



**Australian Organ and Tissue Donation
and Transplantation Authority
Amendment (Disclosure of Information)
Act 2023**

No. 58, 2023

***An Act to amend the *Australian Organ and Tissue
Donation and Transplantation Authority Act 2008*,
and for related purposes***

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

Contents

1	Short title.....	2
2	Commencement	2
3	Schedules	2
Schedule 1—Amendments		3
	<i>Australian Organ and Tissue Donation and Transplantation Authority Act 2008</i>	3



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***An Act to amend the *Australian Organ and Tissue
Donation and Transplantation Authority Act 2008*,
and for related purposes***

[Assented to 21 August 2023]

The Parliament of Australia enacts:

No. 58, 2023 Australian Organ and Tissue Donation and Transplantation Authority 1
Amendment (Disclosure of Information) Act 2023

1 Short title

This Act is the *Australian Organ and Tissue Donation and Transplantation Authority Amendment (Disclosure of Information) Act 2023*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	21 February 2024

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Australian Organ and Tissue Donation and Transplantation Authority Act 2008

1 Section 4

Insert:

authorised family member has the meaning given by section 5.

child has a meaning affected by section 5B.

DonateLife Agency has the meaning given by section 5F.

2 Section 4 (after paragraph (g) of the definition of *organ or tissue donation and transplantation matter*)

Insert:

(ga) commemorative activities relating to organ or tissue donors or recipients;

3 Section 4

Insert:

parent has a meaning affected by section 5B.

4 Section 4 (definition of *partner*)

Repeal the definition, substitute:

partner has the meaning given by section 5A.

5 Section 4

Insert:

sibling has a meaning affected by section 5D.

stepchild has a meaning affected by section 5E.

6 After section 4

Insert:

5 Meaning of *authorised family member*

In this Act, *authorised family member* of an organ or tissue donor or recipient who has died means any of the following persons:

- (a) the partner of the organ or tissue donor or recipient;
- (b) a parent or legal guardian of the organ or tissue donor or recipient;
- (c) a child of the organ or tissue donor or recipient;
- (d) a sibling of the organ or tissue donor or recipient;
- (e) a grandparent of the organ or tissue donor or recipient;
- (f) a grandchild of the organ or tissue donor or recipient;
- (g) if the organ or tissue donor or recipient has traditional Aboriginal or Torres Strait Islander kinship ties—a person who is related to the organ or tissue donor or recipient under Aboriginal or Torres Strait Islander kinship rules;
- (h) if the organ or tissue donor or recipient is a member of a community that accepts relationships other than those referred to in paragraphs (a) to (g) as kinship ties—a person who is accepted by the community to be related to the organ or tissue donor or recipient;
- (i) a person who, under the regulations, is taken to be an authorised family member of the organ or tissue donor or recipient.

5A Meaning of partner

- (1) In this Act, *partner* of a person means:
 - (a) the person's spouse; or
 - (b) the person's de facto partner.
- (2) However, if more than one person would qualify as a *partner* of a person (the *first person*) under subsection (1), then only the last person to so qualify is the *partner* of the first person for the purposes of this Act.

5B Meaning of *child*

- (1) In this Act, *child* of a person includes:
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- (a) an adopted child, stepchild, exnuptial child or foster child of the person; and
 - (b) someone who is a child of the person within the meaning of the *Family Law Act 1975*.

Tracing family relationships

- (2) For the purposes of this Act, if one person is the child of another person because of subsection (1), relationships traced to or through that person are to be determined on the basis that the person is the child of the other person.

5C Meaning of *parent*

Without limiting who is a ***parent*** of a person for the purposes of this Act, a person (the ***first person***) is a ***parent*** of another person if the other person is the first person's child.

5D Meaning of *sibling*

In this Act, ***sibling*** of a person includes a half-brother, half-sister, adoptive brother, adoptive sister, step-brother, step-sister, foster-brother and foster-sister of the person.

5E Meaning of *stepchild*

In this Act, without limiting who is a stepchild of a person, a person (the ***first person***) is a ***stepchild*** of another person (the ***second person***) if the first person would be the second person's stepchild except that the second person is not legally married to the second person's de facto partner.

