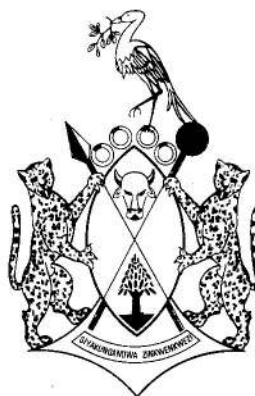


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<b>Umq. 13</b>	<b>eBISHO 16/08/85</b>	<b>No. 93</b>	<b>Vol. 13</b>	<b>BISHO 16/08/85</b>	<b>No. 93</b>
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**DEPARTMENT OF HEALTH**

**GOVERNMENT NOTICE NO. 71**

**IT IS HEREBY NOTIFIED THAT THE PRESIDENT HAS  
ASSENTED TO THE FOLLOWING ACT WHICH IS HEREBY  
PUBLISHED FOR GENERAL INFORMATION:-**

**HUMAN TISSUE ACT, 1985**

**ACT NO. 17 OF 1985**

# HUMAN TISSUE ACT, 1985

## A C T

To provide for the donation or the making available of human bodies or tissue for the purposes of medical or dental training, research or therapy or the advancement of medicine or dentistry in general, for the post-mortem examination of certain human bodies, for the removal of tissue, blood or gametes from the bodies of living persons and the use thereof for medical or dental purposes, as the case may be, for the control of the artificial insemination of persons, and for the regulation of the import and export of human tissue, blood or gametes, and to provide for incidental matters.

(English text signed by the President. Assented to on 08/08/1985.)

*BE IT ENACTED by the National Assembly of the Republic of Ciskei, as follows:—*

### ARRANGEMENT OF ACT

Chapter 1	Interpretation. . . . .	Section 1
Chapter 2	Bodies and Tissue of deceased persons . . . . .	Sections 2 — 17
Chapter 3	Tissue, Blood and Gametes of living persons and blood products . . . . .	Sections 18 — 23
Chapter 4	Authorized institutions, import or export of tissue or of blood or blood products or gametes and related matters . . . . .	Sections 24 — 28
Chapter 5	Appointment and Functions of Inspectors of Anatomy . . . . .	Sections 29 — 32
Chapter 6	General and supplementary provisions . . . . .	Sections 33 — 41
Schedule		

### CHAPTER 1

#### INTERPRETATION

##### *Definitions.*

1. In this Act, unless the context otherwise indicates —  
"artificial insemination of a person" means the introduction by other than natural means of a male gamete or gametes into the internal reproductive organs of a female person for the purpose of human reproduction, including —  
(a) the bringing together outside the human body of a male and female gamete or gametes with a view to placing the product of a union of such gametes in the womb of a female person; or  
(b) the placing of the product of a union of a male and a female gamete or gametes which have been brought together outside the human body, in the womb of a female person,  
for such purpose;  
"authorized institution" means an institution authorized under section 24 to perform the acts referred to in that section;  
"blood" means human blood;  
"blood product" means any product derived or produced from blood;  
"bury" means to inter or to cremate or to dispose of in any other lawful manner; and "burial" has a corresponding meaning;  
"competent witness" means a person of the age of 14 years or over and who at the time when in terms of this Act anything is done in his presence or by him is not incompetent to give evidence in a court of law;  
"dentist" means a dentist registered as such in terms of the Health Professions and Related Health Practices Act, 1984 (Act 36 of 1984);  
"Director-General" means the Director-General : Department of Health;  
"donation" means the donation of a human body or any specific tissue in accordance with section 2 (1) (a) or 2 (2) (a) or of any specific tissue in accordance with section 2 (2) (b), and includes the giving of consent in accordance with section 2 (1) (b) to a post-mortem examination of such a body; and "donate" and "donor" have corresponding meanings;  
"donee" means an institution or person referred to in section 3 (1) to which or to whom a human body or tissue has been donated;  
"export" means to export from the Republic by any means;  
"gamete" means either of the two generative cells essential for human reproduction;  
"Gazette" means the Government Gazette of the Republic;  
"gonad" means the human organ which produces gametes;  
"hospital" means an institution established as a hospital or registered as such in terms of any law;  
"import" means import into the Republic in any manner;

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"importer" includes a person who, whether as an owner, consignor, consignee, agent or broker, is in possession of, or is in any way entitled to the custody or control of, any imported tissue, blood, blood product or gamete;  
 "inspector of anatomy" means an inspector of anatomy appointed as such under section 29 (1);  
 "medical practitioner" means a medical practitioner registered as such in terms of the Health Professions and Related Health Practices Act, 1984;  
 "Minister" means the Minister of Health;  
 "mortuary" means a mortuary established or registered as such in terms of any law;  
 "police official" means a member of "the Force" as defined in section 1 of the Police Act, 1983 (Act 32 of 1983);  
 "prescribed" means prescribed by regulation;  
 "public institution" means an institution supported wholly or in part by funds received from the Ciskeian Revenue Fund;  
 "regulation" means a regulation made under section 37;  
 "Republic" means the Republic of Ciskei;  
 "this Act" includes the regulations;  
 "tissue" means —  
 (a) any human tissue, including any flesh, bone, organ, gland or body fluid, but excluding any blood or gamete; and  
 (b) any device or object implanted before the death of any person by a medical practitioner or dentist into the body of such person;  
 "use", in relation to a human body or tissue, includes to preserve and to dissect, and "use", when used as a noun, has a corresponding meaning.

