

HUMAN TISSUE TRANSPLANTS

Memorandum by the Commonwealth Secretariat

Modern developments in medical science enable the transplantation of different types of human tissue, from living and dead donors, and raise issues of a moral, ethical, religious and legal nature. The purpose of this paper is to review legislative measures in some Commonwealth jurisdictions designed to regulate these practices so that the public benefit is advanced while safeguards are preserved for the rights and beliefs of all the parties legitimately concerned in the decision which results in a transplant.

2. In the United Kingdom the Human Tissue Act was enacted in 1961, and repealed the Corneal Grafting Act, 1952. The 1961 Act, which is set out in Appendix 1, regulates all transplants from deceased persons for medical purposes. In cases where the deceased has expressed a request that his body should be so used, the person in lawful possession of the body may give the necessary authorisation, unless he has a reason to believe the request was later withdrawn. In other cases, after making "such reasonable enquiry as may be practicable" such a person may give permission if he has no reason to believe that the deceased had expressed an objection and not withdrawn it, or that any surviving spouse or relative objects to the body being so dealt with.

3. Various official and unofficial committees and organisations in Britain have published reports on the law of transplantation in recent years, and it is understood that the report of a government Working Party aimed at giving guidance to all concerned with transplants, and at reducing public anxiety, is soon to be published. The Working Party's Chairman was Lord Smith of Marlow, a former President of Royal College of Surgeons.

4. At various times between 1968 and 1979, Private Members' Bills have been introduced in the British House of Commons seeking to make new provision for human organ transplants but none have yet reached the statute book. As in the case of two 1974 Bills, a Private Member's Bill published last year sought to provide that all parts of the body of a deceased person should be available unless the deceased has expressed and recorded an objection during his lifetime (sometimes referred to as the "contracting out" approach).

5. The text of the 1979 Private Member's Transplant of Human Organs Bill is reproduced in Appendix 2. Under its provisions, a register of objections would be maintained and would be available on computer. A medical practitioner, at the request of another, would be able to authorise the removal of any part of a body for therapeutic or curative purposes unless the deceased person had registered his objection in the manner provided for.

6. During its 1970 Proceedings, the Uniform Law Conference of Canada adopted a Uniform Human Tissue Gift Act (first developed in 1965) which applies both to tissue from live and dead bodies. The Uniform Human Tissue Gift Act was re-examined during the Conference's 1971 proceedings. It is understood that these provisions have so far been enacted in eight of the Canadian jurisdictions—Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan. The Québec Civil Code has been amended to contain similar provisions. As an example, the Human Tissue Gift Act 1971 of Ontario is set out in Appendix 3.

7. It will be seen that the Canadian approach makes paramount the right of an individual to dispose of his or her body where a consent has been given in the prescribed manner. No other authorisation is necessary. If a deceased person's consent has not been given, after the surviving spouse, the closest readily available relative from a list in descending order of relationship may give the necessary authorisation. If the deceased has no relative, or if no one from the prescribed list is available, the person lawfully in possession of the body (or, where relevant, the administrative head of the hospital) may give consent.

8. A perusal of the New Zealand Human Tissue Act 1964, reproduced in Appendix 4 will show that the United Kingdom provisions are followed to a considerable degree. It will be noted, however that unlike the position in Britain, the New Zealand Act explains who is to be regarded as the person in lawful possession of a body where death has occurred in a hospital or in public or penal institutions. This Act was amended to a minor degree by Act No.85 of 1968 as shown at the end of the Appendix.

9. The Bermudan Human Tissue Act 1976 (set out in Appendix 5) allows, in that order, a surviving spouse, an adult child, a parent, or an adult brother or sister, to give the necessary authority. Unlike the position in Canada, in the absence of this class of persons, there is no residual authority in any other person to give permission.

10. A major event in Australia, in 1977, was the publication of the Australian Law Reform Commission's Report on Human Tissue Transplants (ALRC 7). The Report made recommendations aimed at creating an efficient mechanism for the donation and use of all tissues (except fetal tissue) from living and dead persons for transplantation, and for the performance of non-coronial autopsies. The Report contained draft legislation in the form of a Bill for an Ordinance for the Australian Capital Territory.

11. The Report reviewed the law of the States of Australia, and traced developments in other parts of the Commonwealth of Nations, in European countries, in the U.S.A., South and Central America and South Africa. The Report included a table of cases from Australia, Britain, New Zealand and the U.S.A. discussed in the text; a table of legislation from over 30 jurisdictions; and an extensive bibliography.

12. The Commission rejected submissions for the introduction into the law of Australia of the "contracting out" approach. The Commission explained that there was a clear divergence of views on the subject, many taking very positive attitudes. It was plain that there was a strong body of opinion in Australia in favour of "contracting out". This had been apparent from the public at large and from the medical profession, from the written submissions and from the evidence given at public hearings. On the other hand, many people strongly opposed "contracting out". The idea of the human body being generally available after death as a source of parts for community use might be acceptable in the future. It might even be acceptable in the near future. However, the Commission concluded that it should not be recommended at this stage.

13. The Commission's principle recommendations can thus be summarised—

- i adults should be able to give their tissue on independent medical advice, after signing a written consent, which could be revoked at any time;
- ii minors (under 18) after receiving independent medical advice, and with the consent of a parent, should be able to donate regenerative tissue. As regards non-regenerate tissue, donations by minors should generally be prohibited unless all the following conditions are satisfied—
 - a) the recipient is in danger of dying,
 - b) medical advice is given to the donor regarding the nature and effect of the removal, and of the transplantation,
 - c) the donor and recipient belong to the same immediate family,
 - d) the donor must have sufficient mental capacity fully to appreciate the position, and must agree to the removal,
 - e) the parents must consent,
 - f) an ad hoc Committee (comprising a judge, a medical practitioner and social worker or psychologist) must unanimously decide that the removal is desirable, is in the interests of the donor, and should be permitted;
- iii persons lacking legal capacity for reasons other than minority, whether adult or not, should not be subjected to tissue removal;
- iv there should be simplified procedures for donation by persons dying in hospital. It should be obligatory to obtain authorisation from close relatives, but by improved procedures;
- v coroners should be empowered to give pre-death approval to tissue removal. Such consent may be

oral, or by telephone, to be later confirmed. The person who can authorise tissue removal from a deceased should not be able to do so until the coroner has consented, and until the other prescribed inquiries have been conducted and the appropriate responses obtained;

- vi the law should forbid payment of any kind of a person for any dead body or part of a dead body, or for human tissue removed in accordance with the recommendations of the Report from any living person or from any dead person, or removed for the purposes of transplantation or other therapy or for medical or scientific purposes;
- vii the proposed legislation should provide clear protection to medical practitioners and other persons involved in activities permitted by the recommended legislation. Such persons should not be liable in any proceedings whether civil or criminal, for any act done in pursuance of a consent, agreement or authority given under the legislation when done without negligence and in good faith;
- viii provision should be made for removal of tissues obtained during normal autopsies, for public therapy purposes;
- ix the proposed legislation should contain a definition of death for all purposes: death has occurred when—
 - a) irreversible cessation of all function of the brain of the person, or
 - b) irreversible cessation of circulation of blood in the body of the person;
- x in the case of "brain death", where it is desired to remove tissue for transplantation, death should be declared by two registered medical practitioners one of whom should be a neurologist or neurosurgeon. Neither should participate in any transplant involving tissue of the deceased.

14. The Transplantation and Anatomy Ordinance 1978 of the A.C.T. came into force in December, 1978 and is closely based on the draft prepared by the Australian Law Reform Commission. The Ordinance is set out in Appendix 6.

15. The Australian Law Reform Commission made a plea in its Report for a uniform approach in Australia to transplant legislation. It was desired by the medical profession engaged in transplantation and was, for numerous reasons, as desirable in Australia as had proved to be the case in Canada and the U.S.A. Apart from the possibility of organs being removed in one State and implanted in another, national programmes, such as the human pituitary programme, would benefit from the elimination of legal differences between States. The same comment was true of donor cards and other systems used by tissue donors.

16. The Government of Queensland accepted most of the Commission's recommendations and enacted the Transplantation and Anatomy Act 1979

(No. 74 of 1979). In its 1979 Annual Report, the Commission recorded its understanding that the Report was under consideration by the Governments of New South Wales and of the Northern Territory. A committee in South Australia had been asked to examine the recommendations. It is understood that the Report was referred by the Standing Committee of Attorney-General to state Ministers of Health, and that the law is under review in Victoria.

17. As regards the question of the time of death, it will be noted that the British and New Zealand Acts state that the medical practitioner who removes a part of a body must have satisfied himself that life is extinct. The Canadian Uniform Act requires that the fact of death must be determined by at least two physicians in accordance with accepted medical practice. The Bermuda enactment states that for the purposes of the Act, the death of a person takes place at the time at which irreversible cessation of that person's brain function occurs. The A.C.T. and Queensland statutes (following the recommendation of the Australian Law Reform Commission in the Report discussed above) state that a person has died when there has occurred irreversible cessation, either of all function of the brain, or of circulation of the blood.

18. In 1974 the Manitoba Law Reform Commission published a Report under the title "A Statutory Definition of Death" proposing a definition of death for all purposes based on the irreversible cessation of all brain functions. This definition was adopted by the Provincial legislature of Manitoba and is reflected in the Vital Statistics Act (R.S.M., ch.V-60).

19. Last year the Law Reform Commission of Canada issued Working Paper No. 23 under the title "Protection of Life: Criteria for the Determination of Death". The Paper discusses death both as a medical and legal phenomenon, and reviews the experience of the U.S.A., Britain, France, Switzerland, Australia and the province of Manitoba, in this area. The Paper includes extensive endnotes, a selected bibliography and selected definitions of death in other jurisdictions. When discussing possible solutions, the Commission expressed the view that the problem is not purely theoretical; on the contrary, it was of real practical importance, no less to the public and to society at large than to the lawyer and the medical and health professionals who frequently must confront it in their professional lives. Whatever solution proposed ought to meet certain specific requirements. It should be flexible, allowing for adaptation to new developments in law and medicine, and it should try to reflect the consensus of a large segment of public and professional viewpoints, even though the prospect of a unanimously acceptable solution can be discounted as unlikely.

20. The Commission felt that three approaches were possible—

a) treating the time and criteria of death as a purely medical problem, and leaving their determination

to the exclusive jurisdiction of the medical profession;

- b) leaving to the case law the task of gradually developing coherent criteria as to time and determination of death;
- c) proceeding directly by way of legislation to define the criteria of death, and apply them in the adjudication of individual cases.

The Commission noted that their comparative review of experience in other jurisdictions had revealed that the legislative or regulatory solution seemed to have met with approval even in jurisdictions like the U.S.A. and Australia, or Manitoba, where the common law tradition might have favoured a case-by-case approach. Moreover the opposition to legislative intervention, in most cases, had been directed not against the principle itself but against its particular formulations. In other words, the discussion had now centered more around the content of the legislation than around the question of whether or not legislation was required. The Commission's tentative view was that a carefully drafted legislative intervention, designed to meet specific and clearly-defined objectives, was probably the best alternative. Its psychological and legal effects would be to dissipate fears shared by doctors, other medical personnel and the public. It would also eliminate the tensions between the insights of tradition and the imperatives of contemporary medicine. However, it would be wrong to opt for just any type of legislative intervention with an unspecified content. The parameters of the solution must be carefully set out according to the objectives and the general philosophy of the reform.

