THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Organ and Tissue Donation (Potential Donor Protection) Bill 2026

A Bill for an Act to establish a Commonwealth national donor-protection standard for organ and tissue recovery in services funded by the Commonwealth, to amend the Australian Organ and Tissue Donation and Transplantation Authority Act 2008, and for related purposes

The Parliament of Australia enacts:

Part 1 — Preliminary

1 Short title

This Act is the Organ and Tissue Donation (Potential Donor Protection) Act 2026.

2 Commencement

This Act commences on the day after it receives the Royal Assent.

3 Objects

The objects of this Act are to:

- establish a Commonwealth national donor-protection standard for every donation and retrieval service funded in whole or in part by the Commonwealth; and
- attach that standard to Organ and Tissue Authority support and to National Health Reform Agreement payments; and
- affirm that a potential deceased donor remains a patient until death is independently determined under the law of a State or Territory.

4 Binding the Crown

This Act binds the Crown in right of the Commonwealth. It does not bind the Crown in right of a State or Territory except so far as a State or Territory accepts the standard as a condition of Commonwealth funding.

5 Definitions

Authority means the Australian Organ and Tissue Donation and Transplantation Authority.

DonateLife Agency has the same meaning as in the Australian Organ and Tissue Donation and Transplantation Authority Act 2008.

indication of life includes spontaneous movement; vocalisation or an attempt to vocalise; a purposeful or reflexive response to stimuli; eye opening or tracking; tears not explained as artefact; withdrawal from pain; over-breathing a ventilator; following a command, including blinking on request; resistance to a procedure; and any other observed or suspected sign of awareness, distress or improving neurological function.

NHRA means the National Health Reform Agreement, including the 2026–31 Addendum.

pause in procedure means the immediate cessation of all organ or tissue recovery, preservation and retrieval activity pending independent hospital reassessment.

public hospital service means a service for which a Commonwealth NHRA contribution is paid.

Part 2 — Commonwealth national donor-protection standard

6 Application of the standard

(1) The national donor-protection standard applies to:

(a) the Authority and each DonateLife Agency that receives money, staff or other support from the Commonwealth; and

(b) a public hospital service in which donation or retrieval is contemplated; and

(c) a retrieval team or contractor paid from Commonwealth donation program funds.

(2) This section does not determine death. Determination of death remains a matter for the law of the relevant State or Territory and accepted medical practice.

7 The standard

(1) Organs or tissue must not be recovered from a person for transplantation in a service to which section 6 applies unless:

(a) death has been determined by a registered medical practitioner who is independent of the DonateLife Agency; and

(b) recovery itself will not be the cause of death.

(2) If any person present reports an indication of life, a change in neurological status, or a doubt as to death or authorisation, a pause in procedure must be initiated.

(3) A person who follows commands, tracks, withdraws purposefully, over-breathes a ventilator or shows improving consciousness is not, at that time, an eligible deceased donor for a service to which section 6 applies.

8 Pause in procedure

(1) A pause may be initiated by a hospital medical practitioner or nurse, donation specialist staff, retrieval staff, the person if able, or a family member.

(2) On a pause: all recovery, preservation, incision, cannulation and perfusion must stop; the person must be returned to the treating team if in theatre; an independent hospital medical practitioner must reassess the person; the senior available next of kin must be informed; and a written pause report must be completed.

(3) Activity must not resume unless an independent hospital medical practitioner records that death has been determined or that the person is not an appropriate donor at that time, that each reported indication of life has been evaluated, and that continuing would not breach section 7.

(4) If the DonateLife Agency and the hospital disagree, the hospital determination prevails. The default is to stop.

9 Separation of roles and DCDD

(1) Until death is determined, DonateLife staff must not direct clinical care, determine death, or serve as the sole authority on donor eligibility.

(2) A paralytic or additional sedative must not be administered, in a service to which section 6 applies, for the purpose of suppressing movement so that recovery can continue, unless independently ordered by the treating team solely for the person’s own care.

(3) For donation after circulatory determination of death, recovery must not begin until an independent medical practitioner has determined death after observation of absent circulation for not less than 5 minutes, consistent with the ANZICS Statement on Death and Organ Donation as in force from time to time.

(4) An entry on the Australian Organ Donor Register is not an authority to treat a living person as dead.

Part 3 — Commonwealth funding conditions

10 Organ and Tissue Authority

(1) The CEO of the Authority must not provide money, staff or other support to a DonateLife Agency unless the Agency has given a written undertaking to comply with the national donor-protection standard.

(2) After section 57 of the Australian Organ and Tissue Donation and Transplantation Authority Act 2008, insert:

57A National donor-protection standard

The CEO must administer the national donor-protection standard in the Organ and Tissue Donation (Potential Donor Protection) Act 2026 as a policy of the Authority for the purposes of section 57.

11 National Health Reform Agreement

(1) The Minister must take all reasonable steps to ensure that the NHRA, or an addendum to it, includes a condition that a State or Territory receiving a Commonwealth contribution for a public hospital service in which donation or retrieval is contemplated will give effect to the national donor-protection standard in that service.

(2) The Minister may treat a knowing failure by a State or Territory to give effect to that condition as a matter to be raised with the Health Ministers' Meeting and, if the Agreement so provides, as affecting the relevant safety and quality component of funding.

(3) This section does not of itself reduce an NHRA payment. It authorises the Commonwealth to attach the standard to the Agreement by addendum.

12 Reporting

(1) A DonateLife Agency must report each pause to the CEO within 24 hours.

(2) The CEO must include in the Authority's annual report a de-identified national summary of pause events, reasons, whether recovery later occurred, and whether the person survived to discharge.

(3) The Minister must table that part of the annual report in each House within 15 sitting days.

13 Whistleblowers

The Public Interest Disclosure Act 2013 applies to a disclosure about a breach of this Act in connection with Commonwealth support as if the DonateLife Agency were a Commonwealth agency to that extent. Victimisation of a person who in good faith initiates a pause is a breach of the Agency's undertaking under section 10.

14 Enforcement

(1) If the CEO reasonably believes a DonateLife Agency has breached the standard, the CEO may require a root-cause analysis, impose further conditions, or after notice suspend or end Commonwealth support.

(2) The CEO must arrange continuity of ethical donation services so far as practicable.

(3) This Act does not limit referral to Ahpra, a coroner or police.

15 Concurrent operation

This Act is not intended to exclude a State or Territory law capable of operating concurrently with it. A State or Territory law that provides equal or greater protection to a potential donor operates according to its terms.

16 Regulations

The Governor-General may make regulations prescribing a uniform pause-report form and other matters required or permitted by this Act.

Model Commonwealth Bill prepared 14 September 2026. Not introduced.

AUSTRALIAN LEGISLATIVE ETHICS COMMISSION