FIRST PRINT

HUMAN TISSUE (AMENDMENT) BILL 1987

NEW SOUTH WALES

EXPLANATORY NOTE

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

The Drug Misuse and Trafficking (Amendment) Bill 1987 is cognate with this Bill.

The object of this Bill is—

(a) to provide that only authorised suppliers and exempt suppliers may carry on a business of supplying blood or blood products for blood transfusions or for other therapeutic purposes, or for medical or scientific purposes, involving the treatment of persons, or a business of supplying semen for the artificial insemination of women;

(b) to provide legal protection against certain criminal and civil proceedings brought against—

(i) donors of blood provided for blood transfusions or for other therapeutic purposes, or for medical or scientific purposes, involving the treatment of persons and donors of semen provided for the artificial insemination of women;

(ii) suppliers of blood, blood products or semen for any of those purposes; and

(iii) persons carrying out blood transfusions or other medical treatment involving the use of blood or blood products or carrying out artificial insemination procedures on women;

(c) to prohibit certain persons who are in possession of information or have custody of records which could identify donors of blood or semen from disclosing that information or publishing those records except in specified circumstances, such as for the purposes of court proceedings; and

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(d) to provide for other matters of a consequential or ancillary nature.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Human Tissue Act 1983 ("the Principal Act").

Schedule 1 (1) amends section 4 of the Principal Act, which defines certain expressions for the purposes of that Act, by inserting into subsection (1) of that section definitions of "artificial insemination", "authorised supplier", "blood product", "donor", "exempt supplier", "premises", "record" and "supply". Schedule 1 (1) also amends that section so as to make it clear that the expression "tissue" includes blood and that the expression "transplantation" includes a transfusion of blood and an artificial insemination of semen. A definition of "prescribed contaminant" is also being inserted into the section and the Governor-in-Council will be empowered to make a regulation declaring an organism or substance to be a prescribed contaminant for the purposes of the Principal Act. The definition of "artificial insemination" and "donor" contained in the existing section 21A are being transferred to the section from section 21A of the Principal Act. Section 21A is to be repealed. (See Schedule 1 (4).)

Schedule 1 (2) amends section 21 of that Act, which prescribes the effect of a consent given under section 19 or 20 of that Act. The amendment is consequential on the insertion in section 4 of the Principal Act of the definition of "premises". (See Schedule 1 (1).)

Schedule 1 (3) changes the heading to Part IIIA of the Principal Act so as to reflect the contents of that Part as proposed to be amended.

Schedule 1 (4) repeals section 21A of the Principal Act, which defines certain expressions for the purposes of Part IIIA of that Act. The definitions of those expressions are being transferred to section 4 of the Principal Act. (See Schedule 1 (1).)

Schedule 1 (5) replaces section 21B of the Principal Act, which specifies the kinds of blood and semen to which Part IIIA of that Act relates. The substituted section 21B will express in a positive form the kinds of blood and semen to which the Part applies as opposed to the negative form in which the present section 21B is expressed.

Schedule 1 (6) amends section 21C of the Principal Act which requires donors of blood or semen to give certificates as to their medical suitability for giving their blood or semen. The amendments are consequential on the replacement of section 21B of the Principal Act. (See Schedule 1 (5).)

Schedule 1 (7) amends section 21D of the Principal Act, which makes it an offence for a person knowingly to sign for the purposes of Part IIIA of the Principal Act a certificate containing a false or misleading statement. The amendment makes it clear that for the offence to be committed the person concerned must have knowledge of the falsity or misleading nature of the statement.

Schedule 1 (8) inserts proposed section 21DA into the Principal Act. The section will provide that, if a person who has become infected with a prescribed contaminant (such as the human immuno-deficiency virus (HIV)), or a disease attributable to such a contaminant, as a result of a transfusion of, treatment involving the use of, blood or a blood product, or, in the case of a woman, as a result of artificial insemination, no criminal proceedings or proceedings in tort or for a breach of contract may be brought against the donor of the blood or semen, unless it is proved that, when the blood was removed or the semen was obtained from the donor, the donor signed a certificate of a kind referred to in section 21C of the Principal Act knowing that the contents of the certificate were false or misleading. If criminal proceedings or civil proceedings in tort or for a breach of contract are brought against the supplier of the blood, blood product or semen, that supplier will have a good defence to those proceedings if it is proved that the provisions of the proposed subsection (3) were complied with. Proposed subsection (4) provides a similar defence in a case where such proceedings are brought against a person who was responsible for or carried out the transfusion, treatment or insemination that caused the infection or against the employer or a supervisor of that person. For example, a medical practitioner or nurse who transfuses contaminated blood to a patient would have a good defence in proceedings in tort for negligence arising out of the infection of the patient if, in those proceedings, the practitioner or nurse proved that the contaminated blood was received from an authorised or exempt supplier and the practitioner or nurse was not aware that the blood was contaminated or was likely to have been contaminated when the transfusion was carried out.

Schedule 1 (9) inserts in the Principal Act a Part IIIB which will provide for the regulation of persons who carry on businesses of supplying blood or blood products for blood transfusions or other therapeutic purposes, or for medical or scientific purposes, involving the treatment of persons or of supplying semen for the artificial insemination of women. Proposed Part IIIB contains the following provisions:

Proposed section 21F defines certain expressions for the purposes of the Part.

Proposed section 21G prohibits a person from carrying on a business of supplying blood or semen unless an authorisation is in force in respect of the business. The section will not apply to an exempt supplier. (The expression "exempt supplier", in relation to blood or blood products, includes the Australian Red Cross Society and the Commonwealth Serum Laboratories Commission, and in relation to blood, blood products and semen, includes a public or private hospital and an area health service.)

Proposed section 21H enables persons who wish to carry on a business of supplying blood, blood products or semen to apply to the Secretary of the Department of Health for an authorisation for that purpose.

Proposed section 21I provides for the issue or refusal of an authorisation and, in particular, specifies the grounds on which an application for an authorisation may be refused. The section also empowers the Secretary to impose conditions or restrictions when issuing an authorisation.

Proposed section 21J enables the conditions or restrictions of an authorisation to be varied or revoked.

Proposed section 21K provides for the revocation or suspension of an authorisation on the grounds that the holder of the authorisation has failed to comply with or has contravened a condition or restriction of the authorisation.

Proposed section 21L prescribes certain offences for the purposes of the Part. The maximum penalty for such an offence will be $10,000.

Proposed section 21M prescribes certain presumptions in relation to legal proceedings arising out of an alleged contravention of proposed section 21G.

Proposed section 21N provides that, if a person who is a director of or concerned in the management of a corporation authorised or permitted a contravention of a provision of the proposed Part IIIB or of a regulation made for the purposes of that Part, the person shall be deemed to have contravened the same provision.

Proposed section 21O provides that a decision of the Secretary relating to an authorisation held by a supplier is to take effect on the day after the date on which it is served on the supplier or on such later date as may be specified in the notice.

Proposed section 21P provides for the appointment of inspectors for the purposes of the proposed Part IIIB.

Proposed section 21Q prescribes the powers of inspectors under the proposed Part IIIB. Those powers include—

(a) a power of entry to premises for the purposes of ascertaining whether or not a provision of that Part or regulations made for the purposes of that Part are being complied with or have been contravened;

(b) the power to inspect blood, blood products, semen and certain other items kept on those premises;

(c) the power to inspect records;

(d) the power to make and take away copies of records;

(e) the power to take samples of blood, blood products or semen;

(f) the power to seize and detain blood, blood products or semen and certain other items in relation to which an offence may have been committed; and

(g) the power to take away records and other documents in certain circumstances.

Proposed section 21R makes it an offence—

(a) to prevent or attempt to prevent an inspector from gaining entry to premises in the exercise of a power conferred by proposed section 21Q;

(b) to obstruct or hinder an inspector in the exercise of a power conferred by that section; or

(c) to refuse or fail to comply with a requirement made by an inspector under that section.

Such an offence will be punishable by a fine not exceeding $1,000 or imprisonment for a term not exceeding 3 months. The proposed section also provides that a person is not guilty of such an offence unless certain matters are proved in proceedings for the offence.

Proposed section 21S provides for the disposal of articles seized under proposed section 21Q. In general, such articles are to be forfeited to the Crown after a specified period unless in the meantime an order disallowing the seizure is made under proposed section 21T. The section also makes provision for the immediate destruction of blood, blood products or semen which is found to contain a prescribed contaminant.

