

January 2026

Submission

Review of Human Tissue Laws: Discussion Paper Transplant Australia

Summary

Transplant Australia congratulates the Australian Law Reform Commission on the preparation of the Human Tissue Laws Discussion Paper with its 49 proposals and 47 questions.

Transplant Australia has taken the time to review the discussion paper and proposals in detail.

It is important to appreciate that Transplant Australia, as the national charity and community voice for organ and tissue donation and transplantation, speaks on behalf of more than 3,500 members who have been directly impacted or whose decisions have been influenced and guided by Human Tissue Laws in Australia.

This includes more than 2,000 transplant recipients, 600 donor family members and 175 living donors. However, our voice is much greater, representing the more than 25,000 Australians currently living with a transplant and the thousands of donor families who have said 'yes' or supported their loved one's documented decision to become a donor.

We participate in this review of the Human Tissue Laws in Australia not only on behalf of our community but in representing the views and interests of the almost 2,000 Australians currently waiting for a life-saving transplant.

In keeping their interests at the forefront of our advocacy, we therefore also represent the interests of future donors and their families. Ordinary Australians numbering 3,596,375, who have given their legal consent to donation and a further 4,352,966 who have expressed an intent to save lives. We interact with many of these people every year in our community presentations and media work promoting donation and explaining the process for registering as a donor.

Registering as an organ and tissue donor is one of the most selfless acts we can undertake, and we thank the almost eight million Australians (36 per cent of the adult population) who have made a commitment to donate their organs to save others if they are medically eligible.

We recognize this review is a 'once-in-a-generation' opportunity to strengthen the law around donation, in particular with a view to improving consent rates to give more Australians the opportunity at a second chance at life.

If the current consent rates of 53 per cent of families saying yes to donation continues, the number of people waiting for a life-saving transplant will continue to grow while those on the lists will continue to suffer or face the prospect of early death.



We therefore ask the Commission to work towards an outcome which supports the decisions of those who have registered. When those Australians made that decision, what was driving them? What was in their minds? We believe it was a decision to undertake a selfless act to save others. A decision which, in the normal course of events, should be respected and therefore the law should be strengthened to 'normalise' donation for those who consent through registration.

We acknowledge that death invariably occurs in an ICU or emergency ward and represents one of the most challenging days of that person's family who have joined their loved one to say goodbye. It is paramount that their support is confirmed. However, if as a society we can change the norm to one in which the expectation is that that person's decision to be a donor will be honoured, then we will have addressed a major concern of the community – that their decision may be overturned.

In turn this will strengthen the purpose of the Australian Organ Donor Register and encourage more people to register, noting that if they do, their decision will be honoured.

Our Response

For ease of reading and understanding Transplant Australia's position, we have 'traffic lighted' our responses into three areas of priority – Green – Full Acceptance, Amber – Acceptance with qualifications or questions, and Red – Concerns - that as the proposals currently exist they do not meet community expectations or may not lead to the overall objective – an increase in donation and therefore more people saved through transplantation.

GREEN – Full Acceptance

A nationally harmonized regulatory framework (Section 1)

- This is a mandatory outcome from the review and should ensure more consistent practice in organ and tissue donation in Australia

The objects of human tissues laws (Section 2)

- It is essential we build trust in the organ and tissue donation sector and that the regulator and all who fall under its jurisdiction observe and comply with the objects.
- In particular we stress the importance of objects (d), (e) , and (g), namely:
 - o promote equity and reduce inequities in access to human tissue and the benefits of human tissue use
 - o ensure respect for individual dignity and autonomy, and for the human body
 - o promote public trust in the laws and regulatory frameworks that govern human tissue
- **Equity.** It is essential if we are to instill confidence and address any inherent bias in the system against those who traditionally have not been able to adequately speak for themselves, that equity be addressed. While it is accurate to say most of these



inequities arise from systemic challenges and practice, embedding the concept of equity into law and by extension into policy, will represent a paradigm shift which will ensure the system and associated practice is obliged to change.

