



INTERNATIONAL COALITION TO  
**END TRANSPLANT  
ABUSE IN CHINA**

## **Submission**

Australian Law Reform Commission

Review of Human Tissue Laws (2025)

**ETAC Australia**

**International Coalition to End Transplant Abuse in China**

[endtransplantabuse.org](http://endtransplantabuse.org)

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## ETAC Australia

1. The International Coalition to End Transplant Abuse in China (**ETAC**) is an independent, non-partisan organisation that is not aligned with any political party, religious or spiritual group, government or any other national or international institution. Our members are from a range of backgrounds, belief systems, religions and ethnicities. We share a common commitment to supporting human rights and ending the heinous crime of forced organ harvesting in the People's Republic of China (**China**), and all associated crimes including torture and other inhuman or degrading treatment or punishment.
2. Forced organ harvesting in China is the systematic, forced and state-sanctioned removal of organs from prisoners, including prisoners of conscience, without the person's consent. Forced organ harvesting is a form of organ trafficking.
3. The ETAC Australian Committee (**ETAC Australia**) was formed in 2016 in response to serious human rights violations in China associated with forced organ harvesting. ETAC Australia comprises lawyers, academics, ethicists, medical professionals and human rights advocates, and is the Australian Committee of the International Coalition to End Transplant Abuse in China (**ETAC**).
4. ETAC provides leadership and expertise on the issue of forced organ harvesting, and promotes and protects human rights by:
  - Undertaking, publishing and disseminating research regarding forced organ harvesting in China;
  - Calling for greater transparency and scrutiny of the transplantation system in China;
  - Promoting public debate regarding human tissue and organ trafficking laws and policy;
  - Raising public awareness regarding the importance of ending the detainment, torture and forced organ harvesting of prisoners of conscience in China;
  - Advocating for actions to reduce and avoid international complicity in China's violations of transplant ethics and human rights law; and
  - Seeking justice for the victims of forced organ harvesting and their families, and demanding accountability for the perpetrators.
5. ETAC Australia provides leadership and expertise on the issue of forced organ harvesting, and promotes and protects human rights by:
  - Advocating for law reform of organ trafficking laws in Australia;
  - Raising awareness of forced organ harvesting as it relates to Australians;
  - Promoting education to prevent and eradicate organ trafficking in Australia;
  - Participating in public inquiries on organ trafficking laws in Australia;
  - Making submissions on organ trafficking laws in Australia;
  - Participating in public inquiries on modern slavery laws in Australia;

- Making submissions on modern slavery laws in Australia; and
- Advocating for actions to prevent, reduce and avoid complicity in China's violations of transplant ethics and human rights laws.

6. The ETAC Australian Committee members can be viewed [here](#). We note that Professor Ian Kerridge has abstained from any involvement in the preparation, drafting and review of this submission.

7. Distinguished Professor Wendy Rogers, FRACGP, PhD and Madeleine Bridgett, PGDL, BPTC, MSW, BSW, are the authors of this submission.

## **Review of Human Tissue Laws**

8. ETAC welcomes the Review of Human Tissue Laws (2025) (Review).
9. ETAC has been actively engaged in advocacy and law reform regarding human tissue laws at both the Commonwealth and State levels for many years, especially as they relate to organ trafficking including trading in tissue.
10. Despite the advocacy work we have undertaken over the years, we have seen little change in the laws. Respectfully, the Australian Government has been slow to implement effective laws to deter, prevent and eradicate organ trafficking in Australia. Further, the current laws are not in keeping with international laws on organ trafficking. The nation is lagging behind other countries who are making excellent progress with such law reform as we discuss further below.
11. Whilst Australia does have human tissue and organ trafficking laws, much more is needed to deter, prevent and eradicate organ trafficking. In our view, the current laws are not adequate in safeguarding our nation from some of the most gregarious and heinous crimes associated with organ trafficking, including serious human rights violations. As will be evident from this submission, we are of the strong view that the current trading in tissue and organ trafficking laws are no longer fit for purpose. Further, they do not reflect internationally accepted laws on organ trafficking, including trading in tissue, and there are serious lacunas in the law both with respect to human tissue laws and organ trafficking laws.
12. ETAC therefore commends the Australian Law Reform Commission for undertaking this timely and important Review.
13. In our respectful submission, this Review should take all measures, within its Terms of Reference, to ensure that Australia's organ trafficking laws are effective, on par with international laws, and are fit for purpose. Further, any recommendations made by the Review should ensure that Australians and businesses are not associated with, or complicit in, organ trafficking related offences that occur both in Australia and overseas.
14. For the reasons submitted below, ETAC are of the view that more can be done to strengthen Australia's organ trafficking laws and to ensure Australians are not participating in, or complicit in, organ trafficking both domestically and internationally. We are also of the view that making recommendations that will strengthen Australia's human tissue and organ trafficking laws falls squarely within the Review's Terms of Reference.

## **Priority Reform Areas - Issues Paper**

15. This submission will focus on the Review's priority reform area of "advertising and trade in human tissue". This priority crosses over with other priority areas as will be evident from this submission,

however given ETAC’s expertise on human tissue and organ trafficking laws, the focus of this submission will be on the much-needed law reform of Australia’s human tissue and organ trafficking laws.

## Terminology

16. ETAC notes that the term “transplant tourism” is used in the Issues Paper. This is not a universally accepted term to describe organ trafficking where an individual travels overseas to have an unlawful organ transplant. We raise this at the outset of this submission and submit that if the term is to be used in the Review’s final report, that the term be adequately defined to ensure it refers to unlawful and unethical organ transplants which occur overseas.

17. The Australian Government’s Smart Traveller website provides the following definition:

‘Transplant tourism’ is a term sometimes used when you go to another country and pay for an organ transplant.

18. In our view, this is not an adequate definition.

19. The “concept of transplant tourism is confusing and vague.”<sup>1</sup> It is unclear what conduct is covered by the term. Does it cover paying for an organ domestically where someone shops around for an organ, or does it only cover conduct where someone leaves their place of residence and goes overseas and purchases an organ unlawfully? Does it cover all forms of trafficking in human organs such as black-market organ trafficking, state-sanctioned organ trafficking, exploitative organ trafficking?

20. The term has the potential to create confusion unless it is adequately defined.

21. In our view the better, and the more internationally accepted terms when referring to organ trafficking are “human trafficking for the purposes of organ removal” and “trafficking in human organs”.

22. The term “trading in tissue” is also universally acceptable and appropriate to use, however it too must be well defined to ensure that the unlawful aspect of the term is evident, noting there are lawful exceptions to trading in tissue. We note that trading in tissue can be a form of organ trafficking.

23. ETAC is not opposed to the use of the term “transplant tourism” as a lay person can relate to the term more easily than organ trafficking, however we are the view that it should be clearly and

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<sup>1</sup> Broumand, B. and Saidi, R F. New Definition of Transplant Tourism. *International Journal of Organ Transplant*, 2017 Feb 1;8(1):49–51, <https://pmc.ncbi.nlm.nih.gov/articles/PMC5347406/>.

properly defined as it can be confusing, vague, and potentially can capture all sort of conduct including lawful, unlawful, ethical, or unethical organ transplants. As has been stated:

Transplant tourism involves travel outside one's country of residence, with the aim of procuring organ, predominantly kidney, liver or corneal, transplantation services. Legal transplant tourism may legitimately involve emotionally or biologically related individuals, one or both of whom have crossed international borders to receive an organ transplant in a country with developed or more accessible transplantation services. Some neighbouring countries, such as the Republic of Ireland and the United Kingdom, operate official bilateral organ sharing programs. Such cooperative agreements are not considered to constitute transplant tourism. According to the 2008 Declaration of Istanbul, which has been recently updated, travel for transplantation can be regarded as a form of transplant tourism if it involves organ trafficking and/or commercialised transplantation activities, or if the country's capacity to fulfil its own citizens' transplant requirements is undermined as a result. Models of transplant tourism include travel of either the donor or recipient to the other person's country, or movement of both donor and recipient from the same or two different countries to a transplant centre based in another country.<sup>2</sup>

24. We raise the issue of terminology at the outset of this Review for consideration.

### **The current issue in Australia**

25. In Australia, according to the Australian Government's Organ and Tissue Authority, there are currently around 1,800 Australians on a waitlist for a transplant and around 14,000 additional people on dialysis – many of whom could benefit from a kidney transplant.<sup>3</sup>
26. Whilst organ donations increased by 13% in 2023 (513 deceased organ donors and 253 living kidney organ), there still remains a shortage of donors compared with those requiring a transplant.
27. The lack of supply of organs in Australia results in Australians seeking to travel overseas for an organ transplant.
28. However, “there is no systematic registration of Australian patients who have received a transplant overseas and no specific mechanism for collecting data on such patients”<sup>4</sup>, as we discuss further below.

