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K Woodward
Chief Parliamentary Counsel
Dated 9 September 2024



TASMANIA

HUMAN TISSUE ACT 1985

No. 118 of 1985

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HUMAN TISSUE ACT 1985

No. 118 of 1985

An Act to make provision for and in relation to the removal of human tissue for transplantation, for the definition of death and for related purposes

[Royal Assent 21 November 1985]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART I – PRELIMINARY

1. Short title

This Act may be cited as the *Human Tissue Act 1985*.

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2. Commencement

- (1) This section and section 1 shall commence on the day on which this Act receives the Royal Assent.
- (2) Except as provided in subsection (1), this Act shall commence on such day as may be fixed by proclamation.

3. Interpretation

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

affected deceased person means a deceased person whose death is a reportable death within the meaning of the *Coroners Act 1995*;

child means a person who has not attained the age of 18 years;

coroner means a coroner within the meaning of the *Coroners Act 1995*;

designated officer, in relation to a hospital, means a person appointed under section 4 to be a designated officer for that hospital;

diagnostic purposes means the purposes of determining –

- (a) the cause of a deceased person's death; or

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- (b) other medical issues, or the extent of other medical issues, relating to the health of a deceased person;

hospital manager means the person that has the day-to-day administrative control of the hospital;

next of kin means –

- (a) in relation to a deceased child who was not married – a person referred to in paragraph (a)(i), (ii), or (iii) of the definition of *senior available next of kin*; and
- (b) in relation to any other deceased person – a person referred to in paragraph (b)(i), (ii), (iii), or (iv) of that definition;

non-coronial autopsy means an autopsy that is authorised under Part IIIA;

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 who was not married –

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- (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 is available; or
 - (iii) where no person referred to in subparagraph (i) or (ii) is available – a person who was the guardian of the child immediately before the death of the child and is available; and
- (b) in relation to any other deceased person –
- (i) where the person, immediately before his death, was married or in a significant relationship, within the meaning of the *Relationships Act 2003*, and the person who was then his spouse or partner in the significant relationship is available – the person who was his spouse or partner;

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- (ii) where no person referred to in subparagraph (i) is available – a son or daughter of the person who has attained the age of 18 years and is available;
- (iii) where no person referred to in subparagraph (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; or
- (v) where no person referred to in subparagraph (i), (ii), (iii) or (iv) is available and the deceased person is an Aboriginal person within the meaning of the *Aboriginal and Torres Strait Islander Commission Act 1989* of the Commonwealth – a person who is an appropriate person according to the customs and the tradition of the

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community or group that
the deceased person
belonged to;

therapeutic, medical or scientific purpose
includes –

- (a) the teaching of therapeutic techniques, medicine or science; and
- (b) medical or scientific research; and
- (c) any other purpose prescribed in the regulations for this definition;

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.

4. Designated officers

- (1) For the purposes of this Act, the hospital manager, by instrument in writing, may appoint such medical practitioners as are necessary to be designated officers for the hospital.
- (2) A designated officer must not act in that capacity under Part IIIA in respect of a deceased person if the designated officer –

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- (a) before the deceased person's death, was involved in the provision of medical care to the person; or
- (b) is likely to be involved in –
 - (i) the performance of a non-coronial autopsy on the deceased person; or
 - (ii) the removal of tissue at such an autopsy.

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Part II – Donations of Tissue by Living Persons

PART II – DONATIONS OF TISSUE BY LIVING PERSONS

Division 1 – Exclusion of certain tissue

5. Interpretation

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

Division 2 – Donations by adults

6. 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 person.

7. Consent by adult living donor to removal of regenerative tissue

A person, other than a child, 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, medical or scientific purposes.

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

- (1) A person, other than a child, 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 subsection (1) shall specify the time at which the consent is given.

9. Medical practitioner may give certificate in relation to consent

A medical practitioner may certify in writing in relation to a consent given under section 7 or 8 by a person, being a consent the terms of which are set out in the certificate, that –

- (a) the consent was given in the medical practitioner's presence;
- (b) the medical practitioner explained to the person before the consent was given the nature, consequences and risks of the removal from the body of the person of the tissue specified in the consent; and
- (c) the medical practitioner is satisfied that –
 - (i) at the time the consent was given, the person had attained the age of 18 years;

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- (ii) at that time, the person was of sound mind; and
- (iii) the consent was freely given.