Proposed section 21T enables a person claiming to be entitled to blood, blood products, semen, containers or equipment seized under proposed section 21Q to apply to the District Court and obtain an order disallowing the seizure and ordering the return of the seized articles to the applicant.

Proposed section 21U empowers the Supreme Court, on the application of the Secretary, to grant an injunction restraining a person from engaging in conduct involving a contravention of proposed section 21G.

Proposed section 21V provides for the service of documents on authorised suppliers.

Schedule 1 (10) amends section 36 of the Principal Act, which prescribes certain offences for the purposes of that Act. Subsection (3) of that section makes it an offence for a person knowingly to sign for the purposes of the Principal Act (Part IIIA excepted) a certificate containing a false or misleading statement. The amendment makes it clear that, for the offence to be committed, the person concerned must have knowledge of the falsity or misleading nature of the statement.

Schedule 1 (11) amends section 37 of the Principal Act, which, with certain exceptions, prohibits medical practitioners and others from disclosing or giving information or documents relating to persons who have donated tissue for transplantation or for a therapeutic, medical or scientific purpose. As a result of the amendment, the prohibition will extend to the Australian Red Cross Society, employees and members of the Society and other prescribed persons who have been involved in removing blood from persons for the purpose of transfusion to patients or the purpose of treating patients in some other way.

Schedule 1 (12) amends section 38 of the Principal Act which prescribes the manner in which offences against that Act are to be dealt with. The amendment is consequential on the enactment of the Local Courts Act 1982.

HUMAN TISSUE (AMENDMENT) BILL 1987

NEW SOUTH WALES

TABLE OF PROVISIONS

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HUMAN TISSUE (AMENDMENT) BILL 1987

NEW SOUTH WALES

No. , 1987

A BILL FOR

An Act to amend the Human Tissue Act 1983 for the purpose of making further provision with respect to donations of blood and semen and for related purposes.

See also Drug Misuse and Trafficking (Amendment) Bill 1987.

B ¶

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 1987".

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 or days as may be appointed by the Governor and 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 4 **(Interpretation)**—

(a) Section 4 (1), definitions of "artificial insemination", "authorised supplier", "blood product"—

Before the definition of "child", insert:

"artificial insemination" includes the fertilisation of a woman's ovum outside the woman's body for the purpose of implanting the fertilised ovum in the body of the woman or another woman;

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

"authorised supplier" means a person who is the holder of an authorisation issued in accordance with section 21I authorising the person to carry on a business of supplying blood, blood products or semen;

"blood product" means a product or extract derived or extracted from blood by any process of manufacture;

(b) Section 4 (1), definitions of "donor", "exempt supplier"—

After the definition of "designated specialist", insert:

"donor", in relation to blood or semen, means the person from whom the blood has been removed or the semen obtained;

"exempt supplier"—

(a) in relation to the supply of blood or a blood product, means—

(i) the Australian Red Cross Society;

(ii) the governing body of a hospital;

(iii) the Commonwealth Serum Laboratories Commission; or

(iv) any other body declared by the regulations to be an exempt supplier of blood or blood products for the purposes of this Act; or

(b) in relation to the supply of semen, means—

(i) the governing body of a hospital; or

(ii) any other body declared by the regulations to be an exempt supplier of semen for the purposes of this Act;

(c) Section 4 (1), definitions of "premises", "prescribed contaminant", "record"—

After the definition of "non-regenerative tissue", insert:

"premises" includes any means of vehicular transport;

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

"prescribed contaminant" means an organism or substance declared by the regulations to be a prescribed contaminant for the purposes of this Act;

"record" includes book, account, deed, writing, document and any other source of information compiled, recorded or stored in written form, or on micro-film, or by electronic process, or in any other manner or by any other means;

(d) Section 4 (1), definition of "spouse", "supply"—

After the definition of "senior available next of kin", insert:

"spouse" includes a person who, although not married, is living with another person on a bona fide domestic basis as that other person's spouse;

"supply" means supply by way of sale, exchange or gift, and includes receive, keep or store for the purpose of supply;

(e) Section 4 (2A) (aa)—

Before section 4 (2A) (a), insert:

(aa) blood;

(f) Section 4 (3), (4)—

Omit section 4 (3), insert instead:

(3) In this Act, a reference to the transplantation of tissue includes a reference to—

(a) the transplantation of any part of the tissue; and

(b) the transplantation of any substance obtained from the tissue,

and, without limiting the generality of the foregoing, includes a reference to the transfusion of blood and the artificial insemination of semen.

(4) In this Act, a reference to the removal of blood (however expressed) for any specified purpose includes a reference to the removal of blood so that a product to be derived or extracted from that blood may be used for that purpose.

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(2) Section 21 (**Effect of consent under section 19 and 20**)—

(a) Section 21 (b)—

Omit ", or in a vehicle,".

(b) Section 21 (b)—

After "persons;", insert "or".

(c) Section 21 (c)—

Omit "description; or", insert instead "description.".

(d) Section 21 (d)—

Omit the paragraph.

(3) Part IIIA, heading—

Omit the heading, insert instead:

PART IIIA

SPECIAL PROVISIONS CONCERNING DONATIONS OF BLOOD OR SEMEN

(4) Section 21A (**Interpretation**)—

Omit the section.

(5) Section 21B—

Omit the section, insert instead:

Application of Part

21B. This Part applies—

(a) to blood that is removed from a donor—

(i) for the purpose of transfusing some or all of the blood to a person other than the donor; or

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(ii) for the purpose of using some or all of the blood for other therapeutic purposes, or for medical or scientific purposes, involving the treatment of a person other than the donor;

(b) to blood products derived or extracted from blood of the kind referred to in paragraph (a); and

(c) to semen obtained or received from a donor for the purpose of using some or all of the semen for the artificial insemination of a woman.

(6) Section 21C **(Certificates by donors)**—

(a) Section 21C (2) (a), (b)—

Omit the paragraphs, insert instead:

(a) blood has been removed solely for a purpose other than a purpose referred to in section 21B (a); or

(b) semen has been obtained or received solely for a purpose other than the purpose referred to in section 21B (b),

(b) Section 21C (2)—

Omit "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)", insert instead "referred to in section 21B (a) or use semen for the purpose referred to in section 21B (b)".

(c) Section 21C (4)—

After section 21C (3), insert:

(4) This section does not apply in respect of semen obtained or received from a donor solely for the purpose of its use for the artificial insemination of the donor's spouse.

(7) Section 21D **(False or misleading statements)**—

(a) Omit "knowingly".

(b) After "statement which", insert ", to that person's knowledge,".

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(8) Section 21DA—

After section 21D, insert:

Restrictions as to legal proceedings involving infection by a prescribed contaminant etc.

21DA. (1) If—

(a) a person has become infected with a prescribed contaminant, or a disease that is attributable to a prescribed contaminant; and

(b) the contaminant was or may have been transmitted to that person—

(i) as a result of a transfusion of blood or a blood product or of any other treatment involving the use of blood or a blood product; or

(ii) in the case of a woman who has been artificially inseminated—as a result of the artificial insemination,

the provisions of subsection (2), (3) or (4) apply according to the circumstances of the case.

(2) Proceedings for an offence (except an offence against section 21D) or in tort or for a breach of contract arising out of the transmission of a prescribed contaminant as referred to in subsection (1) may not be brought against the donor of the blood or semen concerned in the infection, unless it is proved in the proceedings—

(a) that the donor has previously been found guilty of an offence against section 21D or of an offence against a law of another State or a Territory that corresponds to that section; or

(b) that the donor would have been found guilty of such an offence had the donor been charged with such an offence.

