

HUMAN TISSUE BILL

EXPLANATORY NOTE

THIS Bill consolidates and amends the provisions which now appear in the Medical Act 1908 relating to *post mortem* examinations, the practice of anatomy, and the removal of human tissue for therapeutic purposes and for purposes of medical education and research. The provisions regarding the removal of human tissue and *post mortem* examinations substantially follow corresponding provisions in the Human Tissue Act 1961 of the United Kingdom. Sections 26, 28, 29, and 32 of the Births and Deaths Registration Act 1951 are relevant in connection with the matters to which the Bill relates.

The Bill is substantially the same as the Medical Bill which was introduced into Parliament in 1963 but not passed.

Clause 1 relates to the Short Title and commencement of the Bill. It is to come into force on 1 January 1965.

Clause 2 defines a number of the terms used in the Bill. *Subclause (2)* substantially re-enacts the present section 24 (2) of the Medical Act 1908. It declares that, without restricting the rights, powers, or duties of any other person, the Medical Superintendent of a hospital or mental hospital and the Superintendent of a penal institution, shall, for the purposes of the Bill, be deemed to be lawfully in possession of any dead human body lying within the hospital, mental hospital, or institution.

Clause 3 substantially follows section 1 of the Human Tissue Act 1961 of the United Kingdom. It covers the whole of the field now covered by section 24A and part of the field now covered by section 24B of the Medical Act 1908. The clause authorises, subject to appropriate safeguards, the removal of human tissue from a dead body for therapeutic purposes or for purposes of medical education or research.

Clause 4 declares that nothing in *clauses 5 to 9* of the Bill, which relate to anatomical examinations at schools of anatomy, shall apply to any *post mortem* examination directed to be made by a coroner or any other competent legal authority, or to any *post mortem* examination carried out for the purpose of establishing or confirming the cause of death or of investigating the existence or nature of abnormal conditions or for any of the purposes specified in clause 3 of the Bill. The clause also declares that no *post mortem* examination, other than one which is directed or requested by a coroner or other competent legal authority, shall be carried out without the authority of the person lawfully in possession of the body, and that every such examination shall be subject to specified restrictions.

Clause 5 defines the circumstances in which a body may be removed to a school of anatomy for the purposes of anatomical examination.

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Clause 6 provides that every body that is removed for anatomical examination under the Bill shall, before it is so removed, be placed in a decent coffin or shell and shall be removed therein. The clause makes special provision for the burial or cremation of bodies that have undergone anatomical examination, and for regard to be had to the wishes of the deceased and his relatives in that connection. Notice must be given to the Medical Practitioner in charge of a school of anatomy of an intention to send a body to that school.

Clause 7 authorises the Governor-General in Council to establish schools of anatomy; and prohibits the performance of an anatomical examination, or the holding of a body for anatomical examination, at any place other than a school of anatomy or a place authorised by an Inspector.

Clause 8 provides for the appointment of members of the Police as Inspectors of schools of anatomy.

Clause 9 provides for the grant of licences to practise anatomy to medical practitioners who are employed to teach medicine at a school of anatomy.

Clause 10 is a saving provision designed to protect unlicensed teachers and students of a school of anatomy where they carry out an anatomical examination while acting under the directions and supervision of a person licensed to practise anatomy and at a school of anatomy or place at which the person so supervising is licensed to practise anatomy. The saving provision also protects persons who take receipt or have possession of a body on behalf of a person who is licensed to practise anatomy.

Clause 11 directs that any person performing a *post mortem* or anatomical examination or removing any part of a body under the Bill shall do so in a manner that avoids unnecessary mutilation of the body which is being examined or from which any such removal is being effected, and shall conduct the examination or removal in an orderly, quiet, and decent manner.

Clause 12 makes it an offence punishable by a fine not exceeding £500, or by imprisonment for a term not exceeding three months, for a person other than a medical practitioner to perform a *post mortem* examination in contravention of the Bill, or for an unlicensed person to practise anatomy or improperly to have a body in his possession for the purpose of anatomical examination, or for any person to perform an anatomical examination of a body at a place where or at a time when that examination is prohibited by the Bill.

Clause 13 provides for consequential repeals.

