



New South Wales

Human Tissue Amendment (Trafficking in Human Organs) Bill 2016

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to increase the penalty for commercial trading in human organs and other human tissue, and
- (b) to create offences relating to the use of organs and other tissue taken from people without their consent, and
- (c) to impose a duty on registered health practitioners to report any reasonable belief they have that a patient or other person has received an organ or tissue that was commercially traded or taken without appropriate consent.

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 the date of assent to the proposed Act.

Schedule 1 Amendment of Human Tissue Act 1983 No 164

Schedule 1 [1] and [2] update the long title of the *Human Tissue Act 1983* as a consequence of the changes proposed to be made to that Act, which deal with the unlawful removal and use of tissue from living people (whereas the long title currently refers only to the removal of tissue from deceased people).

Schedule 1 [3]–[7] and [9] update references to the holder of an office and to a Ministry.

Schedule 1 [8] substitutes Part 6 to insert the following provisions creating offences relating to trading in, removal, use and transplantation of tissue:

Part 6 Offences relating to trading in, removal, use and transplantation of tissue

Division 1 Preliminary

Proposed section 32 defines words and expressions used in the proposed Part. A *commercial transplant arrangement* is defined as a contract or arrangement under which any person agrees, for valuable consideration, whether given or to be given to any such person or to any other person, to the sale or supply of any tissue from any such person's body or from the body of any other person, whether before or after that person's death or the death of that other person.

Proposed section 32A explains what the term *appropriate consent* means in the proposed Part. In relation to situations where tissue is removed from a person outside New South Wales, the term is defined so as to give effect to the laws of some other countries that allow for the next of kin of a deceased person to grant consent on the person's behalf and to laws of other countries that have an "opt-out" consent scheme, where a deceased person is treated as if he or she has consented to donating tissue unless the person specifically stated during his or her lifetime that he or she did not consent. The provision also makes it clear that prisoners and other detained persons cannot give appropriate consent.

Proposed section 32B makes it clear that offences under the proposed Part extend, in some circumstances, to conduct that occurs outside New South Wales.

Division 2 Offences relating to trading in tissue

Proposed section 32C makes it an offence to enter into, or offer to enter into or promote, a commercial transplant arrangement, to knowingly provide any services under a commercial transplant arrangement, to knowingly accept any benefit under a commercial transplant arrangement or to consent to the transplantation to a person of tissue removed under a commercial transplant arrangement. The section does not apply to arrangements relating to blood, semen, hair, or any other tissue prescribed by the regulations, where the tissue is provided under a program regulated by a hospital or government-approved organisation. (Proposed section 32E (b) provides that the proposed Division does not apply to such arrangements if they provide only for the reimbursement of any expenses necessarily incurred by the person from whom the tissue is to be removed in relation to the removal of tissue in accordance with the Act.)

Proposed section 32D creates an aggravated offence if the relevant commercial transplant arrangement relates to the sale or supply of an amount of tissue the taking of which from the body of a person would reasonably be expected to kill, or threaten the life of, the person, or to the sale or supply of a vital organ.

Proposed section 32E creates certain exemptions from the offences created by the proposed Division.

Proposed section 32F provides that contracts or arrangements entered into in contravention of proposed Division 2 are void.

Proposed section 32G provides for the Minister to approve certain contracts or arrangements.

Division 3 Offences relating to removal of tissue without consent

Proposed section 32H makes it an offence to remove tissue from the body of another person (whether living or deceased) without the appropriate consent.

Proposed section 32I creates an aggravated offence of removing an amount of tissue the taking of which from the body of a person would reasonably be expected to kill, or threaten the life of, the person, or removing a vital organ, without the appropriate consent.

Proposed section 32J creates certain exemptions from the offences created by the proposed Division.

Division 4 Offences relating to use of tissue removed without consent

Proposed section 32K makes it an offence to use any tissue that is removed from the body of a living person in the course of medical, dental or surgical treatment for any purpose, knowing that appropriate consent was not given. It will also be an offence to use any tissue that is removed from the body of a deceased person, in any circumstances, for any purpose, knowing that appropriate consent was not given.

Proposed section 32L creates an aggravated offence of using an amount of tissue the taking of which from the body of a person would reasonably be expected to kill, or threaten the life of, the person, or a vital organ, knowing that appropriate consent was not given.

Proposed section 32M makes it an offence for a person to consent to the use of any tissue removed from the body of another person for the purpose of its transplantation into the body of the person if the tissue was removed from the body of the other person without the appropriate consent and the person to whom it is transplanted knows of, or is reckless as to, that lack of consent.

Proposed section 32N creates an aggravated offence of consenting to being transplanted with an amount of tissue the taking of which from the body of a person would reasonably be expected to kill, or threaten the life of, the person, or with a vital organ, without the appropriate consent, if the person to whom it is transplanted knows of, or is reckless as to, that lack of consent.

Division 5 Mandatory reporting by registered health practitioners

Proposed section 32O imposes a duty on registered health practitioners to report any reasonable belief they have that a patient has received an organ or tissue that was commercially traded or taken without appropriate consent.

Proposed section 32P provides legal protection for registered health practitioners who make such mandatory reports.

Schedule 1 [10] omits existing offences that are replaced by the proposed offences.

Schedule 1 [11] transfers an existing offence (formerly set out in section 32 (1)).

Schedule 1 [12] makes a consequential amendment to a cross-reference.

Schedule 1 [13] provides that the aggravated offences created by the proposed Act are to be dealt with as indictable offences. The remaining offences are to be dealt with summarily before the Local Court.

Schedule 1 [14] provides for the making of savings or transitional regulations consequent on the amendment of the *Human Tissue Act 1983*.

Schedule 2 Amendment of Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86

Schedule 2 makes it unsatisfactory professional conduct for a registered health practitioner to breach the duty to report a reasonable belief that human organs or human tissue have been obtained under a commercial transplant arrangement or taken from people without their consent.