

Version No. 036
Human Tissue Act 1982
No. 9860 of 1982

Version incorporating amendments as at 1 January 2010

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Version No. 036

Human Tissue Act 1982

No. 9860 of 1982

Version incorporating amendments as at 1 January 2010

An Act to make provision for and in relation to the Removal of Human Tissue for Transplantation, for Post-mortem Examinations, for the Definition of Death, for the Registration of Schools of Anatomy, to repeal certain Acts and enactments and for other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

PART I—PRELIMINARY

1 Short title and commencement

- (1) This Act may be cited as the **Human Tissue Act 1982**.
- (2) The several provisions of this Act shall come into operation on a day or on the respective days to be fixed by proclamation or successive proclamations of the Governor in Council published in the Government Gazette.

* * * * *

**S. 1(3)
repealed by
No. 27/1987
s. 3(a)**

2 Repeal

The Acts and enactments mentioned in the Schedule to the extent thereby expressed to be repealed are hereby repealed accordingly.

3 Definitions

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

child means a person who—

- (a) has not attained the age of 18 years; and
- (b) is not married;

S. 3(1) def. of *coroner* substituted by No. 10257 s. 85(a)(i), repealed by No. 77/2008 s. 129(Sch. 2 item 12.1).

* * * * *

S. 3(1) def. of *designated officer* amended by No. 23/1994 s. 118(Sch. 1 item 27.1(a)).

designated officer in relation to a hospital means—

- (a) a registered medical practitioner for the time being appointed under section 4 to be a designated officer for that hospital; or
- (b) where, in relation to a hospital, there is no such person, the medical superintendent of the hospital or, while he is absent from or not on duty at the hospital, a person acting in his place;

domestic partner of a person means—

- (a) a person who is in a registered relationship with the person; or
- (b) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—
 - (i) for fee or reward; or
 - (ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

S. 3(1) def. of *domestic partner* inserted by No. 27/2001 s. 6(Sch. 4 item 5.1(a)), substituted by No. 12/2008 s. 73(1)(Sch. 1 item 31.1).

* * * * *

S. 3(1) def. of *medical practitioner* repealed by No. 23/1994 s. 118(Sch. 1 item 27.1(b)).

next of kin means—

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

- (b) in relation to any other person—a person referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (b) of that definition;

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;

registered medical practitioner means a medical practitioner registered under the **Health Professions Registration Act 2005**;

S. 3(1) def. of *registered medical practitioner* inserted by No. 23/1994 s. 118(Sch. 1 item 27.1(c)), amended by No. 97/2005 s. 182(Sch. 4 item 28).

senior available next of kin means—

- (a) in relation to a deceased child—
- (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 eighteen years and who 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 who is available; and

S. 3(1) def. of *senior available next of kin* amended by No. 27/2001 s. 6(Sch. 4 item 5.1(b)).

- (b) in relation to any other deceased person—
- (i) where the person, immediately before the person's death, had a spouse or domestic partner and that spouse or domestic partner is available—the spouse or domestic partner;
 - (ii) where the person, immediately before the person's death, did not have a spouse or domestic partner or the spouse or domestic partner is not available—a son or daughter of the person who has attained the age of 18 years and who 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 eighteen years and is available;

spouse of a person means a person to whom the person is married;

S. 3(1) def. of *spouse* inserted by No. 27/2001 s. 6(Sch. 4 item 5.1(a)).

* * * * *

S. 3(1) def. of *State Coroner* inserted by No. 10257 s. 85(a)(ii), repealed by No. 77/2008 s. 129(Sch. 2 item 12.1).

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.
- (3) A reference in this Act to a person's brother or sister is a reference to a brother or a sister whether of the whole blood or the half-blood and includes a reference to a person who was adopted by one or both of the parents of the first-mentioned person.
- (4) For the purposes of the definition of *domestic partner* in subsection (1)—
 - (a) *registered relationship* has the same meaning as in the **Relationships Act 2008**; and
 - (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and
 - (c) a person is not a domestic partner of another person only because they are co-tenants.

S. 3(4)
inserted by
No. 27/2001
s. 6(Sch. 4
item 5.2),
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 31.2).

4 Designated officer

- (1) The person, persons or body having the control and management of a hospital may, by instrument in writing, appoint such registered medical practitioners as the person, persons or body considers or consider necessary to be, for the purposes of this Act, designated officers for that hospital.

S. 4(1)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.2).

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s. 4

-
- (2) The power under this section to appoint a person as a designated officer includes the power, by instrument in writing, to remove a person so appointed.
-

PART II—DONATIONS OF TISSUE BY LIVING PERSONS

Division 1—General

5 Interpretation

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

6 Blood donations

Nothing in this Part prevents the removal in accordance with Part III of blood from the body of a person.

Division 2—Donations by adults

7 Consent by adult donor to removal of regenerative tissue

A person, not being 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 purposes or for medical or scientific purposes.

8 Consent by adult donor to removal of non-regenerative tissue

- (1) A person, not being 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 Certificate of consent

A registered medical practitioner may certify in writing—

- (a) that the consent in writing of a person under section 7 or 8 was given in his presence;
- (b) that he explained to the person before the consent was given the nature and effect of the removal from the body of that person of the tissue specified in the consent; and
- (c) that he is satisfied—
 - (i) that, at the time the consent was given, the person was not a child;
 - (ii) that, at the time, the person was of sound mind; and
 - (iii) that the consent was freely given.

S. 9
amended by
No. 23/1994
s. 118(Sch. 1
item 27.3).

10 Effect of consent under section 7

Subject to section 12, 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 registered medical practitioner, other than the registered 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.

S. 10
amended by
No. 23/1994
s. 118(Sch. 1
item 27.4).

s. 11

S. 11
amended by
No. 23/1994
s. 118(Sch. 1
item 27.5).

11 Effect of consent under section 8

Subject to section 12, 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 registered medical practitioner, other than the registered 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 the transplantation of the tissue to the body of another living person.

S. 12
amended by
No. 23/1994
s. 118(Sch. 1
item 27.6).

12 Written consent not sufficient authority in certain cases

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

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

Division 3—Donations from children

13 References to parent not to include guardian etc.

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

14 Prohibition against removal of tissue from children

- (1) It is not lawful to remove non-regenerative tissue from the body of a living child for the purpose of the transplantation of the tissue to the body of another living person.
- (2) Except as provided by this Part, it is not lawful to remove regenerative tissue from the body of a living child for the purpose of the transplantation of the tissue to the body of another living person.

