

**ANATOMY (HUMAN TISSUE) AMENDMENT ACT, 1983,  
No. 165**

**New South Wales**



ANNO TRICESIMO SECUNDO

**ELIZABETHÆ II REGINÆ**

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**Act No. 165, 1983.**

An Act to amend the Anatomy Act, 1977, in relation to the authorisation of anatomical examinations and in relation to penalties. [Assented to, 31st December, 1983.]

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*Anatomy (Human Tissue) Amendment.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**Short title.**

**1.** This Act may be cited as the "Anatomy (Human Tissue) Amendment Act, 1983".

**Commencement.**

**2. (1)** Sections 1 and 2 shall commence on the date of assent to this Act.

**(2)** Except as provided by subsection (1), this Act shall commence on the day appointed and notified under section 2 (2) of the Human Tissue Act, 1983.

**Amendment of Act No. 126, 1977.**

**3.** The Anatomy Act, 1977, is amended in the manner set forth in Schedule 1.

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SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE ANATOMY ACT, 1977.

(1) (a) Section 4, definition of "child"—

After the definition of "body", insert:—

"child" means a person who has not attained the age of 18 years and who is not married;

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SCHEDULE 1—*continued.*AMENDMENTS TO THE ANATOMY ACT, 1977—*continued.*

## (b) Section 4, definition of “designated officer”—

Before the definition of “dispose”, insert:—

“designated officer”, in relation to a hospital, means a person appointed for the time being under section 5 (1) (a) of the Human Tissue Act, 1983, to be a designated officer for the hospital;

## (c) Section 4, definition of “hospital”—

After the definition of “dispose”, insert:—

“hospital” means—

- (a) an incorporated hospital mentioned in the Second Schedule to the Public Hospitals Act, 1929;
- (b) a separate institution mentioned in the Third Schedule to that Act;
- (c) a hospital mentioned in the Fifth Schedule to that Act; or
- (d) a private hospital within the meaning of the Private Hospitals Act, 1908;

## (d) Section 4, definition of “next of kin”—

After the definition of “licence”, insert:—

“next of kin” means—

- (a) in relation to a deceased child—a person referred to in paragraph (a) of the definition of “senior available next of kin”; and
- (b) in relation to any other deceased person—a person referred to in paragraph (b) of that definition;

## (e) Section 4, definition of “Secretary”—

Omit “Health.”, insert instead “Health:”.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE ANATOMY ACT, 1977—*continued.*

(f) Section 4, definition of “senior available next of kin”—

After the definition of “Secretary”, insert:—

“senior available next of kin” means—

(a) in relation to a deceased child—

- (i) a parent of the child;
- (ii) where a parent of the child is not available—a brother or sister of the child, being a brother or sister who has attained the age of 18 years; or
- (iii) where no person referred to in subparagraph (i) or (ii) is available—a person who was a guardian of the child immediately before the death of the child; and

(b) in relation to any other deceased person—

- (i) a person who was a spouse of the deceased person immediately before the deceased person’s death;
- (ii) where the deceased person, immediately before death, was not married or where the deceased person was married and the person who was then the deceased person’s spouse is not available—a son or daughter (if any) of the deceased person, being a son or daughter who has attained the age of 18 years;
- (iii) where no person referred to in subparagraph (i) or (ii) is available—a parent of the deceased person; or
- (iv) where no person referred to in subparagraph (i), (ii) or (iii) is available—a brother or sister of the deceased person, being a brother or sister who has attained the age of 18 years.

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SCHEDULE 1—*continued.*AMENDMENTS TO THE ANATOMY ACT, 1977—*continued.*

## (g) Section 4 (2)—

At the end of section 4, insert:—

## (2) In this Act—

- (a) a reference to a parent of a person includes a reference to a step-parent or adoptive parent of the person;
- (b) a reference to a son or daughter of a person includes a reference to any person of whom the person is a parent;
- (c) a reference to a brother or sister of a person includes a reference to any person who is a son or daughter of a parent of the person; and
- (d) a reference to a spouse of a person is a reference to a person to whom the person is married.

## (2) Section 5 (b)—

Omit the paragraph, insert instead:—

- (b) made or to be made pursuant to an authority under Part V of the Human Tissue Act, 1983.

## (3) Sections 8–8c—

Omit section 8, insert instead:—

**Authority for anatomical examination where body of deceased at a hospital.**

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

- (a) had, during that person's lifetime, expressed the wish for, or consented to, the anatomical examination of that person's body after that person's death; and

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE ANATOMY ACT, 1977—*continued.*

(b) had not withdrawn the wish or revoked the consent, the designated officer may, by instrument in writing, authorise the anatomical examination of that person's body.

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

- (a) the designated officer is not authorised by subsection (1) to give an authority in respect of the person;
- (b) the person had not, during the person's lifetime, expressed an objection to the anatomical examination of the person's body; and
- (c) a senior available next of kin of the person has not objected to the anatomical examination of the person's body,

the designated officer may, by instrument in writing, authorise the anatomical examination of the person's body.

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

(4) Where, in relation to a deceased person—

- (a) a next of kin of the person indicated to a designated officer for a hospital, when the person was unconscious before death, that the next of kin had no objection to the anatomical examination, after the person's death, of the person's body;
- (b) the person did not subsequently recover consciousness before dying; and

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SCHEDULE 1—*continued.*AMENDMENTS TO THE ANATOMY ACT, 1977—*continued.*

- (c) the next of kin has not subsequently indicated to the designated officer that the next of kin objects to the anatomical examination of the person's body,

the designated officer may, for the purposes of any inquiry the designated officer is required to make by subsection (2), rely on that indication without further inquiry of that next of kin.