Division 3 – Donations by children

10. 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.

11. References to parent not to include guardian, &c.

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

12. Removal for transplantation of regenerative tissue from body of child

- (1) A child, and a parent of that child, may jointly give their 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) Despite subsection (1), a child who is, in the opinion of a medical practitioner giving a certificate under section 13 in relation to the consent of that child, capable of –

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- (a) understanding the nature, consequences and risks of the tissue removal specified in subsection (1); and
- (b) making a decision regarding the tissue removal that is informed and free from coercion –

may give consent in writing to the tissue removal specified in subsection (1) independently of any parent.

13. Medical practitioner may give certificate in relation to consent

A medical practitioner may certify in writing in relation to a consent given under section 12, being a consent the terms of which are set out in the certificate, that –

- (a) the consent was given in the medical practitioner's presence;
- (b) the medical practitioner explained to the child and to any parent of the child before the consent was given the nature, consequences and risks 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) the medical practitioner is satisfied that –
 - (i) at the time the consent was given, the person or persons consenting understood the nature,

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consequences and risks of the removal of the tissue and the nature of the transplantation; and

- (ii) the consent was freely given by the person or persons consenting.

Division 4 – Effect of consents

14. Effect of consent under section 7

Subject to section 17, a document that purports to be a consent given in accordance with section 7 is, where a certificate has been given in accordance with section 9 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.

15. Effect of consent under section 8

Subject to section 17, 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 9 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

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the transplantation of the tissue to the body of another living person.

16. Effect of consent under section 12

Subject to section 17, a document that purports to be a consent given in accordance with section 12 is, where a certificate has been given in accordance with section 13 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.

17. Written consent not to be sufficient authority in certain circumstances

A document that purports to be a consent given in accordance with section 7, 8, or 12 is not sufficient authority for a medical practitioner to remove tissue if –

- (a) the medical practitioner has been informed that the consent has been revoked; or
- (b) the medical practitioner knows or has reasonable grounds for suspecting that a certificate given for the purpose of section 9 or 13, as the case may be, in relation to that document contains a false statement.

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Division 5 – Donations of blood

17A. Interpretation

In this Division –

child means a person who has not attained the age of 16 years.

18. Consents by adults to removal of blood

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

- (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, medical or scientific purposes.

19. Consents to removal of blood from children

Subject to the requirements of Division 7 of Part II, a parent of a child may consent to the removal of blood from the body of the child for a purpose referred to in section 18 if –

- (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.

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

A consent duly given under section 18 or 19 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 in relation to whom the person has given the consent, as the case requires –

- (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.

Division 5A – Blood transfusions

21. Administration of blood transfusions to children without parental consent

- (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

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of this section, be deemed to be a blood transfusion.

- (3) Subject to subsection (4), a medical practitioner may administer a blood transfusion to a child who is otherwise unable to give consent 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, or if another medical practitioner is not available, a paramedic, 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 is satisfied 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 subsection (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 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

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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 the practitioner 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.
- (7) Nothing in this section prevents a child who, in the opinion of a medical practitioner proposing to administer a blood transfusion to the child, is capable of –
 - (a) understanding the nature, consequences and risks of the administration of a blood transfusion to the child; and
 - (b) making a decision regarding the administration of a blood transfusion to the child that is informed and free from coercion –

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from giving, refusing to give, or revoking consent to such a blood transfusion independently of any other person.