15 Removal of regenerative tissue from body of child

- (1) A parent of a child may give his 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 a brother, a sister or a parent of the child.
- (2) A registered medical practitioner may certify in writing—
 - (a) that the consent in writing of a parent of a child was given in his presence; and
 - (b) that he explained to the parent before the consent was given the nature and effect of the removal from the body of that child of the tissue specified in the consent and the nature of the transplantation of that tissue—
and—
 - (c) that—
 - (i) he is satisfied that, at the time consent was given, the child was capable of understanding the nature and effect of the removal of the tissue and the nature of the transplantation;
 - (ii) he explained those matters to the child;
 - (iii) the child understood those matters; and

S. 15(2)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.7).

s. 16

- (iv) the child was in agreement with the proposed removal and transplantation of tissue; or
- (d) where the consent relates to the removal of specified regenerative tissue for the purpose of transplantation of the tissue to the body of a brother or sister of the child—that he is satisfied—
 - (i) that the brother or sister is likely to die unless the tissue is transplanted to the body of that brother or sister; and
 - (ii) that, at the time the consent was given, the child, by reason of his age, was not capable of understanding the nature and effect of the removal of the tissue and the nature of the transplantation.

S. 16
amended by
No. 23/1994
s. 118(Sch. 1
item 27.8).

16 Effect of consent under section 15(1)

Subject to section 17, a document that purports to be a consent given in accordance with section 15(1) is, where a certificate has been given in accordance with section 15(2) in relation to that consent, sufficient authority for a registered medical practitioner, other than the registered medical practitioner who gave the certificate, to remove the regenerative tissue specified in the consent for the purpose specified in the consent.

S. 17
amended by
No. 23/1994
s. 118(Sch. 1
item 27.9).

17 Written consent not sufficient authority in certain circumstances

A document that purports to be a consent given in accordance with section 15(1) is not sufficient authority for a registered medical practitioner to remove tissue if—

- (a) the registered medical practitioner has been informed that the consent has been revoked;

S. 17(a)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.9).

(b) the registered medical practitioner knows or has reasonable grounds for suspecting that a certificate given for the purpose of section 15(2) in relation to that document contains a false statement; or

S. 17(b)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.9).

(c) the registered medical practitioner has been informed that the child is no longer in agreement with the removal and transplantation of the tissue.

S. 17(c)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.9).

Division 4—Revocation of consent or agreement

18 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; and

(b) in any other case—as a reference to the person who gave the consent.

(2) A person who gives 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 a designated officer for that hospital;

(ii) to a registered medical practitioner who is attending the donor in a professional capacity; or

S. 18(2)(a)(ii)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.10).

(iii) to a nurse or state enrolled nurse employed at that hospital; and

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S. 18(2)(b)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.10).

(b) where the donor is not a patient in a hospital—to a registered 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) the person who gave the consent for the purposes of this Act indicates to a person referred to in subparagraph (ii) or (iii) of paragraph (a) of subsection (2) that the consent is revoked—

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

S. 18(4)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.10).

(4) Where a person revokes his consent in accordance with subsection (2)—

(a) if the donor is a patient in a hospital at the time of the revocation—the designated officer for the hospital 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—the registered medical practitioner to whom the revocation is communicated—

shall, if it appears to him, after making such inquiries (if any) as are reasonable in the circumstances, that a registered medical practitioner is proposing to rely on the consent in connexion with the removal of tissue from the body of the donor, inform that registered medical practitioner forthwith that the consent has been revoked.

(5) Where a consent is revoked, a person who has in his possession the instrument of consent shall, upon being informed by a designated officer for a hospital or by the registered medical practitioner to whom the revocation is communicated that the consent has been revoked, surrender—

S. 18(5)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.10).

(a) that instrument; and

(b) if a certificate given in accordance with section 9 or with section 15(2) is in his possession, being a certificate relating to the consent—that certificate—

to the person who gave the consent.

(6) A designated officer to whom a person indicates that his consent is revoked under paragraph (a) of subsection (2) or who is informed under subsection (3) of the revocation of a consent shall forthwith record the fact in writing and shall retain the record for three years.

(7) A registered medical practitioner to whom a person indicates that his consent is revoked under paragraph (b) of subsection (2) shall forthwith record the fact in writing and shall retain the record for three years.

S. 18(7)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.10).

19 Child no longer in agreement

(1) Where a medical practitioner has given a certificate in accordance with section 15(2) and the child in relation to whom the certificate has been given informs—

(a) if the child is a patient in a hospital—

(i) a designated officer for that hospital;

(ii) a medical practitioner who is attending the child in a professional capacity; or

(iii) a nurse or state enrolled nurse employed at that hospital; and

(b) if the child is not a patient in a hospital—a medical practitioner who is attending the child in a professional capacity—

that he is no longer in agreement with the proposed removal and transplantation of tissue, the succeeding provisions of this section have effect.

(2) Where—

(a) the child is a patient in a hospital; and

(b) the person whom he so informs is a person referred to in subparagraph (ii) or (iii) of paragraph (a) of subsection (1)—

that person shall inform a designated officer for that hospital forthwith that the child is no longer in agreement with the proposed removal and transplantation of tissue.

(3) The designated officer for the hospital or, where the child is not a patient in a hospital, the medical practitioner who is attending the child in a professional capacity shall, if it appears to him, after making such inquiries (if any) as are reasonable in the circumstances, that a medical practitioner is proposing to remove the tissue from the body of the child, inform that medical practitioner forthwith that the child is no longer in agreement with the proposed removal and transplantation of tissue.

(4) A person who is informed that the child is no longer in agreement with the proposed removal and transplantation of tissue shall, if he has in his possession the instrument of consent that relates to the removal and transplantation of the tissue, surrender—

(a) that instrument; and

(b) if the certificate given in accordance with section 15(2) is in his possession—that certificate—

to the person who gave the consent.

- (5) A designated officer whom a child informs that he is no longer in agreement with the proposed removal and transplantation of tissue under paragraph (a) of subsection (1) or who is informed under subsection (2) that a child is no longer in agreement with the proposed removal and transplantation shall forthwith record the fact in writing and shall retain the record for three years.
- (6) A medical practitioner whom a child informs that he is no longer in agreement with the proposed removal and transplantation of tissue under paragraph (b) of subsection (1) shall forthwith record the fact in writing and shall retain the record for three years.
-

**PART III—BLOOD DONATIONS AND BLOOD
TRANSFUSIONS**

20 Definition of blood transfusion

- (1) In this Part *blood transfusion* means the transfusion of human blood or any of the constituents of human blood to a person.
- (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 of this Part, be deemed to be a blood transfusion.