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<sup>2</sup> Flaherty, T., Nasir, N., Gormley, C., Pandey, S. Transplant Tourism and Organ Trafficking: Current Practices, Controversies and Solutions. *International travel of Medicine and Global Health*, 2021 Sep;9(3):102-106. Footnotes omitted.

[https://www.ijtmgh.com/article\\_132577\\_6f0fdaa85cf4799ece63a1ff8b68c5b.pdf](https://www.ijtmgh.com/article_132577_6f0fdaa85cf4799ece63a1ff8b68c5b.pdf).

<sup>3</sup> Organ and Tissue Authority, Australian Government, <https://www.donatelife.gov.au/all-about-donation/statistics-in-australia>. Accessed 2 July 2025.

<sup>4</sup> Smith, G., Gujari, D., Russell, O., Palmer, L., Toews, M., Wong, G., Lim, W., McDonald, S., Clayton, P., Martin, D., and Coates, P. T. International travel by Australians for overseas transplantation. *Medical Journal of Australia*, 2019; 211 (10): 460-460, <https://www.mja.com.au/journal/2019/211/10/international-travel-australians-overseas-transplantation>.

29. Given Australia's geographical location in the Asia-Pacific region where organ trafficking occurs, the long waiting lists, and the urgent and pressing need for an organ transplant for so many Australians, travelling overseas for the transplant is not only an attractive option, it can potentially save someone's life. With that comes a sense of urgency and desperation for the person needing the transplant and their family.
30. Australians are therefore particularly vulnerable when travelling overseas for an organ transplant. As such the individual may not make all the necessary inquiries about the provenance and procuring of the organ to ensure the organ has been sourced ethically and legally, or make the necessary inquiries about the organ transplant surgery and how it will be undertaken which can later result in serious medical complications and sometimes death.
31. Thus, having a transplant overseas raises serious ethical and legal issues for Australians. Not only for the individual and their family, but also for medical and other health professionals working directly or indirectly with the individual, and also for businesses which are directly or indirectly associated with the organ transplant industry.
32. In the Asia-Pacific region unethical and unlawful organ transplants occur in various forms ranging from black market transplants to state-sanctioned forced organ harvesting from prisoners of conscience, primarily from practitioners of the Buddhist qigong practice of Falun Gong, and Muslim Uyghurs in China. These unethical and unlawful organ transplants often result in serious human rights violations and heinous crimes.
33. Currently and concerningly, Australia's organ trafficking laws do not capture conduct involving Australians travelling overseas for organ transplants where that conduct includes the illegal activity of trafficking in human organs.
34. Transplant-related crimes and human rights abuses arise when organs are obtained by exploitation, coercion and/or by force. Individuals and organisations risk becoming complicit in these crimes and in violations of human rights. Such complicity can extend beyond individual transplants to international clinical and research collaborations between medical institutions and transplant professionals.
35. In 2022 the Global Rights Compliance issued the world's first Legal Advisory Report and Policy Guidance, *Do No Harm: Mitigating Human Rights Risks when Interacting with International Medical Institutions & Professionals in Transplantation Medicine*, which "explores the risks of international collaborations in transplant medicine, research and training and the hard and soft law obligations that govern those partnerships. It also highlights high risk countries such as China, and provides

practical advice for mitigating risks and outlines circumstances where disengagement may be required.”<sup>5</sup>

36. ETAC has previously raised concerns about how in 2016 the NSW Ministry of Health entered into a Memorandum of Understanding (**MOU**) with China’s Health and Family Planning Commission of Shandong, expressly affirming the parties’ “commitment to developing the workforce through staff exchange; developing training and education including ‘complex surgical procedures; developing medical research and new technologies; and developing the evidence base supporting Traditional Chinese Medicine.”<sup>6</sup>
37. The parties agreed to facilitate a “special relationship” between Qilu Hospital, Shandong University and Westmead Hospital, Sydney. Among the agreed opportunities were considerations of exchanges in surgical training in “advanced and complex surgical procedures” through clinical training in China and rotating training positions in Sydney.
38. On 7 December 2017, a press release was issued stating that Premier Gladys Berejiklian and Minister for Health Brad Hazzard had “signed a new Memorandum of Understanding between NSW Health and the Guangdong Health and Family Planning Commission while in the Chinese province of Guangdong”.<sup>7</sup>
39. Australia’s modern slavery laws attempt to address the issue of any complicity in modern slavery offences by requiring certain businesses to report on human rights risks in their businesses, however the Criminal Code does not address this issue regarding corporate liability.<sup>8</sup>

### **The lack of data collection of overseas transplants and mandatory reporting**

40. Australia does not have a comprehensive and transparent data collection repository recording the numbers of Australians travelling overseas for an organ transplant, whether it be for a lawful or unlawful organ transplant.
41. This is despite recommendations being made about data collection and a mandatory reporting scheme, in the Compassion, Not Commerce: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism report (**Compassion, Not Commerce Report**)<sup>9</sup>, as far back as 2018, following the

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<sup>5</sup> Global Rights Compliance, *Do No Harm: Mitigating Human Rights Risks when Interacting with International Medical Institutions & Professionals in Transplantation Medicine*, 2022.

<sup>6</sup> ETAC Submission No. 7 (formerly known as International Coalition to End Organ Pillaging in China - AAIC), [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/HumanOrganTrafficking/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/HumanOrganTrafficking/Submissions).

<sup>7</sup> NSW Government, Press Release, *Premier signs MOU in China*, [https://www.health.nsw.gov.au/news/Pages/20171206\\_00.aspx](https://www.health.nsw.gov.au/news/Pages/20171206_00.aspx).

<sup>8</sup> See: Article 14, Council of Europe Convention against Trafficking in Human Organs, <https://rm.coe.int/16806dca3a>.

<sup>9</sup> Compassion, Not Commerce: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism Report, <https://www.aph.gov.au/>

Federal Government's *Inquiry into Human Organ Trafficking and Organ Transplant Tourism (Inquiry)*.<sup>10</sup>

42. The failure to collect this data places health and legal services in Australia in a difficult position as they are unable to fully understand and make sense of the nature and scope of overseas organ transplants, including the impact this may have on the organ donation system. There is subsequently no visibility of the issue, at all.
43. Those who travel overseas are in essence taking themselves off the waiting list in Australia, although it is unknown if they actually do take themselves off the waiting list, and when they do so. Then when returning to Australia, having had an organ transplant overseas, the person relies on the Australian healthcare system to receive the aftercare they require, to which they are entitled.
44. In circumstances where the organ may have been sourced unethically or unlawfully, it is unlikely the person returns to Australia with a comprehensive discharge summary for the treating teams in Australia. There are numerous and various serious medical complications that can occur from an overseas organ transplant, and there is evidence that there are elevated risks with overseas transplants including "risk of viral or bacterial infection, graft failure and death."<sup>11</sup> There are also serious risks to the person from whom the organ has been sourced, including subsequent death from medical complications and instant death for those who are killed on demand for their organs.<sup>12</sup>
45. The Australian healthcare system and the organ donation system bear the burden in responding to such complications, both financially and in terms of resources. In addition to this healthcare cost, travellers who return with grafts that fail may be treated as a priority for re-transplant, while those who remain on the waiting list in Australia, patiently waiting for a transplant, require medical interventions and treatment until an organ becomes available. Australia's health resources are subsequently being stretched to accommodate both medical situations.
46. Clearly a person is within their right to travel overseas and have an organ transplant. However, it is not permissible for someone to have an organ transplant where the organ has either been paid for or has been sourced unlawfully or unethically.
47. Currently, Australia has no data, and subsequently no visibility, on how, when, where and why overseas transplants occur. This information is necessary to inform legal, health and social policy on organ donations in Australia.

