

HUMAN TISSUE (AMENDMENT) BILL, 1985

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are—

- (a) to amend the Human Tissue Act, 1983, in accordance with an agreement reached by State Health Ministers so as—
 - (i) to provide that blood or semen intended for certain purposes (including blood to be transfused to persons other than the donor) shall not be removed, obtained or received unless a prescribed certificate is signed by the donor at the time of the donation (Schedule 1 (4)—proposed section 21C (1));
 - (ii) to provide that certificates are not required to be given in respect of blood or semen donated for certain other purposes, including research purposes (Schedule 1 (4)—proposed section 21B);
 - (iii) to provide that blood or semen lawfully obtained without the giving of a certificate shall not subsequently be used for any of the purposes referred to in subparagraph (i) unless a prescribed certificate is signed by the donor before the blood or semen is used for that purpose (Schedule 1 (4)—proposed section 21C (2));
 - (iv) to make it an offence for a donor of blood or semen knowingly to sign a certificate required to be given by the donor and which contains a statement which is false or misleading in a material particular (Schedule 1 (4)—proposed section 21D); and
 - (v) to enable regulations to be made to provide for the keeping of certificates given by donors of blood or semen and the making and keeping of records in respect of those certificates (Schedule 1 (4)—proposed section 21E); and
- (b) to further amend the Human Tissue Act, 1983, so as to state that a reference to tissue in that Act shall include a reference to semen (Schedule 1 (2)—proposed section 4 (2A)).

The Bill also contains other provisions of a minor, consequential or ancillary nature.



HUMAN TISSUE (AMENDMENT) BILL, 1985

No. , 1985.

A BILL FOR

An Act to amend the Human Tissue Act, 1983, to provide for the giving of certificates, in respect of certain matters, by blood donors and semen donors.

Human Tissue (Amendment) 1985

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 Short title.

1. This Act may be cited as the "Human Tissue (Amendment) Act, 1985".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

10 (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Amendment of Act No. 164, 1983.

15 3. The Human Tissue Act, 1983, is amended in the manner set forth in Schedule 1.

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE HUMAN TISSUE ACT, 1983.

(1) Section 3—

20 Omit the section.

(2) Section 4 (2A)—

After section 4 (2), insert:—

25 (2A) In this Act, except in so far as the context or subject-matter otherwise indicates or requires, a reference to tissue includes a reference to—

(a) ova and semen; and

(b) foetal tissue.

(3) Section 6—

Omit "spermatozoa", insert instead "semen".

30 (4) Part IIIA—

*Human Tissue (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE HUMAN TISSUE ACT, 1983—*continued.*

After Part III, insert:—

PART IIIA.

5 CERTIFICATES FROM DONORS OF BLOOD OR SEMEN.

Interpretation.

21A. In this Part—

- 10 (a) a reference to artificial insemination, in relation to a woman, includes a reference to the fertilisation of an ovum (whether or not produced by the woman) outside the woman's body for the purpose of implanting the fertilised ovum in the woman's body;
- 15 (b) a reference to a donor, in relation to blood or semen, is a reference to the person from whose body the blood or semen has been removed or obtained, as the case may be; and
- (c) a reference to a person's spouse includes a reference to a person who, although not married to the firstmentioned person, is living with the person as the person's spouse on a bona fide domestic basis.

20 **Application of Part.**

21B. (1) This Part does not apply in respect of blood that is removed from a donor solely—

- (a) for the purpose of its subsequent transfusion to the donor; or
- 25 (b) for the purpose of its use, or the use of any of its constituents—
- (i) for therapeutic purposes;
- (ii) for medical purposes; or
- (iii) for scientific purposes,
- 30 in each case not being a use involving the treatment of any person other than the donor.

(2) This Part does not apply in respect of semen that is obtained or received from a donor solely—

*Human Tissue (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE HUMAN TISSUE ACT, 1983—*continued.*

- (a) for a purpose other than its use for the artificial insemination of a woman; or
- 5 (b) for the purpose of its use for the artificial insemination of the donor's spouse.

Certificates by donors.

