

MEDICAL AMENDMENT BILL

EXPLANATORY NOTE

THE main purpose of this Bill is to adopt the provisions of the Corneal Grafting Act 1952 of the United Kingdom. Under that Act the eyes of any person may, at his own request or with the consent of his surviving relatives, be used after his death, by surgical grafting, to restore the sight of another. This Bill extends also to the use of other tissues for similar therapeutic purposes. It also authorizes, on the like request or with the like consent, *post mortem* examinations by specially licensed medical practitioners for the purposes of medical research or the teaching of pathology.

Clause 2 enacts three new sections as follows:

Section 24A (1) provides that if anyone, either in writing at any time or orally before two or more witnesses during his last illness, requests that his eyes or any other part of his body be used for therapeutic purposes after his death, the person in lawful possession of his body after death may, unless he has reason to believe that the request was later withdrawn, authorize the removal for those purposes of the eyes or of the other part to which the request relates. *Subclause (2)* provides that the person lawfully in possession of any body may in any case give such an authority unless he has reason to believe that the deceased person had expressed an objection to the removal, or unless the surviving husband or wife or any known relative requires the burial or cremation of the body without such removal. The effect of *subclause (3)* is that where any such authority is given, the operation may be carried out by a registered medical practitioner, who must first satisfy himself, by a personal examination, that life is extinct. *Subclause (4)* provides that where there is reason to believe that an inquest may be required, no authority is to be given under the section without the consent of a Coroner, who may impose conditions. *Subclause (5)* makes it clear that an undertaker is not entitled to give any authority under the section.

Section 24B makes similar provisions for authorizing *post mortem* examinations for the purposes of medical research or the teaching of pathology. Under *subclause (2)*, where the deceased had not requested such an examination, the authority may be given only if the person giving it has no reason to believe that the deceased had expressed an objection, and if the surviving husband or wife or (if there is no known husband or wife) a known relative agrees. The *post mortem* examination may be performed only by the Medical Superintendent or the pathologist of a public hospital, or by a pathologist on the staff of a University Medical School, or by a medical practitioner specially licensed under *section 24C* (which is dealt with below).

Section 24C provides that the Minister of Health may license registered medical practitioners to perform *post mortem* examinations authorized under *section 24B*.

Clause 3 re-enacts, in a redrafted form, section 31 (2) of the principal Act, which provides that certain persons are deemed to be in lawful possession of bodies for the purposes of the existing provisions relating to the study and practice of anatomy. The effect of this clause is that for the purposes of those provisions and of the new sections 24A to 24C the following persons are deemed to be "lawfully in possession"—namely, (a) the Medical Superintendent or other medical officer in charge of a public hospital, or the licensee of a private hospital, in respect of a body lying in the hospital; (b) the Medical Superintendent or other medical officer in charge of a mental hospital, in respect of a patient or boarder who dies there; and (c) the Superintendent of a penal institution, in respect of an inmate who dies there.

Clause 4 makes miscellaneous amendments to the provisions of the principal Act relating to the practice of anatomy. *Subclause (1)* defines the expression "anatomical examination". *Subclause (2)* repeals an obsolete provision. *Subclauses (3)* and (4) substitute references to burial or cremation for references to interment.

Hon. Mr Marshall

MEDICAL AMENDMENT

ANALYSIS

Title.

1. Short Title.

2. New sections inserted.

24A. Removal of healthy tissue for therapeutic purposes.

24B. *Post mortem* examinations for research and medical education.

24c. Licences to perform *post mortem* examinations under *last preceding* section.

3. Persons having lawful possession of bodies.

4. Amendments relating to the practice of anatomy.

A BILL INTITULED

AN ACT to amend the Medical Act 1908.

Title.

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

1. This Act may be cited as the Medical Amendment Act 1954, and shall be read together with and deemed part of the Medical Act 1908 (hereinafter referred to as the principal Act).

Short Title.
See Reprint of Statutes, Vol. V, p. 663

2. The principal Act is hereby amended by inserting, after section twenty-four, the following sections:

New sections inserted.

“24A. (1) If any person, either in writing at any time or orally in the presence of two or more witnesses during his last illness, expresses a request that his eyes or any other part of his body be used for therapeutic purposes after his death, the person who is lawfully in

Removal of healthy tissue for therapeutic purposes.