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[/media/02\\_Parliamentary\\_Business/24\\_Committees/244\\_Joint\\_Committees/JFADT/Foreign\\_Affairs\\_Defence\\_and\\_Trade/Organ\\_Harvesting\\_Inquiry/Full\\_report.pdf](https://media/02_Parliamentary_Business/24_Committees/244_Joint_Committees/JFADT/Foreign_Affairs_Defence_and_Trade/Organ_Harvesting_Inquiry/Full_report.pdf).

<sup>10</sup> Inquiry into Human Organ Trafficking and Organ Transplant Tourism,

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/HumanOrganTrafficking](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/HumanOrganTrafficking).

<sup>11</sup> See: Paragraphs 2.45, and 2.87-2.94 including the footnotes of the Compassion, Not Commerce Report.

<sup>12</sup> See: Paragraphs 2.33-2.58 and 2.95-2.102 including the footnotes of the Compassion, Not Commerce Report.

48. Given the systemic costs and effects of overseas organ transplants, they can be understood as a public health issue. A mandatory reporting scheme is a simple way of addressing the lack of data on overseas transplants and would be in keeping with how Australia obtains information about other public health matters such as notifiable diseases, see: Schedule 2 to the *Public Health Act 2010* (NSW).
49. Australia's human tissue laws can be amended to provide for mandatory reporting of all overseas organ transplants and for a data collection repository. Alternatively, public health legislation can be amended for the same purpose. Ideally, this is best done nationally, not by states or territories, so that there the data can be easily collated, reviewed and analysed.

## Background to China's illegal organ transplant industry

50. Before turning to what law reform is needed in Australia, we wish to provide some background information on China's illegal organ transplant industry and a brief overview of the relevant human rights issues associated with forced organ harvesting. We do so as we understand that this is a niche area of organ trafficking and given Australians travel to China for organ transplants it is important to understand the issue to ensure adequate and effective laws are implemented.
51. The Doctors Against Forced Organ Harvesting state that the "harvesting of organs from executed prisoners in China started in 1984 when a law was implemented in China that allowed the practice. The public first became aware of this practice following the testimony of Dr. Wang Guoqi to the U.S. Congress in 2001."<sup>13</sup>
52. In 2005, after longstanding denials, it was officially acknowledged that organs were harvested from executed prisoners in China.<sup>14</sup> Worldwide, organ harvesting from executed prisoners is banned as unethical.<sup>15</sup>
53. Before China introduced a pilot voluntary organ donation program in 2010, over 90% of organs transplanted were procured from prisoners, many imprisoned because of their religious and spiritual beliefs, and many denied the right to a fair trial and killed on demand for their organs.<sup>16</sup>

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<sup>13</sup> Doctors Against Forced Organ Harvesting, <https://dafoh.org/forced-organ-harvesting/>.

<sup>14</sup> Huang J. 'Ethical and legislative perspectives on liver transplantation in the People's Republic of China' in *Liver Transplantation* 2007; 13: 193–196; 人民日报 (People's Daily), "收回死刑核准權：我國死刑數量必會逐步減少" ("As the [Supreme People's Court] gets back the authority to review death penalty cases: our country's death penalty figures will certainly come down gradually"), 1 November 2006, <http://www.people.com.cn/>.

<sup>15</sup> Šućur, A and Gajović, S. Nobel Peace Prize nomination for Doctors Against Forced Organ Harvesting (DAFOH) – a recognition of upholding ethical practices in medicine. *Croatian Medical Journal*, 2016 Jun; 57(3): 219–222, <https://pmc.ncbi.nlm.nih.gov/articles/PMC4937230/>.

<sup>16</sup> Norbert, W.P., Caplan, A., Shapiro, M.E., Els, C., Allison, K.C. and Huige, Li. 2017. Human rights violations in organ procurement practice in China. *BMC Medical Ethics* 18, 11 (2017), <https://bmcmedethics.biomedcentral.com/articles/10.1186/s12910-017-0169-x>.

54. China has claimed that the organs from executed prisoners were from prisoners who had been tried, found guilty, and executed according to Chinese law. China has not produced any evidence to support such assertions.

55. It is estimated there were thousands of people executed in China in 2015.<sup>17</sup> The “true extent of the use of the death penalty in China is unknown as data is treated as a state secret.”<sup>18</sup> A recent report by Amnesty International states that “as of 2017, it appears that China is still sourcing organs from prisoners on death row”.<sup>19</sup> Despite Chinese declarations to the world in 2014 that the country would cease using organs harvested from prisoners<sup>20</sup>, they have not made available any robust data as to how they currently supply organs for the extraordinarily large numbers of transplants performed each year.<sup>21</sup> Nor has China provided any evidence that it adheres to international standards such as the Declaration of Istanbul<sup>22</sup>, and the WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation.<sup>23</sup>

56. Evidence and figures from primary Chinese sources reveal the nature and scale of these crimes, which act as a means of supplying China’s vast, lucrative organ transplantation industry. On 22 June 2016, three highly respected independent investigators published the 680-page report *Bloody Harvest/ The Slaughter: An Update*, illustrating a state-driven industry that transplants far more organs—by an order of magnitude—than can be accounted for by official sources, which China claims are all voluntary donors. The report concludes that 60,000 to 100,000 transplants per year are currently taking place in China - as opposed to the official Chinese claim of 10,000 per year.<sup>24</sup>

## Human rights issues in China

57. Australia has ratified key international human rights treaties, including the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*. The treatment of those detained in internment camps, including forced organ harvesting offences, are serious breaches of a number of fundamental human rights including the right to life (Article 6, ICCPR); right to a fair trial (Article 14, ICCPR); freedom from cruel, inhuman or degrading treatment of punishment, in particular, no one shall be subjected without his free consent to medical or scientific experimentation (article 7, ICCPR); right of all persons deprived of their liberty

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<sup>17</sup> Amnesty’s Report “China’s Deadly Secrets”. 2017. <https://www.amnesty.org/en/documents/asa17/5849/2017/en/>; Amnesty International Global Figures 2015, <https://www.amnesty.org/en/latest/news/2016/04/death-penalty-2015-facts-and-figures/>.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Delmonico, F, Chapman, J, Fung J, Danovitch, G, Levin A, Capron A, Busuttil R, O’Connell P. Open Letter of the People’s Republic of China: China’s fights against corruption in organ transplantation. *Transplantation (Official Journal of The Transplantation Society)*. 2014; 97(8):795-6,

[https://journals.lww.com/transplantjournal/fulltext/2014/04270/open\\_letter\\_to\\_xi\\_jinping\\_president\\_of\\_the\\_3.aspx](https://journals.lww.com/transplantjournal/fulltext/2014/04270/open_letter_to_xi_jinping_president_of_the_3.aspx).

<sup>21</sup> Kilgour, D., Gutmann, D. and Matas, D. 2016. *Bloody Harvest/The Slaughter: An Update* (available from <https://endtransplantabuse.org/an-update/>)

<sup>22</sup> Declaration of Istanbul, <http://www.declarationofistanbul.org/>.

<sup>23</sup> WHO Guidelines: <http://www.who.int/transplantation/en/>.

<sup>24</sup> Kilgour, D., Gutmann, D. and Matas, D. 2016. *Bloody Harvest/The Slaughter: An Update* (available from <https://endtransplantabuse.org/an-update/>)

to be treated with humanity and with respect for the inherent dignity of the human person (article 10, ICCPR); and right to the enjoyment of the highest attainable standard of physical and mental health (article 12, ICESCR).

