

South Australia

## **Transplantation and Anatomy Act 1983**

An Act to make provision for and in relation to the removal of human tissues for transplantation, for post-mortem examinations, and for the regulation of schools of anatomy; and for other purposes.

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#### Legislative history

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Transplantation and Anatomy Act 1983*.

### 5—Interpretation

- (1) In this Act, unless the contrary intention appears—

*child* means a person who—

- (a) has not attained the age of eighteen years; and
- (b) is not married;

**designated officer**, in relation to a hospital, means a person appointed under section 6 to be a designated officer for that hospital;

**medical practitioner** means a legally qualified medical practitioner;

**next of kin** means—

- (a) in relation to a child—a person referred to in paragraph (a)(i), (a)(ii) or (a)(iii) of the definition of **senior available next of kin**; and
- (b) in relation to any other person—a person referred to in paragraph (b)(i), (b)(ii), (b)(iii) or (b)(iv) of that definition;

**non-regenerative tissue** means tissue other than regenerative tissue;

**parent** of a child includes a guardian of the child;

**regenerative tissue** means tissue that, after injury or removal, is replaced in the body of a living person by natural processes;

**senior available next of kin** means—

- (a) in relation to a child, the first in order of priority of the following persons who is available at the time:
  - (i) a parent of the child;
  - (ii) a brother or sister, who has attained the age of eighteen years, of the child;
  - (iii) a guardian of the child; and
- (b) in relation to any other person, the first in order of priority of the following persons who is available at the time:
  - (i) the spouse of the person;
  - (ii) a son or daughter, who has attained the age of eighteen years, of the person;
  - (iii) a parent of the person;
  - (iv) a brother or sister, who has attained the age of eighteen years, of the person;

**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 Act 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.

## 6—Designated officers

The Minister may by instrument in writing, appoint a person who is a medical practitioner to be a designated officer for a hospital specified in the instrument.

## **Part 2—Donations of tissue by living persons**

### **Division 1—Exclusion of certain tissue**

#### **7—Interpretation**

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

### **Division 2—Donations by adults**

#### **8—Removal of blood not subject to this Division**

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

#### **9—Consent by adult living donor to removal of regenerative tissue**

(1) A person who—

- (a) is not a child; and
- (b) in the light of medical advice furnished to him understands the nature and effect of the removal,

may, by writing signed by him otherwise than in the presence of any members of his family, consent to the removal from his body of regenerative tissue, other than blood, specified in the consent—

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

(2) A person who has given a consent referred to in subsection (1) may, at any time before the removal of the regenerative tissue to which the consent applies, revoke, either orally or in writing, his consent to the removal.

#### **10—Consent by adult living donor to removal or non-regenerative tissue for transplantation**

(1) A person who—

- (a) is not a child; and
- (b) in the light of medical advice furnished to him understands the nature and effect of the removal and the nature of the transplantation,

may, by writing signed by him otherwise than in the presence of any members of his family, consent to the removal, after the expiration of a period of twenty-four hours from the time at which the consent is signed, from his body of non-regenerative tissue specified in the consent for the purpose of the transplantation of the tissue to the body of another living person.

(2) A person who has given a consent referred to in subsection (1) may, at any time before the removal of the non-regenerative tissue to which the consent applies, revoke, either orally or in writing, his consent to the removal.

## **Division 3—Donations from children**

### **11—Blood transfusions not subject to this Division**

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

### **12—General prohibition against removal of tissue from children**

It is not lawful—

- (a) to remove non-regenerative tissue from the body of a living child for the purpose of the transplantation of the tissue to the body of another living person; or
- (b) except as provided by this Part, to remove regenerative tissue from the body of a living child for the purpose of the transplantation of the tissue to the body of another living person.