## CHAPTER 2

### BODIES AND TISSUE OF DECEASED PERSONS

*Donation of human bodies and tissue.*

2. (1) Any person who is competent to make a will may in his will, or in a document signed by him and at least two competent witnesses, or in an oral statement made in the presence of at least two competent witnesses —  
 (a) donate his body or any specific tissue thereof to be used after his death for any of the purposes referred to in section 4 (1); or  
 (b) give his consent to a post-mortem examination of his body for any of those purposes, and such a person may in such a will or document or statement nominate an institution or person referred to in section 3 (1) as donee.  
 (2) In the absence of a donation under subsection (1) by a person and of a contrary direction given by that person —  
 (a) his spouse, major child, parent, guardian, major brother or major sister may after his death donate his body or any specific tissue thereof to an institution or person referred to in section 3 (1), to be used for any of the purposes referred to in section 4 (1); and  
 (b) a medical practitioner competent to grant the authority contemplated in section 14 (1) may after the death of the person concerned, if none of the persons referred to in paragraph (a) can be traced, donate any specific tissue of the body of that person to a specific donee of the category referred to in section 3 (1) (f) to be used for transplanting into the body of that donee: Provided that such medical practitioner shall not donate any tissue under this paragraph unless —  
 (i) he is satisfied that all reasonable steps have been taken to trace the persons referred to in paragraph (a); and  
 (ii) two other medical practitioners have stated in writing that the use of the tissue concerned is immediately necessary to save the life of the donee concerned or in the case of eye tissue, to restore his sight.

*Institutions to which and persons to whom human bodies or tissue may be donated.*

3. (1) A human body or specific tissue, as the case may be, may in terms of section 2 be donated to any of the following institutions or persons, namely —  
 (a) a hospital;  
 (b) a university or technikon involved in medical or dental training or research;  
 (c) an authorized institution;  
 (d) a medical practitioner;  
 (e) a dentist;  
 (f) in the case of tissue, also any person who requires therapy in which the tissue concerned can be used.  
 (2) A donation shall be of no force and effect if —  
 (a) no donee is nominated;  
 (b) any other institution or person than that referred to in subsection (1) is nominated as donee;  
 (c) in the case of a person referred to in subsection (1) (d), (e) or (f), a specific donee is not nominated.

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- (3) If a donation to a donee referred to in subsection (1) (a), (b) or (c) does not nominate a specific institution as donee, the institution in the appropriate category which is nearest to the place of the death of the person whose body or tissue has been so donated, if the body or tissue is at or near that place, or, if the body or tissue is not at or near that place, any such institution which is nearest to the place at or near to which it is, shall be deemed to be the donee.
- (4) If a donation has been made to a specific donee who is not within easy reach at the time and place of the death of the person whose body or any specific tissue thereof was so donated, and —
  - (a) that donee is an institution referred to in subsection (1) (a), (b) or (c), the institution in the appropriate category which is nearest to that place shall be deemed to be the donee;
  - (b) that donee is a person referred to in subsection (1) (d), (e) or (f), the donation shall be of no force and effect.
- (5) If a person has made conflicting donations of his body or any specific tissue thereof, effect shall be given to the donation which was last made: Provided that if such person had first donated his entire body to one donee and thereafter donated any specific tissue thereof to another donee, the donation of his entire body shall be deemed to be a donation of the remainder of his body.

*Purposes of donation.*

4. (1) A human body or specific tissue, as the case may be, may in terms of section 2 be donated to be used for any of the following purposes, namely —
  - (a) in the case of donee of a category referred to in section 3 (1) (a), (b), (c), (d) or (e), medical or dental training, research, the advancement of medicine or dentistry, or therapy, including the use of tissue concerned in any living person or persons or for the production of a therapeutic, diagnostic or prophylactic substance;
  - (b) in the case of a donee of the category referred to in section 3 (1) (f), therapy, including the use of tissue concerned needed by such a donee.
- (2) The purposes of a donation need not be expressly stated, but a donation shall be of no force and effect if made for any purpose other than a purpose referred to in subsection (1).

*Revocation of donation.*

5. A donation under section 2 (1) may be revoked before his death by the person who made the donation, in the same way in which it was made or, in the case of a donation by way of a will or other document, also by the intentional destruction of that will or document.

*Certain persons deemed to have made donations.*

6. When a person at the time of his death is wearing a prescribed identity tag issued by an authorized institution, such a person shall be deemed to have made a donation in terms of section 2 (1) of his body or of any specific tissue thereof, in accordance with such particulars as may appear in the records of the authorized institution concerned, to that institution.

*Removal of donated tissue.*

7. (1) Except in the case of a donation of the entire body, a donee shall have a period of 24 hours after the death of the person of whose body any specific tissue was donated within which he may, subject to the granting of authority under section 14 but save as is provided by subsections (3) of this section, remove or cause to be removed the tissue so donated, after the expiry of the said period of 24 hours and irrespective of whether or not the donee has so removed that tissue or caused it to be removed, the body may be claimed for burial or otherwise by the spouse or any relative of the deceased or by any other person who is otherwise entitled thereto.
- (2) For the purposes of this section, the death of the person concerned shall be established by at least two medical practitioners one of whom shall have been practising as a medical practitioner for at least five years after the date on which he was registered as a medical practitioner, and none of those medical practitioners shall transplant tissue removed from the body of that person into the body of a living person or take part in such a transplantation: Provided that where the tissue concerned is eye tissue, the death of the person from whose body the tissue is removed shall be deemed to have been so established by the issuing of a certificate of death in terms of section 24 of the Births, Marriages and Deaths Registration Act, 1963 (Act 81 of 1963), by a medical practitioner in respect of that person.
- (3) (a) Authority under section 14 for the removal of eye tissue in terms of subsection (1) of this section shall not be required if the medical practitioner effecting the removal or under whose supervision the removal is effected, is satisfied that —
  - (i) the tissue concerned has been donated in accordance with section 2;
  - (ii) the body concerned is no longer required for the purpose of an examination contemplated in section 14 (2) (b) and
  - (iii) the removal of the tissue concerned is necessary for any of the purposes referred to in section 4 (1).
- (b) For the purposes of paragraph (a) of this subsection the provisions of section 14 (4) shall *mutatis mutandis*

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apply in respect of the medical practitioner and the will or document concerned.

