

No. 44 of 1978

TRANSPLANTATION AND ANATOMY ORDINANCE 1978

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No. 44 of 1978

AN ORDINANCE

To make provision for and in relation to the removal of human tissues for transplantation, for post-mortem examinations, for the definition of death, for the regulation of schools of anatomy, and for related purposes

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 this thirteenth day of December 1978.

ZELMAN COWEN
Governor-General

By His Excellency's Command,

RALPH J. HUNT
Minister of State for Health

TRANSPLANTATION AND ANATOMY ORDINANCE 1978

PART I—PRELIMINARY

1. This Ordinance may be cited as the *Transplantation and Anatomy Ordinance 1978*.* Short title
2. This Ordinance shall come into operation on a date to be fixed by the Minister of State for the Capital Territory by notice published in the *Gazette*. Commencement
3. (1) The *Blood Transfusions (Infants) Ordinance 1970* and the *Trading in Blood (Prohibition) Ordinance 1973* are repealed. Repeal
(2) The Anatomy Act, 1901 of the State of New South Wales shall cease to be in force in the Territory.
4. (1) In this Ordinance, unless the contrary intention appears— Interpretation
“child” means a person who—
 - (a) has not attained the age of 18 years; and
 - (b) is not married;

* Notified in the *Commonwealth of Australia Gazette* on 19 December 1978.

- “ Commission ” has the same meaning as in the *Health Commission Ordinance 1975*;
- “ Coroner ” means a person who is a Coroner for the Territory;
- “ designated officer ”, in relation to a hospital, means a person appointed under section 5 to be a designated officer for that hospital;
- “ medical practitioner ” means a person who is registered or licensed under a law of a State or Territory relating to the registration or licensing of medical practitioners;
- “ next of kin ” means—
- (a) in relation to a deceased child—a person referred to in sub-paragraph (a) (i), (a) (ii) or (a) (iii) of the definition of “ senior available next of kin ”; **and**
 - (b) in relation to any other deceased person—a person referred to in sub-paragraph (b) (i), (b) (ii), (b) (iii) or (b) (iv) of that definition;
- “ non-regenerative tissue ” means tissue other than regenerative tissue;
- “ regenerative tissue ” means tissue that, after injury or removal, is replaced in the body of a living person by natural processes of growth or repair;
- “ senior available next of kin ” means—
- (a) in relation to a deceased child—
 - (i) where a parent of the child is available—a parent of the child;
 - (ii) where a parent of the child is not available—a brother or sister of the child who has attained the age of 18 years and who is available; or
 - (iii) where no person referred to in sub-paragraph (i) or (ii) is available—a person who was the guardian of the child immediately before the death of the child and who is available; and
 - (b) in relation to any other deceased person—
 - (i) where the person, immediately before his death, was married and the person who was then his spouse is available—the person who was his spouse;
 - (ii) where the person, immediately before his death, was not married or, if he was

married, his spouse is not available—a son or daughter of the person who has attained the age of 18 years and who is available;

(iii) where no person referred to in subparagraph (i) or (ii) is available but a parent of the person is available—that parent; or

(iv) where no person referred to in subparagraph (i), (ii) or (iii) is available—a brother or sister of the person who has attained the age of 18 years and is available;

“tissue” includes an organ, or part, of a human body or a substance extracted from, or from a part of, the human body.

(2) A reference in this Ordinance to the transplantation of tissue shall be read as including a reference to the transplantation of any part of the tissue and to the transplantation of a substance obtained from the tissue.

5. (1) The Chief Medical Administrator of a hospital conducted by the Commission may, by instrument in writing, appoint such persons, being medical practitioners, as he considers necessary to be, for the purposes of this Ordinance, designated officers for that hospital.

(2) The persons or body having the control and management of a hospital other than a hospital conducted by the Commission may, by instrument in writing, appoint such persons, being medical practitioners, as those persons or that body consider necessary to be, for the purposes of this Ordinance, designated officers for that hospital.

PART II—DONATIONS OF TISSUE BY LIVING PERSONS

Division 1—Exclusion of Certain Tissue

6. In this Part, a reference to tissue shall not be read as including a reference to fetal tissue, spermatozoa or ova.

Division 2—Donations by Adults

7. Nothing in this Division prevents the removal in accordance with Division 5 of blood from the body of a person.

8. A person may give his consent in writing to the removal from his body of specified regenerative tissue (other than blood)—
(a) for the purpose of the transplantation of the tissue to the body of another living person; or

- (b) for use for other therapeutic purposes or for medical or scientific purposes.

Consent by adult living donor to removal of non-regenerative tissue for transplantation

9. (1) A person may give his consent in writing to the removal from his body, at any time after the expiration of 24 hours from the time at which the consent is given, of specified non-regenerative tissue for the purpose of the transplantation of the tissue to the body of another living person.

(2) A consent given under sub-section (1) shall specify the time at which the consent is given.

Medical practitioner may give certificate in relation to consent

10. A medical practitioner may certify in writing—

- (a) that the consent in writing of a person, the terms of which consent are set out in the certificate, was given in his presence;
- (b) that he explained to the person before the consent was given the nature and effect of the removal from the body of that person of the tissue specified in the consent; and
- (c) that he is satisfied—
- (i) that, at the time the consent was given, the person had attained the age of 18 years;
 - (ii) that, at that time, the person was of sound mind; and
 - (iii) that the consent was freely given.