### **13—Removal for transplantation of regenerative tissue from a child**

- (1) A parent of a child may, in the prescribed circumstances, 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 living person referred to in the consent.
- (2) The prescribed circumstances for the purposes of subsection (1) are that—
  - (a) in the light of medical advice furnished to the parent and the child each of them understands the nature and effect of the removal and the nature of the transplantation;
  - (b) the child has agreed to the removal of the regenerative tissue for the purpose of its transplantation to the body of the person referred to in subsection (1).
- (3) A consent under subsection (1) has no effect for the purposes of this Act unless approved by the Committee under this section.
- (4) The Minister shall appoint a Committee for the purposes of this section which shall consist of three members, of whom—
  - (a) one shall be a legal practitioner of at least seven years' standing; and
  - (b) one shall be a medical practitioner; and
  - (c) one shall be a social worker or psychologist,and of whom at least one shall be a woman and at least one shall be a man.
- (5) Where a consent is given under subsection (1), the Committee may approve the consent if each of the members of the Committee is of the opinion that it is desirable in all the circumstances of the case that the tissue referred to in the consent be removed from the body of the child for transplantation to the body of the other person referred to in the consent.

## 14—Revocation of consent

A parent who has given a consent under this Division, or a child who has under this Division agreed to the removal of tissue from his body, may, at any time before the removal of the tissue to which the consent or agreement applies, revoke, either orally or in writing, his consent or agreement, as the case requires, to the removal.

## Division 4—Effect of consents

### 15—Consents under section 9

A consent under section 9, is unless it has been revoked under section 9(2), sufficient authority for a medical practitioner, other than a medical practitioner by whom the medical advice referred to in that section was furnished, to remove the regenerative tissue referred to in the consent—

- (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.

### 16—Consents under section 10

A consent under section 10 is, unless it has been revoked under section 10(2), sufficient authority for a medical practitioner, other than a medical practitioner by whom the medical advice referred to in that section was furnished, to remove, after the expiration of a period of twenty-four hours after the time at which the consent was given, the non-regenerative tissue referred to in the consent for the purpose of the transplantation of the tissue to the body of another living person.

### 17—Consents under section 13

A consent under section 13 is, unless the parent who gave the consent has revoked his consent or the child has revoked his agreement under section 14, sufficient authority for a medical practitioner, other than a medical practitioner by whom the medical advice referred to in that section was furnished, to remove from the body of the child the regenerative tissue referred to in the consent for the purpose of the transplantation of the tissue to the body of the other person referred to in the consent.

## Division 5—Donations of blood

### 17A—Interpretation

In this Division—

*child* means a person who—

- (a) has not attained the age of 16 years; and
- (b) is not married.

### 18—Consents by adults to removal of blood

A person who is not a child may consent to the removal of blood from his body for transfusion to another person or for use of the blood or of any of its constituents for other therapeutic purposes or for medical or scientific purposes.

## 19—Consents to removal of blood from children

A parent of a child may consent to the removal of blood from the body of the child for a use referred to in section 18 if—

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

## 20—Consent to be sufficient authority for removal of blood

A consent under this Division 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.

## Part 3—Donations of tissue after death

### 21—Authorities to remove tissue after death

- (1) A designated officer for a hospital may, subject to and in accordance with this section, by instrument in writing, authorise the removal of tissue from the body of a person who has died in the hospital or whose dead body has been brought into the hospital—
  - (a) for the purpose of the transplantation of the tissue to the body of a living person; or
  - (b) for use of the tissue for other therapeutic purposes or for medical or scientific purposes.
- (2) Where the designated officer, after making such inquiries as are reasonable in the circumstances, has reason to believe that the deceased person had, during his lifetime, expressed the wish for, or consented to, the removal after his death of tissue from his body for the purpose or a use referred to in subsection (1) and had not withdrawn the wish or revoked the consent, the designated officer may authorise under subsection (1) the removal of tissue from the body of the deceased person for the purpose or a use referred to in that subsection.
- (3) Where the designated officer, after making such inquiries as are reasonable in the circumstances, has no reason to believe that the deceased person during his lifetime—
  - (a) had expressed the wish for, or consented to, the removal after his death of tissue from his body for the purpose or a use referred to in subsection (1); or
  - (b) had expressed an objection to the removal after his death of tissue from his body for such a purpose or use,

and after making those inquiries and such further inquiries as are reasonable in the circumstances, the designated officer—

- (c) has no reason to believe that the senior available next of kin of the deceased person has an objection to the removal of tissue from the body of the deceased person; or
- (d) is unable to ascertain the existence or the whereabouts of the next of kin of the deceased person or is unable to ascertain whether any of the next of kin of the deceased person has an objection to the removal of tissue from the body of the deceased person,

the designated officer may authorise under subsection (1) the removal of tissue from the body of the deceased person for the purpose or a use referred to in that subsection.