Hon. Mr McKay

HUMAN TISSUE

ANALYSIS

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A BILL INTITULED

An Act to consolidate certain enactments of the General Assembly relating to *post mortem* examinations, the practice of anatomy, and the removal of human tissue for therapeutic purposes and for purposes of medical education and research

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

10 **1. Short Title and commencement**—(1) This Act may be cited as the Human Tissue Act 1964.

(2) This Act shall come into force on the first day of January, nineteen hundred and sixty-five.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Anatomical examination” means examination of a body or any part of a body for the purpose of the study of the science of anatomy: 5

“Body” means a dead human body; but does not include the body of a stillborn child:

“Inspector”, in relation to any school of anatomy, means a person appointed under section 8 of this Act to be an Inspector of that school of anatomy: 10

“Medical practitioner” means a person who is registered or deemed to be registered as a medical practitioner under the Medical Practitioners Act 1950; but does not include a person who is conditionally registered under that Act: 15

“Minister” means the Minister of Health:

“Practise anatomy” means teach the science of anatomy by performing an anatomical examination:

“School of anatomy” means a school of anatomy established under section 7 of this Act. 20

(2) Without limiting the rights, powers, or duties of any person entitled under any rule of law to the possession of any body, it is hereby declared that, for the purposes of this Act, the following persons shall be deemed to be persons lawfully in possession of bodies in the cases hereinafter specified, 25 namely:

(a) The Medical Superintendent or other medical officer for the time being in charge of any institution within the meaning of the Hospitals Act 1957, or the licensee of a licensed hospital within the meaning 30 of Part V of that Act, in respect of any body lying in the institution or hospital:

(b) The Medical Superintendent or other medical officer for the time being in charge of any public institution within the meaning of the Mental Health Act 1911, 35 in respect of any body lying in the institution, being the body of an inmate:

(c) The Superintendent of any penal institution, in respect of any body lying in the institution, being the body 40 of an inmate.

Cf. 1908, No. 116, s. 24; 1954, No. 40, ss. 3, 4 (1)

3. Removal of human tissue for therapeutic purposes, etc.—

(1) If any person, either in writing at any time or orally in the presence of two or more witnesses during his last illness, has expressed a request that his body or any specified part of
5 his body be used after his death for therapeutic purposes or for purposes of medical education or research, the person lawfully in possession of his body after his death may, unless he has reason to believe that the request was subsequently withdrawn, authorise the removal from the body of any part
10 or, as the case may be, the specified part, for use in accordance with the request.

(2) Without limiting subsection (1) of this section, it is hereby declared that the person lawfully in possession of the
15 part from the body for use for the said purposes if, having made such reasonable inquiry as may be practicable, he has no reason to believe—

(a) That the deceased person had expressed an objection
20 to his or her body being so dealt with after death, and had not withdrawn it; or

(b) That the surviving spouse or any surviving relative of the deceased person objects to the body being so dealt with.

(3) Subject to subsections (4) and (5) of this section, the
25 removal and use of any part of a body in accordance with an authority given in pursuance of this section shall be lawful.

(4) No such removal shall be effected except by a medical practitioner, who must have satisfied himself by personal examination of the body that life is extinct.

30 (5) Where a person has reason to believe that an inquest may be required to be held on any body or that a *post mortem* examination of any body may be required by the coroner, he shall not, except with the consent of the coroner,—

(a) Give an authority under this section in respect of the
35 body; or

(b) Act on such an authority given by any other person.

(6) No authority shall be given under this section in respect of any body by a person entrusted with the body for the purpose only of its interment or cremation.

40 (7) Nothing in this section shall be construed as rendering unlawful any dealing with, or with any part of, the body of a deceased person which is lawful apart from this Act.

Cf. 1908, No. 116, ss. 24A, 24B; 1954, No. 40, s. 2; Human Tissue Act 1961, s. 1 (U.K.)