Division 6 – Revocation of consent

22. Revocation of consent

- (1) A reference in this section, in relation to a consent given for the purposes of this Act, 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;
 - (b) in any other case – as a reference to the person who gave the consent.
- (2) A person who gives, or either or both of the persons who jointly give, a consent for the purposes of this Act 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 any employee of that hospital;
 - (ii) to a medical practitioner who is attending the donor in a professional capacity; or
 - (iii) to a registered nurse employed at that hospital;

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- (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) a person, being the person who gave, or one of the persons who jointly gave, the consent for the purposes of this Act, indicates to a person referred to in subsection (2)(a) that the consent is revoked –

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

- (4) Where a person revokes a consent in accordance with subsection (2) –

- (a) if the donor is a patient in a hospital at the time of the revocation – the person to whom the revocation is communicated in accordance with subsection (2) or (3); or
- (b) if the donor is not a patient in a hospital at that time – any medical practitioner who becomes aware that the consent has been revoked –

must, if it appears to the person specified in paragraph (a) or (b), after making such inquiries

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(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 as soon as possible that the consent has been revoked.

(5) Where a consent is revoked, a person who has in the person's 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 9 or 13 is in the person's possession, being a certificate relating to the consent – that certificate –

to the person, or one of the persons, who revoked the consent.

Division 7 – Donations for approved research

22A. Interpretation

In this Division –

approved research means research approved by a human research ethics committee in accordance with the Australian Code and the National Statement;

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Australian Code means the Australian Code for the Responsible Conduct of Research, issued by the NHMRC in 2018, as amended and in force from time to time;

human research ethics committee means a committee formed in accordance with the requirements stated in the National Statement;

National Statement means the National Statement on Ethical Conduct in Human Research, issued by the NHMRC in 2007, as amended and in force from time to time;

NHMRC means the National Health and Medical Research Council established under the *National Health and Medical Research Council Act 1992* of the Commonwealth.

22B. Authorised donation by child

- (1) The removal of tissue from a child's body is authorised if –
 - (a) it is done –
 - (i) for the purpose of approved research; and
 - (ii) in accordance with the approval given in respect of that research, including any conditions of the approval; and

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- (b) consent is given in accordance with the National Statement; and
 - (c) one or more of the following applies:
 - (i) the approved research is for the benefit of the child;
 - (ii) the removal of the tissue occurs during a procedure that is for the benefit of the child and a medical practitioner is satisfied that the removal of the tissue for approved research is not likely to prejudice the health of the child;
 - (iii) a medical practitioner is satisfied that the removal of the tissue will involve a negligible or low risk of harm and minimal discomfort to the child.
- (2) For the purposes of subsection (1)(c)(ii) and (iii), the medical practitioner must make a record of the practitioner's satisfaction.
- (3) For the purposes of subsection (1)(c)(iii), the medical practitioner's satisfaction, and the record of that satisfaction, may relate to –
- (a) a particular child or children; or
 - (b) a group of children that is or may be participating in stated approved research.

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PART III – DONATIONS OF TISSUE AFTER DEATH

23. Authority to remove tissue where body of deceased at a hospital

(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 –

(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, 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, in relation to a deceased person who has died in a hospital or whose dead body has been brought to a hospital –

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- (a) the senior available next of kin of the deceased person has consented, in writing, to the removal of tissue from the body of the deceased person for any of the purposes referred to in subsection (1)(a); and
- (b) it appears to a designated officer for that hospital, after making such inquiries as are reasonable in the circumstances, that –
 - (i) the designated officer is not authorized by subsection (1) to give an authority in respect of that person;
 - (ii) the deceased person had not, during his lifetime, expressed an objection to the removal of tissue from his body;
 - (iii) the consent referred to in paragraph (a) has not been revoked; and
 - (iv) no objection has been made by any other next of kin (of the same or a higher order of the classes referred to in paragraphs (a) and (b) of the definition of *senior available next of kin* in section 3(1)) to the removal of tissue from the body of the deceased person for any purpose including the purpose, or any of the

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purposes, specified in that consent –

the designated officer may, by instrument in writing, authorize the removal of tissue from the body of the deceased person for that purpose or those purposes.

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

- (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, 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

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- (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 3(1) has an objection to the removal of tissue from the body of the deceased person –

the senior available next of kin shall not, under subsection (1), authorize the removal of tissue from the body of the deceased person.

- (3) Subject to this Part, where, during his lifetime, a deceased person whose body is at a place other than a hospital expressed the wish for, or consented to, the removal after his death of tissue from his body for a purpose referred to in subsection (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 subsection, hereby authorized.