S. 20A
inserted by
No. 47/2009
s. 3.

20A Definition of *child* for the purposes of sections 21, 22 and 23

For the purposes of sections 21, 22 and 23, *child* means a person who has not attained the age of 16 years.

21 Consent of adults to removal of blood

A person, not being a child, may consent to the removal of blood from his body—

- (a) for the purpose of a blood transfusion to another person; or
- (b) for the purpose of using the blood or any of its constituents for other therapeutic purposes or for medical or scientific purposes.

22 Consents to removal of blood from children

A parent of a child may consent in writing to the removal of blood from the body of the child for a purpose referred to in section 21 if—

S. 22(a)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.11).

- (a) the registered 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.

23 Consent sufficient authority of removal of blood

A consent under this Part is sufficient authority for the removal of blood from the body of the person who has given the consent or from the body of the child of the person who has given the consent, as the case may be.

24 Blood transfusions to children without consent

- (1) Where the consent of a parent of a child or of a person having authority to consent to the administration of a blood transfusion to a child is refused or not obtained and a blood transfusion is administered to the child by a registered medical practitioner, the registered medical practitioner, or any person acting in aid of the registered medical practitioner and under his supervision in administering the transfusion shall not incur any criminal liability by reason only that the consent of a parent of the child or a person having authority to consent to the administration of the transfusion was refused or not obtained if—

S. 24(1)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.12).

- (a) in the opinion of the registered medical practitioner a blood transfusion was—
- (i) a reasonable and proper treatment for the condition from which the child was suffering; and
 - (ii) that without a blood transfusion the child was likely to die; and
- (b) either—
- (i) after in person examining the child, a second registered medical practitioner concurred in that opinion before the administration of the blood transfusion; or

S. 24(1)(a)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.12).

S. 24(1)(b)(i)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.12).

s. 24

S. 24(1)(b)(ii)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.12).

(ii) where the child is in a hospital the chief medical administrator or medical superintendent of the hospital, being satisfied that a second registered medical practitioner was not available to examine the child and that a blood transfusion was a reasonable and proper treatment for the condition from which the child was suffering and that without a blood transfusion the child was likely to die, consented (either orally or in writing) to the transfusion before it was administered.

S. 24(2)
substituted by
No. 27/1987
s. 3(b).

- (2) Where a blood transfusion is administered to a child in accordance with this section—
- (a) the transfusion; and
 - (b) the taking of any step, including the taking of any blood sample from the child, which is needed to enable the transfusion to be administered—

are, for all purposes, deemed to have been administered or taken with the consent of a parent of the child or of a person having authority to consent to the administration of the transfusion.

S. 24(3)
substituted by
No. 27/1987
s. 3(c),
amended by
No. 23/1994
s. 118(Sch. 1
item 27.12).

- (3) Nothing in this section relieves a registered medical practitioner from liability in respect of anything for which he or she would have been liable if—
- (a) a blood transfusion had been administered;
or
 - (b) a step needed to enable the transfusion to be administered had been taken—

with the consent of a parent of the child or a person having authority to consent to the administration of the transfusion.

PART IV—DONATIONS OF TISSUE AFTER DEATH

25 Effect of authority under section 26

An authority under section 26 is sufficient authority—

(a) for a registered medical practitioner other than—

(i) a registered medical practitioner who gave the authority; or

(ii) a registered medical practitioner who gave a certificate under section 26(7) relating to that authority—

S. 25 substituted by No. 27/1987 s. 3(d).

S. 25(a) amended by No. 12/1998 s. 3(Sch. item 4.1).

S. 25(a)(i) amended by No. 12/1998 s. 3(Sch. item 4.1).

S. 25(a)(ii) amended by No. 12/1998 s. 3(Sch. item 4.1).

to remove tissue from the body of a deceased person in accordance with section 26; and

(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).

S. 25(b) substituted by No. 59/2006 s. 8.

Note

See section 47.

26 Authority to remove tissue after death

(1) A designated officer for a hospital may, subject to and in accordance with this section, authorize the removal of tissue from the body of a person who has died in the hospital or whose dead body has been brought into the hospital—

-
- (a) for the purpose of the transplantation of the tissue to the body of a living person; or
 - (b) for use of the tissue for other therapeutic purposes or for medical or scientific purposes—

where—

- (c) the deceased person—
 - (i) had, at any time, in writing; or
 - (ii) had, during his last illness, orally in the presence of two witnesses—

expressed the wish for, or consented to, the removal after his death of tissue from his body for such a purpose or use;

- (d) subject to subsection (3), where the senior available next of kin of the deceased person makes it known to the designated officer that he consents to the removal of tissue from the body of the deceased person for such a purpose or use; or
 - (e) where the designated officer—
 - (i) after making such inquiries as are reasonable in the circumstances, is unable to ascertain the existence or the whereabouts of the next of kin of the deceased person; and
 - (ii) has no reason to believe that the deceased person had expressed an objection to the removal after his death of tissue from his body for such a purpose or use.
-

(2) Where the body of a deceased person is in a place other than a hospital, a registered medical practitioner and a person with an authority given under section 25(b) are authorized, subject to and in accordance with this section, to remove tissue from the body of the deceased person—

S. 26(2)
amended by
Nos 27/1987
s. 3(e),
23/1994
s. 118(Sch. 1
item 27.13(a)).

- (a) for the purpose of the transplantation of the tissue to the body of a living person; or
- (b) for use of the tissue for other therapeutic purposes or for medical or scientific purposes—

where—

- (c) the deceased person—
 - (i) had, at any time, in writing; or
 - (ii) had, during his last illness, orally in the presence of two witnesses—

expressed the wish for, or consented to, the removal after his death of tissue from his body for such a purpose or use;

- (d) subject to subsection (3), where the senior available next of kin of the deceased person makes it known to the registered medical practitioner or authorized person that he consents to the removal of tissue from the body of the deceased person for such a purpose or use; or

S. 26(2)(d)
amended by
Nos 27/1987
s. 3(f), 23/1994
s. 118(Sch. 1
item 27.13(a)).

- (e) where the registered medical practitioner or authorized person—
 - (i) after making such inquiries as are reasonable in the circumstances, is unable to ascertain the existence or the whereabouts of the next of kin of the deceased person; and

S. 26(2)(e)
amended by
Nos 27/1987
s. 3(f), 23/1994
s. 118(Sch. 1
item 27.13(a)).

(ii) has no reason to believe that the deceased person had expressed an objection to the removal after his death of tissue from the body for such a purpose or use.