21. The Working Paper sets out the following objectives of the legislation the Commission presently had in mind—

- i it must avoid arbitrariness and give greater guidance to doctors, lawyers and the public, while remaining flexible enough to adapt to medical changes;
- ii it must not attempt to solve all the problems created by death, but only the problem of establishing criteria for its determinations;
- iii the one proposed piece of legislation must apply equally in all circumstances where a determination of death is at issue;
- iv it must recognise only the standard and criteria of death: it must not define the medical procedure to be used, nor the instruments or procedures by which death is to be determined;
- v it must recognise standards and criteria generally accepted by the Canadian public;
- vi to remain faithful to the popular concept, it must recognise that death is the death of an individual person, not of an organ or cells;
- vii it must not in practice lead to wrong or unacceptable situations;
- viii the proposed legislation must not determine the criteria of death by reference only, or mainly, to the practice of organ transplantation.

The Commission's tentative formulation of the legislative provision (which it hoped would be reflected in the law of all the Canadian jurisdictions following agreement between them) was in the following terms—

“A person is dead when an irreversible cessation of all that person's brain functions has occurred.

The cessation of brain functions can be determined by the prolonged absence of spontaneous cardiac and respiratory functions.

When the determination of the absence of cardiac and respiratory functions is made possible by the use of artificial means of support, the cessation of the brain functions may be determined by any means recognized by the ordinary standards of current medical practice.”

23. It is recognised that many Commonwealth jurisdictions have not yet had to confront the problems connected with human tissue transplants, but in some the sensitive issues involved are very much alive. Even where sophisticated medical techniques in human tissue transplantation have yet to develop locally, the moral, ethical and public policy issues surrounding commerce in human tissue might present difficulties which need to be faced. Ministers may wish to exchange ideas and experience in this area, and if it is their wish, the Secretariat could arrange for the dialogue to be continued, possibly through the medium of a workshop at which legal and medical experts from interested countries could benefit from each others thinking and experience. It may be that in certain areas of the Commonwealth, initiatives to promote legislation uniform in principle for the region could help to prevent unsatisfactory

practices from developing, and reduce the anguish and uncertainty that inadequately regulated transplants, and trade in human tissue, can produce.

24. The Government of Jamaica has suggested that this paper should be considered for inclusion in the Agenda.

Table of Legislation and Reports

| | |
|---|----------|
| Corneal Grafting Act 1952 (U.K.) | 1 |
| Human Tissue Act 1961 (U.K.) | 1, 9-10 |
| Transplantation of Human Organs Bill (U.K.) | 1, 11-12 |
| Uniform Human Tissue Gift Act (Canada) | 2 |
| Human Tissue Gift Act 1971 (Ontario) | 2, 13-17 |
| Human Tissue Act 1964 (New Zealand) | 2, 14-25 |
| Human Tissue Amendment Act 1968 (New Zealand) | 2, 25-26 |
| Human Tissue Act 1976 (Bermuda) | 2, 27-29 |
| Report: “Human Tissue Transplants” (Australia) | 2 |
| Transplantation and Anatomy Ordinance 1978 (A.C.T.) | 4, 31-54 |
| Transplantation and Anatomy Act 1979 (Queensland) | 5 |
| Report: “A Statutory Definition of Death” (Manitoba) | 5 |
| Vital Statistics Act (Manitoba) | 5 |
| Working Paper: “Protection of Life—Criteria for the Determination of Death (Canada) | 5 |

APPENDIX 1

THE HUMAN TISSUE ACT 1961

(9 & 10 Eliz. 2 c. 54)

An Act to make provision with respect to the use of parts of bodies of deceased persons for therapeutic purposes and purposes of medical education and research and with respect to the circumstances in which post-mortem examinations may be carried out; and to permit the cremation of bodies removed for anatomical examination [27th July 1961]

1. Removal of parts of bodies for medical purposes

(1) If any person, either in writing at any time or orally in the presence of two or more witnesses during his last illness, has expressed a request that his body or any specified part of his body be used after his death for therapeutic purposes or for purposes of medical education or research, the person lawfully in possession of his body after his death may, unless he has reason to believe that the request was subsequently withdrawn, authorise the removal from the body of any part or, as the case may be, the specified part, for use in accordance with the request.

(2) Without prejudice to the foregoing subsection, the person lawfully in possession of the body of a deceased person may authorise the removal of any part from the body for use for the said purposes if, having made such reasonable enquiry as may be practicable, he has no reason to believe—

- (a) that the deceased had expressed an objection to his body being so dealt with after his death, and had not withdrawn it; or
- (b) that the surviving spouse or any surviving relative of the deceased objects to the body being so dealt with.

(3) Subject to subsections (4) and (5) of this section, the removal and use of any part of a body in accordance with an authority given in pursuance of this section shall be lawful.

(4) No such removal shall be effected except by a fully registered medical practitioner, who must have satisfied himself by personal examination of the body that life is extinct.

(5) Where a person has reason to believe that an inquest may be required to be held on any body or that a post-mortem examination of any body may be required by the coroner, he shall not, except with the consent of the coroner,—

- (a) give an authority under this section in respect of the body; or
- (b) act on such an authority given by any other person.

(6) No authority shall be given under this section in respect of any body by a person entrusted with the body for the purpose only of its interment or cremation.

(7) In the case of a body lying in a hospital, nursing home or other institution, any authority under this section may be given on behalf of the person having the control and management thereof by any officer or person designated for that purpose by the first-mentioned person.

(8) Nothing in this section shall be construed as rendering unlawful any dealing with, or with any part of, the body of a deceased person which is lawful apart from this Act.

(9) (*Applies to Scotland.*)

2. Post-mortem examinations

(1) Without prejudice to section fifteen of the Anatomy Act, 1832 (which prevents that Act from being construed as applying to post-mortem examinations directed to be made by a competent legal authority), that Act shall not be construed as applying to any post-mortem examination carried out for the purpose of establishing or confirming the causes of death or of investigating the existence or nature of abnormal conditions.

(2) No post-mortem examination shall be carried out otherwise than by or in accordance with the instructions of a fully registered medical practitioner, and no post-mortem examination which is not directed or requested by the coroner or any other competent legal authority shall be carried out without the authority of the person lawfully in possession of the body; and subsections (2), (5), (6) and (7) of section one of this Act shall, with the necessary modifications, apply with respect to the giving of that authority.

3. Cremation of bodies after anatomical examination

The provision to be made and the certificate to be transmitted under section thirteen of the Anatomy Act, 1832, in respect of a body removed for anatomical examination may, instead of being provision for and a certificate of burial, as mentioned in that section, be provision for the cremation of the body in accordance with the Cremation Acts, 1902 and 1952, and a certificate of the cremation.

4. Short title, etc.

(1) This Act may be cited as the Human Tissue Act, 1961.

(2) The Corneal Grafting Act, 1952, is hereby repealed.

(3) This Act shall come into operation at the expiration of a period of two months beginning with the day on which it is passed.

(4) This Act does not extend to Northern Ireland.

APPENDIX 2

TRANSPLANT OF HUMAN ORGANS

A

B I L L

T O

Allow hospitals to take the organs, such as kidneys, of any patient, once clinical death has been established, other than those of a deceased person who has contracted out during his lifetime by registering, on a central computer, his desire not to donate organs. A.D. 1979

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:—

1.—(1) Subject to the provisions of subsections (2) to (6) of this section, a registered medical practitioner may, at the request of another such practitioner, authorise the removal and use for therapeutic or curative purposes of any part of the body of a person who has died while under his care, unless that person has before his death registered his objection under this Act to the use of his body, or that part of his body, for such purposes. Use of human organs for therapeutic or curative purposes.

(2) No authorisation shall be given, and no removal effected, under the foregoing subsection until the death of the person concerned (hereinafter referred to as "the donor") has been certified by two registered medical practitioners, neither of whom shall be the practitioner requesting the removal and one of whom shall be of not less than five years' standing as a registered practitioner.

(3) Any certification of death under the foregoing subsection shall be accompanied by notes recording the observations of the practitioners at the time of the death of the donor and the clinical action taken immediately prior to, and subsequent to, the death; and both the certificate and the notes shall be made available, if required, to a coroner or, in Scotland, to the procurator fiscal.

(4) No removal of a part of a body under this Act shall be effected except by a registered medical practitioner.

(5) Where there is reason to believe that an inquest may be required to be held on any body or that a post-mortem examination of any body may be required by the coroner, a practitioner shall not, except with the consent of the coroner,—

- (a) give an authorisation under this section in respect of the body, or
- (b) act on such an authorisation given by any other practitioner.

(6) In the application of this section to Scotland, for subsection (5) there shall be substituted the following subsection:—

“(5) Nothing in this section shall authorise the removal of any part from a body in any case where the procurator fiscal has objected to such removal.”

1961 c. 54.

(7) In section 1(1) of the Human Tissues Act 1961, the words “for therapeutic purposes or ” are hereby repealed.

Registration
of objections.

2.—(1) Registration of objections under this Act shall be effected by the Secretary of State on notifications made to him.

(2) Objection may be notified by a person only in respect of his own body or any specified part or parts thereof or, in the case of a person under sixteen years of age, by his parent or guardian; and the notification of any objection under this section may be varied or revoked by a subsequent notification made thereunder.

(3) The Secretary of State may from time to time by regulations made by statutory instrument—

(a) prescribe the form in which notification of objections under this Act is to be made, and

(b) make any other provision which he deems necessary for the proper performance of his functions under this section;

and any statutory instrument containing regulations made under this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) It shall be the duty of the Secretary of State to ensure that the information contained in the register established by him under this section is recorded on a computer and is available at all times for immediate transmission on request to registered medical practitioners.

(5) *Any expenses incurred by the Secretary of State in the performance of his functions under this section shall be payable out of money provided by Parliament.*

Short title,
commence-
ment and
extent.

3.—(1) This Act may be cited as the Transplant of Human Organs Act 1979.

(2) This Act shall come into force on such date as the Secretary of State may by order made by statutory instrument determine.

(3) This Act does not extend to Northern Ireland.

APPENDIX 3

The Human Tissue Gift Act, 1971

*Assented to July 28th, 1971
Legislature Dissolved September 13th, 1971*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act, Interpre-
tation
 - (a) "consent" means a consent given under this Act;
 - (b) "physician" means a person registered under *The R.S.O. 1960,
Medical Act*; c. 234
 - (c) "tissue" includes an organ, but does not include any skin, bone, blood, blood constituent or other tissue that is replaceable by natural processes of repair;
 - (d) "transplant" as a noun means the removal of tissue from a human body, whether living or dead, and its implantation in a living human body, and in its other forms it has corresponding meanings;
 - (e) "writing" for the purposes of Part II includes a will and any other testamentary instrument whether or not probate has been applied for or granted and whether or not the will or other testamentary instrument is valid.

PART I

INTER-VIVOS GIFTS FOR TRANSPLANTS

2. A transplant from one living human body to another living human body may be done in accordance with this Act, Transplants
under Act
are lawful but not otherwise.

3.—(1) Any person who has attained the age of majority, Consent for
transplant is mentally competent to consent, and is able to make a free and informed decision may in a writing signed by him consent to the removal forthwith from his body of the tissue specified in the consent and its implantation in the body of another living person.