Division 3—Donations from Children

Blood transfusions not subject to this Division

11. Nothing in this Division prevents the removal in accordance with Division 5 of blood from the body of a child.

References to parent not to include guardian, &c.

12. In this Division, a reference to the parent of a child shall not be read as including a reference to the guardian of a child or to another person standing in *loco parentis* to the child.

Removal for transplantation of regenerative tissue from body of child

13. (1) A person who is a parent of a child may give his consent in writing to the removal from the body of the child of specified regenerative tissue for the purpose of the transplantation of the tissue to the body of another member of the family of the child or to the body of a relative of the child.

(2) A medical practitioner may certify in writing—

- (a) that the consent in writing of a person who is a parent of a child, the terms of which consent are set out in the certificate, was given in his presence;

- (b) that he explained to the person and to the child before the consent was given the nature and effect of the removal from the body of that child of the tissue specified in the consent and the nature of the transplantation of that tissue; and
- (c) that he is satisfied that, at the time the consent was given, the child—
 - (i) understood the nature and effect of the removal of the tissue and the nature of the transplantation; and
 - (ii) was in agreement with the proposed removal and transplantation of tissue.

14. (1) A person who is a parent of a child may give his consent in writing to the removal from the body of the child, at any time after the expiration of 24 hours from the time at which the consent is given, of specified non-regenerative tissue for the purpose of the transplantation of the tissue to the body of another member of the family of the child.

Removal for trans-plantation of non-regenerative tissue from body of child

(2) A consent given under sub-section (1) shall specify the time at which the consent is given.

(3) A medical practitioner may certify in writing—

- (a) that the consents in writing of both persons who are the parents of a child, the terms of which consents are set out in the certificate, were given in his presence;
 - (b) that, before the consents were given—
 - (i) he advised those persons and the child that a person who was a member of the family of the child was in danger of dying unless certain non-regenerative tissue was transplanted to the body of that person from the body of another person; and
 - (ii) he explained to those persons and the child the nature and effect of the removal from the body of the child of the tissue specified in the consent and the nature of the transplantation of that tissue;
- and
- (c) that he is satisfied that, at the time the consent was given, the child—
 - (i) understood the nature and effect of the removal of the tissue and the nature of the transplantation; and
 - (ii) was in agreement with the proposed removal and transplantation of tissue.

(4) Where each of the parents of a child gives a written consent under sub-section (1) and a medical practitioner gives a certificate in accordance with sub-section (3) in relation to those consents, the medical practitioner who gives that certificate shall refer the matter to the committee appointed in accordance with sub-section (5).

(5) The Minister shall, by instrument in writing, appoint 3 persons of whom—

- (a) one person shall be a Judge of the Supreme Court;
 - (b) one person shall be a medical practitioner; and
 - (c) one person shall be a social worker or a psychologist,
- to be a committee for the purposes of this section.

(6) Where only one parent of a child is available and that parent gives a written consent under sub-section (1), a medical practitioner who gives a certificate in relation to that consent that is restricted in all respects to that parent and the child but is otherwise in accordance with sub-section (3) shall refer the matter to the committee appointed in accordance with sub-section (5).

(7) Where a medical practitioner, in accordance with this section, refers a matter to the committee appointed for the purposes of this section, the committee may, if each of the members of the committee is of the opinion that it is desirable in all of the circumstances of the case that the tissue referred to in the consent or consents, as the case may be, be removed from the body of the child for transplantation to the body of the other person therein referred to, authorize, by instrument in writing, the removal of that tissue for the purpose of transplantation to the body of that other person.

Division 4—Effect of Consents and Authorities

Effect of
consent
under
section 8

15. Subject to section 19, a document that purports to be a consent given in accordance with section 8 is, where a certificate has been given in accordance with section 10 in relation to that consent, sufficient authority for a medical practitioner, other than the medical practitioner who gave the certificate, to remove the regenerative tissue specified in the consent for the purpose or the use, as the case may be, specified in the consent.

Effect of
consent
under
section 9

16. Subject to section 19, a document that purports to be a consent given in accordance with section 9 is, where a certificate has been given in accordance with section 10 in relation to that consent, sufficient authority for a medical practitioner, other than the medical practitioner who gave the certificate, to remove, at any time after the expiration of 24 hours from the time specified in the consent to be the time at which the consent was given, the non-regenerative tissue specified in the consent for the purpose of the transplantation of the tissue to the body of another living person.

17. Subject to section 19, a document that purports to be a consent given in accordance with sub-section 13 (1) is, where a certificate has been given in accordance with sub-section 13 (2) in relation to that consent, sufficient authority for a medical practitioner, other than the medical practitioner who gave the certificate, to remove the regenerative tissue specified in the consent for the purpose specified in the consent.

Effect of consent under section 13

18. (1) Subject to sub-section (2), an authority given in accordance with section 14 by the committee established for the purposes of that section is sufficient authority for a medical practitioner, other than the medical practitioner who gave a certificate in accordance with that section, to remove, at any time after the expiration of 24 hours from the time at which the latest relevant consent under sub-section 14 (1) was given, the non-regenerative tissue specified in the authority for the purpose of transplantation to the body of the other person referred to in the authority.