4. *Post mortem* examinations—(1) Nothing in sections 5 to 9 of this Act shall apply to any *post mortem* examination directed to be made by a coroner or any other competent legal authority, or to any *post mortem* examination carried out for the purpose of establishing or confirming the causes of death or investigating the existence or nature of abnormal conditions or for any of the purposes specified in section 3 of this Act. 5

(2) No *post mortem* examination shall be carried out otherwise than by or in accordance with the instructions of a medical practitioner; and no *post mortem* examination, other than one which is directed or requested by a coroner or any other competent legal authority, shall be carried out without the authority of the person lawfully in possession of the body; and subsections (2), (5), and (6) of section 3 of this Act shall, with the necessary modifications, apply with respect to the giving of that authority. 10 15

Cf. 1908, No. 116, ss. 24B, 37; 1954, No. 40, s. 2; Human Tissue Act 1961, s. 2 (U.K.)

5. Anatomical examinations—(1) If any person, either in writing at any time or orally in the presence of two or more witnesses during his last illness, has expressed a request that his body be used after his death for the purposes of anatomical examination, the person lawfully in possession of the body after death may authorise such an examination, and may permit the body to be removed to a school of anatomy accordingly, unless he has reason to believe that the request was subsequently withdrawn, or unless objection to the body being so dealt with is made by— 20 25

- (a) The surviving spouse of the deceased person; or
- (b) If there is no surviving spouse, a person who is the nearest known relative, or one of the nearest known relatives, of the deceased person. 30

(2) Without limiting subsection (1) of this section, it is hereby declared that the person lawfully in possession of the body of a deceased person may authorise the body to be used for the purposes of anatomical examination, and may permit the body to be removed to a school of anatomy accordingly, if, having made such reasonable inquiry as may be practicable, he has no reason to believe— 35

- (a) That the deceased person had expressed an objection to his or her body being so dealt with after death, and had not withdrawn it; or 40

(b) That the surviving spouse or any surviving relative of the deceased person objects to the body being so dealt with.

(3) Subsections (5) and (6) of section 3 of this Act shall, with the necessary modifications, apply with respect to the giving of any authority under this section.

Cf. 1908, No. 116, ss. 31, 32

6. Removal, burial, and cremation of bodies—(1) Any person empowered by this Act to authorise the use of a body for anatomical examination shall, before causing the body to be removed to a school of anatomy, cause a written notice in duplicate to be sent to the medical practitioner in charge of that school of his intention so to do, and shall, so far as he is able, state in that notice the following particulars:

(a) The name, age, and sex of the deceased person:

(b) The place, date, and cause of death:

(c) The religion of the deceased person.

(2) Every body that is removed for anatomical examination under this Act shall, before it is so removed, be placed in a decent coffin or shell and shall be removed therein.

(3) The medical practitioner in charge of any school of anatomy to which a body is removed for anatomical examination shall, within twenty-four hours of the time at which the body is received at the school of anatomy, cause to be sent to an Inspector notice in writing of the receipt of the body into the said school of anatomy.

(4) In no case shall any body undergo anatomical examination until after thirty-six hours have elapsed from the time of death, nor until after twenty-four hours notice has been given to an Inspector of the intention to make the examination.

(5) All human remains resulting from anatomical examination shall be buried or cremated in accordance with the written instructions of an Inspector, who shall take into consideration any wishes that the deceased or his relatives may have expressed:

Provided that, with the permission of an Inspector, any part of the body may be retained indefinitely for further study.

(6) Notwithstanding anything in this Act or in any other enactment, the written instructions of an Inspector shall be sufficient authority for the cremation of any body that has been removed for anatomical examination or of any human remains resulting from such an examination.

(7) In the month of November in each year, the medical practitioner in charge of any school of anatomy shall cause to be sent to an Inspector a return specifying the name of every person whose body has undergone anatomical examination at the school of anatomy during the year and has been disposed of by burial or cremation under this section. 5

Cf. 1946, No. 40, s. 53

7. Schools of anatomy—(1) The Governor-General in Council may from time to time authorise the establishment of schools of anatomy where the study and practice of anatomy may be carried on in connection with any University or school of medicine, in such place or places and upon such conditions as he thinks fit, and may at any time revoke any such authority. 10

(2) It shall not be lawful for any person to perform an anatomical examination, or to receive or have in his possession any body for anatomical examination, at any place other than a school of anatomy. 15

