



AUSTRALIAN CATHOLIC BISHOPS CONFERENCE



General Secretariat

Bishops Commission for Life, Family and Public Engagement

8 January 2026

The Hon Justice Mordecai Bromberg
President
Australian Law Reform Commission
humantissue@alrc.gov.au

Dr Maeghan Toews
Commissioner
Australian Law Reform Commission

Dear Justice Bromberg and Dr Toews

Review of Human Tissue Laws – Response to the Discussion Paper

1. This submission from the Australian Catholic Bishops Conference is made to respond to the Australian Law Reform Commission discussion paper on the Review of Human Tissue Laws (the Review). This submission builds on an earlier submission made in response to the issues paper and can be made public.
2. The Australian Catholic Bishops Conference (the Conference) is a permanent institution of the Catholic Church in Australia and the instrumentality used by the Australian Catholic Bishops to act nationally and address issues of national significance.
3. The Bishops Commission for Life, Family and Public Engagement (the Commission) is one of several commissions established by the Conference to address important issues both within the Church and in the broader Australian community. The Commission has responsibility for commenting on the regulation of organ and human tissue donation.
4. One in five Australians identify as Catholic. The Catholic Church and its agencies contribute in various ways across the spectrum of Australian society.

5. As an integral part of its core mission, the Church seeks to assist people to experience the fullness of life. It is concerned with all that impacts on human dignity and wellbeing for the common good. Catholic agencies provide ten per cent of hospital and aged care services in Australia, including more than 12,000 hospital beds, 25,000 residential aged care beds and more than 7,000 retirement and independent living units.

6. The Church supports the use of organ and tissue transplants as a way of offering life or improved health to someone in need.¹

7. This submission will address some of the proposals in the Review's discussion paper.

The Objects of Human Tissue Laws

Question 1: *Do you agree with the objects listed in Proposal 5 for human tissue legislation?*

Question 2: *Aside from the objects set out in Proposal 5, should new human tissue legislation include other objects?*

Answer

8. The proposed objects of human tissue laws prioritise the aspiration of increasing "access" to human tissue, rather than the means of achieving increased access which can only be ethically achieved by encouraging more altruism and generosity. Altruism and generosity do not rate a mention in the discussion paper but are central to Australia's practice of organ and human tissue donation and should be prominent in the objects.

9. Governments cannot determine the supply of human tissue but can only encourage it. Presenting "access" almost as a right, risks encouraging practices that put undue pressure on people to make donations. No person should have a right to the organs or human tissue of another person even if that other person is dead. Donation of organs or human tissue are a gift that can be made with informed consent.

10. The central question is how to encourage people to donate tissue in an ethical way. To do that, people need to have confidence in the donation system. The paper does well to mention that "people will not participate in Australia's

¹ Catholic Health Australia (2001), Code of Ethical Standards for Catholic Health and Aged Care Services in Australia. See: <https://cha.org.au/mission/ethics/> . Paragraph 3.14, page 30.

organ and tissue donation and transplantation system, or support the use of human tissue for other medical, educational or scientific purposes, if they do not trust that the system and use of human tissue for other purposes are safe and ethical.” (2.23) This is a crucial point that should be addressed by prioritising altruism and generosity in the objects.

New statutory provisions for determining death

Comment

11. **Proposals 10 and 13** refer to the standard test of death being “... a permanent cessation of the person’s critical brain functions ...”. These references should be amended to “total and irreversible loss of all brain function” as the standard test of death by the brain function criterion.

12. Pope St John Paul II made some important remarks about understanding the human person and their death, including how medicine can consider someone dead with “complete certainty”:

“In this regard, it is helpful to recall that the death of the person is a single event, consisting in the total disintegration of that unitary and integrated whole that is the personal self. It results from the separation of the life-principle (or soul) from the corporal reality of the person. The death of the person, understood in this primary sense, is an event which no scientific technique or empirical method can identify directly.

“Yet human experience shows that once death occurs certain biological signs inevitably follow, which medicine has learnt to recognize with increasing precision. In this sense, the ‘criteria’ for ascertaining death used by medicine today should not be understood as the technical-scientific determination of the exact moment of a person's death, but as a scientifically secure means of identifying the biological signs that a person has indeed died.”²

13. The Code of Ethical Standards for Catholic Health and Aged Care Services in Australia states that:

“Generally death is determined by the irreversible loss of cardio-respiratory function. However, modern medical technology often severs the links between death and the cessation of cardio-respiratory function.

² Address of the Holy Father John Paul II to the 18th International Congress of the Transplantation Society, Tuesday 29 August 2000.