Effect of authority under section 14

(2) Sub-section (1) does not apply in relation to a medical practitioner—

(a) who has been informed—

- (i) that a consent given under sub-section 14 (1) that is relevant in relation to the authority has been revoked; or
- (ii) that the child referred to in the consent is no longer in agreement with the removal and transplantation of the tissue specified in the authority; or

(b) who knows or has reasonable grounds for suspecting that the certificate given in accordance with section 14 that is relevant in relation to the authority contains a false statement.

19. A document that purports to be a consent given in accordance with section 8 or 9 or with sub-section 13 (1) is not sufficient authority for a medical practitioner to remove tissue if—

Written consent not to be sufficient authority in certain circumstances

- (a) the medical practitioner has been informed that the consent has been revoked;
- (b) the medical practitioner knows or has reasonable grounds for suspecting that a certificate given for the purpose of section 10 or sub-section 13 (2), as the case may be, in relation to that document contains a false statement; or
- (c) in the case of a document that purports to be a consent given in accordance with sub-section 13 (1)—the medical practitioner has been informed that the child is no longer in agreement with the removal and transplantation of the tissue.

Division 5—Blood Transfusions

Consents by
adults to
removal of
blood

20. A person, other than a child, who is of sound mind may consent to the removal of blood from his body—

- (a) for transfusion to another person; or
- (b) for the purpose of the use of the blood or of any of its constituents for other therapeutic purposes or for medical or scientific purposes.

Consents to
removal of
blood from
children

21. The parent of a child may consent to the removal of blood from the body of the child for a purpose referred to in section 20 if—

- (a) a medical practitioner advises that the removal is not likely to be prejudicial to the health of the child; and
- (b) the child agrees to the removal.

Consent to
be sufficient
authority
for removal
of blood at
certain
places

22. A consent duly given under section 20 or 21 is sufficient authority for the removal of blood from the body of the person who has given the consent, or from the body of the child of the person who has given the consent, as the case requires—

- (a) at a hospital; or
- (b) at premises, or in a vehicle, used by the Australian Red Cross Society, or by another body approved by the Minister for the purpose of this Division, for the removal of blood from the bodies of persons.

Adminis-
tration of
blood
transfusions
to children
without
parental
consent

23. (1) In this section—

“blood transfusion” means the transfusion of human blood or any of the constituents of human blood;

“child” means a person who has not attained the age of 18 years.

(2) The operation of removing all or part of the blood of a person and replacing it with blood taken from another person shall, for the purposes of this section, be deemed to be a blood transfusion.

(3) Subject to sub-section (4), a medical practitioner may administer a blood transfusion to a child without the consent of a parent of the child or a person having authority to consent to the administration of the transfusion if—

- (a) that medical practitioner and at least one other medical practitioner are of the opinion that the child is in danger of dying and that the administration of a blood transfusion to the child is the best means of preventing the death of the child; and

- (b) the first-mentioned medical practitioner has satisfied himself that the blood to be transfused is compatible with the blood of the child.

(4) A medical practitioner is not entitled to administer a blood transfusion to a child in pursuance of sub-section (3) unless—

- (a) a parent of the child, or a person having authority to consent to the administration of the transfusion, upon being asked to consent to the administration of the transfusion, has failed to give his consent; or
- (b) the medical practitioner is of the opinion that, in the circumstances, it is not practicable to delay the administration of the transfusion until the consent of a parent of the child or a person having authority to consent to the administration of the transfusion can be obtained.

(5) Where a blood transfusion is administered to a child in accordance with this section, the transfusion shall, for all purposes, be deemed to have been administered with the consent of a parent of the child or a person having authority to consent to the administration of the transfusion.

(6) Nothing in this section relieves a medical practitioner from liability in respect of the administration of a blood transfusion to a child, being a liability to which he would have been subject if the transfusion had been administered with the consent of a parent of the child or a person having authority to consent to the administration of the transfusion.

Division 6—Revocation of Consent or Agreement

24. (1) A reference in this section, in relation to a consent given for the purposes of this Ordinance, to the donor shall be read— Revocation
of consent

- (a) in a case in which the consent is given in respect of a child—as a reference to the child; and
- (b) in any other case—as a reference to the person who gave the consent.

(2) A person who gives a consent for the purposes of this Ordinance may at any time thereafter revoke that consent by indicating, either orally or in writing—

- (a) where the donor, in relation to that consent, is a patient in a hospital—
 - (i) to a designated officer for that hospital;
 - (ii) to a medical practitioner who is attending the donor in a professional capacity; or

(iii) to a nurse or nursing aid employed at that hospital;
and

(b) where the donor is not a patient in a hospital—to a medical practitioner who is attending the donor in a professional capacity,

that the consent is revoked.

(3) Where—

(a) the donor is a patient in a hospital; and

(b) the person who gave the consent for the purposes of this Ordinance indicates to a person referred to in sub-paragraph (2) (a) (ii) or (iii) that the consent is revoked,

that person shall inform a designated officer for that hospital forthwith of the revocation of the consent.

(4) Where a person revokes his consent in accordance with sub-section (2)—

(a) if the donor is a patient in a hospital at the time of the revocation—the designated officer for the hospital to whom the revocation is communicated in accordance with sub-section (2) or (3); or

(b) if the donor is not a patient in a hospital at that time—the medical practitioner to whom the revocation is communicated,

shall, if it appears to him, 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 forthwith that the consent has been revoked.

