



Australian Capital Territory

# **Blood Donation (Transmittable Diseases) Act 1985**

**A1985-27**

**Republication No 3**

**Effective: 9 April 2004 – 11 April 2007**

Republication date: 9 April 2004

Last amendment made by A2004-15

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Blood Donation (Transmittable Diseases) Act 1985* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 9 April 2004. It also includes any amendment, repeal or expiry affecting the republished law to 9 April 2004.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Blood Donation (Transmittable Diseases) Act 1985

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09/04/04

Blood Donation (Transmittable Diseases) Act 1985  
Effective: 09/04/04-11/04/07

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Australian Capital Territory

# **Blood Donation (Transmittable Diseases) Act 1985**

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An Act to limit liability in respect of the transmission of acquired immune deficiency syndrome and other diseases through the transfusion of blood

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## **1 Name of Act**

This Act is the *Blood Donation (Transmittable Diseases) Act 1985*.

## **2 Definitions for Act**

In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

***approved***, in relation to an instrument or method, means approved by the chief health officer in writing for this Act.

***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 a transmittable disease—
  - (i) because of having been administered blood supplied from the society or a blood product derived from blood supplied by the society; or
  - (ii) because 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 that disease in a circumstance specified in subparagraph (i) or (ii); or
- (b) a dependant of a person who dies as a result of having contracted a transmittable disease in a circumstance specified in paragraph (a);

other than an action brought under the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth) or the *Workers Compensation Act 1951*.

*society* means the society incorporated by royal charter under the name of the Australian Red Cross Society.

*transmittable disease* means any of the following diseases:

- (a) the disease known as acquired immune deficiency syndrome in any of its forms or stages;
- (b) hepatitis B;
- (c) hepatitis C;
- (d) any disease resulting from infection by the human T cell lymphoma virus 1 or 2;
- (e) syphilis;
- (f) any other prescribed disease.

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

- (1) In a prescribed action against—
  - (a) the society; or
  - (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.

- (2) The defence specified in subsection (1) is not available if it is established that—
  - (a) the society, the employee or the person or body referred to in subsection (1) (b) or (c), as the case requires, was negligent in relation to the taking of the relevant blood or the testing,

processing or handling of that blood or of a blood product derived from that blood; and

- (b) a transmittable disease was contracted as a result of that negligence, whether or not any other actions contributed to the contracting of that disease.

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

- (1) 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 authorised 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 where a sample of the blood was tested and stating—
  - (i) for blood—that a sample of the blood; and
  - (ii) for 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, to ascertain whether the blood contained any pathogen capable of causing the relevant transmittable disease 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.

- (2) The defence specified in subsection (1) is not available if it is established that—
- (a) the hospital or other body, or the medical practitioner or person acting on behalf of the medical practitioner, was negligent in relation to the administering of the relevant blood or blood product to the patient; or
  - (b) the society was negligent in relation to the taking of the relevant blood or the testing, processing or handling of that blood or of a blood product derived from that blood;

and a transmittable disease was contracted as a result of that negligence, whether or not any other actions contributed to the contracting of that disease.

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

For 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 gets from the donor a written declaration; and

*Note 1* It is an offence to make a false or misleading statement or give false or misleading information (see Criminal Code, pt 3.4).

*Note 2* If a form is approved under s 10 for a declaration, the form must be used.

- (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, to ascertain whether the blood contains any pathogen capable of causing the relevant transmittable disease and the society ascertains that the result of the test is negative.

**6 Liability if requirements not complied with**

- (1) Section 3 does not apply if, 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 any pathogen capable of causing the relevant transmittable disease;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 if, at any time up to and including the time when 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 any pathogen capable of causing the relevant transmittable disease; 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 if, 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 any pathogen capable of causing the relevant transmittable disease.

**8 Liability of donor**

- (1) No proceedings, civil or criminal, other than proceedings under the Criminal Code, section 337 (Making false or misleading statements) or section 338 (Giving false or misleading information), lie against a donor of blood only because of a person having contracted a

transmittable 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) Subsection (1) does not apply to or in relation to a donor who has been found guilty of an offence against the Criminal Code, section 337 (Making false or misleading statements) or section 338 (Giving false or misleading information).

## **9 Evidentiary certificates**

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 where 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.

## **10 Approved forms**

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form for a declaration under section 5 (a) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (4) Any other approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

**11 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
cl = clause	pres = present
def = definition	prev = previous
dict = dictionary	(prev...) = previously
disallowed = disallowed by the Legislative Assembly	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

This Act was originally a Commonwealth ordinance—the *Blood Donation (Acquired Immune Deficiency Syndrome s) Ordinance 1985 No 27* (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989 No 21*, s 5 on 11 May 1989 (self-government day).

