



Disagreement between parents in consent for paediatric post-mortem organ donation

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Six-year-old Joe suffered a severe head injury in a car accident and was admitted to the Paediatric ICU.

Several days later, doctors confirm brain death and offer Joe's parents the option of organ donation.

His mother says no, and his father says yes.

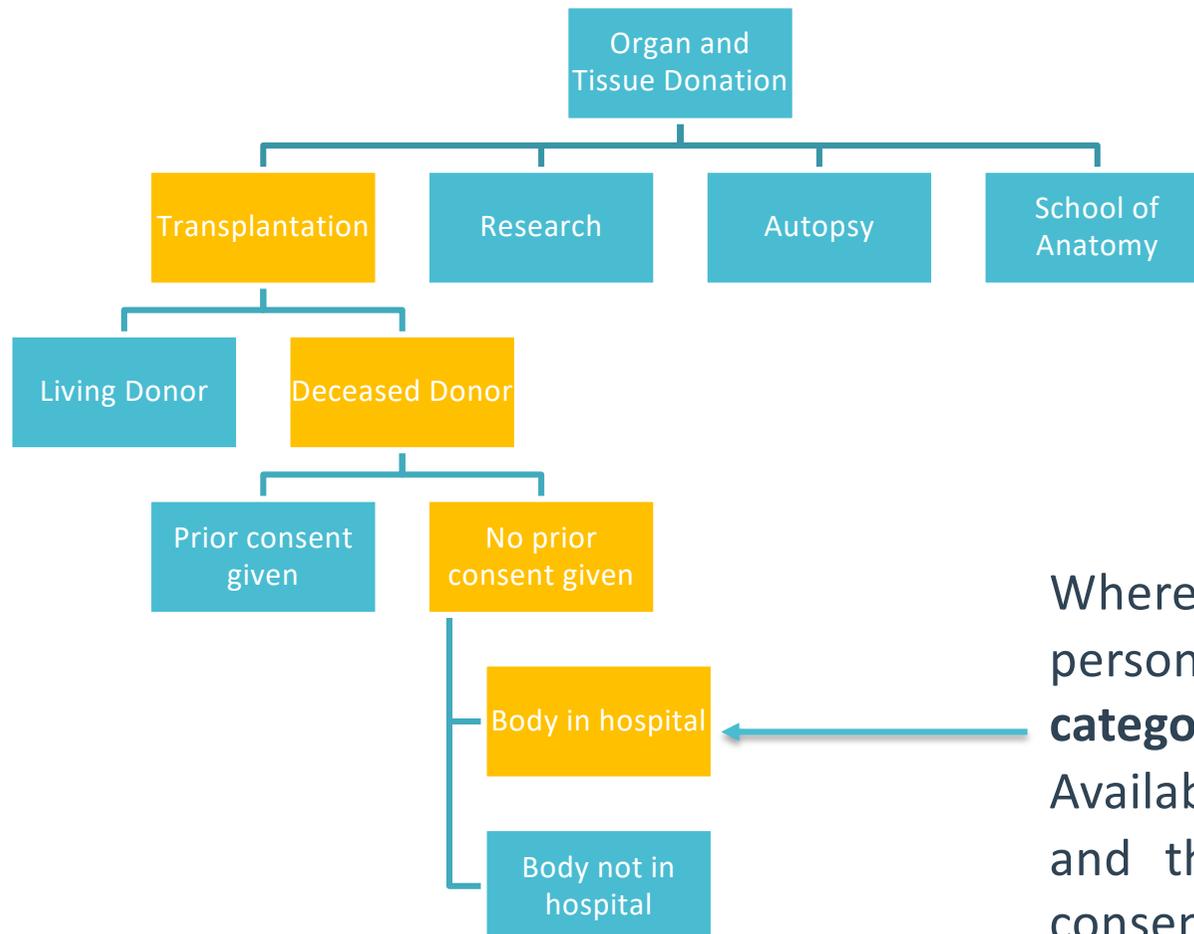
Now what happens?

Outline



- Scope of this paper
- Australian clinical and legal history
- Current legislative landscape
- Clinical guidelines
- More questions to be asked

