



Law Council
OF AUSTRALIA

Review of Human Tissue Laws: Discussion Paper

Australian Law Reform Commission

20 February 2026

Contents

Acknowledgements	1
Introduction	2
Proposals 1 to 4: A nationally harmonised regulatory framework	3
Proposal 5, Questions 1 and 2: The objects of human tissue laws	4
Human rights—National and international alignment.....	6
Questions 3 and 4: Removing barriers and promoting equitable access to human tissue	7
Questions 42 to 44: Reforms relating to data transparency.....	9
Proposal 7: Reforms relating to the definition of “tissue”	9
Proposal 10: Reforms relating to the determination of death	10
Proposal 23: Reforms relating to deceased donation	11
Consent and authorisation for removal of tissue after death.....	11
Designated officer role.....	13
Authorised decision-maker	15
Pre-mortem interventions	16
Coronial consent to donation	17
Respectful and dignified treatment of deceased body	17
Proposals 40 to 45: Reforms relating to the trade in tissue	18
Prohibiting the exchange of human tissue for reward within Australia.....	18
Giving extraterritorial effect to the prohibition	19
Agreement to be void	20
Exceptions to the prohibition on the exchange of human tissue for reward.....	21
Guidance on cost recovery.....	21
Prohibiting advertising	21
Reforms relating to tissue importation ethics and oversight.....	22
The timeframe for implementing reform proposals	22
Proposals 46 to 49: Reforms relating to how information can be disclosed and shared	23
About the Law Council of Australia	25

Acknowledgements

The Law Council of Australia thanks:

- the New South Wales Bar Association;
- the Law Institute of Victoria; and
- the National Human Rights Committee

for their contribution to the preparation of this submission.

Introduction

1. The Law Council of Australia welcomes the opportunity to contribute to the Australian Law Reform Commission's (the **ALRC's**) Discussion Paper as part of its **Review** of human tissue laws.
2. The Discussion Paper builds on the ALRC's Issues Paper,¹ to which the Law Council responded on 10 July 2025,² and seeks feedback on reform proposals and related questions on a wide range of issues. We understand that the Final Report is due to be delivered to the Attorney-General by 16 August 2026.
3. The Law Council welcomes the ALRC's consultative approach and supports many of the directions explored in the Discussion Paper, in particular those that address inconsistencies and remove obstacles to the provision of appropriate medical treatment, while upholding the inherent dignity and rights of all persons. This submission focuses on matters relating to:
 - a nationally harmonised regulatory framework for human tissue laws;
 - the objects of human tissue laws and the need to align with human rights;
 - promoting equitable access to human tissue and improving access to data;
 - to the definition of "tissue";
 - to the determination of "death";
 - deceased donation, which involves considerations of consent requirements, the designated officer role, the authorised decision-maker, pre-mortem interventions, coronial consent to donation, and the respectful and dignified treatment of a deceased body;
 - the trade in tissue, including prohibiting the exchange of human tissue for reward, giving extraterritorial effect to the prohibition, agreement for an exchange to be void, exceptions to the prohibition on the exchange for reward, guidance on cost recovery, prohibiting advertising, reforms relating to tissue importation ethics and oversight, and the timeframe for implementing reform proposals; and
 - how information may be disclosed and shared.
4. The Law Council encourages the ALRC to maintain a rights-focused and nationally coherent approach in its final recommendations, particularly in areas where complex ethical and practical considerations are involved.
5. We would welcome the opportunity to provide further assistance as the Review progresses.

¹ Australian Law Reform Commission, *Review of Human Tissue Laws* (Issues Paper 51, May 2025).

² Law Council of Australia, *Review of Human Tissue Laws: Issues Paper* (Submission, 10 July 2025).

Proposals 1 to 4: A nationally harmonised regulatory framework

6. Proposals 1 to 4 relate to the implementation of a new national regulatory framework for human tissue laws. Broadly, the Law Council supports implementing a new legislative framework that:
 - helps ensure consistency across Australian states and territories;
 - enables flexibility for rapidly evolving technologies and treatment options related to human tissue; and
 - provides clarity, certainty and consistency amongst system users, noting that healthcare is a shared responsibility in Australia between federal, state and territory, and local governments.
7. Proposal 1 seeks views on whether the retrieval, storage, and use of human tissue in Australia for medical, educational or scientific purposes should be regulated either through a coordinated and harmonised set of state, territory, and Commonwealth legislation (Proposal 1(a)); or uniformly by Commonwealth legislation (Proposal 1(b)).
8. Feedback to the Law Council has expressed a preference for Proposal 1(a) over Proposal 1(b), on the basis that this approach would ensure national consistency and flexibility, while maintaining best practice with service delivery. In particular, we note that, legally and historically, health matters have generally been left to the states and territories, which are well-equipped to handle complex service delivery and operations.
9. The regulatory framework established by Proposal 1 could be structured as follows:
 - legislation would address high-level issues, including the substance of legal obligations, rights, entitlements or prohibitions; and
 - delegated legislation would address the corresponding detail, including codes of practice, guidelines or standards as appropriate.
10. The Law Council also supports establishing a properly funded National Regulator (**Proposal 3**) that is empowered to carry out key functions, including setting guidelines and codes of practice, preparing educational materials, accrediting and licensing entities involved in the tissue banking and research sectors, and enforcing compliance with human tissue laws and codes. We agree that a National Regulator could help to maintain consistency across jurisdictions, public trust in the human tissue system, and adaptability, and provide guidance to the medical and research communities on their obligations under the law.³
11. It is critical that any National Regulator is appropriately resourced to exercise its statutory powers and functions. We also echo the ALRC's caution to avoid duplication and increasing existing regulatory burdens, or create unnecessary complexity in areas that are already regulated.⁴

³ Australian Law Reform Commission, *Review of Human Tissue Laws* (Discussion Paper No. 90, November 2025) 8 [1.10].

