



Australian Government

Department of Foreign Affairs and Trade

DFAT SUBMISSION TO THE AUSTRALIAN LAW REFORM COMMISSION'S REVIEW OF HUMAN TISSUE LAWS

23 January 2026

Prohibiting the exchange of human tissue for reward within Australia**Proposal 40**

New human tissue legislation should prohibit the offering, giving or receiving in Australia of any reward in exchange for human tissue.

A reward in relation to the supply of human tissue means:

- a. any financial payment; or
- b. the provision of any valuable property, good, service or advantage;

It should not include:

- a. the reimbursement of any expense or cost; or
- b. the recovery of any loss or damage that was reasonably and lawfully incurred or suffered in connection with the donation, procurement, storage, processing or distribution of human tissue for a purpose permitted by the legislation.

Giving extra-territorial effect to the prohibition**Question 35**

Should the prohibition on exchanging human tissue for reward have extra-territorial effect? If so, what would be the best mechanism to achieve this? For example, an amendment in new human tissue legislation, or an amendment to the *Criminal Code Act 1995 (Cth)*?

1. The Department of Foreign Affairs and Trade (DFAT) welcomes the opportunity to contribute to the Australian Law Reform Commission's Review of Human Tissue Laws. DFAT's interest in the Review arises from its responsibility for supporting Australians travelling and residing overseas, and ensuring Australia's international legal, ethical and consular settings operate coherently.
2. DFAT notes that Proposal 40 of the discussion paper ('Prohibiting the exchange of human tissue for reward within Australia'), includes a question (Question 35) as to whether the proposed prohibition on exchanging human tissue for reward should have extra-territorial effect and, if so, what mechanism would best achieve this.
3. DFAT has not adopted a position either in favour or in opposition to this proposal. DFAT notes, however, that applying the prohibition extra-territorially would reflect the global nature of human tissue trade. This may have practical implications for Australians overseas, and on the consular assistance DFAT provides them.
4. Any change to legislation and regulation on this matter in Australia, including extraterritorially, must prioritise the promotion and protection of human rights, and strengthen protections against modern slavery, people smuggling and human trafficking.
5. Should Proposal 40 be implemented with extra-territorial effect, DFAT would require clear guidance on how any breaches of the relevant legislation should be identified and reported. DFAT also has an interest in ensuring that Australians overseas who may seek to give human tissue in circumstances that were previously lawful are aware of any new prohibitions, in order to avoid inadvertent non-compliance with Australian law.

6. DFAT notes also that it maintains a dedicated page on organ transplant tourism on its Smartraveller website. This page provides specific information to Australian travellers considering travelling overseas for an organ transplant, including legal and ethical considerations, and the health and financial risks involved.

7. The Smartraveller website also makes reference to extraterritorial jurisdiction on its “Staying Within The Law” page. Should Proposal 40 be implemented with extra-territorial effect, DFAT would be required to update the Smartraveller website to reflect the legislative changes.

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)*?

8. On this question, DFAT supports the principle that any new human tissue legislation should include a mechanism to help ensure imported tissue has been ethically sourced. Such a mechanism would complement Australia’s international human rights and anti-trafficking commitments. DFAT defers to the lead domestic agencies on the most appropriate design of this mechanism and would welcome being consulted early in the process.