

# AUSTRALIAN CAPITAL TERRITORY

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## Blood Donation (Acquired Immune Deficiency Syndrome) Ordinance 1985

No. 27 of 1985

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 21 June 1985.

N. M. STEPHEN  
Governor-General

By His Excellency's Command,

NEAL BLEWETT  
Minister of State for Health

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An Ordinance to limit liability in respect of the transmission of Acquired Immune Deficiency Syndrome through the transfusion of blood

### Short title

1. This Ordinance may be cited as the *Blood Donation (Acquired Immune Deficiency Syndrome) Ordinance 1985*.<sup>1</sup>

### Interpretation

2. In this Ordinance, unless the contrary intention appears—

“approved” means approved by the Chairman by instrument in writing for the purposes of this Ordinance;

“Authority” means the Australian Capital Territory Health Authority;

“Chairman” means the Chairman of the Authority;

“donor” means a person who gives blood at premises or a vehicle of the society;

“prescribed action” means an action brought by or on behalf of—

- (a) a person who claims to have contracted the prescribed disease—
  - (i) by reason of having been administered blood supplied by the Society or a blood product derived from blood supplied by the Society;
  - (ii) by reason of having been involved in the taking, testing, handling, producing, supplying or administering to a patient of blood supplied by the Society or a blood product derived from blood supplied by the Society; or
  - (iii) from a person who contracted the prescribed disease in a circumstance specified in sub-paragraph (i) or (ii); or
- (b) a dependant of a person who dies as a result of having contracted the prescribed disease in a circumstance specified in paragraph (a);

“prescribed disease” means the disease known as Acquired Immune Deficiency Syndrome in any of its stages;

“Society” means the society incorporated by Royal Charter under the name of the Australian Red Cross Society.

### **Liability of Red Cross Society**

**3.** In a prescribed action against—

- (a) the Society;
- (b) an employee of, or a person working without payment for, the Society; or
- (c) any other person or body who takes blood from a donor on behalf of the Society,

it is a defence that the Society complied with the prescribed requirements, or caused the prescribed requirements to be complied with, in respect of the taking

of the relevant blood and the testing, processing and handling of that blood and of blood products derived from that blood.

#### **Liability of hospitals and medical practitioners**

4. In a prescribed action against—

- (a) a hospital or other body at whose premises blood supplied by the Society, or a blood product derived from blood supplied by the Society, is administered to a patient; or
- (b) a medical practitioner or a person acting on behalf of a medical practitioner who administered to a patient, or authorized the administration to a patient of, blood supplied by the Society or a blood product derived from blood supplied by the Society,

it is a defence that—

- (c) at the time the blood or blood product was administered, there was attached to the container in which the blood or blood product was contained a certificate purporting to be signed by the person in charge of the laboratory at which a sample of the blood was tested and stating—

- (i) in the case of blood—that a sample of the blood; and

- (ii) in the case of a blood product—that a sample of each unit of blood from which the blood product was derived,

was tested, using approved equipment and in accordance with an approved method, for the presence of antibodies to the virus known as HTLV III and the result of the test was negative; or

- (d) the Society complied with the prescribed requirements, or caused the prescribed requirements to be complied with, in respect of the taking of the relevant blood and the testing, processing and handling of that blood or of blood products derived from that blood.

#### **Requirements to be complied with**

5. For the purposes of sections 3 and 4, the prescribed requirements, in relation to the taking of blood from a donor, are—

- (a) that, before taking blood from the donor, the Society obtains from the donor a declaration in accordance with the form in the Schedule; and
- (b) that, before supplying the blood to be administered to a person, or to be used in the preparation of blood products to be administered to a

person, a sample of the blood is tested, using approved equipment and in accordance with an approved method, for the presence of antibodies to the virus known as HTLV III and the Society ascertains that the result of the test is negative.

**Liabilities where requirements not complied with**

**6. (1)** Section 3 does not apply where, after the Society has taken blood to be supplied for the purpose of being administered to a person or used in the preparation of a blood product to be administered to a person, the Society has reasonable grounds for believing that—

- (a) a statement in the declaration made by the donor of the blood may be false; or
- (b) the blood or blood product may contain the virus known as HTLV III, and the Society does not take all reasonable steps to ensure that the blood or blood product is not administered to a person.

**(2)** Section 4 does not apply where, at any time up to and including the time at which the blood or blood product was administered, the hospital or other body at whose premises the blood or blood product was administered—

- (a) had been informed that that blood or blood product may contain the virus known as HTLV III; and
- (b) did not take all reasonable steps to ensure that the blood or blood product was not administered to a person.

**(3)** Section 4 does not apply in relation to a medical practitioner or person acting on behalf of a medical practitioner where, at the time the blood or blood product was administered, the medical practitioner or other person had been informed that that blood or blood product may contain the virus known as HTLV III.

**False statements**

**7.** A person who in a declaration referred to in paragraph 5 (a) makes a statement that is false in a material particular is guilty of an offence punishable, on conviction, by a fine not exceeding \$5,000 or imprisonment for a term not exceeding 2 years, or both.

**Liability of donor**

**8. (1)** No proceedings, civil or criminal, other than proceedings under section 7, lie against a donor of blood by reason only of a person having

contracted the prescribed disease from the administration to the person of blood given by, or of a blood product derived partly from blood given by, that donor.

(2) Sub-section (1) does not apply to or in relation to a donor who has been found guilty of an offence against section 7.

### **Evidentiary certificates**

9. In proceedings of the kind referred to in section 3 or 4, a certificate purporting to be signed by the person in charge of the laboratory at which a sample of blood was tested and stating—

- (a) that the blood sample was tested using approved equipment and in accordance with an approved method; and
- (b) that the results specified in the certificate were obtained, is evidence of the matters so stated and of the facts on which they are based.

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## **SCHEDULE**

Section 5

### **DECLARATION BY PERSON INTENDING TO DONATE BLOOD**

#### **WARNING**

Supplying blood that may be infected with AIDS (Acquired Immune Deficiency Syndrome) may endanger the life of recipients of the blood, or of blood products derived from the blood. Testing procedures used may not detect the infection.

I have read the above warning and paragraphs 1 to 9 below and hereby declare that, to the best of my knowledge—

- 1. I have not engaged in male to male sexual activity during the past 5 years;
- 2. I have not injected myself, or been injected with, any drug not prescribed by a qualified medical practitioner within the past 5 years;
- 3. I am not suffering from night sweats, weight loss, persistent fever, diarrhea or swollen glands;
- 4. I have no reason to believe that I am suffering from AIDS (Acquired Immune Deficiency Syndrome) or any disease related to it;

5. I have not received a blood transfusion or recurring treatment with human blood products within the past 5 years;
6. My spouse or any sexual partner does not come within the categories described in items 1, 2, 3, 4 and 5;
7. I have not been treated by acupuncture, had my ears pierced or been tattooed within the past 5 years;
8. I have not been in a tropical area where malaria occurs within the past 12 months or had an attack of malaria or taken anti-malarial drugs within the past 2 years;
9. I have not had jaundice or hepatitis in the past 12 months or been in close contact with any person suffering from those diseases within the past 6 months.

I am signing this declaration in the presence of a member of the staff of the Red Cross Society.

NAME OF DONOR:

*(Signature of donor)*

*(Signature of witness)*

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**NOTE**

1. Notified in the *Commonwealth of Australia Gazette* on 1 July 1985.