58. China is a one-party state led by the Chinese Community Party (**CCP**). The country is officially divided into twenty-three provinces, five autonomous regions and four direct-controlled municipalities, and the special administrative regions of Hong Kong and Macau.
59. The Xinjiang Uyghur Autonomous Region, located in the northwest of China, is one of the five autonomous regions located in the northwest of the China and is home to the Turkic Uyghur, Kazakhs and Kyrgyz, the Han, Tibetans, Hui, Tajiks, Mongols, Russians and Xibe.<sup>25</sup> It is a vast region with an expansive history. Each autonomous region is associated with an ethnic minority group.
60. Falun Gong practitioners, a minority group in China, are primarily Han Chinese, but are also of other minority ethnicities.
61. Minority groups in China are detained in what we refer to as internment camps. These camps are often referred to in China as “re-education camps”. They are nothing short of being internment camps intended to punish those who do not follow the indoctrination of the CCP. The ultimate intended aim of these camps is essentially religious, spiritual and ethnic cleansing. At the minimum they are forced labour camps with the same intended aim.
62. In China, “re-education through labor” (**RTL**) is part of the *laogai* system. The Laogai Research Foundation estimates that the *laogai* system currently comprises over one thousand detention facilities, incarcerating millions of individuals.<sup>26</sup> The Foundation estimates that anywhere between 40 to 50 million Chinese have suffered in the *laogai* system since the founding of the People’s Republic of China.
63. In 2017 ETAC made submissions to the Inquiry and subsequently gave evidence at the public hearings.<sup>27</sup> ETAC raised then the deeply concerning issue of minority groups being detained in camps. Heinous crimes and serious human rights abuses are committed in these internment camps, including persecution, torture, rape, slavery, forced organ harvesting and extrajudicial killings. In 2018 the United Nations voiced alarm over these camps stating that the camps resembled “massive internment camps”.<sup>28</sup>

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<sup>25</sup> BBC News, *Regions and territories : Xinjiang*, [https://web.archive.org/web/20110520054144/http://news.bbc.co.uk/2/hi/asia-pacific/country\\_profiles/8152132.stm](https://web.archive.org/web/20110520054144/http://news.bbc.co.uk/2/hi/asia-pacific/country_profiles/8152132.stm).

<sup>26</sup> Laogai Research Foundation, <https://laogairesearch.org/laogai-system/>.

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[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/HumanOrganTrafficking/Public\\_Hearings](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/HumanOrganTrafficking/Public_Hearings).

<sup>28</sup> <https://www.ohchr.org/en/press-releases/2018/08/committee-elimination-racial-discrimination-reviews-report-china>.

64. In March 2020, after twelve months of detailed scrutiny of all available evidence, the Independent Tribunal into Forced Organ Harvesting Against Prisoners of Conscience in China (**China Tribunal**)<sup>29</sup> unanimously and beyond reasonable doubt, concluded that:

“Forced organ harvesting has been committed for years throughout China on a significant scale and ... Falun Gong practitioners have been one – and probably the main – source of organ supply.”

“In regard to the Uyghurs the Tribunal had evidence of medical testing on a scale that could allow them, amongst other uses, to become an ‘organ bank’.”

“Commission of Crimes Against Humanity against the Falun Gong and Uyghurs has been proved beyond reasonable doubt...”

“Governments and any who interact in any substantial way with the PRC [People’s Republic of China] ... should now recognise that they are, to the extent revealed above, interacting with a criminal state.”<sup>30</sup>

65. In 2021, twelve United Nations Special Rapporteurs and human rights experts sent an official correspondence to the Chinese Government regarding forced organ harvesting.<sup>31</sup> The UN experts called on China to “promptly respond to the allegations of ‘organ harvesting’ and to allow independent monitoring by international human rights mechanisms.” An urgent press statement was also released.<sup>32</sup>

66. In ETAC’s 2018 submission<sup>33</sup>, we recommended that the Australian Government work with the international community to hold China accountable for its past and present human rights violations of prisoners of conscience by seeking clear and compelling evidence that forced organ harvesting has ceased. ETAC reiterates this recommendation in the context of this Review.

67. Adequate and effective organ trafficking laws in Australia will play a significant role in ensuring Australians are not engaging in unlawful conduct when travelling overseas for an organ transplant. Such laws will also ensure that organ trafficking is prevented and ultimately eradicated.

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<sup>29</sup> <https://chinatribunal.com/>.

<sup>30</sup> The full judgement of the China Tribunal can be found here: [https://chinatribunal.com/wp-content/uploads/2020/03/ChinaTribunal\\_JUDGMENT\\_1stMarch\\_2020.pdf](https://chinatribunal.com/wp-content/uploads/2020/03/ChinaTribunal_JUDGMENT_1stMarch_2020.pdf).

<sup>31</sup> See: <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=26382>.

<sup>32</sup> United Nations Press Statement, 14 June 2021, *China: UN human rights experts alarmed by ‘organ harvesting’ allegations*, <https://www.ohchr.org/en/press-releases/2021/06/china-un-human-rights-experts-alarmed-organ-harvesting-allegations?LangID=E&NewsID=27167>.

<sup>33</sup> Submission No. 7, International Coalition to End Organ Pillaging in China – AAIC, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/HumanOrganTrafficking/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/HumanOrganTrafficking/Submissions).

## The need for law reform

68. It is incumbent on Australian governments to develop laws to deter, prevent and eradicate organ trafficking and to develop data collection mechanisms based on a mandatory reporting scheme to enable clear visibility of overseas organ transplants and the issues which arise for Australians and the nation from such transplants, including its healthcare, legal and organ donation systems.
69. Internationally, recent legislation has been passed to address forced organ harvesting in China. These laws can act as model laws for Australia and should at least form part of the essential reading and research undertaken in this Review.
70. **Appendix A** provides an overview of recent relevant international laws and reports. Other relevant international laws can be found <https://endtransplantabuse.org/legislation/>.
71. Of particular relevance, s 240.1 of the Canadian *Criminal Code* (R.S.C., 1985, c. C-46) criminalises trafficking in human organs. Section 240.1(1) prohibits the removal of organs without informed consent. Section 240.1(2) prohibits the purchase and sale of organs.
72. Section s 7(4.2) of the *Criminal Code* (Canada) prohibits a Canadian citizen or permanent resident from committing an organ trafficking offence outside of Canada under s 240.1 of the Code.
73. Section 35(1)(c.1) of the *Immigration and Refugee Protection Act* (S.C. 2001, c. 27) (Canada) provides that a permanent resident or foreign national is inadmissible to Canada if the designated Minister is of the opinion that they have engaged in conduct which violates section 240.1 of the *Criminal Code* (Canada).
74. Section 170 of the *Health Care Act 2022* (UK) prohibits commercial dealings in organs for transplantations committed outside the UK. The amendment strengthens UK laws regarding organ trafficking giving extraterritorial effect to s 32 of the *Human Tissue Act 2004* (UK). Prior to this amendment, it was already illegal to commercially trade in organs within the UK. This new law means British citizens and British nationals will no longer be legally permitted to travel outside of the UK to purchase an organ. It also criminalises the act of brokering for the sale of organs in China or other countries.
75. ETAC submits that Australia's organ trafficking laws are not in keeping with organ trafficking laws internationally and further submits that consideration of the laws in various countries should form part of this Review to inform the type of law reform that is required in Australia.

## Different types of organ trafficking offences

76. The term 'organ trafficking' is used internationally to describe different types of conduct in different contexts.

77. Trafficking in persons for the purpose of organ removal and trafficking in human organs are two distinct crimes.

78. A key difference between the two types of organ trafficking crimes is that the “trafficked objects” are different. As was stated in the report by the Council of Europe and United Nations, *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*, at page 93:

The “trafficked objects” are different: in one case the “organs, tissues and cells” and in the other case the “person him/herself” who is trafficked for the specific purpose of removing his/her organs. To express this idea in legal terms, it could be said that trafficking in organs, tissues and cells differs from trafficking in human beings for organ removal in one of the constituent elements of the crime – the object of the criminal offence. In the former case, the object of the crime is the organs, tissues and cells, while in the latter case it is the trafficked person.<sup>34</sup>

79. The distinction between the two crimes is legally significant. This has been recognised in international law.

80. The United Nations Office for Drugs and Crime (**UNODC**) expert group has recommended that:

while there is a clear need to distinguish both crimes (to provide adequate criminal justice responses), there is also a need to promote the legal instruments against both trafficking in human organs and trafficking in persons for organ removal, to have a more effective, comprehensive legal framework against illegal transplant activities.<sup>35</sup>

81. In international law, trafficking in persons for the purpose of organ removal is dealt with by the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (**Palermo Protocol**)<sup>36</sup>, a supplement to the United Nations Convention against Transnational Organized Crime. The Palermo Protocol does not provide for offences relating to trafficking in human organs.

