2004	1 Dec 2004 (see s. 2 and <i>Gazette</i> 26 Nov 2004 p. 5309)
<i>Human Tissue and Transplant Amendment Act 2006</i>	14 of 2006	11 May 2006	11 May 2006 (see s. 2)
<b>Reprint 2: The <i>Human Tissue and Transplant Act 1982</i> as at 7 Jul 2006</b> (includes amendments listed above)			
<i>Medical Practitioners Act 2008</i> s. 162	22 of 2008	27 May 2008	1 Dec 2008 (see s. 2 and <i>Gazette</i> 25 Nov 2008 p. 4989)

Short title	Number and year	Assent	Commencement
<i>Health Practitioner Regulation National Law (WA) Act 2010</i> Pt. 5 Div. 28	35 of 2010	30 Aug 2010	18 Oct 2010 (see s. 2(b) and <i>Gazette</i> 1 Oct 2010 p. 5075-6)
<i>Health Services Act 2016</i> s. 294	11 of 2016	26 May 2016	1 Jul 2016 (see s. 2(b) and <i>Gazette</i> 24 Jun 2016 p. 2291)

~~<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.~~

**Provisions that have not come into operation**

Short title	Number and year	Assent	Commencement
<i>Public Health (Consequential Provisions) Act 2016</i> s. <del>102</del> <sup>4</sup>	19 of 2016	25 Jul 2016	24 Jan 2017 (see s. 2(1)(c) and <i>Gazette</i> 10 Jan 2017 p. 165)

<sup>2</sup> The provisions in this Act repealing these Acts have been omitted under the *Reprints Act 1984* s. 7(4)(f).

<sup>3</sup> The provision in this Act amending that Act has been omitted under the *Reprints Act 1984* s. 7(4)(e).

~~<sup>4</sup> On the date as at which this compilation was prepared, the *Public Health (Consequential Provisions) Act 2016* s. 102 had not come into operation. It reads as follows:~~

~~**102. Various references to “Executive Director” amended**~~

~~(1) This section amends the Acts listed in the Table.~~

~~(2) In the provisions listed in the Table delete the definition of **Executive Director**.~~

**Table**

<i>Human Tissue and Transplant Act 1982</i>	s. 3(1)
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~~(3) In the provisions listed in the Table insert in alphabetical order:~~

~~Chief Health Officer~~ has the meaning given in the *Public Health Act 2016* section 4(1);

**Table**

<i>Human Tissue and Transplant Act 1982</i>	s. 3(1)
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~~(4)~~ In the provisions listed in the Table delete “Executive Director” (each occurrence) and insert:

~~Chief Health Officer~~

**Table**

<i>Human Tissue and Transplant Act 1982</i>	s. 3(4), 4(2), (4), (4a) and (5), 5(4) and (5), 24(2), 32A(1), 32B(1), (2), (4)(a), (5) and (6)
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