S. 26(3)
amended by
Nos 27/1987
s. 3(g),
23/1994
s. 118(Sch. 1
item 27.13(a)).

(3) A designated officer for a hospital shall not give an authority under paragraph (d) of subsection (1) and a registered medical practitioner or authorized person shall not remove tissue under paragraph (d) of subsection (2) if he has reason to believe that the deceased person—

(a) had, during his lifetime, expressed in writing an objection to the removal of tissue from his body after his death; or

(b) had, at any time during his last illness, expressed orally in the presence of two witnesses an objection to the removal of tissue from his body after his death.

S. 26(4)
amended by
Nos 27/1987
s. 3(g),
23/1994
s. 118(Sch. 1
item 27.13(a)).

(4) A designated officer for a hospital who gives an authority under paragraph (c) of subsection (1) for the removal of tissue from the body of a deceased person and a registered medical practitioner or authorized person who removes tissue under paragraph (c) of subsection (2) from the body of a deceased person shall forthwith advise the senior available next of kin of the deceased person that he has authorized the removal of, or removed tissue in accordance with the wish or consent of the deceased person.

S. 26(5)
amended by
Nos 27/1987
s. 3(g),
23/1994
s. 118(Sch. 1
item 27.13(a)).

(5) The senior available next of kin of a person may make it known to a designated officer for a hospital or a registered medical practitioner or authorized person at any time when the person is unconscious before death that he consents to the removal, after the death of the person, of tissue from the body of the person for the purpose or a use referred to in subsection (1), but the

designated officer or registered medical practitioner or authorized person shall not act on such an indication if the person recovers consciousness.

(6) Where there are two or more persons having a description referred to in a subparagraph of paragraph (a) or (b) of the definition of *senior available next of kin* in section 3, the consent of any one of those persons has effect for the purposes of this section notwithstanding any indication to the contrary by the other or any other of those persons.

(7) A designated officer for a hospital shall not give an authority under subsection (1) in respect of a deceased person and a registered medical practitioner or authorized person shall not remove tissue under subsection (2) from the body of a deceased person unless—

S. 26(7)
amended by
Nos 27/1987
s. 3(h),
23/1994
s. 118(Sch. 1
item 27.13(a)).

(a) where the respiration or the circulation of the blood of the deceased person is not being maintained by artificial means—a registered medical practitioner (not being the designated officer or the first-mentioned registered medical practitioner) has certified in writing—

S. 26(7)(a)
amended by
Nos 27/1987
s. 3(i), 23/1994
s. 118(Sch. 1
item 27.13(a)).

(i) that he carried out a clinical examination of the person; and

(ii) that, in his opinion, the person has died within the meaning of section 41; or

(b) where the respiration or the circulation of the blood of the deceased person is being maintained by artificial means—two registered medical practitioners, neither of whom is the designated officer or the first-mentioned registered medical practitioner and each of whom has been for a period of

S. 26(7)(b)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.13
(a)(b)).

s. 26A

not less than five years a registered medical practitioner, have each certified in writing—

- (i) that he has carried out a clinical examination of the person while the respiration or the circulation of the blood of that person was being maintained by artificial means; and
- (ii) that, in his opinion, at the time of examination, irreversible cessation of all function of the brain of the person had already occurred.

Penalty: 100 penalty units or imprisonment for six months, or both.

S. 26(8)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.13(a)).

- (8) For the purposes of subsection (7), any period during which a person who is a registered medical practitioner practised as a registered medical practitioner, however described, under the law in force in a place outside Victoria shall be taken into account in calculating the period of five years referred to in that subsection.

S. 26A
inserted by
No. 59/2006
s. 9.

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
 - (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.

27 Consent by a coroner

- (1) If the designated officer for a hospital or, in a case to which section 26(2) applies, the registered medical practitioner or the authorized person has reason to believe that the circumstances applicable in relation to the death of a person are such that a coroner has jurisdiction under the **Coroners Act 2008** to investigate the death of the person, the designated officer or the registered medical practitioner or the authorized person, as the case may be, shall not authorize the removal of or remove tissue from the body of the deceased person unless a coroner has given his consent to the removal.
- (2) Section 26(2) does not operate in a case in which a coroner has or may have jurisdiction under the **Coroners Act 2008** to investigate the death of a person unless a coroner has given his consent to the removal of tissue from the body of the deceased person.
- (3) A coroner may give a direction either before or after the death of a person that his consent to the removal of tissue from the body of the person after the death of the person is not required and, in that event, subsection (1) does not apply to or in relation to the removal of tissue from the body of the person.
- (4) A consent or direction by a coroner under this section may be expressed to be subject to such conditions as are specified in the consent or the direction.

S. 27(1)
amended by
Nos 10257
s. 85(b),
27/1987 s. 3(j),
23/1994
s. 118(Sch. 1
item 27.14),
77/2008
s. 129(Sch. 2
item 12.2).

S. 27(2)
amended by
Nos 10257
s. 85(c),
77/2008
s. 129(Sch. 2
item 12.2).

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No. 9860 of 1982
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s. 27

- (5) A consent or direction may be given orally by a coroner, and if so given, shall be confirmed in writing.
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PART V—POST-MORTEM EXAMINATIONS

28 Authority for post-mortem

(1) Subject to this Part, where the body of a deceased person is in a hospital and it appears to a designated officer for the hospital, after making such inquiries as are reasonable in the circumstances, that the deceased person—

- (a) had, at any time, in writing; or
- (b) had, during his last illness, orally in the presence of two witnesses—

expressed the wish for, or consented to, a post-mortem examination of his body, the designated officer may, by writing signed by him, authorize a post-mortem examination of the body of the deceased person.

(2) Subject to this Part, where the body of a deceased person is in a place other than a hospital and it appears to a registered medical practitioner, after making such inquiries as are reasonable in the circumstances, that the deceased person—

- (a) had, at any time, in writing; or
- (b) had, during his last illness, orally in the presence of two witnesses—

expressed the wish for, or consented to, a post-mortem examination of his body, the registered medical practitioner is authorized to carry out a post-mortem examination of the body of the deceased person.

(3) Subject to this Part—

- (a) where the body of a deceased person is in a hospital and it appears to a designated officer for the hospital; or

S. 28(2)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.15).

S. 28(3)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.15).

Human Tissue Act 1982
No. 9860 of 1982
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S. 28(3)(b)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.15).