Cf. Corneal Grafting Act 1952 (15 & 16 Geo. VI & 1 Eliz. II, ch. 28) (U.K.)

possession of his body after his death may, unless that person has reason to believe that the request was subsequently withdrawn, authorize the removal of the eyes, or of any part of the body to which the request relates, for use for those purposes. 5

“(2) Without affecting the provisions of subsection *one* of this section, it is hereby declared that the person who is lawfully in possession of any body may authorize the removal of the eyes or of any other part of the body for use for therapeutic purposes, unless— 10

“(a) That person has reason to believe that the deceased person had expressed an objection to his eyes or any part of his body being so dealt with after his death; or

“(b) The surviving husband or wife or any known relative of the deceased person requires that the body be buried or cremated without such removal. 15

“(3) Subject to the provisions of this section, any authority given under this section in respect of any body shall be sufficient authority for the removal and use for therapeutic purposes of the eyes or of any part of the body to which it relates: 20

“Provided that no such removal shall be effected except by a registered medical practitioner who has satisfied himself, by a personal examination of the body, that life is extinct. 25

“(4) If any person who is empowered under this section to give any such authority as aforesaid has reason to believe that an inquest may be required to be held on the body, he shall not give that authority without the consent of a Coroner, who may give his consent subject to such conditions, if any, as he thinks fit. 30

“(5) No authority shall be given under this section in respect of any body by a person who is entrusted by another person with the body for the purpose only of its burial or cremation. 35

Post mortem
examinations
for research
and medical
education.

“24B. (1) If any person, either in writing at any time or orally in the presence of two or more witnesses during his last illness, expresses a request that after his death a *post mortem* examination of his body be performed for the purposes of medical research or the 40

teaching of pathology, the person who is lawfully in possession of his body after his death may, unless that person has reason to believe that the request was subsequently withdrawn, authorize a *post mortem* examination of the body for any such purposes.

“(2) Without affecting the provisions of subsection *one* of this section, it is hereby declared that the person who is lawfully in possession of any body may authorize a *post mortem* examination of the body for the purposes of medical research or the teaching of pathology, if—

“(a) That person has no reason to believe that the deceased person had expressed an objection to a *post mortem* examination; and

“(b) The surviving husband or wife, or, if there is no husband or wife known to be surviving and there is known to be a relative, any such relative, consents to a *post mortem* examination.

“(3) Subject to the provisions of this section, any authority given under this section in respect of any body shall be sufficient authority for the *post mortem* examination of the body and for the removal of any diseased tissue for the purposes of medical research or the teaching of pathology:

“(4) No *post mortem* examination shall be performed under this section except by the Medical Superintendent of an institution within the meaning of the Hospitals Act 1926, or by a registered medical practitioner who is a pathologist on the staff of any such institution (whether he is employed in an honorary capacity or otherwise), or who is a pathologist on the staff of any school of medicine or surgery at any constituent college of the University of New Zealand, or who is the holder of a licence for the time being in force under section *twenty-four c* of this Act. Before performing the examination, the person who is to perform it shall satisfy himself, by a personal examination of the body, that life is extinct.

“(5) If any person who is empowered under this section to give any such authority as aforesaid has reason to believe that an inquest may be required to be held on the body, he shall not give that authority without the consent of a Coroner, who may give his consent on and subject to such conditions, if any, as he thinks fit.

See Reprint
of Statutes,
Vol. III, p. 725

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

Licences to perform *post-mortem* examinations under last preceding section.

“24c. (1) The Minister of Health may from time to time grant to any registered medical practitioner a licence to perform *post mortem* examinations for the purposes of section *twenty-four B* of this Act. 5

“(2) Any licence under this section shall continue in force until it is cancelled or surrendered: 10

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

“(3) Any licence under this section may be cancelled by the Minister at any time by notice in writing to the holder of the licence.” 15

Persons having lawful possession of bodies.

3. (1) Section twenty-four of the principal Act is hereby amended by adding the following subsection as subsection two thereof: 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 Part of this Act the following persons shall be deemed to be persons lawfully in possession of bodies in the cases hereinafter specified, namely: 25

See Reprint of Statutes, Vol. III, p. 725

“(a) The Medical Superintendent or other medical officer for the time being in charge of any institution within the meaning of the Hospitals Act 1926, or the licensee of a licensed hospital within the meaning of Part III of that Act, in respect of any body lying in the institution or hospital: 30

See Reprint of Statutes, Vol. V, p. 743

“(b) The Medical Superintendent or other medical officer for the time being in charge of any public institution within the meaning of the Mental Defectives Act 1911, in respect of any body lying in the institution, being the body of a patient or boarder: 35

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

(2) Subsection two of section thirty-one of the principal Act is hereby consequentially repealed.

4. (1) Section twenty-four of the principal Act is hereby further amended by inserting, before the definition of the term "body", the following definition: Amendments relating to the practice of anatomy.

5 " 'Anatomical examination' means the anatomical examination of any body for the purposes of the study and practice of anatomy at a school of anatomy under this Part of this Act; and 'examine anatomically' and 'practise anatomy' have corresponding meanings: ".
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(2) Subsection two of section twenty-six of the principal Act is hereby repealed.

15 (3) Section thirty-one of the principal Act is hereby further amended as follows:

(a) By omitting the word "interment", and substituting the words "burial or cremation":

(b) By omitting the word "interred", and substituting the words "buried or cremated".

20 (4) Section thirty-two of the principal Act is hereby amended as follows:

(a) By inserting, after the word "burial", the words "or cremation":

25 (b) By omitting the word "interred", and substituting the words "buried or cremated".