⁴ *Ibid*, 9 [1.16].

12. Proposal 3 provides three options for how the National Regulator could be established. Proposal 3(a) contemplates expanding the powers and functions of the Organ and Tissue Authority (**OTA**) by amending the *Australian Organ and Tissue Donation and Transplantation Authority Act 2008* (Cth). Feedback to the Law Council has expressed caution with this option, as the OTA's current regulatory focus is restricted to organ donation and does not encompass the broader tissue sector. Given the breadth of human tissue laws, the Proposal 3(b) and (c) appears to have greater potential to ensure and enable an effective national legislative framework. Proposal 3(b), which envisages the establishment of a new statutory regulatory body that would incorporate the OTA as a branch, would support a more coordinated and consistent approach to a national framework. This would be preferable to the creation of a new regulatory body that would be separate from the OTA, as contemplated by Proposal 3(c), given the overlap between organ donation and other aspects of the human tissue sector.
13. The Law Council shares the ALRC's views that "[a] controlled and coordinated harmonisation process is needed to ensure that implementation of [the] proposed regulatory framework ... and future legislative amendments are nationally consistent".⁵ We have received feedback that prefers achieving harmonisation through applied legislation, as proposed in Proposal 4(b), in which one host jurisdiction drafts and enacts a template Act, which is then enacted and applied in every other jurisdiction. Our feedback suggests that this could promote a high degree of uniformity and increase the efficiency with which amendments could be enacted across jurisdictions to accommodate evolving technologies. The Law Council was referred to health practitioner regulation laws, originally enacted by Queensland as the host jurisdiction,⁶ as a positive example of applied legislation working well in practice in the area of health (notwithstanding its associated complexities).

Proposal 5, Questions 1 and 2: The objects of human tissue laws

14. Proposal 5 sensibly proposes including an opening section in new human tissue legislation explaining the objects of the legislation.
15. Feedback to the Law Council is particularly supportive of proposed objects (c) to (f), noting that they appear to make human rights central to the reform of human tissue laws, namely that legislation intends to:
 - (c) *ensure that the donation, and use of human tissue for medical, educational or scientific purposes, is consistent with Australia's international human rights obligations;*
 - (d) *promote equity and reduce inequities in access to human tissue and the benefits of human tissue use;*
 - (e) *ensure respect for individual dignity and autonomy, and for the human body;*
 - (f) *prevent the exploitation of individuals in relation to how their tissue is removed, and used for medical, educational and scientific purpose[.]*

⁵ Ibid, 11 [1.22].

⁶ *Health Practitioner Regulation National Law Act 2009* (Qld).

16. As noted in paragraph 2.11 of the Discussion Paper, there is a shortage of organs for transplantation in Australia.⁷ This can lead some patients to seek unlawful or unethical organ transplants: for example, by travelling internationally to purchase an organ for transplantation when overseas (known as “transplant tourism”).⁸ Such practices can exploit vulnerable people overseas and breach fundamental human rights principles such as the inherent right to life,⁹ the right to be free from torture, cruel and inhuman or degrading treatment or punishment,¹⁰ the right to be free from slavery,¹¹ and forced or compulsory labour.¹² Transplant tourism is discussed further below.
17. It is essential that any efforts to increase access to human tissue should not compromise the rights and the inherent dignity of individuals in Australia or overseas, and that any new human tissue laws are consistent with Australia’s international human rights obligations. Adopting a human rights framework for the proposed national legislation would help create a modern, ethical and principled framework for human tissue donation and use.¹³
18. The Law Council has received feedback that it may be useful to include an additional object beyond those listed in the Discussion Paper—namely, “to promote transparency”. We have previously submitted that any reforms to the legislative framework governing access to human tissue must be guided by the core aim and principle of transparency (amongst others).¹⁴ Although it is arguable that “promot[ing] public trust” can subsume “transparency”, we recommend including it as a standalone object. This is because, as a core principle, it touches on various issues, including:
- the donation processes themselves;
 - the proper and consistent application of regulations and guidelines; and
 - the scrutiny and oversight of any relevant regulators.
19. Separately, the Law Council received feedback that the protective ambit of the objects provision could be better realised by removing the possessive “their” from proposed object (f). On this basis, we propose that the object read “prevent the exploitation of individuals in relation to how tissue is removed”. That is because questions of exploitation do not merely arise in relation to individuals and their own tissue, but also exist on a social and global scale.

⁷ Australian Law Reform Commission, *Review of Human Tissue Laws* (Discussion Paper No. 90, November 2025) 18 [2.11].

⁸ *Ibid*, 110 [11.9].

⁹ *International Covenant on Civil and Political Rights (ICCPR)*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), Article 6(1); *Universal Declaration of Human Rights (UDHR)*, GA Res 217A(III), UN GAOR, UN Doc A/810 (10 December 1948), Article 3.