- (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 the purpose or a use referred to in subsection (1), but the designated officer shall not act on such an indication if the person recovers consciousness.
- (5) Where there are two or more persons having a description referred to in a subparagraph of paragraph (a) or (b) of the definition of *senior available next of kin* in section 5, 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.

## **22—Authority to remove tissue where body of deceased person not in hospital**

- (1) Where the body of a deceased person is in a place other than a hospital, the senior available next of kin of the deceased person may, subject to this section, by instrument in writing, authorise 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 use of the tissue for other therapeutic purposes or for medical or scientific purposes.
- (2) Subsection (1) does not apply where the senior available next of kin of the deceased person has reason to believe that—
  - (a) the deceased person had, during his lifetime, expressed an objection to the removal of tissue from his body and had not withdrawn his 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 5 has an objection to the removal of tissue from the body of the deceased person.
- (3) Where—
  - (a) a deceased person, during his lifetime, expressed the wish for, or consented to, the removal after his death of tissue from his body for the purpose or a use referred to in subsection (1); and
  - (b) the wish had not been withdrawn or the consent revoked; and
  - (c) the body of the deceased person is in a place other than a hospital,

the removal of tissue from the body of the deceased person in accordance with the wish or consent is, by force of this subsection, hereby authorised.



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## 23—Consent by State Coroner

- (1) If the designated officer for a hospital or, in a case to which section 22 applies, the senior available next of kin, has reason to believe that the circumstances applicable in relation to the death of a person are such that an inquest may be held under the *Coroners Act 2003* into the death, the designated officer or the senior available next of kin, as the case may be, shall not authorise the removal of tissue from the body of the deceased person unless the State Coroner has consented to the removal.
- (2) Section 22(3) does not operate in a case in which an inquest may be held under the *Coroners Act 2003* into the death of a person unless the State Coroner has consented to the removal of tissue from the body of the deceased person.
- (3) The State Coroner may give a direction either before or after the death of a person that his or her 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, subsection (1) does not apply to or in relation to the removal of tissue from the body of the person.
- (4) A consent or direction by the State Coroner under this section may be expressed to be subject to such conditions as are specified in the consent or the direction.
- (5) A consent or direction may be given orally by the State Coroner and, if so given, shall be confirmed in writing.

## 24—Effect of authority under this Part

- (1) Subject to subsection (2), an authority under this Part is sufficient authority for the removal of tissue from the body of the deceased person referred to in the authority for the purpose of the transplantation of the tissue to the body of a living person or for use for other therapeutic, medical or scientific purposes, provided that the removal of the tissue is carried out by—
  - (a) a medical practitioner other than—
    - (i) a medical practitioner referred to in subsection (2); and
    - (ii) in a case to which section 21 applies, the designated officer for the hospital; or
  - (b) where the tissue is to be removed for the purpose of corneal transplantation—an authorised person or a medical practitioner entitled by virtue of paragraph (a) to carry out the removal.
- (2) Where the respiration and the circulation of the blood of a person are being maintained by artificial means, tissue shall not be removed from the body of the person for the purpose or a use specified in subsection (1) unless two medical practitioners (each of whom has carried out a clinical examination of the person, and each of whom has been for a period of not less than five years a medical practitioner) have declared that irreversible cessation of all function of the brain of the person has occurred.
- (3) For the purposes of subsection (2), 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 country outside Australia shall be taken into account in calculating the period of five years referred to in that subsection.

- (4) In this section—

*authorised person* means a person, not being a medical practitioner, appointed by the Minister to be an authorised person for the purposes of this section.