25.

25A. Certificates required in certain situations

- (1) Where –
 - (a) a person has died within the meaning of section 27A; and
 - (b) at the time at which he died or at any time thereafter his respiration was being maintained by artificial means –

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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 a medical practitioner for a period of not less than 5 years, have each certified in writing –

- (c) that he carried out a clinical examination of the person while the respiration of that person was 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: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 6 months, or both.

- (2) For the purposes of subsection (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 subsection.

26. Effect of authority under this Part

- (1) An authority under this Part is sufficient authority for a medical practitioner other than –
 - (a) a medical practitioner referred to in section 25A(1); and

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Part III – Donations of Tissue After Death

(b) in a case to which section 23 applies, the designated officer who gave the authority –

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 section 25A(1) in relation to the giving of an authority does not affect the validity of the authority.

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Part IIIA – Non-coronial autopsies and medical examinations

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**PART IIIA – NON-CORONIAL AUTOPSIES AND
MEDICAL EXAMINATIONS**

Division 1 – General

26A. Non-coronial autopsies to be dignified

In the performance of a non-coronial autopsy under this Act, regard is to be had to the dignity of the deceased person.

Division 2 – Consent to non-coronial autopsies

26B. Authority to perform non-coronial autopsy

- (1) A designated officer, by instrument in writing, may authorise a non-coronial autopsy of the body of a deceased person if, after making reasonable enquiries, the designated officer is satisfied that –
 - (a) the deceased person is not a deceased child; and
 - (b) the deceased person had, during his or her lifetime, given written consent to the non-coronial autopsy; and
 - (c) the consent had not been withdrawn or revoked before the deceased person's death; and
 - (d) if the deceased person is an affected deceased person, the coroner has consented under section 28A to the non-coronial autopsy.

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Part IIIA – Non-coronial autopsies and medical examinations

- (2) A designated officer, by instrument in writing, may authorise a non-coronial autopsy of the body of a deceased person if, after making reasonable enquiries, the designated officer –
- (a) is not satisfied of the matters referred to in subsection (1); but
 - (b) is satisfied that –
 - (i) the deceased person did not, during his or her lifetime, object to a non-coronial autopsy being performed after his or her death; and
 - (ii) the senior available next of kin of the deceased person has given written consent to the non-coronial autopsy; and
 - (iii) the consent of the senior available next of kin has not been withdrawn or revoked; and
 - (iv) no objection to the non-coronial autopsy has been made by any other next of kin (of the same or of a higher order of the classes of next of kin specified in the definition of *senior available next of kin* in section 3); and
 - (v) if the deceased person is an affected deceased person, the coroner has consented under

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section 28A to the non-coronial autopsy.

- (3) However, subsection (2)(b)(ii), (iii) and (iv) do not apply if, after making reasonable enquiries, a designated officer is unable to locate, or ascertain the existence of, any of the deceased person's next of kin.
- (4) The consent of a deceased person or senior available next of kin of a deceased person to a non-coronial autopsy of the deceased person may be given conditionally or unconditionally.

26C. Removal of tissue during non-coronial autopsy

- (1) A designated officer, by instrument in writing, may authorise the removal of tissue for use for therapeutic, medical or scientific purposes during a non-coronial autopsy if, after making reasonable enquiries, the designated officer is satisfied that –
 - (a) the deceased person is not a deceased child; and
 - (b) the deceased person had, during his or her lifetime, given written consent for the removal and use of tissue for such purposes; and
 - (c) the consent had not been withdrawn or revoked before the deceased person's death; and

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- (d) if the deceased person is an affected deceased person, the coroner has consented under section 28A to the removal of tissue.
- (2) A designated officer, by instrument in writing, may authorise the removal of tissue for use for therapeutic, medical or scientific purposes during a non-coronial autopsy if, after making reasonable enquiries, the designated officer –
- (a) is not satisfied of the matters referred to in subsection (1); but
 - (b) is satisfied that –
 - (i) the deceased person did not, during his or her lifetime, object to tissue being removed for use for therapeutic, medical or scientific purposes after his or her death; and
 - (ii) the senior available next of kin of the deceased person has given written consent for the removal and use of tissue for such purposes; and
 - (iii) that consent of the senior available next of kin has not been withdrawn or revoked; and
 - (iv) no objection to the removal and use of the tissue has been made by any other next of kin (of the same or of a higher order of the