- That said, organ donation policy and guidelines as espoused by the Organ & Tissue Authority and the Transplantation Society of Australia and New Zealand, play an equal role in addressing equity, noting the limitations of the law to correct all anomalies.
- These comments also reflect support for the Section: Removing Barriers and Promoting Equitable Access to Human Tissue, especially in relation to access to transplantation for First Nations people and those from diverse or rural and remote locations. We support the work of the Authority in this area and that of groups such as the National Indigenous Kidney Transplantation Taskforce and we will continue to advocate strongly to address areas of inequity including matters of gender bias which are not addressed in this paper.

Important SIDE NOTE – Many of these equity objectives were identified and addressed in the National Strategy for Organ Donation, Retrieval and Transplantation released by the Federal and State Governments in November 2024 but remains unfunded.

- **Respect for Individual Dignity and Autonomy.** This is paramount and should naturally extend to the individual deciding whether organ and tissue donation is right for them and how that decision will be respected by all those involved, including their Next of Kin (referred to as the Authorised Decision Maker in this paper).
- It will extend to the importance of privacy for those who have undergone transplantation and they should be able to recover and live their lives without the creation of a system which potentially ‘guilts’ them into making contact the family of their donor. We support the anonymity of donation and transplantation.
- **Public Trust.** Building public trust and confidence in the system is essential if we are to continue improving donation for the betterment of Australians waiting for a transplant. Two recent developments overseas demonstrate how easily that trust can be eroded. Namely, the recent investigations in the USA into several potential donors and the adoption of opt-out in Ireland which is seeing 300 people a day (almost 60,000 over six months) withdraw from the register. Any change in legislation must be handled delicately with the full support and understanding of the public.

How Information Can be Shared (Section 12)

- Transplant Australia agrees with the section regarding reforms to non-disclosure provisions. We underline the importance of health practitioners sharing crucial information confidentially to establish whether someone is a suitable donor for a potential recipient.
- We agree consenting recipients and donor families should be able to speak publicly about their transplant or donation experience with a view to promoting the lived experience to encourage more Australians to support donation or to give hope to



those waiting while still preserving the anonymity around the details of donation.

- We continue to support the anonymity of donation and transplantation. We do not believe either recipients or donor families should be under any expectation or coercion to share their details so that recipients and donors can meet. In discussions with our members from both side of transplantation and donation, this option is rarely sought or even discussed. We encourage recipients and donors to share anonymously letters providing an appreciation of the gift they have received or given. We believe there are too many risks for both sides if meeting becomes the norm or is expected. In particular we wish donor families to grieve and grow and accept the wonderful gift they have had a role in giving without learning of their recipients' identities. This could lead to potential issues of exploitation and whether the recipients are living their lives correctly? Recipients have reported significant psychological harm from this type of pressure. Importantly, donor families have enough grief to manage without perhaps one day hearing that one of the transplants was ultimately not successful or the recipient has passed away.

AMBER – Acceptance with Qualifications or Questions

National Regulator (Proposal 3)

- The Organ & Tissue Authority as a statutory authority of the Federal Government is a test case for the successful introduction of a national authority overseeing the delivery of federal and state-based programs and is to be congratulated for its ongoing role in leading the donation sector. Transplantation will be harder with its state-based transplant units and organ specialties embedded in state public hospitals.
- That said, there is a strong case for greater regulation to ensure consistency of practice to achieve the inequities addressed earlier.
- Our question revolves around whether the Organ and Tissue Authority is the appropriate authority to undertake this regulation? On balance, with its role in the promotion of donation and building confidence in donation practice, we do not believe in its current form it could add the role of regulation to its portfolio.

Definition of Tissue (Section 4)

- We concur that after many decades since the last review of human tissues laws were undertaken, it is important that legislation keep pace with changing technology and terminology. While we have no leaning towards any of the proposed terms, we would stress that any definition needs to be written in plain English and understood equally by the medical and legal professions and the public. They should also clearly indicate simply the subject matter. Terms 'substance of human origin', or 'human material' may be factually more accurate but do not necessarily pass the 'pub test' in the eyes of the public. Becoming a 'donor of human material' would sound clinical and fail to convey the life-saving nature of such a gift. Therefore, on balance, organ, tissue and cell donation is preferred.