(2) Notwithstanding subsection 1, a consent given there- Consent of
person
under age,
etc. under by a person who had not attained the age of majority, was not mentally competent to consent, or was not able to make a free and informed decision is valid for the purposes of this Act if the person who acted upon it had no reason to believe that the person who gave it had not attained the age of majority, was not mentally competent to consent, and was not able to make a free and informed decision, as the case may be.

Consent is full authority to proceed (3) A consent given under this section is full authority for any physician,

(a) to make any examination necessary to assure medical acceptability of the tissue specified therein; and

(b) to remove forthwith such tissue from the body of the person who gave the consent.

Stale consent void

(4) If for any reason the tissue specified in the consent is not removed in the circumstances to which the consent relates, the consent is void.

PART II

POST MORTEM GIFTS FOR TRANSPLANTS AND OTHER USES

Consent by person for use of his body after death

4.—(1) Any person who has attained the age of majority may consent,

(a) in a writing signed by him at any time; or

(b) orally in the presence of at least two witnesses during his last illness,

that his body or the part or parts thereof specified in the consent be used after his death for therapeutic purposes, medical education or scientific research.

Where donor under age

(2) Notwithstanding subsection 1, a consent given by a person who had not attained the age of majority is valid for the purposes of this Act if the person who acted upon it had no reason to believe that the person who gave it had not attained the age of majority.

Consent is full authority, exception

(3) Upon the death of a person who has given a consent under this section, the consent is binding and is full authority for the use of the body or the removal and use of the specified part or parts for the purpose specified, except that no person shall act upon a consent given under this section if he has reason to believe that it was subsequently withdrawn.

Consent by spouse, etc., for use of body after death

5.—(1) Where a person of any age who has not given a consent under section 4 dies, or in the opinion of a physician is incapable of giving a consent by reason of injury or disease and his death is imminent,

(a) his spouse of any age; or

(b) if none or if his spouse is not readily available, any one of his children who has attained the age of majority; or

- (c) if none or if none is readily available, either of his parents; or
- (d) if none or if neither is readily available, any one of his brothers or sisters who has attained the age of majority; or
- (e) if none or if none is readily available, any other of his next of kin who has attained the age of majority; or
- (f) if none or if none is readily available, the person lawfully in possession of the body other than, where he died in hospital, the administrative head of the hospital,

may consent,

- (g) in a writing signed by the spouse, relative or other person; or
- (h) orally by the spouse, relative or other person in the presence of at least two witnesses; or
- (i) by the telegraphic, recorded telephonic, or other recorded message of the spouse, relative or other person,

to the body or the part or parts thereof specified in the consent being used after death for therapeutic purposes, medical education or scientific research.

(2) No person shall give a consent under this section if he has reason to believe that the person who died or whose death is imminent would have objected thereto. Prohibition

(3) Upon the death of a person in respect of whom a consent was given under this section the consent is binding and is, subject to section 6, full authority for the use of the body or for the removal and use of the specified part or parts for the purpose specified except that no person shall act on a consent given under this section if he has actual knowledge of an objection thereto by the person in respect of whom the consent was given or by a person of the same or closer relationship to the person in respect of whom the consent was given than the person who gave the consent. Consent is full authority, exceptions

(4) In subsection 1, "person lawfully in possession of the body" does not include, Person lawfully in possession of body, exceptions

- (a) the supervising coroner or a coroner in possession of the body for the purposes of *The Coroners Act*; R.S.O. 1960, c. 69

R.S.O. 1960,
c. 80

- (b) the Public Trustee in possession of the body for the purpose of its burial under *The Crown Administration of Estates Act*;
- (c) an embalmer or funeral director in possession of the body for the purpose of its burial, cremation or other disposition; or
- (d) the superintendent of a crematorium in possession of the body for the purpose of its cremation.

Coroner's
direction

6. Where in the opinion of a physician, the death of a person is imminent by reason of injury or disease and the physician has reason to believe that section 7, 21 or 22 of *The Coroners Act* may apply when death does occur and a consent under this Part has been obtained for a post-mortem transplant of tissue from the body, a coroner having jurisdiction, notwithstanding that death has not yet occurred, may give such directions as he thinks proper respecting the removal of such tissue after the death of the person, and every such direction has the same force and effect as if it had been made after death under section 8 of *The Coroners Act*.

Determina-
tion of
death

7.—(1) For the purposes of a post-mortem transplant, the fact of death shall be determined by at least two physicians in accordance with accepted medical practice.

Prohibition

(2) No physician who has had any association with the proposed recipient that might influence his judgment shall take any part in the determination of the fact of death of the donor.

Idem

(3) No physician who took any part in the determination of the fact of death of the donor shall participate in any way in the transplant procedures.

Exception

(4) Nothing in this section in any way affects a physician in the removal of eyes for cornea transplants.

Where
specified
use fails

8. Where a gift under this Part cannot for any reason be used for any of the purposes specified in the consent, the subject-matter of the gift and the body to which it belongs shall be dealt with and disposed of as if no consent had been given.

PART III

GENERAL

Civil
liability

9. No action or other proceeding for damages lies against any person for any act done in good faith and without negligence in the exercise or intended exercise of any authority conferred by this Act.

10. No person shall buy, sell or otherwise deal in, directly or indirectly, for a valuable consideration, any tissue for a transplant, or any body or part or parts thereof other than blood or a blood constituent, for therapeutic purposes, medical education or scientific research, and any such dealing is invalid as being contrary to public policy. Sale, etc., of tissue prohibited

11.—(1) Except where legally required, no person shall disclose or give to any other person any information or document whereby the identity of any person, Disclosure of information

(a) who has given or refused to give a consent ;

(b) with respect to whom a consent has been given ; or

(c) into whose body tissue has been, is being or may be transplanted,

may become known publicly.

(2) Where the information or document disclosed or given pertains only to the person who disclosed or gave the information or document, subsection 1 does not apply. Exception

12. Any dealing with a body or part or parts thereof that was lawful before this Act came into force shall, except as provided in this Act, continue to be lawful. Lawful dealings not affected, exception

13. Every person who knowingly contravenes any provision of this Act is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than six months, or to both. Offence

14. Except as provided in section 6, nothing in this Act affects the operation of *The Coroners Act*. R.S.O. 1960, c. 69 not affected

15. A request made or an authorization given under *The Human Tissue Act, 1962-63* before this Act came into force may be acted upon in accordance with that Act notwithstanding the repeal of that Act. Transitional provision 1962-63, c. 59

PART IV

MISCELLANEOUS

16. *The Human Tissue Act, 1962-63* and *The Human Tissue Amendment Act, 1967* are repealed. 1962-63, c. 59; 1967, c. 38, repealed

17. This Act comes into force on the day it receives Royal Assent. Commencement

18. This Act may be cited as *The Human Tissue Gift Act, 1971*. Short title

APPENDIX 4

THE HUMAN TISSUE ACT 1964



ANALYSIS

| | |
|---|---|
| Title | 6. Removal, burial, and cremation of bodies |
| 1. Short Title and commencement | 7. Schools of anatomy |
| 2. Interpretation | 8. Inspectors of schools of anatomy |
| 3. Removal of human tissue for therapeutic purposes, etc. | 9. Licences to practise anatomy |
| 4. <i>Post mortem</i> examinations | 10. Saving |
| 5. Anatomical examinations | 11. Decency to be observed |
| | 12. Offences |
| | 13. Repeals |

1964, No. 19

An Act to consolidate certain enactments of the General Assembly relating to *post mortem* examinations, the practice of anatomy, and the removal of human tissue for therapeutic purposes and for purposes of medical education and research [16 October 1964]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Human Tissue Act 1964.

(2) This Act shall come into force on the first day of January, nineteen hundred and sixty-five.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Anatomical examination” means examination of a body or any part of a body for the purpose of the study of the science of anatomy:

“Body” means a dead human body; but does not include the body of a stillborn child:

“Inspector”, in relation to any school of anatomy, means a person appointed under section 8 of this Act to be an Inspector of that school of anatomy:

“Medical practitioner” means a person who is registered or deemed to be registered as a medical practitioner under the Medical Practitioners Act 1950; but does not include a person who is conditionally registered under that Act:

“Minister” means the Minister of Health:

“Practise anatomy” means teach the science of anatomy by performing an anatomical examination:

“School of anatomy” means a school of anatomy established under section 7 of this Act.

(2) Without limiting the rights, powers, or duties of any person entitled under any rule of law to the possession of any body, it is hereby declared that, for the purposes of this Act, the following persons shall be deemed to be persons lawfully in possession of bodies in the cases hereinafter specified, namely:

- (a) The Medical Superintendent or other medical officer for the time being in charge of any institution within the meaning of the Hospitals Act 1957, or the licensee of a licensed hospital within the meaning of Part V of that Act, in respect of any body lying in the institution or hospital:
- (b) The Medical Superintendent or other medical officer for the time being in charge of any public institution within the meaning of the Mental Health Act 1911, in respect of any body lying in the institution, being the body of an inmate:
- (c) The Superintendent of any penal institution, in respect of any body lying in the institution, being the body of an inmate.

Cf. 1908, No. 116, s. 24; 1954, No. 40, ss. 3, 4 (1)

3. Removal of human tissue for therapeutic purposes, etc.—

(1) If any person, either in writing at any time or orally in the presence of two or more witnesses during his last illness, has expressed a request that his body or any specified part of his body be used after his death for therapeutic purposes or for purposes of medical education or research, the person lawfully in possession of his body after his death may, unless he has reason to believe that the request was subsequently withdrawn, authorise the removal from the body of any part or, as the case may be, the specified part, for use in accordance with the request.

(2) Without limiting subsection (1) of this section, it is hereby declared that the person lawfully in possession of the body of a deceased person may authorise the removal of any part from the body for use for the said purposes if, having made such reasonable inquiry as may be practicable, he has no reason to believe—

- (a) That the deceased person had expressed an objection to his or her body being so dealt with after death, and had not withdrawn it; or
- (b) That the surviving spouse or any surviving relative of the deceased person objects to the body being so dealt with.

(3) Subject to subsections (4) and (5) of this section, the removal and use of any part of a body in accordance with an authority given in pursuance of this section shall be lawful.

(4) No such removal shall be effected except by a medical practitioner, who must have satisfied himself by personal examination of the body that life is extinct.

(5) Where a person has reason to believe that an inquest may be required to be held on any body or that a *post mortem* examination of any body may be required by the coroner, he shall not, except with the consent of the coroner,—

(a) Give an authority under this section in respect of the body; or

(b) Act on such an authority given by any other person.

(6) No authority shall be given under this section in respect of any body by a person entrusted with the body for the purpose only of its interment or cremation.

(7) Nothing in this section shall be construed as rendering unlawful any dealing with, or with any part of, the body of a deceased person which is lawful apart from this Act.

Cf. 1908, No. 116, ss. 24A, 24B; 1954, No. 40, s. 2; Human Tissue Act 1961, s. 1 (U.K.)

4. *Post mortem* examinations—(1) Nothing in sections 5 to 9 of this Act shall apply to any *post mortem* examination directed to be made by a coroner or any other competent legal authority, or to any *post mortem* examination carried out for the purpose of establishing or confirming the causes of death or investigating the existence or nature of abnormal conditions or for any of the purposes specified in section 3 of this Act.

(2) No *post mortem* examination shall be carried out otherwise than by or in accordance with the instructions of a medical practitioner; and no *post mortem* examination, other than one which is directed or requested by a coroner or any other competent legal authority, shall be carried out without the authority of the person lawfully in possession of the body; and subsections (2), (5), and (6) of section 3 of this Act shall, with the necessary modifications, apply with respect to the giving of that authority.