82. Australia has international obligations under the Palermo Protocol having ratified the protocol on 14 September 2005.

83. The Council of Europe Convention against Trafficking in Human Organs (**Trafficking in Human Organs Convention**)<sup>37</sup> deals with trafficking in human organs. The Convention was opened for

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<sup>34</sup> <https://rm.coe.int/16805ad1bb>.

<sup>35</sup> UNODC, *Trafficking in persons for the purpose of organ removal: Assessment Toolkit*, p. 19, <https://rm.coe.int/16805ad1bb>.

<sup>36</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>.

<sup>37</sup> Council of Europe Convention against Trafficking in Human Organs, <https://rm.coe.int/16806dca3a>.

signature and specifically provides for the necessary legal protections associated with the distinct crime of trafficking in human organs.

84. The Compassion, Not Commerce Report recommended that the Australian Government sign and ratify the Convention (see: Recommendation 6). This is yet to be done.
85. ETAC recommends that the Review consider making a recommendation in its final report that the Australian Government sign and ratify the Convention and that the Criminal Code be amended to include the offence of trafficking of human organs as provided for in the Convention.

### **Australia's organ trafficking laws**

86. In Australia, organ trafficking is a crime and a modern slavery offence.
87. Organ trafficking is a modern slavery offence pursuant to s 4 of the *Modern Slavery Act 2018* (Cth) and s 5 of the *Modern Slavery Act 2018* (NSW).
88. The criminal offences of organ trafficking are found in the Schedule to the *Criminal Code Act 1995* (**Criminal Code**) at Subdivision BA, subsections 271.7A-271.7E.
89. Trafficking in persons for the purpose of organ removal has been criminalised in the Criminal Code since 2005. In 2013, the Criminal Code was amended by introducing four standalone organ trafficking offences.
90. Since the introduction of these offences in 2005, there has not been a single prosecution in Australia. Further, for the period of 2017 to 2022, there has not been one report of organ trafficking made to the Australian Federal Police.<sup>38</sup>
91. ETAC is of the view that one of the main reasons for the lack of prosecutions is that the current laws are inadequate and do not capture conduct where Australians have an organ transplant overseas involving a commercial transaction, and where Australians travel overseas and procure an organ unlawfully or unethically before they have an organ transplant. These are forms of trafficking in human organs.
92. Concerningly, the *Criminal Code* does not include an offence for trafficking of human organs.
93. The Criminal Code only provides for the offence of 'trafficking in persons for the removal of organs'. This creates a lacuna in Australia's organ trafficking laws.

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<sup>38</sup> [https://consultations.ag.gov.au/crime/modern-slavery-offences/user\\_uploads/targeted-review-of-modern-slavery-offences-in-divisions-270-and-271-of-the-criminal-code-act-1995.pdf](https://consultations.ag.gov.au/crime/modern-slavery-offences/user_uploads/targeted-review-of-modern-slavery-offences-in-divisions-270-and-271-of-the-criminal-code-act-1995.pdf), p.22.

94. The Criminal Code provisions largely relate to offences of trafficking in persons for the removal of organs, save for s 271.7A of the Criminal Code which prohibits the removal of organs.

95. Section 271.7A of the Criminal Code provides that

The removal of a person's organ is contrary to this Subdivision if:

- (a) the removal, or entering into an agreement for the removal, would be contrary to the law of the State or Territory where it is, or is to be, carried out; or
- (b) neither the victim, nor the victim's guardian, consents to the removal, and it would not meet a medical or therapeutic need of the victim.

96. While s 271.7A prohibits the removal, or entering into an agreement for the removal, of a person's organ without their consent, the removal of the organ has to be unlawful in the country where the removal is to be carried out for this provision to have force. Section 271.7A does not have extraterritorial application under the Criminal Code.

97. The Commonwealth organ trafficking laws are silent on the fundamental trafficking in human organs offences as contained in the Convention, including but to limited to:

- a. "where, in exchange for the removal of organs, the living donor, or a third party, has been offered or has received a financial gain or comparable advantage" (Article 4(1)(b) of the Convention);
- b. "where in exchange for the removal of organs from a deceased donor, a third party has been offered or has received a financial gain or comparable advantage" (Article 4(1)(c) of the Convention);
- c. "the solicitation and recruitment of an organ donor or a recipient, where carried out for financial gain or comparable advantage for the person soliciting or recruiting, or for a third party" (Article 7(1) of the Convention); and
- d. "the promising, offering or giving by any person, directly or indirectly, of any undue advantage to healthcare professionals, its public officials or persons who direct or work for private sector entities, in any capacity, with a view to having a removal or implantation of a human organ..." (Article 7(3) of the Convention); and
- e. "the request or receipt by healthcare professionals, its public officials or persons who direct or work for private sector entities, in any capacity, of any undue advantage with a view to performing or facilitating the performance of a removal or implantation of a human organ..." (Article 7(4) of the Convention).

98. Unlike the slavery and slavery-like offences under Division 270 of the Criminal Code, the current organ trafficking offences require the victim to be moved across or within Australia's borders. This does not reflect typical conduct whereby Australians go overseas for an organ transplant and engage in illegal activity. This type of organ trafficking is the crime of 'trafficking in human organs'.

99. Trafficking in human organs violates human dignity and the right to life and constitutes a serious threat to public health (see: Preamble, Convention against Trafficking in Human Organs).

100. Informed consent and freely donating organs without a financial transaction, or some other form of contractual consideration for the organ, are the fundamental principles underpinning lawful and ethical donor transplants (see: The Declaration of Istanbul on Organ Trafficking and Transplant Tourism and Council of Europe Convention against Trafficking in Human Organs).<sup>39</sup>

101. The Compassion, Not Commerce Report recommended that "the Australian Government amend the Criminal Code Act 1995 and any other relevant legislation insofar as offences relating to organ trafficking: include trafficking in human organs, including the solicitation of a commercial organ transplant; apply to any Australian citizen, resident or body corporate; apply regardless of whether the proscribed conduct occurred either within or outside of the territory of Australia; apply regardless of the nationality or residence of the victim; and apply regardless of the existence, or lack thereof, of equivalent laws in the jurisdiction in which the offending conduct occurred."

(Recommendation 7).

102. This recommendation is yet to be implemented. In the Australian Government's response to the Compassion, Not Commerce Report this recommendation was accepted in principle, and the following relevant comments were made:

The Australian Government will explore potential legislative options to strengthen the Criminal Code offences to address this crime to capture conduct by Australians overseas that does not involve the trafficking of a person into or from Australia for the purpose of organ removal - for example, a situation where an Australian citizen trafficked a person within a foreign country for the purpose of organ removal.

Within Australia, all states and territories have legislated against the sale of organs, regardless of consent. The Australian Government will explore potential legislative options to strengthen the Criminal Code offences to capture the wilful exploitation of individuals for the purposes of organ transplantation by an Australian citizen, resident or body corporate outside of Australia.<sup>40</sup>

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<sup>39</sup> [https://www.declarationofistanbul.org/images/documents/doi\\_2008\\_English.pdf](https://www.declarationofistanbul.org/images/documents/doi_2008_English.pdf); <https://rm.coe.int/16806dca3a>.

<sup>40</sup> Australian Government Response, <https://www.ag.gov.au/sites/default/files/2022-08/australian-government-response-organ-trafficking-inquiry.pdf>, pp.12-13.

103. ETAC recommends that the Review consider making a recommendation in its final report that the Australian Government urgently amend the Criminal Code to capture conduct involving trafficking in human organs, including the solicitation of a commercial organ transplant.

### **The Attorney-General's targeted review of Divisions 270 and 271 of the Criminal Code**

104. Whilst the Attorney-General's "Targeted Review of Divisions 270 and 271 of the *Criminal Code 1995(Cth)*"<sup>41</sup>, accepted, in its 2023 report at page 75, that there are two distinct organ trafficking offences – trafficking in organs and trafficking in persons for the removal of organs – the review did not recommend creating a new offence of trafficking in organs, despite the recommendations in the Compassion, Not Commerce Report, and despite internationally accepted laws on trafficking in human organs.