Determination of Death (Section 5)

- Transplant Australia accepts changing technologies and advances in medicine have resulted in greater understanding of the concept of death. We acknowledge the introduction of donation after circulatory death has resulted in many more lives being saved through transplantation. The introduction of Normothermic Regional Perfusion could help increase the potential donor pool and the quality of organs.
- We wish to emphasise the importance of this definition not becoming either too legalistic or scientifically-based but instead every effort must be made to ensure any revised definition of death is universally accepted by the medical profession, in particular, the Australian and New Zealand Intensive Care Society, as well as ethicists and the legal fraternity working in this sector. And most importantly, it is easily understood by the public so as to continue to build confidence in donation.

RED – Concerns

Reforms related to Deceased Donation (Section 7)

- Transplant Australia supports the removal of the designated officer and the inclusion of the Authorised Decision Maker to help streamline consent procedures. We applaud the provision that the authorized decision-maker must have ‘primary regard to the adult’s known beliefs, values and references regarding tissue donation, if any, and make the decision they believe the adult would have made in the circumstances’.
- We are concerned about Proposal 23 Section 4 and the standards needed to achieve valid consent if those standards were to apply at the time of someone registering to donation their organs. These standards are defined:
 - Valid consent is:*
 - a. given voluntarily;*
 - b. given at a time when the person consenting has decision-making capacity;*
 - c. given after the person consenting has been informed about the nature and effect of the removal of the tissue;*
 - d. given after the person consenting has been informed about the intended use of the tissue; and*
 - e. able to be revoked at any time before the removal of the tissue.*
- We do not believe these five standards reflect community expectations regarding the altruistic nature of donation are not feasible to implement with the current registration system. If implemented during registration, they would undoubtedly lead to less Australians registering while potentially encouraging Australians to withdraw from the register. All Australians on the Australian Organ Donor Register have taken that step to simply ‘sign on to save lives’ and an overt legalistic interpretation of consent at time of registration could remove the selfless and philanthropic nature of donation.
- If these standards rather relate to the authorised decision maker, they should be rewritten in the third person to reflect the importance of the role of that person in understanding and providing valid consent.



Strengthening Consent

- **Transplant Australia also believes there is a unique opportunity through this review to strengthen consent in relation to the Australian Organ Donor Register to normalise and better respect an individual's decision to consent for donation.**
- Currently both the online form provided through www.donatelife.gov.au (attachment 2) and the Services Australia Australian Organ Donor Register form (NH0007DF) (attachment 1) are designed to REGISTER your decision on the Australian Organ Donor Register – but not to CONSENT to organ and tissue donation. Please see relevant attachments. The DonatLife form says you are 'registering to be an organ and tissue donor'. The Services Australia form is somewhat stronger referring to the applicant registering their 'donation decision' and asking what 'organs and tissue you want to donate for transplantation when you die'.
- But consenting to organ and tissue donation is silent in the Australian system.
- By comparison, the state-based registries in the United States of America are more precise in confirming a person's donation decision. See attachments.
- We appreciate registration in the USA falls under the various Anatomical Gift Acts and is more akin to first person consent where technically no one is permitted to overrule the decision. We note in practice that families in the USA are still consulted in these decisions and donation does not proceed unless there is full support. However it is acknowledged the strength of the wording within the registries assists in making clear the decision of the donor and the fact that decision should be in the vast majority of cases. Consent rates in the USA are superior to Australia, generally falling between 60 and 70 per cent of potential donors.

Premortem Interventions (Proposal 26)

- Transplant Australia supports steps to allow pre-mortem interventions to help establish whether the intended donor is eligible. If that person has registered, pre-mortem interventions should be permissible, preferably with the consent of the authorized decision maker.
- The discussion paper canvasses this topic with a number of considerations and proposals.
- We note that in the case of the Georgia State Registry (attachment 5), consent for pre-mortem interventions is specifically called out and it would be worth establishing whether the wording around registration could be updated to reflect this. We would consider a decision to become a registered and consented donor would align with a person's willingness to allow their body in those circumstances to be subject to these types of interventions.