(3) Nothing in this section shall prevent any person, who is licensed under this Act to practise anatomy and who obtains the permission of an Inspector in writing for that purpose and the permission of the governors, teachers, or proper authorities of the school at which he is licensed to practise anatomy, from removing any body or portion of a body to such place as the Inspector deems fit for the purpose of practising anatomy, upon such terms and conditions as the Inspector and authorities of the school, in their uncontrolled discretion, think fit. 20 25

Cf. 1908, No. 116, ss. 25, 34

8. Inspectors of schools of anatomy—(1) The Minister may from time to time, with the concurrence of the Minister in Charge of Police, appoint one or more members of the Police as an Inspector or Inspectors of any school of anatomy, and may direct in what manner Inspectors shall transact the duties of their office. 30

(2) Every Inspector shall, unless he sooner dies, continue in office until some other person is appointed in his place. 35

(3) Every Inspector of a school of anatomy shall make a quarterly return to the Minister of all bodies which, during the preceding quarter, have been removed for anatomical examination to the school, or that may have been removed to any other place under the provisions of section 7 of this Act, 40

distinguishing the sex and, as far as is known at the time, the name and age of each person whose body was so removed as aforesaid.

(4) An Inspector may visit and inspect at any time the
5 school of anatomy for which he is appointed an Inspector.

(5) There shall be payable to an Inspector, out of money appropriated by Parliament for the purpose, such remuneration as is fixed from time to time by the Minister of Finance.

(6) Every Inspector of any school of anatomy who was in
10 office immediately before the commencement of this Act shall continue in office after the commencement of this Act as if he had been appointed by the Minister under this section.

Cf. 1908, No. 116, ss. 27, 28, 29, 30

9. Licences to practise anatomy—(1) Subject to the provisions of section 10 of this Act, it shall not be lawful for any person to practise anatomy, or to receive or have in his possession any body for anatomical examination, unless he is licensed under this section to practise anatomy.

(2) The Minister may grant a licence to practise anatomy,
20 subject to such conditions as he sees fit to impose, to any medical practitioner who is employed to teach at a school of anatomy.

(3) Any licence granted under this section shall specify the school of anatomy at which the holder of the licence may
25 practise anatomy.

(4) Any licence granted under this section shall continue in force until it is cancelled or surrendered:

Provided that any such licence may, if the Minister thinks fit, be granted for any specified period, and in any such case
30 the licence may be renewed from time to time by the Minister, if he thinks fit, for any specified period.

(5) Any licence granted under this section may be cancelled by the Minister at any time by notice in writing to the holder of the licence.

(6) Any licence to practise anatomy that was subsisting
35 immediately before the commencement of this Act shall continue in force after the commencement of this Act as if it had been granted by the Minister under this section.

Cf. 1908, No. 116, s. 26

10. Saving—Nothing in sections 5 to 9, or in section 12, of this Act shall be construed as prohibiting—

- (a) Any anatomical examination or the practice of anatomy by any person who is acting under the directions and supervision of a person licensed to practise anatomy and is carrying out the anatomical examination or the practice of anatomy at a school of anatomy or place at which the person so supervising is licensed to practise anatomy; or
- (b) The receipt or possession of a body on behalf of a person so licensed.

11. Decency to be observed—Any person performing a *post mortem* or anatomical examination or removing any part of a body pursuant to this Act shall do so in a manner that avoids unnecessary mutilation of the body which is being examined or from which any such removal is being effected, and shall conduct the examination or removal in an orderly, quiet, and decent manner.

Cf. 1908, No. 116, s. 35

12. Offences—Every person commits an offence and is liable on summary conviction to a fine not exceeding five hundred pounds, or to imprisonment for a term not exceeding three months, who,—

- (a) Not being a medical practitioner, performs any *post mortem* examination otherwise than in accordance with the instructions of a medical practitioner; or
- (b) Not being licensed under this Act to practise anatomy, practises anatomy, or, otherwise than on behalf of a person so licensed, receives or has in his possession any body for the purpose of anatomical examination; or
- (c) Performs an anatomical examination of a body at a place where or at a time when that examination is prohibited by this Act.

Cf. 1908, No. 116, s. 39

13. Repeals—The following enactments are hereby repealed:

- (a) The Medical Act 1908:
- (b) Section 53 of the Statutes Amendment Act 1946:
- (c) The Medical Amendment Act 1954.