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MINISTER FOR HEALTH

THE HONOURABLE MATT FOLEY MLA  
ATTORNEY-GENERAL AND MINISTER FOR JUSTICE AND MINISTER FOR  
THE ARTS

THE HONOURABLE STEPHEN BREDHAUER MLA  
MINISTER FOR TRANSPORT AND MINISTER FOR MAIN ROADS

**Response to Parliament**

**LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE  
REPORT NO. 16, JULY 1999**

**REVIEW OF THE *TRANSPLANTATION AND ANATOMY AMENDMENT BILL* 1998**

**Recommendation 2**

The committee recommends that the Minister for Health, as the minister responsible for the *Transplantation and Anatomy Act 1979* (Qld), consider reviewing Part 3 of the Act (Donations of tissue after death) with the aim of establishing whether those provisions should be amended to more accurately reflect current practice in relation to organ donation and transplantation. Given the relative uniformity of these provisions in Australia (and given the desirability of maintaining that uniformity), this is a matter which the minister might wish to raise at an appropriate Australian Health Ministers' forum.

It is acknowledged that community values in the area of consent for medical matters have changed markedly since the *Transplantation and Anatomy Act 1979* commenced and that a review of the Act would result in significantly reduced consent arrangements than that now in place in the legislation, which would run counter to the objective of facilitating organ donation. However, as noted by the Committee, clinicians have in practice adapted to these changing values and responded by applying the legislation in a narrower way in practice. In practice, the legislation is not creating any barriers to the proper and ethical removal of body tissue.

It will also be highly unlikely that such a review could be confined to Part 3 of the Act as similar issues in relation to consent arrangements apply throughout the Act.

**Recommendation 3**

The committee supports the efforts of *Australians Donate* and *Queenslanders Donate* to increase education and awareness about organ donation both in the community and in hospitals. In particular, the committee supports the emphasis on educating people about the importance of communicating their decision to be a donor with their family. The conduct of periodic surveys will assist in measuring the effectiveness of these efforts.

**The committee recommends that the Minister for Health consider the appropriateness and feasibility of appointing (as part of Queenslanders Donate) an organ donor advocate to further develop and promote education and awareness strategies regarding organ donation in the Queensland community.**

**To assist people in recording their decision to be a donor, the committee recommends that the Attorney-General, as the Minister responsible for the Powers of Attorney Act 1998 (Qld), investigate amending that Act so as to allow people to record a wish to be an organ donor after their death in an advance health directive.**

Queenslanders Donate is a new business unit within Queensland Health established through Government funding in the 1998/99 Budget to provide improved coordination services for organ and tissue donation. The unit is located at the Princess Alexandra Hospital and comprises a manager and three organ donor coordinators plus a number of tissue donor coordinators.

The manager acts as the advocate to further develop and promote education and awareness strategies regarding donation in Queensland, as recommended by the committee.

The infrastructure of Queenslanders Donate comprises of a Transplant Clinical Advisory Committee which has representation of key stakeholders in organ and tissue donation and transplantation. This committee is dedicated to provide advice and support of the manager in the development of new initiatives to improve organ and tissue donation.

One of the developments which is currently being integrated into our health care system is the employment and training of specialist personnel to increase the awareness and acceptance of the issues of organ and tissue donation amongst health care providers and create an environment in which those who wish to donate can do so with confidence in the process.

Queenslanders Donate is also working collaboratively with Australians Donate to increase community awareness and acceptance of organ and tissue donation within the community.

Advance Health Directives are provided for in section 35 of the Powers of Attorney Act 1998. They are limited in scope and application. A person can only use an Advance Health Directive to give directions for their future health care and appoint eligible attorneys to exercise powers for health matters if the directions are found to be inadequate. While it is of course possible to amend the provisions of the Act, the amendments recommended in the Report go somewhat outside the ambit of the whole legislative scheme.

Although the inclusion in an Advance Health Directive of a written consent as required under section 22(6) of the *Transplantation and Anatomy Act 1979* would be in keeping with community expectations, the Powers of Attorney Act 1998 applies to health care matters (which may include organ donations) while the person with impaired capacity is living. It is not intended to apply after the person has died.

Advance Health Directives are legally binding documents. If it is the intention of the medical profession to continue to have regard to the wishes of the next of kin of the potential donor,

there would be a concern that the inclusion of a consent to donation after death in an Advance Health Directive could detract from the document's otherwise binding nature.

Although Advance Health Directives do not include a consent to donation after death, they do identify whether a person has made arrangements to donate their organs on the basis that it may be necessary for some life-sustaining medical treatment to continue. Information is also included advising persons who wish to donate their organs of who they need to contact to arrange donation. This information could be amended to reflect any changes to these details, particularly as a result of any nationally integrated communication package.