(5) Where a consent is revoked, a person who has in his possession the instrument of consent shall, upon being informed by a designated officer for a hospital or by the medical practitioner to whom the revocation is communicated that the consent has been revoked, surrender—

(a) that instrument; and

(b) if a certificate given in accordance with section 10 or with sub-section 13 (2) or 14 (3) is in his possession, being a certificate relating to the consent—that certificate,

to the person who gave the consent.

Child no longer in agreement with removal and transplantation

25. (1) Where a medical practitioner has given a certificate in accordance with sub-section 13 (2) or 14 (3) and the child in relation to whom the certificate has been given informs—

(a) if the child is a patient in a hospital—

(i) a designated officer for that hospital;

- (ii) a medical practitioner who is attending the child in a professional capacity; or
- (iii) a nurse or nursing aid employed at that hospital; and

(b) if the child is not a patient in a hospital—a medical practitioner who is attending the child in a professional capacity, that he is no longer in agreement with the proposed removal and transplantation of tissue, the succeeding provisions of this section have effect.

(2) Where—

- (a) the child is a patient in a hospital; and
- (b) the person whom he so informs is a person referred to in sub-paragraph (1) (a) (ii) or (iii),

that person shall inform a designated officer for that hospital forthwith that the child is no longer in agreement with the proposed removal and transplantation of tissue.

(3) The designated officer for the hospital or, where the child is not a patient in a hospital, the medical practitioner who is attending the child in a professional capacity shall, if it appears to him, after making such inquiries (if any) as are reasonable in the circumstances, that a medical practitioner is proposing to remove the tissue from the body of the child, inform that medical practitioner forthwith that the child is no longer in agreement with the proposed removal and transplantation of tissue.

(4) A person who is informed that the child is no longer in agreement with the proposed removal and transplantation of tissue shall, if he has in his possession the instrument of consent that relates to the removal and transplantation of the tissue, surrender—

- (a) that instrument; and
- (b) if the certificate given in accordance with sub-section 13 (2) or 14 (3) is in his possession—that certificate,

to the person who gave the consent.

PART III—DONATIONS OF TISSUE AFTER DEATH

26. For the purposes of this Part, where a deceased person is survived by a person who, although not married to the deceased person, was at the time of the death of the deceased person living with the deceased person as that person's husband or wife, as the case may be, on a permanent and *bona fide* domestic basis, that surviving person shall be taken—

De facto
spouses

- (a) to have been married to the deceased person; and
- (b) to have been the spouse of the deceased person immediately before his death.

Authority to
remove
tissue where
body of
deceased
at a
hospital

27. (1) Subject to this Part, where it appears to a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances, that a deceased person who has died in the hospital or whose dead body has been brought into the hospital—

(a) had, during his lifetime, expressed the wish for, or consented to, the removal after his death of tissue from his body—

(i) for the purpose of the transplantation of the tissue to the body of a living person; or

(ii) for the purpose of the use of the tissue for other therapeutic purposes or for medical or scientific purposes; and

(b) had not withdrawn the wish or revoked the consent, the designated officer may, by instrument in writing, authorize the removal of tissue from the body of the deceased person for that purpose.

(2) Subject to this Part, where it appears to a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances in relation to a deceased person who has died in the hospital or whose dead body has been brought into the hospital, that—

(a) the designated officer is not authorized by sub-section (1) to give an authority in respect of that person;

(b) the deceased person had not, during his lifetime, expressed an objection to the removal of tissue from his body; and

(c) the senior available next of kin of the deceased person has not objected to the removal of tissue from the body of the deceased person,

the designated officer may, by instrument in writing, authorize the removal of tissue from the body of the deceased person for any of the purposes referred to in paragraph (1) (a).

(3) Where a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances, is unable to ascertain the existence or whereabouts of the next of kin of the deceased person, sub-section (2) applies as if paragraph (c) of that sub-section were omitted.

(4) The senior available next of kin of a person may make it known to a designated officer at any time when the person is unconscious before death that he has no objection to the removal, after the death of the person, of tissue from the body of the person for a purpose referred to in sub-section (1), but the designated officer shall not act on such an indication if the person recovers consciousness.

(5) Where there are 2 or more persons having a description referred to in a sub-paragraph of paragraph (a) or (b) of the definition of "senior available next of kin" in section 4, an objection by any one

of those persons has effect for the purposes of this section notwithstanding any indication to the contrary by the other or any other of those persons.

28. (1) Subject to this Part, where the body of a deceased person is at a place other than a hospital, the senior available next of kin of the deceased person may, by instrument in writing, authorize the removal of tissue from the body of the deceased person—

Authority to remove tissue where body of deceased not at a hospital

- (a) for the purpose of the transplantation of the tissue to the body of a living person; or
- (b) for the purpose of the use of the tissue for other therapeutic purposes or for medical or scientific purposes.

(2) Where it appears to the senior available next of kin of the deceased person, after making such inquiries (if any) as are reasonable in the circumstances, that—

- (a) the deceased person had, during his lifetime, expressed an objection to the removal of tissue from his body and had not withdrawn that objection; or
- (b) another next of kin of the same or a higher order of the classes in paragraph (a) or (b) of the definition of “senior available next of kin” in section 4 has an objection to the removal of tissue from the body of the deceased person,

the senior available next of kin shall not, under sub-section (1), authorize the removal of tissue from the body of the deceased person.