- (4) (a) The medical practitioner who has removed eye tissue in terms of subsection (1) or under whose supervision the removal was effected, shall forthwith forward a written report thereon stating the prescribed particulars, to the inspector of anatomy in whose area the removal was effected.
- (b) A copy of the written report shall be retained for the prescribed period by that medical practitioner and shall during that period be produced by him for examination if required for any purpose in terms of this Act or any other law by an inspector of anatomy, a medical practitioner or a police official or by a person authorized thereto by the Minister or a magistrate.

*Post-mortem examination of bodies of deceased persons.*

8. Subject to the granting of authority under section 14, a post-mortem examination of the body of a deceased person may be conducted before the burial thereof if —
  - (a) the deceased gave consent thereto under section 2 (1) (b); or
  - (b) such an examination is necessary for determining more precisely the cause of death or for a specific scientific purpose.

*Removal of tissue at post-mortem examinations under Inquests Act, 1984.*

9. (1) Notwithstanding anything to the contrary contained in any law but subject to the provisions of subsection (2) and the prescribed conditions, a medical practitioner who conducts a post-mortem examination of a body under section 3 of the Inquests Act, 1984 (Act 29 of 1984) may remove prescribed tissue from that body and shall hand tissue so removed over to a prescribed authorized institution to be used or supplied for such of the purposes referred to in section 4 (1) as may be prescribed.
- (2) The provisions of section 14 shall not apply in respect of the removal of tissue under subsection (1) of this section, but such a removal shall not be effected if the medical practitioner conducting the post-mortem examination —
  - (a) is not satisfied that the removal of the tissue will in no way affect the outcome of that examination; or
  - (b) at the time of that examination has reason to believe that the body or tissue concerned has been donated or that the removal would be contrary to a direction given by the deceased before his death.

*Disposal of bodies of deceased destitutes.*

10. (1) The body of a person who at the time of his death was known to be a destitute or who is on reasonable grounds suspected then to have been a destitute who then was the inmate of a public institution shall subject to the provisions of sections 2 and 8 and unless that body is within 24 hours after the death of that person buried, or claimed for burial by the spouse or any relative or *bona fide* friend of the deceased, in accordance with sections 11 and 12 be at the disposal of the inspector of anatomy in whose area the body is.
- (2) Subject to any order under section 12 (1), the person in charge of the institution or any other person in whose care such a body is shall not hand it over to any person other than a spouse, relative or friend, referred to in subsection (1), who is known to him, unless the person requesting it produces to him an order of a magistrate authorizing the handing over of the body to that person.
- (3) A magistrate shall not issue such an order unless the person applying for the order undertakes to pay the cost of the burial of the body concerned, and the magistrate is satisfied that that person is the spouse or a relative or *bona fide* friend of the deceased.
- (4) The provisions of subsections (1) and (2) shall not apply —
  - (a) to a public institution which the Minister has in writing exempted therefrom;
  - (b) in respect of a body if the Minister has so ordered.

*Notice to inspector of anatomy.*

11. (1) If a body in respect of which section 10 (1) applies has not within 24 hours after the death of the deceased been buried, or claimed for burial by a spouse, relative or friend referred to in section 10 (1), the person in charge of the institution concerned, or any other person in whose care the body is, shall forthwith direct a notice to that effect, stating the prescribed particulars, to the inspector of anatomy concerned.
- (2) If the notice has not been directed to the inspector of anatomy in writing, it shall be repeated in writing within 36 hours after the death of the deceased.
- (3) A copy of the written notice shall be retained for the prescribed period by the person who directed the notice to the inspector of anatomy concerned, and shall during that period be produced for examination if required for any purpose in terms of this Act or any other law by an inspector of anatomy or a medical practitioner or police official or by a person authorized thereto by the Minister or a magistrate.

*Handing over of bodies to certain institutions.*

12. (1) An inspector of anatomy may on receipt of a notice contemplated in section 11 (1) by written order direct that the body concerned be handed over to a specific institution of a category referred to in section 3 (1) (b) situated within the area of the inspector of anatomy concerned.
- (2) (a) An inspector of anatomy shall not issue such an order if he suspects on reasonable ground that the deceased at the time of his death was suffering from a disease specified by the Director-General in a notice



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given by him for the purposes of this paragraph to every inspector of anatomy.

- (b) The Director-General may at any time amend or withdraw such a notice.
- (3) A body handed over to an institution in terms of an order under subsection (1), may be used by the institution concerned in accordance with the regulations for any of the purposes referred to in section 4 (1) (a).
- (4) If no order under subsection (1) is issued within 12 hours after the receipt of a notice contemplated in section 11 (1), the body concerned shall no longer be at the disposal of the inspector of anatomy concerned.

