

Recommendation The ALRC should consider the explicit requirement for a medical practitioner to verify life extinct in circumstances where organ donation may occur.

Rationale

The requirement for a medical practitioner to verify life extinct in circumstances where organ donation may occur, would align the statutory /regulation with contemporary medical guidelines.

Medical expertise is required to verify life extinct of a person where the person’s respiration is being maintained by artificial means, (for example circumstances of neurological death (brain death)).

However, outside of the context of brain death, other professionals are deemed to have the capacity to verify life extinct.

The current medical standards or guidelines (ANZICS The Statement on Death and Organ Donation EDITION 4.1 | 2021) implies that declaration or verification of death (life extinct) is a medical practitioner responsibility in donation via the donation following declaration of circulatory death pathway.

“The doctor responsible for determining death should document the time and date of determination of death, along with his or her name and signature.” A proforma (see Appendix E; page 59) will facilitate this.

(ref 1.3.2 Documentation of circulatory determination of death in the context of organ donation ANZICS The Statement on Death and Organ Donation EDITION 4.1 | 2021 pg24)

Current and proposed regulations

In circumstances outside of context of neurological (brain death), contemporary HTAs often do not explicitly identify the professionals authorised to verify life extinct in circumstances where organ donation may occur.

Example

Transplantation and Anatomy Act 1979

Reprint current from 19 December 2025 to date (accessed 20 January 2026 at 15:05)

Part 8 Section 45

When death occurs

(1) For the purposes of this Act, a person has died when there has occurred—

(a)irreversible cessation of circulation of blood in the body of the person; or

(b)irreversible cessation of all function of the brain of the person certified in accordance with subsection (2).

(2) The irreversible cessation referred to in subsection (1)(b) shall be certified by 2 medical practitioners, each of whom has carried out a clinical examination of the person and 1 of whom is a specialist neurologist or neurosurgeon or has such other qualifications as are prescribed for the purposes of this section....

Regarding subsection (1) a, (with relates to donation via the donation following circulatory death pathway) the act is “silent” with regard identifying/proscribing which professionals are legally authorised to verify life extinct or death.

Given the importance of the fundamental principal of organ and tissue donation is the “dead donor rule”, determining that responsibility for verification/declaration of death (life extinct) in the context of organ donation maybe important in maintaining public confidence in the process, irrespective of the donation pathway.

Question. In circumstances where tissue donation was to occur after verification of life extinct, should authority to legally verify life extinct be restricted to medical practitioners only?

The ALRC should consider adopting the terminology of Verification or Declaration of Death (Life Extinct) –in Proposal 10

Recommendation:

*The ALRC should consider adopting the terminology of **Verification or Declaration of Death (Life Extinct)** –in Proposal 10, to be consistent with contemporary legal and medical practice.*

Section X When death occurs

1. For the purpose of the law, a person is **verified or declared as being dead (life extinct)** when ..

Rationale:

In, Australia the legal requirements of declaration of death involves two distinct processes; **verification/declaration of death** (confirmation that life is extinct) and **certification of death** (regulatory requirement defining the cause of death).

There is some variance in state/territory regulation, however most jurisdictions authorise the following professionals to legally **verify life extinct** or death: *registered nurses, registered midwives, qualified paramedics, police officers and registered medical practitioners.*

Authority to **certify** death, though is limited and restricted to either a registered medical practitioner (who has either cared for the patient or examined the body after death) or a coroner.

Many potential donors are subjects of coronial review due to the preceding circumstances of death (for example trauma). In these cases, the medical practitioner relinquishes authority to certify death to the coroner. A significant proportion of organ/tissue donors, thus donate tissue and/or organs without legal **certification of death**.

A fundamental principal of organ and tissue donation is the “dead donor rule”. All jurisdictions, formally require **verification/declaration of death (life extinct)** as a legal prerequisite, before proceeding with organ /tissue donation.

In accordance with the terms of reference of the review, adopting the terminology of **verification/declaration of death (life extinct)**, would provide clarity as to the legal standing, intent/outcome of the proscribed medical standards or guidelines for diagnosing death identified in any proposed regulation, thus promote medical and legal harmonisation