

26 July 2016

Deceased Organ Donation Review
Sector and Services Policy
Ministry of Health
PO Box 5013
Wellington 6145

By email: organdonation@moh.govt.nz

Increasing Rates of Deceased Organ Donation

Introduction

1. The New Zealand Law Society appreciates the opportunity to comment on the Ministry of Health's discussion document, *Increasing Rates of Deceased Organ Donation* (discussion document).

Comments

Organ Donor Register

2. The Law Society supports the general policy aims of the discussion document. Tweaking the driving licence regime is a good option for improving the recording of consent to donate organs, in the short term. The advantage of the driver's licence approach is that drivers are given the opportunity to express a willingness to donate. Improving this system has merit, providing a way for drivers to communicate their wishes to their families.
3. There are however limitations to focusing only on drivers. Besides the obvious point that it will not provide a mechanism for recording the intentions of non-drivers, a tick on a form does not necessarily enable fully informed consent to be given. The Law Society does therefore support further consideration of a register. A register would apply more broadly and provide a process for proper informed consent.
4. The Law Society made submissions on the Human Tissue Bill in 2007. That Government Bill followed the Human Tissue (Organ Donation) Amendment Bill (a Member's Bill), which was considered by select committee in 2006. Although an organ register was extensively debated at the time, the select committee did not recommend a register but included an enabling provision for an opt-in register by way of regulations at a later date. This now appears as section 76 of the Human Tissue Act 2008. It follows that the law does not need to change for such a register to be established. (This point is not identified in the discussion document.)

5. A donor registry could be linked to the informed consent provisions in the Human Tissue Act 2008. That would require the development of a system to ensure potential donors, while alive, are provided with sufficient information and choose which organs they wish to donate in which circumstances before being placed on the register, with a simple system to record changes of mind. This could be linked with NHI numbers so that it is easily accessed (just as a system of advance directives – advance refusals of treatment while a person is alive – could also be linked and easily available to clinicians). There should be provision of information for people on the register to share with families so they are aware of donors’ views. Families could still override decisions, as clinicians are unlikely to be willing to remove organs in the face of family refusal. This hierarchy of consent and objection is set out in the Human Tissue Act 2008.

Ethical Guidance

7. The Law Society supports the formation of a stand-alone organ donation and transplant ethics committee (as per the UK model), together with a clinical governance framework for clinicians. That committee should develop policies on deceased organ donation, since case-by-case considerations may be impractical in light of time constraints. However, the ethics committee could be available on a national “hotline” for clinicians as an advisory body so that clinicians can access advice, where appropriate.
8. One obstacle to better rates of deceased organ donation in New Zealand is the country’s small population and geographical spread. There are very few tertiary hospitals where organ donation can take place at the time of death or shortly afterwards. The Law Society agrees with the proposal for a national strategy and coordinating body. Links between Emergency Departments and Intensive Care Units (ICU) should be developed to enable prospective donors to be assessed and ventilated. This would require sufficient ICU resources to avoid any suggestion that people with a chance of recovery are missing out on that chance.

Cultural considerations

6. The discussion document makes some reference to cultural values. The Law Society agrees that there is a need to engage with Māori and minority groups as they may have fewer options for accessing organs. There should be a culturally appropriate engagement with Māori, including the development of informed consent processes that are in accord with tikanga Māori.

Further consultation required on DCD

9. The Law Society considers that Donation after Circulatory Death (DCD) should not be introduced in New Zealand without thorough public consultation. The notion of retrieving organs from a donor who is not brain dead will be offensive to some cultures and religions. It could lead to a similar approach being adopted in respect of other terminally ill people. Public education is important and needs to be led from a government agency or body.

Conclusion

10. This submission has been prepared with the assistance of the Law Society's Health Law Committee. If you wish to discuss it further, please do not hesitate to contact the convenor, Adam Lewis, via the committee secretary, Jo Holland at jo.holland@lawsociety.org.nz / (04) 463 2967.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Tiana Epati', written in a cursive style.

Tiana Epati
Vice President