*Bodies to be preserved for certain period before use.*

- 13. (1) The person in charge of an institution to which a body has been handed over in terms of an order under section 12 (1), shall keep and preserve that body for a period of at least 14 days before it may be used: Provided that, if the said person deems it advisable, any tissue of such a body may be removed and preserved separately.
- (2) The provisions of section 10 (2) and (3) shall *mutatis mutandis* apply if any person within the period referred to in subsection (1) of this section requests the person in charge of the institution concerned to hand over to him a body which is being kept and preserved in terms of the last-mentioned subsection.

*Granting of authority.*

- 14. (1) The magistrate of the district within which a person has died or within which the body of a deceased person is, or the medical practitioner in charge of a hospital or authorized institution in which a person has died or of a mortuary in which the body of a person is, or any other medical practitioner employed at that hospital, institution or mortuary who has been authorized thereto by the medical practitioner in charge, either in general or in a particular case, may, notwithstanding anything to the contrary contained in any law, grant written authority in the prescribed form that —
  - (a) a medical practitioner or dentist making application therefor in the prescribed form may, subject to the prescribed conditions, remove or cause to be removed under his supervision any specific tissue from the body concerned before the burial thereof; or
  - (b) a medical practitioner making application therefor in the prescribed form may, subject to the prescribed conditions, conduct a post-mortem examination of that body before the burial thereof.
- (2) No authority shall be granted under subsection (1) unless the magistrate or medical practitioner concerned is satisfied —
  - (a) except in a case where application is made for conducting a post-mortem examination for a purpose referred to in section 8 (b), that the body or tissue concerned was donated;
  - (b) that the body concerned is no longer required for the purpose of an examination in accordance with —
    - (i) section 3 of the Inquests Act, 1984 (Act 29 of 1984);
    - (ii) section 46 of the Health Act, 1977 (Act 63 of 1977);
    - (iii) section 25 of the Births, Marriages and Deaths Registration Act, 1963 (Act 81 of 1963); or
    - (iv) section 34 of the Occupational Diseases in Mines and Works Act, 1973 (Act 78 of 1973); and
  - (c) that the removal of the tissue concerned or the post-mortem examination concerned is necessary for any of the purposes referred to in section 4 (1) or 8 (b), as the case may be.
- (3) Notwithstanding the provisions of subsection (2) (b) (i) of this section, authority under subsection (1) of this section may be granted for the removal, for any of the purposes referred to in section 4 (1), of any specific tissue from a body which is required for the purpose of an examination in accordance with section 3 of the Inquests Act, 1984, if the medical practitioner who is to conduct the examination concerned or cause that examination to be conducted, certifies that he is satisfied that the removal of that tissue will in no way affect the outcome of that examination and that he has no objection to the removal of that tissue.
- (4) If a person who has died has in his will or in a document donated tissue of his body or given his consent to the post-mortem examination of his body, a magistrate or medical practitioner who is competent to grant authority under subsection (1), may act upon that will or document if on the face of it it appears to be legally valid and notwithstanding the fact that, in the case of that will, it has not yet been lodged with or accepted by the Master of the Supreme Court.

*Magistrate or medical practitioner to report to inspector of anatomy.*

- 15. A magistrate or medical practitioner who has granted authority under section 14 for the removal of any specific tissue from a body shall forthwith forward a written report with respect thereto, stating the prescribed particulars, to the inspector of anatomy in whose area the body concerned was at the time of the granting of the authority.

*Prohibition of use of gonads for certain purposes.*

- 16. A gonad removed from the body of a deceased person shall not be transplanted into the body of a living person if the result of such transplantation may be procreation.

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*Registers and notices in respect of bodies of deceased persons received by certain institutions or persons.*

17. (1) The person in charge of an institution to which a body has been donated in accordance with section 2 or of an institution to which a body has been handed over in terms of an order under section 12 (1) and every person to whom a body has been donated in accordance with the first-mentioned section, shall —
- (a) on receipt of such a body and from time to time thereafter enter the prescribed particulars in respect of that body in a register kept for that purpose;
  - (b) in the case of a body donated in terms of section 2, forthwith after receipt thereof direct a written notice thereon, stating the prescribed particulars, to the inspector of anatomy in whose area that body has been received.
- (2) A register in terms of subsection (1) (a) and a copy of every written notice in terms of subsection (1) (b) shall be retained by the person concerned and referred to in subsection (1) for the prescribed period and shall during that period be produced by him for examination if required for any purpose in terms of this Act or any other law by an inspector of anatomy or a medical practitioner or police official or by a person authorized thereto by the Minister or a magistrate.

CHAPTER 3

TISSUE, BLOOD AND GAMETES OF LIVING PERSONS, AND BLOOD PRODUCTS

*Consent to removal of tissue, blood or gametes from bodies of living persons.*

18. No tissue, blood or gamete shall be removed or withdrawn from the body of a living person for a purpose referred to in section 19 —
- (a) except in accordance with the prescribed conditions; and
  - (b) unless written consent thereto has been granted —
    - (i) where such person is a major, by that person;
    - (ii) where such person is a minor, by the parents or guardians of that person:
- Provided that —
- (aa) in the case of the removal of tissue which is replaceable by natural processes, or the withdrawal of blood, from the body of a person who is a competent witness, the consent of that person to the removal of that tissue or blood shall be sufficient, whether it be granted in writing or orally;
  - (bb) tissue removed in the interests of his health from the body of a living person with his consent or with the consent of any other person who may in law give consent on his behalf, may be used for any of the purposes referred to in section 19.

