

Human Tissue Amendment Bill 2001

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* as follows:

- (a) to remove provisions of the Act that allow a designated officer of a hospital to authorise the removal of tissue from the body of a deceased person, or the conduct of a non-coronial post-mortem examination, in cases where the deceased person has not given consent during his or her lifetime and the designated officer of a hospital is unable to ascertain the existence or whereabouts of a next of kin of the deceased person,
- (b) to require that tissue removed from the body of a deceased person for the purposes of a post-mortem examination may be used for therapeutic, medical or scientific purposes (other than the purposes of that examination) only with the written consent of the deceased person (given during his or her lifetime) or a senior available next of kin,
- (c) to require that a human body that is being retained for the purposes of a post-mortem examination may be used for other therapeutic, medical or scientific purposes only with the written consent of the deceased person (given during his or her lifetime) or a senior available next of kin,
- (d) to confer enforcement powers in connection with the provisions of that Act,
- (e) to allow regulations to be made with respect to the removal, retention and use of tissue from persons (whether living or deceased), and the use of the bodies of deceased persons for any therapeutic, medical or scientific purposes under an authority under that Act,
- (f) to make consequential amendments, and amendments of a savings or transitional nature.

The Bill also amends the *Coroners Act 1980* to authorise the retention and use, in certain circumstances, of human tissue, or other substances, taken from a human body during a post mortem examination, or other examination or test, ordered by a coroner under that Act.

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 a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Human Tissue Act 1983* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Coroners Act 1980* set out in Schedule 2.

Schedule 1 Amendment of Human Tissue Act 1983

Authority to remove tissue or conduct non-coronial post-mortem examination

At present, the *Human Tissue Act 1983* (the *principal Act*) provides that, if the body of a deceased person is at a hospital, a designated officer of the hospital may authorise the removal of tissue from the body of the deceased person or the post-mortem examination of the person's body in circumstances where it appears that the deceased person had not, during the person's lifetime, consented to or expressed an objection to the removal of tissue or a post-mortem examination and the designated officer is unable to ascertain the existence or whereabouts of a next of kin of the deceased person after making certain inquiries. **Schedule 1 [10]** and **[13]** remove those provisions.

Authority to use tissue removed for purposes of post-mortem examination for other purposes

At present, the principal Act provides that if a post-mortem examination is authorised under the Act, then the use of tissue removed from the body of the deceased person for the purposes of the post-mortem examination for other therapeutic, medical or scientific purposes is also

authorised. An order by a coroner under certain provisions of the *Coroners Act 1980* directing the performance of a post-mortem examination is also sufficient authority for the use, for therapeutic, medical or scientific purposes, of tissue removed from the body for the purposes of that post-mortem examination.

Schedule 1 [15] amends those provisions so that an authority under the principal Act, or an order by a coroner, to conduct a post-mortem examination and to remove from the deceased person's body such tissue as is necessary for the purpose of the post-mortem examination does not automatically authorise the use of the tissue for any therapeutic, medical or scientific purposes (other than the purposes of the post-mortem examination). In order to use the tissue for those other purposes, an authority is required under new provisions to be inserted in the principal Act.

The new provisions (see **Schedule 1 [16]**, proposed Division 2 of Part 5) allow a designated officer of a hospital or a forensic institution (an institution at which post-mortem examinations are carried out) to authorise the use of tissue removed for the purposes of a post-mortem examination for other therapeutic, medical or scientific purposes, but only if satisfied that:

- (a) the deceased person (not being a deceased child) gave written consent to that use in his or her lifetime and did not revoke that consent, or
- (b) the deceased person had not, during the person's lifetime, expressed an objection to the use after the person's death of tissue from the person's body for such purposes, a senior available next of kin has given written consent to that use of the tissue, and there is no next of kin of a similar or higher order who objects to the use of the tissue for that purpose.

The authorisation must be given in accordance with the terms of any such written consent.

In addition, if a coroner has jurisdiction to hold an inquest in respect of the death of the person, a coroner's consent to the use of the tissue must also be obtained.

Schedule 1 [18] (proposed section 36 (2A)) makes it an offence to use tissue removed from the body of a deceased person for the purposes of a post-mortem examination for any other purposes, except in accordance with an authority given by a designated officer under the principal Act. The offence will attract a maximum penalty of 40 penalty units (currently \$4,400) or imprisonment for 6 months, or both.

Schedule 1 [19] provides that the offence does not apply in respect of anything authorised by or under the *Coroners Act 1980*, the *Anatomy Act 1977* or any other law.

Schedule 1 [1]–[3], [6], [11], [12] and [14] are consequential amendments.