#### **Recommendation 4**

**The committee recommends that Queensland Health (continue to) liaise with Queensland Transport (and Australians Donate) about utilising the driver's licence application and renewal process to provide people with information about organ and tissue donation. This information should encourage people to communicate their decisions to be an organ donor with their family and be such that it gives the potential donor's next-of-kin confidence that the potential donor has made a well-informed or considered decision about organ donation. Where appropriate, changes should be made to the *Traffic Regulations 1962* and current administrative procedures to achieve this.**

**In addition, the committee recommends that the Minister for Transport amend the *Traffic Regulations 1962* to provide licence holders with an express statutory right to require amendment of the donor consent notation on their driver's licence at any time.**

Queensland Transport supports the continued use of the driver's licence for organ donor status indication.

Consultation between Queensland Health and Queensland Transport is ongoing in regard to the provision of suitable information to potential organ donors at the time of driver's licence application or renewal.

Australians Donate is developing a nationally integrated communication package regarding organ and tissue donation comprising brochures, donor cards and an outline for television commercials.

It is proposed that the national information packages will be distributed with all driver's licence renewal notices that are mailed to customers as well as being available at Queensland Transport Customer Service Centres and agencies.

In regard to licensed drivers giving permission for their organ donor status to be provided to Queensland Health, regulatory changes are not required but may be desirable in the future. The provision of the *Traffic Act 1949* which restricts the use of drivers licence information without the licensed driver's consent can be simply addressed. The addition of a consent statement on the driver's licence application form indicating that the licensee consents to

their organ donor status being provided to Queensland Health will satisfy the current regulation.

Changing the donor status on a driver's licence is presently available in the same manner that other details such as addresses are amended. There are no restrictions placed on licensed drivers in regard to changing their organ donor status and therefore it is not believed that a regulatory change to the *Traffic Regulation 1962* is warranted.

### **Recommendation 5**

**The committee recommends that immediate steps be taken to overcome the restrictions which currently prevent access to the donor information on the Queensland driver's licence database by those involved in organ donation.**

**In this regard the committee notes that Queensland Health has been negotiating with Queensland Transport to amend the current driver's licence application/renewal form to include a question asking people who do consent to a donor notation being recorded on their driver's licence to also consent to Queensland Transport providing that information to Queensland Health.**

**The committee urges the Minister for Transport and the Minister for Health to expedite moves to enable full use of this valuable data.**

While it is technically feasible to make the required Queensland Transport data accessible to Queensland Health, there are a number of administrative, legislative and logistical issues to resolve, namely:

- the Queensland Transport drivers licence application/renewal form would need to seek permission to pass the information on to Queensland Health;
- a Memorandum of Understanding between Queensland Transport and Queensland Health would need to be implemented;
- depending on the selected solution, controls would need to be implemented to ensure that Queensland Health only accessed relevant information; and
- if a new Queensland Health database is established to contain the extracted data, ongoing resources will need to be assigned for maintaining and supporting the database, as well as providing training to officers who require access to the database.


There is also a national agenda to establish a national database of prospective organ and tissue donors (Recommendation 6), and any Queensland Health database would need to either use or integrate with the national database.

Consultation is already occurring between Queensland Transport and Queensland Health. However, until the specific requirements of any national database or the local Queenslanders Donate needs are better understood, it is not feasible to identify costs or to address the

various logistical issues. Following resolution of the issues, each of the proposed solutions can be reviewed jointly by the relevant parties ie. Queenslanders Donate, Queensland Health, Queensland Transport and Queensland Police Service. Once a preferred option is agreed, then this could be formally scoped and costed.

### **Recommendation 6**

**The committee recommends that Queensland Health attempt to ascertain the viability of the Australians Donate proposal to establish a national donor database and support that proposal should Queensland Health consider it viable. (In this regard the committee notes that Queensland Health is represented on the National Council of Australians Donate.)**

 Support for the development of a nationally based accessible information system which identifies persons willing to be organ donors on their drivers licence was reached at the Australian Health Ministers Conference held on 4 August 1999.

At that meeting Ministers also agreed to request Transport Ministers to support the central recording of information on organ donor status on the "NEVDIS" (National Electronic Vehicle Information System) database as well as to request that Australians Donate work with individual Transport Ministers and the Australian Transport Council to achieve a national donor database which is accessible on a **24** hour basis.

In a similar vein, the Health Insurance Commission (HIC) is currently developing a business proposal to link a donor database to the existing Medicare information system. Such a development would provide significant support to data collection and management of an organ donor register. It is expected that this proposal will be completed in November 1999.

The competing merits of a national approach utilising NEVDIS or the HIC database will require further review.