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classes of next of kin specified in the definition of *senior available next of kin* in section 3); and

- (v) if the deceased person is an affected deceased person, the coroner has consented under section 28A to the removal of tissue.
- (3) However, subsection (2)(b)(ii), (iii) and (iv) do not apply if, after making reasonable enquiries, a designated officer is unable to locate, or ascertain the existence of, any of the deceased person's next of kin.
- (4) The consent of a deceased person or senior available next of kin of a deceased person to the removal of tissue for use for therapeutic, medical or scientific purposes during a non-coronial autopsy may be given conditionally or unconditionally.
- (5) An authorisation under this section is not required to remove tissue for diagnostic purposes during a non-coronial autopsy.

26D. Effect of authorisation under this Part

- (1) In this section –

conditions of consent means the conditions attached to –

- (a) a consent for the performance of a non-coronial autopsy; or

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- (b) a consent for the removal of tissue for use for therapeutic, medical or scientific purposes during a non-coronial autopsy.
- (2) An authorisation given under section 26B is authority for a medical practitioner, other than the designated officer giving the authorisation, to –
 - (a) perform, in accordance with the conditions of consent, a non-coronial autopsy on the body of the deceased person specified in the authorisation; and
 - (b) remove such tissue from the deceased person during a non-coronial autopsy as is necessary for diagnostic purposes.
- (3) An authorisation given under section 26C is authority for –
 - (a) a medical practitioner, other than the designated officer giving the authorisation, to remove, in accordance with the conditions of consent, tissue from a deceased person during a non-coronial autopsy in accordance with the authorisation; and
 - (b) the removed tissue to be used, in accordance with the conditions of consent, for therapeutic, medical or scientific purposes.
- (4) If the same tissue is required for diagnostic purposes and for therapeutic, medical or

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scientific purposes, the tissue is to be used for diagnostic purposes first.

Division 3 – Consent to medical examination

26E. Medical examination of stillborn child

(1) In this section –

conditions of parental consent means the conditions attached to the consent of a parent of a stillborn child for –

- (a) the performance of a medical examination of the stillborn child; or
- (b) the removal of tissue for use for therapeutic, medical or scientific purposes during a medical examination of a stillborn child;

stillborn child means a child who is stillborn and –

- (a) is at least 20 weeks in gestation; or
 - (b) if it cannot be reliably established whether the period of gestation is at least 20 weeks, has a body mass of at least 400 grams at birth.
- (2) A designated officer, by instrument in writing, may authorise a medical examination of a

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stillborn child if a parent of the stillborn child has given consent in writing to the examination.

- (3) An authorisation under subsection (2) is authority for a medical practitioner, other than the designated officer who gave the authorisation, to –
 - (a) perform, in accordance with the conditions of parental consent, the medical examination of the stillborn child specified in the authorisation; and
 - (b) remove such tissue from the stillborn child during the medical examination as is necessary for medical testing.
- (4) A designated officer, by instrument in writing, may authorise the removal of tissue for use for therapeutic, medical or scientific purposes during a medical examination of a stillborn child if a parent of the stillborn child has given written consent for the tissue to be removed for use for therapeutic, medical or scientific purposes.
- (5) An authorisation under subsection (4) is authority for –
 - (a) a medical practitioner, other than the designated officer who gave the authorisation, to remove, in accordance with the conditions of parental consent, tissue from a stillborn child during a medical examination in accordance with the authorisation; and

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- (b) the removed tissue to be used, in accordance with the conditions of parental consent, for therapeutic, medical or scientific purposes.
- (6) The consent of a parent of a stillborn child to a medical examination of the stillborn child, or to the removal of tissue for use for therapeutic, medical or scientific purposes from the stillborn child, may be given conditionally or unconditionally.
- (7) If the same tissue is required for medical testing and for therapeutic, medical or scientific purposes, the tissue is to be used for medical testing first.

