

July 2025

Review of Human Tissue Laws: Issues Paper (2025)

Transplant Australia Response

Background

Transplant Australia is the national charity for organ donation and transplantation with a membership of more than 3,500 members including 2,000 transplant recipients, 600 donor family members and 175 living donors.

As the national peak body representing transplant recipients, those on the waiting list, living donors, donor families, and the wider transplant community, our mission is to promote organ and tissue donation, improve the quality of life for recipients, and ensure a fair, transparent, and effective transplant system. We are also an important link between the health care sector and our community, providing advocacy, education and resources to ensure people are better informed.

We are a strong advocate for donation, providing evidence-based, informed, ethical and professional communication and community advice to legislators and decision-makers. Our values ensure we speak positively about donation in the media and on social media, knowing the importance of instilling confidence in our donation systems in the eyes of the public and potential donors and their families.

We advocate for improvements and for all state and territory governments to embrace and implement the new National Strategy for Organ Donation, Retrieval and Transplantation.

It is important to emphasise that for those waiting for a transplant and for those who have received the gift of life, organ and tissue donation is not just a procedure carried out in hospital - it is the difference between life and death. Recipients have lived the long and often anxious wait for a match. Many have endured years of illness, uncertainty, and emotional and physical exhaustion. They have also experienced the profound gratitude that comes with receiving a second chance at life. Every recipient is acutely aware that their survival is only possible because another human being, their donor, supported by family, who made an extraordinary and selfless decision.

Our waiting lists for a life-saving transplant continue to grow with almost 1,900 Australians currently listed for a transplant while many more could benefit if we were able to increase donation rates further.

We ask that the laws governing donation reflect the urgency, dignity, and complexity of this journey.

Review of Human Tissue Laws

Transplant Australia welcomes the decision by the Australian Law Reform Commission to review Human Tissue Laws in Australia.

This review presents an important opportunity to modernise and harmonise human tissue laws to better reflect contemporary ethical standards, community expectations, and the needs of those directly impacted by these systems.



Transplant Australia supports the four principles guiding the review as outlined in the May 2025 Issues Paper, namely:

1. Reform should support increased access to human tissue in Australia
2. Respect for persons and the human body should be prioritised
3. Reform should support equitable participation in, and access to, donation and transplantation systems
4. Reform should promote and uphold public trust

Transplant Australia is pleased to provide the following comments in relation to the Issues Paper and has grouped them under these four Principles for ease of review:

1. Reform should support increased access to human tissue in Australia

Transplant Australia:

- Concur that any update to the Human Tissue Laws must, as a basic principle, be undertaken with a view to increasing access to organ and tissue donation in Australia.
- We are concerned about the increasing numbers of Australians waiting for a life-saving transplant and the length of time they wait.
- We are concerned about inequities in the donation and transplantation systems, especially in relation to those from diverse backgrounds including Indigenous communities.
- We are equally concerned about the disparities across our States and Territories in terms of waiting list acceptance and time on those lists for a transplant.
- The review should, while upholding public trust (Principle 4), review and embrace deeper understandings of death as in 'the centrality of loss of brain function' rather than implying that there are two distinct 'types' of death.
- It should resolve unintended consequences of procedures designed to preserve organs for transplantation after death such as Normothermic Regional Perfusion with a view to supporting the principle of increased access to donation for Australians.
- It should strengthen the weight of a person's informed decision to consent to donation, in line with community's expectations, that that decision will be respected and honoured after death. This is one of the most fundamental changes which can be made to improve consent rates.

2. Respect for persons and the human body should be prioritized

Transplant Australia believes:

- Respect for persons and the human body is fundamental to an ethical and highly regarded donation system.
- The autonomy and right of an individual to register for organ and tissue donation should be respected. We are concerned public trust is undermined in the system when, in practice, any objection within a family to donation will result in donation not proceeding, even when the intended donor had formally registered to donation. This is regularly raised with us by the public as a flaw in the system.
- That respecting the right of donors will have a flow-on effect for their families in that it effectively removes a significant burden on that family because a decision has already been made, and families need only to support or acknowledge that decision.



- There should be clarity around the role of senior next of kin in the process for 'consent' when a potential donor is not registered and conversely 'acknowledgement' where that donor is indeed registered.
- It is important to harmonise consent procedures to give clarity to the public, donor families, organ donation agencies, hospitals and the designated medical officers who are at the coalface of these decisions. Currently in some States a person's registration status as a donor permits the removal of organs and tissue however in practice the designated medical officers always consult and seek formal approval of the family. It would be worth exploring community attitudes to this practice as, previously stated, there is an expectation that if you are registered you will proceed to donation. We understandably acknowledge balancing the needs of potential recipients with grieving families, while acknowledging the autonomy of the donor needs further discussion.
- In the case of registered donors, consent laws and practice should simply state that families are consulted to gain their support and asked to acknowledge or confirm their loved one's decision without having to 're-consent' for every organ and tissue which occurs in some states.
- The system of donor - recipient anonymity should continue and there should be respect for both donors and their families and for recipients in terms of their desire for privacy. Donor families should be able to publicly acknowledge their loved one's gift if they so desire and many families find great comfort in knowing their loved one saved one or more lives. Recipients should equally be able to self-determine if they wish to remain anonymous or publicly thank donors in general for their gifts. Many recipients struggle with survivor guilt amongst a range of other physical and mental conditions in recovery and they do not need the added burden or expectation that they should make direct contact with their donor's family. Any such move undermines the very nature of what is a 'gift' and gifts should not come with pre-conditions.

3. Reform should support equitable participation in, and access to, donation and transplantation systems

Transplant Australia believes:

- As already stated, any review should work towards a more equitable system of donation and transplantation and barriers should be removed to ensure equal access for all Australians to transplantation.
- Harmonising the Human Tissue Acts across all states and territories will be the most efficient way to remove many of these barriers.
- It will be important at the same time to respect different cultures and belief systems when it comes to donation and transplantation.
- The Commission, through its review, should reaffirm the principle of financial neutrality for donor families and living donors.

4. Reform should promote and uphold public trust

Transplant Australia believes:

- The review of the Human Tissue Laws in Australia is a unique and once-in-a-generation opportunity to modernize donation and transplantation law while preserving and enhancing public trust in donation.
- The people of Australia are fortunate to live in a country where donation is highly regarded and respected and donors are acknowledged for the gift they give to others to receive a second chance at life.



- Any reforms should strengthen that trust, while at the same time, acknowledging that our current system is not perfect, and too many potential organs are not utilized because of low family consent rates.
- We would contend one-way public trust is currently eroded in the knowledge that families can override a person's decision to be a donor. This leads to decreased desire to register as a donor, yet we know family consent rates are double that from registered donors compared to those who are not registered and have not discussed donation with their family.

We thank the Australian Law Reform Commission for reaching out to Transplant Australia early in its review process. We are uniquely placed to provide both the views of the community impacted by donation and transplantation and the views of the clinical sector. We look forward to working with the Commission as it reviews the Human Tissue Laws and its report, for which we will advocate strongly so that more Australians can receive a life-saving transplant.

Chris Thomas
Chief Executive Officer
Transplant Australia

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