

No. 5 of 2003.

Public Health (Amendment) Act 2003.

Certified on: 20 AUG 2003



INDEPENDENT STATE OF PAPUA NEW GUINEA

No. of 2003.

Public Health (Amendment) Act 2003.

ARRANGEMENT OF SECTIONS.

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"PART III. — BLOOD AND TISSUE DONATION, TRANSFUSION AND TRANSPLANTATION.

"13. INTERPRETATION AND APPLICATION OF PART III."

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 2003.

AN ACT

entitled

Public Health (Amendment) Act 2003,

BEING an Act to amend the *Public Health Act* (Chapter 226),

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

1. **REPEAL AND REPLACEMENT OF PART III.**

Part III of the Principal Act is repealed and is replaced with the following:-

**"PART III. – BLOOD AND TISSUE DONATION,
TRANSFUSION AND TRANSPLANTATION.**

"13. INTERPRETATION AND APPLICATION OF PART III.

- (1) In this Part, unless the contrary intention appears –
- "approved" means approved in writing by the Departmental Head of the Department responsible for health matters;
 - "blood" includes an extract or derivative of human blood;
 - "certified", in relation to blood, means certified under this Part;
 - "National Health Board" means the National Health Board established by Section 8 of the *National Health Administration Act 1997*;
 - "supplier" means –
 - (a) the Papua New Guinea Red Cross Society incorporated under the *Papua New Guinea Red Cross Society Incorporation Act* (Chapter 1042); or
 - (b) any other person approved for the purposes of this Part;
 - "tissue" includes an organ or part of a human body or a substance extracted from, or from a part of, a human body but does not include blood;
 - "transfusion" includes non-intravenous injection;

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"transmissible contaminant" means –

- (a) the virus known as HTLV III; or
- (b) any organism or substance declared by the Minister, by notice in the National Gazette, to be a transmissible contaminant for the purposes of this Part.

"(2) A reference in this Part to the transplantation of tissue shall be read as including a reference to the transplantation of any part of the tissue and to the transplantation of a substance obtained from the tissue.

"(3) Nothing in this Part effects the operation of the *Anatomy Act* (Chapter 227).

"13A. BLOOD AND TISSUE DONATION AND IMPORT.

- (1) Where a supplier takes, or proposes to take –
 - (a) blood from a person for the purposes of being used, if suitable, for transfusion to another person or for the derivation of a blood product that may be used for transfusion to another person; or
 - (b) tissue from a person or a body of a person for the purposes of transplanting it to another person,

the following provisions apply:–

- (c) the blood or tissue cannot be taken from a living person unless the person has, not more than 12 hours previously, signed a declaration in an approved form which includes a statement that as far as he is aware, he is not infected with or carrying antibodies to a transmissible contaminant;
- (d) as soon as practicable after taking the blood or tissue, the supplier shall cause an approved testing procedure to be carried out in relation to the blood or tissue;
- (e) where the results of the testing procedure referred to in Paragraph (d) indicate the presence of a transmissible contaminant, the supplier shall dispose of the blood or tissue in an approved manner;
- (f) where the results do not indicate the presence of a transmissible contaminant, the supplier may certify in an approved manner that the blood or tissue is free from transmissible contaminants.

"(2) Where the Minister, on the advice of the National Health Board, is satisfied that –

- (a) the laws of a country confer immunities substantially similar to those conferred by Section 13B; and

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(b) blood and tissue collected in that country have been adequately tested for transmissible contaminants, he may, by notice in the National Gazette, declare the country to be an approved source of imported blood or tissue, as the case may be.

"(3) A declaration under Subsection (2) may be subject to such conditions as the Minister thinks fit.

"(4) Where a supplier imports blood or tissue from a country which is declared to be an approved source under Subsection (2), he may, subject to the directions of the Departmental Head, certify that the blood or tissue is free from transmissible contaminants.

