

2011

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

TRANSPLANTATION AND ANATOMY AMENDMENT BILL 2011

EXPLANATORY STATEMENT

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EXPLANATORY STATEMENT

OVERVIEW

The proposed Transplantation and Anatomy Amendment Bill 2011 will provide for:

- a. amendments to Part 1, section 5(1) and (2) of the *Transplantation and Anatomy Act 1978* (the T&A Act) which governs the appointment of a doctor to be a designated officer for a hospital conducted by the Territory and for a hospital other than a hospital conducted by the territory; and
- b. amendments to Part 3, section 31(2) of the T&A Act which governs the removal of tissue for the purpose of corneal transplantation.

Amendments to Part 1 of the T&A Act

The object of the amendments to Part 1 of the T&A Act is to improve the efficiency, effectiveness, timely delivery and quality of services in the organ and tissue donation sector in the ACT. The amendments seek to increase the number of designated officers, who authorise the removal of organs and tissue from the body of a deceased person located in an ACT hospital for the purpose of transplantation to the body of a living person or for other therapeutic, medical or scientific purposes.

Part 1 of the T&A Act specifically covers the appointment of a doctor to be a designated officer in an ACT hospital. The amendments to Part 1 of the T&A Act are required to allow the appointment of other health professionals as designated officers. This would increase the number, availability and accessibility of designated officers for the purpose of organ and tissue donation in the ACT. This would also increase the efficiency of obtaining family consent for organ and tissue donation in the ACT.

The amendments to Part 1 of the T&A Act are in line with the COAG endorsed national reform package for organ and tissue donation. In the light of considerable cross border activity, the proposed amendments will also be consistent with the relevant corresponding legislation in NSW namely, the *Human Tissue Act 1983* (NSW).

Amendments to Part 3 of the T&A Act

The object of the amendments to Part 3 of the T&A Act is to allow authorised and trained tissue retrievalists to retrieve all tissue (musculoskeletal, cardiovascular, eye and skin tissue) and not just eye tissue for the purpose of corneal transplantation.

Section 31(2) of Part 3 of the T&A Act covers the removal of eye tissue for the purpose of corneal transplantation. The amendments to Part 3 of the T&A Act are required to allow authorised and trained tissue retrievalists to retrieve all

tissue, not just eye tissue, in a timely manner. These amendments would bring the ACT requirements for tissue retrieval in line with the equivalent NSW *Human Tissue Act 1983* and would also help to increase the retrieval rates of tissue donation in the ACT. Essentially the amendments will expand the role of existing tissue retrievalists and will not require the recruitment of additional retrievalists at this stage.

The amendments to Part 3 of the T&A Act are in line with the COAG endorsed national reform package for organ and tissue donation.

These amendments give effect to the original intent of the legislation and do not affect human rights.

DETAIL

Clause 1 Name of Act

This clause is a technical clause and sets out the name of the proposed Act as the *Transplantation and Anatomy Amendment Act 2011*.

Clause 2 Commencement

This clause is a technical clause setting out when commencement of the Act will occur. It is intended that the Act will commence on the day after its notification.

Clause 3 Legislation amended

This clause identifies the Act to be amended, namely the *Transplantation and Anatomy Act 1978*.

Clause 4 Section 5

This clause substitutes a new section, which will allow the appointer to appoint a person other than a doctor as a designated officer if the appointer is satisfied that the person has suitable clinical knowledge and experience in relation to organ and tissue retrieval and transplantation.

Clause 5 Effect of authority under pt 3 Section 31 (1) (b)

This clause substitutes a new subparagraph 31(1) (b) which is consequential on the amendment to section 5 that now allows persons other than doctors to be appointed as designated officers.

Clause 6 Section 31(2)

This clause substitutes a new subsection (2) and inserts a new subsection (2A) which provides that the authority provided under Part 3 to remove relevant tissue from the body of a deceased person for the purpose of transplantation is sufficient to authorise a person other than a doctor to

remove relevant tissue from the deceased person for the purpose of transplantation. This is allowed if the person is authorised in writing by the chief health officer to remove relevant tissue for the purpose of transplantation and that the person is not the same person who gave the authority.

Clause 7 New section 31 (4)

The clause inserts a new subsection to define for the purposes of the section that relevant tissue is limited to musculoskeletal, cardiovascular, eye and skin tissue and does not include a whole organ.

Clause 8 Effect of authority under pt 4 Section 35

This clause is consequential on the amendment to section 5 and inserts the words ‘and the designated officer is a doctor’ after the word ‘applies’ to account for the situation that a designated officer may not be a doctor.

Clause 9 Disclosure of information Section 49(3)(c)

This clause is consequential to the changes made to section 31 (2) and replaces the reference to ‘section 31(2)’ with a reference to ‘section 31 (2A)’ which is now the correct reference.