



Coroners Court
of Victoria

13 February 2026

The Hon Justice Mordecai Bromberg
President
Australian Law Reform Commission

Via email only: humantissue@alrc.gov.au

Dear Justice Bromberg,

Review of Human Tissue Laws

Thank you for inviting me to provide a written submission to the Australian Law Reform Commission's Review of Human Tissue Laws (**Inquiry**).

I am pleased to provide a submission on behalf of the Coroners Court of Victoria to assist the Inquiry's consideration of question 24 in the Discussion Paper on 'Coronial consent to donation'.

If you need any further clarification regarding the Court's submission, please contact me or Senior Legal Counsel, Ms Elizabeth Morris, via [REDACTED].

Yours sincerely,
[REDACTED]

Judge Liberty Sanger
State Coroner
Coroners Court of Victoria



Submission to the ALRC's Review of Human Tissue Laws

Role of the Coroner

The Coroners Court of Victoria (**Court**) is an inquisitorial court¹ responsible for making findings concerning the cause and circumstances of reportable deaths. The Court's primary role and function is to investigate deaths and fires in specified circumstances with the objective of establishing the facts of when, where, how and why the death or fire occurred.²

The purpose of the coronial system is to:

*provide **independent answers to those grieving families** affected by the investigation of sudden, unexpected and tragic deaths by the coroner. Those deaths can often involve vulnerable members of our community, such as those who are placed in the care or custody of the state. Our coronial system must take a broad public health approach to investigation to **clarify on the public record the causes and circumstances of death**, to provide public hearings into those matters where it is appropriate and to draw lessons from deaths so as to minimise the risks of recurrence, where possible, in the future.*³

The Coroners Court contributes to the reduction of the number of preventable deaths and fires through the making of findings and recommendations following investigations.⁴ That is, the coroner's preventative role flows from its primary objective of independently investigating deaths to ascertain the cause and circumstances of the death.

Consent decision: legislative framework and relevant considerations

In Victoria, the donation of organs and tissue after death is regulated by Part IV of the *Human Tissue Act 1982* (Vic) (**Human Tissue Act**).

Under section 26 of the Human Tissue Act, a designated officer for a hospital⁵ may authorise the removal of tissue from the body of a deceased person for the purpose of transplantation of the tissue to the body of a living person, or use of the tissue for medical, scientific or therapeutic purposes, where:

- (a) the deceased person had expressed the wish for, or consented to, the removal of tissue from their body after their death for such a purpose or use; or
- (b) the senior available next of kin of the deceased person consents to removal of the tissue from the body of the deceased person for such a purpose or use (and the deceased person had not objected during their lifetime to such removal); or
- (c) if the existence or whereabouts of the next of kin of the deceased person is unable to be ascertained after making reasonable enquiries and there is no reason to believe the deceased

¹ *Coroners Act 2008* (Vic), s 89.

² *Coroners Act 2008* (Vic), s 1(b).

³ Rob Hulls, Attorney-General, Coroners Bill 2008 (Vic), Second Reading Speech, 9 October 2008.

⁴ *Coroners Act 2008* (Vic), s 1(c).

⁵ or a registered medical practitioner or authorized person if the deceased person is in a place other than a hospital.



person had expressed an objection to the removal of tissue from their body after their death during their lifetime.⁶

However, where the death of that person is being investigated under the *Coroners Act 2008* (Vic) (**Coroners Act**), authorisation cannot be given for the removal of tissue from the body of the deceased unless the coroner has given consent to the removal (**‘the consent decision’**)⁷.

This provision operates as a safeguard to ensure the coroner’s investigation and any criminal investigation in respect of the death is not compromised as a result of the removal of tissue. Similar provisions have been adopted in all jurisdictions in Australia.⁸

The Coroners Act provides the framework by which coroners are to approach the consent decision in the context of their investigation into a reportable or reviewable death.

Relevantly, the coroner is obliged to pursue all reasonable lines of inquiry as may be required to ascertain the identity of the deceased, the cause of death and the circumstances in which the death occurred.⁹ If required investigations are incomplete, the coroner’s obligation to find, if possible, the cause and circumstances of death, will not have been discharged.¹⁰

Every reported death is unique and requires an individual approach in determining what inquiries may be required, and the relevance of any tissue to the investigation.

In determining whether to provide consent to the removal of tissue, the coroner will have regard to:

1. The coroner’s statutory obligations to independently investigate reportable deaths and make findings as to the identity of the deceased, and the cause and circumstances of the death as required under section 67(1) of the Coroners Act.
2. The factors set out in section 8 of the Coroners Act, including:
 - a) that the death of a family member, friend or community member is distressing, and distressed persons may require referral for professional support or other support;
 - b) that unnecessarily lengthy or protracted coronial investigations may exacerbate the distress of family, friends and others affected by the death;
 - c) that different cultures have different beliefs and practices surrounding death that should, where appropriate, be respected;
 - d) the desirability of promoting public health and safety and the administration of justice.
3. Expert advice from a forensic pathologist as to the relevance of the tissue to the investigation and whether removal of the tissue would impact the investigation of the identity, cause and

⁶ *Human Tissue Act 1982* (Vic), s 26.

⁷ Or that the coroner has given a direction that consent is not required, pursuant to section 27(3) of the *Human Tissue Act 1982* (Vic).