5F Meaning of *DonateLife Agency*

- (1) The Minister may, by legislative instrument, declare that a specified agency is a ***DonateLife Agency*** for the purposes of this Act.
- (2) The Minister must not declare under subsection (1) that an agency is a ***DonateLife Agency*** unless the Minister is satisfied that the

agency has a role or function in relation to one or more organ or tissue donation and transplantation matters.

Consultation

- (3) Before the Minister makes a declaration under subsection (1) in relation to:
- (a) a Department of a State; or
 - (b) a part of a Department of a State; or
 - (c) an authority of a State; or
 - (d) a part of an authority of a State;
- the Minister must consult the Minister of the State who is responsible, or principally responsible, for the administration of matters relating to health in the State.
- (4) Before the Minister makes a declaration under subsection (1) in relation to:
- (a) a Department of the Northern Territory; or
 - (b) a part of a Department of the Northern Territory; or
 - (c) an authority of the Northern Territory; or
 - (d) a part of an authority of the Northern Territory;
- the Minister must consult the Minister of the Northern Territory who is responsible, or principally responsible, for the administration of matters relating to health in the Northern Territory.
- (5) Before the Minister makes a declaration under subsection (1) in relation to:
- (a) a Department of the Australian Capital Territory; or
 - (b) a part of a Department of the Australian Capital Territory; or
 - (c) an authority of the Australian Capital Territory; or
 - (d) a part of an authority of the Australian Capital Territory;
- the Minister must consult the Minister of the Australian Capital Territory who is responsible, or principally responsible, for the administration of matters relating to health in the Australian Capital Territory.

Agency

- (6) For the purposes of this section, **agency** means:
- (a) a Department of a State or Territory; or
 - (b) a part of a Department of a State or Territory; or
 - (c) an authority of a State or Territory; or
 - (d) a part of an authority of a State or Territory; or
 - (e) a body corporate.

7 Section 58 (heading)

After “**Protection of patient confidentiality**”, insert “—**Authority and CEO**”.

8 After paragraph 58(2)(a)

Insert:

- (ab) if the organ or tissue donor or recipient is under 16 years of age—a parent or legal guardian of the organ or tissue donor or recipient; or
- (ac) if the organ or tissue donor or recipient:
 - (i) is 16 or 17 years of age; and
 - (ii) has legal capacity to consent to the publication or dissemination of the information;the organ or tissue donor or recipient; or
- (ad) if the organ or tissue donor or recipient:
 - (i) is 16 or 17 years of age; and
 - (ii) does not have legal capacity to consent to the publication or dissemination of the information;a parent or legal guardian of the organ or tissue donor or recipient; or

9 Paragraph 58(2)(b)

Repeal the paragraph, substitute:

- (b) if the organ or tissue donor or recipient has died but is survived by one or more authorised family members—any of those authorised family members; or

10 Subsection 58(3)

Repeal the subsection, substitute:

- (3) Subsection (2) does not permit the publication or dissemination by the Authority or the CEO of information that reveals that an organ and/or tissue was:
 - (a) removed from the body of a particular organ or tissue donor; and
 - (b) transplanted to the body of a particular organ or tissue recipient.
- (4) To avoid doubt, if the publication or dissemination by the Authority or the CEO of particular information is permitted by subsection (2), a law of a State or Territory does not prevent the publication or dissemination by the Authority or the CEO of the information.

11 After section 58

Insert:

58A Publication, dissemination or disclosure of patient information—DonateLife Agencies, grant recipients and authorised family members

Scope

- (1) This section applies if:
 - (a) an organ or tissue donation and transplantation has occurred; and
 - (b) the organ or tissue donor or recipient has died.

