

# CLAUSE NOTES

## *Human Tissue Amendment Bill 2024*

### Part 1 - Preliminary

- |          |  |
|----------|--|
| Clause 1 | <b>Short title</b><br><br>The Short Title states that the Act is to be cited as the <i>Human Tissue Amendment Act 2024</i> .   |
| Clause 2 | <b>Commencement</b><br><br>Provides for the Act to commence on Royal Assent.   |
| Clause 3 | <b>Principal Act</b><br><br>This clause identifies the <i>Human Tissue Act 1985</i> as the Principal Act for the purposes of the Bill.   |
| Clause 4 | <b>Section 3 amended (Interpretation)</b><br><br>This clause amends section 3 of the Principal Act by omitting the definition of “child” and substituting a definition that is based on age and not marital status. Consequentially, the definitions of “next of kin” and “senior next of kin” are amended to clarify that, where a person who has not attained the age of 18 years but is married, their spouse is their first next of kin or senior next of kin, respectively. |
| Clause 5 | <b>Section 5 amended (Interpretation)</b><br><br>This clause amends section 3 of the Principal Act by inserting “breastmilk” as a type of tissue to which a reference to tissue in Part II (Donations of Tissue by Living Persons) shall not be read as included for the purpose of that part.   |

Clause 6	<p><b>Section 9 amended (Medical practitioner may give certificate in relation to consent)</b></p> <p>This clause amends section 3 of the Principal Act by omitting “and effect” and inserts “consequences and risks” for greater specificity of the elements of informed consent.</p> <p>This clause further omits “or, not having attained that age, was married” in consequence of clause 4. Living persons who have not attained the age of 18 years and wish to donate tissue may rely on section 12.</p> <p>Minor clarifying amendments have omitted “his” and “he” with explicit references to the medical practitioner that is the subject of the requirements.</p>
Clause 7	<p><b>Section 12 amended</b></p> <p>This clause amends section 12 of the Principal Act by renumbering the existing provision as subsection (1) and inserting a new subsection (2) that clarifies that a child who is a mature minor may consent to the removal of their own tissue for transplantation, without any parent also needing to consent.</p>
Clause 8	<p><b>Section 13 amended (Medical practitioner may give certificate in relation to consent)</b></p> <p>In consequence of clause 7 allowing mature minors to consent to removal of their own tissue independently of any parent, this clause amends section 13 of the Principal Act to provide that the medical practitioner may certify in writing in relation to a consent given under section 12 that the consent was given in the presence of the medical practitioner, who is satisfied that the consent was given freely and with understanding of the nature, consequences and risks by the child or, where the child consenting is not a mature minor and consents with a parent or parents, then all persons consenting.</p> <p>It is intended that, consistent with the existing provisions of the Act, a child who is consenting with the support of their parent or parents has an age-appropriate understanding of the nature, consequences and risks of the removal of their tissue, in addition to their freely given agreement to the removal.</p>

- Clause 9**                      **Section 17A amended (Interpretation)**
- This clause amends section 17A of the Principal Act by omitting the reference to the marriage of a child who has not attained 16 years of age.
- Clause 10**                    **Section 19 amended (Consents to removal of blood from children)**
- This clause amends section 19 of the Principal Act by inserting a reference to the new Division 7 of Part II, to which removal of a child's tissue for the purpose of research must be subject.
- Clause 11**                    **Section 21 amended (Administration of blood transfusions to children without parental consent)**
- This clause amends section 21 of the Principal Act by excluding a child who is able to freely give, refuse or revoke their informed consent (meaning a mature minor who is not by reason of their illness or injury not able to give or refuse consent) from the application of the section.
- This clause further amends section 21 of the Principal Act by providing that, where a medical practitioner forms the opinion that a child is in danger of dying and the administration of a blood transfusion to the child is the best means of preventing the death of the child, and where a second medical practitioner is not available to also form that opinion as currently required by the Principal Act, a paramedic may form the opinion instead of a second medical practitioner, such as an emergency in a remote location.
- Clause 12**                    **Section 22 amended (Revocation of consent)**
- This clause amends section 22 of the Principal Act by omitting a references to "designated officer" from subsection (2)(a)(i), and references paragraphs "(ii) or (iii)" from subsection (3)(b), and providing that the donor may express their revocation of any consent to any employee of that hospital, and requiring that person receiving the revocation to inform the designated officer.
- Changes are also made to subsection (4) to place a mandatory obligation on any employee of the hospital, medical practitioner or registered nurse to whom the revocation is communicated, and any medical practitioner who becomes aware of the revocation, must communicate that revocation to a medical practitioner who appears to propose to rely on a consent that has been revoked.

**Clause 13**

**Part II, Division 7 inserted**

This clause inserts a new Division 7 into Part II of the Principal Act. The new section 22A contains the interpretive provisions for the Division.

The new section 22B sets out the requirements for the removal of tissue from a child's body for the purposes of approved research if it to be considered an authorised removal, such as in reference to section 30(1). The effect is that the research must be undertaken in accordance with any conditions of the approval and also in accordance with the National Statement on Ethical Conduct in Human Research, issued by the National Health and Medical Research Council established under the *National Health and Medical Research Council Act 1992* (Cth). One or more of the conditions contained in paragraph (c) must also be met and the medical practitioner must make an appropriate record.

**Clause 14**

**Section 28 amended (Act does not prevent specified removals of tissue, &c.)**

This clause amends section 28 of the Principal Act for the purpose of clarifying that the removal of tissue from the body of a person that is consented to or authorised under another Act will not be an offence under section 30 of the Principal Act.

**Clause 15**

**Section 30 amended (Offences)**

This clause amends section 30 of the Principal Act by clarifying that the removal of tissue from the body of a person that is consented to or authorised under another Act will not be an offence under this section.

**Clause 16**

**Section 31 amended (Disclosure of information)**

This clause amends section 31 of the Principal Act by providing that a next of kin of a deceased person may consent to the release of information or a document that identifies the deceased person from whose body tissue was removed, and in other circumstances arising under the Principal Act.

## Clause 17

### Repeal of Act

This clause automatically repeals the amending legislation after the first anniversary of its commencement. The changes that the amending legislation makes to the Principal Act remain in force after the repeal of the amending legislation.