Authority to use body that is retained for purposes of post-mortem examination for other therapeutic, medical or scientific purposes

Schedule 1 [16] inserts proposed Division 3 of Part 5, which provides for the giving of an authority under the principal Act to use a body that is being retained for the purposes of a post-mortem examination for other therapeutic, medical or scientific purposes.

The provisions allow a designated officer of a hospital or a forensic institution to authorise the use of a deceased person's body for therapeutic, medical or scientific purposes not connected with the post-mortem examination, but only if satisfied that:

- (a) the deceased person (not being a deceased child) gave written consent to that use in his or her lifetime and did not revoke that consent, or
- (b) the deceased person had not, during the person's lifetime, expressed an objection to the use after the person's death of the person's body for such purposes, a senior available next of kin has given written consent to that use, and there is no next of kin of a similar or higher order who objects to the use of the body for that purpose.

The authorisation must be given in accordance with the terms of any such written consent.

In addition, if a coroner has jurisdiction to hold an inquest in respect of the death of the person, a coroner's consent to the use of the body must also be obtained.

Schedule 1 [18] (proposed section 36 (2B)) makes it an offence to use the body of a deceased person that is being retained for a post-mortem examination for any purpose other than the purposes of the post-mortem examination, except in accordance with an authority given by a designated officer under the principal Act. The offence will attract a maximum penalty of 40 penalty units (currently \$4,400) or imprisonment for 6 months, or both. **Schedule 1 [5]**

(proposed section 4 (5)) makes it clear that a reference to using the body of a deceased person includes carrying out any procedure on the body of the deceased person or subjecting the body of a deceased person to any experiment, process or research.

Schedule 1 [19] provides that the offence does not apply in respect of anything authorised by or under the *Coroners Act 1980*, the *Anatomy Act 1977* or any other law.

Schedule 1 [1]–[3] and **[6]** are consequential amendments.

Enforcement

Schedule 1 [17] inserts proposed Part 7A, which provides for the enforcement of the principal Act. The provisions allow the Director-General of the Department of Health to appoint inspectors for the purposes of the principal Act. At present, inspectors are appointed under Part 3B of the principal Act and have powers of entry and inspection only in relation to that Part. Inspectors appointed under the new provisions will have power to enter and inspect any premises for the purpose of ascertaining whether or not any of the provisions of the principal Act or any regulations made under the principal Act are being complied with, and certain other powers. It will be an offence to hinder or obstruct an inspector, or to refuse or fail to comply with a requirement made by an inspector. The offence will attract a maximum penalty of 10 penalty units (currently \$1,100) or 3 months imprisonment, or both.

Inspectors will retain the more specific powers currently set out in Part 3B of the principal Act for the purpose of ensuring that that Part is being complied with.

Schedule 1 [4], [7], [8] and **[9]** are consequential amendments, and **Schedule 1 [22]** includes a transitional provision.

Regulation-making powers

Schedule 1 [20] allows regulations to be made under the principal Act for or with respect to the following:

- (a) the making and keeping of records in connection with the removal of tissue from the body of a person (whether living or deceased), including the removal of tissue in the course of medical or surgical treatment, and its retention or use for any purposes,
- (b) the making and keeping of records in connection with the use of any deceased person's body for any therapeutic, medical or scientific purposes under an authority under the principal Act,
- (c) the provision of information to the Director-General of the Department of Health, or to any other specified person concerned in the administration of the principal Act, about any removal, retention or use of tissue from the body of a person, or any use of a deceased person's body for any therapeutic, medical or scientific purposes under an authority under the principal Act.

Schedule 1 [21] and **[22]** allow savings and transitional regulations to be made.

Notes in text

Schedule 1 [5] (proposed section 5 (6)) provides that notes included in the principal Act do not form part of the Act.

Schedule 2 Amendment of Coroners Act 1980

Schedule 2 amends the *Coroners Act 1980* to confirm that an order by a coroner authorising a post mortem examination, or other examination or test, under that Act also authorises:

- (a) the use of any tissue removed for any of the following purposes:
 - (i) an investigation by a coroner of the person's death,
 - (ii) an investigation of any offence,
 - (iii) proceedings for any offence, and
- (b) the retention of small samples of certain tissue and use of the tissue for any of the following purposes:
 - (i) the exercise by a coroner of his or her functions under that Act,
 - (ii) an investigation of any offence,
 - (iii) any legal proceedings (whether or not in connection with an offence),
 - (iv) a purpose authorised by an authority given under the *Human Tissue Act 1983* that is sufficient authority to use the tissue for that purpose,

(v) such other purposes as may be prescribed by the regulations under that Act.