Conclusion

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 its work in reviewing these laws. Transplant Australia is 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

January 22, 2026



Medicare Form (Attachment 1)



medicare

**Australian Organ Donor Register
New registration, change or removal
of donation decision details**

Apply online

If you are 16 years or older and want to register, change or remove your donation decision for the Australian Organ Donor Register (AODR), you can do this online using your Medicare online account through myGov or the myGov app.

1. Access your **Medicare online account** through myGov or the myGov app.
2. Select **Services** and then **Medicare**.
3. From the Medicare menu select **Services** and then **Organ donation preferences**.
4. Select **Register for organ donation** and follow the prompts.

If you do not have a myGov account, you can create one at my.gov.au and then link Medicare to it.

You can also register online at donatelife.gov.au

When to use this form

Use this form if you are 16 years or older to:

- register your donation decision for the AODR
- change or remove your donation decision details.

Important information

It is important to tell your family your decision about being an organ and tissue donor. Your family need to agree to donate your organs and tissue when you die. They may be more likely to follow your wishes if they already know about them.

For more information

Go to servicesaustralia.gov.au/organdonor or call 1800 777 203.

Filling in this form

You can complete this form on your computer using Adobe Acrobat Reader, or you can print it.

For help on how to fill in our forms, go to servicesaustralia.gov.au/formhelp

If you have a printed form:

- Use black or blue pen.
- Print in BLOCK LETTERS.

Your decision

1 Do you want to:

Tick one only

- register yourself on the AODR
- remove yourself from the AODR
- change your donation decision details on the AODR
- register your decision not to be a donor

Your details

2 Do you want to link your donation decision to your Medicare record?

No

Yes Medicare card number (if known)

Ref no.

3 Donor registration number (if known)

R

4 Mr Mrs Miss Ms Mx Other

Family name

First given name

5 Gender

Male

Female

Non-binary

6 Date of birth (DD MM YYYY)



DonateLife
SUPPORTER

DonateLife Online Form Attachment 2



Join the register

All about donation

Get involved

[Home](#) > [Join the register](#)

Join the register

Anyone in Australia aged 16 and over can register on the Australian Organ Donor Register. It only takes one minute.

On this page you can submit a new registration and check if you are already registered.

New registration

By filling in the online form, you are registering to be an organ and tissue donor. This means that one day you could save the lives of many people.

Check you're registered

Think you are already registered? You can check by filling in the form below.

If you are registered you will receive a pop up message letting you know. If you are not, you will now be registered as an organ and tissue donor.



Personal details

First name *

Surname *

Email address (optional)

Date of birth *

Postcode *

Medicare details

Medicare card number *

Reference number *


[Don't have a medicare card?](#)

What prompted you to register today?

Register






DonateLife Washington DC Register Form (attachment 3)

 [Home](#) [Get the Facts](#) [Stories of Inspiration](#)


Register to be a donor

Thank you for documenting your donation decision! By putting your name on the Donate Life Washington, D.C. registry, you agree to donate your organs, eyes and tissues following your death for use in transplantation, research, therapy and/or education.

First Name*	Middle Name	Last Name*
Date of Birth (ex: MM/DD/YYYY)* dd / mm / yyyy 		Gender* 
Most Recent Address*		
City*	District of Columbia	ZIP Code*
(Click if you do not live in DC)		
SSN (Last Four Digits)*	Ethnicity 	
OR		
Driver's License Number/ID#*		
OR		
Mobile Phone#*		
E-mail Address		

Please provide an email address to receive your registration confirmation.

Donation Options

- I wish to donate all organs, eyes and tissues for transplantation, research, education and therapy.
- I wish to specify my donation. 
- Yes, I accept the [Terms and Conditions](#).



DonateLife Texas (attachment 4)

DonateLife Georgia State Registry (attachment 5)