*Purposes for which tissue, blood or gametes of bodies of living persons may be used.*

19. Any tissue, blood or gamete removed or withdrawn from the body of a living person shall, subject to the regulations, only be used for medical or dental purposes, as the case may be, including —
- (a) in the case of such tissue, the use of transplanting thereof in the body of another living person or for the production of a therapeutic, diagnostic or prophylactic substance;
  - (b) in the case of such blood, the administering thereof to another living person or the production of a blood product; and
  - (c) in the case of such gamete, the artificial insemination of another person:
- Provided that —
- (i) any tissue, blood or gamete of a person who is mentally ill within the meaning of the Mental Health Act, 1973 (Act 18 of 1973), or
  - (ii) any tissue which is not replaceable by natural processes or any gamete of a person who is a minor, or
  - (iii) any gamete of a person who has been declared an habitual criminal in terms of section 286 of the Criminal Procedure Act, 1977 (Act 51 of 1977),
- shall not be used for any of the purposes referred to in paragraph (a), (b) or (c) of this section.

*Requirements with regard to tissue transplants.*

20. The removal of tissue from the body of a living person for transplanting into the body of another living person shall not be effected —
- (a) in any place other than a hospital or authorized institution; or
  - (b) without the written authority of the medical practitioner in charge of the hospital or authorized institution concerned, which medical practitioner shall not effect the transplantation concerned or take part therein.

*Use of gonads.*

21. A gonad removed from the body of a living person shall not be used in the body of another living person if the result of such use may be procreation, unless the Minister has in the case concerned granted previous written authority thereto.

*Artificial insemination.*

22. A gamete removed from the body of a living person shall not be used for the artificial insemination of another person unless the person effecting the artificial insemination acts in accordance with a code of practice for artificial insemination published by the Department of Health and specified in the regulations.

## HUMAN TISSUE ACT, 1985

### *Control of removal and use of tissue and blood, and of art- ificial insemination.*

23. (1) No person, except a medical practitioner or dentist or a person acting under his supervision, may for the purposes of this Chapter —
- (a) remove any tissue from the body of a living person or use or transplant tissue so removed in the body of another living person; or
  - (b) withdraw any blood from the body of a living person or administer blood or a blood product to a living person.
- (2) No person except a medical practitioner or a person acting under his supervision may effect the artificial insemination of a person.

## CHAPTER 4

### **AUTHORIZED INSTITUTIONS, IMPORT OR EXPORT OF TISSUE OR OF BLOOD, BLOOD PRODUCTS OR GAMETES, AND RELATED MATTERS**

#### *Authorized institutions.*

24. The Minister may by notice in the *Gazette* authorize any institution which is not an institution referred to in section 3 (1) (a) or (b) and which complies with the prescribed conditions —
- (a) to acquire, use or supply bodies of deceased persons for any of the purposes referred to in section 4 (1);
  - (b) to acquire or use any tissue lawfully imported or removed from the body of a living or deceased person for any of the purposes referred to in section 4 (1) or 19, as the case may be;
  - (c) to supply any tissue preserved by it to an institution or person referred to in section 3 (1) (a), (b), (c), (d) or (e) for any of the purposes referred to in section 4 (1) or 19; or
  - (d) to perform such other acts as may be prescribed.

#### *Import and export permits.*

25. (1) No person other than a person to whom the Director-General has issued a permit in terms of subsection (2) may import or export any prescribed tissue or any blood, blood product or gamete.
- (2) The Director-General may on application in the prescribed form issue a permit in the prescribed form to a person authorizing him to import or export, subject to such conditions as the Director-General may determine, any tissue contemplated in subsection (1) or any blood, blood product or gamete.

#### *Disposal of tissue, blood, blood products or gametes imported without or contrary to permit.*

26. (1) When any prescribed tissue or any blood, blood product or gamete has in the opinion of the Director-General been imported contrary to the provisions of section 25 or the conditions of a permit issued under that section, the Director-General may order the importer concerned in writing to remove from the Republic, within the period determined by the Director-General and at the expense of that importer, the tissue, blood, blood product or gamete so imported.
- (2) If such an importer after receipt of a written order under subsection (1), notifies the Director-General in writing that he does not intend to comply with the order, or fails to remove the tissue, blood, blood product or gamete concerned from the Republic within the period determined by the Director-General in terms of the said subsection, the Director-General may seize the tissue, blood, blood product or gamete and dispose thereof in such manner as he may deem fit.
- (3) When the Director-General has disposed of any tissue, blood, blood product or gamete by virtue of the provisions of subsection (2), he may recover the cost in connection with such disposal from the importer concerned.

#### *Appeals.*

27. Any person who considers himself aggrieved by a decision of the Director-General in connection with his application for the issue of a permit in terms of section 25 (2) or with an order under section 26 (1), may within 60 days after the date of such decision or order appeal to the Minister, who may confirm, alter or set aside that decision or order.

#### *Payment in connec- tion with import, acquisition or supply of tissue, blood, blood products or gametes.*

28. (1) No person except —
- (a) an authorized institution or, in the case of tissue or gametes imported in terms of this Act, the importer concerned, may receive any payment in respect of the import, acquisition or supply of any tissue or gamete for or to another person for any of the purposes referred to in section 4 (1) or 19;
  - (b) a prescribed institution or person may receive any payment in respect of the import or acquisition for or the supply to another person of blood or a blood product,
- and any such payment which has been received, shall be refundable to the person who made it.
- (2) The provisions of subsection (1) shall not prevent a medical practitioner or dentist from receiving remuneration for professional services rendered by him to any person.