It was renamed by the *Blood Donation (Transmittable Diseases) (Amendment) Act 1996 No 78* (see s 5).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

#### Legislation before becoming Territory enactment

##### **Blood Donation (Transmittable Diseases) Act 1985 No 27**

notified 1 July 1985

commenced 1 July 1985

as amended by

##### **Blood Donation (Acquired Immune Deficiency Syndrome) (Amendment) Ordinance 1985 No 55**

notified 18 October 1985

commenced 18 October 1985

##### **Blood Donation (Acquired Immune Deficiency Syndrome) (Amendment) Ordinance 1986 No 47**

notified 22 August 1986

commenced 22 August 1986

##### **Blood Donation (Acquired Immune Deficiency Syndrome) (Amendment) Ordinance (No 2) 1986 No 90**

notified 22 December 1986

commenced 22 December 1986

**Community and Health Service (Consequential Provisions)  
Ordinance 1988 No 29 sch**

notified 30 June 1988  
commenced 2 July 1988 (s 2)

**Self-Government (Consequential Amendments) Ordinance 1989 No  
38 sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S164)  
s 1, s 2 commenced 10 May 1989 (s 2 (1))  
sch 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989  
No S164)

**Legislation after becoming Territory enactment****Health Services (Consequential Provisions) Act 1990 No 63 sch 1**

notified 28 December 1990 (Gaz 1990 No S102)  
s 1, s 2 commenced 28 December 1990 (s 2 (1))  
sch 1 commenced 31 January 1991 (s 2 (2) and see Gaz 1991 No S4)

**Workers' Compensation (Consequential Amendments) Act 1991  
No 106 sch**

notified 15 January 1992 (Gaz 1992 No S3)  
s 1, s 2 commenced 15 January 1992 (s 2 (1))  
sch commenced 22 January 1992 (s 2 (2) and see Gaz 1992 No S9)

**Health (Consequential Provisions) Act 1993 No 14 sch 1**

notified 1 March 1993 (Gaz 1993 No S23)  
commenced 1 March 1993 (s 2 and see Gaz 1993 No S23)

**Blood Donation (Transmittable Diseases) (Amendment) Act 1996  
No 78**

notified 20 December 1996 (Gaz 1996 No S328)  
commenced 20 December 1996 (s 2)

**Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)  
s 1, s 2 commenced 27 November 1998 (s 2 (1))  
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 37**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 37 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

## Endnotes

4 Amendment history

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### **Criminal Code (Theft, Fraud, Bribery and Related Offences)**

#### **Amendment Act 2004 A2004-15 sch 2 pt 2.9**

notified LR 26 March 2004

s 1, s 2 commenced 26 March 2004 (LA s 75 (1))

sch 2 pt 2.9 commenced 9 April 2004 (s 2 (1))

## 4 Amendment history

### **Title**

title am 1996 No 78 s 4

### **Name of Act**

s 1 am 1996 No 78 s 5

### **Definitions for Act**

s 2 def **approved** sub 1988 No 29 sch  
am 1990 No 63 sch 1; 1993 No 14 sch 1  
sub 1996 No 78 s 6  
def **authority** om 1988 No 29 sch  
def **board** ins 1990 No 63 sch 1  
om 1993 No 14 sch 1  
def **chairman** om 1988 No 29 sch  
def **prescribed action** am 1986 No 47 s 3; 1991 No 106 sch;  
1996 No 78 s 6  
def **prescribed disease** om 1996 No 78 s 6  
def **service** ins 1988 No 29 sch  
om 1990 No 63 sch 1  
def **transmittable disease** ins 1996 No 78 s 6

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

s 3 am 1986 No 47 s 4; 1996 No 78 s 7

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

s 4 am 1986 No 47 s 5; 1996 No 78 s 8

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

s 5 am 1985 No 55 s 3; 1986 No 47 s 6; 1989 No 38 sch 1; 1996  
No 78 s 9; 2001 No 44 amdt 1.367-1.369  
am A2004-15 amdt 2.22

### **Liability if requirements not complied with**

s 6 am 1996 No 78 s 10

### **False statements**

s 7 am 1998 No 54 sch  
om A2004-15 amdt 2.23

### **Liability of donor**

s 8 am 1996 No 78 s 11; A2004-15 amdt 2.24



**Approved forms**

s 10                      ins 1986 No 47 s 7  
                              om 1986 No 90 s 2  
                              ins 1996 No 78 s 12  
                              sub 2001 No 44 amdt 1.370

**Regulation-making power**

s 11                      ins 2001 No 44 amdt 1.370

**Schedule**

sch                      om 1985 No 55 s 4

**5 Earlier republications**

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1996 No 78	31 January 1998
2	A2001-44	19 April 2002