



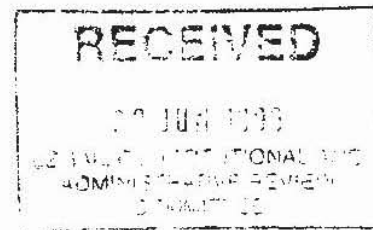
Submission No 43

NEW SOUTH WALES
MINISTER FOR HEALTH

24 JUN 1999

M99/3821

The Hon G Fenlon MLA
Chair
Legal Constitutional and Administrative Review Committee
Legislative Assembly of Queensland
Parliament House
George Street
BRISBANE QLD 4000



Dear Mr Fenlon

I refer to your letter concerning submissions to the Legal, Constitutional and Administrative Review Committee's inquiry into the Queensland Transplantation and Anatomy Amendment Bill 1998.

Organ and tissue donation by deceased persons in NSW is governed by the Human Tissue Act 1983. Please find the relevant sections attached. The provisions of the Human Tissue Act are similar to those of the Queensland Act. However, the NSW provisions do not distinguish between oral and written consent to post mortem donation, as section 26 of the Queensland Act does.


I understand that in NSW an indication by a potential donor on his or her driver's licence can be considered as a wish expressed during that person's lifetime to donate their organs after death. A designated officer is still required to make reasonable inquiries to determine whether the deceased revoked that wish during his or her lifetime.

The NSW Act does not make specific reference to 'signed writing' as does subsection 22(6) of the Queensland Act. Therefore, it has not been considered necessary to amend the NSW Act to specify that a driver's licence constitutes 'signed writing'.

I have referred your invitation to provide submissions to the Medical Director of the Coordination Centre for Organ and Tissue Donation which is administered by the NSW Division of the Australian Red Cross Blood Service for submission directly to you.

Thank you for providing this opportunity to comment on the Amendment Bill.

Yours sincerely



Craig Knowles
Minister for Health

Human Tissue Act 1983 No. 164

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

- (i) by leaving it with a director or the secretary of the body corporate; or
- (ii) by sending it by post addressed to the body corporate at its registered office or, if its registered office is not located in New South Wales, to the principal place of business of the body corporate in New South Wales.

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

PART 4—REMOVAL OF TISSUE AFTER DEATH

De facto spouses

22. For the purposes of this Part, where a deceased person is survived by a person who, although not married to the deceased person, was at the time of the deceased person's death living with the deceased person as the deceased person's spouse on a bona fide domestic basis, that surviving person shall be deemed to have been the spouse of the deceased person immediately before the deceased person's death.

Authority to remove tissue where body of deceased at a hospital

23. (1) Where it appears to a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances in relation to a person who has died in the hospital or whose dead body has been brought into the hospital, that the person:

- (a) had, during that person's lifetime, expressed the wish for, or consented to, the removal after that person's death of tissue from that person's body for the purpose of:
 - (i) its transplantation to the body of a living person; or
 - (ii) its use for other therapeutic purposes or for medical purposes or scientific purposes; and
- (b) had not withdrawn the wish or revoked the consent,

the designated officer may, by instrument in writing, authorise the removal of tissue from that person's body in accordance with the wish or consent.

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

- (a) the designated officer is not authorised by subsection (1) to give an authority in respect of the person;

Human Tissue Act 1983 No. 164

- (b) the person had not, during the person's lifetime, expressed an objection to the removal of tissue from the person's body; and
- (c) a senior available next of kin of the person has not objected to the removal of tissue from the person's body,

the designated officer may, by instrument in writing, authorise the removal of tissue from the person's body for any of the purposes referred to in subsection (1) (a) (i) or (ii).

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

(4) Where, in relation to a deceased person:

- (a) a next of kin of the person indicated to a designated officer for a hospital, when the person was unconscious before death, that the next of kin had no objection to the removal, after the person's death, of tissue from the person's body for a purpose referred to in subsection (1) (a) (i) or (ii);
- (b) the person did not subsequently recover consciousness before dying; and
- (c) the next of kin has not subsequently indicated to the designated officer that the next of kin objects to the removal of tissue from the person's body,

the designated officer may, for the purposes of any inquiry the designated officer is required to make by subsection (2), rely on that indication without further inquiry of that next of kin.

(5) Where there are 2 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 4 (1), an objection by any one of those persons has effect for the purposes of subsection (2) (c) notwithstanding any indication to the contrary by the other or any other of those persons.

