

Queensland Intensive Care Clinical Network Submission in response to the proposals of The Australian Law Reform Commission (the ALRC) published in the REVIEW OF HUMAN TISSUE LAWS Discussion Paper 90 November 2025.

Introduction.

Background. The Queensland Intensive Care Clinical Network (QICCN) is a Queensland Health sponsored multidisciplinary group of clinicians and consumer representative/s dedicated to guiding the strategic direction of public intensive care services across Queensland. The mission of the QICCN is to provide high-level leadership, expertise, and specialist clinical advice to the Department of Health, Hospital and Health Services, clinicians, and other stakeholders, with the goal of promoting optimal health outcomes in Queensland intensive care units (ICUs).

The QICCN representatives have reviewed the discussion paper REVIEW OF HUMAN TISSUE LAWS Discussion Paper 90 November 2025. published by the ALRC. The QICCN acknowledges that terms of reference of the ALRC review are broad, reflecting many aspects of current and potentially future conduct of tissue donation, and use of human tissue.

Though intensive care as an important stakeholder, in the facilitation of many aspects of post-mortem organ and tissue donation, in Queensland, DonateLife Queensland is the premier authority with responsibility for governance of donation practice.

In its review of the ALRC discussion paper, the QICCN has focused on recommendations and proposals for reform that would have implications for intensive practice irrespective of the context of organ/tissue donation. Consequently, the QICCN review, and this summary submission has focused on Section 5. Reforms relating to the determination of death.

Summary

The QICCN acknowledges that ALRC, in its review of current territory and state legislation, has concluded that in Queensland, the provisions of the Queensland Transplantation and Anatomy Act 1979, apply specifically to deceased organ and tissue donation. Whereas in all other jurisdictions, regulation regarding determination of death apply to all contexts (irrespective of organ/tissue donation). Other interjurisdictional inconsistencies include variance regarding experience, and qualification of medical practitioners responsible for deterring if a person has died, as well as variance in the statutory locations of the provisions.

The QICCN endorses and supports the objectives of the ALRC to conduct a review and recommend reforms to harmonise and modernise the human tissue laws of Australia.

Major recommendations proposals

The QICCCN supports the Proposal Establish a National Regulator to have the following powers and functions:

- Set national policies in relation to human tissue.
- Create binding codes of practice and standards.
- Provide guidelines for medical practitioners, researchers, and organisations that retrieve, store, or use human tissue.
- Provide educational material for the general public about tissue donation;
- Accredite and license entities that retrieve, import, store, process, distribute, and/or export human tissue in the tissue banking and research sectors;

- Monitor, collect data, investigate, and enforce compliance with human tissue laws and codes using both civil and criminal penalties.

The QICCN supports the establishment of a singular entity for the governance, regulation, implementation of donation and transplant practice is being essential address the issue of current and risk future potential inconsistencies between state and territory human tissue practice.

Medical standards of practice are determined by national (bilateral) authority entities such as the Australian and New Zealand Intensive Care Society (ANZICS), Transplantation Society of Australia and New Zealand (TSANZ). Similarly, standards for training, credentialing and specialist practice recognition are also determined by national (binational) colleges. The QICCN is of the opinion that legalisation and governance should also be uniform nationally.

To support the establishment of a National Regulatory (Authority) the QICCN endorses a framework that proposes State and territory divest or refer their powers in respect of human tissue laws to the Commonwealth, under s 51 (xxxvii) of the Australian Constitution (or s 122 for territories).

Similarly, the QICCN supports the adoption of a Uniform Death Act as a mechanism to harmonise regulation regarding legal application and definition of determination of death.

New statutory provisions for determining death.

The QICCN supports the adoption of a uniform brain-based approach to the definition/determination of death. The QICCN recognises the progress to develop internationally a uniform consensus regarding the definition of death. The QICCN supports the uniform brain-based definition as a concept that ‘unifies’ both death by circulatory criteria and death by neurological criteria - with as death being determined by of loss critical brain function. Death by circulatory criteria being redefined as loss of critical brain function because of the permanent/irreversible absence of circulation. The QICCN is supportive of the ANZICS endorsed recommendation – aligned with evolving progress towards universal/international consensus definition of death)

As stated previously the QICCN recommends that the proposed regulation should be applicable for all contexts (not restricted only to tissue/organ donation)

ALRC Proposal 10 New statutory provisions for determining death. Legislation should encompass the following.

X *When death occurs*

1. *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 section Y, where ‘permanent’ means:*

a. that the critical functions of the person’s brain cannot resume on their own; and

a. 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.

2. In this section

a cessation of the critical functions of a person's brain requires the complete absence of any form of consciousness (wakefulness and awareness) and brainstem functions, including the ability to breathe independently

2. Regulations may identify professional standards or guidelines for the purpose of determining accepted medical practices under (1).