(5) Where there are 2 or more persons having a description referred to in a subparagraph of paragraph (a) or (b) of the definition of "senior available next of kin" in section 4 (1), an objection by any one of those persons has effect for the purposes of subsection (2) (c) notwithstanding any indication to the contrary by the other or any other of those persons.

**Authority for anatomical examination where body of deceased not at a hospital.**

8A. (1) Where—

- (a) the body of a deceased person (other than a deceased child) is at a place other than a hospital;
- (b) the deceased person had, during the person's lifetime, expressed the wish for, or consented to, the anatomical examination, after the person's death, of that person's body; and
- (c) the wish had not been withdrawn or the consent revoked,

the anatomical examination of that person's body is hereby authorised.

(2) Where the body of a deceased person is at a place other than a hospital, a senior available next of kin of the person may, by instrument in writing, authorise the anatomical examination of the person's body.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE ANATOMY ACT, 1977—*continued.*

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

- (a) the person had, during the person's lifetime, expressed an objection to the anatomical examination of the person's 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 (1) has an objection to the anatomical examination of the person's body,

the senior available next of kin shall not authorise the anatomical examination of the person's body.

Penalty for an offence against this subsection: \$1,000.

**Consent by coroner.**

8B. (1) This section applies to a person in respect of whose death a coroner has jurisdiction to hold an inquest under the Coroners Act, 1980.

(2) A designated officer for a hospital or a senior available next of kin shall not authorise the anatomical examination of the body of a person to whom this section applies unless a coroner has given consent to the examination.

Penalty: \$4,000 or imprisonment for 6 months, or both.

(3) Section 8A (1) does not apply in relation to a person to whom this section applies unless a coroner has given consent to the anatomical examination of the person's body.

(4) A consent by a coroner under this section may be expressed to be subject to such conditions as are specified in the consent.



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SCHEDULE 1—*continued.*AMENDMENTS TO THE ANATOMY ACT, 1977—*continued.*

(5) A consent by a coroner under this section may be given orally and, if so given, shall be confirmed in the prescribed manner.

(6) A coroner shall, in determining the conditions (if any) to which a consent shall be subject, have regard only to the effect which the conduct of an anatomical examination of the body of the person to whom the consent relates may have in relation to the conduct of any inquest which a coroner has jurisdiction to hold in respect of that person's death.

**Effect of authority.**

8c. (1) An authority under section 8 or 8A is sufficient authority for a person who has lawful possession of a body to permit the body to be used for anatomical examination by the holder of a licence.

(2) For the purposes of this section, a person does not have lawful possession of a body if that person is a funeral director or other person entrusted with the body for the purposes only of its disposal.

(4) (a) Section 9 (a)—

Omit "has been permitted to do so in accordance with section 8", insert instead "is permitted to use the body for anatomical examination pursuant to section 8c (1)".

(b) Section 9—

At the end of the section, insert:—

Penalty: \$4,000 or imprisonment for 6 months, or both.

(5) (a) Section 10 (1)—

At the end of the subsection, insert:—

Penalty: \$1,000.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE ANATOMY ACT, 1977—*continued.*

(b) Section 10 (2)—

At the end of the subsection, insert:—

Penalty: \$1,000.

(6) (a) Section 11 (1)—

Omit “surviving spouse of the deceased or, if there is no surviving spouse, the nearest surviving relative”, insert instead “senior available next of kin”.

(b) Section 11 (2)—

At the end of the subsection, insert:—

Penalty: \$1,000.

(c) Section 11 (3)—

At the end of the subsection, insert:—

Penalty for an offence against this subsection: \$1,000.

(7) (a) Section 12 (1)—

At the end of the subsection, insert:—

Penalty: \$1,000.

(b) Section 12 (3)—

Omit “surviving spouse of the deceased or, if there is no surviving spouse, the nearest surviving relative”, insert instead “senior available next of kin”.

(c) Section 12 (3)—

At the end of the subsection, insert:—

Penalty: \$1,000.

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SCHEDULE 1—*continued.*AMENDMENTS TO THE ANATOMY ACT, 1977—*continued.*

## (d) Section 12 (4)—

At the end of the subsection, insert:—

Penalty for an offence against this subsection: \$1,000.

## (8) Section 13—

At the end of the section, insert:—

Penalty: \$1,000.

## (9) (a) Section 14 (1)—

At the end of the subsection, insert:—

Penalty: \$1,000.

## (b) Section 14 (2)—

At the end of the subsection, insert:—

Penalty: \$1,000.

## (c) Section 14 (3)—

At the end of the subsection, insert:—

Penalty: \$4,000 or imprisonment for 6 months, or both.

## (d) Section 14 (4)—

At the end of the subsection, insert:—

Penalty: \$1,000.

## (e) Section 14 (5)—

After section 14 (4), insert:—

(5) The holder of a licence shall not contravene the terms or conditions of the licence.

Penalty for an offence against this subsection: \$1,000.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE ANATOMY ACT, 1977—*continued.*

- (10) Section 15—  
Omit the section.
- (11) Section 17 (4)—  
Omit "\$100", insert instead "\$500".
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