

EXPLANATORY STATEMENT

ISSUED BY THE AUTHORITY OF THE MINISTER

OF STATE FOR HEALTH

AUSTRALIAN CAPITAL TERRITORY LEGISLATION

TRANSPLANTATION AND ANATOMY ORDINANCE 1978

No.44 of 1978

On 15 July 1976 the then Attorney-General, the Hon R. J. Ellicott, Q.C., M.P. referred to the Law Reform Commission the question of providing laws in the Australian Capital Territory "for the preservation and use of human bodies and for the removal, preservation and use of organs and tissues for the purposes of surgery, medical therapy, transplantation, education and research".

The Law Reform Commission reported on this matter on 30 June 1977 and the Report was referred to the Minister for Health on 14 July 1977. The Minister for Health approved the preparation of draft legislation in accordance with the Report subject to the clarification of the provisions relating to protection of the identities of donors and donees and incorporating in the proposed legislation provisions to:

- . recognise the right of de facto spouses to be consulted in deciding whether a dead person's tissue should be transplanted; and
- . recognise the right of the spouse of a dead minor to be consulted in deciding whether the dead person's tissue should be transplanted.

The draft legislation restricts the provisions on disclosure of information recommended in the Report to persons taking part in the transplantation procedure and to persons employed at hospitals where these procedures are performed. Provisions to include the other two matters referred to above have also been included.

The legislation makes the consent procedures relating to transplantation of tissue more effective than those recommended in the Report. In addition, the legislation has been prepared to conform to present drafting procedures but the fundamental principles of the Law Reform Commission's Report have been retained.

In particular the penalties have been revised from those originally proposed by the Law Reform Commission. Some penalties for offences have been increased from the proposed \$500 to \$1,000. The legislation now provides for a maximum term of three month's imprisonment as an addition or alternative to the fine where the fine is a maximum of \$500, and a maximum term of 6 months as an addition or alternative to the fine where the fine is a maximum of \$1,000. The Law Reform Commission's Report did not provide for imprisonment.

As the legislation is comprehensive within its field it repeals the Blood Transfusions (Infants) Ordinance 1970 and the Trading in Blood (Prohibition) Ordinance 1973. The Anatomy Act 1901 of New South Wales will cease to be in force in the Australian Capital Territory because of this legislation. Provision for the matters included in these two Ordinances and the NSW Act is included in this legislation.

The Ordinance was referred to the Australian Capital Territory Legislative Assembly which approved it subject to a minor amendment. This amendment has not been incorporated into the Ordinance as the Ordinance would, if the amendment were incorporated, conflict with the Coroners Ordinance 1956.

Separate approaches to Attorney Generals Department will nevertheless be made regarding amendments to the Coroners Ordinance to accommodate the Assembly's intention in their proposed amendment.