¹⁰ ICCPR, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), Article 7; UDHR, GA Res 217A(III), UN GAOR, UN Doc A/810 (10 December 1948), Article 5.

¹¹ ICCPR, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), Article 8(1).

¹² *Ibid*, Article 8(3).

¹³ Australian Law Reform Commission, *Review of Human Tissue Laws* (Discussion Paper No. 90, November 2025) 18 [2.14].

¹⁴ Law Council of Australia, *Review of Human Tissue Laws: Issues Paper* (Submission, 10 July 2025) 5 [7] and 9 [14].

Human rights—National and international alignment

20. The Law Council acknowledges the commitment in the Discussion Paper to ensuring that new human tissue laws are consistent with Australia’s international human rights obligations and recognition of the importance of some of these rights as standalone objects of any new human tissue legislation.¹⁵ It is evident that several objects under Proposal 5, and the subsequent discussion,¹⁶ are informed by aspects of the International Covenant on Civil and Political Rights (**ICCPR**)¹⁷ and the International Covenant on Economic, Social and Cultural Rights (**ICESCR**).¹⁸
21. The Law Council reiterates the views expressed in our previous submission, that any reforms should reflect these, and other relevant international treaties and guidelines, and that the reforms as a whole be consistent with treaty obligations.¹⁹ In particular, the ALRC may wish to explicitly consider the Convention on the Rights of the Child²⁰ and the Convention on the Rights of Persons with Disabilities²¹ in relation to proposed reforms that impact the rights of children and persons with disability in the context of medical decision-making and privacy.
22. Additional relevant rights and obligations include:
- the right to freedom from torture, cruel, inhuman or degrading treatment and punishment under Article 7 of the ICCPR;
 - the obligation upon State Parties to criminalise trafficking in persons under Article 5 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational organized Crime²² (noting that ‘trafficking in persons’ is defined in Article 3 to include the removal of organs); and
 - the Council of Europe Convention against Trafficking in Human Organs.²³
23. Alignment with these rights and obligations will serve not only to guide legislative reform, but also to ensure the long-term sustainability, legitimacy and social acceptance of Australia’s human tissue regulatory system.

¹⁵ Australian Law Reform Commission, *Review of Human Tissue Laws* (Discussion Paper No. 90, November 2025) 18 [2.14–2.15].

¹⁶ *Ibid*, 15–21.

¹⁷ ICCPR, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), preamble, articles 2, 3, 17, 26.

¹⁸ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976), preamble, articles 2(2), 3, 12(1), 15(1)(b).

¹⁹ Law Council of Australia, *Review of Human Tissue Laws: Issues Paper* (Submission, 10 July 2025) 8 [10]–[13].

²⁰ See *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 12, 16. The Law Council acknowledges that Australia has a reservation to article 12 of the CRPD allowing for substituted decision-making in certain circumstances, but only subject to appropriate safeguards.

²¹ See *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 12.

²² *United Nations Convention against Transnational Organized Crime*, GA Res 55/25, UN Doc A/RES/55/25 (8 January 2001, adopted 15 November 2000) annex II (‘Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime’) art 3(a)

²³ *Council of Europe Convention against Trafficking in Human Organs*, opened for signature 25 March 2015, CETS No 216 (entered into force 1 March 2018).

Questions 3 and 4: Removing barriers and promoting equitable access to human tissue

24. The Law Council agrees with the statement in the ALRC’s Discussion Paper that removing barriers and promoting equity should be core goals of organ and tissue donation policy in Australia. As such, we support **Proposal 5** setting out the proposed Objects section, which includes “promote equity and reduce inequities in access to human tissue and the benefits of human tissue use” as a core object.²⁴
25. As recognised in the Discussion paper, First Nations peoples and some other groups in Australia continue to face barriers to donating organs and accessing organs for transplantation, and likely do not share equally in the benefits of human tissue use.²⁵ The Discussion Paper attributes this inequity to service delivery and systemic issues with health provision, and not from human tissue laws or policy.²⁶
26. In response to Question 3, we support the inclusion of provisions that aim to remove barriers and promote equitable access to human tissue, donation, transplantation and use, including the suggested additional strategies list at paragraph 3.20 of the Discussion Paper to promote and improve access, being:
 - recognising First Nations people’s cultural norms and values in human tissue laws;
 - strengthening governance and redress mechanisms; and
 - supporting culturally safe storage, repatriation, and disposal of tissue.²⁷
27. We also suggest ensuring that appropriate education materials and guidance are prepared in direct consultation with First Nations peoples to promote organ donation and enhance awareness and understanding in a culturally safe manner—this may be done by the proposed National Regulator.
28. Generally, we support measures that promote equitable and culturally safe access to organ donation, and enhance the organ donation system understanding, including through translated materials, and developing strategies for groups who experience other barriers to organ donation and transplantation.²⁸
29. In response to Question 4, we note that the specific barriers to equitable access to human tissue donation, transplantation and use should be informed by consultation and collaboration with impacted groups and public health experts.
30. The Law Council recommends that there should be provisions to ensure that data on the number of people going overseas for organ transplantation is collected and publicly available. The *Compassion, Not Commerce: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism Report* (the **Compassion not Commerce Report**), published in 2018 by the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade, made specific

²⁴ Australian Law Reform Commission, *Review of Human Tissue Laws* (Discussion Paper No. 90, November 2025) 15.