Publication, dissemination or disclosure by a DonateLife Agency or grant recipient

- (2) Either of the following:
 - (a) a DonateLife Agency;
 - (b) a person who is a party to an agreement that:
 - (i) is in force; and

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- (ii) provides for the making of one or more grants under paragraph 11(1)(g) to the person;
- may publish, disseminate or disclose information that is likely to enable the identification of the deceased organ or tissue donor or the deceased organ or tissue recipient (as the case requires) if:
- (c) the publication, dissemination or disclosure is for the purposes of any of the following activities:
 - (i) an educational activity that is relevant to an organ or tissue donation and transplantation matter;
 - (ii) a commemorative activity that is an organ or tissue donation and transplantation matter;
 - (iii) a promotional activity that is relevant to an organ or tissue donation and transplantation matter;
 - (iv) a community awareness activity that is relevant to an organ or tissue donation and transplantation matter; and
 - (d) the publication, dissemination or disclosure is made with the consent of an authorised family member of the deceased organ or tissue donor or recipient; and
 - (e) the publication, dissemination or disclosure is made:
 - (i) using a service to which paragraph 51(v) of the Constitution applies; or
 - (ii) using an electronic service (within the meaning of the *Online Safety Act 2021*); or
 - (iii) in a Territory; or
 - (iv) in a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); or
 - (v) by a constitutional corporation.

Publication, dissemination or disclosure by an authorised family member

- (3) An authorised family member of the deceased organ or tissue donor or recipient may publish, disseminate or disclose information that is likely to enable the identification of the deceased organ or tissue donor or the deceased organ or tissue recipient (as the case requires) if:

- (a) the publication, dissemination or disclosure is for the purposes of any of the following activities of the Authority or a DonateLife Agency:
 - (i) an educational activity that is relevant to an organ or tissue donation and transplantation matter;
 - (ii) a commemorative activity that is an organ or tissue donation and transplantation matter;
 - (iii) a promotional activity that is relevant to an organ or tissue donation and transplantation matter;
 - (iv) a community awareness activity that is relevant to an organ or tissue donation and transplantation matter; and
 - (b) the publication, dissemination or disclosure is made:
 - (i) using a service to which paragraph 51(v) of the Constitution applies; or
 - (ii) using an electronic service (within the meaning of the *Online Safety Act 2021*); or
 - (iii) in a Territory; or
 - (iv) in a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*).
- (4) Subsections (2) and (3) have effect despite anything in a law of a State or Territory.

Secondary publication, dissemination or disclosure

- (5) If information has been the subject of a publication, dissemination or disclosure under subsection (2) or (3), a person may publish, disseminate or disclose that information if:
- (a) the publication, dissemination or disclosure is for the purposes of reporting on any of the following activities:
 - (i) an educational activity that is relevant to an organ or tissue donation and transplantation matter;
 - (ii) a commemorative activity that is an organ or tissue donation and transplantation matter;
 - (iii) a promotional activity that is relevant to an organ or tissue donation and transplantation matter;
 - (iv) a community awareness activity that is relevant to an organ or tissue donation and transplantation matter; and
 - (b) the publication, dissemination or disclosure is made:

- (i) using a service to which paragraph 51(v) of the Constitution applies; or
 - (ii) using an electronic service (within the meaning of the *Online Safety Act 2021*); or
 - (iii) in a Territory; or
 - (iv) in a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*).
- (6) Subsection (5) has effect despite anything in a law of a State or Territory.

12 Transitional—publication or dissemination of patient information by Authority or CEO

Paragraph 58(2)(b) of the *Australian Organ and Tissue Donation and Transplantation Authority Act 2008* (as amended by this Schedule) applies in relation to an organ or tissue donor or recipient who died before, at or after the commencement of this item.

13 Transitional—publication, dissemination or disclosure of patient information by DonateLife Agencies, grant recipients or authorised family members

- (1) Paragraph 58A(1)(a) of the *Australian Organ and Tissue Donation and Transplantation Authority Act 2008* (as amended by this Schedule) applies in relation to an organ or tissue donation and transplantation that occurred before, at or after the commencement of this item.
- (2) Paragraph 58A(1)(b) of the *Australian Organ and Tissue Donation and Transplantation Authority Act 2008* (as amended by this Schedule) applies in relation to an organ or tissue donor or recipient who died before, at or after the commencement of this item.

[Minister's second reading speech made in—
House of Representatives on 24 May 2023
Senate on 13 June 2023]

(64/23)
