BLOOD TRANSFUSION (LIMITATION OF LIABILITY) ACT 1986

No. 79 of 1986

TABLE OF PROVISIONS

AN ACT to limit liability in respect of the transmission of Acquired Immune Deficiency Syndrome through the transfusion of blood and blood products.

[Royal Assent 28 November 1986]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Blood Transfusion (Limitation of Liability) Act* 1985. Short title.

Commencement.

2—This Act shall commence on the day on which it receives the Royal assent.

Interpretation.

3—In this Act, unless the contrary intention appears—

" approved " means approved by the Director-General of Health Services, by instrument in writing, for the purposes of this Act;

" authorized supplier " means—

(*a*) the society incorporated by Royal Charter under the name of the Australian Red Cross Society;

(*b*) the Commonwealth Serum Laboratories Commission established by the *Commonwealth Serum Laboratories Act* 1961 of the Commonwealth; or

(*c*) any other approved person;

" blood product " includes any extract or derivative of blood;

" certified ", in relation to blood or a blood product, means certified in accordance with section 4 (1) (*d*), (2), or (3);

" relevant virus " means the virus known as HTLV III;

" transfusion " includes non-intravenous injection.

Steps to be taken in relation to donation of blood.

4—(1) Where an authorized supplier takes, or proposes to take, blood from a person for the purpose of being used, if suitable, for transfusion or for the derivation of a blood product that may be used for transfusion, the following provisions apply:—

(*a*) the blood shall not be taken unless that person has, not more than 12 hours previously, signed a declaration in an approved form;

(*b*) as soon as practicable after taking the blood, the authorized supplier shall cause an approved testing procedure to be carried out in relation to the blood;

(*c*) where the results of an approved testing procedure carried out in relation to blood indicate the presence of the relevant virus, the authorized supplier shall dispose of the blood and any blood product derived from the blood in an approved manner;

(*d*) where those results do not indicate the presence of the relevant virus, the authorized supplier may, in an approved manner, certify that the blood is free from the relevant virus.

(2) Where an authorized supplier, in accordance with approved procedures, derives a blood product from material each portion of which is certified blood or a certified blood product, the authorized supplier may, in an approved manner, certify that the blood product is free from the relevant virus.

(3) Where an authorized supplier—

(*a*) imports into Tasmania from another State or Territory of the Commonwealth blood or a blood product in relation to which immunities substantially similar to those conferred by section 5 are conferred by a law of that State or Territory; and

(*b*) complies with such requirements as may be approved for the purposes of this subsection,

the authorized supplier may, in an approved manner, certify that the blood or blood product is free from the relevant virus.

(4) Where an authorized supplier has reasonable cause to suspect that blood or a blood product supplied by the authorized supplier may be contaminated by the relevant virus, the authorized supplier shall take all reasonable steps to ensure that the blood or blood product is not used for the purpose of transfusion or for the derivation of a blood product that may be used for transfusion.

Limitation of liability in relation to transfusion of certified blood and blood products.

5—(1) Subject to this section, no civil or criminal liability attaches to any person in respect of the transmission to another person of the relevant virus or the disease known as Acquired Immune Deficiency Syndrome, or any other disease that is attributable to the relevant virus, by reason of the transfusion of certified blood or a certified blood product.

(2) A person who knowingly makes a false declaration under section 4 (1) (*a*) or under section 6 (*b*) is not entitled to the protection of this section in relation to the blood, or any blood product in any way derived from the blood, in relation to the taking of which the declaration was made.

(3) An authorized supplier is not entitled to the protection of this section in relation to blood or a blood product if the authorized supplier fails to observe a requirement imposed on it by or under this Act in relation to the blood or blood product, or in relation to blood from which the blood product was derived.

(4) A person who is an employee of, or a person working without payment for, an authorized supplier is not entitled to the protection of this section in relation to blood or a blood product if that person fails to observe a requirement imposed on the authorized supplier by or under this Act in relation to the blood or blood product, or in relation to blood from which the blood product was derived, being a requirement applicable to the duties of that person in relation to the operations of the authorized supplier.

(5) A person is not entitled to the protection of this section in relation to blood, or a blood product, imported into Tasmania from another State or Territory of the Commonwealth if that person is in breach of, or has failed to comply with, a requirement imposed upon him by, the law of that State or Territory under which an immunity substantially similar to an immunity conferred by this section is, or, but for that breach or failure, would be, conferred upon him.

(6) A person is not entitled to the protection of this section in relation to blood or a blood product if—

(*a*) that person has reasonable cause to suspect that the blood or blood product may be contaminated with the relevant virus; or

(*b*) that person, or an employee of, or a person working without payment for, that person, was guilty of any negligence or wilful misconduct that exposed, or was likely to expose, the blood or blood product to contamination with the relevant virus.

Limitation of liability in relation to emergency transfusion of uncertified blood and blood products.

6—Where—

(*a*) the relevant virus or the disease known as Acquired Immune Deficiency Syndrome, or any other disease that is attributable to the relevant virus, is transmitted by reason of the transfusion of blood or a blood product that was, in whole or in part, not certified;

(*b*) so much of the blood or blood product as was not certified was taken, or derived from blood taken, from a person who, not more than 12 hours before the taking of the blood, signed a declaration in an approved form; and

(*c*) immediately before the carrying out of the transfusion, not less than 2 medical practitioners were of the opinion that the condition of the person in the treatment of whom the transfusion was carried out was such that he was likely to die unless that blood or blood product was administered to him before sufficient quantities of certified blood, or a certified blood product, of an appropriate kind could reasonably be expected to be available for administration to him,

section 5 applies as if all of the blood or blood product referred to in paragraph (*a*) were certified.

False statements in declarations.

7—A person who knowingly makes a false or misleading statement in a declaration signed for the purposes of section 4 (1) (*a*) or 6 (*b*) is guilty of an offence and is punishable upon conviction by a fine not exceeding $10 000 or imprisonment for 2 years, or both.