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(3) If proceedings for an offence or in tort or for a breach of contract arising out of the transmission of a prescribed contaminant as referred to in subsection (1) are brought against a person (other than the donor) in respect of a supply by that person, or an employee of that person, of blood, a blood product or semen, it is a defence in those proceedings for the defendant to prove that—

(a) at the time of supply, the defendant was an authorised supplier or an exempt supplier;

(b) if the defendant or an employee of the defendant removed the blood or the blood from which the blood product was derived or extracted, or had obtained or received the semen, from the donor—the defendant or that employee had, before supply, ensured that—

(i) the donor had signed either a certificate of the kind referred to in section 21C or a similar document as to the medical suitability of the donor to provide blood for a purpose referred to in section 21B (a) or to provide semen for the purpose referred to in section 21B (b); and

(ii) the blood, the blood from which the blood product was derived or extracted or, as the case may be, the blood of the donor of the semen had been subjected to tests of a kind approved by the Minister for the purposes of this section and those tests had indicated that no prescribed contaminant was present in that blood;

(c) if the defendant or an employee of the defendant obtained the blood, blood product or semen from another person—that other person was an authorised supplier or an exempt supplier; and

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(d) before the time when the blood or blood product used for transfusion to, or for otherwise treating, the infected person, or the time when the semen was used for the artificial insemination of the infected woman, the defendant had not become aware that the blood, blood product or semen was or was likely to have been contaminated with the prescribed contaminant concerned or, if, before that time, the defendant had become aware of that fact, the defendant had taken all reasonably practicable steps to ensure that the blood, blood product or semen was not so used.

(4) If proceedings for an offence or in tort or for a breach of contract arising out of the transmission of a prescribed contaminant as referred to in subsection (1) are brought against the person who carried out the transfusion, treatment or artificial insemination or the employer or any supervisor of that person, it is a defence in those proceedings for the defendant to prove that—

(a) if the defendant or an employee of the defendant removed the blood or the blood from which the blood product was derived or extracted, or obtained or received the semen, from the donor directly, the defendant or that employee had ensured that—

(i) the donor had signed either a certificate of the kind referred to in section 21C or a similar document as to the medical suitability of the donor to provide blood for a purpose referred to in section 21B (a) or to provide semen for the purpose referred to in section 21B (b); and

(ii) the blood, the blood from which the blood product was derived or extracted or, as the case may be, the blood of the donor of the semen had been subjected to tests of a kind approved by the Minister for the purposes of this section and those tests had indicated that no prescribed contaminant was present in that blood;

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(b) if the defendant or an employee of the defendant obtained the blood, blood product or semen from another person—that other person was an authorised supplier or an exempt supplier; and

(c) when the transfusion, treatment or artificial insemination was carried out, the defendant was not aware that the blood, blood product or semen was or was likely to have been contaminated with the prescribed contaminant concerned.

(9) Part IIIB—

After Part IIIA, insert:

PART IIIB

REGULATION OF BUSINESSES SUPPLYING BLOOD, BLOOD PRODUCTS OR SEMEN

Interpretation: Pt. IIIB

21F. (1) In this Part—

(a) a reference to carrying on a business of supplying blood or blood products is a reference to carrying on a business or undertaking of supplying blood or blood products to medical institutions and other persons—

(i) with a view to transfusing some or all of the blood or blood products to persons; or

(ii) with a view to using some or all of the blood or blood products for other therapeutic purposes, or for medical or scientific purposes, involving the treatment of persons; and

(b) a reference to carrying on a business of supplying semen is a reference to carrying on a business or undertaking of supplying semen to medical institutions and other persons for the purpose of using some or all of the semen for the artificial insemination of women.

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(2) In this Part—

"authorisation" means an authorisation issued by the Secretary under section 21I;

"inspector" means a person holding office as an inspector under section 21P;

"Secretary" means the Secretary of the Department of Health or a person acting in that position.

Unauthorised persons prohibited from carrying on a business of supplying blood, blood products or semen

21G. (1) A person shall not—

(a) carry on a business of supplying blood, blood products or semen; or

(b) participate in the management of such a business,

unless there is in force in respect of that business an authorisation in writing issued under section 21I.

(2) Subsection (1) does not apply to an exempt supplier.

Applications for authorisations

21H. (1) Any person who wishes to carry on a business of supplying blood, blood products or semen may make an application in writing to the Secretary for an authorisation.

(2) An application under subsection (1) must contain or be accompanied by such particulars as may be prescribed with respect to—

(a) the applicant;

(b) the business of supplying blood, blood products or semen proposed to be carried on by the applicant;

(c) the persons who are to be employed in that business; and

(d) the premises at which it is proposed to carry on the business.

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(3) As soon as practicable after receiving an application made under subsection (1), the Secretary shall proceed to consider and dispose of the application.

Issue of authorisations etc.

21I. (1) The Secretary may refuse to issue an authorisation applied for under section 21H on the ground that—

(a) the application does not contain or is not accompanied by the prescribed particulars;

(b) the applicant, or any person who is to be concerned in the management of the business proposed to be carried on by the applicant, is not a fit and proper person to carry on or be concerned in the management of the business of supplying blood, blood products or semen;

(c) the persons or any of the persons proposed to be employed in the business proposed to be carried on by the applicant do not hold the prescribed qualifications in relation to particular functions to be performed in connection with that business;

(d) the premises at which it is proposed to carry on the business do not satisfy the prescribed requirements or will contravene prescribed restrictions;

(e) the Secretary is of the opinion that the health of the community would be jeopardised; or

(f) the Secretary is of the opinion that the applicant would, if issued with an authorisation, be unable to comply with the prescribed conditions applicable to the authorisation,

but otherwise the Secretary must issue an authorisation.

(2) If the Secretary refuses to issue an authorisation applied for under section 21H, the Secretary must notify the applicant in writing of the refusal and the grounds on which it is based.

(3) An authorisation is subject to such conditions and restrictions as are prescribed or as are imposed under subsection (4).

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(4) In issuing an authorisation, the Secretary may impose such conditions and restrictions, not inconsistent with this Part or the regulations, as appear to be necessary to maintain the health of the community.

(5) An authorisation shall remain in force on and from the date of its issue until revoked by the Secretary.

(6) The Secretary shall not refuse to issue an authorisation without giving the applicant for the authorisation an opportunity to be heard.

Variation and revocation of conditions and restrictions of authorisation

21J. The Secretary may from time to time, by notice in writing served on the holder of an authorisation—

(a) vary a condition or restriction imposed in respect of the authorisation under section 21I (4) or paragraph (b);

(b) impose in respect of the authorisation such additional conditions and restrictions on that holder as appear to the Secretary necessary to preserve the health of the community; or

(c) revoke a condition or restriction imposed in respect of the authorisation under section 21I (4) or paragraph (b).

Revocation or suspension of authorisations

21K. (1) If the Secretary is satisfied that the holder of an authorisation is failing or has failed to comply with or is contravening or has contravened a condition or restriction to which the authorisation is subject, the Secretary may, by notice in writing served on the holder of the authorisation, either revoke the authorisation or suspend its operation for a period not exceeding 90 days.

(2) An authorisation may be revoked under subsection (1) even though its operation is suspended at the relevant time.

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(3) If the operation of an authorisation is suspended under subsection (1), the authorisation shall, for the purposes of section 21G, be deemed to have been revoked.

(4) The Secretary shall not revoke an authorisation without giving the holder of the authorisation an opportunity to be heard.

(5) If the holder of an authorisation surrenders the authorisation to the Secretary with a request for revocation, the Secretary must immediately revoke the authorisation.

Offences under Pt. IIIB

21L. A person who—

(a) contravenes section 21G; or

(b) fails to comply with or contravenes a condition or restriction to which an authorisation is subject,

is guilty of an offence and liable to a penalty not exceeding $10,000.

Presumptions in certain legal proceedings

21M. If in any legal proceedings relating to an alleged contravention of section 21G it is proved that—

(a) a person, other than the donor—

(i) has supplied blood or blood products on at least 2 occasions to one or more persons for the purpose of transfusion to other persons or for other therapeutic purposes, or for medical or scientific purposes, involving the treatment of persons; or

(ii) has supplied semen on at least 2 occasions to one or more persons for the purpose of artificially inseminating women; or

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(b) a person, other than the donor, has kept on premises occupied by that person blood or blood products or, as the case may be, semen in excess of the prescribed quantity,

it shall, until the contrary is proved, be presumed for the purposes of those proceedings that the person was carrying on a business of supplying blood or blood products or of supplying semen.

Offences by directors of corporations etc.

21N. (1) If a corporation contravenes, whether by act or omission, any provision of this Part or a regulation made for the purposes of this Part, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Part or a regulation made for the purposes of this Part.

Time at which decision of the Secretary under section 21J or 21K is to have effect

21O. A decision of the Secretary under section 21J or 21K takes effect on the day after the day on which notice of the decision is served on the authorised supplier concerned or at such later time as may be specified in the notice.

Inspectors

21P. (1) The Secretary may appoint any officer of the Department of Health, or any person whom the Secretary considers to be suitably qualified for the purpose, to be an inspector for the purposes of this Part.