21C. (1) A person shall not—

- (a) remove any donor's blood intended—
- 10 (i) for the purpose of its transfusion; or
- (ii) for the purpose of its use, or the use of any of its constituents, for therapeutic purposes, or for medical purposes or scientific purposes; or
- 15 (b) obtain or receive any donor's semen intended for use for the artificial insemination of a woman,

unless the donor has signed a certificate relating to the medical suitability of the donor, being a certificate in or to the effect of the prescribed form, and had the signature witnessed by a prescribed person or a person of a prescribed class, at the time of the removal of the blood, or the obtaining or receipt of the semen, as the case may be.

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Penalty: \$200.

(2) Where—

- 25 (a) blood has been removed solely for a purpose referred to in section 21B (1); or
- (b) semen has been obtained or received solely for a purpose referred to in section 21B (2),

30 a person shall not subsequently use the blood for any purpose other than a purpose referred to in section 21B (1) or use the semen for any purpose other than a purpose referred to in section 21B (2) unless the donor has signed a certificate relating to the medical suitability of the donor, being a certificate in or to the effect of the

*Human Tissue (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE HUMAN TISSUE ACT, 1983—*continued.*

5 prescribed form, and had the signature witnessed by a prescribed person or a person of a prescribed class, at the time of, or at any time after, the removal of the blood, or the obtaining or receipt of the semen, as the case may be, and before the use of the blood or semen.

Penalty: \$200.

10 (3) Where a donor is required by subsection (1) or (2) to sign a certificate and have the signature witnessed and the donor is, by reason of illiteracy or physical incapacity, incapable of signing the certificate, the donor shall be deemed to have signed the certificate and had the signature witnessed in accordance with that requirement if—

15 (a) in the case of a donor who is illiterate but not physically incapable of signing—the donor makes his or her mark on the certificate and a prescribed person or a person of a prescribed class witnesses the making of the mark and certifies on the certificate that, before the mark was made, the nature and effect of the certificate were explained to the donor; or

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(b) in the case of a donor who is physically incapable of signing—a person authorised to do so by the donor has signed the certificate on the donor's behalf and a prescribed person or a person of a prescribed class witnesses that signature.

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False or misleading statements.

21D. A person shall not, for the purposes of this Part, knowingly sign a certificate which contains any statement which is false or misleading in a material particular.

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Penalty: \$5,000 or imprisonment for one year, or both.

Records.

21E. The regulations may provide for the keeping of certificates given for the purposes of this Part and for the making and keeping of records in respect of those certificates.

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Human Tissue (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE HUMAN TISSUE ACT, 1983—*continued.*

(5) Section 34 (2)—

At the end of section 34, insert:—

- 5 (2) Nothing in subsection (1) allows the removal of blood or the obtaining or receipt of semen from a person in contravention of Part IIIA.

(6) Section 36 (3) (b)—

Omit the paragraph, insert instead:—

- 10 (b) for the purposes of this Act (Part IIIA excepted), knowingly sign a certificate which contains any statement which is false or misleading in a material particular.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1985

HUMAN TISSUE (AMENDMENT) ACT, 1985, No. 61

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

* * * * *

Act No. 61, 1985.

An Act to amend the Human Tissue Act, 1983, to provide for the giving of certificates, in respect of certain matters, by blood donors and semen donors. [Assented to, 15th May, 1985.]

Human Tissue (Amendment) 1985

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Human Tissue (Amendment) Act, 1985".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Amendment of Act No. 164, 1983.

3. The Human Tissue Act, 1983, is amended in the manner set forth in Schedule 1.

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE HUMAN TISSUE ACT, 1983.

(1) Section 3—

Omit the section.

(2) Section 4 (2A)—

After section 4 (2), insert:—

(2A) In this Act, except in so far as the context or subject-matter otherwise indicates or requires, a reference to tissue includes a reference to—

(a) ova and semen; and

(b) foetal tissue.

(3) Section 6—

Omit "spermatozoa", insert instead "semen".

(4) Part IIIA—

Human Tissue (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE HUMAN TISSUE ACT, 1983—*continued.*

After Part III, insert:—

PART IIIA.

CERTIFICATES FROM DONORS OF BLOOD OR SEMEN.

Interpretation.

