

South Australia

Transplantation and Anatomy (Post-Mortem Examinations) Amendment Act 2005

An Act to amend the *Transplantation and Anatomy Act 1983*.

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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 (Post-Mortem Examinations) Amendment Act 2005*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Transplantation and Anatomy Act 1983*

4—Insertion of section 5A

After section 5 insert:

5A—Authorisation of retention of tissue for a purpose

An authorisation in accordance with this Act to remove or use tissue for a particular purpose will be taken to also authorise the retention of the tissue, to the extent that such retention is reasonably necessary for the purpose.

5—Substitution of Part 4

Part 4—delete Part 4 and substitute:

Part 4—Post-mortem examinations

25—Authority for post-mortem examination where body of deceased person is in hospital

- (1) A designated officer for a hospital may, subject to 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—
 - (a) if, after making such inquiries as are reasonable in the circumstances, the designated officer is satisfied that the deceased person had, during his or her lifetime, given his or her consent to a post-mortem examination of his or her body and had not revoked the consent; or
 - (b) if, after making such inquiries as are reasonable in the circumstances, the designated officer is not satisfied as to the matters referred to in paragraph (a) but is satisfied—
 - (i) that the senior available next of kin of the deceased person has given his or her consent to a post-mortem examination of the body of the deceased person; and
 - (ii) that the deceased person had not, during his or her lifetime, expressed an objection to a post-mortem examination of his or her body; or
 - (c) if, after making such inquiries as are reasonable in the circumstances, the designated officer—

- (i) is not satisfied as to the matters referred to in paragraphs (a) and (b)(i) but is satisfied as to the matter referred to in paragraph (b)(ii); and
 - (ii) is unable to ascertain—
 - (A) the existence or whereabouts of the next of kin of the deceased person; or
 - (B) whether any of the next of kin of the deceased person has an objection to a post-mortem examination of the body of the deceased person.
- (2) If, after making such inquiries as are reasonable in the circumstances, the designated officer is not satisfied as to the matters referred to in subsection (1)(a) and has reason to believe—
 - (a) that the deceased person had, during his or her lifetime, expressed an objection to a post-mortem examination of his or her body and had not withdrawn that objection; or
 - (b) 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,

the designated officer may, subject to this section, with the consent of the Minister, authorise a post-mortem examination of the body of the deceased person in accordance with the consent for the purpose or purposes specified in the consent.

- (3) The Minister must not consent to a post-mortem examination of the body of a deceased person unless—
 - (a) the Minister is of the opinion—
 - (i) that a post-mortem examination of the body of the deceased person is necessary or desirable in order to identify or deal with any risk (whether actual or perceived) to the health of the public; and
 - (ii) that the interests of public health justify overriding any objection to a post-mortem examination of the body of the deceased person expressed by the deceased person during his or her lifetime or on the part of the senior available next of kin of the deceased person; and
 - (b) if the Minister has 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—the Minister has made every reasonable attempt to persuade the senior available next of kin to grant his or her consent to a post-mortem examination.

- (4) The Minister must, within 7 days after granting consent to a post-mortem examination of the body of a deceased person under this section, notify the State Coroner of the consent.
- (5) If the designated officer has reason to believe that the death of the person is or may be a reportable death under the *Coroners Act 2003*, the designated officer must not authorise a post-mortem examination of the body of the deceased person unless—
 - (a) the State Coroner has given his or her consent to the post-mortem examination; or
 - (b) the State Coroner has given a direction (whether before or after the person's death) that his or her consent to a post-mortem examination of the body of the person is not required.
- (6) Subject to subsection (7), a consent referred to in this section (other than a consent of the State Coroner) must be in writing.
- (7) The senior available next of kin of a deceased person may, at the request of the designated officer, give his or her consent to a post-mortem examination of the body of the deceased person orally by telephone but that consent is not effective unless—
 - (a) the giving of the consent is heard by two witnesses, at least one of whom must be a medical practitioner; and
 - (b) a written record of the consent is made by a witness who is a medical practitioner; and
 - (c) that record is signed by the two witnesses.
- (8) A consent or direction of the State Coroner under this section—
 - (a) may be unconditional or subject to such conditions as are specified in the consent or direction;
 - (b) if given orally, must be confirmed in writing.
- (9) If 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, the consent of any one of those persons has effect for the purposes of this section.

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

- (1) The senior available next of kin of a deceased person whose body is in a place other than a hospital 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) The senior available next of kin of the deceased person must not authorise a post-mortem examination of the body of the deceased person if he or she has reason to believe—
- (a) that another next of kin of the deceased person of the same or higher order of the classes referred to 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; or
 - (b) that the deceased person had, during his or her lifetime, expressed an objection to a post-mortem examination of his or her body and had not withdrawn the objection.
- (3) If the senior available next of kin of the deceased person has reason to believe that the death of the person is or may be a reportable death under the *Coroners Act 2003*, the senior available next of kin must not authorise a post-mortem examination of the body of the deceased person unless—
- (a) the State Coroner has given his or her consent to the post-mortem examination; or
 - (b) the State Coroner has given a direction (whether before or after the person's death) that his or her consent to a post-mortem examination of the body of the person is not required.
- (4) If—
- (a) a deceased person had, during his or her lifetime, given his or her written consent to a post-mortem examination of his or her body and had not revoked the consent; and
 - (b) the body of the deceased person is in a place other than a hospital,
- a post-mortem examination of the deceased person is authorised by force of this subsection.
- (5) However, if an inquest may be held under the *Coroners Act 2003* into the death of a deceased person, subsection (4) does not authorise a post-mortem examination of the body of the deceased person unless the State Coroner has given his or her consent to the examination.
- (6) A consent or direction of the State Coroner under this section—
- (a) may be unconditional or subject to such conditions as are specified in the consent or direction;
 - (b) if given orally, must be confirmed in writing.