(b) where the body of a deceased person is in a place other than a hospital and it appears to a registered medical practitioner—

after making such inquiries as are reasonable in the circumstances, that—

S. 28(3)(c)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.15).

(c) the designated officer is not authorized by subsection (1) to give an authority in respect of the body of the deceased person and the registered medical practitioner is not authorized by subsection (2) to carry out a post-mortem examination of the body of the deceased person; and

S. 28(3)(d)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.15).

(d) the senior available next of kin of the deceased person makes it known to the designated officer or registered medical practitioner that he consents to a post-mortem examination of the body of the deceased person—

the designated officer may, by writing signed by him, authorize a post-mortem examination of the body or the registered medical practitioner is authorized to carry out a post-mortem examination of the body.

S. 28(4)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.15).

(4) A designated officer for a hospital shall not give an authority under subsection (3) and a registered medical practitioner shall not carry out a post-mortem examination under subsection (3) if he has reason to believe that the deceased person—

(a) had, at any time in writing; or

(b) had, at any time during his last illness, orally in the presence of two witnesses—

expressed an objection to a post-mortem examination of his body.

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| <p>(5) Where a designated officer for a hospital or a registered medical practitioner, after making such inquiries as are reasonable in the circumstances, is unable to ascertain the existence or whereabouts of the next of kin of the deceased person, subsection (3) applies as if paragraph (d) of that subsection were omitted.</p> | <p>S. 28(5)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.15).</p> |
| <p>(6) The senior available next of kin of a person, if he has no reason to believe that the person had expressed an objection to a post-mortem examination of his body, may make it known to a designated officer of a hospital or to a registered medical practitioner at any time before the death of the person that he consents to a post-mortem examination of the body of the person.</p> | <p>S. 28(6)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.15).</p> |
| <p>(7) A designated officer for a hospital who gives an authority under subsection (1) for a post-mortem examination of the body of a deceased person and a registered medical practitioner who carries out a post-mortem examination under subsection (2) of the body of a deceased person shall forthwith advise the senior available next of kin of the deceased person that he has authorized or carried out the post-mortem examination in accordance with the wish or consent of the deceased person.</p> | <p>S. 28(7)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.15).</p> |
| <p>(8) Where there are two or more persons having a description referred to in a subparagraph of paragraph (a) or (b) of the definition of <i>senior available next of kin</i> in section 3, the consent of any one of those persons has effect for the purposes of this section notwithstanding any indication to the contrary by the other or any other of those persons.</p> | |
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s. 28A

S. 28A
inserted by
No. 59/2006
s. 10.

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.

29 Consent by coroner

S. 29(1)
substituted by
No. 10257
s. 85(d),
amended by
No. 77/2008
s. 129(Sch. 2
item 12.3).

- (1) This section applies to a deceased person whose death a coroner has jurisdiction to investigate under the **Coroners Act 2008**.
- (2) A designated officer for a hospital or a senior available next of kin, shall not authorize a post-mortem examination of the body of a deceased person to whom this section applies unless a coroner has given his consent to the examination.
- (3) Section 28(1), (2) and (3) do not apply in relation to a deceased person to whom this section applies unless a coroner has given his consent to a post-mortem examination of the body of the deceased person.

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- (4) A coroner may give a direction, either before or after the death of a person to whom this section applies, that his consent to a post-mortem examination of the body of the person is not required and, in that event subsections (2) and (3) do not apply to or in relation to a post-mortem examination of the body of the deceased person.
 - (5) A consent or direction by a coroner under this section may be expressed to be subject to such conditions as are specified in the consent or direction.
 - (6) A consent or direction may be given orally by a coroner and, if so given, shall be confirmed in writing within seven days after it is given.

30 Effect of authority under this Part

- (1) An authority under this Part is sufficient authority for a registered medical practitioner (other than, in a case to which section 29 applies, the designated officer for the hospital)—
 - (a) to conduct an examination of the body of the deceased person; and
 - (b) to remove tissue from the body of the deceased person.
- (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 subsection (1)(b).
- (2) An authority under this Part is authority for the use, for therapeutic, medical or scientific purposes, of tissue removed from the body of the deceased person for the purpose of the post-mortem examination.

S. 30(1)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.16).

S. 30(1A)
inserted by
No. 59/2006
s. 11.

S. 30(3)
amended by
Nos 10257
s. 85(e),
77/2008
s. 129(Sch. 2
item 12.4).

- (3) Authority under the **Coroners Act 2008** to remove tissue is, subject to any order to the contrary by a coroner, authority for the use, for therapeutic, medical or scientific purposes, of tissue removed from the body of the deceased person for the purpose of the post-mortem examination.

31 Conduct of examination

Where a person carries out an anatomical examination, he shall ensure that the examination is carried out, and the body handled, in a proper and decent manner.

PART VI—DONATIONS FOR ANATOMICAL PURPOSES

32 Authority for anatomy

(1) Subject to this Part, where the body of a deceased person is in a hospital and it appears to a designated officer for the hospital, after making such inquiries as are reasonable in the circumstances, that the deceased person—

- (a) had, at any time, in writing; or
- (b) had, during his last illness, orally in the presence of two witnesses—

expressed the wish for, or consented to, the retention after his death of his body—

- (c) for the purpose of anatomical examination; or
- (d) for the purpose of the use of his body for the study and teaching of the anatomy of the human body—

the designated officer may, by instrument in writing, authorize the retention and use of the body of the deceased person for any of those purposes.

(2) Subject to this Part, where the body of a deceased person is in a place other than a hospital and it appears to a registered medical practitioner, after making such inquiries as are reasonable in the circumstances, that the deceased person—

- (a) had, at any time in writing; or
- (b) had, during his last illness, orally in the presence of two witnesses—

expressed the wish for, or consented to, the retention after his death of his body—

S. 32(2)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.17).

s. 32

- (c) for the purpose of anatomical examination;
or
- (d) for the purpose of the use of his body for the
study and teaching of the anatomy of the
human body—

the registered medical practitioner may, by
instrument in writing, authorize the retention and
use of the body of the deceased person for any of
those purposes.

S. 32(3)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.17).

(3) Subject to this Part—

- (a) where the body of a deceased person is in a
hospital and it appears to the designated
officer for the hospital; or
- (b) where the body of a deceased person is in
any other place and it appears to a registered
medical practitioner—

S. 32(3)(b)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.17).

after making such inquiries as are reasonable in
the circumstances that—

S. 32(3)(c)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.17).

- (c) the designated officer or registered medical
practitioner is not authorized by subsection
(1) or (2) to give an authority in respect of
the body of the deceased person; and
- (d) the senior available next of kin of the
deceased person makes it known to the
designated officer that he consents to the
retention and use of the body of the deceased
person for any of those purposes—

the designated officer or registered medical
practitioner may, by writing signed by him,
authorize the retention and use of the body of the
deceased person for any of the purposes referred
to in paragraphs (c) and (d) of subsection (1).