(3) Where a deceased person, during his lifetime, expressed the wish for, or consented to, the removal after his death of tissue from his body for a purpose referred to in sub-section (1) and the wish had not been withdrawn or the consent revoked, the removal of tissue from the body of the deceased person in accordance with the wish or consent is, by force of this sub-section, hereby authorized.

29. (1) This section applies to a deceased person—

- (a) who has died in a manner or in circumstances referred to in sub-section 11 (1) (other than paragraph 11 (1) (f)) of the *Coroners Ordinance* 1956;
- (b) in respect of whom a medical practitioner has not given a certificate as to the cause of death; or
- (c) in respect of whose death the Coroner is required by the Attorney-General to hold an inquest.

Consent by the Coroner

(2) A designated officer for a hospital or a senior available next of kin, as the case may be, shall not authorize the removal of tissue from the body of a deceased person to whom this section applies unless the Coroner has given his consent to the removal of the tissue.

(3) Sub-section 28 (3) does not apply in relation to a deceased person to whom this section applies unless the Coroner has given his consent to the removal of tissue from the body of the deceased person.

(4) The Coroner may give a direction, either before or after the death of a person to whom this section applies, that his consent to the removal of tissue from the body of the person after the death of the person is not required and, in that event, sub-sections (2) and (3) do not apply to or in relation to the removal of tissue from the body of the person.

(5) A consent or direction by the Coroner under this section may be expressed to be subject to such conditions as are specified in the consent or the direction.

(6) A consent or direction may be given orally by the Coroner, and if so given, shall be confirmed in writing.

Certificate
of
specialist,
&c.,
required in
certain
situations

30. (1) Where—

- (a) a person has died within the meaning of section 45; and
- (b) at the time at which he died or at any time thereafter his respiration and the circulation of his blood were being maintained by artificial means,

a designated officer for a hospital shall not give an authority under this Part in respect of that deceased person unless 2 medical practitioners, each of whom has been for a period of not less than 5 years a medical practitioner and one of whom is a specialist neurologist or neurosurgeon or has such other qualifications as are prescribed, have each certified in writing—

- (c) that he carried out a clinical examination of the person while the respiration and the circulation of the blood of that person were being maintained by artificial means; and
- (d) that, in his opinion, at the time of that examination, irreversible cessation of all function of the brain of the person had already occurred.

Penalty: \$1,000 or imprisonment for 6 months, or both.

(2) For the purposes of sub-section (1), any period during which a person who is a medical practitioner practised as a medical practitioner, however described, under the law in force in a place outside Australia shall be taken into account in calculating the period of 5 years referred to in that sub-section.

Effect of
authority
under this
Part

31. (1) An authority under this Part is sufficient authority for a medical practitioner other than—

- (a) a medical practitioner referred to in sub-section 30 (1); and
- (b) in a case to which section 27 applies, the designated officer for the hospital who gave the authority,

to remove tissue from the body of the deceased person referred to in the authority for the purpose referred to in the authority.

(2) A contravention by a designated officer of sub-section 30 (1) in relation to the giving of an authority does not affect the validity of the authority.

PART IV—POST-MORTEM EXAMINATIONS

32. (1) Subject to section 34, where it appears to a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances, that a deceased person who has died in the hospital or whose dead body has been brought into the hospital—

Authority
for post-
mortem
examination

(a) had, during his lifetime, expressed the wish for, or consented to, a post-mortem examination of his body for the purpose of investigating the cause of his death; and

(b) had not withdrawn the wish or revoked the consent, the designated officer may, by instrument in writing, authorize a post-mortem examination of the body of the deceased person for that purpose.

(2) Subject to section 34, where it appears to a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances in relation to a deceased person who has died in the hospital or whose dead body has been brought into the hospital, that—

(a) the designated officer is not authorized by sub-section (1) to give an authority in respect of that person;

(b) the deceased person had not, during his lifetime, expressed an objection to the post-mortem examination of his body; and

(c) the senior available next of kin of the deceased person has not objected to a post-mortem examination of the body of the deceased person,

the designated officer may, by instrument in writing, authorize a post-mortem examination of the body of the deceased person for the purpose of investigating the cause of the death of that person.

(3) Where a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances, is unable to ascertain the existence or whereabouts of the next of kin of the deceased person, sub-section (2) applies as if paragraph (c) of that sub-section were omitted.

(4) The senior available next of kin of a person may make it known to a designated officer at any time when the person is unconscious before death that he has no objection to a post-mortem examination of the body of the person, but the designated officer shall not act on such an indication if the person recovers consciousness.

(5) Where there are 2 or more persons having a description referred to in a sub-paragraph of paragraph (a) or (b) of the definition of "senior available next of kin" in section 4, an objection by any one of those persons has effect for the purposes of this section notwithstanding any indication to the contrary by the other or any other of those persons.

Authority
for post-
mortem
examination
where body
of deceased
not at a
hospital

33. (1) Subject to this Part, where the body of a deceased person is at a place other than a hospital, the senior available next of kin of the deceased person may, by instrument in writing, authorize a post-mortem examination of the body of the deceased person for the purpose of investigating the cause of the death of that person.

(2) Where it appears to the senior available next of kin of the deceased person, after making such inquiries (if any) as are reasonable in the circumstances, that—

- (a) the deceased person had, during his lifetime, expressed an objection to a post-mortem examination of his body and had not withdrawn that objection; or
- (b) another next of kin of the same or a higher order of the classes in paragraph (a) or (b) of the definition of "senior available next of kin" in section 4 has an objection to the post-mortem examination of the body of the deceased person,

the senior available next of kin shall not, under sub-section (1), authorize the post-mortem examination of the body of the deceased person.

