

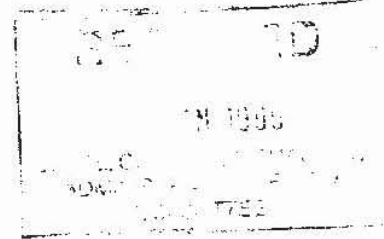


Submission NO 42

## MINISTER FOR HEALTH

24 JUN 1999

Our Ref: 00869



The Honourable Gary Fenlon MLA  
Chair  
Legal, Constitutional, and Administrative Review Committee  
Legislative Assembly of Queensland  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Mr Fenlon

Thank you for the opportunity to comment on the *Transplantation and Anatomy Amendment Bill 1998* currently before your Committee.

It is difficult to comment on the proposed amendment without knowing the exact wording of the consent clause on the Queensland driver's licence, what sort of information is given about organ donation before this consent is sought, or how this consent proceeds to registration and is then used by hospital administration.

However, I can advise that a Western Australian working party developing codes of practice for organ donation did consider the question of the legal weight of the consent to donate on drivers' licences.

Under Western Australian legislation, next of kin must be consulted even when a potential donor has consented or expressed a wish to be a donor, to ensure that the person has not changed their mind. The working party identified a number of concerns with driver's licence consent:

- The existing pro forma offered no scope for a licensee to "opt out" - ie, to indicate an express wish NOT to be a donor.
- The ease and simplicity of ticking a box may indicate that the person did not give much thought to the issue and as such may not be sufficient indication to next of kin that the deceased wished to donate.
- Conversely, the requirement to consult the next of kin and their possible refusal might lead to the express wishes of the deceased being overridden, a situation that does not occur when executing a last will and testament.

The issue that the *Transplantation and Anatomy Amendment Bill 1998* attempts to address is not the legal weight of indicating consent to donate on a driver's licence. Rather, it is the conflict that may arise in dealing with the next of kin and whether their grief and concerns override the express wishes of the deceased. Legislation making driver's licence consent more legally binding does not in itself address this issue. Such legislation may even lead to a decline in the rate of prospective consent if aggrieved next of kin publicly voice their objections.

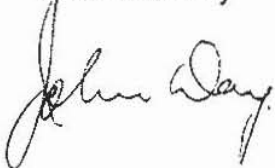
The Western Australian Department of Transport is currently liaising with hospital donor coordinators, the Lion's Eye Bank and the Australian Kidney Foundation in this State to rework the donation consent procedure on drivers' licences. Proposed changes will require the licensee to sign a declaration that they wish to donate their organs and/or tissue and that they have made their wishes known to their next of kin. However, this change is operational, not statutory.

Rather than legislate to override the wishes of objecting next of kin, in Western Australia we are addressing the issue of donor registration through the proposed establishment of a Western Australian Organ and Tissue Donation Agency (WAOTDA). The WAOTDA will aim to maximise Western Australia's donation rates and ensure positive outcomes for donor families and recipients. This will be accomplished in part through improved community education to stimulate discussion of donation issues amongst relatives.

In addition, Western Australia's Transplant Promotion Group (TPG) is preparing to launch a community awareness campaign in July 1999. The TPG is an independent community organisation representing donor families, transplant recipients, medical stakeholders, and the wider community. The TPG is the peak body for organ donation promotion and support in this State and it will play a key advisory role to the proposed WAOTDA.

In summary, the issue of donor and next of kin consent is delicate, highly personal, and has a deep philosophical dimension. As transplant technology continues to advance rapidly and demand for organs continues to increase, society has to revisit and adapt its attitude to death and dying. In Western Australia, initiatives to improve donation consent rates emphasise this attitudinal change, which by tradition precedes and drives legislation, rather than vice versa.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'John Day', written in dark ink.

**JOHN DAY**  
**Minister for Health**