21A. In this Part—

- (a) a reference to artificial insemination, in relation to a woman, includes a reference to the fertilisation of an ovum (whether or not produced by the woman) outside the woman's body for the purpose of implanting the fertilised ovum in the woman's body;
- (b) a reference to a donor, in relation to blood or semen, is a reference to the person from whose body the blood or semen has been removed or obtained, as the case may be; and
- (c) a reference to a person's spouse includes a reference to a person who, although not married to the firstmentioned person, is living with the person as the person's spouse on a bona fide domestic basis.

Application of Part.

21B. (1) This Part does not apply in respect of blood that is removed from a donor solely—

- (a) for the purpose of its subsequent transfusion to the donor; or
- (b) for the purpose of its use, or the use of any of its constituents—
 - (i) for therapeutic purposes;
 - (ii) for medical purposes; or
 - (iii) for scientific purposes,

in each case not being a use involving the treatment of any person other than the donor.

(2) This Part does not apply in respect of semen that is obtained or received from a donor solely—

*Human Tissue (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE HUMAN TISSUE ACT, 1983—*continued.*

- (a) for a purpose other than its use for the artificial insemination of a woman; or
- (b) for the purpose of its use for the artificial insemination of the donor's spouse.

Certificates by donors.

21C. (1) A person shall not—

- (a) remove any donor's blood intended—
 - (i) for the purpose of its transfusion; or
 - (ii) for the purpose of its use, or the use of any of its constituents, for therapeutic purposes, or for medical purposes or scientific purposes; or
- (b) obtain or receive any donor's semen intended for use for the artificial insemination of a woman,

unless the donor has signed a certificate relating to the medical suitability of the donor, being a certificate in or to the effect of the prescribed form, and had the signature witnessed by a prescribed person or a person of a prescribed class, at the time of the removal of the blood, or the obtaining or receipt of the semen, as the case may be.

Penalty: \$200.

(2) Where—

- (a) blood has been removed solely for a purpose referred to in section 21B (1); or
- (b) semen has been obtained or received solely for a purpose referred to in section 21B (2),

a person shall not subsequently use the blood for any purpose other than a purpose referred to in section 21B (1) or use the semen for any purpose other than a purpose referred to in section 21B (2) unless the donor has signed a certificate relating to the medical suitability of the donor, being a certificate in or to the effect of the

Human Tissue (Amendment) 1985

SCHEDULE 1—*continued.*AMENDMENTS TO THE HUMAN TISSUE ACT, 1983—*continued.*

prescribed form, and had the signature witnessed by a prescribed person or a person of a prescribed class, at the time of, or at any time after, the removal of the blood, or the obtaining or receipt of the semen, as the case may be, and before the use of the blood or semen.

Penalty: \$200.

(3) Where a donor is required by subsection (1) or (2) to sign a certificate and have the signature witnessed and the donor is, by reason of illiteracy or physical incapacity, incapable of signing the certificate, the donor shall be deemed to have signed the certificate and had the signature witnessed in accordance with that requirement if—

- (a) in the case of a donor who is illiterate but not physically incapable of signing—the donor makes his or her mark on the certificate and a prescribed person or a person of a prescribed class witnesses the making of the mark and certifies on the certificate that, before the mark was made, the nature and effect of the certificate were explained to the donor; or
- (b) in the case of a donor who is physically incapable of signing—a person authorised to do so by the donor has signed the certificate on the donor's behalf and a prescribed person or a person of a prescribed class witnesses that signature.

False or misleading statements.

21D. A person shall not, for the purposes of this Part, knowingly sign a certificate which contains any statement which is false or misleading in a material particular.

Penalty: \$5,000 or imprisonment for one year, or both.

Records.

21E. The regulations may provide for the keeping of certificates given for the purposes of this Part and for the making and keeping of records in respect of those certificates.

Human Tissue (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE HUMAN TISSUE ACT, 1983—*continued.*

(5) Section 34 (2)—

At the end of section 34, insert:—

(2) Nothing in subsection (1) allows the removal of blood or the obtaining or receipt of semen from a person in contravention of Part IIIA.

(6) Section 36 (3) (b)—

Omit the paragraph, insert instead:—

(b) for the purposes of this Act (Part IIIA excepted), knowingly sign a certificate which contains any statement which is false or misleading in a material particular.

In the name and on behalf of Her Majesty I assent to this Act.

J. A. ROWLAND,
Governor.

*Government House,
Sydney, 15th May, 1985.*



