

**Coroners and Human Tissue Acts (Amendment)  
Act 2006  
Act No. 59/2006**

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Victoria

No. 59 of 2006

# Coroners and Human Tissue Acts (Amendment) Act 2006<sup>†</sup>

[Assented to 29 August 2006]

The Parliament of Victoria enacts as follows:

## PART 1—PRELIMINARY

### 1. Purposes

The purposes of this Act are—

- (a) to amend the **Coroners Act 1985** in relation to autopsies and to provide further for the objects and functions of the Victorian Institute of Forensic Medicine; and

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(b) to make miscellaneous amendments to the  
**Human Tissue Act 1982.**

**2. Commencement**

- (1) This Act (except section 13(4)) comes into operation on the day after the day on which it receives the Royal Assent.
  - (2) Section 13(4) comes into operation on the day on which section 163(1)(c) of the **Health Professions Registration Act 2005** comes into operation.
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**PART 2—AMENDMENT OF THE CORONERS ACT 1985**

**3. Definitions**

In section 3(1) of the **Coroners Act 1985** insert the following definitions—

' "**corresponding law**" means a law relating to the donation of human tissue for transplantation or for use for other therapeutic purposes or for medical or scientific purposes that—

- (a) substantially corresponds to the **Human Tissue Act 1982**; or
- (b) is prescribed for the purposes of this definition;

"**transplantation**" has the same meaning as in section 3(2) of the **Human Tissue Act 1982**;

**4. Autopsies**

After section 27(1) of the **Coroners Act 1985** insert—

"(1A) For the purposes of an autopsy performed in accordance with—

- (a) a direction under sub-section (1); or
- (b) an order under section 28(4)(a)—

a mortuary technician, forensic technician or scientist, under the general supervision of the pathologist or doctor who is responsible for the performance of the autopsy, may remove or assist in the removal of tissue."

See:  
Act No.  
10257.  
Reprint No. 5  
as at  
26 November  
2004  
and  
amending  
Act Nos  
108/2004,  
18/2005,  
77/2005 and  
97/2005.  
LawToday:  
www.dms.  
dpc.vic.  
gov.au

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**5. Objects of the Victorian Institute of Forensic Medicine**

- (1) In section 64(2)(h) of the **Coroners Act 1985**, for "programs" **substitute** "programs;".
- (2) For section 64(2)(i) of the **Coroners Act 1985** **substitute**—
  - "(i) to provide tissue banking facilities and services referred to in section 66(4)."

**6. Functions of the Victorian Institute of Forensic Medicine**

- (1) In section 66(1) of the **Coroners Act 1985**—
    - (a) in paragraph (f), for "examinations;" **substitute** "examinations.";
    - (b) paragraph (g) is **repealed**.
  - (2) After section 66(3) of the **Coroners Act 1985** **insert**—
    - "(4) The Institute also has the following functions—
      - (a) to receive tissue taken in accordance with the **Human Tissue Act 1982** (whether under Part X of that Act or otherwise) from living persons in Victoria and to process, store and supply the tissue for transplantation to living persons in Victoria or elsewhere or for use, in Victoria or elsewhere, for other therapeutic purposes or for medical or scientific purposes;
      - (b) to remove tissue, or receive tissue taken, in accordance with the **Human Tissue Act 1982** from deceased persons in Victoria (whether or not a coroner has jurisdiction to investigate the deaths) and to process, store and
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supply the tissue for transplantation to living persons in Victoria or elsewhere or for use, in Victoria or elsewhere, for other therapeutic purposes or for medical or scientific purposes;

- (c) to remove tissue, or receive tissue taken, in accordance with a corresponding law of another State or a Territory and to process, store and supply the tissue for transplantation to living persons in Victoria or elsewhere or for use, in Victoria or elsewhere, for other therapeutic purposes or for medical or scientific purposes;
- (d) to receive tissue taken in accordance with a corresponding law of a country other than Australia and to process, store and supply the tissue for transplantation to living persons in Victoria or elsewhere or for use, in Victoria or elsewhere, for other therapeutic purposes or for medical or scientific purposes."