105. In our view this was a lost opportunity to amend the Criminal Code. Finding 12 in the report will not remedy this lacuna in the law.

106. What is urgently required is the inclusion in Australian law of the offence of 'trafficking in human organs'. This offence should form the suite of organ trafficking laws in the Criminal Code. This will ensure that all forms of organ trafficking are offences under the Criminal Code.

107. Further, such law reform will bring Australia's laws in line with jurisdictions overseas and will act to deter, prevent and eradicate the commercial trade of organs overseas involving Australians as is evident by the insertion of trafficking in human organs in the Criminal Code of Canada in 2022.<sup>42</sup>

### **The comparative example of overseas offences in the Criminal Code**

108. The Australian Lawyers for Human Rights in their submission to the Inquiry in 2017 provide an excellent comparative analysis of child sex offences which occur outside Australia pursuant to Division 272 of the Criminal Code.<sup>43</sup>

109. These provisions ensure that Australians who commit, procure, encourage or benefit from sexual offences against children while overseas will not escape the tough penalties they would have received if the offences were committed at home.

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<sup>41</sup> Targeted Review of Divisions 270 and 271 of the *Criminal Code 1995(Cth)*, [https://consultations.ag.gov.au/crime/modern-slavery-offences/user\\_uploads/targeted-review-of-modern-slavery-offences-in-divisions-270-and-271-of-the-criminal-code-act-1995.pdf](https://consultations.ag.gov.au/crime/modern-slavery-offences/user_uploads/targeted-review-of-modern-slavery-offences-in-divisions-270-and-271-of-the-criminal-code-act-1995.pdf).

<sup>42</sup> <https://www.parl.ca/legisinfo/en/bill/44-1/s-223>; and see s240.1 of Canada's Criminal Code, <https://laws-lois.justice.gc.ca/eng/acts/c-46/FullText.html>. There are a number of international jurisdictions which have laws prohibiting their citizens or permanent residents from engaging in unlawful organ transplants overseas including the United States of America, Canada, United Kingdom, Taiwan, and Israel. The various laws in overseas jurisdictions can be found [here](#).

<sup>43</sup> Australian Lawyers for Human Rights Submission, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/HumanOrganTrafficking/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/HumanOrganTrafficking/Submissions).

110. As the ALHR submission states, “there is a very clear and urgent need for the enactment of similar extraterritorial provisions to capture the conduct of Australian citizens, residents and corporate entities who receive, procure, encourage or benefit from the overseas harvesting and transplant of trafficked organs.

111. The penalties under Division 272 differ depending on the offence committed with the most serious offences punishable by a maximum term of 25 years imprisonment and lesser offences attracting a penalty of up to 7 years imprisonment. Fines of up to \$825,000.00 may be imposed for corporate bodies.

112. It is important to note that significant elements of the child sex tourism offences created under Division 272 of the Commonwealth Criminal Code are ones of ‘absolute liability.’ This means that there are no fault elements that must be proved – it is enough that the act was committed, and there is no defence of mistake.<sup>44</sup>

113. Federal and State Police actively monitor and prosecute child sex offenders. The Australian Federal Police cooperate with other countries' law enforcement authorities to actively monitor and investigate Australian citizens, permanent residents or companies that are associated with such offences. The Australian government promotes public awareness of these offences and provides information on how to report them on its Smart Traveller website.<sup>45</sup>

114. Division 272 of the Criminal Code provides an excellent framework for the drafting of similar extraterritorial provisions to ensure that Australia’s organ trafficking laws extend criminal conduct to unlawful organ transplants that occur overseas.

115. Some of the key extraterritorial offences created within Division 272 provide a useful guide as to how similar provisions may be framed to address some of the complex challenges associated with the global back market trade in organs and the extraterritorial application of Commonwealth offences.

## Australia’s human tissue laws

116. ETAC supports having consistent trading in tissue laws in all legislation in States and Territories.

117. ETAC also supports the extraterritorial application of such laws to ensure those travelling overseas are prohibited from purchasing human tissues including organs or the solicitation of commercial organ transplants.

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<sup>44</sup> See: Section 6 and Division 272 of the *Criminal Code Act 1995* (Cth).

<sup>45</sup> See: Smart Traveller Website: <http://smartraveller.gov.au/guide/all-travellers/laws/pages/child-sex-offences.aspx>.

118. The trading in tissue offence contained in s32 of the *Human Tissue Act 1958* (NSW) provides greater legal protections compared to the current Commonwealth organ trafficking laws in terms of trafficking in human organs. The offence also has extraterritorial application.

119. Section 32 contains appropriate and adequate exemptions such as for when trading in tissue is done for therapeutic, medical or scientific purposes.

120. Section 32 is an important legislative mechanism to deter, prevent and eradicate trading in tissue.

121. Notwithstanding this, the trading in tissue laws in Australia should better reflect the laws in the Trafficking in Human Organs Convention.

122. Further, extraterritorial application is essential in capturing the unlawful conduct involving Australians travelling overseas for an organ transplant.

## **Plastination of deceased bodies**

123. ETAC raised concerns in 2018 about the Real Bodies exhibition in Australia and were the driving force in having the exhibition shut down.

124. The Open Letter to the Prime Minister, Opposition Leader, Minister for Foreign Affairs, Minister for Health and NSW Minister for Health can be read here: <https://endtransplantabuse.org/open-letter-urges-for-real-bodies-the-exhibition-to-be-closed-down/>.

125. Here are some relevant media articles:

- a. <https://www.theguardian.com/australia-news/2018/apr/25/call-to-shut-real-bodies-exhibition-over-fears-it-uses-executed-prisoners>.
- b. <https://www.smh.com.au/entertainment/art-and-design/calls-for-government-to-ban-crass-real-bodies-exhibit-20180425-p4zbix.html>.
- c. <https://www.news.com.au/finance/business/other-industries/calls-to-close-real-bodies-exhibition-over-claims-corpses-are-murdered-chinese-prisoners/news-story/6c2ce76f19f43bed726b396cbeef48f1>.
- d. <https://www.vice.com/en/article/sydney-exhibition-may-contain-the-corpses-of-prisoners-group-alleges/>.
- e. <https://theconversation.com/real-bodies-controversy-how-australian-museums-regulate-the-display-of-human-remains-95644>.

126. We were surprised to discover at the time that Australia does not have laws governing how and when human remains can enter into the country, and on what basis it would be lawful to bring human remains into the country.

127. ETAC is of the view that Australia should have laws to address this lacuna in the law. This can be done by amending the current human tissue laws to prohibit the entering of human remains into Australia unless there is clear and accurate documentation detailing the provenance of the human remains and the consent to use the human remains in the ways intended once entered into Australia. Alternatively, as border force issues are a Commonwealth responsibility, federal laws can be enacted to address the issue.

### **Principles underpinning organ trafficking laws including trading in tissue laws**

128. First and foremost a human rights framework should underpin organ trafficking laws, including trading in tissue laws.

129. The NHMRC's *Ethical guidelines for cell, tissue and organ donation and transplantation in Australia* (**Guidelines**), list 11 principles to support ethical practice in donation and transplantation in Australia. These 11 principles are based on five foundational values.

130. The values are:

- a. Respect for the dignity and autonomy of donors, recipients, and their families and communities.
- b. Promotion of the wellbeing of potential and actual donors, recipients, and their families and communities.
- c. Promotion of justice in donation and transplantation of organs and tissues.
- d. Promotion of solidarity and community reciprocity.
- e. Stewardship of the common good

131. ETAC endorses these values and recommends that any amendments to human tissue and organ trafficking laws reflect and support them.

132. The principles in the Guidelines are:

- a. **Principle 1:** Decision-making about donation and transplantation should seek out and take account of expressed preferences of donors, recipients, their families and communities, and facilitate self-determination.