## Part 4—Post-mortem examinations

### 25—Authorities for post-mortem examinations

- (1) A designated officer for a hospital may, subject to and in accordance with this section, by instrument in writing, authorise, for the purpose of investigating the causes of death of a person who has died in the hospital or whose dead body has been brought into the hospital, a post-mortem examination of the body of the deceased person.
- (2) Where the designated officer, after making such inquiries as are reasonable in the circumstances, has reason to believe that the deceased person had, during his lifetime, expressed the wish for, or consented to, a post-mortem examination of his body and had not withdrawn the wish or revoked the consent, the designated officer may authorise under subsection (1) a post-mortem examination of the body.
- (3) Where the designated officer, after making such inquiries as are reasonable in the circumstances, has no reason to believe that the deceased person during his lifetime—
- (a) had expressed the wish for, or consented to, a post-mortem examination of his body; or
  - (b) had expressed an objection to a post-mortem examination of his body,
- and after making those inquiries and such further inquiries as are reasonable in the circumstances, the designated officer—
- (c) has no reason to believe that the senior available next of kin of the deceased person has an objection to a post-mortem examination of the body of the deceased person; or
  - (d) is unable to ascertain the existence or the whereabouts of the next of kin of the deceased person or is unable to ascertain whether any of the next of kind of the deceased person has an objection to a post-mortem examination of the body of the deceased person,

the designated officer may authorise under subsection (1) a post-mortem examination of the body of the deceased person for the purpose referred to in that subsection.

- (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 two or more persons having a description referred to in a subparagraph of paragraph (a) or (b) of the definition of *senior available next of kin* in section 5, 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.

## **26—Authority for post-mortem examination where body of deceased person not in hospital**

- (1) Where the body of a deceased person is in a place other than a hospital, the senior available next of kin of the deceased person may, subject to this section, by instrument in writing, authorise a post-mortem examination of the body of the deceased person for the purpose of investigating the causes of death of the person.
- (2) Subsection (1) does not apply where the senior available next of kin of the deceased person has reason to believe that—
  - (a) the deceased person had, during his lifetime, expressed an objection to a post-mortem examination of his body and had not withdrawn his 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 5 has an objection to the post-mortem examination of the body of the deceased person.
- (3) Where—
  - (a) a deceased person, during his lifetime, expressed the wish for, or consented to, a post-mortem examination of his body; and
  - (b) the wish had not been withdrawn or the consent revoked; and
  - (c) the body of the deceased person is in a place other than a hospital,a post-mortem examination of the body of the deceased person in accordance with the wish or consent is, by force of this subsection, hereby authorised.

## **27—Consent by State Coroner**

- (1) If the designated officer for a hospital or, in a case to which section 26 applies, the senior available next of kin, has reason to believe that the circumstances applicable in relation to the death of a person are such that an inquest may be held under the *Coroners Act 2003* into the death, the designated officer or the senior available next of kin, as the case may be, shall not authorise a post-mortem examination of the body of the deceased person unless the State Coroner has consented to the examination.
- (2) Section 26(3) does not operate in a case in which an inquest may be held under the *Coroners Act 2003* into the death of a person unless the State Coroner has consented to the post-mortem examination.
- (3) The State Coroner may give a direction either before or after the death of a person that his consent to a post-mortem examination of the body of the person is not required and, in that event, subsection (1) does not apply to or in relation to a post-mortem examination of the body of the deceased person.
- (4) A consent or direction by the State Coroner under this section may be expressed to be subject to such conditions as are specified in the consent or the direction.
- (5) A consent or direction may be given orally by the State Coroner, and if so given, shall be confirmed in writing.

## 28—Effect of authority under this Part

- (1) An authority under this Part is sufficient authority for a medical practitioner (other than, in a case to which section 25 applies, the designated officer for the hospital)—
  - (a) to conduct an examination of the body of the deceased person; and
  - (b) to remove tissue from the body of the deceased person for the purpose of the post-mortem examination or for use for therapeutic, medical or scientific purposes.
- (2) Where a post-mortem examination is directed by the State Coroner or the Coroner's Court pursuant to the *Coroners Act 2003*, the direction is, subject to any order to the contrary by the State Coroner or the Coroner's Court (as the case requires), 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 5—Donations for anatomical purposes

### 29—Authorities for anatomy

- (1) A designated officer for a hospital may, subject to and in accordance with this section, by instrument in writing, authorise the use of the body of a person who has died in the hospital or whose dead body has been brought into the hospital—
  - (a) for the purpose of anatomical examination; or
  - (b) for the purpose of the study and teaching of the anatomy of the human body.
- (2) Where the designated officer, after making such inquiries as are reasonable in the circumstances, has reason to believe that the deceased person had, during his lifetime, expressed the wish for, or consented to, the use of his body after his death for a purpose referred to in subsection (1) and had not withdrawn the wish or revoked the consent, the designated officer may authorise under subsection (1) the use of the body of the deceased person for a purpose referred to in that subsection.
- (3) Where the designated officer, after making such inquiries as are reasonable in the circumstances, has no reason to believe that the deceased person during his lifetime—
  - (a) had expressed the wish for, or consented to, the use of his body after his death for a purpose referred to in subsection (1); or
  - (b) had expressed an objection to the use of his body after his death for such a purpose,

and is satisfied that the senior available next of kin of the deceased person has no objection to the use of the body of the deceased person for such a purpose, the designated officer may authorise under subsection (1) the use of the body of the deceased person for a purpose referred to in that subsection.