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(2) On appointing an inspector under subsection (1), the Secretary shall issue to the inspector a certificate of authority authorising the inspector to exercise the powers conferred by section 21Q.

Powers of inspectors

21Q. (1) An inspector may exercise all or any of the following powers for the purposes of this Part:

(a) the power at all reasonable times to enter and inspect all premises for the purpose of ascertaining whether or not a provision of this Part or a regulation made for the purposes of this Part is not being or has not been complied with or is being or has been contravened;

(b) the power to inspect—

(i) all blood, blood products or semen kept on those premises;

(ii) all containers that the inspector reasonably believes to contain or to have contained blood, blood products or semen; and

(iii) all equipment kept on the premises that the inspector reasonably believes to be or to have been used for processing, packing or storing blood, blood products or semen;

(c) the power to take and remove for analysis or testing a sample of any blood, blood product or semen kept on the premises;

(d) the power to inspect all records kept on those premises and the power to require any person whom the inspector reasonably believes to have custody or control of those records to produce them for inspection;

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(e) without limiting paragraph (d), the power to inspect, and the power to require a person to produce for inspection, any records in the custody or under the control of the person, being records which relate—

(i) to the question of whether or not a provision of this Part or a regulation made for the purposes of this Part is not being or has not been complied with or is being or has been contravened; or

(ii) to financial transactions relating to a business of supplying blood, blood products or semen;

(f) if any records inspected, produced or required to be produced in accordance with paragraph (d) or (e)—

(i) are not in writing;

(ii) are not written in the English language; or

(iii) are not decipherable on sight,

the power to require the person who has custody or control of those records to produce a statement in the English language and decipherable on sight setting out the contents of those records;

(g) the power to make and take away copies of the whole or any part of a record inspected or produced in accordance with paragraph (d) or (e) or a statement produced in accordance with paragraph (f);

(h) the power to seize and detain—

(i) any blood, blood product or semen in relation to which the inspector reasonably believes an offence against this Part or against a regulation made for the purposes of this Part is being or has been committed;

(ii) any container in which any such blood, blood product or semen is kept; and

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(iii) any equipment which the inspector reasonably believes is being or has been used in connection with any such offence;

(i) the power—

(i) to place any blood, blood product or semen, referred to in paragraph (h), in a container;

(ii) where any blood, blood product, semen, container or equipment referred to in that paragraph has been seized on premises entered in accordance with paragraph (a), to place the blood, blood product, semen, container or equipment in a room, compartment or cabinet located on those premises; and

(iii) to mark, fasten and seal that container or, as the case may be, the door or opening providing access to that room, compartment or cabinet;

(j) in order to make copies of records or of parts of records which may be inspected in accordance with paragraph (d) or (e) or of statements produced in accordance with paragraph (f), the power to take away and retain, for such period as may be reasonably necessary, any such records or statements;

(k) if the inspector concerned reasonably believes that any such records or statements are evidence of an offence against this Part or a regulation made for the purposes of this Part, the power to take away and retain those records or statements until proceedings for the offence have been disposed of.

(2) Subsection (1) (a) does not authorise an inspector to effect an entry to premises by the use of force or to enter a part of premises that is used for residential purposes without the consent of the occupier of that part.

(3) Before taking away a record or statement under subsection (1), an inspector must tender an appropriate receipt to the person from whom it is taken.

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(4) Any blood, blood product, semen, container or equipment seized under subsection (1) (h) may, at the option of the inspector who made the seizure or another inspector acting in place of that inspector, be detained on the premises where it was found or be removed to other premises and detained there.

(5) If any information whatever is given to an inspector by an officer of a corporation which is carrying on or has carried on a business of supplying blood, blood products or semen, the information is, for the purposes of any proceedings against the corporation for an offence against this Part or a regulation made for the purposes of this Part, binding on and admissible in evidence against the corporation, unless it is proved that the information was given in relation to a matter in respect of which the officer had no authority to bind the corporation.

(6) The provisions of subsection (5) are in addition to any enactment or rule of law relating to the binding effect and admissibility in evidence of statements made by an officer of a corporation.

(7) In subsections (5) and (6), "officer", in relation to a corporation, has the same meaning as that expression has in the Companies (New South Wales) Code.

Obstruction etc. of inspectors

21R. (1) A person who—

(a) prevents or attempts to prevent an inspector from exercising the power conferred by section 21Q (1) (a);

(b) hinders or obstructs an inspector in the exercise of any of the other powers conferred by section 21Q; or

(c) fails or refuses to comply with a requirement made under that section,

is guilty of an offence and liable to a penalty not exceeding $1,000 or to imprisonment for a term not exceeding 3 months.

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(2) A person is not guilty of an offence under subsection (1) unless—

(a) it is established by the prosecutor that the inspector concerned produced at the relevant time the certificate of authority issued to the inspector under section 21P (2);

(b) where the offence arises under subsection (1) (a) or (b)—it is established by the prosecutor that the person was informed by the inspector concerned, or otherwise knew, that that inspector was empowered to exercise the power to which the offence relates; or

(c) where the offence arises under subsection (1) (c)—it is established by the prosecutor that the inspector concerned warned the person that a failure or refusal to comply with the requirement was an offence.

Disposal of seized articles

21S. (1) If—

(a) any blood, blood product, semen, container or equipment seized under section 21Q (1) (h)—

(i) has not been disposed of as referred to in subsection (2); or

(ii) in the case of blood, a blood product or semen, has not been destroyed under subsection (5),

and no application for disallowance of the seizure has been made within the period allowed by section 21T (1); or

(b) any such application has been made within that period and the application has been refused or withdrawn before a decision in respect of the application has been made,

the blood, blood product, semen, container or equipment shall be forfeited to the Crown and may be destroyed or disposed of in such manner as the Secretary directs.

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(2) If—

(a) any blood, blood product, semen, container or equipment seized under section 21Q (1) (h)—

(i) has not been forfeited by virtue of subsection (1); or

(ii) in the case of blood, a blood product or semen, has not been destroyed under subsection (5); and

(b) the Secretary is satisfied that no failure to comply with or contravention of any of the provisions of this Part or of the regulations made for the purposes of this Part has been committed in relation to the blood, blood product, semen, container or equipment,

the Secretary shall immediately cause the blood, blood product, semen, container or equipment to be delivered to such person as appears to the Secretary to be entitled to it.

(3) If—

(a) any blood, blood product, semen, container or equipment seized under section 21Q (1) (h) is forfeited to the Crown by virtue of subsection (1) because no application for disallowance of the seizure was made within the period allowed by section 21T (1);

(b) the Secretary is satisfied that no failure to comply with or contravention of any of the provisions of this Part or of any regulations made for the purposes of this Part has been committed in relation to the blood, blood product, semen, container or equipment; and

(c) the blood, blood product, semen, container or equipment has not been destroyed or disposed of in a manner that would prevent it from being dealt with in accordance with this subsection,

the Secretary shall immediately cause the blood, blood product, semen, container or equipment to be delivered to such person as appears to the Secretary to be the person who would, but for the forfeiture, have been entitled to it.

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(4) If any blood, blood product, semen, container or equipment is delivered to a person in accordance with subsection (3), such proprietary and other interests as existed immediately before the forfeiture are revived.

(5) If—

(a) an inspector who has seized any blood, blood product or semen under section 21Q (1) (h) is satisfied on reasonable grounds that the blood, blood product or semen contains a prescribed contaminant; and

(b) the blood, blood product or semen is not required or is no longer required to be retained for the purposes of any legal proceedings,

the inspector shall cause the blood, blood product or semen to be destroyed.

Disallowance of seizure

21T. (1) Any person claiming to be entitled to any blood, blood product, semen, container or equipment seized under section 21Q (1) (h) may, within 10 days after the date on which the seizure took place, make an application to the District Court for an order disallowing the seizure of the blood, blood product, semen, container or equipment.

(2) An application made under subsection (1) shall not be heard unless the applicant has previously served a copy of the application on the Secretary.

(3) The Secretary is entitled to appear as respondent at the hearing of an application made under subsection (1).