- b. **Principle 2:** Decision-making about donation and transplantation should promote cultural safety, demonstrating cultural humility, critical reflection, and awareness of power dynamics.
- c. **Principle 3:** Decision-making about donation and transplantation should be free from bias or discrimination based on clinically irrelevant factors such as disability, cultural identity, or social or economic circumstances.
- d. **Principle 4:** In donation and transplantation activities, potential conflicts of interest should be avoided and, where unavoidable, should be appropriately managed.
- e. **Principle 5:** Donation and transplantation activities and associated decision making should be transparent and open to scrutiny.
- f. **Principle 6:** Donation and transplantation activities and associated decision making should protect the privacy of individuals and their families and the confidentiality of information related to donation and transplantation activities.
- g. **Principle 7:** Donation and transplantation activities should provide benefit and minimise burdens and risk of harm: where burdens or risks are unavoidable, they should be proportionate to the benefits that are anticipated.
- h. **Principle 8:** Donation and transplantation activities should promote equity in the distribution of and access to donation and transplantation of organs and tissues.
- i. **Principle 9:** Donation and transplantation activities should foster solidarity, efficiency, and sustainability, and support progress towards self-sufficiency with regional and international collaboration where necessary.
- j. **Principle 10:** Human organs, tissues and cells should not be treated as ordinary commodities that can be sold or exchanged for profit: any profits arising from the removal, processing, distribution, storage, transfer or use of donated cells, tissues or organs should be used to enhance quality, safety, sustainability, and equity in healthcare for all.
- k. **Principle 11:** Decision-making about donation and transplantation should be free from coercion, exploitation or financial incentives; this should not preclude coverage of costs associated with donation or transplantation.

133. ETAC endorses these principles. We do not note significant omissions in the ethical foundations provided in these values and principles. The principles in the Guidelines are consistent with,

although not identical to, the ethical guidance in the *WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation*.

134. However, we would like to see stronger support for the principles in Australia's human tissue and organ trafficking laws.

135. We note that the Guidelines are silent on several of the principles in the Declaration of Istanbul, including:

- a. **Principle 3:** Trafficking in human organs and trafficking in persons for the purpose of organ removal should be prohibited and criminalized.
- b. **Principle 9:** Health professionals and healthcare institutions should assist in preventing and addressing organ trafficking, trafficking in persons for the purpose of organ removal, and transplant tourism.
- c. **Principle 10:** Governments and health professionals should implement strategies to discourage and prevent the residents of their country from engaging in transplant tourism.

136. Therefore, we advocate for the principles in the Guidelines to be fully supported in Australia's human tissue and organ trafficking laws. In particular, we call for the relevant legislation to apply to all donations and transplants involving Australian citizens, irrespective of the jurisdiction in which the donation or transplantation takes place. In addition, this Review provides an opportunity to align Australian law and practice with the Declaration of Istanbul to address the gaps we identify above.

137. Australians who receive transplants overseas are potentially in breach of most, if not all of the Guidelines' principles. For example, a person who travels to China and pays a large sum of money to receive a trafficked organ taken from an incarcerated Uyghur who is killed for that organ is in breach of all 11 principles, apart from perhaps principle 6, although this is not known and it may breach this principle.

138. Further, failing to criminalise overseas transplants undermines ethical practice in Australia by violating the principles and undermining their foundational values.

## Conclusion

139. Notwithstanding the challenges identified in this submission, having legislation which strengthens Australia's trading in tissue and organ trafficking laws is an important and essential step in deterring, preventing and eradicating organ trafficking in Australia.

140. ETAC welcomes the opportunity to make a further submission to the Review once the Discussion Paper is released. At that time, we intend to make a suite of recommendations to assist in this Review.

141. Thank you for the opportunity to participate in what we see as a vital initiative to ensure there are safeguards for all Australians and for those living overseas who are so often exploited and harmed in other ways as a result of organ trafficking.

If you wish to discuss this submission further, please do not hesitate to contact Susie Hughes, Executive Director, ETAC, [REDACTED].

## APPENDIX A

### INTERNATIONAL ORGAN TRAFFICKING LEGISLATION AND REPORTS

#### **A. RELEVANT INTERNATIONAL LEGISLATION**

##### **1. 2022 - Canada – Amendment to the *Criminal Code* and *Immigration and Refugee Protection Act***

Section 240.1 of the Canadian Criminal Code criminalises trafficking in human organs. Section 240.1(1) prohibits the removal of organs without informed consent. Section 240.1(2) prohibits the purchase and sale of organs.

Section 7(4.2) of the Criminal Code prohibits a Canadian citizen or permanent resident from committing an organ trafficking offence outside of Canada under s 240.1 of the Code.

Section 35(1)(c.1) of the Immigration and Refugee Protection Act provides that a permanent resident or foreign national is inadmissible to Canada if the designated Minister is of the opinion that they have engaged in conduct which violates section 240.1 of the Criminal Code.

<https://www.parl.ca/legisinfo/en/bill/44-1/s-223>

<https://www.parl.ca/DocumentViewer/en/44-1/bill/S-223/royal-assent>

##### **2. 2022 – United Kingdom – Amendment to the *Health Care Act 2022 (UK)* and *Human Tissue Act 2004 (UK)***

Section 170 of the *Health Care Act 2022 (UK)* prohibits commercial dealings in organs for transplantations committed outside the UK. The amendment strengthens UK laws regarding organ trafficking giving extra-territorial effect to s 32 of the *Human Tissue Act 2004 (UK)*. Prior to this amendment, it was already illegal to commercially trade in organs within the UK. This new law means British citizens and British nationals will no longer be legally permitted to travel outside of the UK to purchase an organ. It also criminalises the act of brokering for the sale of organs in China or other countries.

<https://www.legislation.gov.uk/ukpga/2022/31/section/170/enacted>

<https://endtransplantabuse.org/uk-prohibits-commercial-organ-tourism-to-stop-complacency-in-crimes-against-humanity/>

##### **3. 2021 – United Kingdom - The Medicines and Medical Devices Bill**

This legislation gives Ministers the powers to amend and supplement existing regulations on human medicine and medical devices such as the Human Tissue (Quality and Safety for Human Application) Regulations 2007 and the Human Tissue Act 2004. In particular, an amendment to the initial bill was included that would enable regulations under Clause 1 (1) to make provision about 'the use of tissues or cells.' This amendment was primarily aimed at halting the use of medicines in the UK that could include human tissues from victims of forced organ harvesting.

<https://bills.parliament.uk/bills/2700/stages/12568/amendments/72603>

<https://bills.parliament.uk/bills/2700>

<https://endtransplantabuse.org/organ-harvesting-amendment-to-uk-medicines-and-medical-devices-bill/>

**4. 2024/2025 – United States - The States of Texas, Utah, Idaho, Arizona and Tennessee passed legislation**

**Texas**

This law prohibits health benefit plan issuers from covering a human organ transplant or post-transplant care if the transplant operation is performed, or if the human organ to be transplanted was procured by a sale or donation originating in China or another country known to have participated in forced organ harvesting.

The bill states its intent includes to "bring awareness to China's state-sanctioned practice of forced organ harvesting of prisoners of conscience and other vulnerable persons, including Falun Gong practitioners, Uyghur Muslims, Tibetan Buddhists, and House Church Christians"

<https://legiscan.com/TX/text/SB1040/id/2819559>

<https://endtransplantabuse.org/texas-passes-new-law-to-stop-health-benefit-plan-coverage-of-organ-transplant-in-china/>

**Utah**

This law states that: "an issuer of accident and health insurance may not cover a human organ transplant or post-transplant care if:

- (a) the human organ transplant operation is performed in the People's Republic of China or any other country known to have participated in forced organ harvesting, as designated pursuant to Subsection (3); or
- (b) the human organ to be transplanted was procured by sale or donation originating in the People's Republic of China or any other country known to have participated in forced organ harvesting, as designated pursuant to Subsection (3)."

<https://le.utah.gov/~2024/bills/static/SB0262.html>

<https://endtransplantabuse.org/utah-passes-bill-restricting-insurance-coverage-of-organ-transplants-from-china/>

### **Idaho**

This law seeks to prohibit health insurers from covering an organ transplant or post-transplant care performed in China or any other country known to have participated in forced organ harvesting. It also prevents health insurers from reimbursing an organ transplant performed in Idaho if that organ comes from China or other prohibited countries.

Additionally, it prohibits medical and research facilities in the state from using genetic sequencing machines or software that come from foreign adversaries such as China.

