



New South Wales

Human Tissue Amendment (Ante-mortem Interventions) Bill 2023

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Human Tissue Act 1983* (*the Act*) to provide for ante-mortem procedures to be carried out on persons to facilitate post-mortem tissue donation.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on day that is 4 months after the date of assent to this Act.

Schedule 1 Amendment of Human Tissue Act 1983 No 164

Schedule 1[2] inserts proposed Part 4A to establish a scheme to allow ante-mortem procedures to be carried out to facilitate post-mortem tissue donation.

Proposed section 27B defines certain terms used in proposed Part 4A, including *senior available next of kin*.

Proposed section 27C enables a designated officer for a hospital to authorise the carrying out of an ante-mortem procedure if—

- (a) the potential tissue donor provides consent to the ante-mortem procedure, or
- (b) a senior available next of kin of the potential tissue donor provides consent, or
- (c) after making reasonable inquiries, the designated officer—
 - (i) is unable to locate a senior available next of kin, and

- (ii) is satisfied the potential tissue donor has consented to the removal of tissue for donation, the consent has not been revoked and the potential donor has not expressed an objection to the carrying out of an ante-mortem procedure.

The Act, section 4 also defines—

- (a) **designated officer**, in relation to a hospital, as a person appointed for the time being under the Act, section 5(1)(a) to be a designated officer for the hospital, and
- (b) **designated specialist**, in relation to a hospital, means a person appointed for the time being under section 5(1)(b) to be a designated specialist for the hospital.

Proposed section 27C also provides that a designated officer must not give an authorisation unless—

- (a) the designated officer is reasonably satisfied an authorisation to remove tissue after the death of the potential tissue donor under the Act, Part 4 will be given, and
- (b) a designated specialist not involved in the care of the tissue donor, or where not reasonably available, an experienced medical practitioner, has certified in writing that the designated specialist or medical practitioner is reasonably satisfied—
 - (i) the death of the potential tissue donor is expected, and
 - (ii) the carrying out of an ante-mortem procedure on the potential tissue donor will not hasten the death or cause any more than minimal harm to a potential tissue donor.

Proposed section 27D provides the circumstances under which the senior available next of kin may consent to the carrying out of an ante-mortem procedure on a potential tissue donor.

Proposed section 27E provides that an authority under proposed section 27C is sufficient authority for the carrying out of an ante-mortem procedure on a potential tissue donor.

Proposed section 27F provides that the authority under proposed section 27C applies despite the *Guardianship Act 1987*. The authority does not have effect if—

- (a) a person responsible has given consent to treatment on the potential tissue donor under the *Guardianship Act 1987*, Part 5, and
- (b) the treatment is incompatible with the ante-mortem procedure.

Schedule 1[1] makes a consequential amendment.