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**Review of Organ and Tissue Donation Procedures Select Committee  
Submission - Professor Lindy Willmott and Dr Ben White  
July 2008**

The limited time available for making submissions prevents us from providing a more detailed and considered response to the issues raised in your 2008 Issues Paper. However, given the importance of this review and the need to address the low donation rate that exists in Australia, we would like to make a number of observations.

### **Nature of the regime**

We note the observations made at various places throughout the Issues Paper that the link between an opt-out or presumed consent regime and increasing donation rates are not as significant as might be expected. Nevertheless, we are of the view that an opt-out regime is a desirable way forward.

Of the two options, 'strong presumed consent' and 'weak presumed consent' we would favour the former. It appears that the Queensland experience that allows the next of kin to veto a decision of a donor to donate organs has an effect on the number of donations. It would seem an opportunity missed for next of kin similarly to be able to rebut the presumption of consent to donation.

### **Method of opting out**

We agree that there needs to be an easy and accessible method for opting out that caters for the various levels of literacy, language, cultural and geographic factors. It would seem sensible to facilitate the national register being one method to advise of a decision to opt-out.

However, perhaps this should not be the exclusive way to opt-out. For example, if a person went to the trouble of writing and signing a document expressing their objection to donation, that should be sufficient recognition of his or her intention to opt-out.

### **Role of next of kin**

As suggested above, we do not believe that the next of kin should be able to prevent donation because of their own views about donation, or their feelings of loss or distress at the time their loved one has died. To this extent, they should not have any right of veto.

However, we recommend that the next of kin should be notified that organs will be harvested from the deceased. We make this recommendation for two reasons. First, notification of next of kin would promote openness in the practice of organ donation, and ensure some kind of public scrutiny exists.

Secondly, notification would provide the next of kin an opportunity to advise relevant authorities if the deceased had written a formal document indicating he or she did not consent to the harvesting of organs.

### **Need for other initiatives**

The research presented in the Issues Paper suggests that an opt-out regime works best if accompanied by other initiatives such as those listed in section 4 of the Issues Paper. It would appear that an opt-out legal framework coupled with co-ordinated strategies, including the recruitment of appropriately skilled and trained staff, is needed to increase the rate of organ donation and, to the extent that resources permit, should be adopted.

### **Need for advertising regime**

We agree with the suggestion made in the Issues Paper about the need for a comprehensive advertising regime to advise the public of this reform. A change to an opt-out system would represent a fundamental change to the legal landscape and there would be an obligation to inform the public so they could exercise their right to opt-out should they desire.

Such an educational campaign may also be effective in raising the awareness of the need for organ donations to increase.