Human Tissue Act 1982
No. 9860 of 1982
Part VI—Donations for Anatomical Purposes

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- (4) A designated officer for a hospital or a registered medical practitioner shall not give an authority under subsection (3) if he has reason to believe that the deceased person—
- (a) had, at any time, in writing; or
 - (b) had, during his last illness, orally in the presence of two witnesses—
- expressed an objection to the retention and use of his body for any of the purposes referred to in paragraphs (c) and (d) of subsection (1).
- (5) Where a designated officer for a hospital or a registered medical practitioner, after making such enquiries as are reasonable in the circumstances is unable to ascertain the existence or whereabouts of the next of kin of the deceased person subsection (3) applies as if paragraph (d) of that subsection were omitted.
- (6) The senior available next of kin of a person may make it known to a designated officer for a hospital or a registered medical practitioner at any time when the person is unconscious before death that he consents to the retention after the death of the person of the body of the person for any of the purposes referred to in paragraphs (c) and (d) of subsection (1), but the designated officer or registered medical practitioner shall not act on such an indication if the person recovers consciousness.
- (7) A designated officer for a hospital or a registered medical practitioner who gives an authority under subsection (1) or (2) for the retention and use of the body of a deceased person shall forthwith advise the senior available next of kin of the deceased person that he has authorized the retention and use of the body of the deceased
- S. 32(4)**
amended by
No. 23/1994
s. 118(Sch. 1
item 27.17).
- S. 32(5)**
amended by
No. 23/1994
s. 118(Sch. 1
item 27.17).
- S. 32(6)**
amended by
No. 23/1994
s. 118(Sch. 1
item 27.17).
- S. 32(7)**
amended by
No. 23/1994
s. 118(Sch. 1
item 27.17).

s. 32A

person in accordance with the wish or consent of the deceased person.

- (8) Where there are two or more persons having a description referred to in a subparagraph of paragraph (a) or (b) of the definition of *senior available next of kin* in section 3, the consent of any of those persons has effect for the purposes of this section notwithstanding any indication to the contrary by the other or any other of those persons.

S. 32A
inserted by
No. 59/2006
s. 12.

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.

33 Consent by coroner

S. 33(1)
amended by
Nos 10257
s. 85(f),
23/1994
s. 118(Sch. 1
item 27.18),
77/2008
s. 129(Sch. 2
item 12.5).

- (1) If the designated officer for a hospital or, in a case to which section 32(2) applies, the registered medical practitioner, has reason to believe that the circumstances applicable in relation to the death of a person are such that a coroner has jurisdiction under the **Coroners Act 2008** to investigate the death of the person the designated officer or the registered medical practitioner, as the case may be, shall not authorize the retention of the body of the deceased person for any of the purposes referred to in paragraph (c) or (d) of section 32(1)

unless a coroner has given his consent to the retention of the body of the person.

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

34 Effect of authority under this Part

- (1) An authority under this Part is sufficient authority for the removal of the body of the deceased person to a school of anatomy for its acceptance by the school of anatomy and for its retention and use, subject to the regulations (if any) made for the purposes of section 37, by the school of anatomy for a purpose referred to in paragraph (c) or (d) of section 32(1).
 - (2) In subsection (1) *school of anatomy* means—
 - (a) a school of anatomy the conduct of which is authorized under this Act;
 - (b) a place that is, by virtue of section 35(4), to be deemed to be a school of anatomy for the purposes of this Act and the regulations; or
 - (c) a school of anatomy established or licensed under a law of the Commonwealth, of another State or of a Territory.
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PART VII—SCHOOLS OF ANATOMY

35 Schools of anatomy

- (1) In this section, *prescribed institution* means an institution specified in the regulations as a prescribed institution for the purposes of this Part.
- (2) The Minister may, by notice published in the Government Gazette, authorize the conduct within a prescribed institution of a school of anatomy for the teaching and study of anatomy and for the carrying on of the practice of anatomy.
- (3) A notice under subsection (2) may specify that the school of anatomy, the conduct of which is so authorized, shall be concerned only with the teaching and study of the anatomy of such part of the human body as is specified in the notice.
- (4) The Minister may, by notice published in the Government Gazette, authorize the carrying out of anatomical examinations and the teaching and study of the anatomy of the whole or a specified part of the human body at a place, not being a place within a prescribed institution, specified in the notice.
- (5) A place specified in an authority under subsection (4) that has not been revoked shall be deemed for the purposes of this Act and the regulations to be a school of anatomy.
- (6) The Minister may by notice published in the Government Gazette, revoke an authority given under subsection (4).

36 Inspectors of schools of anatomy

- (1) The Governor in Council may by notice published in the Government Gazette appoint inspectors of schools of anatomy.
- (2) The Governor in Council may by notice published in the Government Gazette revoke the appointment of an inspector.
- (3) The Governor in Council may from time to time determine the schools of anatomy that an inspector shall superintend.
- (4) An inspector may at any time inspect any school of anatomy that in accordance with subsection (3) he superintends.
- (5) A person who, immediately before the commencement of this Act, was an inspector appointed under section 28 of the **Medical Act 1958** is an inspector of schools of anatomy and, for the purposes of this Act, shall be deemed to have been appointed under this Act.

37 Regulations relating to schools of anatomy

- (1) The regulations may make provision for and in relation to—
 - (a) the period after death within which, and the manner in which, bodies may be transported to a school of anatomy;
 - (b) the conditions subject to which anatomical examinations and the teaching and study of anatomy and the practice of anatomy may be carried out;
 - (c) the furnishing of returns and other information by the person in charge of a school of anatomy;
 - (d) the precautions to be taken in regard to the receipt and custody of bodies;

Human Tissue Act 1982
No. 9860 of 1982
Part VII—Schools of Anatomy

s. 37

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- (e) the inspection of schools of anatomy;
 - (f) the regulation and control of schools of anatomy; and
 - (g) the disposal of bodies or any parts of bodies.
- (2) A person shall not contravene or fail to comply with a provision of the regulations made for the purposes of subsection (1) that is applicable to him.

Penalty: 10 penalty units.

PART VIII—PROHIBITION OF TRADING IN TISSUE

38 Unauthorized selling of tissue prohibited

- (1) Subject to this section, a person shall not sell, or agree to sell, tissue (including his own tissue) or the right to take tissue from his body.

Penalty: 50 penalty units.

- (2) Nothing in subsection (1) applies to a sale, or an agreement to sell, to a person who is, or is reasonably believed by the vendor to be, acting subject to, and in accordance with, a permit granted under section 39(2).