- (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 use after the death of the person of the body of the person for a purpose referred to in subsection (1), but the designated officer shall not act on such an indication if the person recovers consciousness.

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- (5) Where there are two or more persons having a description referred to in a subparagraph of paragraph (a) or (b) of the definition of *senior available next of kin* in section 5, 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.

### **30—Authority for anatomy where body of deceased person not in hospital**

- (1) Where the body of a deceased person is in a place other than a hospital, the senior available next of kin of the deceased person may, subject to this section, by instrument in writing, authorise the use of the body of the deceased person—
- (a) for the purpose of anatomical examination; or
  - (b) for the study and teaching of the anatomy of the human body.
- (2) Subsection (1) does not apply where the senior available next of kin of the deceased person has reason to believe that—
- (a) the deceased person had, during his lifetime, expressed an objection to the use of his body for a purpose referred to in section 29(1) and had not withdrawn his 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 5 has an objection to the use of the body of the deceased person for a purpose referred to in section 29(1).
- (3) Where—
- (a) a deceased person, during his lifetime, expressed the wish for, or consented to, the use after his death of his body for a purpose referred to in section 29(1); and
  - (b) the wish had not been withdrawn or the consent revoked; and
  - (c) the body of the deceased person is in a place other than a hospital,
- the use of the body of the deceased person in accordance with the wish or consent is, by force of this subsection, hereby authorised.

### **31—Consent by State Coroner**

- (1) If the designated officer for a hospital or, in a case to which section 30 applies, the senior available next of kin, has reason to believe that the circumstances applicable in relation to the death of a person are such that an inquest may be held under the *Coroners Act 2003* into the death, the designated officer or the senior available next of kin, as the case may be, shall not authorise the use of the body of the deceased person for a purpose referred to in section 29(1) unless the State Coroner has consented to the use of the body of the person.
- (2) Section 30(3) does not operate in a case in which an inquest may be held under the *Coroners Act 2003* into the death of a person unless the State Coroner has consented to the use of the body of the person.

- (3) The State Coroner may give a direction either before or after the death of a person that his consent to the use of the body of the person after the death of the person is not required and, in that event, subsection (1) does not apply to or in relation to the use of the body of the person.
- (4) A consent or direction by the State Coroner under this section may be expressed to be subject to such conditions as are specified in the consent or the direction.
- (5) A consent or direction may be given orally by the State Coroner, and if so given, shall be confirmed in writing.

### **32—Effect of authority under this Part**

An authority under this Part is sufficient authority for the removal of the body of the deceased person to a school of anatomy established under Part 6 or to a school of anatomy established or licensed under a law of the Commonwealth, of another State or of a Territory, for its acceptance by the school of anatomy and for its use, subject to the regulations made under section 34, by the school of anatomy for a purpose referred to in section 29(1).

## **Part 6—Schools of anatomy**

### **33—Establishment of schools of anatomy**

- (1) In this section—  
*prescribed institution* means any institution specified in the regulations as a prescribed institution.
- (2) The Minister may, by instrument in writing, authorise the establishment within prescribed institutions of schools of anatomy for the teaching and study of anatomy and for the carrying on of the practice of anatomy.
- (3) An instrument authorising the establishment of a school of anatomy within a prescribed institution may authorise the teaching and study of the anatomy of the whole of the human body or may authorise the teaching and study of the anatomy of specified parts of the human body.
- (4) The Minister may, by instrument in writing, authorise the carrying out of anatomical examinations and the teaching and study of anatomy at a place, not being a place within a prescribed institution, specified in the instrument.
- (5) A place referred to in subsection (4) shall be deemed to be a school of anatomy established under subsection (2).
- (6) A copy of each instrument under this section shall be published in the Gazette.