"(5) Where a supplier imports blood or tissue from a country which is not declared under Subsection (2) to be an approved source, the following provisions apply:-

- (a) as soon as practicable after importing the blood or tissue, the supplier shall cause an approved testing procedure to be carried out in relation to the blood or tissue;
- (b) where the results of the testing procedure indicate the presence of a transmissible contaminant, the supplier shall dispose of the blood or tissue in an approved manner;
- (c) where the results do not indicate the presence of a transmissible contaminant, the supplier shall certify that the blood or tissue is free from a transmissible contaminant.

"(6) Where the supplier, in accordance with approved procedures, derives a blood product from a material each portion of which is certified blood, the supplier may, in the approved manner, certify that the blood product is free from transmissible contaminants.

"(7) Where a supplier has reasonable cause to suspect that blood or tissue supplied by him may contain a transmissible contaminant, he shall take all reasonable steps to ensure that the blood or tissue is not used for the purpose of transfusion or transplant or for the derivation of a blood product that may be used for transfusion.

"(8) A person, who –

- (a) donates; or
- (b) takes; or
- (c) supplies for transfusion or transplant; or
- (d) certifies; or
- (e) uses; or
- (f) otherwise handles or deals with,

blood or tissue in a manner contrary to this section, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

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"13B. LIMITATION OF LIABILITY IN RELATION TO TRANSFUSIONS AND TRANSPLANTS.

(1) No criminal or civil liability attaches to a person in respect to transmission to another person of any infection which is attributable to a transmissible contaminant by reason of the transfusion of certified blood or the transplant of certified tissue unless the person –

- (a) knowingly made a false declaration under Section 13A(1)(a) or Section 13C(b) in relation to that blood or tissue; or
- (b) being a supplier, failed to observe a requirement imposed on him under this Part in relation to that blood or tissue; or
- (c) being an employee of or working without payment for a supplier, failed to observe a requirement applicable to his duties in relation to that blood or tissue which is imposed on the supplier under this Part; or
- (d) where the blood or tissue is imported into the country, breached or failed to comply with any requirement imposed upon him by law of the country from which the importation is made under which an immunity substantially similar to an immunity conferred by this section was, or, but for the breach or failure, would have been, conferred upon him; or
- (e) had reasonable cause to suspect that the blood or tissue may have been contaminated with a transmissible contaminant; or
- (f) whether by himself or by the agency of an employee of a person working without payment for him, was guilty of any negligence or wilful misconduct in relation to the taking, storage, preparation, processing, handling, supplying, labelling or other documenting, or administering of that blood or tissue that exposed, or was likely to expose, that blood or tissue, to contamination with a transmissible contaminant.

"(2) Where the transmissible contaminant referred to in Subsection (1) is transmitted by transfusion of a blood product, it is immaterial whether the contamination occurred before or after the blood product was extracted or derived from the blood.

"13C. EMERGENCY TRANSFUSION OF UNCERTIFIED BLOOD.

Where –

- (a) an infection that is attributable to a transmissible contaminant is transmitted to a person by reason of an operation of transfusion of blood that was, in whole or in part, not certified; and

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- (b) so much of the blood that was not certified was taken, or in the case of a blood product, was derived from blood taken from a donor who, not more than twelve hours before donating the blood, signed a declaration in an approved form; and
- (c) the medical practitioner performing the operation and, where practicable, at least one other medical practitioner thinks that the operation –
 - (i) is a reasonable and proper one to be performed for the condition from which the person is suffering; and
 - (ii) is essential in order to save the life of the person before sufficient quantities of certified blood of an appropriate kind can reasonably be expected to be available for transfusion; and
- (d) the medical practitioner –
 - (i) has had previous experience in performing the operation of transfusion of blood; and
 - (ii) before commencing the transfusion, he assures himself that the blood to be transfused is compatible with that of the person,

Section 13B applies as if all of the blood referred to in Paragraph (a) were certified.

"13D. EMERGENCY TRANSFUSIONS ON MINORS WITHOUT CONSENT.