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

24. (1) Where:

- (a) the body of a deceased person (other than a deceased child) is at a place other than a hospital;
- (b) the deceased person had, during the person's lifetime, expressed the wish for, or consented to, the removal after the person's death of tissue from the person's body for the purpose of:
 - (i) its transplantation to the body of a living person; or

Human Tissue Act 1983 No. 164

(ii) its use for other therapeutic purposes or for medical purposes or scientific purposes; and

(c) the wish had not been withdrawn or the consent revoked,

the removal of tissue from the person's body in accordance with the wish or consent is hereby authorised.

(2) Where the body of a deceased person is at a place other than a hospital, a senior available next of kin of the person may, by instrument in writing, authorise the removal of tissue from the person's body for the purpose of:

(a) its transplantation to the body of a living person; or

(b) its use for other therapeutic purposes or for medical purposes or scientific purposes.

(3) Notwithstanding subsection (2), where it appears to a senior available next of kin of a deceased person, after making such inquiries (if any) as are reasonable in the circumstances, that:

(a) the person had, during the person's lifetime, expressed an objection to the removal of tissue from the person's body and had not withdrawn that objection; or

(b) another next of kin of the same or a higher order of the classes in paragraph (a) or (b) of the definition of "senior available next of kin" in section 4 (1) has an objection to the removal of tissue from the person's body,

the senior available next of kin shall not authorise the removal of tissue from the person's body.

Penalty for an offence against this subsection: \$1,000.

Consent by coroner

25. (1) This section applies to a person in respect of whose death a coroner has jurisdiction to hold an inquest under the Coroners Act 1980.

(2) A designated officer for a hospital or a senior available next of kin shall not authorise the removal of tissue from the body of a person to whom this section applies unless a coroner has given consent to the removal of the tissue.

Penalty: \$4,000 or imprisonment for 6 months, or both.

(3) Section 24 (1) does not apply in relation to a person to whom this section applies unless a coroner has given consent to the removal of tissue from the person's body.

Human Tissue Act 1983 No. 164

(4) A consent by a coroner under this section may be expressed to be subject to such conditions as are specified in the consent.

(5) A consent by a coroner under this section may be given orally and, if so given, shall be confirmed in the prescribed manner.

(6) A coroner shall, in determining the conditions (if any) to which a consent shall be subject, have regard only to the effect which the removal of tissue from the body of the person to whom the consent relates may have in relation to the conduct of any inquest which a coroner has jurisdiction to hold in respect of that person's death.

Certificates required in certain situations

26. (1) Where:

- (a) a person has died in a hospital or the body of a deceased person has been brought into a hospital; and
- (b) at the time when the person died or at any time thereafter the person's respiration or the circulation of the person's blood was being maintained by artificial means,

a designated officer for the hospital shall not give an authority under this Part in respect of the person unless each of 2 medical practitioners (not including the designated officer) has certified in writing:

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

Penalty: \$4,000 or imprisonment for 6 months, or both.

(2) At the time when the clinical examination referred to in subsection (1) is carried out:

- (a) each of the 2 medical practitioners referred to in that subsection shall have practised medicine for a period or periods totalling not less than 5 years during the 8 years immediately preceding that time; and
- (b) at least one of those medical practitioners shall be a designated specialist for the hospital referred to in that subsection.

(3) For the purposes of subsection (2) (a), any period during which a person has practised medicine in a place outside New South Wales in accordance with the law in force in that place shall be taken into account in calculating the period of 5 years referred to in that paragraph.

*Human Tissue Act 1983 No. 164***Effect of authority under this Part**

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

- (a) a medical practitioner referred to in section 26 (1); or
- (b) where the authority was given by a medical practitioner, the medical practitioner by whom the authority was given,

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

(1A) Without limiting subsection (1), an authority under this Part which authorises the removal of tissue for the purpose of corneal transplantation (whether or not it authorises the removal of tissue for any other purpose) is sufficient authority for a person other than a medical practitioner to remove tissue from the body of the deceased person referred to in the authority for the purpose of corneal transplantation if the person removing the tissue:

- (a) is appointed, in writing, by the Secretary of the Department of Health to remove tissue under this section for the purpose of corneal transplantation; and
- (b) is not the person by whom the authority was given.

(2) A contravention by a designated officer of section 26 (1) in relation to the giving of an authority does not affect the validity of the authority.

PART 5—POST-MORTEM EXAMINATIONS**Authority for post-mortem examination where body of deceased at a hospital**

28. (1) Where it appears to a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances in relation to a person who has died in the hospital or whose dead body has been brought into the hospital, that the person:

- (a) had, during that person's lifetime, expressed the wish for, or consented to, the post-mortem examination of that person's body; and
- (b) had not withdrawn the wish or revoked the consent,

the designated officer may, by instrument in writing, authorise the post-mortem examination of that person's body in accordance with the wish or consent.

(2) Where it appears to a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances in relation to a person who has died in the hospital or whose dead body has been brought