It has thus become necessary to recognise that in the absence of all brain function it is impossible for a person to live as an integrated and coordinated organism. Total and irreversible loss of all brain function, accompanied by an evident cause, is thus a valid medical criterion of death.”³

14. Proposals 10 and 13 should refer to “total and irreversible loss of all brain function” as the standard test of death by the brain function criterion.

Use of tissue removed during a post-mortem examination

Question 27: *Should new human tissue legislation contain an exception to the need for consent so that ‘small samples’ can be used for scientific, medical or educational purposes? If so, what samples should fall within the exception?*

15. There should be no exception to the need for informed consent. There is no right to use the tissue of another person, so informed consent should be required.

Consent and authorisation for use of tissue samples

Question 29: *Should there be a legal requirement to obtain consent from people who provide tissue samples before using their tissue for research or other purposes that they did not consent to? You may want to consider Question 27, where we ask about secondary uses of tissue samples taken during a post-mortem examination.*

Answer

16. There should be a legal requirement to obtain consent from people who provide tissue samples before those samples are used for research or other purposes. There is no right to use the tissue of another person, so informed consent should be required.

Prohibiting the exchange of human tissue for reward within Australia

Comment

17. The Conference supports the intent of **Proposal 40** but would like to see it strengthened so the intent is not subverted. Reference to “... the reimbursement

³ Catholic Health Australia (2001), Code of Ethical Standards for Catholic Health and Aged Care Services in Australia. See: <https://cha.org.au/mission/ethics/> . Paragraph 5.22, page 47.

of any expense or cost ..." should be amended to read "... the reimbursement of any reasonable documented expense or cost directly related to the donation ...".

18. The Conference does not support allowing direct or indirect inducements and only supports compensation for donors for documented expenses which are directly related to the donation. The standard should be the level of expense documentation required by the Australian Taxation Office in relation to documenting work-related expenses.

19. A crucial ethical issue is the commodification of human bodies. As Pope St John Paul II expressed it, donating tissue is not just a matter of giving away something that belongs to us but of giving something of ourselves, for "by virtue of its substantial union with a spiritual soul, the human body cannot be considered as a mere complex of tissues, organs and functions . . . rather it is a constitutive part of the person who manifests and expresses himself through it". He went on to say, "any procedure which tends to commercialise human organs or to consider them as items of exchange or trade must be considered morally unacceptable because to use the body as an 'object' is to violate the dignity of the human person."⁴

20. Allowing inducements would mean treating the human body and hence the person as a mere commodity, undermining the existing social capital in existing systems of donation that depend on altruism and a commitment to the common good, and exploiting the poor who lack alternative ways of earning an income. Individuals and the common good are best protected by maintaining the existing prohibitions on trading in human organs and tissue.

21. The medical teams involved in living organ donation have a special responsibility to ensure the safety of the donor and in general that has proved to be the case. The opposite, however, has proven to be true when organs are traded rather than given altruistically and this is a strong reason for opposing trade in human tissue.

Question 36(c): *Should new human tissue legislation include an exception to enabled paid plasma donation?*

⁴ Address of the Holy Father John Paul II to the 18th International Congress of the Transplantation Society, Tuesday 29 August 2000.

Answer

22. There is a significant risk that payments for plasma would adversely affect the social capital and community benefit involved in altruistic donation. Payment would also create perverse incentives for people to not provide important information such as information about risk activities for infection.

Reforms relating to tissue importation ethics and oversight

Question 40: *Should new human tissue legislation include a mechanism to help make sure that imported tissue has been ethically sourced? If so, should the mechanism be:*

a. A prohibition of the importation into Australia of human tissue that was originally obtained without the consent of the donor, or in exchange for reward or profit? or

b. A reporting mechanism similar to that contained in the Modern Slavery Act 2018 (Cth)?

Question 41: *If a prohibition is legislated of the kind described in Question 40(a), or reporting requirements introduced of the kind described in Question 40(b), should new human tissue legislation include a mechanism to exempt importations of human tissue from the prohibition or reporting requirements, and if so, what factors should be considered as a basis for justifying an exemption? For example, relevant factors could include but not be limited to:*

- *the health needs of Australians;*
- *if it is possible to meet the health needs of Australians through domestic supply of the relevant tissue; and*
- *the risk that the people from whom the tissue was originally obtained were coerced or exploited.*

Answer

23. For ethical consistency and credibility, the same standards of consent, reporting and prohibition of reward should apply to human tissue sourced from overseas as that sourced in Australia. Australian laws should be mindful that some countries may not have the same respect for human dignity and for informed consent as Australia and therefore there should be provision to prohibit importation of human tissue from countries that do not have the same standards as Australia.

24. I would be happy to answer any questions the Law Reform Commission may have. I can be contacted via [REDACTED]

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Yours sincerely

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Auxiliary Bishop of Sydney
Bishop delegate for life issues