### **34—Regulations for the control etc of schools of anatomy**

The regulations may make provision for and in relation to—

- (a) the conditions subject to which bodies may be removed to a school of anatomy; and
- (b) the conditions subject to which anatomical examinations and the teaching and study of anatomy and the practice of anatomy may be carried out; and

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- (c) the furnishing of returns and other information by the person in charge of a school of anatomy; and
  - (d) the precautions to be taken in regard to the receipt, custody and subsequent interment or cremation of bodies; and
  - (e) the inspection of schools of anatomy; and
  - (f) the regulation and control of schools of anatomy.

## **Part 7—Prohibition of trading in tissue**

### **35—Certain contracts to be void**

- (1) Subject to this section, 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;
  - (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,is void.
- (2) A person who enters into a contract or arrangement referred to in subsection (1) is guilty of an offence and liable to a penalty not exceeding five thousand dollars.
- (3) Subsection (1) does not apply to or in relation to the sale or supply of tissue (not being tissue obtained under a contract or arrangement that is by subsection (1) void) 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, medical or scientific purposes.
- (4) Subsection (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 Act.
- (5) Nothing in this section renders inoperative a consent or authority given or purporting to have been given under this Act in relation to tissue from the body of a person or in relation to the body of a person if a person acting in pursuance of the consent or authority did not know and had no reason to know that the tissue or the body was the subject matter of a contract or arrangement referred to in subsection (1).
- (6) Where he considers it is 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 under subsection (1) and nothing in subsection (1) or (2) applies to and in relation to a contract or agreement entered into in accordance with an approval under this subsection.
- (7) A person shall not knowingly—
  - (a) publish or disseminate by newspaper, book, broadcasting, television, cinematograph or other means; or
  - (b) exhibit to public view in any place,

an advertisement relating to the selling or buying in Australia of tissue or of the right to remove tissue from the bodies of persons unless the advertisement and the form and wording thereof have been approved in writing by the Minister and the advertisement contains a statement to that effect.

Penalty: Five thousand dollars.

## Part 8—Miscellaneous

### 36—Exclusion of liability of persons acting in pursuance of consent etc

- (1) Subject to this Act, a person is not liable in any proceedings, whether civil or criminal, for any act done in pursuance of, by reason of, or as a result of, a consent, agreement or authority given, or purporting to have been given, in pursuance of this Act where the act is done without negligence and in good faith.
- (2) Without limiting the generality of the expression "in good faith", a person shall be regarded as having done an act referred to in subsection (1) in good faith if the person establishes that—
  - (a) he had an honest and reasonable belief that a consent, agreement or authority required by this Act for the doing of the act had been given; or
  - (b) he had no reason to doubt that a consent, agreement or authority purporting to have been given in accordance with this Act for the doing of the act was a consent, agreement or authority given in accordance with this Act.

### 37—Act does not prevent specified removals of tissue etc

- (1) Nothing in this Act 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 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; or
  - (b) the use of tissue so removed; or
  - (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 subsection (1)(a) and (1)(b)—

*tissue* has the same meaning as in Part 2.

### 38—Offences in relation to removal of tissue

- (1) A person shall not—
  - (a) remove tissue other than blood from the body of a living person for use for a purpose specified in section 9, 10 or 13 except in pursuance of a consent that is under Division 4 of Part 2 sufficient authority for the person to remove the tissue for use for that purpose; or



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- (b) remove blood from the body of a living person for transfusion or a use specified in section 18 except in pursuance of a consent that is under Division 5 of Part 2 sufficient authority for the removal of the blood; or
  - (c) remove tissue from the body of a deceased person for a purpose or use referred to in section 21(1) or 22(1) except in pursuance of an authority that is under Part 3 sufficient authority for the person to remove the tissue for that purpose or use; or
  - (d) conduct a post-mortem examination of the body of a deceased person unless the post-mortem examination is made in pursuance of an authority that is under Part 4 sufficient authority for the person to conduct the post-mortem examination; or
  - (e) in conducting a post-mortem examination of the body of a deceased person in pursuance of an authority referred to in paragraph (d), remove tissue from the body of a person except for a purpose for which that authority is under Part 4 sufficient authority; or
  - (f) use the body of a deceased person for the purposes of anatomical examination or the study and teaching of the anatomy of the human body except in pursuance of an authority that is under Part 5 sufficient authority for the use of the body; or
  - (g) carry out an anatomical examination of the body of a deceased person otherwise than at a school of anatomy established or deemed to have been established under Part 6.