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(4) The District Court shall, on the hearing of an application made under subsection (1), make an order disallowing the seizure—

(a) if it is proved by or on behalf of the applicant that the applicant would, but for the seizure, be entitled to the blood, blood product, semen, container or equipment and if it is not proved by or on behalf of the respondent beyond all reasonable doubt that an offence was being or had been at the time of the seizure, committed in relation to the blood, blood product, semen, container or equipment; or

(b) if, in the opinion of the Court, there are exceptional circumstances justifying the making of an order disallowing the seizure,

but otherwise the Court must refuse the application.

(5) If on the hearing of an application made under subsection (1) it appears to the District Court that the blood, blood product, semen, container or equipment that is the subject of the application is required to be produced in evidence in any pending proceedings in connection with an offence against this Part or against any regulation made for the purposes of this Part, the Court may, either on the application of the respondent or on its own motion, adjourn the hearing until the conclusion of those proceedings.

(6) If the District Court makes an order under subsection (4) disallowing the seizure of any blood, blood product, semen, container or equipment, the Court must also make one or both of the following orders:

(a) an order directing the respondent to cause the blood, blood product, semen, container or equipment to be delivered to the applicant or to such other person as appears to the Court to be entitled to it;

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(b) where the blood, blood product, semen, container or equipment cannot for any reason be so delivered or has in consequence of the seizure depreciated in value, an order directing the Secretary to pay to the applicant such amount by way of compensation as the Court considers to be just and reasonable.

(7) The award of costs with respect to the hearing of an application made under subsection (1) is in the discretion of the District Court.

(8) If the District Court makes an order for the payment of any amount as compensation under subsection (6) (b) or awards any amount as costs under subsection (7), that order is enforceable as a judgment of the Court.

Injunctions

21U. (1) If a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of section 21G, the Supreme Court may, on the application of the Secretary, grant an injunction restraining the person from engaging in that conduct and, if in the opinion of the Court it is desirable to do so, requiring the person to do any act or thing.

(2) If an application is made to the Supreme Court for an injunction under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) pending the determination of the application.

(3) The Supreme Court may rescind or vary an injunction granted under subsection (1) or (2).

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(4) If an application is made to the Supreme Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Court to grant the injunction may be exercised—

(a) where the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in that conduct; or

(b) where it appears to the Court that, in the event of the injunction not being granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind.

Service of notices

21v. (1) A notice required under this Part to be served on an authorised supplier may be served—

(a) if the authorised supplier is a person other than a body corporate—

(i) by delivering it to that person personally; or

(ii) by sending it by post addressed to that person at the supplier's residence or at any place at which the supplier carries on business, whether of supplying blood, blood products or semen or not; or

(b) if the authorised supplier is a body corporate—

(i) by leaving it with a director or the secretary of the body corporate; or

(ii) by sending it by post addressed to the body corporate at its registered office or, if its registered office is not located in New South Wales, to the principal place of business of the body corporate in New South Wales.

(2) Subsection (1) does not affect the operation of any law authorising a document to be served in a manner not provided for by that subsection.

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(10) Section 36 (**Offences**)—

(a) Section 36 (3) (b)—

Omit "knowingly".

(b) Section 36 (3) (b)—

After "statement which", insert ", to that person's knowledge,".

(11) Section 37 (**Disclosure of information**)—

(a) Section 37 (1) (c)—

After "tissue" where firstly occurring, insert "(other than blood)".

(b) Section 37 (1) (ca), (cb)—

After section 37 (1) (c), insert:

(ca) where blood has been removed from the body of a person (whether living or deceased)—

(i) by a medical practitioner;

(ii) by an employee or member of the Australian Red Cross Society or of a body prescribed for the purpose of this subparagraph; or

(iii) by any other person of a class prescribed for the purpose of this subparagraph,

to—

(iv) the medical practitioner, any person who was the employer or partner of that practitioner when the blood was removed and any person who was an employee of that practitioner when the blood was removed or who has since been employed by that practitioner;

(v) the Australian Red Cross Society or body so prescribed and any person who was an employee or member of that Society or body when the blood was removed or who has since been employed by that society or body; or

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(vi) that other person, any person who was the employer or partner of that other person when the blood was removed and any person who was an employee of that other person when the blood was removed or has since been employed by that other person;

(cb) where blood has been removed from the body of a person (whether living or deceased) at a hospital or at premises prescribed, or at premises of a class prescribed, for the purposes of this paragraph—to any person who was employed at the hospital or premises when the blood was removed or who has since been employed at the hospital or premises;

(c) Section 37 (2)—

Omit "or give to any other person any information or document", insert instead "information or publish a record".

(d) Section 37 (3)—

Omit "information disclosed", insert instead "the disclosure of information or the publication of a record".

(e) Section 37 (3) (a)—

After "information", insert "or record".

(f) Section 37 (4)—

After section 37 (3), insert:

(4) For the purposes of this section, a person shall be deemed to have published a record if that person permits or facilitates access to that record by another person.

(12) Section 38 (**Proceedings for offences**)—

(a) Omit "taken before a court of petty sessions", insert instead "dealt with before a Local Court".

(b) Omit "stipendiary magistrate", insert instead "Magistrate".

HUMAN TISSUE (AMENDMENT) ACT 1987 No. 144

NEW SOUTH WALES

TABLE OF PROVISIONS

70522-16051 (32)

HUMAN TISSUE (AMENDMENT) ACT 1987 No. 144

NEW SOUTH WALES

Act No. 144, 1987

An Act to amend the Human Tissue Act 1983 for the purpose of making further provision with respect to donations of blood and semen and for related purposes. [Assented to 16 June 1987]

See also Drug Misuse and Trafficking (Amendment) Act 1987.

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 1987".

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 or days as may be appointed by the Governor and 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 4 (**Interpretation**)—

(a) Section 4 (1), definitions of "artificial insemination", "authorised supplier", "blood product"—

Before the definition of "child", insert:

"artificial insemination" includes the fertilisation of a woman's ovum outside the woman's body for the purpose of implanting the fertilised ovum in the body of the woman or another woman;

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

"authorised supplier" means a person who is the holder of an authorisation issued in accordance with section 21I authorising the person to carry on a business of supplying blood, blood products or semen;

"blood product" means a product or extract derived or extracted from blood by any process of manufacture;

(b) Section 4 (1), definitions of "donor", "exempt supplier"—

After the definition of "designated specialist", insert:

"donor", in relation to blood or semen, means the person from whom the blood has been removed or the semen obtained;

"exempt supplier"—

(a) in relation to the supply of blood or a blood product, means—

(i) the Australian Red Cross Society;

(ii) the governing body of a hospital;

(iii) the Commonwealth Serum Laboratories Commission; or

(iv) any other body declared by the regulations to be an exempt supplier of blood or blood products for the purposes of this Act; or

(b) in relation to the supply of semen, means—

(i) the governing body of a hospital; or

(ii) any other body declared by the regulations to be an exempt supplier of semen for the purposes of this Act;

(c) Section 4 (1), definitions of "premises", "prescribed contaminant", "record"—

After the definition of "non-regenerative tissue", insert:

"premises" includes any means of vehicular transport;

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

"prescribed contaminant" means an organism or substance declared by the regulations to be a prescribed contaminant for the purposes of this Act;

"record" includes book, account, deed, writing, document and any other source of information compiled, recorded or stored in written form, or on micro-film, or by electronic process, or in any other manner or by any other means;

(d) Section 4 (1), definition of "spouse", "supply"—

After the definition of "senior available next of kin", insert:

"spouse" includes a person who, although not married, is living with another person on a bona fide domestic basis as that other person's spouse;

"supply" means supply by way of sale, exchange or gift, and includes receive, keep or store for the purpose of supply;

(e) Section 4 (2A) (aa)—

Before section 4 (2A) (a), insert:

(aa) blood;

(f) Section 4 (3), (4)—

Omit section 4 (3), insert instead:

(3) In this Act, a reference to the transplantation of tissue includes a reference to—

(a) the transplantation of any part of the tissue; and

(b) the transplantation of any substance obtained from the tissue,

and, without limiting the generality of the foregoing, includes a reference to the transfusion of blood and the artificial insemination of semen.

(4) In this Act, a reference to the removal of blood (however expressed) for any specified purpose includes a reference to the removal of blood so that a product to be derived or extracted from that blood may be used for that purpose.

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(2) Section 21 (**Effect of consent under section 19 and 20**)—

(a) Section 21 (b)—

Omit ", or in a vehicle,".

(b) Section 21 (b)—

After "persons;", insert "or".

(c) Section 21 (c)—

Omit "description; or", insert instead "description.".

(d) Section 21 (d)—

Omit the paragraph.

