



ANALYSIS

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1998, No. 86

**An Act to amend the Health Act 1956**

*[2 July 1998]*

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Health Amendment Act 1998, and is part of the Health Act 1956 (“the principal Act”).

(2) This Act comes into force on the second day after the date on which it receives the Royal assent.

## PART 1

## AMENDMENTS TO PRINCIPAL ACT RELATING TO COLLECTION OF BLOOD

**2. Duty to provide information for purposes of blood collection**—The principal Act is amended by repealing section 22E, and substituting the following section:

“22E. The Minister may, at any time, by notice in writing, require a hospital and health service to provide to an entity appointed under section 92H, in such manner as the Minister specifies in the notice, such information as is specified in the notice, being health information of the kind referred to in paragraph (d) or paragraph (e) of the definition of that term in section 22B.”

**3. Part 3A substituted**—The principal Act is amended by repealing Part IIIA, and substituting the following Part:

## “PART 3A

## “TRADING IN HUMAN BLOOD AND CONTROLLED HUMAN SUBSTANCE

“92A. **Interpretation**—In this Part, unless the context otherwise requires,—

“‘Appointed entity’ means an entity appointed under section 92H:

“‘Blood’ means human blood; and—

“(a) Includes the following:

“(i) A substance derived from blood:

“(ii) A human organ, or human bone marrow, or human tissue, including the placenta, of a kind that is suitable as a source from which to derive a constituent of blood that may be used therapeutically or in the preparation of a substance for therapeutic use:

“(iii) A constituent of an organ, bone marrow, or tissue described in subparagraph (ii):

“(iv) Human haematopoietic stem cells, or a constituent of human haematopoietic stem cells, that may be used therapeutically or in the preparation of a substance for therapeutic use; but

“(b) Does not include the following:

“(i) Any substance derived from blood, a human organ, human bone marrow, human

tissue, or human haematopoietic stem cells that is intended for use in quality control or as a diagnostic product:

“(ii) Any substance containing a fraction of blood, a human organ, human bone marrow, human tissue, or human haematopoietic stem cells that the Governor-General by Order in Council declares not to be blood for the purposes of this Part:

“ ‘Controlled human substance’—

“(a) Means—

“(i) Human bone marrow (other than human bone marrow referred to in paragraph (a) (ii) of the definition of the term ‘blood’ in this section) that may be used therapeutically or in the preparation of a substance for therapeutic use; or

“(ii) A constituent of human bone marrow described in subparagraph (i); or

“(iii) Any other substance of the human body that may be used therapeutically or in the preparation of a substance for therapeutic use and that the Governor-General by Order in Council declares to be included in this definition; but

“(b) Does not include—

“(i) A product derived from any controlled human substance that is intended for use in quality control or as a diagnostic product; or

“(ii) A substance containing a fraction of any controlled human substance that the Governor-General by Order in Council declares not to be a controlled human substance for the purposes of this Part.

**“92B. Trading in own blood or controlled human substance prohibited—**(1) No person may require or accept financial or other consideration for the blood or any controlled human substance of that person.

“(2) No person may provide financial or other consideration for the taking of blood or any controlled human substance from the body of a person for administration to another person.

“(3) Every person commits an offence and is liable to a fine not exceeding \$1,000 who contravenes subsection (1).

“(4) Every person commits an offence and is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding \$5,000 who contravenes subsection (2).

“92C. **Collection of blood or controlled human substance**—(1) No person may take blood or any controlled human substance from the body of a person for the purpose of obtaining that blood or that substance for administration to another person.

“(2) Every person commits an offence and is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding \$5,000 who contravenes subsection (1).

“(3) Subsection (1) does not apply to—

“(a) An appointed entity that is authorised to take blood and controlled human substances from persons; or

“(b) An employee or agent of an appointed entity who is authorised by the entity to take blood or controlled human substances on behalf of the entity, if the entity has the power to authorise employees or agents to do so.

“(4) For the purposes of subsection (3), an appointed entity is authorised to take blood and controlled human substances, and has the power to authorise employees and agents of the entity to do so, unless the notice by which the entity is appointed provides otherwise.

“(5) Every appointed entity described in subsection (3) (a) and every employee or agent described in subsection (3) (b) who takes blood or any controlled human substance must give due recognition to the fact that the blood or controlled human substance has been donated.

“92D. **Charging for administered blood or controlled human substance**—(1) No person who administers blood or any controlled human substance to another person may require or accept financial or other consideration for that blood or that substance from the person to whom it is administered.

“(2) Every person commits an offence and is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding \$5,000 who contravenes subsection (1).

“92E. **Exemptions**—(1) The Minister may, in his or her discretion and on such terms and conditions (if any) as the Minister thinks fit, by notice in writing, exempt a person or persons or class of persons from compliance with any or all of

the provisions of sections 92B (1), 92B (2), and 92D (1), and may in the same manner vary or revoke any such exemption.