## CHAPTER 5

### APPOINTMENT AND FUNCTIONS OF INSPECTORS OF ANATOMY

*Inspectors of anatomy.*

29. (1) The Director-General may appoint one or more persons in the Department of Health as inspectors of anatomy.
- (2) (a) An inspector of anatomy shall exercise the powers and perform the duties conferred or imposed upon or delegated or assigned to him by or under this Act, subject to the control and directions of the Director-General.
- (b) The Director-General may exercise any power conferred upon an inspector of anatomy by section 31 (1) (a), (b), (c), (d), (e) or (f).
- (3) An inspector of anatomy shall exercise his powers and perform his duties in an area defined by the Director-General.
- (4) The appointment of an inspector of anatomy and the definition of the area within which he may exercise his powers and shall perform his duties shall be made known in the *Gazette*.

*Registers to be kept by inspectors of anatomy.*

30. (1) An inspector of anatomy shall keep a register in which he shall enter the prescribed particulars in respect of —
- (a) every order issued by him under section 12 (1);
- (b) every written notice in terms of section 17 (1) (b) received by him;
- (c) every written report in terms of section 7 (4) or 15 forwarded to him;
- (d) any other prescribed matter.
- (2) Such a register shall be retained for the prescribed period by the inspector of anatomy concerned and shall during that period be produced for examination if required for any purpose in terms of this Act or any other law by a medical practitioner or police official or by a person authorized thereto by the Minister or a magistrate.

*Powers of inspector of anatomy.*

31. (1) An inspector of anatomy may —
- (a) at any reasonable time for the proper performance of his functions and without prior notice enter any premises —
- (i) in or upon which a human body or tissue is used or is reasonably suspected to be used for any purpose referred to in section 4 (1), 8 or 19;
- (ii) in or upon which the production from tissue of any therapeutic, diagnostic or prophylactic substance or the supply of such a substance so produced is carried on or is reasonably suspected to be carried on;
- (iii) in or upon which the artificial insemination of any person is effected or is reasonably suspected to be effected;
- (iv) in or upon which the withdrawal of blood from the body of any living person, and the preservation, testing processing, supply or disposal in any other manner of blood so withdrawn or imported blood, is carried on or is reasonably suspected to be carried on;
- (v) in or upon which the administering of blood or any blood product to any living person is carried on or is reasonably suspected to be carried on;
- (vi) in or upon which the production or supply of any blood product is carried on or is reasonably suspected to be carried on;
- (vii) in or upon which any prescribed activity or process is carried on or is reasonably suspected to be carried on; or
- (viii) which are connected with or are reasonably suspected to be connected with any act or process referred to in subparagraphs (i) to (vii);
- (b) examine any such premises or any body, tissue, product or substance or other object found therein or thereon or any activity or process carried on in or upon those premises, and may open any package or container in or upon those premises which contains or is suspected to contain such a body, tissue, product, substance or other object, in order to ascertain whether the provisions of this Act with regard to those premises or that body, tissue, product, substance, other object, activity or process are being complied with;
- (c) at any time demand from any person in or upon any such premises that he forthwith or at a time and place determined by the inspector produce to him any register, record or other document which is in the possession or custody or under the control of that person or any other person on his behalf;
- (d) examine such a register, record or other document and require from any person referred to in paragraph (c) an explanation of anything appearing therein, and make copies thereof or extracts therefrom, or seize such a register, record or other document, if in his opinion it may afford evidence of an offence under this Act;
- (e) with regard to any matter which he is investigating, question, either alone or in the presence of another person, as he may deem fit, any person whom he finds in or upon premises entered by him in terms of paragraph (a) or whom he on reasonable grounds suspects to be or to have been employed in or upon such premises or to have possession or custody of or control over anything referred to in this subsection;
- (f) order any person contemplated in paragraph (c) or (e) to appear before him at a time and place determined by him, and at that time and place question that person with regard to any matter he is investigating;

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- (g) remove and bury the remains of a human body or tissue which is kept in or upon premises entered by him in terms of paragraph (a) if he deems it advisable, and recover the cost in connection with the removal and burial from the institution or person under whose care the body or tissue concerned was immediately before such removal and burial.
- (2) Any person who is in charge of any premises contemplated in subsection (1) shall at all reasonable times render such assistance as an inspector of anatomy may require in the exercise of his powers under that subsection or as the Director-General or any delegate referred to in section 38 (2) (a) may require in the exercise of those powers under section 29 (2) (b).

*Reports.*

- 32. An inspector of anatomy shall furnish to the Director-General —
  - (a) as soon as possible after the thirty-first day of December of each year a report in respect of his work during the year which ended on that day and in respect of the operation of the provisions of this Act in so far as they apply to him;
  - (b) any other report required by the Minister from time to time in respect of the activities of the inspector.

CHAPTER 6

GENERAL AND SUPPLEMENTARY PROVISIONS

*Prohibition of publication of certain facts.*

- 33. (1) No person shall publish to any other person any fact whereby the identity of —
  - (a) a deceased person whose body or any specific tissue thereof has been donated,
  - (b) the donor of the body of a deceased person or any specific tissue thereof,
  - (c) a living person from whose body any tissue blood or gamete has been removed or withdrawn for any purpose referred to in section 19, or
  - (d) the person who has given his consent to the removal of any tissue, blood or gamete from the body of a living person for such a purpose,may possibly be established, unless consent thereto was granted in writing by the deceased person concerned prior to his death, or after his death by a person referred to in section 2 (2) (a) or by a district surgeon referred to in section 2 (2) (b), or by the living person concerned or by another person referred to in paragraph (bb) of the proviso to section 18.
- (2) No person shall publish to another person any fact whereby the identity of the recipient of any tissue removed from the body of another person before or after the death of the said person may possibly be established, unless —
  - (a) in the case of a recipient who is still alive at the time of such publication, that recipient before such publication granted his consent thereto in writing; or
  - (b) in the case of a recipient who at the time of such publication has died —
    - (i) that recipient before his death granted his consent to such publication in writing; or
    - (ii) that recipient did not before his death indicate in any manner that he would not be prepared to grant such consent and the spouse, major child, parent, guardian, major brother or sister of the recipient before such publication granted consent thereto in writing.