Cf. 1908, No. 116, ss. 24B, 37; 1954, No. 40, s. 2; Human Tissue Act 1961, s. 2 (U.K.)

5. Anatomical examinations—(1) If any person, either in writing at any time or orally in the presence of two or more witnesses during his last illness, has expressed a request that his body be used after his death for the purposes of anatomical examination, the person lawfully in possession of the body after death may authorise such an examination, and may permit the body to be removed to a school of anatomy accordingly, unless he has reason to believe that the request was subsequently withdrawn, or unless objection to the body being so dealt with is made by—

- (a) The surviving spouse of the deceased person; or
- (b) If there is no surviving spouse, a person who is the nearest known relative, or one of the nearest known relatives, of the deceased person.

(2) Without limiting subsection (1) of this section, it is hereby declared that the person lawfully in possession of the body of a deceased person may authorise the body to be used for the purposes of anatomical examination, and may permit the body to be removed to a school of anatomy accordingly, if, having made such reasonable inquiry as may be practicable, he has no reason to believe—

- (a) That the deceased person had expressed an objection to his or her body being so dealt with after death, and had not withdrawn it; or
- (b) That the surviving spouse or any surviving relative of the deceased person objects to the body being so dealt with.

(3) Subsections (5) and (6) of section 3 of this Act shall, with the necessary modifications, apply with respect to the giving of any authority under this section.

Cf. 1908, No. 116, ss. 31, 32

6. Removal, burial, and cremation of bodies—(1) Any person empowered by this Act to authorise the use of a body for anatomical examination shall, before causing the body to be removed to a school of anatomy, cause a written notice in duplicate to be sent to the medical practitioner in charge of that school of his intention so to do, and shall, so far as he is able, state in that notice the following particulars:

- (a) The name, age, and sex of the deceased person:
- (b) The place, date, and cause of death:
- (c) The religion of the deceased person.

(2) Every body that is removed for anatomical examination under this Act shall, before it is so removed, be placed in a decent coffin or shell and shall be removed therein.

(3) The medical practitioner in charge of any school of anatomy to which a body is removed for anatomical examination shall, within twenty-four hours of the time at which the body is received at the school of anatomy, cause to be sent to an Inspector notice in writing of the receipt of the body into the said school of anatomy.

(4) In no case shall any body undergo anatomical examination until after thirty-six hours have elapsed from the time of death, nor until after twenty-four hours' notice has been given to an Inspector of the intention to make the examination.

(5) All human remains resulting from anatomical examination shall be buried or cremated in accordance with the written instructions of an Inspector, who shall take into consideration any wishes that the deceased or his relatives may have expressed:

Provided that, with the permission of an Inspector, any part of the body may be retained indefinitely for further study.

(6) Notwithstanding anything in this Act or in any other enactment, the written instructions of an Inspector shall be sufficient authority for the cremation of any body that has been removed for anatomical examination or of any human remains resulting from such an examination.

(7) In the month of November in each year, the medical practitioner in charge of any school of anatomy shall cause to be sent to an Inspector a return specifying the name of every person whose body has undergone anatomical examination at the school of anatomy during the year and has been disposed of by burial or cremation under this section.

Cf. 1946, No. 40, s. 53

7. Schools of anatomy—(1) The Governor-General in Council may from time to time authorise the establishment of schools of anatomy where the study and practice of anatomy may be carried on in connection with any University or school of medicine, in such place or places and upon such conditions as he thinks fit, and may at any time revoke any such authority.

(2) It shall not be lawful for any person to perform an anatomical examination, or to receive or have in his possession any body for anatomical examination, at any place other than a school of anatomy.

(3) Nothing in this section shall prevent any person, who is licensed under this Act to practise anatomy and who obtains the permission of an Inspector in writing for that purpose and the permission of the governors, teachers, or proper authorities of the school at which he is licensed to practise anatomy, from removing any body or portion of a body to such place as the Inspector deems fit for the purpose of practising anatomy, upon such terms and conditions as the Inspector and authorities of the school, in their uncontrolled discretion, think fit.

Cf. 1908, No. 116, ss. 25, 34

8. Inspectors of schools of anatomy—(1) The Minister may from time to time, with the concurrence of the Minister in Charge of Police, appoint one or more members of the Police as an Inspector or Inspectors of any school of anatomy, and may direct in what manner Inspectors shall transact the duties of their office.

(2) Every Inspector shall, unless he sooner dies, continue in office until some other person is appointed in his place.

(3) Every Inspector of a school of anatomy shall make a quarterly return to the Minister of all bodies which, during the preceding quarter, have been removed for anatomical examination to the school, or that may have been removed to any other place under the provisions of section 7 of this Act, distinguishing the sex and, as far as is known at the time, the name and age of each person whose body was so removed as aforesaid.

(4) An Inspector may visit and inspect at any time the school of anatomy for which he is appointed an Inspector.

(5) There shall be payable to an Inspector, out of money appropriated by Parliament for the purpose, such remuneration as is fixed from time to time by the Minister of Finance.

(6) Every Inspector of any school of anatomy who was in office immediately before the commencement of this Act shall continue in office after the commencement of this Act as if he had been appointed by the Minister under this section.

Cf. 1908, No. 116, ss. 27, 28, 29, 30

9. Licences to practise anatomy—(1) Subject to the provisions of section 10 of this Act, it shall not be lawful for any person to practise anatomy, or to receive or have in his possession any body for anatomical examination, unless he is licensed under this section to practise anatomy.

(2) The Minister may grant a licence to practise anatomy, subject to such conditions as he sees fit to impose, to any medical practitioner who is employed to teach at a school of anatomy.

(3) Any licence granted under this section shall specify the school of anatomy at which the holder of the licence may practise anatomy.

(4) Any licence granted under this section shall continue in force until it is cancelled or surrendered:

Provided that any such licence may, if the Minister thinks fit, be granted for any specified period, and in any such case the licence may be renewed from time to time by the Minister, if he thinks fit, for any specified period.

(5) Any licence granted under this section may be cancelled by the Minister at any time by notice in writing to the holder of the licence.

(6) Any licence to practise anatomy that was subsisting immediately before the commencement of this Act shall continue in force after the commencement of this Act as if it had been granted by the Minister under this section.

Cf. 1908, No. 116, s. 26

10. Saving—Nothing in sections 5 to 9, or in section 12, of this Act shall be construed as prohibiting—

- (a) Any anatomical examination or the practice of anatomy by any person who is acting under the directions and supervision of a person licensed to practise anatomy and is carrying out the anatomical examination or the practice of anatomy at a school of anatomy or place at which the person so supervising is licensed to practise anatomy; or
- (b) The receipt or possession of a body on behalf of a person so licensed.

11. Decency to be observed—Any person performing a *post mortem* or anatomical examination or removing any part of a body pursuant to this Act shall do so in a manner that avoids unnecessary mutilation of the body which is being examined or from which any such removal is being effected, and shall conduct the examination or removal in an orderly, quiet, and decent manner.

Cf. 1908, No. 116, s. 35

12. Offences—Every person commits an offence and is liable on summary conviction to a fine not exceeding five hundred pounds, or to imprisonment for a term not exceeding three months, who,—

- (a) Not being a medical practitioner, performs any *post mortem* examination otherwise than in accordance with the instructions of a medical practitioner; or
- (b) Not being licensed under this Act to practise anatomy, practises anatomy, or, otherwise than on behalf of a person so licensed, receives or has in his possession any body for the purpose of anatomical examination; or
- (c) Performs an anatomical examination of a body at a place where or at a time when that examination is prohibited by this Act.

Cf. 1908, No. 116, s. 39

13. Repeals—The following enactments are hereby repealed:

- (a) The Medical Act 1908;
- (b) Section 53 of the Statutes Amendment Act 1946;
- (c) The Medical Amendment Act 1954.

An Act to amend the Human Tissue Act 1964

[13 December 1968]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Human Tissue Amendment Act 1968, and shall be read together with and deemed part of the Human Tissue Act 1964 (hereinafter referred to as the principal Act).

2. Interpretation—Section 2 of the principal Act is hereby amended by repealing the definition of the term “medical practitioner”, in subsection (1), and substituting the following definition:

“‘Medical practitioner’ means a person who is registered or deemed to be registered as a medical practitioner under the Medical Practitioners Act 1950, and, subject to section 4A of this Act, includes a person who is conditionally registered under that Act:”.

3. Restrictions on persons conditionally registered—The principal Act is hereby amended by inserting, after section 4, the following section:

“4A. For the purposes of sections 3 and 4 of this Act, but for no other purpose of this Act, a person who is conditionally registered under the Medical Practitioners Act 1950 shall be subject to the restrictions imposed by section 10 of the last-mentioned Act.”

APPENDIX 5



BERMUDA

1976 : No. 11

THE HUMAN TISSUE ACT 1976

[Date of Assent 27th February, 1976]

[Operative Date 27th February, 1976]

WHEREAS it is expedient to make provision for the use of parts of the bodies of deceased persons for therapeutic purposes:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

1. For the purposes of this Act the death of a person takes place at the time at which irreversible cessation of that person's brain function occurs. Meaning of death.

2. (1) Where —

(a) the death of a person occurs; and

(b) a certificate to that effect has been made and signed by two medical practitioners; and

(c) a valid direction has been made under section 3 or 4,

such direction shall, subject to subsections (2) and (3), be full authority in law for the use of the body of that person or for the removal and use of the specified part or parts thereof for the purposes specified in the direction.

(2) Where a direction under section 3 or 4 authorizes the removal of any specified part of the body of a dead person such removal and any subsequent transplantation of such part in

Use of
body for
medical
purposes.

the body of any other person shall not be performed by a medical practitioner who signed the certificate mentioned in subsection (1) (b).

- (3) A person shall not act upon a direction —
- (a) in the case of a direction under section 3, if he has reason to believe that the person who gave the direction withdrew it;
 - (b) in the case of a direction under section 4 —
 - (i) if he has actual knowledge that another member of the same class of persons as the person who gave the direction objects thereto; or
 - (ii) if he has reason to believe that the dead person would, if living, have objected thereto; or
 - (c) in either case, except with the consent of the coroner, if he has reason to believe that an inquest may be required to be held upon the body.

(4) Any person who contravenes subsection (2) or (3) shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$500 or imprisonment for a term not exceeding 6 months.

**Direction
for use of
body made
before death.**

3. (1) A person 18 years of age or over may, —
- (a) in writing at any time; or
 - (b) orally in the presence of at least two witnesses during his last illness,

direct that his body or any specified part thereof be used after his death for therapeutic purposes or for purposes of medical education or research.

(2) The Administrator of the King Edward VII Memorial Hospital shall maintain a register in which any person may enter a direction for the purposes of subsection (1) (a) and such register shall be conclusive evidence of the making of such direction.

(3) A direction given by a person under 18 years of age is valid for the purposes of this section if the person who acted upon it had no reason to believe that the person who gave the direction was under 18 years of age at the time he gave it.

**Direction for
use of body
by members
of family
of dead
person.**

4. Where a person other than a person who has made a direction under section 3 dies, —
- (a) his spouse; or

- (b) if none, any one of his children 21 years of age or over; or
- (c) if none, either of his parents; or
- (d) if none, any of his brothers or sisters 21 years of age or over,

may direct that the body or any specified part thereof may be used for therapeutic purposes or for purposes of medical education or research.