(3) Part IIIA, heading—

Omit the heading, insert instead:

PART IIIA

SPECIAL PROVISIONS CONCERNING DONATIONS OF BLOOD OR SEMEN

(4) Section 21A (**Interpretation**)—

Omit the section.

(5) Section 21B—

Omit the section, insert instead:

Application of Part

21B. This Part applies—

(a) to blood that is removed from a donor—

(i) for the purpose of transfusing some or all of the blood to a person other than the donor; or

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(ii) for the purpose of using some or all of the blood for other therapeutic purposes, or for medical or scientific purposes, involving the treatment of a person other than the donor;

(b) to blood products derived or extracted from blood of the kind referred to in paragraph (a); and

(c) to semen obtained or received from a donor for the purpose of using some or all of the semen for the artificial insemination of a woman.

(6) Section 21C (**Certificates by donors**)—

(a) Section 21C (2) (a), (b)—

Omit the paragraphs, insert instead:

(a) blood has been removed solely for a purpose other than a purpose referred to in section 21B (a); or

(b) semen has been obtained or received solely for a purpose other than the purpose referred to in section 21B (b),

(b) Section 21C (2)—

Omit "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)", insert instead "referred to in section 21B (a) or use semen for the purpose referred to in section 21B (b)".

(c) Section 21C (4)—

After section 21C (3), insert:

(4) This section does not apply in respect of semen obtained or received from a donor solely for the purpose of its use for the artificial insemination of the donor's spouse.

(7) Section 21D (**False or misleading statements**)—

(a) Omit "knowingly".

(b) After "statement which", insert ", to that person's knowledge,".

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(8) Section 21DA—

After section 21D, insert:

Restrictions as to legal proceedings involving infection by a prescribed contaminant etc.

21DA. (1) If—

(a) a person has become infected with a prescribed contaminant, or a disease that is attributable to a prescribed contaminant; and

(b) the contaminant was or may have been transmitted to that person—

(i) as a result of a transfusion of blood or a blood product or of any other treatment involving the use of blood or a blood product; or

(ii) in the case of a woman who has been artificially inseminated—as a result of the artificial insemination,

the provisions of subsection (2), (3) or (4) apply according to the circumstances of the case.

(2) Proceedings for an offence (except an offence against section 21D) or in tort or for a breach of contract arising out of the transmission of a prescribed contaminant as referred to in subsection (1) may not be brought against the donor of the blood or semen concerned in the infection, unless it is proved in the proceedings—

(a) that the donor has previously been found guilty of an offence against section 21D or of an offence against a law of another State or a Territory that corresponds to that section; or

(b) that the donor would have been found guilty of such an offence had the donor been charged with such an offence.

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(3) If proceedings for an offence or in tort or for a breach of contract arising out of the transmission of a prescribed contaminant as referred to in subsection (1) are brought against a person (other than the donor) in respect of a supply by that person, or an employee of that person, of blood, a blood product or semen, it is a defence in those proceedings for the defendant to prove that—

(a) at the time of supply, the defendant was an authorised supplier or an exempt supplier;

(b) if the defendant or an employee of the defendant removed the blood or the blood from which the blood product was derived or extracted, or had obtained or received the semen, from the donor—the defendant or that employee had, before supply, ensured that—

(i) the donor had signed either a certificate of the kind referred to in section 21C or a similar document as to the medical suitability of the donor to provide blood for a purpose referred to in section 21B (a) or to provide semen for the purpose referred to in section 21B (b); and

(ii) the blood, the blood from which the blood product was derived or extracted or, as the case may be, the blood of the donor of the semen had been subjected to tests of a kind approved by the Minister for the purposes of this section and those tests had indicated that no prescribed contaminant was present in that blood;

(c) if the defendant or an employee of the defendant obtained the blood, blood product or semen from another person—that other person was an authorised supplier or an exempt supplier; and

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(d) before the time when the blood or blood product used for transfusion to, or for otherwise treating, the infected person, or the time when the semen was used for the artificial insemination of the infected woman, the defendant had not become aware that the blood, blood product or semen was or was likely to have been contaminated with the prescribed contaminant concerned or, if, before that time, the defendant had become aware of that fact, the defendant had taken all reasonably practicable steps to ensure that the blood, blood product or semen was not so used.

(4) If proceedings for an offence or in tort or for a breach of contract arising out of the transmission of a prescribed contaminant as referred to in subsection (1) are brought against the person who carried out the transfusion, treatment or artificial insemination or the employer or any supervisor of that person, it is a defence in those proceedings for the defendant to prove that—

(a) if the defendant or an employee of the defendant removed the blood or the blood from which the blood product was derived or extracted, or obtained or received the semen, from the donor directly, the defendant or that employee had ensured that—

(i) the donor had signed either a certificate of the kind referred to in section 21C or a similar document as to the medical suitability of the donor to provide blood for a purpose referred to in section 21B (a) or to provide semen for the purpose referred to in section 21B (b); and

(ii) the blood, the blood from which the blood product was derived or extracted or, as the case may be, the blood of the donor of the semen had been subjected to tests of a kind approved by the Minister for the purposes of this section and those tests had indicated that no prescribed contaminant was present in that blood;

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(b) if the defendant or an employee of the defendant obtained the blood, blood product or semen from another person—that other person was an authorised supplier or an exempt supplier; and

(c) when the transfusion, treatment or artificial insemination was carried out, the defendant was not aware that the blood, blood product or semen was or was likely to have been contaminated with the prescribed contaminant concerned.

(9) Part IIIB—

After Part IIIA, insert:

PART IIIB

REGULATION OF BUSINESSES SUPPLYING BLOOD, BLOOD PRODUCTS OR SEMEN

Interpretation: Pt. IIIB

21F. (1) In this Part—

(a) a reference to carrying on a business of supplying blood or blood products is a reference to carrying on a business or undertaking of supplying blood or blood products to medical institutions and other persons—

(i) with a view to transfusing some or all of the blood or blood products to persons; or

(ii) with a view to using some or all of the blood or blood products for other therapeutic purposes, or for medical or scientific purposes, involving the treatment of persons; and

(b) a reference to carrying on a business of supplying semen is a reference to carrying on a business or undertaking of supplying semen to medical institutions and other persons for the purpose of using some or all of the semen for the artificial insemination of women.

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(2) In this Part—

"authorisation" means an authorisation issued by the Secretary under section 21I;

"inspector" means a person holding office as an inspector under section 21P;

"Secretary" means the Secretary of the Department of Health or a person acting in that position.

Unauthorised persons prohibited from carrying on a business of supplying blood, blood products or semen

21G. (1) A person shall not—

(a) carry on a business of supplying blood, blood products or semen; or

(b) participate in the management of such a business,

unless there is in force in respect of that business an authorisation in writing issued under section 21I.

(2) Subsection (1) does not apply to an exempt supplier.

Applications for authorisations

21H. (1) Any person who wishes to carry on a business of supplying blood, blood products or semen may make an application in writing to the Secretary for an authorisation.

(2) An application under subsection (1) must contain or be accompanied by such particulars as may be prescribed with respect to—

(a) the applicant;

(b) the business of supplying blood, blood products or semen proposed to be carried on by the applicant;

(c) the persons who are to be employed in that business; and

(d) the premises at which it is proposed to carry on the business.

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(3) As soon as practicable after receiving an application made under subsection (1), the Secretary shall proceed to consider and dispose of the application.

Issue of authorisations etc.

21I. (1) The Secretary may refuse to issue an authorisation applied for under section 21H on the ground that—

(a) the application does not contain or is not accompanied by the prescribed particulars;

(b) the applicant, or any person who is to be concerned in the management of the business proposed to be carried on by the applicant, is not a fit and proper person to carry on or be concerned in the management of the business of supplying blood, blood products or semen;

(c) the persons or any of the persons proposed to be employed in the business proposed to be carried on by the applicant do not hold the prescribed qualifications in relation to particular functions to be performed in connection with that business;

(d) the premises at which it is proposed to carry on the business do not satisfy the prescribed requirements or will contravene prescribed restrictions;

(e) the Secretary is of the opinion that the health of the community would be jeopardised; or

(f) the Secretary is of the opinion that the applicant would, if issued with an authorisation, be unable to comply with the prescribed conditions applicable to the authorisation,

but otherwise the Secretary must issue an authorisation.