*Offences and penalties.*

- 34. Any person who —
  - (a) except in so far as it may be permitted by or under any other law, acquires, uses or supplies a body of a deceased person or any tissue, blood or gamete of a living or deceased person in any other manner or for any other purpose than that permitted by this Act,
  - (b) except in so far as it may be permitted by or under this Act or any other law, conducts a post-mortem examination of the body of a deceased person,
  - (c) fails to forward or direct any report or notice which he is obliged to forward or direct to an inspector of anatomy in accordance with section 7 (4) (a), 11 (1), 11 (2) or 17 (1) (b), to the inspector of anatomy concerned,
  - (d) fails to keep a register in accordance with section 17 (1) (a),
  - (e) fails to retain a copy of a statement or notice or a register for the prescribed period in accordance with section 7 (4) (b), 11 (3) or 17 (2), or to produce such a copy or register in compliance with any provision of those sections,
  - (f) uses any gonad in the body of a living person contrary to the provisions of section 16 or 21,
  - (g) effects an artificial insemination contrary to the provisions of section 22,
  - (h) contravenes or fails to comply with any provision of section 23,
  - (i) contravenes or fails to comply with any provision of section 25 (1) or of a condition of a permit issued under section 25 (2),
  - (j) contravenes or fails to comply with any provision of section 28,
  - (k) contravenes or fails to comply with any provision of section 33,

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- (l) falsely holds himself out to be an inspector of anatomy,
  - (m) makes any statement to any person in the performance of such person's functions in terms of this Act which is false in any material respect, knowing it to be false,
  - (n) refuses or fails to answer to the best of his knowledge any question which any person has in the performance of his functions in terms of this Act put to him,
  - (o) refuses or fails to comply to the best of his ability with any demand, requirement or order of an inspector of anatomy or any other person made or given in terms of any provision of this Act,
  - (p) hinders any person in the performance of his functions in terms of this Act,
- shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

*Exclusion of civil and criminal liability.*

35. (1) No medical practitioner or dentist, and no person under the supervision of a medical practitioner or dentist, who has removed any tissue from the body of a deceased person for any of the purposes referred to in section 4 (l) or who has conducted a post-mortem examination for any of the purposes referred to in section 8 or who has removed any tissue from the body of a living person for any of the purposes referred to in section 19, and no inspector of anatomy who has issued an order under section 12 (1) for the handing over of a body to an institution, and no magistrate or medical practitioner who has granted any authority under section 14 (1), shall incur any liability, whether civil or criminal, in respect of the act concerned, if performed in good faith, if any relevant donation made or consent given or order issued is subsequently found to be legally invalid.
- (2) The provisions of subsection (1) shall not be construed as in any way extending existing principles of civil or criminal liability.

*Exclusive rights in respect of bodies of deceased persons, tissue, blood and gametes.*

36. Any person who acquires the body of a deceased person or any tissue, blood or gamete by virtue of any provision of this Act, shall, subject to any restrictions in terms of this Act or any other law and provided he uses the body, tissue, blood or gamete for the purposes for which it has been donated, handed over or supplied to him, on receipt of that body, tissue, blood or gamete acquire exclusive rights in respect thereof.

*Regulations.*

37. (1) The Minister may make regulations, regarding —
- (a) the disposal, otherwise than in terms of section 31 (1) (g), of human bodies and tissue no longer required for any of the purposes referred to in section 4 (1);
  - (b) the conditions for the removal or withdrawal of tissue, blood and gametes from the bodies of living persons for any of the purposes referred to in section 19;
  - (c) the conditions for the use (other than for artificial insemination of any person) and supply of gametes for any of the purposes referred to in section 19, for the use and supply of any tissue lawfully imported or removed from the body of a living person, and for the disposal, otherwise than in accordance with section 31 (1) (g), of such tissue and gametes no longer required for any of the purposes referred to in section 4 (1) or 19, as the case may be;
  - (d) the manner in which a person who has donated his body or any tissue thereof to an authorized institution may cause particulars of the donation or the revocation of the donation to be recorded by the authorized institution concerned, the form of an identity tag contemplated in section 6 which may be issued by such an institution to such a person, the particulars which shall appear on such an identity tag and the records to be kept by that institution in connection with such a donation or revocation thereof;
  - (e) the regulation and the control (including the imposition of duties on any person and of restrictions and prohibitions in connection with such control) of —
    - (i) the production, including the packing sealing and labelling, of therapeutic diagnostic and prophylactic substance from tissue and the supply of such substances;
    - (ii) the use and disposal of human bodies handed over to institutions under section 12 (1);
    - (iii) the artificial insemination of persons;
    - (iv) the withdrawal of blood from the bodies of living persons by organizations (including the requirements with which those organizations shall comply), and the preservation, testing processing, supply or disposal in any other manner of blood so withdrawn or of imported blood, for use, whether as whole blood or in the form of any blood product, for any of the purposes referred to in section 19;
    - (v) the administering of blood or any blood product to living persons; and
    - (vi) the production, including the packing sealing and labelling, of blood products and the supply of such product.
  - (f) the returns and reports to be submitted by institutions and persons for the purposes of this Act to specified officers;
  - (g) the fees payable to an inspector of anatomy by the institution concerned in respect of any body handed over to an institution in terms of an order under section 12 (1);