## 7. Validation

At the end of section 75 of the **Coroners Act 1985** insert—

- "(2) Anything done or purported to be done under this Act before the commencement of section 7 of the **Coroners and Human Tissue Acts (Amendment) Act 2006**, that would have been validly done had that Act been in operation at the time at which the thing was done or purported to have been done has, and is deemed always to have had, the same force and effect as it would have had if the **Coroners and Human Tissue Acts (Amendment) Act 2006** had been in

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operation at the time at which the thing was  
done or purported to have been done.".

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**PART 3—AMENDMENT OF THE HUMAN TISSUE ACT 1982**

**8. Removal of tissue after death**

For section 25(b) of the **Human Tissue Act 1982** substitute—

"(b) for a prescribed person or a person belonging to a prescribed class of persons to remove tissue, or a prescribed class of tissue, from the body of a deceased person in accordance with—

- (i) an authorisation of a designated officer under section 26(1); or
- (ii) an authority given by section 26(2).

Note: See section 47."

**9. New section 26A inserted**

After section 26 of the **Human Tissue Act 1982** insert—

**"26A. How information may be given**

A reference in section 26—

- (a) to the senior available next of kin making his or her consent known to a designated officer or to a registered medical practitioner or authorised person; or
- (b) to a designated officer or a registered medical practitioner or authorised person—
  - (i) making inquiries; or

See:  
Act No.  
9860.  
Reprint No. 3  
as at  
1 June 2004  
and  
amending  
Act No.  
97/2005.  
LawToday:  
www.dms.  
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- (ii) advising the senior available next of kin—

may be taken to be a reference to the designated officer, registered medical practitioner or authorised person being satisfied that the consent has been given, the inquiries have been made or the advice has been given, as the case may be."

**10. New section 28A inserted**

After section 28 of the **Human Tissue Act 1982** insert—

**"28A. How information may be given**

A reference in section 28—

- (a) to a designated officer of a hospital or a registered medical practitioner making inquiries or advising the senior available next of kin; or
- (b) to the senior available next of kin making his or her consent known to a designated officer or registered medical practitioner—

may be taken to be a reference to the designated officer or registered medical practitioner being satisfied that the inquiries have been made, the advice has been given or the consent has been given, as the case may be."

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**11. Post-mortem examinations**

After section 30(1) of the **Human Tissue Act 1982** insert—

"(1A) A mortuary technician, forensic technician or scientist, under the general supervision of the registered medical practitioner who is responsible for the conduct of the post-mortem examination, may remove or assist in the removal of tissue under sub-section (1)(b)."

**12. New section 32A inserted**

After section 32 of the **Human Tissue Act 1982** insert—

**"32A. How information may be given**

A reference in section 32—

- (a) to a designated officer of a hospital or a registered medical practitioner making inquiries or advising the senior available next of kin; or
- (b) to the senior available next of kin making his or her consent known to a designated officer or registered medical practitioner—

may be taken to be a reference to the designated officer or registered medical practitioner being satisfied that the inquiries have been made, the advice has been given or the consent has been given, as the case may be."

**13. Non-application of Human Tissue Act 1982**

(1) For section 42(1)(a) of the **Human Tissue Act 1982** substitute—

"(a) the removal of tissue, whether regenerative or non-regenerative, from the body of a living person—

- (i) in the course of medical treatment or dental care or a procedure carried out, in the interests of the health of the person, by a registered medical practitioner or, in the case of dental care, by a registered dentist with the consent, express or implied, given by or on behalf of the person; or
- (ii) in circumstances necessary for the preservation of the life of the person;

(ab) the removal of blood or other regenerative tissue from the body of a living person in the course of medical treatment or a procedure (including the testing of blood to determine whether the person has, or may have in the future, a disease or medical condition) carried out, in the interests of the health of the person, by a health service provider with the consent, express or implied, given by or on behalf of the person;"

(2) In section 42(2) of the **Human Tissue Act 1982**, after "(a)" insert ", (ab)".