(3) Where a deceased person, during his lifetime, expressed the wish for, or consented to, a post-mortem examination of his body and the wish had not been withdrawn or the consent revoked, a post-mortem examination of the body of the deceased person in accordance with the wish or consent is, by force of this sub-section, hereby authorized.

Consent by
the
Coroner

34. (1) This section applies to a deceased person—

- (a) who has died in a manner or in circumstances referred to in sub-section 11 (1) (other than paragraph 11 (1) (f)) of the *Coroners Ordinance* 1956;
- (b) in respect of whom a medical practitioner has not given a certificate as to the cause of death; or
- (c) in respect of whose death the Coroner is required by the Attorney-General to hold an inquest.

(2) The designated officer for a hospital or a senior available next of kin, as the case may be, shall not authorize a post-mortem examination of the body of a deceased person to whom this section applies unless the Coroner has given his consent to the examination.

(3) Sub-section 33 (3) does not apply in relation to a deceased person to whom this section applies unless the Coroner has given his consent to the post-mortem examination of the body of the deceased person.

(4) The Coroner may give a direction either before or after the death of a deceased person to whom this section applies that his consent to a post-mortem examination of the body of the person is not required and, in that event, sub-sections (2) and (3) do not apply to or in relation to a post-mortem examination of the body of the deceased person.

(5) A consent or direction by the Coroner under this section may be expressed to be subject to such conditions as are specified in the consent or the direction.

(6) A consent or direction may be given orally by the Coroner and, if so given, shall be confirmed in writing.

35. (1) An authority under this Part is sufficient authority for a medical practitioner (other than, in a case to which section 32 applies, the designated officer for the hospital who gave the authority)—

Effect of
authority
under this
Part

- (a) to conduct such examination of the body of the deceased person as is necessary for the purpose of investigating the cause of the death of the person; and
- (b) to remove from the body of the person such tissue as is necessary for the purpose of the post-mortem examination.

(2) An authority under this Part is sufficient authority for the use, for therapeutic, medical or scientific purposes, of tissue removed from the body of a deceased person for the purpose of a post-mortem examination.

(3) An order by the Coroner under the *Coroners Ordinance 1956* directing a post-mortem examination is, subject to any order to the contrary by the Coroner, authority for the use, for therapeutic, medical or scientific purposes, of tissue removed from the body of the deceased person for the purpose of the post-mortem examination.

PART V—DONATIONS FOR ANATOMICAL PURPOSES

36. In this Part, “school of anatomy” means—

Interpretation

- (a) a school of anatomy established under a law of the Commonwealth;
- (b) a school of anatomy the conduct of which is authorized under this Ordinance;

- (c) a place that is, by virtue of sub-section 42 (4), to be deemed to be a school of anatomy for the purposes of this Ordinance and the regulations; or
- (d) a school of anatomy that is licensed under a law of a State.

Authority
for
anatomy
where body
of deceased
at a
hospital

37. (1) Subject to section 39, where it appears to a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances in relation to a deceased person who has died in the hospital or whose dead body has been brought into the hospital, that—

- (a) the deceased person had not, during his lifetime, expressed an objection to the retention after his death of his body—
 - (i) for the purpose of anatomical examination; or
 - (ii) for the purpose of the use of his body for the study and teaching of the anatomy of the human body;
 and
- (b) the senior available next of kin of the deceased person has no objection to the retention of the body of the deceased person for a purpose referred to in paragraph (a),

the designated officer may, by instrument in writing, authorize the retention and use of the body of the deceased person at a school of anatomy for any of the purposes referred to in paragraph (a).

(2) Where a designated officer for a hospital, after making such inquiries as are reasonable in the circumstances, is unable to ascertain the existence or whereabouts of the next of kin of the deceased person, sub-section (1) applies as if paragraph (b) of that sub-section were omitted.

(3) The senior available next of kin of a person may make it known to a designated officer at any time when the person is unconscious before death that he has no objection to the retention after the death of the person of the body of the person for a purpose referred to in sub-section (1), but the designated officer shall not act on such an indication if the person recovers consciousness.

(4) Where there are 2 or more persons having a description referred to in a sub-paragraph of paragraph (a) or (b) of the definition of “senior available next of kin” in section 4, an objection by any one of those persons has effect for the purposes of this section notwithstanding any indication to the contrary by the other or any other of those persons.

Authority
for anatomy
where body
of deceased
not at a
hospital

38. (1) Subject to this Part, where the body of a deceased person is at a place other than a hospital, the senior available next of kin of the deceased person may, by instrument in writing, authorize the retention and use of the body of the deceased person at a school of anatomy—

- (a) for the purpose of anatomical examination; or

- (b) for the purpose of the use of the body for the study and teaching of the anatomy of the human body.

(2) Where it appears to the senior available next of kin of the deceased person, after making such inquiries (if any) as are reasonable in the circumstances, that—

- (a) the deceased person had, during his lifetime, expressed an objection to the retention of his body for a purpose referred to in sub-section (1) and had not withdrawn that objection; or
- (b) another next of kin of the same or a higher order of the classes in paragraph (a) or (b) of the definition of “senior available next of kin” in section 4 has an objection to the retention of the body of the deceased person for that purpose,

the senior available next of kin shall not, under sub-section (1), authorize the retention and use of the body of the deceased person for that purpose at a school of anatomy.

