

New Zealand prohibits use of cadaveric tissue of minors. Should it?

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New Zealand Human Tissue Act 2008

Governs collection, use, storage, and disposal of human tissue

Covers therapeutic purposes, e.g. organ/tissue transplantation

Covers non-therapeutic purposes: education, anatomical and other scientific research, public display, post-mortem examination

Generally requires consent of donor, or their nominee, or close family/relative

Objections can override consent

Creates 16 new prohibitions/offences

Offence of anatomical examination and certain public display of body of person under 16 years

S51(1) No person may intentionally or knowingly collect or use for anatomical examination, public display, or both, tissue that is, or is collected from, the body of an individual who, at the time he or she died, was under 16 years of age.

Offenders liable on conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding \$50,000

Focuses on the collector and user, not donor

It's kind of odd

We haven't found the same provision in UK or Australian law

UK permits child donation for anatomical use

Australia NSW expressly addresses, others generally a mix of de-facto/implicit/explicit restriction to adults or permitted

Lots of distinctions – consent age, third party, NSW permits unless in state care (40 penalty units and/or 6 months)



Human Tissue Act 2004



New South Wales

Why is it in the law in NZ?



The Act gives options

The purpose of this Act is to help to ensure that collection or use of human tissue—

- (a) occurs only with proper recognition of, and respect for,—
 - (i) the autonomy and dignity of the individual whose tissue is, before or after his or her death, collected or used; and
 - (ii) the cultural and spiritual needs, values, and beliefs of the immediate family of that individual; and
 - (iii) the cultural, ethical, and spiritual implications of the collection or use of human tissue; and
 - (iv) the public good associated with collection or use of human tissue (whether for health practitioner education, the investigation of offences, research, transplantation or other therapeutic purposes, or for other lawful purposes); and
- (b) does not endanger the health and safety of members of the public; and
- (c) generally does not involve the requirement or acceptance, or the offering or provision, of financial or other consideration for the tissue.

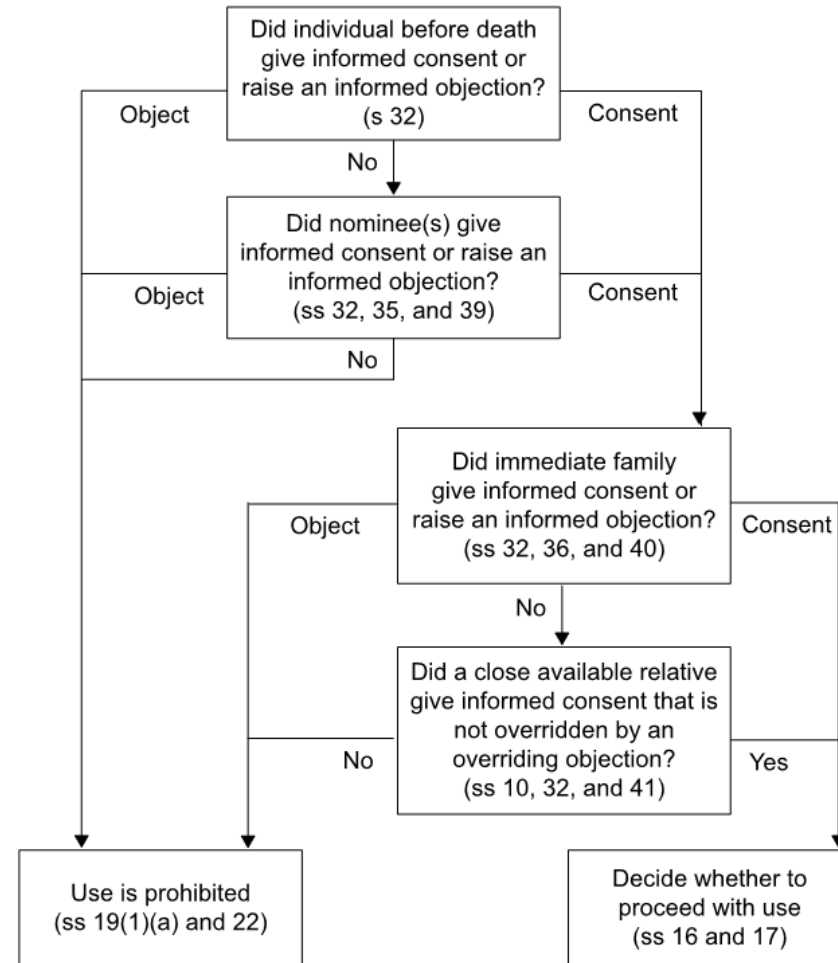
Consent

Parliamentary debate and guidance emphasise the centrality of consent for the Act

Schedule 2

Use for anatomical examination or public display of tissue that is or is from bodies

s 5(2)



- Persons proposing to collect or use tissue must comply with s 14.
- In determining whether consent or an objection is informed consent, an informed objection, or an overriding objection, see in particular ss 9, 26-30, 37, 38, and 43.
- Examination and some display of bodies of individuals under 16 years is prohibited: s 51.

Some possible justifications

Quality of child's consent

Children under 16 can consent to other things (e.g. tissue for donor analysis), so why not this?

Quality of consent of another suitable agent

Immediate family can generally consent for general purposes and anatomical examination or public display if no consent and no objection given by donor

Seems that there isn't a problem here, and if there was it would be another offence, e.g. collection without consent, trading in tissue etc.

Some other justifications

Cultural and spiritual needs, values, and beliefs of the immediate family
Protected by consent requirements in other situations

Dignity and/or possibly mana of the individual
Interpreted as a value independent of autonomy protective of individuals by virtue of their humanity or tikanga-relevant qualities
No sign of it operating elsewhere as outweighing consent, and why it would operate only here

Cultural, ethical, and spiritual implications of the collection or use of human tissue
Anatomical science and public display of under 16s would need to be sufficiently bad to warrant offence
Unclear what the basis for this is, but not helped by not distinguishing anatomical examination and public display

Against the prohibition

The Act affirms autonomy, does this violate it?

No, autonomy doesn't oblige others to accept an offer of competent minors (or anyone else)

But autonomy not recognised and respected by explicitly permitting consensual use as in other areas

Autonomy of anatomical scientists? Restrictions on research uses of tissue are common and can be justified. There doesn't appear to be a good justification for this though.

The Act affirms the public good of tissue use, and this restricts the good use of cadaveric tissue of minors for benefit of other minors, if not others

Conclusion

This is murky law that implies undue moral scepticism about anatomical science's positive value, and possibly public display too

Inconsistent with general research ethics for vulnerable individuals or groups

Inconsistent with some of the Acts purposes

The burden of proof should fall on justifying continued prohibition, not on its removal

Work should focus on permissible collection and use in different minor donor scenarios