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(3) After section 42(2) of the **Human Tissue Act 1982** insert—

'(3) In this section—

**"health service provider"** has the same meaning as in the **Health Records Act 2001** and includes—

- (a) a person who is employed or engaged by, or who performs work for, a health service provider in the performance of that service;
- (b) a provider that provides a service prescribed as a health service for the purposes of this section;

**"registered dentist"** has the same meaning as in the **Dental Practice Act 1999**.'

(4) In section 42(3) of the **Human Tissue Act 1982**, for the definition of "registered dentist" substitute—

' **"registered dentist"** means a person registered in the dentists' division of the register kept by the Dental Practice Board of Victoria under the **Health Professions Registration Act 2005**.'

#### **14. Offences**

In sections 44(4)(a) and 44(4)(b) of the **Human Tissue Act 1982**, after "make" insert "or having been satisfied that those inquiries have been made".

## 15. Disclosure of information

After section 45(3) of the **Human Tissue Act 1982** insert—

- "(4) Despite sub-section (1) and Health Privacy Principles 1 and 2 set out in Schedule 1 to the **Health Records Act 2001** and section 141 of the **Health Services Act 1988**, any of the persons referred to in sub-section (5) may—
- (a) collect and use health information within the meaning of the **Health Records Act 2001** in relation to a deceased person or an unconscious person referred to in section 26(5); and
  - (b) disclose that information to each other and any other necessary person—
- for the purposes of—
- (c) assessing whether the tissue of the deceased person or the person when deceased is suitable for any use permitted under Part IV, V or VI; and
  - (d) determining whether the removal of tissue is authorised under Part IV, V or VI; and
  - (e) ascertaining and locating the senior available next of kin of the person referred to in paragraph (a).
- (5) Sub-section (4) applies to—
- (a) a hospital where the person has died or where the person is or had previously been a patient;
  - (b) a registered medical practitioner of the person;

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- (c) the Victorian Institute of Forensic Medicine established under Part 9 of the **Coroners Act 1985**;
  - (d) a tissue or organ donation service, including a person or body prescribed as a tissue or organ donation service;
  - (e) a person who is employed or engaged by, or who performs work for, a person or body referred to in paragraph (a), (c) or (d) in relation to tissue donation.
- (6) Despite any other Act or law, a person to whom a request for health information is made under sub-section (4) is authorised to provide the requested information."

**16. New section 45A inserted**

After section 45 of the **Human Tissue Act 1982** insert—

**"45A. Validation**

Anything done or purported to be done under this Act before the commencement of section 16 of the **Coroners and Human Tissue Acts (Amendment) Act 2006** that would have been validly done—

- (a) had that Act been in operation at the time at which the thing was done or purported to have been done; and
- (b) had the persons referred to in regulation 4A of the Human Tissue Regulations 2006 been prescribed to remove tissue of any kind and had their duties included the removal of tissue of any kind—

has, and is deemed always to have had, the same force and effect as it would have had if the **Coroners and Human Tissue Acts**

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**(Amendment) Act 2006** had been in operation at the time at which the thing was done or purported to have been done and the persons referred to in regulation 4A of the Human Tissue Regulations 2006 had been prescribed to remove tissue of any kind."

**17. New section 47 inserted**

After section 46 of the **Human Tissue Act 1982** insert—

**"47. Transitional**

Until the commencement of regulations made on or after the commencement of section 8 of the **Coroners and Human Tissue Acts (Amendment) Act 2006** prescribing persons, or classes of persons for the purposes of section 25(b), the persons referred to in regulation 4A of the Human Tissue Regulations 2006 are deemed to have been prescribed to remove tissue of any kind and their duties are deemed to include the removal of tissue of any kind."

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Endnotes

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**ENDNOTES**

† *Minister's second reading speech—*

*Legislative Assembly: 20 July 2006*

*Legislative Council: 9 August 2006*

The long title for the Bill for this Act was "to amend the **Coroners Act 1985** and the **Human Tissue Act 1982** and for other purposes."