

# Blood Donation (Transmittable Diseases) Blood Donor Form 2025 (No 1)

**Disallowable instrument DI2025–320**

**Approved form AF2025–27**

made under the

**Blood Donation (Transmittable Diseases) Act 1985, s 10(3) Approved Forms**

## EXPLANATORY STATEMENT

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### OVERVIEW

The Disallowable Instrument and Approved Form (together ‘the Instrument’) have been prepared in accordance with section 10(3) of the *Blood Donation (Transmittable Diseases) Act 1985* (the Act).

On commencement the Instrument revokes the Disallowable Instrument DI2022-239 and Approved Form AF2022-13 notified on the ACT Legislation Register dated 31 October 2022.

Section 5 of the Act specifies prescribed requirements in relation to the taking of blood, which trigger the application of the protections from liability at sections 3 and 4 of the Act. At section 5(a) these requirements include that before taking blood from the donor, the society gets from the donor a written declaration.

Under section 10 of the Act the Minister may approve a form for a particular purpose under the Act, such as for section 5(a), and where a form is approved, only that form is to be used for that purpose. Consistently with section 10(3) of the Act, as the form approved by the Minister relates to section 5(a) of the Act, it is a Disallowable Instrument.

The Instrument approves a revised declaration for the purposes of section 5(a). The revised declaration reflects changes made to the Blood Donor Questionnaire and Declaration Form by the Australian Red Cross Lifeblood (a part of the Society, and formerly known as the Australian Red Cross Blood Service) which are intended to ensure that the questions are appropriate for the safety of donors and recipients and that donors are not excluded unnecessarily.

The substantive change to the new Blood Donor Questionnaire and Declaration Form, which has the approval of the Therapeutic Goods Administration (TGA), relates to the removal of gender-based sexual activity questions for people in Australia that donate

fresh blood products. Implementation of gender-neutral assessments (GNA) means that all donors will be asked the same sexual activity questions regardless of their sex, gender or sexuality.

Under the GNA approach:

- most people in a sexual relationship of six months or more with a single partner will be eligible to donate fresh blood products, and
- most people with new or multiple partners will be able to donate fresh blood products for transfusion, if they have not had anal sex in the last three months.

The form may be completed electronically or in a hard copy, printed format.

It is an offence under Part 3.4 of the Criminal Code to make a false or misleading statement, or to give false or misleading information. Accordingly, a donor that completes the Blood Donor Declaration Form and in doing so knowingly or recklessly provides false, misleading or incorrect information, or that omits information the absence of which makes the information false or misleading, is likely to have committed an offence.

The Instrument will commence on 19 April 2026 to align with the national implementation of the use of the revised Blood Donor Questionnaire and Declaration Form by Australian Red Cross Lifeblood as part of the Society.

## **CONSISTENCY WITH HUMAN RIGHTS**

The Instrument engages the following sections of the *Human Rights Act 2004* (Human Rights Act):

- Section 8 – Right to recognition and equality before the law (*promoted*)
- Section 12 – Right to privacy (*limited*)

The right to recognition and equality before the law under section 8 of the Human Rights Act includes the right to equal protection of the law without discrimination. The Instrument promotes this right by implementing gender-neutral assessments, which means that all donors will be asked the same sexual activity questions regardless of their sex, gender or sexuality.

The Instrument limits the right to privacy under section 12 of the Human Rights Act as it approves a form requiring the collection, storage and use of personal information for a person to become a blood donor. The collection of this information serves the legitimate purposes of, and is rationally connected to, ensuring blood donations are safe and suitable, as well as promoting sustainable blood supply.

The right to privacy is only limited by the Instrument to the extent necessary to achieve the legitimate purposes of enabling safe blood donation and promoting sustainable blood supply. The information collected is limited to what is necessary to determine a person's eligibility to donate blood, ensure the safety of both donors and recipients, to contact the donor for future donations, and assist with research including improving the safety of transfusion and donation; as outlined in the form. By adopting the GNA, the revised form better balances the limitation of the right to privacy. The

GNA approach ensures that information which is connected to sex, gender or sexuality, which is not therapeutically necessary, is not collected. Further, the donation of blood is on an entirely voluntary basis, and a person's private information only must be shared by that person if they choose to donate blood. The information shared must also be handled in accordance with protections under the *Privacy Act 1988* (Cth) and *Health Records (Privacy and Access) Act 1997*, which provides a range of further protections to ensure the privacy of blood donors is protected. For these reasons the limitation on privacy is reasonable and proportionate to achieving the purposes of a safe and sustainable blood supply.