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- (h) the fees payable to an authorized institution in respect of the supply by it of therapeutic, diagnostic and prophylactic substance;
  - (i) the fees payable to specified persons in respect of any act performed by virtue of a regulation made under this subsection;
  - (j) additional powers and duties of inspectors of anatomy;
  - (k) any matter which in terms of this Act is permitted or required to be prescribed by regulation;
  - (l) generally, any matter in respect of which the Minister considers it necessary or expedient to make regulations so as to achieve the objects of this Act, the generality of the powers conferred by this paragraph not being limited by the provisions of the preceding paragraphs.
- (2) Different regulations may be made under this section in respect of different institutions or persons of different categories of institutions, persons, tissue, gametes, blood or blood products.
  - (3) A regulation made under subsection (1) (e) (vi) may in respect of the production of any blood product prescribe any requirement set out in any publication which in the opinion of the Minister is generally recognized as authoritative.
  - (4) The Minister shall, not less than three months before a regulation is made under subsection (1) (k) or (l) of this section regarding any matter contemplated in section 9 (1), cause a draft of such a regulation to be published in the *Gazette*, together with a notice declaring his intention to make such a regulation and inviting interested persons to furnish him with their comments thereon or with any representations they may wish to make in connection therewith: Provided that, if the Minister thereafter determines upon any alteration of the draft regulation published as aforesaid, as a result of comments or representations furnished to him in respect thereof, it shall not be necessary to publish the alteration in terms of this subsection before the amended draft is published as a regulation.
  - (5) A regulation may prescribe penalties not exceeding a fine of R1 000 or imprisonment for a period not exceeding six months for any contravention of or failure to comply with its provisions.
  - (6) The Minister may upon such conditions as he may deem fit, by notice in the *Gazette* or by written notice sent by post or delivered by hand to a person, exempt such person from any of or all the regulations made under this section, and may at any time in like manner withdraw any such notice of exemption.

## Delegation of powers.

38. (1) (a) The Minister may, subject to such conditions as he may determine, in writing delegate to the Director-General or any other officer in the Department of Health any power, excluding the power to make regulations, conferred upon him by this Act.
- (b) The Minister shall not be divested of a power delegated by him under paragraph (a), and may alter or set aside any decision by the Director-General or an officer taken in the exercise of a power so delegated.
- (2) (a) The Director-General may, subject to such conditions as he may determine, in writing delegate, whether in general, in a particular case or in cases of a particular nature, to any officer in the Department of Health any power conferred upon him by or under this Act.
- (b) The Director-General shall not be divested of a power delegated by him under paragraph (a), and may alter or set aside any decision by an officer taken in the exercise of a power so delegated.
- (3) (a) An inspector of anatomy may, subject to such conditions as he may determine, in writing delegate, whether in general, in a particular case or in cases of a particular nature, to any person in the Department of Health who is under his control, any power conferred upon the inspector by or under this Act.
- (b) An inspector of anatomy shall not be divested of a power delegated by him under paragraph (a), and may alter or set aside any decision by a person taken in the exercise of a power so delegated.

## Savings.

39. The provisions of this Act —
- (a) shall not render unlawful the preparation of the body of a deceased person for the purpose of embalming it, whether or not such preparation involves the making of incisions for the withdrawal of blood and the replacement thereof by a preservative, or the restoration of any disfigurement or mutilation of the body of a deceased person before its burial;
- (b) shall not be construed as relieving any person of any duty imposed upon him by any law for the time being in force with regard to the giving of information or notices or certificates of deaths or of the registration of deaths.

## Repeal of laws and savings.

40. (1) Subject to the provisions of subsection (2), the laws specified in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.
- (2) Anything done or deemed to have been done under any provision of a law repealed by subsection (1) and which is capable of being done under any provision of this Act, shall be deemed to have been done under the last-mentioned provision.
- (3) Any licence issued in terms of any regulation under section 43 of the Health Act, 1977, or deemed to be issued in terms thereof, and in force immediately before the commencement of this Act, shall, notwithstanding the repeal of the said section 43 by subsection (1), remain in force but shall lapse on a date fixed by the Minister by notice in the *Gazette*, which date shall not be later than two years after such commencement.



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*Short title and commencement.*

41. This Act shall be called the Human Tissue Act, 1985 and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

**SCHEDULE**

**LAWS REPEALED**

Number and year of law	Short title	Extent of repeal
Act 20 of 1959	Anatomy Act, 1959 .....	The whole
Act 27 of 1961	Anatomy Amendment Act, 1961 .....	The whole
Act 24 of 1970	Anatomical Donations and Post-Mortem Examinations Act, 1970 .....	The whole
Act 42 of 1972	Anatomical Donations and Post-Mortem Examinations Amendment Act, 1972 .....	The whole
Act 59 of 1973	Anatomical Donations and Post-Mortem Examinations Amendment Act, 1973 .....	The whole
Act 63 of 1977	Health Act, 1977 .....	Section 43
Act 39 of 1980	Anatomical Donations and Post-Mortem Examinations Amendment Act, 1980 .....	The whole

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 GOVERNMENT NOTICE NO. 71  
 ACT NO. 17 OF 1985