Division 4 – Procedure

26F. Secretary to approve or issue guidelines

- (1) This section applies to a hospital where non-coronial autopsies, or medical examinations of stillborn children, are performed in accordance with this Act.
- (2) A hospital manager is to submit draft guidelines to the Secretary.
- (3) The draft guidelines –
 - (a) must include guidelines on any matter specified by the Secretary; and
 - (b) may include guidelines on the following matters:

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- (i) procedures relating to obtaining consent for non-coronial autopsies or medical examinations of stillborn children;
 - (ii) hospital procedures and protocols for all stages of non-coronial autopsies or medical examinations of stillborn children;
 - (iii) the collection and recording of information relating to non-coronial autopsies or medical examinations of stillborn children; and
- (c) may include other guidelines relating to the performance of non-coronial autopsies or medical examinations of stillborn children.
- (4) The draft guidelines may amend, or replace, the existing guidelines for the hospital.
 - (5) The Secretary may –
 - (a) approve the draft guidelines as guidelines; or
 - (b) refuse to approve the draft guidelines.
 - (6) The Secretary may issue guidelines, without having first received a submission under subsection (2), that –

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- (a) put guidelines in place for a hospital; or
 - (b) amend the existing guidelines of a hospital; or
 - (c) replace the existing guidelines of a hospital.
- (7) If the Secretary issues guidelines that amend the existing guidelines, the amendment, unless it states otherwise, is incorporated into the existing guidelines.
- (8) If the Secretary issues guidelines that replace the existing guidelines, the existing guidelines are rescinded unless the replacement guidelines state otherwise.
- (9) The Secretary may specify in the guidelines the hospital, or hospitals, to which the guidelines apply.

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Part IV – Prohibition of Trading in Tissue

PART IV – PROHIBITION OF TRADING IN TISSUE

27. Certain contracts not to be entered into

- (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, 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.

Penalty: Fine not exceeding 5 penalty units or imprisonment for a term not exceeding 3 months, or both.

- (2) Subsection (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) 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.
- (4) Where he considers it desirable by reasons 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 subsection

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- (5) and nothing in subsection (1) or (5) applies to and in relation to a contract or arrangement entered into in accordance with an approval under this subsection.
- (5) A contract or arrangement entered into in contravention of this section is void.

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Part IVA – Definition of Death

PART IVA – DEFINITION OF DEATH

27A. When death occurs

For the purposes of the law of Tasmania, 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 V – MISCELLANEOUS

28. Act does not prevent specified removals of tissue, &c.

- (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 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) anything done in pursuance of the *Anatomical Examinations Act 2006*;
 - (ca) the removal of tissue from the body of a person permitted under another Act;
 - (d) the embalming of the body of a deceased person; or
 - (e) 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), *tissue* has the same meaning as in Part II.

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Part V – Miscellaneous

28A. Consent by coroner

(1) Before –

- (a) a senior available next of kin consents to the removal of tissue from the body of an affected deceased person; or
- (b) a designated officer authorises the removal of tissue from the body of an affected deceased person; or
- (c) a designated officer authorises the performance of a non-coronial autopsy of an affected deceased person –

a coroner must have consented to the removal of the tissue or, as the case may be, the performance of the non-coronial autopsy.

(2) However, before or after the death of an affected deceased person, a coroner may give a direction that his or her consent is not required under this section and, in that event, the deceased person is no longer an affected deceased person for the purposes of this Act.

(3) A consent or direction by a coroner under this section –

- (a) if the coroner makes the consent or direction orally, is to be confirmed in writing as soon as practicable; and
- (b) may be on such conditions as are specified in the consent or direction.

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- (4) Sections 24(3) and 26D do not apply in relation to an affected deceased person until a coroner has given his or her consent under subsection (1).

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

- (1) Subject to subsection (2), where –
- (a) a person carries out a procedure; and
 - (b) a consent or authority given under this Act is sufficient authority under this Act 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.