5. For the avoidance of doubt it is declared that any person who, acting in pursuance of a valid direction made under section 3 or 4, causes the termination of any bodily function of a person whose death has occurred for the purposes of this Act shall not thereby be deemed to have unlawfully killed that person for the purposes of the Criminal Code.

Modification
of the
Criminal
Code.

AUSTRALIAN CAPITAL TERRITORY

No. 44 of 1978

TRANSPLANTATION AND ANATOMY ORDINANCE 1978

TABLE OF PROVISIONS

PART I—PRELIMINARY

Section

1. Short title
2. Commencement
3. Repeal
4. Interpretation
5. Designated officers

PART II—DONATIONS OF TISSUE BY LIVING PERSONS

Division 1—Exclusion of Certain Tissue

6. Interpretation

Division 2—Donations by Adults

7. Blood transfusions not subject to this Division
8. Consent by adult living donor to removal of regenerative tissue
9. Consent by adult living donor to removal of non-regenerative tissue for transplantation
10. Medical practitioner may give certificate in relation to consent

Division 3—Donations from Children

11. Blood transfusions not subject to this Division
12. Reference to parent not to include guardian, &c.
13. Removal for transplantation of regenerative tissue from body of child
14. Removal for transplantation of non-regenerative tissue from body of child

Division 4—Effect of Consents and Authorities

15. Effect of consent under section 8
16. Effect of consent under section 9
17. Effect of consent under section 13
18. Effect of authority under section 14
19. Written consent not to be sufficient authority in certain circumstances

Division 5—Blood Transfusions

20. Consents by adults to removal of blood
21. Consents to removal of blood from children
22. Consent to be sufficient authority for removal of blood at certain places
23. Administration of blood transfusions to children without parental consent

Division 6—Revocation of Consent or Agreement

24. Revocation of consent
25. Child no longer in agreement with removal and transplantation

PART III—DONATIONS OF TISSUE AFTER DEATH

26. De facto spouses
27. Authority to remove tissue where body of deceased at a hospital
28. Authority to remove tissue where body of deceased not at a hospital
29. Consent by the Coroner
30. Certificate of specialist, &c., required in certain situations
31. Effect of authority under this Part

PART IV—POST-MORTEM EXAMINATIONS

- 32. Authority for post-mortem examination
- 33. Authority for post-mortem examination where body of deceased not at a hospital
- 34. Consent by the Coroner
- 35. Effect of authority under this Part

PART V—DONATIONS FOR ANATOMICAL PURPOSES

- 36. Interpretation
- 37. Authority for anatomy where body of deceased at a hospital
- 38. Authority for anatomy where body of deceased not at a hospital
- 39. Provisions applicable where deceased person consented to retention of his body for anatomy
- 40. Consent by the Coroner
- 41. Effect of authority under this Part

PART VI—SCHOOLS OF ANATOMY

- 42. Schools of anatomy
- 43. Regulations for the control, &c., of schools of anatomy

PART VII—PROHIBITION OF TRADING IN TISSUE

- 44. Certain contracts not to be entered into

PART VIII—DEFINITION OF DEATH

- 45. When death occurs

PART IX—MISCELLANEOUS

- 46. Ordinance does not prevent specified removals of tissue, &c.
- 47. Exclusion of liability of person acting in pursuance of consent or authority
- 48. Offences
- 49. Disclosure of information
- 50. Amendment of *Seat of Government (Administration) Ordinance 1930*
- 51. Regulations

AUSTRALIAN CAPITAL TERRITORY

No. 44 of 1978

AN ORDINANCE

To make provision for and in relation to the removal of human tissues for transplantation, for post-mortem examinations, for the definition of death, for the regulation of schools of anatomy, and for related purposes

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act* 1910.

Dated this thirteenth day of December 1978.

ZELMAN COWEN
Governor-General

By His Excellency's Command,

RALPH J. HUNT
Minister of State for Health

TRANSPLANTATION AND ANATOMY ORDINANCE 1978

PART I—PRELIMINARY

1. This Ordinance may be cited as the *Transplantation and Anatomy Ordinance* 1978.* Short title

2. This Ordinance shall come into operation on a date to be fixed by the Minister of State for the Capital Territory by notice published in the *Gazette*. Commencement

3. (1) The *Blood Transfusions (Infants) Ordinance* 1970 and the *Trading in Blood (Prohibition) Ordinance* 1973 are repealed. Repeal

(2) The Anatomy Act, 1901 of the State of New South Wales shall cease to be in force in the Territory.

4. (1) In this Ordinance, unless the contrary intention appears— Interpretation
“child” means a person who—
(a) has not attained the age of 18 years; and
(b) is not married;

- “ Commission ” has the same meaning as in the *Health Commission Ordinance 1975*;
- “ Coroner ” means a person who is a Coroner for the Territory;
- “ designated officer ”, in relation to a hospital, means a person appointed under section 5 to be a designated officer for that hospital;
- “ medical practitioner ” means a person who is registered or licensed under a law of a State or Territory relating to the registration or licensing of medical practitioners;
- “ next of kin ” means—
- (a) in relation to a deceased child—a person referred to in sub-paragraph (a) (i), (a) (ii) or (a) (iii) of the definition of “ senior available next of kin ”; and
 - (b) in relation to any other deceased person—a person referred to in sub-paragraph (b) (i), (b) (ii), (b) (iii) or (b) (iv) of that definition;
- “ non-regenerative tissue ” means tissue other than regenerative tissue;
- “ regenerative tissue ” means tissue that, after injury or removal, is replaced in the body of a living person by natural processes of growth or repair;
- “ senior available next of kin ” means—
- (a) in relation to a deceased child—
 - (i) where a parent of the child is available—a parent of the child;
 - (ii) where a parent of the child is not available—a brother or sister of the child who has attained the age of 18 years and who is available; or
 - (iii) where no person referred to in sub-paragraph (i) or (ii) is available—a person who was the guardian of the child immediately before the death of the child and who is available; and
 - (b) in relation to any other deceased person—
 - (i) where the person, immediately before his death, was married and the person who was then his spouse is available—the person who was his spouse;
 - (ii) where the person, immediately before his death, was not married or, if he was married, his spouse is not available—a son or daughter of the person who has attained the age of 18 years and who is available;
 - (iii) where no person referred to in sub-paragraph (i) or (ii) is available but a parent of the person is available—that parent; or

- (iv) where no person referred to in subparagraph (i), (ii) or (iii) is available— a brother or sister of the person who has attained the age of 18 years and is available;

“tissue” includes an organ, or part, of a human body or a substance extracted from, or from a part of, the human body.

(2) A reference in this Ordinance to the transplantation of tissue shall be read as including a reference to the transplantation of any part of the tissue and to the transplantation of a substance obtained from the tissue.

5. (1) The Chief Medical Administrator of a hospital conducted by the Commission may, by instrument in writing, appoint such persons, being medical practitioners, as he considers necessary to be, for the purposes of this Ordinance, designated officers for that hospital.

(2) The persons or body having the control and management of a hospital other than a hospital conducted by the Commission may, by instrument in writing, appoint such persons, being medical practitioners, as those persons or that body consider necessary to be, for the purposes of this Ordinance, designated officers for that hospital.

PART II—DONATIONS OF TISSUE BY LIVING PERSONS

Division 1—Exclusion of Certain Tissue

6. In this Part, a reference to tissue shall not be read as including a reference to fetal tissue, spermatozoa or ova.

Division 2—Donations by Adults

7. Nothing in this Division prevents the removal in accordance with Division 5 of blood from the body of a person.

8. A person may give his consent in writing to the removal from his body of specified regenerative tissue (other than blood)—

- (a) for the purpose of the transplantation of the tissue to the body of another living person; or
- (b) for use for other therapeutic purposes or for medical or scientific purposes.

Consent by adult living donor to removal of non-regenerative tissue for transplantation

9. (1) A person may give his consent in writing to the removal from his body, at any time after the expiration of 24 hours from the time at which the consent is given, of specified non-regenerative tissue for the purpose of the transplantation of the tissue to the body of another living person.

(2) A consent given under sub-section (1) shall specify the time at which the consent is given.

Medical practitioner may give certificate in relation to consent

10. A medical practitioner may certify in writing—

- (a) that the consent in writing of a person, the terms of which consent are set out in the certificate, was given in his presence;
- (b) that he explained to the person before the consent was given the nature and effect of the removal from the body of that person of the tissue specified in the consent; and
- (c) that he is satisfied—
 - (i) that, at the time the consent was given, the person had attained the age of 18 years;
 - (ii) that, at that time, the person was of sound mind; and
 - (iii) that the consent was freely given.

Division 3—Donations from Children

Blood transfusions not subject to this Division

11. Nothing in this Division prevents the removal in accordance with Division 5 of blood from the body of a child.

References to parent not to include guardian, &c.

12. In this Division, a reference to the parent of a child shall not be read as including a reference to the guardian of a child or to another person standing in *loco parentis* to the child.

Removal for transplantation of regenerative tissue from body of child

13. (1) A person who is a parent of a child may give his consent in writing to the removal from the body of the child of specified regenerative tissue for the purpose of the transplantation of the tissue to the body of another member of the family of the child or to the body of a relative of the child.

(2) A medical practitioner may certify in writing—

- (a) that the consent in writing of a person who is a parent of a child, the terms of which consent are set out in the certificate, was given in his presence;
- (b) that he explained to the person and to the child before the consent was given the nature and effect of the removal from the body of that child of the tissue specified in the consent and the nature of the transplantation of that tissue; and
- (c) that he is satisfied that, at the time the consent was given, the child—
 - (i) understood the nature and effect of the removal of the tissue and the nature of the transplantation; and
 - (ii) was in agreement with the proposed removal and transplantation of tissue.

14. (1) A person who is a parent of a child may give his consent in writing to the removal from the body of the child, at any time after the expiration of 24 hours from the time at which the consent is given, of specified non-regenerative tissue for the purpose of the transplantation of the tissue to the body of another member of the family of the child. Removal for trans-plantation of non-regenerative tissue from body of child

(2) A consent given under sub-section (1) shall specify the time at which the consent is given.

(3) A medical practitioner may certify in writing—

(a) that the consents in writing of both persons who are the parents of a child, the terms of which consents are set out in the certificate, were given in his presence;

(b) that, before the consents were given—

(i) he advised those persons and the child that a person who was a member of the family of the child was in danger of dying unless certain non-regenerative tissue was transplanted to the body of that person from the body of another person; and

(ii) he explained to those persons and the child the nature and effect of the removal from the body of the child of the tissue specified in the consent and the nature of the transplantation of that tissue;

and

(c) that he is satisfied that, at the time the consent was given, the child—

(i) understood the nature and effect of the removal of the tissue and the nature of the transplantation; and

(ii) was in agreement with the proposed removal and transplantation of tissue.

(4) Where each of the parents of a child gives a written consent under sub-section (1) and a medical practitioner gives a certificate in accordance with sub-section (3) in relation to those consents, the medical practitioner who gives that certificate shall refer the matter to the committee appointed in accordance with sub-section (5).

(5) The Minister shall, by instrument in writing, appoint 3 persons of whom—

(a) one person shall be a Judge of the Supreme Court;

(b) one person shall be a medical practitioner; and

(c) one person shall be a social worker or a psychologist, to be a committee for the purposes of this section.