²⁵ *Ibid*, 23 [3.1].

²⁶ *Ibid*.

²⁷ *Ibid*, 28 [3.20]. These were identified by the Australian Alliance for Indigenous Genomics, *Submission 50*.

²⁸ *Ibid*, 26 [3.15], 27 [3.16]–[3.18].

recommendations for data collection of all transplants in Australia and for mandatory reporting of overseas transplants.²⁹

31. We acknowledge that, following the Compassion not Commerce Report, the Australian Government has indicated that it has invested in continued improvements to organ donation and transplantation data collection in Australia.³⁰ However, despite this investment, we understand that there is currently no single central data collection repository for all transplants in Australia, nor is data collected on the numbers of people travelling overseas for an organ transplant. This means that there is no analysis or understanding of how overseas transplants may influence transplant waiting lists in Australia, or of how the cost of after-care for overseas transplant patients may impact Australia's healthcare system. The Compassion not Commerce Report concluded that:

Transplant tourism poses clear health risks to donors, including risk of infection, diminished physical capacity, and complex psychological harm, including mental illness and emotional trauma. Donor participation in transplant tourism may lead to social or economic harm or exploitation, including financial hardship associated with poor health outcomes resulting from organ removal.

Transplant tourism also poses serious health risks to organ recipients, including elevated risk of bacterial, viral and fungal infection, graft failure, and death. Providing medical care to patients who develop such complications represents an increased and avoidable burden on the Australian healthcare system.³¹

32. The Compassion not Commerce Report recommended that:

... the Australian Government meets international best practice standards by establishing a comprehensive organ donation data collection repository... comprising a single point of access to data regarding all organ transplantations in Australia, including outcomes of treatment, deaths, travel overseas for treatment, cross referencing against waiting lists and other relevant information.³²

33. The Compassion not Commerce Report further recommended that:

... the Australian Government ensures that suitably-anonymised data regarding the participation by Australians in overseas commercial transplants, or those involved in organ procured from a non-consenting donor overseas, be shared with appropriate international partners, in order to combat transnational organ trafficking through cross-jurisdictional intelligence sharing.³³

²⁹ Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Compassion, Not Commerce: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism* (Report No 594, November 2018) 58, Recommendations 3-5.

³⁰ Australian Government, *Australian Government response to the Senate Foreign Affairs, Defence and Trade Legislation Committee Report: Migration Amendment (Overseas Organ Transplant Disclosure and Other Measures) Bill 2023* (Report, September 2024) Annex A, 3.

³¹ Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Compassion, Not Commerce: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism* (Report No 594, November 2018) 40–41 [2.100]–[2.101].

³² *Ibid*, 58 - Recommendation 3.

³³ *Ibid*, 58 - Recommendation 4.

34. And finally, the Compassion not Commerce Report recommended that:

*... the Australian Government works with the States and Territories, transplant registries, and the medical community, to consider the appropriate parameters, protections, and other considerations, to support a mandatory reporting scheme whereby medical professionals have an obligation to report, to an appropriate registry or authority, any knowledge or reasonable suspicion that a person under their care has received a commercial transplant or one sourced from a non-consenting donor, be that in Australia or overseas.*³⁴

Questions 42 to 44: Reforms relating to data transparency

35. Relatedly, and in response to Question 42, the Law Council submits that there is a great need for data to better understand the demand for tissue and inform future policy development. This is acknowledged in the Discussion Paper.³⁵

36. In particular, feedback to the Law Council is supportive of mandatory reporting by health professionals of overseas transplants that distinguishes, where possible, between legitimate overseas transplantation and transplant tourism. In addition to collecting data on the prevalence of transplant tourism and deterring Australians from seeking a transplant in this manner, mandatory reporting would enable Australia's healthcare system to monitor the impact of overseas transplants, creating better data to inform policies on organ donation and treatments and facilitating equitable access to organ transplants in Australia.

37. In relation to Question 43, the Law Council suggests that requiring health professionals to report on overseas transplants would not be oppressive, especially as health professionals are already familiar with mandatory reporting obligations, for example, in the context of suspected abuse. Additionally, health professionals are currently legally required to report on notifiable diseases with lists of diseases and procedures for reporting prescribed in each state and territory.³⁶

38. In response to Question 44, the Law Council supports the National Regulator (or alternative) having the power to conduct mandatory inspections of records.

Proposal 7: Reforms relating to the definition of “tissue”

39. The Law Council previously supported the alignment of key definitions (amongst other things) to promote consistency across jurisdictions and reduce legal uncertainty and regulatory fragmentation.³⁷

40. The Law Council agrees with Proposal 7, that new human tissue legislation should include a definition of human “tissue” (or an alternative label) that is broad and provides a flexible mechanism to adjust the definition. Importantly, the definition

³⁴ Ibid, 58 - Recommendation 5.

³⁵ Australian Law Reform Commission, *Review of Human Tissue Laws* (Discussion Paper No. 90, November 2025) 124 [11.94].

³⁶ *National Health Security Act 2007* (Cth). At the state and territory level see, for example, *Public Health Act 2010* (NSW), s 82; *Public Health and Wellbeing Act 2008* (Vic), s 127.

