

WESTERN AUSTRALIA

---

**HUMAN TISSUE AND  
TRANSPLANT AMENDMENT  
ACT 1997**

---

**No. 25 of 1997**

---

**AN ACT to amend the *Human Tissue and Transplant Act 1982*.**

[Assented to 24 September 1997.]

The Parliament of Western Australia enacts as follows:

**Short title**

**1.** This Act may be cited as the *Human Tissue and Transplant Amendment Act 1997*.

**Commencement**

2. This Act comes into operation on the day on which it receives the Royal Assent.

**Principal Act**

3. In this Act the *Human Tissue and Transplant Act 1982\** is referred to as the principal Act.

[\* *Act No. 116 of 1982.*

*For subsequent amendments see 1995 Index to Legislation of Western Australia, Table 1, p. 104 and Acts Nos. 78 of 1995 and 2 of 1996.]*

**Section 3 amended**

4. (1) Section 3 (1) of the principal Act is amended in the definition of “designated officer” by deleting “a person nominated and approved under section 4 as the designated officer for that hospital;” and substituting the following —

“  
the person who is the designated officer for that hospital in accordance with section 4;  
”.

(2) Section 3 (2) of the principal Act is amended by deleting “Act.” and substituting the following —

“  
Act or any agency established under section 7B of the *Hospitals and Health Services Act 1927* that has among its objects and powers the conduct of pathological examinations.  
”.

(3) Section 3 (4) of the principal Act is amended by deleting “there is no medical practitioner readily identifiable as the chief medical administrator of the hospital or”.

**Section 4 amended**

5. (1) After section 4 (4) of the principal Act the following subsections are inserted —

“

(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 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.

”.

(2) Section 4 (5) of the principal Act is amended by inserting after “approval” the following —

“ or nomination ”.

**Section 22 amended**

6. (1) Section 22 (1) of the principal Act is amended by deleting “section” and substituting the following —

“ Part ”.

(2) Section 22 (3) of the principal Act is repealed and the following subsection is substituted —

“

(3) The authority of a designated officer to authorize 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.

”.

**Section 25 amended**

7. Section 25 (1) of the principal Act is repealed and the following subsection is substituted —

“

(1) A designated officer for a hospital may, subject to and in accordance with this Part, authorize 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.

”.

**Section 26 amended**

**8.** Section 26 (1) of the principal Act is repealed and the following subsection is substituted —

“

(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, authorize 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.

”.

**Section 28 amended**

**9.** Section 28 (1) of the principal Act is amended —

- (a) by deleting “his powers” and substituting the following —

“ the powers of the designated officer ”; and

- (b) by deleting paragraph (a) and substituting the following paragraph —

“

- (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).

”.

**Sections 32A and 32B inserted**

**10.** After section 32 of the principal Act the following sections are inserted —

“

**Codes of practice**

**32A.** (1) The Executive Director 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.

**Enforcement of directions contained in a code of practice**

**32B.** (1) Where it appears to the Executive Director that a person has by act or omission contravened a direction contained in a code of practice the Executive Director 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 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; 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.

(6) The Executive Director 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.

”.