

EXPLANATORY STATEMENT

Australian Organ and Tissue Donation and Transplantation Authority Act 2008

Australian Organ and Tissue Donation and Transplantation Authority Amendment Regulations 2023

Purpose and operation

The purpose of amending the *Australian Organ and Tissue Donation and Transplantation Authority Regulations 2020* (OTA Regulations) is to ensure consistency with the terms now defined in the *Australian Organ and Tissue Donation and Transplantation Authority Amendment (Disclosure of Information) Act 2023* (Amending Act), which will be inserted into the *Australian Organ and Tissue Donation and Transplantation Authority Act 2008* (Act).

The Amending Act allows the Australian Organ and Tissue Donation and Transplantation Authority (OTA) and DonateLife staff to obtain consent for the disclosure of information from an extended list of “authorised family members” of a deceased donor, or deceased recipient, for the purposes of including information about the respective deceased donor or recipient in their community awareness and educational activities, and for family members to commemorate their loved ones in remembrance services. The disclosure of information is restricted to the purposes of the activities and by the people defined in the legislation.

Where a living donor or recipient is under 16 years of age, or is 16 or 17 years of age and does not have legal capacity to consent, the Amending Act provides that information identifying the donor or recipient may be published, disseminated or disclosed with the consent of the parent or legal guardian of that donor or recipient.

The purpose of the *Australian Organ and Tissue Donation and Transplantation Authority Amendment Regulations 2023* (Amending Regulations) is to amend the OTA Regulations to remove the provision authorising a parent or guardian to consent to the publication or dissemination of information likely to enable identification of donor under 18. The Amending Regulations ensure the OTA Regulations operate consistently with the Amending Act.

Authority

Section 60 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Reliance on subsection 33(3) of the *Acts Interpretation Act 1901*

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be

construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Commencement

The Amending Regulations commence at the same time as the Amending Act. The Amending Act commences on 21 February 2024, which is six months after the date of Royal Assent.

Consultation

Consultation on the Amending Act was undertaken and the resulting amendments to remove section 8 from the OTA Regulations are a consequential amendment.

Consultation on the Amending Act followed standard consultation requirements. The following bodies and organisations were consulted:

- The Organ and Tissue Authority;
- The Department of the Prime Minister and Cabinet;
- The Attorney General's Department;
- All States and Territories (two rounds of consultation);
- The National Aboriginal Community Controlled Health Organisation;
- The Australian Indigenous Doctors' Association; and
- The Congress of Aboriginal and Torres Strait Islander Nurses and Midwives.

General

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of this instrument are set out in **Attachment A**.

This instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment B**.

ATTACHMENT A

Details of the *Australian Organ and Tissue Donation and Transplantation Authority Amendment Regulations 2023*

Section 1 – Name

Section 1 provides that the name of this instrument is the *Australian Organ and Tissue Donation and Transplantation Authority Amendment Regulations 2023*.

Section 2 – Commencement

Section 2 provides that the whole of this instrument commences at the same time as Schedule 1 to the *Australian Organ and Tissue Donation and Transplantation Authority Amendment (Disclosure of Information) Act 2023* commences.

Section 3 – Authority

Section 3 provides that the instrument is made under the *Australian Organ and Tissue Donation and Transplantation Authority Act 2008*.

Section 4 – Schedules

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Australian Organ and Tissue Donation and Transplantation Authority Regulations 2020

- 1** Item 1 repeals section 8 of the *Australian Organ and Tissue Donation and Transplantation Authority Regulations 2020*, which provides that the parent or legal guardian of the donor is authorised to give consent to the publication or dissemination of information where a donor is less than 18 years old.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian Organ and Tissue Donation and Transplantation Authority Amendment Regulations 2023

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The *Australian Organ and Tissue Donation and Transplantation Authority Amendment (Disclosure of Information) Act 2023* (the Amending Act) amends the *Australian Organ and Tissue Donation and Transplantation Authority Act 2008* (the 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 without breaching state or territory legislation. This will enable sharing of information for educational campaigns and commemorative purposes. The definition of ‘authorised family members’ includes a parent or legal guardian of the donor or recipient.

Where a living donor or recipient is under 16 years of age, or is 16 or 17 years of age and does not have legal capacity to consent, the Amending Act provides that information identifying the donor or recipient may be published, disseminated or disclosed with the consent of the parent or legal guardian of that donor or recipient.

The *Australian Organ and Tissue Donation and Transplantation Authority Amendment Regulations 2023* (Amending Regulations) amends the *Australian Organ and Tissue Donation and Transplantation Authority Regulations 2020* (OTA Regulations) to remove the provision that authorises a parent or guardian to consent to the publication or dissemination of information likely to enable identification of donor under 18 years of age. The Amending Regulations would ensure the OTA Regulations operate consistently with the Amending Act.

Human Rights Implications

The Regulations do not engage any of the applicable rights or freedoms because the Regulations repeal a matter required to give effect to the Act.

Conclusion

The Regulations are compatible with human rights as they do not raise any human rights issues.

The Hon. Ged Kearney MP
Assistant Minister for Health and Aged Care