

Explanatory Memorandum

Human Tissue and Transplant Amendment Bill 2005

INTRODUCTION

Chronic renal failure is an increasing problem in Australia. The waiting period for a cadaveric donor currently ranges from three to five years resulting on average in one person dying per week while waiting for a transplant. This Bill has arisen as a result of the need to increase the availability of live organ donors. Live kidney donation has become more common and is widely accepted as a treatment for end stage renal disease. Since the establishment of Donate West five years ago, organ donation has been steadily increasing. Passage of this Bill will eliminate an unnecessary restriction on live organ donation. This will assist in continuing to increase organ donation by providing access to organs that would otherwise be unavailable. Senior renal transplant clinicians support the Bill.

Legislation in other States already contain similar provisions to that proposed by this Bill. The amendment is not restricted to any specific type of arrangement or contract, thus providing a level of flexibility to deal with other situations rather than only paired kidney exchanges. The requirement for Ministerial approval means that there is oversight of arrangements that may fall within the scope of the prohibition on trading in tissue and organs to ensure that they are within the intent of the legislation. Any arrangement or contract approved by the Minister would also need to meet the normal requirements in relation to donation that are set out in the *Human Tissue and Transplant Act 1982*.

Long Title

The long title sets out the purpose of the Bill, which is to amend the *Human Tissue and Transplant Act 1982*.

Clause 1 Short Title

Short title of the Act.

Clause 2 Commencement

Provides for the Act to come into operation on the day on which it receives Royal Assent.

Clause 3 The Act amended

States the name of the Act, which is to be amended, the *Human Tissue and Transplant Act 1982*.

Clause 4 Section 29 amended

A new subsection is inserted after section 29(4) that provides for the Minister to approve in writing, the entering into of a contract or arrangement that allows for the exchange of organs

or tissue. This type of arrangement would be void without this amendment because the exchange of any organ or tissue would be considered to be the sale or supply for valuable consideration, and thus in breach of section 29(1) of the *Human Tissue and Transplant Act 1982*.

This amendment would give the Minister the capacity to approve the arrangement or contract under special circumstances, for instance in the case of a paired kidney exchange (“PKE”) arrangement. PKE involves two pairs of living donors and recipients. The intended recipient of each donor is incompatible with the other donor. An exchange is arranged between the two donor /recipient pairs.

Persons seeking to enter into a contract or arrangement would also be required to undertake a range of assessments including psychological tests before entering into a contract or arrangement.
