



Government of **Western Australia**
Department of **Health**

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Via email: community.affairs.sen@aph.gov.au

Dear Mr Strickland

AUSTRALIAN ORGAN AND TISSUE DONATION AND TRANSPLANTATION AUTHORITY AMENDMENT (DISCLOSURE OF INFORMATION) BILL 2023

Thank you for your email of 20 June 2023, inviting the WA Department of Health (Department) to comment on the Australian Organ and Tissue Donation and Transplantation Authority Amendment (Disclosure of Information) Bill 2023 (Amendment Bill). The Amendment Bill was recently referred by the Australian Senate to the Community Affairs Legislation Committee.

The Bill amends the *Australian Organ and Tissue Donation and Transplantation Authority Act 2008* (OTA Act) to allow the Australian Organ and Tissue Donation and Transplantation Authority (OTA), DonateLife agencies, grant recipients and “authorised family members” to publish, disseminate or disclose information about deceased organ or tissue donors or recipients.

The Department supports the intent of these legislative amendments, which provide confidence that such disclosure can be legally undertaken. This is for the benefit of the broader community, through raising awareness of the importance and value of organ donation and transplantation, and most importantly allowing individuals and families to commemorate this important contribution.

The World Transplant Games, which were held to great success in Perth, WA in April of this year, fittingly demonstrates the capacity that transplantation has to transform lives, and the importance of allowing the generous gift of organ and tissue donation to be publicly honoured.

As per the statement ‘*Disclosure of information provisions in Commonwealth and state and territory Acts*’ released earlier this year on behalf of all Australian governments, the Department recognises that “many donor families support the idea of raising community awareness about donation and registration and commemorating their family member in remembrance services”. In addition to this broad support for the intended purpose of the Amendment Bill, I have addressed a number of specific provisions in the Bill below.

Clause 5 Meaning of *authorised family member*

The existing legislation and associated regulations restrict those who may consent to the disclosure of information to living adult donors or recipients, surviving partners of deceased donors or recipients, or (where the donor is aged less than 18 years) parent or legal guardian, of the donor or recipient.

The extended definition of 'authorised family member' in the Amendment Bill acknowledges the variety of family structures in modern Australia as well as Aboriginal and Torres Strait Islander kinship ties.

The Explanatory Memorandum to the Amendment Bill notes that there is no legislated hierarchy for the order in which consent is required to be sought, with the intent being that consent will be sought from the OTA or DonateLife staff from the most senior authorised family member available.

The amendments provide protection to a broader group of people with legitimate status to provide consent; responding to the contemporary understanding of family relationships and culture whilst still providing guidance to OTA or DonateLife Agency staff when obtaining consent for disclosure.

Clause 5F Meaning of *DonateLife Agency*

It is noted that the Bill includes additional consultation with jurisdictions, in order for the Minister to declare that a specified agency is a DonateLife Agency for the purposes of the Act.

Clause 8 After paragraph 58(2)(a)

WA Department supports the change for an organ or tissue donor or recipient to consent to disclosure by OTA or OTA Chief Executive Officer (CEO) of identifying information from 16 years of age, where they have the legal capacity to do so.

Clause 10 Subsection 58(3)

The Department supports the clarification provided by Clause 10(3), that the expanded ability for OTA or OTA CEO to disclose identifying information for an organ or tissue recipient or donor does not include the linking of recipients and their respective donors. Under Organ and Tissue Authority policy, contact between donor families and those receiving an organ transplant which can be facilitated by DonateLife Agencies, is anonymous. This aims to protect important privacy principles which underpin organ and tissue donation and transplantation activity.

Thank you again for the opportunity to comment on this important legislative change.

Yours sincerely

Dr D J Russell-Weisz PSM
DIRECTOR GENERAL

28 June 2023

G O V E R N M E N T O F W E S T E R N A U S T R A L I A