“(2) Where a notice is given under subsection (1), the Minister must as soon as practicable after giving the notice, publish in the *Gazette* and present to the House of Representatives a copy of the notice.

“92F. **Unauthorised advertising prohibited**—(1) No person may distribute an advertisement relating to the purchase or sale in New Zealand of blood or a controlled human substance.

“(2) For the purposes of subsection (1), ‘distribute’ means—

“(a) To publish or otherwise disseminate, by newspaper, magazine, periodical, book, billboard, radio, television, cinematograph film, or any other means whatever; or

“(b) To exhibit to public view in any premises or place; or

“(c) To deposit in any area, yard, garden, or enclosure comprising part of or appurtenant to any premises.

“(3) Every person commits an offence and is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,500 who contravenes subsection (1).

“92G. **Liability of employers, principals, and directors**—(1) An act done by a person as the employee (‘the employee’) of another person (‘the employer’) is for the purposes of an offence against this Part to be treated as done by the employer as well as by the employee, if—

“(a) The employer approved of the act; or

“(b) The employer knew that the act was to be done or was being done and failed to take all reasonable steps to prevent it.

“(2) An act done by a person as the agent (‘the agent’) of another person (‘the principal’) is for the purposes of an offence against this Part to be treated as done by the principal as well as by the agent, if—

“(a) The principal approved of the act; or

“(b) The principal knew that the act was to be done or was being done and failed to take all reasonable steps to prevent it.

“(3) Where a body corporate is convicted of an offence against this Part, a director of the body corporate is to be treated as having committed the same offence if—

“(a) The director approved of the act that constituted the offence; or

“(b) The director knew the offence was to be or was being committed and failed to take all reasonable steps to prevent it.

“(4) In subsection (3), the term ‘director’ includes a person who is concerned in the management of a body corporate.

“92H. **Appointed entities to collect and distribute blood and controlled human substances**—(1) The Minister may from time to time, by notice in writing, appoint 1 or more entities to be responsible for the performance of such functions in relation to blood and controlled human substances as are specified in the notice.

“(2) An appointment under subsection (1) may be subject to such terms and conditions as are specified in the notice appointing the appointee.

“(3) The Minister may from time to time, by notice in writing, revoke, vary, or add to—

“(a) Any of the functions for which an appointee is responsible:

“(b) Any of the terms or conditions of the appointment.

“(4) The Minister may, at any time, by notice in writing, revoke an appointment made under subsection (1).

“(5) A notice given under this section takes effect on the date specified for the purpose in the notice or, if no date is specified for that purpose, on the day after the date on which it is issued.

“(6) An appointed entity that performs, in accordance with a notice given under this section, any function in relation to blood or a controlled human substance, is entitled to do anything, or refrain from doing anything, that is necessary or desirable for the purpose of performing that function, unless a notice given under this section provides otherwise.

“(7) As soon as practicable after the Minister gives a notice under subsection (1) or subsection (3) (a) or subsection (4), the Minister must—

“(a) Publish a copy of it in the *Gazette*; and

“(b) Present a copy of it to the House of Representatives.

“92I. **Exemption from Part II of Commerce Act 1986**—Nothing in Part II of the Commerce Act 1986 applies to—

“(a) Any contract, arrangement, understanding, or covenant in relation to blood or controlled human substances that—

“(i) At the time it is entered into is, or is of a class that is, approved for the purposes of this section by the Governor-General by Order in Council; or

“(ii) Is entered into by a person who (at the time it is entered into) is, or is of a class that is, approved for the purposes of this section by the Governor-General by Order in Council; or

“(b) Any act done to give effect to a provision of any contract, arrangement, understanding, or covenant to which paragraph (a) applies.”

“92j. **Protection of appointed entities**—(1) Section 129 applies to any appointed entity, and to any employee or agent of an appointed entity, who, in pursuance or intended pursuance of a provision in a notice given under section 92H, does any act, or fails or refuses to do any act, in relation to blood or a controlled human substance.

“(2) For the purpose of applying section 129 in accordance with subsection (1), a provision in a notice given under section 92H is to be regarded as a provision of this Act.”

## PART 2

### PROVISIONS RELATING TO DISSOLUTION OF BLOOD TRANSFUSION TRUST

**4. Vesting of assets of blood transfusion trust**—(1) In this section and in sections 6, 7, 8, and 9, the term “the Trust” means the blood transfusion trust established under section 92J of the principal Act (as in force before the commencement of this Act).

(2) On the date that this Act comes into force, the assets and the liabilities of the Trust vest in the hospital and health service known as New Zealand Blood Service Limited freed of all trusts affecting those assets or liabilities.