³⁷ Law Council of Australia, Law Council of Australia, *Review of Human Tissue Laws: Issues Paper* (Submission, 10 July 2025) 7 [8].

should be readily understood and easy to apply at any given point in time, particularly for users such as medical practitioners and members of the public.

41. At this stage, we offer no concluded view to how “tissue” should be defined. However, we recommend that any proposed definition be drafted in consultation with clinical specialists to ensure it is accurate, up to date and sufficiently broad to account for future developments.
42. We are supportive of measures to empower the National Regulator to adjust the scope of the “tissue” definition through delegated legislation that provides specified exclusions.³⁸ Using delegated legislation is appropriate given the need to be responsive to any medical and scientific developments in this fast-moving field. The approach also ensures subject matter experts with the requisite technical knowledge are involved in adjusting the definition’s scope. Further, the Law Council supports empowering the National Regulator to create guidelines to provide interpretive guidance and clarity about the definition and scope of “tissue”, to enhance understanding and avoid confusion about the ambit of the legislation.

Proposal 10: Reforms relating to the determination of death

43. The Law Council previously welcomed the ALRC’s indication that the definition of “death” will be specifically considered in its review and noted its support for reform that is consistent with clinical practice and medical knowledge.³⁹ We welcome the Discussion Paper’s detailed consideration of the issue.
44. In Proposal 10, we support the express provision in the proposed Section Y that “[a] determination that a person has died under Section X must be made according to accepted medical practice”.
45. We emphasise that clinical specialists should be consulted concerning proposed Section X which provides for “[w]hen death occurs”. The Discussion Paper acknowledges that questions regarding whether death occurs when there has been a “permanent cessation of the person’s critical brain functions” (as opposed to other metrics) may become contested and are highly technical in nature.⁴⁰ The Law Council has received feedback in support of the ALRC’s proposed wording for the determination of death provision, which strongly emphasises the unified brain-based nature of death. We also note that the ALRC’s proposal is consistent with the substance of the submission by the Australian and New Zealand Intensive Care Society’s Death and Organ Donation Committee.⁴¹
46. In addition, views provided to the Law Council have expressed a preference for any provision on the determination of death to be incorporated within the new human tissue legislation set out in Proposal 1, as opposed to the alternatives set out in Question 9 of the Discussion Paper. This ensures that “death” (in the human tissue

³⁸ Australian Law Reform Commission, *Review of Human Tissue Laws* (Discussion Paper No. 90, November 2025) 35 [4.18].

³⁹ Law Council of Australia, Law Council of Australia, *Review of Human Tissue Laws: Issues Paper* (Submission, 10 July 2025) 11 [25].

⁴⁰ Australian Law Reform Commission, *Review of Human Tissue Laws* (Discussion Paper No. 90, November 2025) 43-51.

⁴¹ *Ibid*, 53 [5.59].

law context) remains properly scrutinised and regulated, in accordance with the “dead donor rule”,⁴² as well as consistent across jurisdictions. In turn, this would promote public trust and avoid confusion for users.

Proposal 23: Reforms relating to deceased donation

Consent and authorisation for removal of tissue after death

47. The Law Council supports ensuring consistency in consent requirements and other procedural standards across jurisdictions and strengthening consent provisions to ensure consent is respected in practice.⁴³ Relatedly, we also maintain the need to respect individual autonomy and dignity, which is critical for seeking to reform human tissue laws.⁴⁴ The ALRC’s proposed Objects provision, specifically Proposal 5(e), is particularly applicable to reforms regarding deceased donation.
48. The Discussion Paper discusses whether an individual’s expressed wish to donate tissue should be legally binding, or whether their next of kin (or family) should have the final decision about if donation can occur.⁴⁵ Paragraph 7.23 highlights that as a matter of practice, the wishes of a person’s next of kin (or family) are always followed, regardless of whether the deceased person previously expressed a wish to donate.⁴⁶
49. The Law Council does not have a concluded position on this issue at this stage. However, we have received input that expresses concern about the practice of seeking consent from a person’s family when it is not legally required, on the basis that:
- it is not consistent with the law and creates public confusion and misconception;
 - it does not respect the donor’s wishes and undermines individual autonomy;
 - it may not be an appropriate decision for the family, particularly when imposed on grieving families at a difficult time;
 - there is a likelihood that family members refuse to consent—nationally in 2024, 53 percent of families agreed to donation.⁴⁷ Also, there is research that has shown that regret of family members who overrule their loved one’s wish to be an organ donor is common;⁴⁸
 - it may discourage an individual from providing valid consent if they believe their family will inevitably override their wish; and
 - it may result in negative media attention and undermine public trust in the organ donation system.⁴⁹

⁴² Ibid, 41.

⁴³ Law Council of Australia, *Review of Human Tissue Laws: Issues Paper* (Submission, 10 July 2025) 11.

⁴⁴ Ibid, 6 [8].

⁴⁵ Australian Law Reform Commission, *Review of Human Tissue Laws* (Discussion Paper No. 90, November 2025) 69 [7.5].

⁴⁶ Ibid, 72 [7.23].

⁴⁷ See Australian Organ and Tissue Donation and Transplantation Authority, *Australian Donation and Transplantation Activity Report 2024*, 18.

⁴⁸ JR Rodrigue, DL Cornell and RJ Howard, ‘The Instability of Organ Donation Decisions by Next-of-Kin and Factors That Predict It’ (2008) 8(12) *American Journal of Transplantation* 2661, 2663.