39. Where a deceased person, during his lifetime, expressed the wish for, or consented to, the use of his body after his death for a purpose referred to in sub-section 37 (1) and the wish had not been withdrawn or the consent revoked, the removal of the body of the deceased person to a school of anatomy and the use of the body at such a school for a purpose specified in sub-section 37 (1) is hereby authorized.

Provisions applicable where deceased person consented to retention of his body for anatomy

40. (1) This section applies to a deceased person—

- (a) who has died in a manner or in circumstances referred to in sub-section 11 (1) (other than paragraph 11 (1) (f)) of the *Coroners Ordinance* 1956;
- (b) in respect of whom a medical practitioner has not given a certificate as to the cause of death; or
- (c) in respect of whose death the Coroner is required by the Attorney-General to hold an inquest.

Consent by the Coroner

(2) The designated officer for a hospital or a senior available next of kin shall not, in relation to the body of a deceased person to whom this section applies, give an authority under sub-section 37 (1) or 38 (1), as the case may be, except with the consent of the Coroner.

(3) Section 39 does not apply in relation to a deceased person to whom this section applies unless the Coroner has given his permission for the body of the deceased person to be dealt with in accordance with that section.

(4) The Coroner may give a direction either before or after the death of a deceased person to whom this section applies that his consent or permission in relation to the removal or use of the body of the person after the death of the person is not required and, in that event, sub-sections (2) and (3) do not apply to or in relation to the body of the person.

(5) A consent or direction by the Coroner under this section may be expressed to be subject to such conditions as are specified in the consent or the direction.

(6) A consent or direction may be given orally by the Coroner, and if so given, shall be confirmed in writing.

Effect of
authority
under this
Part

41. An authority under this Part is, for the purposes of the law of the Territory, sufficient authority for the removal of the body of the deceased person to a school of anatomy and for its retention and use at such a school for a purpose specified in sub-section 37 (1).

PART VI—SCHOOLS OF ANATOMY

Schools of
anatomy

42. (1) The Minister may, by notice published in the *Gazette*, authorize the conduct within a specified educational institution of a school of anatomy for the teaching and study of anatomy and for the carrying on of the practice of anatomy.

(2) A notice under sub-section (1) may specify that the school of anatomy, the conduct of which is so authorized, shall be concerned only with the teaching and study of the anatomy of such part of the human body as is specified in the notice.

(3) The Minister may, by notice published in the *Gazette*, authorize the carrying out of anatomical examinations and the teaching and study of the anatomy of the whole or a specified part of the human body at a place, not being a place within an educational institution, specified in the notice.

(4) A place specified in a notice under sub-section (3) shall be deemed for the purposes of this Ordinance and the regulations to be a school of anatomy.

Regulations
for the
control,
&c., of
schools of
anatomy

43. (1) The regulations may make provision for and in relation to—

- (a) the manner in which bodies may be transported to a school of anatomy;
- (b) the conditions subject to which anatomical examinations and the teaching and study of anatomy and the practice of anatomy may be carried out;

- (c) the furnishing of returns and other information by the person in charge of a school of anatomy;
- (d) the precautions to be taken in regard to the receipt, custody and subsequent interment or cremation of bodies;
- (e) the inspection of schools of anatomy; and
- (f) the regulation and control of schools of anatomy.

(2) Regulations under this Ordinance making provision for or in relation to a matter specified in paragraph (1) (b), (c), (e) or (f) shall not be expressed to apply to or in relation to a school of anatomy other than one established in accordance with an authority given under section 42.

PART VII—PROHIBITION OF TRADING IN TISSUE

44. (1) Subject to this section, a person shall not enter into a contract or arrangement under which a person agrees, for valuable consideration, whether given or to be given to himself or to another person—

Certain contracts not to be entered into

- (a) to the sale or supply of tissue from his body or from the body of another person, whether before or after his death or the death of the other person, as the case may be; or
- (b) to the post-mortem examination or anatomical examination of his body after his death or of the body of another person after the death of the other person.

Penalty: \$500 or imprisonment for 3 months, or both.

(2) Sub-section (1) does not apply to or in relation to the sale or supply of tissue other than blood or any of its constituents if the tissue has been subjected to processing or treatment and the sale or supply is made for use, in accordance with the directions of a medical practitioner, for therapeutic or scientific purposes.

(3) Sub-section (1) does not apply to or in relation to a contract or arrangement providing only for the reimbursement of any expenses necessarily incurred by a person in relation to the removal of tissue in accordance with this Ordinance.

(4) Where he considers it desirable by reason of special circumstances so to do, the Minister may, by instrument in writing, approve the entering into of a contract or arrangement that would, but for the approval, be void by virtue of sub-section (5) and nothing in sub-section (1) or (5) applies to and in relation to a contract or agreement entered into in accordance with an approval under this sub-section.

(5) A contract or arrangement entered into in contravention of this section is void.

PART VIII—DEFINITION OF DEATH

When death occurs

45. For the purposes of the law of the Territory, a person has died when there has occurred—

- (a) irreversible cessation of all function of the brain of the person; or
- (b) irreversible cessation of circulation of blood in the body of the person.