30. Offences

- (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 Act or another Act, sufficient authority for the removal of the tissue by that person.

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Part V – Miscellaneous

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 6 months, or both.

- (1A) A person must not perform a non-coronial autopsy on the body of a deceased person, or a medical examination of a stillborn child, except in accordance with a consent or authority that is, under this Act or another Act, sufficient authority for the performance of the non-coronial autopsy or the medical examination by that person.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 6 months, or both.

- (2) A person shall not, in connection with a proposal to remove tissue from the body of a person, whether living or dead, for the purpose of transplantation or for use for other therapeutic, medical, or scientific purposes, knowingly furnish information that is false or misleading concerning the suitability of the body for removal of the tissue for that purpose.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.

- (3) A person who –
- (a) gives an authority under this Act without having made the inquiries that the person is required by this Act to make;

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- (b) makes a false statement in a certificate given for the purposes of this Act; 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 10 penalty units or imprisonment for a term not exceeding 6 months, or both such fine and imprisonment.

- (4) Nothing in subsection (1) applies to or in relation to –
 - (a) anything done in pursuance of an order by a coroner under the *Coroners Act 1995*; or
 - (b) any other act authorized by law.

31. Disclosure of information

- (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 –
 - (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, medical or scientific purposes;
 - (b) with respect to whom or with respect to whose body a consent, other than a

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consent under section 18, or authority has been given under this Act; or

- (c) into whose body tissue other than blood has been, is being, or may be, transplanted –

may become publicly known.

Penalty: Fine not exceeding 5 penalty units or imprisonment for a term not exceeding 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 18 may become publicly known.

Penalty: Fine not exceeding 5 penalty units or imprisonment for a term not exceeding 3 months, or both.

- (3) This section applies –

- (a) where a consent has been given in accordance with this Act – to a medical practitioner who gave a certificate in relation to the consent;
- (b) where an authority has been given in accordance with this Act by a designated officer for a hospital – to the designated officer;

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- (c) where tissue has been removed from the body of a person or a deceased person – to 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) Subsections (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;

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- (c) with the consent of the person to whom the information relates, or, if that person is deceased, the consent of that person's next of kin; or
- (d) when the circumstances in which the disclosure is made are such that the disclosure is or would be privileged.

32. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may –
 - (a) provide for the making and keeping of records in connection with the removal of tissue from the body of a person (whether living or deceased), including records relating to –
 - (i) the removal of tissue in the course of medical, dental or surgical treatment; and
 - (ii) the use of the tissue for any purpose; and
 - (b) provide for the making and keeping of records relating to –
 - (i) a non-coronial autopsy under this Act; and

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- (ii) the use of any tissue removed under this Act for therapeutic, medical or scientific purposes; and
 - (c) prescribe information to be provided to the Secretary, or to any other specified person concerned in the administration of this Act, relating to –
 - (i) the removal of tissue under this Act from the body of a person (whether living or deceased); and
 - (ii) the use of the tissue for any purpose; and
 - (d) prescribe how tissue is to be dealt with once it is no longer required for the purposes of this Act.
- (3) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.
- (4) The regulations may –
- (a) provide that a contravention of any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

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- (5) The regulations may adopt, either wholly or in part and with or without modification, and either specifically or by reference, any standards, rules, codes or specifications whether or not the standards, rules, codes or specifications are published or issued before or after the commencement of this Act.
- (6) A reference in subsection (5) to standards, rules, codes or specifications includes a reference to an amendment to those standards, rules, codes or specifications, whether the amendment is published or issued before or after the commencement of this Act.