Scope

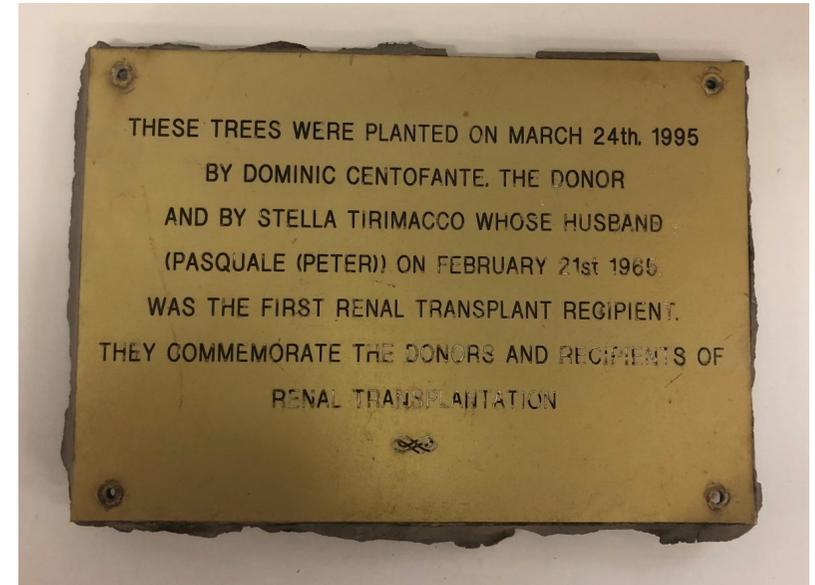


Where two or more persons are in **equal category** of Senior Available Next of Kin and there is both a consent and objection

Australian clinical and legal history



- 1940s – Australia starts corneal transplants
- 1963 – RMH – cadaveric kidney transplant – 62 days post-transplant
- 1965 – TQEH - first successful live-kidney transplant
- Concerns no common law basis for donation and transplantation
 - insertion of clauses into various statutes

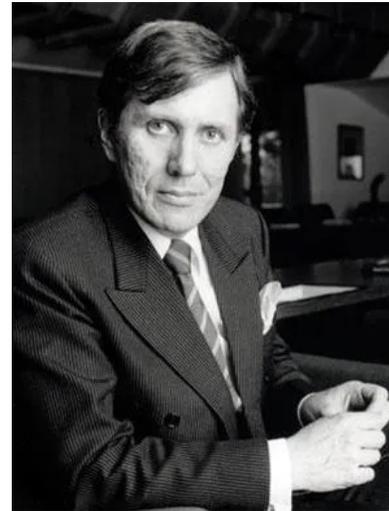


<https://healthmuseumsa.org.au/2025/03/60-years-of-kidney-transplants-in-australia/>

Australian clinical and legal history



- 1977
 - Australian Law Reform Commission (ALRC)
 - Included draft legislation



<https://www.alrc.gov.au/about/our-leadership/president/past-presidents/hon-michael-kirby-ac-cmg/>



<https://www.alrc.gov.au/publication/human-tissue-transplants-alrc-report-7/>

Draft legislation



25. (5) Where there are two or more persons“senior available next of kin” an **objection** by any one of those persons has **effect for the purposes** of this section **notwithstanding any indication to the contrary** by the other or **any other of those persons.**

(ALRC 7, Appendix IV)

Australian clinical and legal history



- Late 1970- mid 1980s
 - States and territories introduce legislation based on the draft legislation from the ALRC
 - All **except Victoria** maintain the status of an objection holding effect

Victorian legislation



(8) Where there are two or more persons having a description referred to in a sub-paragraph of paragraph (a) or (b) of the definition of “senior available next of kin” in section 3, the consent of any of those persons has effect for the purposes of this section notwithstanding any indication to the contrary by the other or any other of those persons.

Human Tissue Act (Vic), 1982 – as enacted

(6) Where there are two or more persons having a description referred to in a subparagraph of paragraph (a) or (b) of the definition of *senior available next of kin* in section 3, the consent of any one of those persons has effect for the purposes of this section notwithstanding any indication to the contrary by the other or any other of those persons.

Human Tissue Act (Vic) 1982 – current – s26(6)

Current legislative landscape



- Legislation in each State and Territory to govern donation and transplantation for clinical purposes
- Provides a legal mechanism for authorising living and deceased organs and tissues

Legislation

ACT Transplantation and Anatomy Act 1978

NSW Human Tissue Act 1983

NT Transplantation and Anatomy Act 1979

QLD Transplantation and Anatomy Act 1979

SA Transplantation and Anatomy Act 1983

TAS Human Tissue Act 1985

VIC Human Tissue Act 1982

WA Human Tissue and Transplant Act 1982

Current legislative landscape



- Senior Available Next of Kin
 - For a deceased child* donor
 - Spouse*
 - Parent
 - Brother or Sister – 18 years or older
 - Child Guardian

Current legislative landscape



- Where there is a disagreement between donation decision-makers who are SANOKs **generally** the law provides that an objection to donation will be respected over a consent or approval to donate
- **....other than Victoria**

Current legislative landscape



- Under review!



