22nd January 2026

Response to Proposal 10: New Statutory Provisions for Determining Death

Dear Commissioners,

On behalf of the Working Group responsible for the United Kingdom's Academy of Medical Royal Colleges' 2025 *Code of Practice for the Diagnosis and Confirmation of Death*, we welcome the opportunity to respond to the Australian Law Reform Commission's discussion paper on revising statutory provisions for determining death.

We commend the clarity, care, and ethical sensitivity evident in Proposal 10**,** particularly the proposed statutory articulation that, for the purposes of the law, a person dies when there has been a *permanent cessation of the person's critical brain functions*, determined in accordance with accepted medical practice.

From a UK perspective, the Commission's proposals align closely with the direction taken internationally over the past decade. The World Brain Death Project (2020)**,** and the national guidance from the Australian and New Zealand Intensive Care Society (2021), Canada (2023) and the United States (2023), and most recently the UK Academy Code (2025)**,** all reflect a growing international convergence around brain-based definitions of death, grounded in loss of the capacities for consciousness and breathing, and operationalised through rigorous, standardised medical criteria.

We also welcome the Commission's thoughtful and internationally aligned definition of *permanent*, which recognises cessation of functions that cannot resume spontaneously (on their own) or will not be restored through intervention.

We wish to express strong support for the Commission's recognition that death is a process rather than a singular event**.** As noted in section 5.4 of the discussion paper, determining whether death has occurred is not straightforward precisely because different organs, tissues, and cells cease function at different rates. This framing resonates closely with contemporary medical understanding and clinical reality. The UK Academy Code's definition of death recognises that, while biologically death is a process, it is necessary to define a point in that process where death can be diagnosed and confirmed in an accurate, standardised, and timely manner. Only in this medical sense does death become construed as an event with its important legal and social ramifications.

It is also striking, and welcome, to see the continuity between the Commission's current approach and the Australian Law Reform Commission's 1977 analysis, which so clearly articulated the process of death as a biological *continuum* and emphasised that the determination of death necessarily involves a professional medical judgement that irreversible—or, in contemporary terms, permanent—loss of function has occurred. The distinction drawn in 1977 between the question *"Is the person dead?"* and the question *"Is life extinct in every part of the body?"* remains of fundamental importance, particularly in the context of modern intensive care and organ support technologies.

Finally, we particularly welcome the Commission's proposal that determinations of death be made according to *accepted medical practice***,** with scope for professional standards and guidelines to be identified through regulation. This approach appropriately recognises that the determination of death is a clinical judgement, exercised by trained professionals, using evidence-based criteria, within an ethical and cultural context.

If we may offer one observation, it is that the drafting of subsections i-iii in Proposal 10(b), while clearly well intentioned, may introduce a degree of complexity that is not strictly necessary in statute:

b. that the critical functions of the person's brain will not be restored through intervention because:

i. it is not possible to restore those functions through intervention; or

ii. intervention would violate a valid end-of-life decision made by or on behalf

of the person; or

iii. intervention or the continuation of intervention would be contrary to

accepted medical practice in end-of-life care.

In our view, the important inclusion of "accepted medical practice" in proposed Section Y, similar in effect to the approach taken in the Uniform Determination of Death Act (1981) in the United States, already provides a sufficient and flexible framework to encompass the considerations set out in Proposal 10(b)(i–iii). We suggest that detailed articulation of the relevant medical and ethical standards is best undertaken through professional guidance developed by national medical bodies, allowing such standards to evolve with clinical practice and ethical consensus, while avoiding potential rigidity or misinterpretation were these provisions to be embedded directly in statute.

We congratulate the Australian Law Reform Commission on a thoughtful and internationally attuned proposal, and we believe it represents an important step toward greater global uniformity in how death is defined and determined in law and medical practice.

Yours sincerely,

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2025 Code of Practice for the Diagnosis and Confirmation of Death