PART IX—MISCELLANEOUS

Ordinance does not prevent specified removals of tissue, &c.

46. (1) Nothing in this Ordinance applies to or in relation to—

- (a) the removal of tissue from the body of a living person in the course of a procedure or operation carried out, in the interests of the health of the person, by a medical practitioner with the consent, express or implied, given by or on behalf of the person or in circumstances necessary for the preservation of the life of the person;
- (b) the use of tissue so removed;
- (c) the embalming of the body of a deceased person; or
- (d) the preparation, including the restoration of any disfigurement or mutilation, of the body of a deceased person for the purpose of interment or cremation.

(2) In paragraphs (1) (a) and (1) (b), “tissue” has the same meaning as in Part II.

Exclusion of liability of person acting in pursuance of consent or authority

47. (1) Subject to sub-section (2), where—

- (a) a person carries out a procedure; and
- (b) a consent or authority given under this Ordinance is sufficient authority under this Ordinance for that person to carry out that procedure,

that person is not liable to any other person in respect of anything done or omitted to be done by that first-mentioned person in the carrying out of that procedure.

(2) Nothing in this section relieves a person from liability for negligence in respect of anything done or omitted to be done by him in the carrying out of a procedure.

Offences

48. (1) A person shall not remove tissue from the body of a person, whether living or dead, except in accordance with a consent or authority that is, under this Ordinance, sufficient authority for the removal of the tissue by that person.

Penalty: \$1,000 or imprisonment for 6 months, or both.

(2) A person shall not conduct a post-mortem examination of the body of a deceased person except in accordance with an authority that is, under this Ordinance, sufficient authority for that person to conduct the post-mortem examination.

Penalty: \$1,000 or imprisonment for 6 months, or both.

(3) A person shall not—

- (a) remove the body of a deceased person to a school of anatomy; or
- (b) use the body of a deceased person for a purpose specified in sub-section 37 (1),

except in accordance with an authority that is, under this Ordinance, sufficient authority for such removal or use of the body for that purpose.

Penalty: \$1,000 or imprisonment for 6 months, or both.

(4) A person who—

- (a) gives an authority under this Ordinance without having made the inquiries that he is required by this Ordinance to make;
- (b) makes a false statement in a certificate given for the purposes of this Ordinance; or
- (c) contravenes or fails to comply with a provision of Division 6 of Part II,

is guilty of an offence and is punishable upon conviction by a fine not exceeding \$1,000 or imprisonment for a term not exceeding 6 months, or both such fine and imprisonment.

(5) Nothing in sub-section (1) or (2) applies to or in relation to—

- (a) anything done in pursuance of an order by the Coroner under the *Coroners Ordinance 1956*; or
- (b) any other act authorized by law.

49. (1) Subject to this section, a person to whom this section applies shall not disclose or give to any other person any information or document whereby the identity of a person or a deceased person—

Disclosure of information

- (a) from whose body tissue other than blood has been removed for the purpose of transplantation or for the purpose of the use of the tissue for other therapeutic purposes or for medical or scientific purposes;
- (b) with respect to whom or with respect to whose body a consent, other than a consent under section 20, or authority has been given under this Ordinance; or
- (c) into whose body tissue other than blood has been, is being, or may be, transplanted,

may become publicly known.

Penalty: \$500 or imprisonment for 3 months, or both.

(2) Subject to this section, a person to whom this section applies shall not disclose or give to any other person any information or document whereby the identity of a child from whose body blood has been removed for a purpose referred to in section 20 may become publicly known.

Penalty: \$500 or imprisonment for 3 months, or both.

(3) This section applies—

- (a) where a consent has been given in accordance with this Ordinance—to a medical practitioner who gave a certificate in relation to the consent;
- (b) where an authority has been given in accordance with this Ordinance by a designated officer for a hospital—to the designated officer;
- (c) where tissue has been removed from the body of a person or a deceased person—the medical practitioner who removed the tissue and, if the tissue was removed at a hospital, each person who was employed at the hospital at the time of the removal of the tissue or has since been employed at the hospital;
- (d) where tissue has been transplanted into the body of a person—to the medical practitioner who performed the transplantation and, if the tissue was transplanted at a hospital, each person who was employed at the hospital at the time of the transplantation or has since been employed at the hospital; and
- (e) where it is proposed that tissue will be transplanted into the body of a person—to the medical practitioner who is to perform the transplantation and, if the tissue is to be transplanted at a hospital, each person who is employed at the hospital or who becomes so employed.

(4) Sub-sections (1) and (2) do not apply to or in relation to information disclosed—

- (a) in pursuance of an order of a Court or when otherwise required by law;
- (b) for the purposes of hospital administration or *bona fide* medical research;
- (c) with the consent of the person to whom the information relates; or
- (d) when the circumstances in which the disclosure is made are such that the disclosure is or would be privileged.

50. The Second Schedule to the *Seat of Government (Administration) Ordinance* 1930 is amended by inserting in Part 2, after the words—

Amendment
of
*Seat of
Government
(Adminis-
tration)
Ordinance
1930*

“ *Termination of Pregnancy Ordinance 1978* ”,
the words—

“ *Transplantation and Anatomy Ordinance 1978* ”.

51. The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters that are required or permitted to be prescribed by this Ordinance or are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance and in particular for prescribing penalties not exceeding a fine of \$250 for offences against the regulations.

Regulations