(6) Where only one parent of a child is available and that parent gives a written consent under sub-section (1), a medical practitioner who gives a certificate in relation to that consent that is restricted in all respects to that parent and the child but is otherwise in accordance with sub-section (3) shall refer the matter to the committee appointed in accordance with sub-section (5).

(7) Where a medical practitioner, in accordance with this section, refers a matter to the committee appointed for the purposes of this section, the committee may, if each of the members of the committee is of the opinion that it is desirable in all of the circumstances of the case that the tissue referred to in the consent or consents, as the case may be, be removed from the body of the child for transplantation to the body of the other person therein referred to, authorize, by instrument in writing, the removal of that tissue for the purpose of transplantation to the body of that other person.

Division 4—Effect of Consents and Authorities

Effect of
consent
under
section 8

15. Subject to section 19, a document that purports to be a consent given in accordance with section 8 is, where a certificate has been given in accordance with section 10 in relation to that consent, sufficient authority for a medical practitioner, other than the medical practitioner who gave the certificate, to remove the regenerative tissue specified in the consent for the purpose or the use, as the case may be, specified in the consent.

Effect of
consent
under
section 9

16. Subject to section 19, a document that purports to be a consent given in accordance with section 9 is, where a certificate has been given in accordance with section 10 in relation to that consent, sufficient authority for a medical practitioner, other than the medical practitioner who gave the certificate, to remove, at any time after the expiration of 24 hours from the time specified in the consent to be the time at which the consent was given, the non-regenerative tissue specified in the consent for the purpose of the transplantation of the tissue to the body of another living person.

Effect of
consent
under
section 13

17. Subject to section 19, a document that purports to be a consent given in accordance with sub-section 13 (1) is, where a certificate has been given in accordance with sub-section 13 (2) in relation to that consent, sufficient authority for a medical practitioner, other than the medical practitioner who gave the certificate, to remove the regenerative tissue specified in the consent for the purpose specified in the consent.

Effect of
authority
under
section 14

18. (1) Subject to sub-section (2), an authority given in accordance with section 14 by the committee established for the purposes of that section is sufficient authority for a medical practitioner, other than the medical practitioner who gave a certificate in accordance with that section, to remove, at any time after the expiration of 24 hours from the time at which the latest relevant consent under sub-section 14 (1) was given, the non-regenerative tissue specified in the authority for the purpose of transplantation to the body of the other person referred to in the authority.

(2) Sub-section (1) does not apply in relation to a medical practitioner—

(a) who has been informed—

- (i) that a consent given under sub-section 14 (1) that is relevant in relation to the authority has been revoked; or
- (ii) that the child referred to in the consent is no longer in agreement with the removal and transplantation of the tissue specified in the authority; or

- (b) who knows or has reasonable grounds for suspecting that the certificate given in accordance with section 14 that is relevant in relation to the authority contains a false statement.

19. A document that purports to be a consent given in accordance with section 8 or 9 or with sub-section 13 (1) is not sufficient authority for a medical practitioner to remove tissue if—

Written consent not to be sufficient authority in certain circumstances

- (a) the medical practitioner has been informed that the consent has been revoked;
- (b) the medical practitioner knows or has reasonable grounds for suspecting that a certificate given for the purpose of section 10 or sub-section 13 (2), as the case may be, in relation to that document contains a false statement; or
- (c) in the case of a document that purports to be a consent given in accordance with sub-section 13 (1)—the medical practitioner has been informed that the child is no longer in agreement with the removal and transplantation of the tissue.

Division 5—Blood Transfusions

20. A person, other than a child, who is of sound mind may consent to the removal of blood from his body—

Consents by adults to removal of blood

- (a) for transfusion to another person; or
- (b) for the purpose of the use of the blood or of any of its constituents for other therapeutic purposes or for medical or scientific purposes.

21. The parent of a child may consent to the removal of blood from the body of the child for a purpose referred to in section 20 if—

Consents to removal of blood from children

- (a) a medical practitioner advises that the removal is not likely to be prejudicial to the health of the child; and
- (b) the child agrees to the removal.

22. A consent duly given under section 20 or 21 is sufficient authority for the removal of blood from the body of the person who has given the consent, or from the body of the child of the person who has given the consent, as the case requires—

Consent to be sufficient authority for removal of blood at certain places

- (a) at a hospital; or
- (b) at premises, or in a vehicle, used by the Australian Red Cross Society, or by another body approved by the Minister for the purpose of this Division, for the removal of blood from the bodies of persons.

Adminis-
tration of
blood
transfusions
to children
without
parental
consent

23. (1) In this section—

“blood transfusion” means the transfusion of human blood or any of the constituents of human blood;

“child” means a person who has not attained the age of 18 years.

(2) The operation of removing all or part of the blood of a person and replacing it with blood taken from another person shall, for the purposes of this section, be deemed to be a blood transfusion.

(3) Subject to sub-section (4), a medical practitioner may administer a blood transfusion to a child without the consent of a parent of the child or a person having authority to consent to the administration of the transfusion if—

(a) that medical practitioner and at least one other medical practitioner are of the opinion that the child is in danger of dying and that the administration of a blood transfusion to the child is the best means of preventing the death of the child; and

(b) the first-mentioned medical practitioner has satisfied himself that the blood to be transfused is compatible with the blood of the child.

(4) A medical practitioner is not entitled to administer a blood transfusion to a child in pursuance of sub-section (3) unless—

(a) a parent of the child, or a person having authority to consent to the administration of the transfusion, upon being asked to consent to the administration of the transfusion, has failed to give his consent; or

(b) the medical practitioner is of the opinion that, in the circumstances, it is not practicable to delay the administration of the transfusion until the consent of a parent of the child or a person having authority to consent to the administration of the transfusion can be obtained.

(5) Where a blood transfusion is administered to a child in accordance with this section, the transfusion shall, for all purposes, be deemed to have been administered with the consent of a parent of the child or a person having authority to consent to the administration of the transfusion.

(6) Nothing in this section relieves a medical practitioner from liability in respect of the administration of a blood transfusion to a child, being a liability to which he would have been subject if the transfusion had been administered with the consent of a parent of the child or a person having authority to consent to the administration of the transfusion.

Division 6—Revocation of Consent or Agreement

Revocation
of consent

24. (1) A reference in this section, in relation to a consent given for the purposes of this Ordinance, to the donor shall be read—

(a) in a case in which the consent is given in respect of a child—as a reference to the child; and

(b) in any other case—as a reference to the person who gave the consent.

(2) A person who gives a consent for the purposes of this Ordinance may at any time thereafter revoke that consent by indicating, either orally or in writing—

(a) where the donor, in relation to that consent, is a patient in a hospital—

(i) to a designated officer for that hospital;

(ii) to a medical practitioner who is attending the donor in a professional capacity; or

(iii) to a nurse or nursing aid employed at that hospital; and

(b) where the donor is not a patient in a hospital—to a medical practitioner who is attending the donor in a professional capacity,

that the consent is revoked.

(3) Where—

(a) the donor is a patient in a hospital; and

(b) the person who gave the consent for the purposes of this Ordinance indicates to a person referred to in sub-paragraph (2) (a) (ii) or (iii) that the consent is revoked,

that person shall inform a designated officer for that hospital forthwith of the revocation of the consent.

(4) Where a person revokes his consent in accordance with sub-section (2)—

(a) if the donor is a patient in a hospital at the time of the revocation—the designated officer for the hospital to whom the revocation is communicated in accordance with sub-section (2) or (3); or

(b) if the donor is not a patient in a hospital at that time—the medical practitioner to whom the revocation is communicated,

shall, if it appears to him, after making such inquiries (if any) as are reasonable in the circumstances, that a medical practitioner is proposing to rely on the consent in connection with the removal of tissue from the body of the donor, inform that medical practitioner forthwith that the consent has been revoked.

(5) Where a consent is revoked, a person who has in his possession the instrument of consent shall, upon being informed by a designated officer for a hospital or by the medical practitioner to whom the revocation is communicated that the consent has been revoked, surrender—

(a) that instrument; and

(b) if a certificate given in accordance with section 10 or with sub-section 13 (2) or 14 (3) is in his possession, being a certificate relating to the consent—that certificate,

to the person who gave the consent.

Child no longer in agreement with removal and transplantation

25. (1) Where a medical practitioner has given a certificate in accordance with sub-section 13 (2) or 14 (3) and the child in relation to whom the certificate has been given informs—

(a) if the child is a patient in a hospital—

(i) a designated officer for that hospital;

(ii) a medical practitioner who is attending the child in a professional capacity; or

(iii) a nurse or nursing aid employed at that hospital;
and

(b) if the child is not a patient in a hospital—a medical practitioner who is attending the child in a professional capacity, that he is no longer in agreement with the proposed removal and transplantation of tissue, the succeeding provisions of this section have effect.

(2) Where—

(a) the child is a patient in a hospital; and

(b) the person whom he so informs is a person referred to in sub-paragraph (1) (a) (ii) or (iii),

that person shall inform a designated officer for that hospital forthwith that the child is no longer in agreement with the proposed removal and transplantation of tissue.

(3) The designated officer for the hospital or, where the child is not a patient in a hospital, the medical practitioner who is attending the child in a professional capacity shall, if it appears to him, after making such inquiries (if any) as are reasonable in the circumstances, that a medical practitioner is proposing to remove the tissue from the body of the child, inform that medical practitioner forthwith that the child is no longer in agreement with the proposed removal and transplantation of tissue.

(4) A person who is informed that the child is no longer in agreement with the proposed removal and transplantation of tissue shall, if he has in his possession the instrument of consent that relates to the removal and transplantation of the tissue, surrender—

(a) that instrument; and

(b) if the certificate given in accordance with sub-section 13 (2) or 14 (3) is in his possession—that certificate,

to the person who gave the consent.

PART III—DONATIONS OF TISSUE AFTER DEATH

De facto spouses

26. For the purposes of this Part, where a deceased person is survived by a person who, although not married to the deceased person, was at the time of the death of the deceased person living with the deceased person as that person's husband or wife, as the case may be, on a permanent and *bona fide* domestic basis, that surviving person shall be taken—

(a) to have been married to the deceased person; and

(b) to have been the spouse of the deceased person immediately before his death.

27. (1) Subject to this Part, where it appears to a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances, that a deceased person who has died in the hospital or whose dead body has been brought into the hospital—

Authority to
remove
tissue where
body of
deceased
at a
hospital

(a) had, during his lifetime, expressed the wish for, or consented to, the removal after his death of tissue from his body—

(i) for the purpose of the transplantation of the tissue to the body of a living person; or

(ii) for the purpose of the use of the tissue for other therapeutic purposes or for medical or scientific purposes; and

(b) had not withdrawn the wish or revoked the consent, the designated officer may, by instrument in writing, authorize the removal of tissue from the body of the deceased person for that purpose.

(2) Subject to this Part, where it appears to a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances in relation to a deceased person who has died in the hospital or whose dead body has been brought into the hospital, that—

(a) the designated officer is not authorized by sub-section (1) to give an authority in respect of that person;

(b) the deceased person had not, during his lifetime, expressed an objection to the removal of tissue from his body; and

(c) the senior available next of kin of the deceased person has not objected to the removal of tissue from the body of the deceased person,

the designated officer may, by instrument in writing, authorize the removal of tissue from the body of the deceased person for any of the purposes referred to in paragraph (1) (a).