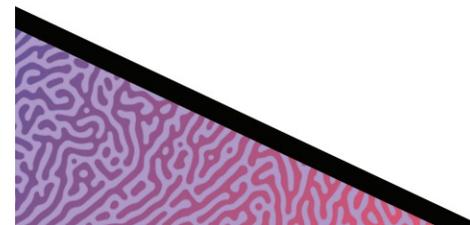
ISSUES PAPER
REVIEW OF
HUMAN TISSUE LAWS

Issues Paper 51
May 2025



DISCUSSION PAPER
REVIEW OF
HUMAN TISSUE LAWS

Discussion Paper 90
November 2025



Clinical Guidelines



- “The guidance provided in this document has the goal of ensuring families are supported in making an informed decision about donation....”
- Family Donation Conversation
- “The family will be assured that, whatever they decide, their decision will be supported. ”



Best Practice Guideline for Offering Organ and Tissue Donation in Australia

Edition 2 | April 2021

Clinical Guidelines

- Acknowledges that can be “complicated if there is disagreement between the people making the decision and/or other people who are close family or friends of the potential donor
Disagreements are often about who should be involved in making the decision and/or who should have the final say in the donation decision”
- Provides a ‘Framework for ethical decision making’ – broad decision making throughout the process
- Outlines the legislative framework (noting Vic)

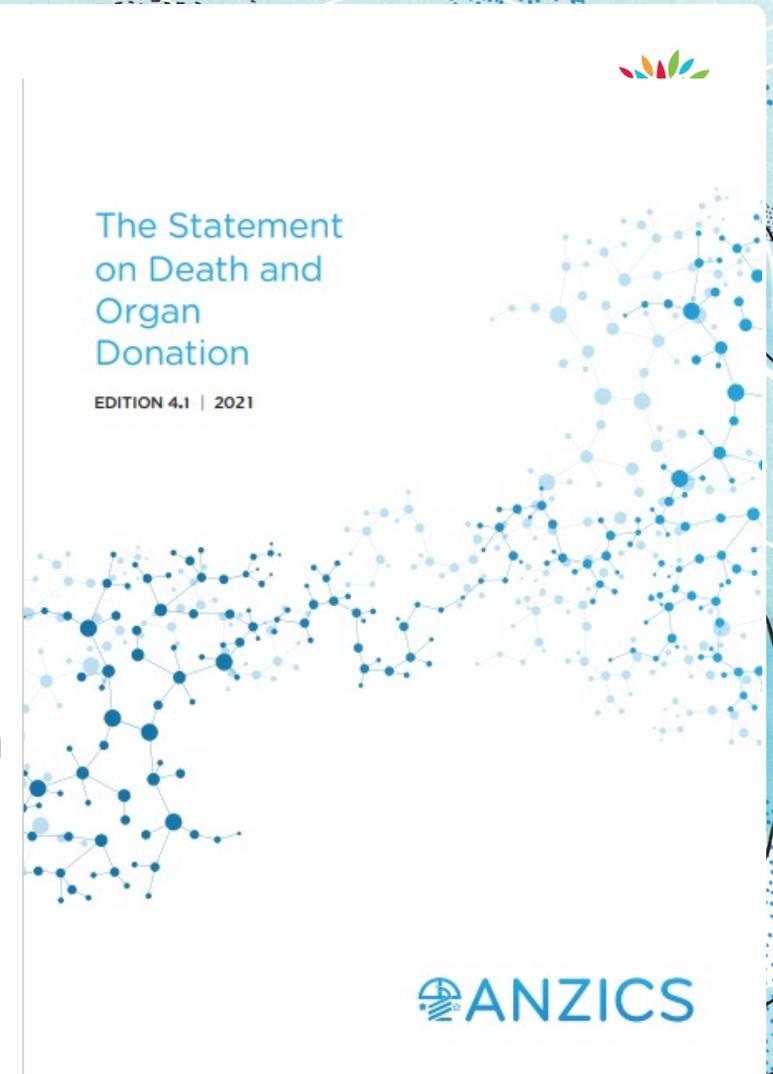


Ethical guidelines for cell, tissue and organ donation and transplantation in Australia



Clinical Guidelines

- Recommendation: “Irrespective of the patient’s known wishes about donation, all possible attempts should be made to contact the family to discuss donation and to ascertain their agreement or otherwise. **Donation should not proceed if the family disagrees.**”
- Outlines the legislative framework (noting Vic)
- Recommendation: “Donation should be discussed with all **families** where donation is a possibility. Discussions about organ and tissue donation should be respectful of the patient and sensitive to the **family’s emotional, psychological, spiritual, cultural and religious needs.**”



Clinical Guidelines



- **Important to note:**

- In general, Australian legislation states that the designated officer may authorise removal of tissue if the deceased patient **had in advance expressed a wish or given consent to donation of tissue**, which had not been revoked, or at least had not expressed an objection to donation.
- Notwithstanding these legislative provisions, the practice in Australia and New Zealand is always to seek family agreement.

Clinical Guidelines



- No explicit information given of how to navigate disagreement between equal SANOK
- Possibly as only relevant in Victoria

More questions to be asked



- What is the preferred response for disagreement between SANOK?
 - Single objection as veto or allow discretion for authorisation
- How do we go about working that out?

More questions to be asked



- What is the nature of the decision being made?
- What benefits and harms are we considering?
And to whom do they fall?
- What other factors do we need to consider?



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