(1) A medical practitioner may perform the operation of transfusion of blood on a minor without the consent of a parent or guardian or any other person where –

- (a) the parent, guardian or other person –
 - (i) when requested to give consent, fails or refuses to do so; or
 - (ii) cannot, after reasonable inquiry, be found, or it is impracticable in the circumstances to obtain the consent; and
- (b) the medical practitioner and, where practicable, at least one other medical practitioner thinks that the operation –
 - (i) is a reasonable and proper one to be performed for the condition from which the minor is suffering; and
 - (ii) is essential in order to save his life; and
- (c) the medical practitioner –
 - (i) has had previous experience in performing the operation of transfusion of blood; and
 - (ii) before performing the operation assures himself that the blood to be transfused is compatible with that of the minor.

"(2) Where an operation of transfusion of blood has been performed on a minor under and in accordance with Subsection (1), it shall be deemed to have been performed with all consents otherwise required by law.

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"(3) The powers conferred on a medical practitioner by Subsection (1) are in addition to and not in derogation of any other powers of a medical practitioner.

"13E. TRADING IN BLOOD AND TISSUE.

- (1) Subject to this section, a person, who –
- (a) buys, agrees to buy, offers to buy or holds himself out as willing to buy, human blood or tissue or the right to take blood or tissue from the body of another person; or
 - (b) sells or agrees to sell human blood or tissue (including his own blood or tissue) or the right to take blood or tissue from his body or that of another person; or
 - (c) subject to Subsection (2), enters into a contract or arrangement under which a person in the country agrees, for valuable consideration, whether given or to be given to himself or to another person, to the sale or supply of blood or tissue from himself or from another person,

is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

"(2) Subsection (1)(c) does not apply in relation to a contract or arrangement providing only for the reimbursement of any expenses necessarily incurred by a person in relation to the removal of blood or tissue in accordance with this Act.

"(3) A contract or arrangement entered into contrary to this section is void and of no effect.

"(4) Notwithstanding Subsection (1), where he thinks it desirable by reason of special circumstances to do so, the Minister may, by notice in the National Gazette, authorize, subject to such conditions and restrictions specified in the notice, a person to buy human blood or tissue, or the right to take blood or tissue from the body, of another person.

"(5) The Minister may, by notice in the National Gazette, declare that Subsection (1) does not apply to the sale or supply of a specified class or classes of product derived from blood or tissue that has been subjected to processing or treatment.

"(6) A person who, as vendor or supplier, enters into a contract or arrangement for the sale or supply of a product of a class specified in an order made under Subsection (5), is guilty of an offence if the blood or tissue from which the product was derived was obtained under a contract or arrangement that is void by reason of Subsection (3).

Penalty: A fine not exceeding K1,000.00.

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"(7) Nothing in this section renders inoperative a consent or authority given or purporting to be given under this Act in relation to blood or tissue from a person or in relation to a person if a person acting in pursuance of the consent or authority did not know or had no reason to know that the blood or tissue was the subject matter of a contract or arrangement referred to in Subsection (1) (c)."

2. PROHIBITED ADVERTISEMENTS (AMENDMENT OF SECTION 140).

Section 140 of the Principal Act is amended by inserting immediately after Subsection (3) the following new subsection:-

"(3A) Subject to Subsection (4), a person, who publishes a statement, whether by advertisement or otherwise, relating to the buying in the country of human blood or tissue or of the right to take blood or tissue from persons, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00."

3. REPEAL, SAVINGS AND TRANSITIONAL.

(1) The *Sale of Human Blood Act* (Chapter 236) is hereby repealed.

(2) Where, immediately before the coming into operation of this Act, an offence was committed or an action or proceeding was pending or existing by or against a person or body under the Act repealed by Subsection (1), the offence may be prosecuted or proceeding may be continued or enforced by, against or in favour of a person or body under the Principal Act as if the offence had been committed or action or proceeding had been taken under the Principal Act.

I hereby certify that the above is a fair print of the *Public Health (Amendment) Act 2003* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Public Health (Amendment) Act 2003* was made by the National Parliament on 1 July 2003.

Speaker of the National Parliament.