- (3) Subsection (1) does not apply to the receiving of reasonable expenses of a kind referred to in section 17 of the **Prohibition of Human Cloning for Reproduction Act 2008**.

S. 38(3)
inserted by
No. 63/1995
s. 168(1),
amended by
Nos 11/2003
s. 25(1),
72/2008 s. 27.

39 Unauthorized buying of tissue prohibited

- (1) Subject to this section, a person shall not buy, agree to buy, offer to buy, hold himself out as being willing to buy, or inquire whether a person is willing to sell to the person or another person—

- (a) tissue; or
(b) the right to take tissue from the body of another person.

Penalty: 100 penalty units or imprisonment for six months, or both.

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Part VIII—Prohibition of Trading in Tissue

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S. 39(1A)
inserted by
No. 63/1995
s. 168(2),
amended by
Nos 12/1998
s. 3(Sch.
item 4.2),
11/2003
s. 25(1),
72/2008 s. 27.

S. 39(2)
amended by
No. 10163
s. 33.

- (1A) Subsection (1) does not apply to the giving of reasonable expenses of a kind referred to in section 17 of the **Prohibition of Human Cloning for Reproduction Act 2008**.
- (2) Where he considers it desirable by reason of special circumstances so to do, the Minister may, by a permit in writing, authorize a person, subject to such conditions and restrictions as may be specified in the permit, to buy tissue (other than spermatozoa or ova) or the right to take tissue (other than spermatozoa or ova) from the body of another person.
- (3) Nothing in subsection (1) applies to anything done under and in accordance with a permit granted under subsection (2).
- (4) The Minister may at any time, by notice in writing given to a person to whom a permit has been granted under this section, cancel the permit.
- (5) Where a permit has been granted under subsection (2) subject to any conditions or restrictions specified in the permit, a person shall not act on the authority of the permit unless the conditions or restrictions, as the case may be, are or have been complied with.
- (6) A person who contravenes subsection (5) is guilty of an offence and liable to a penalty not exceeding 50 penalty units or imprisonment for three months, or both.

39A Recovery of certain costs of tissue banks

S. 39A
inserted by
No. 67/2003
s. 6.

- (1) A person who owns or controls a tissue bank prescribed by the regulations may charge an amount to recover the reasonable costs associated with the removal, evaluation, storage, processing at the tissue bank and distribution from the tissue bank of tissue removed in accordance with this Act.
- (2) Section 38(1) does not apply to a person who only charges an amount in accordance with subsection (1).
- (3) Section 39(1) does not apply to a person who only pays an amount charged in accordance with subsection (1).

40 Advertising restrictions

S. 40
amended by
No. 63/1995
s. 168(3).

A person shall not—

- (a) publish or disseminate by newspaper, other periodical, book, broadcasting, television, cinematograph or other means whatever;
- (b) exhibit to public view in a house, shop or place; or
- (c) deposit in the area, yard, garden or enclosure of a house, shop or place—

an advertisement relating to the selling or buying of tissue or the donation of tissue or of the right to take tissue from the bodies of persons unless the proposed advertisement has been approved by the Minister and contains a statement to that effect.

Penalty: 50 penalty units or imprisonment for three months, or both.

PART IX—DEFINITION OF DEATH

41 Definition of death

For the purposes of the law of Victoria, a person has died when there has occurred—

- (a) irreversible cessation of circulation of blood in the body of the person; or
 - (b) irreversible cessation of all function of the brain of the person.
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PART X—MISCELLANEOUS

42 Act does not prevent specified removals of tissue etc.

(1) Nothing in this Act applies to or in relation to—

- (a) the removal of tissue, 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;
- (b) the use or disposal of the tissue so removed;
- (c) the embalming of the body of a deceased person; or
- (d) the preparation, including the restoration of any disfigurement or mutilation, of the body of a deceased person for the purpose of interment or cremation.

S. 42(1)(a) amended by No. 23/1994 s. 118(Sch. 1 item 27.19), substituted by No. 59/2006 s. 13(1).

S. 42(1)(ab) inserted by No. 59/2006 s. 13(1).

S. 42(2)
amended by
No. 59/2006
s. 13(2).

S. 42(3)
inserted by
No. 59/2006
s. 13(3).

S. 42(3) def. of
*registered
dentist*
substituted by
No. 59/2006
s. 13(4).

(2) In paragraph (a), (ab) and (b) of subsection (1) a reference to tissue does not include a reference to foetal tissue, spermatozoa or ova.

(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 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**.

43 Exclusion of liability when 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.

44 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, sufficient authority for the removal of the tissue by that person.

Penalty: 100 penalty units or imprisonment for six months, or both.

- (2) A person shall not conduct a post-mortem examination of the body of a deceased person except in accordance with an authority that is, under this Act, sufficient authority for the person to conduct the post-mortem examination.

Penalty: 100 penalty units or imprisonment for six months, or both.

- (3) A person shall not—

- (a) remove the body of a deceased person to a school of anatomy; or
- (b) use the body of a deceased person for a purpose specified in section 32(1)—

except in accordance with an authority that is, under Part VI, sufficient authority for such removal or use of the body for that purpose.

Penalty: 100 penalty units or imprisonment for six months, or both.

- (4) A person shall not—

- (a) give an authority under this Act without having made the inquiries that he is required by this Act to make or having been satisfied that those inquiries have been made;

S. 44(4)(a)
amended by
No. 59/2006
s. 14.

s. 45

S. 44(4)(b)
amended by
No. 59/2006
s. 14.

- (b) remove tissue from, or carry out a post-mortem examination of, the body of a deceased person without having made the inquiries that he is required by this Act to make or having been satisfied that those inquiries have been made;
- (c) make a false statement in a certificate given for the purposes of this Act; or
- (d) contravene or fail to comply with a provision of Division 4 of Part II.

Penalty: 100 penalty units or imprisonment for six months, or both.

- (5) Nothing in subsection (1) or (2) applies to or in relation to—

S. 44(5)(a)
amended by
Nos 10257
s. 85(g),
77/2008
s. 129(Sch. 2
item 12.6).

- (a) anything done in pursuance of an order by a coroner under the **Coroners Act 2008**; or

- (b) any other act authorized by law.

45 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 has been removed for the purpose of transplantation or for use for other therapeutic purposes or for medical or scientific purposes;
 - (b) with respect to whom or with respect to whose body a consent or authority has been given under this Act; or

(c) into whose body tissue has been, is being, or may be, transplanted—

may become publicly known.

Penalty: 50 penalty units.