Penalty: Five thousand dollars.

- (2) A designated officer for a hospital who issues an authority under this Act—
  - (a) without having made any of the inquiries that he is required to make under this Act; or
  - (b) without making such inquiries as are reasonable in the circumstances of the case,is guilty of an offence and is liable to a penalty not exceeding two thousand dollars.
- (3) Nothing in subsection (1) applies to or in relation to—
  - (a) any act for which a person is not, by reason of section 36, criminally liable; or
  - (b) anything done in pursuance of an order by the State Coroner or the Coroner's Court under the *Coroners Act 2003*; or
  - (c) any other act authorised by law.

### **38A—Offence to provide false or misleading information in relation to the donation of blood or semen**

- (1) A donor who supplies false or misleading information in relation to the donation of blood or semen, knowing the information to be false or misleading, is guilty of an offence.

Penalty: \$10 000.

(2) In this section—

*donor* means a person who—

- (i) donates blood for any use or purpose contemplated by this Act; or
- (ii) donates semen for the purposes of a fertilisation procedure or for medical or scientific purposes;

*fertilisation procedure* means—

- (i) artificial insemination; or
- (ii) the procedure of fertilising an ovum outside the body and transferring the fertilised ovum into the uterus.

### 39—Disclosure of information

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

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

may become publicly known.

Penalty: Five thousand dollars.

(2) Subsection (1) does not apply to or in relation to any information disclosed—

- (a) in pursuance of an order of a court or when otherwise required by law; or
- (b) for the purposes of hospital administration or *bona fide* medical research; or
- (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.

### 40—Summary offences

Proceedings for an offence against this Act shall be disposed of summarily.

### 41—Regulations

(1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

- (a) provide for notices setting out information relating to the operation and effect of this Act and for the furnishing of such notices to persons prior to their giving any consent or agreement under this Act;
- (b) prescribe penalties not exceeding one thousand dollars for contravention of, or non-compliance with, a regulation (including a regulation referred to in section 34).

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Transplantation and Anatomy Act 1983* repealed the following:

*Anatomy Act 1884*

*Sale of Human Blood Act 1962*

*Transplantation of Human Tissue Act 1974*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1983	11	<i>Transplantation and Anatomy Act 1983</i>	5.5.1983	1.7.1984 ( <i>Gazette 17.5.1984 p1160</i> ) except ss 33 & 34—4.1.1996 ( <i>Gazette 4.1.1996 p3</i> )
1984	67	<i>Transplantation and Anatomy Act Amendment Act 1984</i>	18.10.1984	18.10.1984
1985	67	<i>Transplantation and Anatomy Act Amendment Act 1985</i>	6.6.1985	6.6.1985
1987	41	<i>South Australian Health Commission Act Amendment Act 1987</i>	30.4.1987	1.7.1987 except ss 13 & 20—1.7.1988 ( <i>Gazette 25.6.1987 p1634</i> )
2000	1	<i>Transplantation and Anatomy (Consent to Blood Donation) Amendment Act 2000</i>	6.4.2000	6.4.2000
2000	34	<i>South Australian Health Commission (Administrative Arrangements) Amendment Act 2000</i>	6.7.2000	Sch 1 (cl 19)—6.7.2000 ( <i>Gazette 6.7.2000 p5</i> )
<b>2003</b>	<b>33</b>	<b><i>Coroners Act 2003</i></b>	<b>31.7.2003</b>	<b>Sch (cll 19—23)—1.7.2005 (<i>Gazette 23.6.2005 p1899</i>)</b>
2005	75	<i>Transplantation and Anatomy (Post-Mortem Examinations) Amendment Act 2005</i>	8.12.2005	uncommenced
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 87 (s 213)—1.6.2007 ( <i>Gazette 26.4.2007 p1352</i> )