⁴⁹ As noted in Australian Law Reform Commission, *Review of Human Tissue Laws* (Discussion Paper No. 90, November 2025) 73 [7.24].

In this context, the Law Institute of Victoria (**LIV**) submits that an individual's expressed wish to donate tissue should be respected, both in law and in practice, and should not be able to be overridden by other people such as family members (or as per below, the authorised decision-maker). In the LIV's view, the autonomy and wishes of a potential organ donor should be paramount in any human tissue legislation, and ought to be respected, as reflected in the ALRC's Proposal 5(e). Given that consent to organ donation is refused by family in almost half of all cases,⁵⁰ LIV members support measures that seek to overcome the current low conversion rate of organ donations.

50. The LIV submits that consent (or 're-consent') of next of kin or family should not be necessary if a person validly consented to donate tissue prior to dying. Rather, a person's authorised decision-maker should only be asked for consent where no valid consent was given by that individual prior to death (this is considered further below).
51. Proposal 23 seeks to continue to give effect to the approach that a person's wishes in relation to tissue donation are prevented from being overridden,⁵¹ by virtue of paragraph [5] which declares that "[v]alid consent is sufficient legal authority for the removal of the specified tissue and for the specified uses". The LIV notes that this is consistent with the existing subsection 30(1) of the *Human Tissue Act 1982* (Vic), which provides that "[a]n authority under this Part is sufficient authority ... to remove tissue from the body of the deceased person."
52. The LIV further suggests that that the ALRC should consider inserting additional provisions to further strengthen the legislation and to give greater certainty to system users, including health practitioners. The LIV has received anecdotal evidence indicating that some health practitioners are concerned about potential reprisal if they proceed with organ donation in accordance with valid consent or authorisation provided under applicable legislation, where this is contrary to the wishes of the donor's family. These concerns may be heightened where family members threaten legal action should organ donation proceed.
53. In this context, the LIV recommends the legislation should provide that:
 - a health practitioner must, as far as reasonably practicable, give effect to consent or authorisation that has been validly provided under the legislation (see, for example, section 60 of the *Medical Treatment Planning and Decisions Act 2016* (Vic));
 - a health practitioner is protected from liability if they, in good faith and without negligence, give effect to consent or authorisation that has been validly provided under the legislation (see, for example, section 52 of the *Medical Treatment Planning and Decisions Act 2016* (Vic)); and
 - valid consent or authorisation provided under the legislation cannot be overridden by the next of kin or other family member (or authorised decision-maker, as discussed below).

⁵⁰ See, for example, Rachel Carbonell, Loretta Florance and Jackson Worthington, *Organ donors on the rise, but fewer Australians receiving life-saving transplants* (ABC News online, 25 February 2025).

⁵¹ This is consistent with the ALRC's position in its 1977 report. See Australian Law Reform Commission, *Review of Human Tissue Laws* (Discussion Paper No. 90, November 2025) 73 [7.28].

54. The LIV has emphasised that provisions of this kind, supported by a targeted and effective communications strategy upon implementation, would assist in promoting practical compliance with both the intent and operation of the legislation. Such measures may also help address current practices where a donor’s expressed wishes are not acted upon due to objections or disagreement from family members or other third parties. The development of further guidance material to support health practitioners in conducting difficult conversations with a potential donor’s family—including clear explanations of the legal framework and applicable processes—would be beneficial. The LIV considers that these legislative and implementation measures would help achieve an appropriate balance between respecting individual autonomy and acknowledging the interests and sensitivities of the family of a deceased person.
55. The Law Council also received feedback that new human tissue legislation should specify the form in which valid consent to deceased donation may be given. Providing greater clarity on the accepted forms of consent would help promote confidence in the donation system, support consistent decision-making by health practitioners, and reduce uncertainty at a time when decisions may need to be made quickly.
56. Broadly, the Law Council supports the criteria for “valid consent” set out in paragraph [4] of Proposal 23, that consent is given voluntarily, at a time when the person consenting has decision-making capacity, after the person consenting has been informed of the nature and effect of the removal of the tissue, as well as about the intended use of the tissue, and is revocable where practicable prior to being removed. This framework largely mirrors what we set out in our previous submission.⁵²

Designated officer role

57. The ALRC’s Discussion Paper provides a brief overview of the role of the Designated Officer, who is responsible for authorising tissue removal from the bodies of persons who die in hospital settings. The Discussion Paper also refers to the ALRC’s 1977 report on human tissue laws, which recommended there should be Designated Officers to ascertain whether the deceased had, prior to death, consented to or objected to donation. Where the deceased person’s wishes were unknown, the 1977 report envisaged that Designated Officers would contact the deceased’s relatives to seek their views regarding donation.⁵³
58. The Discussion Paper notes that at the time of making the recommendation in 1977, “there was no national agency to coordinate deceased donation or inquire about a dying or deceased person’s wishes or the views of their family.”⁵⁴ The Discussion Paper further observes that DonateLife is now primarily responsible for:
- checking if a person is listed on the Australian Organ Donor Register (“Donor Register”);
 - providing advice to clinicians about a donor’s suitability to donate; and

⁵² Law Council of Australia, Law Council of Australia, *Review of Human Tissue Laws: Issues Paper* (Submission, 10 July 2025) 13 [34].