(2) This section applies—

(a) where a consent has been given in accordance with this Act—to a registered medical practitioner who gave a certificate in relation to the consent;

S. 45(2)(a)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.20).

(b) where an authority has been given in accordance with this Act by a designated officer for a hospital—to the designated officer;

(c) where tissue has been removed from the body of a person or a deceased person—the person 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;

S. 45(2)(c)
amended by
No. 27/1987
s. 3(k).

(d) where tissue has been transplanted into the body of a person—to the registered medical practitioner who performed the transplantation and, if the tissue as 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

S. 45(2)(d)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.20).

(e) where it is proposed that tissue will be transplanted into the body of a person—to the registered 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.

S. 45(2)(e)
amended by
No. 23/1994
s. 118(Sch. 1
item 27.20).

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- (3) Subsection (1) does not apply to or in relation to any information disclosed—
- (a) in pursuance of an order of a court or when otherwise required by law;
 - (b) for the purposes of hospital administration or bona fide medical research;
 - (c) with the consent of the person to whom the information relates; or
 - (d) when the circumstances in which the disclosure is made are such that the disclosure is or would be privileged.
- (4) Despite subsection (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 subsection (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

S. 45(4)
inserted by
No. 59/2006
s. 15.

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- (e) ascertaining and locating the senior available next of kin of the person referred to in paragraph (a).
- (5) Subsection (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;
 - (c) the Victorian Institute of Forensic Medicine established under Part 9 of the **Victorian Institute of Forensic Medicine 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 subsection (4) is authorised to provide the requested information.

S. 45(5)
inserted by
No. 59/2006
s. 15.

S. 45(5)(c)
amended by
No. 77/2008
s. 129(Sch. 2
item 12.7).

S. 45(6)
inserted by
No. 59/2006
s. 15.

45A Validation

S. 45A
inserted by
No. 59/2006
s. 16.

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

s. 46

(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 (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.

S. 46
amended by
No. 67/2003
s. 7 (ILA
s. 39B(1)).

46 Regulations

(1) The Governor in Council may make regulations, not inconsistent with this Act, prescribing all matters that are authorized or required to be prescribed for carrying out or giving effect to this Act.

S. 46(2)
inserted by
No. 67/2003
s. 7.

(2) The regulations—
(a) may be of general or limited application; and
(b) may differ according to differences in time, place or circumstance.

S. 47
inserted by
No. 59/2006
s. 17.

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.

Human Tissue Act 1982
No. 9860 of 1982

Sch.

* * * * *

Sch.
repealed by
No. 23/1994
s. 118(Sch. 1
item 27.21).

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ENDNOTES

1. General Information

The **Human Tissue Act 1982** was assented to on 5 January 1983 and came into operation on 4 April 1983: Government Gazette 26 January 1983 page 176.

2. Table of Amendments

This Version incorporates amendments made to the **Human Tissue Act 1982** by Acts and subordinate instruments.

Infertility (Medical Procedures) Act 1984, No. 10163/1984

Assent Date: 20.11.84
Commencement Date: S. 33 on 10.8.86: Government Gazette 6.8.86 p. 2011
Current State: This information relates only to the provision/s amending the **Human Tissue Act 1982**

Coroners Act 1985, No. 10257/1985

Assent Date: 10.12.85
Commencement Date: Ss 1–3, Pt 9 (ss 64–74) on 12.2.86: Government Gazette 12.2.86 p. 382; rest of Act on 1.6.86: Government Gazette 30.4.86 p. 1115
Current State: All of Act in operation

Human Tissue (Amendment) Act 1987, No. 27/1987

Assent Date: 12.5.87
Commencement Date: 12.5.87
Current State: All of Act in operation

Medical Practice Act 1994, No. 23/1994

Assent Date: 17.5.94
Commencement Date: Ss 1, 2 on 17.5.94: s. 2(1); rest of Act on 1.7.94: Government Gazette 23.6.94 p. 1672
Current State: All of Act in operation

Infertility Treatment Act 1995, No. 63/1995

Assent Date: 27.6.95
Commencement Date: S. 168 on 1.1.98: s. 2(4)
Current State: This information relates only to the provision/s amending the **Human Tissue Act 1982**

Health Acts (Statute Law Revision) Act 1998, No. 12/1998

Assent Date: 28.4.98
Commencement Date: 28.4.98
Current State: All of Act in operation

Statute Law Amendment (Relationships) Act 2001, No. 27/2001

Assent Date: 12.6.01
Commencement Date: S. 6(Sch. 4 item 5) on 28.6.01: Government Gazette 28.6.01 p. 1428
Current State: This information relates only to the provision/s amending the **Human Tissue Act 1982**

Human Tissue Act 1982
No. 9860 of 1982

Endnotes

Health Legislation (Research Involving Human Embryos and Prohibition of Human Cloning) Act 2003, No. 11/2003

Assent Date: 6.5.03
Commencement Date: S. 25(1) on 16.10.03: Government Gazette 16.10.03 p. 2624
Current State: This information relates only to the provision/s amending the **Human Tissue Act 1982**

Health Legislation (Amendment) Act 2003, No. 67/2003

Assent Date: 14.10.03
Commencement Date: S. 7 on 15.10.03: s. 2(1); s. 6 on 1.6.04: s. 2(3)
Current State: This information relates only to the provision/s amending the **Human Tissue Act 1982**

Health Professions Registration Act 2005, No. 97/2005

Assent Date: 7.12.05
Commencement Date: S. 182(Sch. 4 item 28) on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Human Tissue Act 1982**

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

Assent Date: 29.8.06
Commencement Date: Ss 8–13(3), 14–17 on 30.8.06: s. 2(1); s. 13(4) on 1.7.07: s. 2(2)
Current State: This information relates only to the provision/s amending the **Human Tissue Act 1982**

Relationships Act 2008, No. 12/2008

Assent Date: 15.4.08
Commencement Date: S. 73(1)(Sch. 1 item 31) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Human Tissue Act 1982**

Prohibition of Human Cloning for Reproduction Act 2008, No. 72/2008

Assent Date: 25.11.08
Commencement Date: S. 27 on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Human Tissue Act 1982**

Coroners Act 2008, No. 77/2008

Assent Date: 11.12.08
Commencement Date: S. 129(Sch 2 item 12) on 1.11.09: s. 2
Current State: This information relates only to the provision/s amending the **Human Tissue Act 1982**

Human Tissue Amendment Act 2009, No. 47/2009

Assent Date: 18.8.09
Commencement Date: 19.8.09: s. 2
Current State: All of Act in operation

3. Explanatory Details

No entries at date of publication.