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	1.7.2005
Pt 1		
<i>ss 2—4</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.7.2005</i>
s 5		
s 5(1)		
domestic partner	inserted by 43/2006 s 213(1)	uncommenced—not incorporated
<i>Commission</i>	<i>deleted by 34/2000 Sch 1 cl 19(a)</i>	<i>6.7.2000</i>
senior available next of kin	amended by 43/2006 s 213(2)	uncommenced—not incorporated
spouse	inserted by 43/2006 s 213(3)	uncommenced—not incorporated
s 5A	inserted by 75/2005 s 4	uncommenced—not incorporated
s 6	amended by 41/1987 s 35	1.7.1987
	amended by 34/2000 Sch 1 cl 19(b)	6.7.2000
Pt 2		
s 17A	inserted by 1/2000 s 2	6.4.2000
Pt 3		
<b>s 23</b>		
<b>s 23(1)</b>	<b>amended by 33/2003 Sch (cl 19(1), (2))</b>	<b>1.7.2005</b>
<b>s 23(2)</b>	<b>amended by 33/2003 Sch (cl 19(3), (4))</b>	<b>1.7.2005</b>
<b>s 23(3)</b>	<b>amended by 33/2003 Sch (cl 19(5), (6))</b>	<b>1.7.2005</b>
<b>s 23(4)</b>	<b>amended by 33/2003 Sch (cl 19(7))</b>	<b>1.7.2005</b>
<b>s 23(5)</b>	<b>amended by 33/2003 Sch (cl 19(8))</b>	<b>1.7.2005</b>
s 24		
s 24(1)	substituted by 67/1984 s 2(a)	18.10.1984
s 24(4)	inserted by 67/1984 s 2(b)	18.10.1984
authorised person	amended by 41/1987 s 35	1.7.1987
	amended by 34/2000 Sch 1 cl 19(c)	6.7.2000
<b>Pt 4 before substitution by 75/2005</b>		
<b>s 27</b>		
<b>s 27(1)</b>	<b>amended by 33/2003 Sch (cl 20(1), (2))</b>	<b>1.7.2005</b>
<b>s 27(2)</b>	<b>amended by 33/2003 Sch (cl 20(3), (4))</b>	<b>1.7.2005</b>
<b>s 27(3)</b>	<b>amended by 33/2003 Sch (cl 20(5))</b>	<b>1.7.2005</b>
<b>s 27(4)</b>	<b>amended by 33/2003 Sch (cl 20(6))</b>	<b>1.7.2005</b>
<b>s 27(5)</b>	<b>amended by 33/2003 Sch (cl 20(7))</b>	<b>1.7.2005</b>
<b>s 28</b>		
<b>s 28(2)</b>	<b>amended by 33/2003 Sch (cl 21(1), (2))</b>	<b>1.7.2005</b>

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Pt 4	substituted by 75/2005 s 5	uncommenced—not incorporated
<b>Pt 5</b>		
<b>s 31</b>		
s 31(1)	amended by 33/2003 Sch (cl 22(1), (2))	1.7.2005
s 31(2)	amended by 33/2003 Sch (cl 22(3), (4))	1.7.2005
s 31(3)	amended by 33/2003 Sch (cl 22(5))	1.7.2005
s 31(4)	amended by 33/2003 Sch (cl 22(6))	1.7.2005
s 31(5)	amended by 33/2003 Sch (cl 22(7))	1.7.2005
Pt 7		
s 35		
s 35(2)	amended by 75/2005 s 6(1)	uncommenced—not incorporated
s 35(7)	amended by 75/2005 s 6(2)	uncommenced—not incorporated
Pt 8		
s 38		
s 38(1)	amended by 75/2005 s 7(1)	uncommenced—not incorporated
s 38(2)	amended by 75/2005 s 7(2)	uncommenced—not incorporated
<b>s 38(3)</b>	<b>amended by 33/2003 Sch (cl 23))</b>	<b>1.7.2005</b>
s 38A	inserted by 67/1985 s 2	6.6.1985
s 38A(1)	amended by 75/2005 s 8	uncommenced—not incorporated
s 39		
s 39(1)	amended by 75/2005 s 9	uncommenced—not incorporated
s 41		
s 41(2)	amended by 75/2005 s 10(1), (2)	uncommenced—not incorporated

## Historical versions

Reprint No 1—15.1.1992

Reprint No 2—6.4.2000

Reprint No 3—6.7.2000