(3) Sections 6, 8, and 9, and the First Schedule of the Health Reforms (Transitional Provisions) Act 1993 apply in respect of the vesting of assets and liabilities by subsection (2) as if—

(a) Those assets and liabilities were transferred under section 5 of that Act; and

(b) The Trust were the transferor and New Zealand Blood Service Limited were the transferee under a proposal approved by an Order in Council made under that section.

(4) Unless in any case the context otherwise requires, every reference to the Trust in any document (other than an enactment) is, after the commencement of this Act, to be read as a reference to New Zealand Blood Service Limited.

(5) In this section, unless the context otherwise requires, the terms “assets”, “liabilities”, and “transfer” have the same

meaning as they have in section 2 of the Health Reforms (Transitional Provisions) Act 1993.

**5. Respect for donated blood**—(1) New Zealand Blood Service Limited must, in managing any blood or controlled human substance vested in it by section 4, give due recognition to the fact that the blood or controlled human substance has been donated.

(2) In this section, the terms “blood” and “controlled human substance” have the same meaning as they have in section 92A of the principal Act.

**6. Blood transfusion trust dissolved**—(1) On the date that this Act comes into force the Trust is dissolved.

(2) On the date that this Act comes into force every trustee of the Trust ceases to hold office as trustee of the Trust.

**7. Final report of Trust**—(1) Subject to section 8, New Zealand Blood Service Limited (in this section and in section 8 referred to as the transferee) must prepare the Trust’s final report within 3 months after the date on which this Act comes into force.

(2) The final report referred to in subsection (1) consists of—

(a) An annual report setting out the information specified in section 41I of the Public Finance Act 1989 in relation to the Trust’s operations for the period beginning with 1 July 1997 and ending with the close of the day immediately before the commencement of this Act; and

(b) The Trust’s financial statements for that period, which must—

(i) Set out the information specified in section 41 of the Public Finance Act 1989; and

(ii) Be accompanied by an audit opinion prepared by the Audit Office in accordance with section 43 of that Act.

(3) The final report must be signed on behalf of the transferee or by the persons appointed, under section 8, to prepare the report, as the case may require.

(4) As soon as practicable after receiving a copy of the final report, the Minister must present the report to the House of Representatives.

**8. Appointment of persons to discharge reporting obligations**—(1) In any case where the transferee is, because

of section 7 or the operation of section 4 (2), required to prepare a report concerning the Trust, the transferee may, by notice in writing, appoint 2 persons, eligible to be appointed under subsection (2), to prepare that report.

(2) The following persons are eligible to be appointed under subsection (1):

- (a) Two former trustees of the Trust; or
- (b) One former trustee of the Trust and 1 former executive officer of the Trust.

(3) When a report prepared by persons appointed under subsection (1) is presented in properly completed form to the Minister, the obligation of the transferee to prepare the report is discharged.

(4) If in any case a person appointed under subsection (1) is, at any time, unable or unwilling to prepare the report required by the appointment, the transferee may—

- (a) Replace that person by appointing another person who is, in the circumstances of the case, eligible to be appointed under subsection (2) to prepare the report; or
- (b) Terminate the appointment of both persons appointed to prepare the report and—
  - (i) Appoint 2 other persons who are eligible to be appointed under subsection (2) to prepare the report; or
  - (ii) Prepare the report itself.

**9. Protection of former trustees**—(1) Section 92L of the principal Act (as in force before the commencement of this Act) continues to apply to former trustees of the Trust as if this Act had not been passed.

(2) If, in the period commencing on 31 March 1998 and ending with the close of the day immediately before the commencement of this Act, a former trustee or officer of the Trust did an act, or failed or refused to do an act, in order to prepare for, or assist in, the implementation of this Act, the trustee or officer is under no civil or criminal liability for doing, or failing or refusing to do, the act.

(3) Subsection (2) does not exclude the liability of a former trustee or officer of the Trust for doing, or failing or refusing to do, an act in bad faith or without reasonable care.

(4) Subsection (2) applies despite any provision in the deed by which the Trust was established.

**10. Consequential amendment to Ombudsmen Act 1975**—The Ombudsmen Act 1975 is consequentially amended by omitting from Part II of the First Schedule the item relating to the blood transfusion trust established under section 92j of the Health Act 1956.

**11. Consequential amendment to Public Finance Act 1989**—The Public Finance Act 1989 is consequentially amended by omitting from the Fourth, Fifth, and Sixth Schedules the item relating to the blood transfusion trust established under section 92j of the Health Act 1956.

**12. Consequential repeals**—The following enactments are consequentially repealed:

- (a) Section 27 of the Health Amendment Act 1993;
- (b) Section 2 of the Health Amendment Act (No. 3) 1994.

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This Act is administered in the Ministry of Health.

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