⁵³ Australian Law Reform Commission, *Review of Human Tissue Laws* (Discussion Paper No. 90, November 2025) 70 [7.12].

⁵⁴ *Ibid*, 71 [7.14].

- planning the approach to family conversations about donation.⁵⁵
59. In practice, a Designated Officer in a hospital setting provides final authorisation in accordance with the provisions of the relevant human tissue laws.⁵⁶
60. Proposal 23 does not include a role for Designated Officers and Question 16 seeks views on whether, contrary to the ALRC’s proposal, there is a need for Designated Officers in a modern tissue donation system.⁵⁷
61. The Law Council has received divergent views on these matters, with some expressing support to remove the Designated Officer role due to perceptions of ineffectiveness. However, others took the view that the role of Designated Officer remains necessary, at least for in-hospital deaths. This perspective notes that while a Designated Officer may not be required in a modern tissue donation system to check whether the potential donor had indicated a willingness to donate or to seek consent for donation from the person’s senior next of kin, the Designated Officer performs other important functions, including:
- ensuring that significant clinical practices in a hospital (such as removal of organs from a deceased person) are overseen by a senior representative of the hospital, and not by the treating clinicians or an external body such as DonateLife;
 - providing a safeguard for the rights of potential donors by requiring a senior hospital representative to ensure compliance with hospital clinical governance processes before tissue removal proceeds;
 - ensuring that the hospital’s medical practitioners comply with coronial legislation;
 - providing authorisation for the removal of tissue after death where consent cannot be obtained (e.g. because the person does not have decision-making capacity and there is no authorised decision-maker), such as in section 26(1)(e) of the *Human Tissue Act 1982* (Vic); and
 - providing authorisation for pre-mortem interventions where consent cannot be obtained (e.g. because there is no authorised decision-maker), such as in section 24E of the *Human Tissue Act 1982* (Vic).
62. The feedback received by the Law Council also noted that a Designated Officer’s tasks in a hospital are generally not time-consuming or onerous. Those with direct experience working with Designated Officers in hospitals have noted that the tasks may be performed by a senior hospital employee without difficulty. The LIV has provided feedback that it is not aware of any examples in Victorian hospitals of any of the practical difficulties referred to in paragraph 7.19 of the Discussion Paper.
63. Based on the reasons above, we suggest that the ALRC may need to reconsider the need for Designated Officers in a hospital setting.

⁵⁵ Ibid.

⁵⁶ Ibid, 71 [7.17].

⁵⁷ Ibid, 71 [7.20].

Authorised decision-maker

64. The Law Council supports greater harmonisation of provisions across jurisdictions where consent may need to be obtained from a substitute decision-maker. In our previous submission, we suggested clarification of the law is needed about who has the final say on organ donation, and we appreciate the ALRC's careful consideration of this issue.⁵⁸
65. The Law Council received support for Proposal 25 that new human tissue legislation should replace current definitions of "senior available next of kin" with a definition of "authorised decision-maker" that sets out a hierarchy of decision-makers modelled on section 13 of the *Health Care Decision Making Act 2023* (NT).⁵⁹
66. We also agree with the Discussion Paper's observations that current definitions and hierarchies of "next of kin" or "senior available next of kin" do not recognise culturally diverse and modern understandings of family and kinship, or the appointment of legally recognised substitute decision-makers.⁶⁰ Further, providing for a mechanism for individuals to appoint a person of their choice to make donation decisions on their behalf if they die, if they do not want their family or next of kin to play this role, is a proposal that is consistent with the individual's autonomy and dignity.
67. Based on the feedback received, we agree with the benefits outlined in paragraph 7.42 of the Discussion Paper to give more weight to the views of the donor (if the donor consented, or does not have the decision-making capacity) through an authorised decision-maker who:
 - can be someone appointed through an advance care directive by the donor as the first person in the hierarchy of substitute decision-makers, allowing the donor to appoint whoever they trust to uphold their wishes; and
 - in the case of an adult donor, is required to make the decision they think the adult would have made in the circumstances.
68. The feedback received also emphasised that any reforms make appropriate accommodation for First Nations kinship structures.
69. While there is support for the list of substitute decision-makers set out at page 74 of the Discussion Paper, we note that modifications may be required to account for different state and territory regimes. For example, in Victoria, the LIV states that it may need to refer to "appointed medical treatment decision maker".⁶¹
70. The LIV also recommends giving further consideration to the inclusion of "a friend of the person who has a close and continuing relationship with the person" in the decision-maker hierarchy.⁶² For example, in Victoria, "a friend of the person" is not

⁵⁸ Law Council of Australia, *Review of Human Tissue Laws: Issues Paper* (Submission, 10 July 2025) 14 [37].

⁵⁹ Australian Law Reform Commission, *Review of Human Tissue Laws* (Discussion Paper No. 90, November 2025) 68.

⁶⁰ *Ibid*, 70 [7.7].

⁶¹ *Medical Treatment Planning and Decisions Act 2016* (Vic), s 55.

⁶² Australian Law Reform Commission, *Review of Human Tissue Laws* (Discussion Paper No. 90, November 2025) 74 [7.33].

recognised in section 55 of the *Medical Treatment Planning and Decisions Act 2016* (Vic) as a potential substitute decision-maker for medical treatment decisions.