(3) Where a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances, is unable to ascertain the existence or whereabouts of the next of kin of the deceased person, sub-section (2) applies as if paragraph (c) of that sub-section were omitted.

(4) The senior available next of kin of a person may make it known to a designated officer at any time when the person is unconscious before death that he has no objection to the removal, after the death of the person, of tissue from the body of the person for a purpose referred to in sub-section (1), but the designated officer shall not act on such an indication if the person recovers consciousness.

(5) Where there are 2 or more persons having a description referred to in a sub-paragraph of paragraph (a) or (b) of the definition of "senior available next of kin" in section 4, an objection by any one of those persons has effect for the purposes of this section notwithstanding any indication to the contrary by the other or any other of those persons.

Authority to remove tissue where body of deceased not at a hospital

28. (1) Subject to this Part, where the body of a deceased person is at a place other than a hospital, the senior available next of kin of the deceased person may, by instrument in writing, authorize the removal of tissue from the body of the deceased person—

- (a) for the purpose of the transplantation of the tissue to the body of a living person; or
- (b) for the purpose of the use of the tissue for other therapeutic purposes or for medical or scientific purposes.

(2) Where it appears to the senior available next of kin of the deceased person, after making such inquiries (if any) as are reasonable in the circumstances, that—

- (a) the deceased person had, during his lifetime, expressed an objection to the removal of tissue from his body and had not withdrawn that objection; or
 - (b) another next of kin of the same or a higher order of the classes in paragraph (a) or (b) of the definition of “senior available next of kin” in section 4 has an objection to the removal of tissue from the body of the deceased person,
- the senior available next of kin shall not, under sub-section (1), authorize the removal of tissue from the body of the deceased person.

(3) Where a deceased person, during his lifetime, expressed the wish for, or consented to, the removal after his death of tissue from his body for a purpose referred to in sub-section (1) and the wish had not been withdrawn or the consent revoked, the removal of tissue from the body of the deceased person in accordance with the wish or consent is, by force of this sub-section, hereby authorized.

Consent by the Coroner

29. (1) This section applies to a deceased person—

- (a) who has died in a manner or in circumstances referred to in sub-section 11 (1) (other than paragraph 11 (1) (f)) of the *Coroners Ordinance* 1956;
- (b) in respect of whom a medical practitioner has not given a certificate as to the cause of death; or
- (c) in respect of whose death the Coroner is required by the Attorney-General to hold an inquest.

(2) A designated officer for a hospital or a senior available next of kin, as the case may be, shall not authorize the removal of tissue from the body of a deceased person to whom this section applies unless the Coroner has given his consent to the removal of the tissue.

(3) Sub-section 28 (3) does not apply in relation to a deceased person to whom this section applies unless the Coroner has given his consent to the removal of tissue from the body of the deceased person.

(4) The Coroner may give a direction, either before or after the death of a person to whom this section applies, that his consent to the removal of tissue from the body of the person after the death of the person is not required and, in that event, sub-sections (2) and (3) do not apply to or in relation to the removal of tissue from the body of the person.

(5) A consent or direction by the Coroner under this section may be expressed to be subject to such conditions as are specified in the consent or the direction.

(6) A consent or direction may be given orally by the Coroner, and if so given, shall be confirmed in writing.

30. (1) Where—

- (a) a person has died within the meaning of section 45; and
- (b) at the time at which he died or at any time thereafter his respiration and the circulation of his blood were being maintained by artificial means,

Certificate of specialist, &c., required in certain situations

a designated officer for a hospital shall not give an authority under this Part in respect of that deceased person unless 2 medical practitioners, each of whom has been for a period of not less than 5 years a medical practitioner and one of whom is a specialist neurologist or neurosurgeon or has such other qualifications as are prescribed, have each certified in writing—

- (c) that he carried out a clinical examination of the person while the respiration and the circulation of the blood of that person were being maintained by artificial means; and
- (d) that, in his opinion, at the time of that examination, irreversible cessation of all function of the brain of the person had already occurred.

Penalty: \$1,000 or imprisonment for 6 months, or both.

(2) For the purposes of sub-section (1), any period during which a person who is a medical practitioner practised as a medical practitioner, however described, under the law in force in a place outside Australia shall be taken into account in calculating the period of 5 years referred to in that sub-section.

31. (1) An authority under this Part is sufficient authority for a medical practitioner other than—

- (a) a medical practitioner referred to in sub-section 30 (1); and
- (b) in a case to which section 27 applies, the designated officer for the hospital who gave the authority,

Effect of authority under this Part

to remove tissue from the body of the deceased person referred to in the authority for the purpose referred to in the authority.

(2) A contravention by a designated officer of sub-section 30 (1) in relation to the giving of an authority does not affect the validity of the authority.

PART IV—POST-MORTEM EXAMINATIONS

Authority
for post-
mortem
examination

32. (1) Subject to section 34, where it appears to a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances, that a deceased person who has died in the hospital or whose dead body has been brought into the hospital—

(a) had, during his lifetime, expressed the wish for, or consented to, a post-mortem examination of his body for the purpose of investigating the cause of his death; and

(b) had not withdrawn the wish or revoked the consent,
the designated officer may, by instrument in writing, authorize a post-mortem examination of the body of the deceased person for that purpose.

(2) Subject to section 34, where it appears to a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances in relation to a deceased person who has died in the hospital or whose dead body has been brought into the hospital, that—

(a) the designated officer is not authorized by sub-section (1) to give an authority in respect of that person;

(b) the deceased person had not, during his lifetime, expressed an objection to the post-mortem examination of his body; and

(c) the senior available next of kin of the deceased person has not objected to a post-mortem examination of the body of the deceased person,

the designated officer may, by instrument in writing, authorize a post-mortem examination of the body of the deceased person for the purpose of investigating the cause of the death of that person.

(3) Where a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances, is unable to ascertain the existence or whereabouts of the next of kin of the deceased person, sub-section (2) applies as if paragraph (c) of that sub-section were omitted.

(4) The senior available next of kin of a person may make it known to a designated officer at any time when the person is unconscious before death that he has no objection to a post-mortem examination of the body of the person, but the designated officer shall not act on such an indication if the person recovers consciousness.

(5) Where there are 2 or more persons having a description referred to in a sub-paragraph of paragraph (a) or (b) of the definition of “senior available next of kin” in section 4, an objection by any one of those persons has effect for the purposes of this section notwithstanding any indication to the contrary by the other or any other of those persons.

Authority
for post-
mortem
examination
where body
of deceased
not at a
hospital

33. (1) Subject to this Part, where the body of a deceased person is at a place other than a hospital, the senior available next of kin of the deceased person may, by instrument in writing, authorize a post-mortem examination of the body of the deceased person for the purpose of investigating the cause of the death of that person.

(2) Where it appears to the senior available next of kin of the deceased person, after making such inquiries (if any) as are reasonable in the circumstances, that—

- (a) the deceased person had, during his lifetime, expressed an objection to a post-mortem examination of his body and had not withdrawn that objection; or
- (b) another next of kin of the same or a higher order of the classes in paragraph (a) or (b) of the definition of “senior available next of kin” in section 4 has an objection to the post-mortem examination of the body of the deceased person,

the senior available next of kin shall not, under sub-section (1), authorize the post-mortem examination of the body of the deceased person.

(3) Where a deceased person, during his lifetime, expressed the wish for, or consented to, a post-mortem examination of his body and the wish had not been withdrawn or the consent revoked, a post-mortem examination of the body of the deceased person in accordance with the wish or consent is, by force of this sub-section, hereby authorized.

34. (1) This section applies to a deceased person—

Consent by
the
Coroner

- (a) who has died in a manner or in circumstances referred to in sub-section 11 (1) (other than paragraph 11 (1) (f)) of the *Coroners Ordinance* 1956;
- (b) in respect of whom a medical practitioner has not given a certificate as to the cause of death; or
- (c) in respect of whose death the Coroner is required by the Attorney-General to hold an inquest.

(2) The designated officer for a hospital or a senior available next of kin, as the case may be, shall not authorize a post-mortem examination of the body of a deceased person to whom this section applies unless the Coroner has given his consent to the examination.

(3) Sub-section 33 (3) does not apply in relation to a deceased person to whom this section applies unless the Coroner has given his consent to the post-mortem examination of the body of the deceased person.

(4) The Coroner may give a direction either before or after the death of a deceased person to whom this section applies that his consent to a post-mortem examination of the body of the person is not required and, in that event, sub-sections (2) and (3) do not apply to or in relation to a post-mortem examination of the body of the deceased person.

(5) A consent or direction by the Coroner under this section may be expressed to be subject to such conditions as are specified in the consent or the direction.

(6) A consent or direction may be given orally by the Coroner and, if so given, shall be confirmed in writing.

35. (1) An authority under this Part is sufficient authority for a medical practitioner (other than, in a case to which section 32 applies, the designated officer for the hospital who gave the authority)—

Effect of
authority
under this
Part

- (a) to conduct such examination of the body of the deceased person as is necessary for the purpose of investigating the cause of the death of the person; and
- (b) to remove from the body of the person such tissue as is necessary for the purpose of the post-mortem examination.

(2) An authority under this Part is sufficient authority for the use, for therapeutic, medical or scientific purposes, of tissue removed from the body of a deceased person for the purpose of a post-mortem examination.

(3) An order by the Coroner under the *Coroners Ordinance 1956* directing a post-mortem examination is, subject to any order to the contrary by the Coroner, authority for the use, for therapeutic, medical or scientific purposes, of tissue removed from the body of the deceased person for the purpose of the post-mortem examination.

PART V—DONATIONS FOR ANATOMICAL PURPOSES

Interpretation

36. In this Part, “ school of anatomy ” means—

- (a) a school of anatomy established under a law of the Commonwealth;
- (b) a school of anatomy the conduct of which is authorized under this Ordinance;
- (c) a place that is, by virtue of sub-section 42 (4), to be deemed to be a school of anatomy for the purposes of this Ordinance and the regulations; or
- (d) a school of anatomy that is licensed under a law of a State.

Authority for anatomy where body of deceased at a hospital

37. (1) Subject to section 39, where it appears to a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances in relation to a deceased person who has died in the hospital or whose dead body has been brought into the hospital, that—

- (a) the deceased person had not, during his lifetime, expressed an objection to the retention after his death of his body—
 - (i) for the purpose of anatomical examination; or
 - (ii) for the purpose of the use of his body for the study and teaching of the anatomy of the human body;
- and

- (b) the senior available next of kin of the deceased person has no objection to the retention of the body of the deceased person for a purpose referred to in paragraph (a),

the designated officer may, by instrument in writing, authorize the retention and use of the body of the deceased person at a school of anatomy for any of the purposes referred to in paragraph (a).

(2) Where a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances, is unable to ascertain the existence or whereabouts of the next of kin of the deceased person, sub-section (1) applies as if paragraph (b) of that sub-section were omitted.

(3) The senior available next of kin of a person may make it known to a designated officer at any time when the person is unconscious before death that he has no objection to the retention after the death of the person of the body of the person for a purpose referred to in sub-section (1), but the designated officer shall not act on such an indication if the person recovers consciousness.

(4) Where there are 2 or more persons having a description referred to in a sub-paragraph of paragraph (a) or (b) of the definition of "senior available next of kin" in section 4, an objection by any one of those persons has effect for the purposes of this section notwithstanding any indication to the contrary by the other or any other of those persons.