3. To determine the death of a person where the person's respiration is being maintained by artificial means, two registered medical practitioners, one of whom is a specialist and both of whom have been registered medical practitioners for a period of at least five years, must each confirm in writing that they have carried out a clinical examination of the person and, in their opinion, the person has suffered a permanent cessation of the critical functions of the person's brain, within the meaning of section X.

Implications of proposal 10 for intensive care practice in Queensland are.

1. **Medical practitioners must have been registered medical practitioners for a period of at least 5 years** to be authorised to declare the death of a person where the person's respiration is being maintained by artificial means, (*death by neurological criteria*)

Whilst the QICCN recognises that the condition of 5 years registration, represents a regulatory change., the QICCN is of the opinion that such a change is unlikely to have significant impact on medical practice in Queensland.

QICCN recommendation/comment. The QICCN is of the opinion that factors such as experience, level of training and expertise, are more crucial factors than duration of registration in determining a medical practitioner's competence in conducting the appropriate medical assessment to declare/verify death under section 3.

2. **Implications of a uniform death act, and/or the legal recognition of brain death/ or death defined by neurological criteria outside of the context of organ donation.**

The potential for loss of authority of SHA to refuse withdrawal/withholding of treatment and loss legitimacy of QCAT to decide on such matters in brain dead patients.

The current Queensland regulatory framework governing withdraw/withholding life support therapies is determined by Queensland Guardian and Administration Act (GAA).

Except for emergencies where the patient's wishes are unknown, legislation requires medical practitioners to have authorised consent to withhold or withdraw life support therapies. *Ref Section 63A and for a withholding or withdrawal by consent—section 66(3), (4) or (5) and section 66A.*)

A consequence of the Queensland Transplantation and Anatomy Act 1979, applicability regarding death, especially when determined by neurological criteria, only applying to deceased organ and tissue donation has been, that in the absence of a formal legal recognition of death, doctors are required to seek authorization/consent to withdraw treatment including “life” support. Doctors need to seek authorisation from the Queensland Civil and Administrative Tribunal (QCAT) or the Supreme Court, in circumstances where for a patient lacks capacity has provided no prior advanced directive, and the statutory health attorney (SHA) refuses to provide consent to either withholding or withdraw of healthcare treatments.

It is the lack of legal recognition in Queensland of brain death outside of the context of organ donation, which has provided the legal rationale underpinning the application of the GGA legislation in such cases.

Consequences of the adoption of a Uniform Death Act and/or the broader applicability of the verification of death outside of the context of tissue/organ donation in Queensland are that the Statutory Health Attorney (next of kin) potentially may no longer retain authority to refuse to consent to withdrawal/withholding of treatment/healthcare including “life support” and the QCAT may not have legitimacy to adjudicate on matters of withholding or withdrawing treatment/healthcare in the context cases where there is a determination of the death of a person (even where the person's respiration is being maintained by artificial means).

Noting the above the QICCN does endorse the ALRC recommended reforms regarding a Uniform Death Act, and its applicational in all contexts. The QICC is of the opinion that the reforms will assist in providing a legal basis and rationale to enable the withdrawal of cardiovascular and respiratory support from deceased patients even in circumstances where the next of kin (SHA) may object.

As background the QICCN is lobbying Queensland Health to initiate both review and advocate for reform of the GAA. The current GAA legal regulation compels doctors to administer/and or continue healthcare, including life support treatments, if the patient or their next of SHA express(ed) objection to withholding or withdraw even in circumstances of medical futility. The ALRC proposals, do assist in this advocacy, by providing a legal basis and rationale to enable the withdrawal of cardiovascular and respiratory support from the deceased.

3. QICCN Recommendation: regarding terminology in Proposal 10

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

QICCN recognises that whilst medical assessments determine a patient clinically fulfils recognised criteria for the diagnosis of death; for a death to be acknowledged and legally recognised, requires either formal declaration or verification of death (life extinct).

The QICCN thus advocates, for the purpose of harmonisation of medical and legal terminology that the explicit objective of medical assessment for determination of death in the context of proposed legislation, is the medicolegal declaration or verification of death (life extinct).

Normothermic regional perfusion (NRP) (comment)

The QICCN acknowledges that implementing proposal 10 for the legal determination of death may open the door for the practice of normothermic regional perfusion (NRP). The QICCN supports the ALRC recommends in proposal 12 that any post-mortem interventions (such as NRP) be done in accordance with accepted medical practice, with clinical guidelines specified in regulations to help define what accepted medical practices are. The development of ethically robust protocols for NRP, and the designation in regulations, will help to facilitate exacting standards of practice for a consistent and transparent approach to NRP. The QICCN recognises that NRP a highly specialised and complex mechanism of organ support for the purpose of supporting donation. The QICCN notes that within Queensland there are very few centres that currently would have the capability to introduce such a program. The QICCN would only be supportive of a future NRP program that was developed in accordance with national regulation and standards.