(2) If the Secretary refuses to issue an authorisation applied for under section 21H, the Secretary must notify the applicant in writing of the refusal and the grounds on which it is based.

(3) An authorisation is subject to such conditions and restrictions as are prescribed or as are imposed under subsection (4).

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(4) In issuing an authorisation, the Secretary may impose such conditions and restrictions, not inconsistent with this Part or the regulations, as appear to be necessary to maintain the health of the community.

(5) An authorisation shall remain in force on and from the date of its issue until revoked by the Secretary.

(6) The Secretary shall not refuse to issue an authorisation without giving the applicant for the authorisation an opportunity to be heard.

Variation and revocation of conditions and restrictions of authorisation

21J. The Secretary may from time to time, by notice in writing served on the holder of an authorisation—

(a) vary a condition or restriction imposed in respect of the authorisation under section 21I (4) or paragraph (b);

(b) impose in respect of the authorisation such additional conditions and restrictions on that holder as appear to the Secretary necessary to preserve the health of the community; or

(c) revoke a condition or restriction imposed in respect of the authorisation under section 21I (4) or paragraph (b).

Revocation or suspension of authorisations

21K. (1) If the Secretary is satisfied that the holder of an authorisation is failing or has failed to comply with or is contravening or has contravened a condition or restriction to which the authorisation is subject, the Secretary may, by notice in writing served on the holder of the authorisation, either revoke the authorisation or suspend its operation for a period not exceeding 90 days.

(2) An authorisation may be revoked under subsection (1) even though its operation is suspended at the relevant time.

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(3) If the operation of an authorisation is suspended under subsection (1), the authorisation shall, for the purposes of section 21G, be deemed to have been revoked.

(4) The Secretary shall not revoke an authorisation without giving the holder of the authorisation an opportunity to be heard.

(5) If the holder of an authorisation surrenders the authorisation to the Secretary with a request for revocation, the Secretary must immediately revoke the authorisation.

Offences under Pt. IIIB

21L. A person who—

(a) contravenes section 21G; or

(b) fails to comply with or contravenes a condition or restriction to which an authorisation is subject,

is guilty of an offence and liable to a penalty not exceeding $10,000.

Presumptions in certain legal proceedings

21M. If in any legal proceedings relating to an alleged contravention of section 21G it is proved that—

(a) a person, other than the donor—

(i) has supplied blood or blood products on at least 2 occasions to one or more persons for the purpose of transfusion to other persons or for other therapeutic purposes, or for medical or scientific purposes, involving the treatment of persons; or

(ii) has supplied semen on at least 2 occasions to one or more persons for the purpose of artificially inseminating women; or

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(b) a person, other than the donor, has kept on premises occupied by that person blood or blood products or, as the case may be, semen in excess of the prescribed quantity,

it shall, until the contrary is proved, be presumed for the purposes of those proceedings that the person was carrying on a business of supplying blood or blood products or of supplying semen.

Offences by directors of corporations etc.

21N. (1) If a corporation contravenes, whether by act or omission, any provision of this Part or a regulation made for the purposes of this Part, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Part or a regulation made for the purposes of this Part.

Time at which decision of the Secretary under section 21J or 21K is to have effect

21O. A decision of the Secretary under section 21J or 21K takes effect on the day after the day on which notice of the decision is served on the authorised supplier concerned or at such later time as may be specified in the notice.

Inspectors

21P. (1) The Secretary may appoint any officer of the Department of Health, or any person whom the Secretary considers to be suitably qualified for the purpose, to be an inspector for the purposes of this Part.

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(2) On appointing an inspector under subsection (1), the Secretary shall issue to the inspector a certificate of authority authorising the inspector to exercise the powers conferred by section 21Q.

Powers of inspectors

21Q. (1) An inspector may exercise all or any of the following powers for the purposes of this Part:

(a) the power at all reasonable times to enter and inspect all premises for the purpose of ascertaining whether or not a provision of this Part or a regulation made for the purposes of this Part is not being or has not been complied with or is being or has been contravened;

(b) the power to inspect—

(i) all blood, blood products or semen kept on those premises;

(ii) all containers that the inspector reasonably believes to contain or to have contained blood, blood products or semen; and

(iii) all equipment kept on the premises that the inspector reasonably believes to be or to have been used for processing, packing or storing blood, blood products or semen;

(c) the power to take and remove for analysis or testing a sample of any blood, blood product or semen kept on the premises;

(d) the power to inspect all records kept on those premises and the power to require any person whom the inspector reasonably believes to have custody or control of those records to produce them for inspection;

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(e) without limiting paragraph (d), the power to inspect, and the power to require a person to produce for inspection, any records in the custody or under the control of the person, being records which relate—

(i) to the question of whether or not a provision of this Part or a regulation made for the purposes of this Part is not being or has not been complied with or is being or has been contravened; or

(ii) to financial transactions relating to a business of supplying blood, blood products or semen;

(f) if any records inspected, produced or required to be produced in accordance with paragraph (d) or (e)—

(i) are not in writing;

(ii) are not written in the English language; or

(iii) are not decipherable on sight,

the power to require the person who has custody or control of those records to produce a statement in the English language and decipherable on sight setting out the contents of those records;

(g) the power to make and take away copies of the whole or any part of a record inspected or produced in accordance with paragraph (d) or (e) or a statement produced in accordance with paragraph (f);

(h) the power to seize and detain—

(i) any blood, blood product or semen in relation to which the inspector reasonably believes an offence against this Part or against a regulation made for the purposes of this Part is being or has been committed;

(ii) any container in which any such blood, blood product or semen is kept; and

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(iii) any equipment which the inspector reasonably believes is being or has been used in connection with any such offence;

(i) the power—

(i) to place any blood, blood product or semen, referred to in paragraph (h), in a container;

(ii) where any blood, blood product, semen, container or equipment referred to in that paragraph has been seized on premises entered in accordance with paragraph (a), to place the blood, blood product, semen, container or equipment in a room, compartment or cabinet located on those premises; and

(iii) to mark, fasten and seal that container or, as the case may be, the door or opening providing access to that room, compartment or cabinet;

(j) in order to make copies of records or of parts of records which may be inspected in accordance with paragraph (d) or (e) or of statements produced in accordance with paragraph (f), the power to take away and retain, for such period as may be reasonably necessary, any such records or statements;

(k) if the inspector concerned reasonably believes that any such records or statements are evidence of an offence against this Part or a regulation made for the purposes of this Part, the power to take away and retain those records or statements until proceedings for the offence have been disposed of.

(2) Subsection (1) (a) does not authorise an inspector to effect an entry to premises by the use of force or to enter a part of premises that is used for residential purposes without the consent of the occupier of that part.

(3) Before taking away a record or statement under subsection (1), an inspector must tender an appropriate receipt to the person from whom it is taken.

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(4) Any blood, blood product, semen, container or equipment seized under subsection (1) (h) may, at the option of the inspector who made the seizure or another inspector acting in place of that inspector, be detained on the premises where it was found or be removed to other premises and detained there.

(5) If any information whatever is given to an inspector by an officer of a corporation which is carrying on or has carried on a business of supplying blood, blood products or semen, the information is, for the purposes of any proceedings against the corporation for an offence against this Part or a regulation made for the purposes of this Part, binding on and admissible in evidence against the corporation, unless it is proved that the information was given in relation to a matter in respect of which the officer had no authority to bind the corporation.

(6) The provisions of subsection (5) are in addition to any enactment or rule of law relating to the binding effect and admissibility in evidence of statements made by an officer of a corporation.

(7) In subsections (5) and (6), "officer", in relation to a corporation, has the same meaning as that expression has in the Companies (New South Wales) Code.

Obstruction etc. of inspectors

21R. (1) A person who—

(a) prevents or attempts to prevent an inspector from exercising the power conferred by section 21Q (1) (a);

(b) hinders or obstructs an inspector in the exercise of any of the other powers conferred by section 21Q; or

(c) fails or refuses to comply with a requirement made under that section,

is guilty of an offence and liable to a penalty not exceeding $1,000 or to imprisonment for a term not exceeding 3 months.

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(2) A person is not guilty of an offence under subsection (1) unless—

(a) it is established by the prosecutor that the inspector concerned produced at the relevant time the certificate of authority issued to the inspector under section 21P (2);

(b) where the offence arises under subsection (1) (a) or (b)—it is established by the prosecutor that the person was informed by the inspector concerned, or otherwise knew, that that inspector was empowered to exercise the power to which the offence relates; or

(c) where the offence arises under subsection (1) (c)—it is established by the prosecutor that the inspector concerned warned the person that a failure or refusal to comply with the requirement was an offence.