27—Authority to use for therapeutic, medical or scientific purposes, tissue removed for post-mortem examination

- (1) A designated officer for a hospital may, by instrument in writing, authorise the use, for therapeutic, medical or scientific purposes, of tissue removed from the body of a deceased person for the purposes of a post-mortem examination of the body performed at the hospital pursuant to an authority under section 25—
 - (a) if, after making such inquiries as are reasonable in the circumstances, the designated officer is satisfied that the deceased person had, during his or her lifetime, given his or her consent to the use, after his or her death, of tissue from his or her body for therapeutic, medical or scientific purposes and had not revoked the consent; or
 - (b) if, after making such inquiries as are reasonable in the circumstances, the designated officer is not satisfied as to the matters referred to in paragraph (a) but is satisfied—
 - (i) that the senior available next of kin of the deceased person has given his or her consent to the use, for therapeutic, medical or scientific purposes, of any tissue removed from the body of the deceased person for the purposes of a post-mortem examination of the body; and
 - (ii) that the deceased person had not, during his or her lifetime, expressed an objection to the use, for therapeutic, medical or scientific purposes, of tissue removed from his or her body after his or her death.
- (2) The senior available next of kin of a deceased person may, by instrument in writing, authorise the use, for therapeutic, medical or scientific purposes, of tissue removed from the body of the deceased person for the purposes of a post-mortem examination of the body performed at a place other than a hospital pursuant to an authority under section 26 unless he or she has reason to believe—
 - (a) that another next of kin of the deceased person of the same or higher order of the classes referred to in paragraph (a) or (b) of the definition of *senior available next of kin* in section 5 has an objection to the use, for therapeutic, medical or scientific purposes, of tissue removed from the body of the deceased person for the purposes of a post-mortem examination of the body; or
 - (b) that the deceased person had, during his or her lifetime, expressed an objection to the use, for therapeutic, medical or scientific purposes, of tissue removed from his or her body after his or her death and had not withdrawn the objection.

- (3) The State Coroner may, by instrument in writing, authorise the use, for therapeutic, medical or scientific purposes, of tissue removed from the body of a deceased person for the purposes of a post-mortem examination of the body performed pursuant to a direction given by the State Coroner or the Coroner's Court under the *Coroners Act 2003*—
- (a) if, after making such inquiries as are reasonable in the circumstances, the State Coroner is satisfied that the deceased person had, during his or her lifetime, given his or her consent to the use, after his or her death, of tissue from his or her body for therapeutic, medical or scientific purposes and had not revoked the consent; or
 - (b) if, after making such inquiries as are reasonable in the circumstances, the State Coroner is not satisfied as to the matters referred to paragraph (a) but is satisfied—
 - (i) that the senior available next of kin of the deceased person has given his or her consent to the use, for therapeutic, medical or scientific purposes, of any tissue removed from the body of the deceased person for the purposes of a post-mortem examination of the body; and
 - (ii) that the deceased person had not, during his or her lifetime, expressed an objection to the use, for therapeutic, medical or scientific purposes, of tissue removed from his or her body after his or her death.
- (4) If 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, the consent of any one of those persons has effect for the purposes of this section.
- (5) A consent referred to in this section must be in writing.

28—Effect of authority under this Part

- (1) An authority given by a designated officer for a hospital under section 25 is sufficient authority for a medical practitioner (other than the designated officer)—
- (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 purposes of the post-mortem examination.
- (2) An authority under section 26 is sufficient authority for a medical practitioner—
- (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 purposes of the post-mortem examination.

- (3) An authority under section 27 is sufficient authority for the use, for therapeutic, medical or scientific purposes, of tissue removed from the body of a deceased person for the purposes of a post-mortem examination of the body.
- (4) An authority given under this Part is subject to any conditions specified in the instrument of authorisation.

28A—Post-mortem examinations to be conducted with regard for dignity of deceased

A post-mortem examination of the body of a deceased person authorised under this Act must be conducted with regard to the dignity of the deceased person.

6—Amendment of section 35—Certain contracts to be void

- (1) Section 35(2)—delete "and liable to a penalty not exceeding five thousand dollars" and substitute:
Maximum penalty: \$20 000.
- (2) Section 35(7)—delete the penalty provision and substitute:
Maximum penalty: \$20 000.

7—Amendment of section 38—Offences in relation to removal of tissue

- (1) Section 38(1)—delete the penalty provision and substitute:
Maximum penalty: \$20 000.
- (2) Section 38(2)—delete "and is liable to a penalty not exceeding two thousand dollars" and substitute:
Maximum penalty: \$5 000.

8—Amendment of section 38A—Offence to provide false or misleading information in relation to donation of blood or semen

Section 38A(1)—delete the penalty provision and substitute:
Maximum penalty: \$20 000.

9—Amendment of section 39—Disclosure of information

Section 39(1)—delete the penalty provision and substitute:
Maximum penalty: \$20 000.

10—Amendment of section 41—Regulations

- (1) Section 41(2)—after paragraph (a) insert:
 - (ab) prescribe the form in which any consent or authority under this Act is to be obtained;
- (2) Section 41(2)(b)—delete "one thousand dollars" and substitute:
\$2 500