Australian Capital Territory

Blood Donation (Acquired Immune Deficiency Syndrome) Act 1985

A1985-27

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About this republication

The republished law

This is a republication of the *Blood Donation (Acquired Immune Deficiency Syndrome) Act 1985* effective from 1 March 1993 to 19 December 1996.

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Australian Capital Territory

BLOOD DONATION (ACQUIRED IMMUNE DEFICIENCY SYNDROME) ACT 1985

This consolidation has been prepared by the ACT Parliamentary Counsel's Office

Reprinted as at 30 April 1993

TABLE OF PROVISIONS

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

Short title

1. This Act may be cited as the *Blood Donation (Acquired Immune Deficiency Syndrome) Act 1985*.[1]

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Interpretation

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

"approved" means approved by the Minister by instrument for the purposes of 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 the prescribed disease—

(i) by reason of having been administered blood supplied from 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 subparagraph (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),

other than an action brought under the *Commonwealth Employees Rehabilitation and Compensation Act 1988* of the Commonwealth or the *Workers' Compensation Act 1951*;

"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.

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Liability of Red Cross Society

3. (1) 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.

(2) The defence specified in subsection (1) is not available where it is established that—

(a) the Society, the employee or the person or body referred to in paragraph (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) the prescribed disease was contracted as a result of that negligence, whether or not any other actions contributed to the contracting of the prescribed disease.

Liability of hospitals and medical practitioners

4. (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 authorized the administration to a patient of, blood supplied by the Society or a blood product derived from blood supplied by the Society,

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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.

(2) The defence specified in subsection (1) is not available where 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 the prescribed disease was contracted as a result of that negligence, whether or not any other actions contributed to the contracting of the prescribed disease.

Requirements to be complied with

5. (1) 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 a form approved by the Minister by instrument in writing published in the *Gazette*; and

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(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.

(2) An instrument under paragraph (1) (a) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Liability 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.

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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) Subsection (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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NOTE

1. The *Blood Donation (Acquired Immune Deficiency Syndrome) Act 1985* as shown in this reprint comprises Act No. 27, 1985 amended as indicated in the Tables below.

   Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

Table 1

Table of Ordinances

Ordinance	Number and year	Date of notification in *Gazette*	Date of commencement	Application, saving or transitional provisions
Blood Donation (Acquired Immune Deficiency Syndrome) Ordinance 1985	27, 1985	1 July 1985	1 July 1985	
Blood Donation (Acquired Immune Deficiency Syndrome) (Amendment) Ordinance 1985	55, 1985	18 Oct 1985	18 Oct 1985	—
Blood Donation (Acquired Immune Deficiency Syndrome) (Amendment) Ordinance 1986	47, 1986	22 Aug 1986	22 Aug 1986	—
Blood Donation (Acquired Immune Deficiency Syndrome) (Amendment) Ordinance (No. 2) 1986	90, 1986	22 Dec 1986	22 Dec 1986	—
Community and Health Service (Consequential Provisions) Ordinance 1988	29, 1988	30 June 1988	2 July 1988	S. 4
Self-Government (Consequential Amendments) Ordinance 1989	38, 1989	10 May 1989	Ss. 1 and 2: 10 May 1989 Remainder: 11 May 1989 (*see* s. 2 (2) and *Gazette* 1989, No. S164)	—

Self-Government day 11 May 1989

NOTE—continued

Table 2

Table of Acts

Act	Number and year	Date of notification in *Gazette*	Date of commencement	Application, saving or transitional provisions
Health Services (Consequential Provisions) Act 1990	63, 1990	28 Dec 1990	Ss. 1 and 2: 28 Dec 1990 Remainder: 31 Jan 1991 (*see* s. 2 (2) and *Gazette* 1991, No. S4)	Ss. 6-17
Workers' Compensation (Consequential Amendments) Act 1991	106, 1991	15 Jan 1992	Ss. 1 and 2: 15 Jan 1992 Remainder: 22 Jan 1992 (*see* s. 2 (2) and *Gazette* 1992, No. S9)	—
Health (Consequential Provisions) Act 1993	14, 1993	1 Mar 1993	1 Mar 1993 (*see* s. 2)	Parts IV-VI (ss. 14-34)

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 2	am. No. 47, 1986; No. 29, 1988; Act No. 63, 1990; No. 106, 1991; No. 14, 1993
Ss. 3, 4	am. No. 47, 1986
S. 5	am. No. 55, 1985; No. 47, 1986; No. 38, 1989
S. 10	ad. No. 47, 1986
	rep. No. 90, 1986
The Schedule	rep. No. 55, 1985

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