

TASMANIA

HUMAN TISSUE AMENDMENT BILL 2024

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HUMAN TISSUE AMENDMENT BILL 2024

(Brought in by the Minister for Health, Mental Health and Wellbeing, the Honourable Guy Barnett)

A BILL FOR

An Act to amend the *Human Tissue Act 1985*

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

1. Short title

This Act may be cited as the *Human Tissue Amendment Act 2024*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Principal Act

In this Act, the *Human Tissue Act 1985** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

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- (a) by omitting the definition of *child* and substituting the following definition:

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

- (b) by inserting “who was not married” after “child” in paragraph (a) of the definition of *next of kin*;
- (c) by inserting “who was not married” after “deceased child” in paragraph (a) of the definition of *senior available next of kin*.

5. Section 5 amended (Interpretation)

Section 5 of the Principal Act is amended by inserting “breastmilk,” after “including a reference to”.

6. Section 9 amended (Medical practitioner may give certificate in relation to consent)

Section 9 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “his” and substituting “the medical practitioner’s”;
- (b) by omitting from paragraph (b) “he” and substituting “the medical practitioner”;
- (c) by omitting from paragraph (b) “and effect” and substituting “, consequences and risks”;

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- (d) by omitting from paragraph (c) “he” and substituting “the medical practitioner”;
- (e) by omitting from paragraph (c)(i) “or, not having attained that age, was married”.

7. Section 12 amended

Section 12 of the Principal Act is amended as follows:

- (a) by renumbering the text of the section as subsection (1);
- (b) by inserting the following subsection after subsection (1):
 - (2) Despite subsection (1), a child who is, in the opinion of a medical practitioner giving a certificate under section 13 in relation to consent of that child, capable of –
 - (a) understanding the nature, consequences and risks of the tissue removal specified in subsection (1); and
 - (b) making a decision regarding the tissue removal that is informed and free from coercion –

may give consent in writing to the tissue removal specified in

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subsection (1) independently of
any parent.

8. Section 13 amended (Medical practitioner may give certificate in relation to consent)

Section 13 of the Principal Act is amended as follows:

- (a) by omitting “by a child and a parent of that child,”;
- (b) by omitting from paragraph (a) “his” and substituting “the medical practitioner’s”;
- (c) by omitting from paragraph (b) “he” and substituting “the medical practitioner”;
- (d) by omitting from paragraph (b) “that” first occurring and substituting “any”;
- (e) by omitting from paragraph (b) “and effect” and substituting “, consequences and risks”;
- (f) by omitting from paragraph (c) “he” and substituting “the medical practitioner”;
- (g) by omitting from paragraph (c)(i) “both the child and that parent of the child understood the nature and effect” and substituting “the person or persons consenting understood the nature, consequences and risks”;
- (h) by omitting from paragraph (c)(ii) “both the child and that parent of the child” and

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substituting “the person or persons
consenting”.

9. Section 17A amended (Interpretation)

Section 17A of the Principal Act is amended by
omitting the definition of *child* and substituting
the following definition:

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

**10. Section 19 amended (Consents to removal of blood
from children)**

Section 19 of the Principal Act is amended by
omitting “A” and substituting “Subject to the
requirements of Division 7 of Part II, a”.

**11. Section 21 amended (Administration of blood
transfusions to children without parental consent)**

Section 21 of the Principal Act is amended as
follows:

- (a) by inserting in subsection (3) “who is
otherwise unable to give consent” after
“a child”;
- (b) by inserting in subsection (3)(a) “, or if
another medical practitioner is not
available, a paramedic,” after “other
medical practitioner”;

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- (c) by omitting from subsection (3)(b) “has satisfied himself” and substituting “is satisfied”;
- (d) by omitting from subsection (4)(a) “his”;
- (e) by omitting from subsection (6) “he” and substituting “the practitioner”;
- (f) by inserting the following subsection after subsection (6):

(7) Nothing in this section prevents a child who, in the opinion of a medical practitioner proposing to administer a blood transfusion to the child, is capable of –

- (a) understanding the nature, consequences and risks of the administration of a blood transfusion to the child; and
- (b) making a decision regarding the administration of a blood transfusion to the child that is informed and free from coercion –

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

12. Section 22 amended (Revocation of consent)

Section 22 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(a)(i) “a designated officer for” and substituting “any employee of”;
- (b) by omitting from subsection (3)(b) “subsection (2)(a)(ii) or (iii)” and substituting “subsection (2)(a)”;
- (c) by omitting subsection (4) and substituting the following subsection:
 - (4) Where a person revokes a consent in accordance with subsection (2) –
 - (a) if the donor is a patient in a hospital at the time of the revocation – the person to whom the revocation is communicated in accordance with subsection (2) or (3); or
 - (b) if the donor is not a patient in a hospital at that time – any medical practitioner who becomes aware that the consent has been revoked –

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must, if it appears to the person specified in paragraph (a) or (b), after making such inquiries (if any) as are reasonable in the circumstances, that a medical practitioner is proposing to rely on the consent in connection with the removal of tissue from the body of the donor, inform that medical practitioner as soon as possible that the consent has been revoked.

- (d) by omitting from subsection (5) “his” first occurring and substituting “the person’s”;
- (e) by omitting from subsection (5)(b) “his” and substituting “the person’s”.

13. Part II, Division 7 inserted

After section 22 of the Principal Act, the following Division is inserted in Part II:

Division 7 – Donations for approved research

22A. Interpretation

In this Division –

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

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

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

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

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

22B. Authorised donation by child

- (1) The removal of tissue from a child's body is authorised if –
 - (a) it is done –
 - (i) for the purpose of approved research; and

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- (ii) in accordance with the approval given in respect of that research, including any conditions of the approval; and
 - (b) consent is given in accordance with the National Statement; and
 - (c) one or more of the following applies:
 - (i) the approved research is for the benefit of the child;
 - (ii) the removal of the tissue occurs during a procedure that is for the benefit of the child and a medical practitioner is satisfied that the removal of the tissue for approved research is not likely to prejudice the health of the child;
 - (iii) a medical practitioner is satisfied that the removal of the tissue will involve a negligible or low risk of harm and minimal discomfort to the child.
- (2) For the purposes of subsection (1)(c)(ii) and (iii), the medical practitioner must

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make a record of the practitioner's satisfaction.

(3) For the purposes of subsection (1)(c)(iii), the medical practitioner's satisfaction, and the record of that satisfaction, may relate to –

(a) a particular child or children; or

(b) a group of children that is or may be participating in stated approved research.

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

Section 28(1) of the Principal Act is amended by inserting after paragraph (c) the following paragraph:

(ca) the removal of tissue from the body of a person permitted under another Act;

15. Section 30 amended (Offences)

Section 30 of the Principal Act is amended as follows:

(a) by inserting in subsection (1) “or another Act” after “Act”;

(b) by inserting in subsection (1A) “or another Act” after “Act”;

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- (c) by omitting from subsection (3)(a) “he” and substituting “the person”.

16. Section 31 amended (Disclosure of information)

Section 31(4)(c) of the Principal Act is amended by inserting “, or if that person is deceased, the consent of that person’s next of kin” after “relates”.

17. Repeal of Act

This Act is repealed on the first anniversary of the day on which it commenced.