33. Consequential amendment, &c., of other Acts

- (1) *The amendments effected by this subsection have been incorporated into the authorised version of the Anatomy Act 1964.*
- (2) *The amendments effected by this subsection have been incorporated into the authorised version of the Anatomy Act 1964.*
- (3) *The amendments effected by this subsection have been incorporated into the authorised version of the Medical Act 1959.*
- (4) *The Sale of Blood Act 1964 and the Sale of Blood Act 1978 are repealed.*

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NOTES

The foregoing text of the *Human Tissue Act 1985* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 5 September 2024 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Human Tissue Act 1985</i>	No. 118 of 1985	21.11.1985 (ss. 1 and 2) 17.3.1986 (remaining provisions, see SR 1986 No. 19)
<i>Human Tissue Amendment Act 1987</i>	No. 51 of 1987	18.7.1987
<i>Statute Law Revision Act 1994</i>	No. 68 of 1994	25.11.1994
<i>Nursing Act 1995</i>	No. 100 of 1995	1.7.1996
<i>Coroners (Consequential and Miscellaneous Amendments) Act 1995</i>	No. 74 of 1995	31.12.1996
<i>Relationships (Consequential Amendments) Act 2003</i>	No. 45 of 2003	1.1.2004
<i>Human Tissue Amendment Act 2006</i>	No. 19 of 2006	10.11.2006
<i>Anatomical Examinations Act 2006</i>	No. 26 of 2006	1.3.2007
<i>Human Tissue Amendment Act 2008</i>	No. 3 of 2008	17.4.2008
<i>Health Practitioner Regulation National Law (Tasmania) (Consequential Amendments) Act 2010</i>	No. 3 of 2010	1.7.2010
<i>Human Tissue Amendment Act 2024</i>	No. 11 of 2024	5.9.2024

TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Amended by No. 68 of 1994, s. 3 and Sched. 1, No. 74 of 1995, s. 3 and Sched. 1, No. 100 of 1995, s. 97 and Sched. 7, No. 45 of 2003, Sched. 1, No. 19 of 2006, s. 4, No. 3 of 2010, Sched. 1 and No. 11 of 2024, s. 4
Section 4	Substituted by No. 19 of 2006, s. 5

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Provision affected	How affected
Section 5	Amended by No. 11 of 2024, s. 5
Section 7	Amended by No. 19 of 2006, s. 6
Section 9	Amended by No. 11 of 2024, s. 6
Section 12	Amended by No. 11 of 2024, s. 7
Section 13	Amended by No. 11 of 2024, s. 8
Division 5 of Part II	Heading amended by No. 3 of 2008, s. 4
Section 17A	Inserted by No. 3 of 2008, s. 5 Amended by No. 11 of 2024, s. 9
Section 18	Amended by No. 19 of 2006, s. 7
Section 19	Amended by No. 11 of 2024, s. 10
Division 5A of Part II	Heading inserted by No. 3 of 2008, s. 6
Section 21	Amended by No. 11 of 2024, s. 11
Section 22	Amended by No. 11 of 2024, s. 12
Section 22A of Part II	Inserted by No. 11 of 2024, s. 13
Section 22B of Part II	Inserted by No. 11 of 2024, s. 13
Section 23	Amended by No. 19 of 2006, s. 8
Section 24	Amended by No. 19 of 2006, s. 9
Section 25	Amended by No. 74 of 1995, s. 3 and Sched. 1 Repealed by No. 19 of 2006, s. 10
Section 25A	Inserted by No. 51 of 1987, s. 5
Section 26	Substituted by No. 51 of 1987, s. 6
Division 1	Inserted by No. 19 of 2006, s. 11
Division 2	Inserted by No. 19 of 2006, s. 11
Division 3	Inserted by No. 19 of 2006, s. 11
Division 4	Inserted by No. 19 of 2006, s. 11
Section 27	Amended by No. 51 of 1987, s. 8 and Sched. 1
Section 27A	Inserted by No. 51 of 1987, s. 7
Section 28	Amended by No. 26 of 2006, Sched. 2 and No. 11 of 2024, s. 14
Section 28A	Inserted by No. 19 of 2006, s. 12
Section 30	Amended by No. 51 of 1987, s. 8 and Sched. 1, No. 74 of 1995, s. 3 and Sched. 1, No. 19 of 2006, s. 13 and No. 11 of 2024, s. 15
Section 31	Amended by No. 51 of 1987, s. 8 and Sched. 1, No. 19 of 2006, s. 14 and No. 11 of 2024, s. 16
Section 32	Amended by No. 51 of 1987, s. 8 and Sched. 1 Substituted by No. 19 of 2006, s. 15