<https://legiscan.com/ID/text/H0670/2024>

<https://endtransplantabuse.org/idaho-passes-bill-targeting-insurance-coverage-of-organ-transplants-from-china/>

### **Arizona**

This law allows insurance providers and the state's Medicaid agency to deny or limit coverage for a patient who receives an organ transplant from China, or if the organ was procured by a sale or donation from China.

<https://legiscan.com/AZ/text/HB2109/2025>

<https://endtransplantabuse.org/arizona-end-organ-harvesting-act-signed-into-law/>

### **Tennessee**

This law bars health insurance providers in Tennessee from funding organ transplants and post-transplant care if the organ came from China or if the operation takes place in China.

The law also prohibits medical or research facilities from using genetic sequencers produced in foreign adversary nations including China. Additionally, the medical or research facilities must apply measures to ensure genome data security, with remote access to data storage outside the US banned unless approved by the state health commissioner.

<https://legiscan.com/TN/bill/HB0395/2025>

<https://endtransplantabuse.org/tennessee-passes-new-law-to-stop-health-insurance-coverage-of-organ-transplant-linked-to-china/>

## **B. CURRENT LEGISLATION IN PROGRESS**

### **5. 2025 – United States - Stop Forced Organ Harvesting Act of 2025**

This bipartisan Bill passed in the House for a second time (406-1) on 7 May, 2025 after passing previously (413-2) in 2023 prior to the US federal election. On 8 May 2025, the Bill was introduced to the Senate and Read twice and referred to the Committee on Foreign Relations.

This bill requires the President to impose sanctions on persons (individuals and entities) involved in forced organ trafficking and authorises the Department of State to deny or revoke the passports of individuals convicted of certain crimes related to organ trafficking.

Specifically, the President must report to Congress a list of persons that facilitate (1) forced organ harvesting, or (2) trafficking in persons for organ harvesting. For each person on the list, the President must impose property and visa-blocking sanctions.

Furthermore, the State Department may deny or revoke the passport of an individual who has been convicted of a federal crime of knowingly transferring any human organ for valuable consideration for use in human transplantation, if the individual (1) is subject to imprisonment or supervised release resulting from that conviction, and (2) used a passport or crossed an international border when committing that crime.

The Bill text specifically includes mention of China: “to hold accountable persons implicated, including members of the Chinese Communist Party, in forced organ harvesting and trafficking in persons for purposes of the removal of organs.”

<https://www.congress.gov/bill/119th-congress/house-bill/1503>

<https://endtransplantabuse.org/stop-forced-organ-harvesting-act-passed-in-us-house-of-representatives/>

<https://endtransplantabuse.org/cotton-coons-colleagues-introduce-bill-in-us-senate-to-hold-china-accountable-for-forced-organ-harvesting/>

<https://endtransplantabuse.org/joint-ngo-letter-urges-us-senate-to-pass-the-stop-forced-organ-harvesting-act/>

## 6. 2025 – United States - Falun Gong Protection Act

This Bill passed in the US House of Representatives unanimously on the 5 May 2025 (after previously passing in the House in 2024 prior to the federal election). The Bill was re-introduced to the Senate by Senator Cruz on 3 March, 2025 (after previously being introduced prior to the US federal election by Senator Marco Rubio in 2024)

On 6 May, 2025, the Bill was received in the Senate and Read twice and referred to the Committee on Foreign Relations.

This Bill provides for the imposition of sanctions with respect to forced organ harvesting within the People’s Republic of China, and for other purposes.’ The bill highlights that ‘any collaboration with or participation in the PRC’s organ transplant system by the United States Government or a United States person or organisation presents serious ethical challenges that would jeopardise the

integrity of the United States organ transplantation system.’ It would require the Secretary of State to regularly submit a report on the status of forced organ harvesting in the PRC which includes ‘a list of all United States grants over the past ten years that have supported research on organ transplantation in the PRC or in collaboration between a Chinese and a United States entity.

<https://www.congress.gov/bill/119th-congress/house-bill/1540>

<https://www.congress.gov/bill/119th-congress/senate-bill/817>

<https://endtransplantabuse.org/falun-gong-protection-act-passed-in-the-us-house-of-representatives/>

<https://endtransplantabuse.org/falun-gong-protection-act-introduced-in-the-u-s-senate/>

<https://www.cruz.senate.gov/newsroom/press-releases/sen-cruz-introduces-legislation-to-dismantle-chinas-state-sponsored-organ-harvesting-industry-and-human-rights-abuses>

## 7. 2025 – United States - Block Organ Transplant Purchases from China Act of 2025

This Bill was introduced to the US House of Representatives on 14 March, 2025.

The Bill prohibits federal reimbursement for certain organ transplants and related medical services with specified connections to the People’s Republic of China when the organ’s origins cannot be verified. The Bill would prohibit any organ transplant procedure that is not procured from an entity participating in the Organ Procurement and Transplantation Network (OPTN) from receiving federal reimbursements to ensure that organ donation does not originate from illegal Chinese organ markets

<https://www.congress.gov/bill/119th-congress/house-bill/2114>

[https://dunn.house.gov/press-releases?ID=75432A35-F19B-47A8-864D-6A94E3940C83&fbclid=IwY2xjawJHBQpleHRuA2FlbQlxMAABHRQafXEAd5w9zkXYtG5acGwux6HeqxTJEjmZWe56PfKqxALOSNVi\\_7m9xA\\_aem\\_rKbdBUAdO21bmYeFO-HNkw](https://dunn.house.gov/press-releases?ID=75432A35-F19B-47A8-864D-6A94E3940C83&fbclid=IwY2xjawJHBQpleHRuA2FlbQlxMAABHRQafXEAd5w9zkXYtG5acGwux6HeqxTJEjmZWe56PfKqxALOSNVi_7m9xA_aem_rKbdBUAdO21bmYeFO-HNkw)

## C. LEGISLATION AND RESOLUTIONS PASSED GLOBALLY SINCE 2006

### 8. Legislation that addresses various aspects of organ trafficking and forced organ harvesting has been passed in Israel, Spain, Taiwan, Italy, Norway, Belgium, South Korea, Canada and the United Kingdom.

For more information including links to the laws passed see:

<https://endtransplantabuse.org/legislation/>

### 9. Resolutions have been passed by the European Parliament in 2013 and 2022 and the US House of Representatives. Resolutions have also been passed in Italy, Belgium, the Czech Republic and a number of US States.

For more information including resolution texts see:

<https://endtransplantabuse.org/parliamentary-congressional-resolutions/>

#### **D. LEGAL ADVISORY/REPORTS**

**10. Global Rights Compliance (GRC) Legal Advisory Report and Policy Guidance: *Do No Harm: Mitigating Human Rights Risks when Interacting with International Medical Institutions & Professionals in Transplantation Medicine***

This Advisory and Policy Guidance is a world first advisory regarding the business and human rights obligations and complicity risks for entities and professionals outside of China associated with transplant medicine, research and training.

While business and human rights awareness is increasing within the manufacturing and fashion industries, entities and their professionals associated with the organ transplantation sector remain broadly unaware of their human rights responsibilities and due diligence obligations under the UNGPs and the associated risks of complicity in organ trafficking. Global organ trafficking is on the rise and there is an urgent need for best practice and accountability within the medical/transplantation sector with respect to human rights.

Download both documents here: <https://globalrightscompliance.com/project/do-no-harm-policy-guidance-and-legal-advisory-report/>

Watch the introduction video here: <https://www.youtube.com/watch?v=F-bui7E9Mng&t=1s>

**11. Commended by the Bar Human Rights Committee of England and Wales**

<https://barhumanrights.org.uk/bhrc-responds-to-global-rights-compliance-legal-advisory-report-and-policy-guidance-on-global-organ-trafficking-and-forced-organ-harvesting/>

**12. Report by the New York City Bar Association** on forced organ harvesting The New York City Bar Association has published a report on organ harvesting considerations, including forced organ harvesting in China and other ethical issues with organ donation.

<https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/organ-harvesting-ethical-considerations>

<https://s3.amazonaws.com/documents.nycbar.org/files/20221145-OrganHarvestingEthics.pdf>