⁸ See *Human Tissue Act 1983* (NSW), s 25; *Transplantation and Anatomy Act 1979* (QLD), s 28; *Human Tissue and Transplant Act 1982* (WA), s 27; *Transplantation and Anatomy Act 1983* (SA), s 31; *Human Tissue Act 1985* (TAS), s 28A.

⁹ *Priest v West (in his capacity as Deputy State Coroner of Victoria) & Anor* [2012] 40 VR 521, 524.

¹⁰ *Ibid*, 525.



circumstances of the death, or cause evidentiary difficulties in respect of any criminal investigation or prosecution relating to the death.

4. The wishes of the deceased's family regarding the proposed removal of tissue.

Coroners' approach to consent decision in Victoria

Victorian coroners are supportive of organ and tissue donation requests wherever possible, provided this does not impede their ability to fulfil the paramount duty to independently investigate and make findings with respect to the death as required under the Coroners Act.

The Court works closely with DonateLife Victoria, Donor Tissue Bank of Victoria (**DTBV**), the Victorian Institute of Forensic Medicine (**VIFM**) Coronial Admissions and Enquiries team, and other agencies to facilitate organ and tissue donation from deceased persons where appropriate to do so.

The coroner may be unable to consent to donation in circumstances where the identity of the deceased is unconfirmed, or where the cause of death is unclear and requires further investigation of requested organs or tissue. However, it is rare for a coroner to refuse to provide consent to the removal of tissue for donation and there is no evidence to suggest coronial decisions are acting as a significant barrier to organ donation rates in Victoria.¹¹

Proposed reforms relating to coronial consent to donation

Question 24 seeks input into whether new human tissue legislation should provide factors for coroners to consider when deciding whether to consent to donation of tissue from human bodies under their jurisdiction, and if so, what factors a coroner should take into account.

Legislative amendment is a matter for Parliament. However, the Court wishes to draw the Inquiry's attention to the following matters in considering any potential recommendations for legislative reform to the coronial consent decision:

- There is national consistency in legislative requirements for coronial consent decisions as all jurisdictions have equivalent provisions requiring the coroner's consent before authorization can be given for the removal of tissue from the body of a deceased person where the death is under investigation by the coroner.¹² No jurisdiction has legislated factors for the coroner to consider in approaching this decision.
- While anecdotal evidence suggests there has been an increase in refusals by Coroners to provide consent,¹³ there does not appear to be any empirical data available to corroborate this. Further

¹¹ See: Victorian Parliamentary Inquiry, '[Register and talk about it: Inquiry into increasing the number of registered organ and tissue donors](#)' report, tabled 20 March 2024. The report discusses coroners' consent decisions in part 7.3.4 (pp 197-199). See also: [Transcript of Public Hearing](#) of the Victorian Parliamentary Inquiry into Increasing the Number of Registered Organ and Tissue Donors on 19 June 2023, Dr Rohit D'Costa, DonateLife Victoria, p 5.

¹² See *Human Tissue Act 1982* (Vic), s 27; *Human Tissue Act 1983* (NSW), s 25; *Transplantation and Anatomy Act 1979* (QLD), s 28; *Human Tissue and Transplant Act 1982* (WA), s 27; *Transplantation and Anatomy Act 1983* (SA), s 31; *Human Tissue Act 1985* (TAS), s 28A; *Transplantation and Anatomy Act 1978* (ACT), s 29; *Human Tissue Transplant Act 1979* (NT), s 20.

¹³ As described in the Australian Law Reform Commission, Discussion Paper 'Review of Human Tissue Laws', at [7.93], referencing the report of the Standing Committee on Public Administration, Parliament of Western Australia.



research and policy analysis is needed to better understand the rates of, and reasons for, refusals by coroners to inform the need for and development of effective policy reforms.

- If human tissue legislation is amended to prescribe factors the coroner must consider in approaching the consent decision, this may create a repugnancy between statutes by requiring a coroner to consider factors which may conflict with their paramount statutory duty to properly investigate and make findings in respect of the death.

The Court agrees that improved communication and collaboration may be more effective than legislation or the development of protocols,¹⁴ and supports the use of guidelines or similar mechanisms to provide clarity for coroners on the principles to be applied in approaching the consent decision where required.

In this respect, the Court agrees with the position set out in the Queensland State Coroner's Guidelines on organ and tissue donation, which provides that:

*The mere fact a person's death is reportable does not preclude whole organ or tissue donation. Rather, over 50% of Australian donors are coroner's cases. **Provided coroners are satisfied the retrieval won't compromise their investigation or the prosecution of any criminal charges that may be laid in respect of the death, there is no reason for coroners to withhold consent to organ and tissue retrieval.** Facilitating organ and tissue donation is consistent with the coronial system's focus on respecting the wishes of the deceased and their families to the greatest extent possible, and pursuing public benefit from sudden death investigation.*¹⁵

The Court will continue to work closely with key stakeholders to improve donation processes in respect of deceased persons whose deaths are under investigation by the Court and facilitate donation where it is possible to do so while fulfilling the Court's primary statutory responsibilities.

¹⁴ See: Australian Law Reform Commission, Discussion Paper 'Review of Human Tissue Laws', at [7.96], referencing Leo Nunnink and Chelsea Wallace-Dixon, 'The Impact of Organ Donation on Coronial Processes and Forensic Investigation: A Literature Review' (2020) 71 *Journal of Forensic and Legal Medicine* 101940, 3.

¹⁵ State Coroner's Guidelines (Qld) 2013, Chapter 4 'Dealing with bodies', p 14.