



New South Wales

Human Tissue Amendment (Ante-mortem Interventions) Act 2024 No 13

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Human Tissue Amendment (Ante-mortem Interventions) Act 2024 No 13

Act No 13, 2024

An Act to amend the *Human Tissue Act 1983* to allow ante-mortem procedures to be carried out to facilitate post-mortem tissue donation; and for related purposes. [Assented to 25 March 2024]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Human Tissue Amendment (Ante-mortem Interventions) Act 2024*.

2 Commencement

This Act commences on the day that is 4 months after the date of assent to this Act.

Schedule 1 Amendment of Human Tissue Act 1983 No 164

[1] Section 4 Definitions

Omit “*senior available next of kin* means—” from section 4(1), definition of *senior available next of kin*.

Insert instead “*senior available next of kin*, other than in Part 4A, means—”.

[2] Part 4A

Insert after Part 4—

Part 4A Ante-mortem procedures for donation of tissue after death

27B Definitions

In this part—

ante-mortem procedure means the following medical procedures, other than normothermic regional perfusion, carried out to determine, maintain or improve the viability of tissue for a relevant purpose—

- (a) the administration of medication,
- (b) the removal of blood and tissue for testing,
- (c) medical imaging and other diagnostic procedures,
- (d) blood transfusions for the purpose of improving organ viability.

potential tissue donor means the person on whom an ante-mortem procedure is to be carried out.

relevant purpose means the expected transplantation of tissue, excluding gametes, from a potential tissue donor’s body, after the potential tissue donor’s death, to the body of another living person.

senior available next of kin, of a potential tissue donor, means—

- (a) in relation to a child who is a potential tissue donor—
 - (i) a parent of the child, or
 - (ii) if a parent of the child is not available—a brother or sister of the child who is at least 18 years of age, or
 - (iii) if no person referred to in subparagraph (i) or (ii) is available—a guardian of the child, and
- (b) otherwise—
 - (i) the potential tissue donor’s spouse, or
 - (ii) if the potential tissue donor does not have a spouse or the potential tissue donor’s spouse is not available—a child of the potential tissue donor who is at least 18 years of age, or
 - (iii) if no person referred to in subparagraph (i) or (ii) is available—a parent of the potential tissue donor, or
 - (iv) if no person referred to in subparagraph (i), (ii) or (iii) is available—a brother or sister of the potential tissue donor who is at least 18 years of age.

27C Authority to carry out ante-mortem procedures

- (1) A designated officer in relation to a hospital may authorise the carrying out of an ante-mortem procedure if the potential tissue donor provides consent.

- (2) If the potential tissue donor lacks the capacity to provide consent under subsection (1), the designated officer may authorise the carrying out of an ante-mortem procedure if—
- (a) there are one or more senior available next of kin of the potential tissue donor and a senior available next of kin provides consent under section 27D, or
 - (b) there are no known senior available next of kin of the potential tissue donor and the designated officer is satisfied that—
 - (i) the potential tissue donor has, during the potential tissue donor's lifetime, provided consent in writing to the removal of tissue for a relevant purpose, and
 - (ii) the consent has not been revoked, and
 - (iii) the potential tissue donor has not expressed an objection to the carrying out of an ante-mortem procedure on the potential tissue donor.
- (3) Despite subsections (1) and (2), a designated officer must not give an authorisation unless—
- (a) the designated officer is reasonably satisfied an authorisation to remove tissue after the death of the potential tissue donor under the Act, Part 4 will be given, and
 - (b) a prescribed practitioner has certified in writing that the prescribed practitioner is reasonably satisfied—
 - (i) the death of the potential tissue donor is imminently expected, and
 - (ii) the carrying out of an ante-mortem procedure on the potential tissue donor will not—
 - (A) hasten the death of the potential tissue donor, or
 - (B) cause more than minimal harm to the potential tissue donor, or
 - (C) cause undue risk to the potential tissue donor.
- (4) In this section—
- experienced medical practitioner*** means a medical practitioner who has been a registered medical practitioner for at least 5 years.
- prescribed practitioner*** means a designated specialist or, if a designated specialist is not available, an experienced medical practitioner, who is not involved in—
- (a) transplantation procedures, or
 - (b) the care of the potential tissue donor, or
 - (c) the care of a potential recipient of tissue.

27D Senior available next of kin may consent to ante-mortem procedures

- (1) A senior available next of kin may consent to the carrying out of an ante-mortem procedure on a potential tissue donor.
- (2) The senior available next of kin must not provide consent under subsection (1) unless the senior available next of kin is satisfied that there is no reason to believe the potential tissue donor has expressed an objection to the carrying out of an ante-mortem procedure on the potential tissue donor.

27E Effect of an authority

An authority under section 27C is sufficient authority for the carrying out of an ante-mortem procedure on a potential tissue donor.

27F Relationship with Guardianship Act 1987

- (1) An authority under section 27C has effect despite the *Guardianship Act 1987*.
- (2) Despite subsection (1), an authority under section 27C does not have effect if—
 - (a) a person responsible has given consent to treatment on the potential tissue donor under the *Guardianship Act 1987*, Part 5, and
 - (b) the treatment is incompatible with the ante-mortem procedure.
- (3) In this section—

person responsible has the same meaning as in the *Guardianship Act 1987*, Part 5.

treatment has the same meaning as in the *Guardianship Act 1987*, Part 5.

27G Ante-mortem procedure not to interfere with coroner's functions

Despite the other provisions of this part, an ante-mortem procedure must not be carried out if the procedure is reasonably likely to interfere with the functions of the coroner under the *Coroners Act 2009* in respect of the death of the potential tissue donor.

[Second reading speech made in—
Legislative Assembly on 23 November 2023
Legislative Council on 14 March 2024]