38. (1) Subject to this Part, where the body of a deceased person is at a place other than a hospital, the senior available next of kin of the deceased person may, by instrument in writing, authorize the retention and use of the body of the deceased person at a school of anatomy—

Authority for anatomy where body of deceased not at a hospital

- (a) for the purpose of anatomical examination; or
- (b) for the purpose of the use of the body for the study and teaching of the anatomy of the human body.

(2) Where it appears to the senior available next of kin of the deceased person, after making such inquiries (if any) as are reasonable in the circumstances, that—

- (a) the deceased person had, during his lifetime, expressed an objection to the retention of his body for a purpose referred to in sub-section (1) and had not withdrawn that objection; or
- (b) another next of kin of the same or a higher order of the classes in paragraph (a) or (b) of the definition of "senior available next of kin" in section 4 has an objection to the retention of the body of the deceased person for that purpose,

the senior available next of kin shall not, under sub-section (1), authorize the retention and use of the body of the deceased person for that purpose at a school of anatomy.

39. Where a deceased person, during his lifetime, expressed the wish for, or consented to, the use of his body after his death for a purpose referred to in sub-section 37 (1) and the wish had not been withdrawn or the consent revoked, the removal of the body of the deceased person to a school of anatomy and the use of the body at such a school for a purpose specified in sub-section 37 (1) is hereby authorized.

Provisions applicable where deceased person consented to retention of his body for anatomy

40. (1) This section applies to a deceased person—

- (a) who has died in a manner or in circumstances referred to in sub-section 11 (1) (other than paragraph 11 (1) (f)) of the *Coroners Ordinance* 1956;

Consent by the Coroner

- (b) in respect of whom a medical practitioner has not given a certificate as to the cause of death; or
- (c) in respect of whose death the Coroner is required by the Attorney-General to hold an inquest.

(2) The designated officer for a hospital or a senior available next of kin shall not, in relation to the body of a deceased person to whom this section applies, give an authority under sub-section 37 (1) or 38 (1), as the case may be, except with the consent of the Coroner.

(3) Section 39 does not apply in relation to a deceased person to whom this section applies unless the Coroner has given his permission for the body of the deceased person to be dealt with in accordance with that section.

(4) The Coroner may give a direction either before or after the death of a deceased person to whom this section applies that his consent or permission in relation to the removal or use of the body of the person after the death of the person is not required and, in that event, sub-sections (2) and (3) do not apply to or in relation to the body of the person.

(5) A consent or direction by the Coroner under this section may be expressed to be subject to such conditions as are specified in the consent or the direction.

(6) A consent or direction may be given orally by the Coroner, and if so given, shall be confirmed in writing.

Effect of authority under this Part

41. An authority under this Part is, for the purposes of the law of the Territory, sufficient authority for the removal of the body of the deceased person to a school of anatomy and for its retention and use at such a school for a purpose specified in sub-section 37 (1).

PART VI—SCHOOLS OF ANATOMY

Schools of anatomy

42. (1) The Minister may, by notice published in the *Gazette*, authorize the conduct within a specified educational institution of a school of anatomy for the teaching and study of anatomy and for the carrying on of the practice of anatomy.

(2) A notice under sub-section (1) may specify that the school of anatomy, the conduct of which is so authorized, shall be concerned only with the teaching and study of the anatomy of such part of the human body as is specified in the notice.

(3) The Minister may, by notice published in the *Gazette*, authorize the carrying out of anatomical examinations and the teaching and study of the anatomy of the whole or a specified part of the human body at a place, not being a place within an educational institution, specified in the notice.

(4) A place specified in a notice under sub-section (3) shall be deemed for the purposes of this Ordinance and the regulations to be a school of anatomy.

- 43.** (1) The regulations may make provision for and in relation to—
- (a) the manner in which bodies may be transported to a school of anatomy;
 - (b) the conditions subject to which anatomical examinations and the teaching and study of anatomy and the practice of anatomy may be carried out;
 - (c) the furnishing of returns and other information by the person in charge of a school of anatomy;
 - (d) the precautions to be taken in regard to the receipt, custody and subsequent interment or cremation of bodies;
 - (e) the inspection of schools of anatomy; and
 - (f) the regulation and control of schools of anatomy.

Regulations
for the
control,
&c., of
schools of
anatomy

(2) Regulations under this Ordinance making provision for or in relation to a matter specified in paragraph (1) (b), (c), (e) or (f) shall not be expressed to apply to or in relation to a school of anatomy other than one established in accordance with an authority given under section 42.

PART VII—PROHIBITION OF TRADING IN TISSUE

- 44.** (1) Subject to this section, a person shall not enter into a contract or arrangement under which a person agrees, for valuable consideration, whether given or to be given to himself or to another person—
- (a) to the sale or supply of tissue from his body or from the body of another person, whether before or after his death or the death of the other person, as the case may be; or
 - (b) to the post-mortem examination or anatomical examination of his body after his death or of the body of another person after the death of the other person.

Certain
contracts
not to be
entered into

Penalty: \$500 or imprisonment for 3 months, or both.

(2) Sub-section (1) does not apply to or in relation to the sale or supply of tissue other than blood or any of its constituents if the tissue has been subjected to processing or treatment and the sale or supply is made for use, in accordance with the directions of a medical practitioner, for therapeutic or scientific purposes.

(3) Sub-section (1) does not apply to or in relation to a contract or arrangement providing only for the reimbursement of any expenses necessarily incurred by a person in relation to the removal of tissue in accordance with this Ordinance.

(4) Where he considers it desirable by reason of special circumstances so to do, the Minister may, by instrument in writing, approve the entering into of a contract or arrangement that would, but for the approval, be void by virtue of sub-section (5) and nothing in sub-section (1) or (5) applies to and in relation to a contract or agreement entered into in accordance with an approval under this sub-section.

(5) A contract or arrangement entered into in contravention of this section is void.

PART VIII—DEFINITION OF DEATH

When death occurs

45. For the purposes of the law of the Territory, a person has died when there has occurred—

- (a) irreversible cessation of all function of the brain of the person; or
- (b) irreversible cessation of circulation of blood in the body of the person.

PART IX—MISCELLANEOUS

Ordinance does not prevent specified removals of tissue, &c.

46. (1) Nothing in this Ordinance applies to or in relation to—

- (a) the removal of tissue from the body of a living person in the course of a procedure or operation carried out, in the interests of the health of the person, by a medical practitioner with the consent, express or implied, given by or on behalf of the person or in circumstances necessary for the preservation of the life of the person;
- (b) the use of tissue so removed;
- (c) the embalming of the body of a deceased person; or
- (d) the preparation, including the restoration of any disfigurement or mutilation, of the body of a deceased person for the purpose of interment or cremation.

(2) In paragraphs (1) (a) and (1) (b), “tissue” has the same meaning as in Part II.

Exclusion of liability of person acting in pursuance of consent or authority

47. (1) Subject to sub-section (2), where—

- (a) a person carries out a procedure; and
- (b) a consent or authority given under this Ordinance is sufficient authority under this Ordinance for that person to carry out that procedure,

that person is not liable to any other person in respect of anything done or omitted to be done by that first-mentioned person in the carrying out of that procedure.

(2) Nothing in this section relieves a person from liability for negligence in respect of anything done or omitted to be done by him in the carrying out of a procedure.

Offences

48. (1) A person shall not remove tissue from the body of a person, whether living or dead, except in accordance with a consent or authority that is, under this Ordinance, sufficient authority for the removal of the tissue by that person.

Penalty: \$1,000 or imprisonment for 6 months, or both.

(2) A person shall not conduct a post-mortem examination of the body of a deceased person except in accordance with an authority that is, under this Ordinance, sufficient authority for that person to conduct the post-mortem examination.

Penalty: \$1,000 or imprisonment for 6 months, or both.

(3) A person shall not—

- (a) remove the body of a deceased person to a school of anatomy; or
- (b) use the body of a deceased person for a purpose specified in sub-section 37 (1),

except in accordance with an authority that is, under this Ordinance, sufficient authority for such removal or use of the body for that purpose.

Penalty: \$1,000 or imprisonment for 6 months, or both.

(4) A person who—

- (a) gives an authority under this Ordinance without having made the inquiries that he is required by this Ordinance to make;
- (b) makes a false statement in a certificate given for the purposes of this Ordinance; or
- (c) contravenes or fails to comply with a provision of Division 6 of Part II,

is guilty of an offence and is punishable upon conviction by a fine not exceeding \$1,000 or imprisonment for a term not exceeding 6 months, or both such fine and imprisonment.

(5) Nothing in sub-section (1) or (2) applies to or in relation to—

- (a) anything done in pursuance of an order by the Coroner under the *Coroners Ordinance* 1956; or
- (b) any other act authorized by law.

49. (1) Subject to this section, a person to whom this section applies shall not disclose or give to any other person any information or document whereby the identity of a person or a deceased person— Disclosure of information

- (a) from whose body tissue other than blood has been removed for the purpose of transplantation or for the purpose of the use of the tissue for other therapeutic purposes or for medical or scientific purposes;
- (b) with respect to whom or with respect to whose body a consent, other than a consent under section 20, or authority has been given under this Ordinance; or
- (c) into whose body tissue other than blood has been, is being, or may be, transplanted,

may become publicly known.

Penalty: \$500 or imprisonment for 3 months, or both.

(2) Subject to this section, a person to whom this section applies shall not disclose or give to any other person any information or document whereby the identity of a child from whose body blood has been removed for a purpose referred to in section 20 may become publicly known.

Penalty: \$500 or imprisonment for 3 months, or both.

(3) This section applies—

- (a) where a consent has been given in accordance with this Ordinance—to a medical practitioner who gave a certificate in relation to the consent;

- (b) where an authority has been given in accordance with this Ordinance by a designated officer for a hospital—to the designated officer;
- (c) where tissue has been removed from the body of a person or a deceased person—the medical practitioner who removed the tissue and, if the tissue was removed at a hospital, each person who was employed at the hospital at the time of the removal of the tissue or has since been employed at the hospital;
- (d) where tissue has been transplanted into the body of a person—to the medical practitioner who performed the transplantation and, if the tissue was transplanted at a hospital, each person who was employed at the hospital at the time of the transplantation or has since been employed at the hospital; and
- (e) where it is proposed that tissue will be transplanted into the body of a person—to the medical practitioner who is to perform the transplantation and, if the tissue is to be transplanted at a hospital, each person who is employed at the hospital or who becomes so employed.

(4) Sub-sections (1) and (2) do not apply to or in relation to information disclosed—

- (a) in pursuance of an order of a Court or when otherwise required by law;
- (b) for the purposes of hospital administration or *bona fide* medical research;
- (c) with the consent of the person to whom the information relates; or
- (d) when the circumstances in which the disclosure is made are such that the disclosure is or would be privileged.

Amendment
of
*Seat of
Government
(Adminis-
tration)
Ordinance
1930*

50. The Second Schedule to the *Seat of Government (Administration) Ordinance* 1930 is amended by inserting in Part 2, after the words—

“ *Termination of Pregnancy Ordinance 1978* ”,
the words—

“ *Transplantation and Anatomy Ordinance 1978* ”.

Regulations

51. The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters that are required or permitted to be prescribed by this Ordinance or are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance and in particular for prescribing penalties not exceeding a fine of \$250 for offences against the regulations.