Disposal of seized articles

21S. (1) If—

(a) any blood, blood product, semen, container or equipment seized under section 21Q (1) (h)—

(i) has not been disposed of as referred to in subsection (2); or

(ii) in the case of blood, a blood product or semen, has not been destroyed under subsection (5),

and no application for disallowance of the seizure has been made within the period allowed by section 21T (1); or

(b) any such application has been made within that period and the application has been refused or withdrawn before a decision in respect of the application has been made,

the blood, blood product, semen, container or equipment shall be forfeited to the Crown and may be destroyed or disposed of in such manner as the Secretary directs.

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(2) If—

(a) any blood, blood product, semen, container or equipment seized under section 21Q (1) (h)—

(i) has not been forfeited by virtue of subsection (1); or

(ii) in the case of blood, a blood product or semen, has not been destroyed under subsection (5); and

(b) the Secretary is satisfied that no failure to comply with or contravention of any of the provisions of this Part or of the regulations made for the purposes of this Part has been committed in relation to the blood, blood product, semen, container or equipment,

the Secretary shall immediately cause the blood, blood product, semen, container or equipment to be delivered to such person as appears to the Secretary to be entitled to it.

(3) If—

(a) any blood, blood product, semen, container or equipment seized under section 21Q (1) (h) is forfeited to the Crown by virtue of subsection (1) because no application for disallowance of the seizure was made within the period allowed by section 21T (1);

(b) the Secretary is satisfied that no failure to comply with or contravention of any of the provisions of this Part or of any regulations made for the purposes of this Part has been committed in relation to the blood, blood product, semen, container or equipment; and

(c) the blood, blood product, semen, container or equipment has not been destroyed or disposed of in a manner that would prevent it from being dealt with in accordance with this subsection,

the Secretary shall immediately cause the blood, blood product, semen, container or equipment to be delivered to such person as appears to the Secretary to be the person who would, but for the forfeiture, have been entitled to it.

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(4) If any blood, blood product, semen, container or equipment is delivered to a person in accordance with subsection (3), such proprietary and other interests as existed immediately before the forfeiture are revived.

(5) If—

(a) an inspector who has seized any blood, blood product or semen under section 21Q (1) (h) is satisfied on reasonable grounds that the blood, blood product or semen contains a prescribed contaminant; and

(b) the blood, blood product or semen is not required or is no longer required to be retained for the purposes of any legal proceedings,

the inspector shall cause the blood, blood product or semen to be destroyed.

Disallowance of seizure

21T. (1) Any person claiming to be entitled to any blood, blood product, semen, container or equipment seized under section 21Q (1) (h) may, within 10 days after the date on which the seizure took place, make an application to the District Court for an order disallowing the seizure of the blood, blood product, semen, container or equipment.

(2) An application made under subsection (1) shall not be heard unless the applicant has previously served a copy of the application on the Secretary.

(3) The Secretary is entitled to appear as respondent at the hearing of an application made under subsection (1).

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(4) The District Court shall, on the hearing of an application made under subsection (1), make an order disallowing the seizure—

(a) if it is proved by or on behalf of the applicant that the applicant would, but for the seizure, be entitled to the blood, blood product, semen, container or equipment and if it is not proved by or on behalf of the respondent beyond all reasonable doubt that an offence was being or had been at the time of the seizure, committed in relation to the blood, blood product, semen, container or equipment; or

(b) if, in the opinion of the Court, there are exceptional circumstances justifying the making of an order disallowing the seizure,

but otherwise the Court must refuse the application.

(5) If on the hearing of an application made under subsection (1) it appears to the District Court that the blood, blood product, semen, container or equipment that is the subject of the application is required to be produced in evidence in any pending proceedings in connection with an offence against this Part or against any regulation made for the purposes of this Part, the Court may, either on the application of the respondent or on its own motion, adjourn the hearing until the conclusion of those proceedings.

(6) If the District Court makes an order under subsection (4) disallowing the seizure of any blood, blood product, semen, container or equipment, the Court must also make one or both of the following orders:

(a) an order directing the respondent to cause the blood, blood product, semen, container or equipment to be delivered to the applicant or to such other person as appears to the Court to be entitled to it;

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(b) where the blood, blood product, semen, container or equipment cannot for any reason be so delivered or has in consequence of the seizure depreciated in value, an order directing the Secretary to pay to the applicant such amount by way of compensation as the Court considers to be just and reasonable.

(7) The award of costs with respect to the hearing of an application made under subsection (1) is in the discretion of the District Court.

(8) If the District Court makes an order for the payment of any amount as compensation under subsection (6) (b) or awards any amount as costs under subsection (7), that order is enforceable as a judgment of the Court.

Injunctions

21U. (1) If a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of section 21G, the Supreme Court may, on the application of the Secretary, grant an injunction restraining the person from engaging in that conduct and, if in the opinion of the Court it is desirable to do so, requiring the person to do any act or thing.

(2) If an application is made to the Supreme Court for an injunction under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) pending the determination of the application.

(3) The Supreme Court may rescind or vary an injunction granted under subsection (1) or (2).

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(4) If an application is made to the Supreme Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Court to grant the injunction may be exercised—

(a) where the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in that conduct; or

(b) where it appears to the Court that, in the event of the injunction not being granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind.

Service of notices

21v. (1) A notice required under this Part to be served on an authorised supplier may be served—

(a) if the authorised supplier is a person other than a body corporate—

(i) by delivering it to that person personally; or

(ii) by sending it by post addressed to that person at the supplier's residence or at any place at which the supplier carries on business, whether of supplying blood, blood products or semen or not; or

(b) if the authorised supplier is a body corporate—

(i) by leaving it with a director or the secretary of the body corporate; or

(ii) by sending it by post addressed to the body corporate at its registered office or, if its registered office is not located in New South Wales, to the principal place of business of the body corporate in New South Wales.

(2) Subsection (1) does not affect the operation of any law authorising a document to be served in a manner not provided for by that subsection.

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(10) Section 36 (**Offences**)—

(a) Section 36 (3) (b)—

Omit "knowingly".

(b) Section 36 (3) (b)—

After "statement which", insert ", to that person's knowledge,".

(11) Section 37 (**Disclosure of information**)—

(a) Section 37 (1) (c)—

After "tissue" where firstly occurring, insert "(other than blood)".

(b) Section 37 (1) (ca), (cb)—

After section 37 (1) (c), insert:

(ca) where blood has been removed from the body of a person (whether living or deceased)—

(i) by a medical practitioner;

(ii) by an employee or member of the Australian Red Cross Society or of a body prescribed for the purpose of this subparagraph; or

(iii) by any other person of a class prescribed for the purpose of this subparagraph,

to—

(iv) the medical practitioner, any person who was the employer or partner of that practitioner when the blood was removed and any person who was an employee of that practitioner when the blood was removed or who has since been employed by that practitioner;

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(v) the Australian Red Cross Society or body so prescribed and any person who was an employee or member of that Society or body when the blood was removed or who has since been employed by that society or body; or

(vi) that other person, any person who was the employer or partner of that other person when the blood was removed and any person who was an employee of that other person when the blood was removed or has since been employed by that other person;

(cb) where blood has been removed from the body of a person (whether living or deceased) at a hospital or at premises prescribed, or at premises of a class prescribed, for the purposes of this paragraph—to any person who was employed at the hospital or premises when the blood was removed or who has since been employed at the hospital or premises;

(c) Section 37 (2)—

Omit "or give to any other person any information or document", insert instead "information or publish a record".

(d) Section 37 (3)—

Omit "information disclosed", insert instead "the disclosure of information or the publication of a record".

(e) Section 37 (3) (a)—

After "information", insert "or record".

(f) Section 37 (4)—

After section 37 (3), insert:

(4) For the purposes of this section, a person shall be deemed to have published a record if that person permits or facilitates access to that record by another person.

SCHEDULE 1—*continued*

AMENDMENTS TO THE HUMAN TISSUE ACT 1983—*continued*

(12) Section 38 (**Proceedings for offences**)—

(a) Omit "taken before a court of petty sessions", insert instead "dealt with before a Local Court".

(b) Omit "stipendiary magistrate", insert instead "Magistrate".

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