71. Finally, where there is disagreement between authorised decision-makers of equal standing within the decision-making hierarchy, the LIV suggests that the consent of one authorised decision-maker should prevail notwithstanding another's objection. This approach is consistent with supporting measures that address the persistently low conversion rate for organ donation. Alternatively, the LIV considers that such disagreements could be resolved by adopting an approach analogous to paragraph 55(3)(c) of the *Medical Treatment Planning and Decisions Act 2016* (Vic), which provides that, if more than one person fits the description in the subparagraph, the oldest of those persons is the authorised decision-maker.
72. Given that states and territories have different substitute-decision maker regimes for medical treatment decisions before death, a potential option in the new human tissue legislation is to define "authorised decision-maker" to have the same meaning as the relevant state or territory's substitute-decision maker for medical treatment decisions before death. However, we note that this approach may result in inconsistencies between states and territories, which may lead to more confusion amongst regime users.

Pre-mortem interventions

73. The Law Council received support for Proposal 26, that the new human tissue legislation should define pre-mortem interventions to mean any activity, procedure or investigation that is performed on a living person solely for the purpose of tissue donation after death, including to assess, maintain, or improve the viability of organs for transplantation. This definition is considered to be appropriately broad, allowing flexibility to cover the range of procedures that might be undertaken to facilitate organ transplantation.
74. Supports has also been received for the general prohibition in Proposal 27 on pre-mortem interventions unless it is authorised under the legislation. However, Proposal 27 as currently drafted removes the ability for pre-mortem interventions where consent cannot be obtained (for example, if the person does not have decision-making capacity and the person has no authorised decision-maker).
75. Accordingly, the Law Council proposes that the wording be amended to read "a pre-mortem intervention is prohibited unless valid consent or authorisation has been given to it" (underlining added). The Law Council considers that legislation should authorise pre-mortem interventions in any of the following situations where:
 - the relevant donor has given consent prior to death (if they had decision-making capacity);
 - the person's authorised decision-maker has given consent (if the person does not have decision-making capacity); or
 - the Designated Officer has given authorisation (if the person does not have decision-making capacity, and there is no authorised decision-maker—see, for example, section 24E of the *Human Tissue Act 1982* (Vic)).

76. The Law Council supports a requirement in Proposal 27 that, in determining whether to consent on behalf of an adult person, the authorised decision-maker (and the Designated Officer, if the above is accepted) “must have regard to the person’s known beliefs, values, and preferences ... and make the decision they believe the person would have made in the circumstances”. This is an important safeguard consistent with the autonomy principle.
77. Separately, in response to Question 22, in situations where it is necessary to conduct minor procedures to determine a person’s suitability to donate tissue after death, and where it is not practical to obtain prior consent, feedback to the Law Council is supportive of an exception to the need for consent.
78. In addition, feedback received by the Law Council suggests that new human tissue laws should protect health practitioners from prosecution for undertaking ante-mortem procedures. The LIV suggests that the exclusion of liability provision in section 43 of the *Human Tissue Act 1982* (Vic) could be used as a model.

Coronial consent to donation

79. The Law Council recognises there are important legal, ethical and procedural considerations for the interaction between coronial responsibilities and time-critical human tissue donation processes. In our previous submission, we recommended greater legislative and procedural clarity to streamline donation processes in this context.⁶³ Broadly, we support a nationally consistent framework to ensure that coronial oversight is preserved without unnecessarily impeding lawful donation in urgent clinical contexts.⁶⁴ This could also help overcome the current low conversion rates of organ donation.
80. In response to Question 24, we support human tissue legislation providing factors that coroners should consider when deciding whether or not to consent to donation of tissue from human bodies under their jurisdiction. We received feedback that suggested including the following potential factors for consideration:
- whether or not the person or their authorised decision-maker consented to donation;
 - whether or not the coroner is reasonably satisfied that the donation will compromise a potential investigation or prosecution;
 - the wider public impact of objecting to donation, including the urgency of donor management; and
 - guidance from treating clinicians.

Respectful and dignified treatment of deceased body

81. The Law Council supports a national framework that is underpinned by and enshrines the inherent dignity of the human body and the right of every person to control what happens to their body during life and after death.⁶⁵ In this context, we support

⁶³ Law Council of Australia, *Review of Human Tissue Laws: Issues Paper* (Submission, 10 July 2025) 20 [62].

⁶⁴ *Ibid*, 20 [63].

⁶⁵ *Ibid*, 6 [8].

Proposal 28, that new human tissue legislation should provide that, when removing tissue from a deceased body, any person involved in the removal must treat the body with the highest level of respect and dignity that is practicable in the circumstances.

82. Proposal 29 proposes to provide a mechanism enabling medical practitioners and authorised technicians to remove certain types of tissue from deceased bodies, and the National Regulator (or alternative) should by delegated legislation specify the relevant qualifications required for technicians, and any additional type of tissue that technicians are authorised to remove.
83. We received feedback which agrees that the creation of a minimum set of qualifications for technicians authorised to remove certain types of tissue from deceased bodies strikes the right balance between respecting the dignity and autonomy of individuals and the need to accommodate unforeseen circumstances, and respect for a deceased person's family and loved ones.

Proposals 40 to 45: Reforms relating to the trade in tissue

84. Broadly, the Law Council continues to be deeply concerned about trafficking in persons for the purposes of organ removal, organ trafficking, itself, and organ transplant tourism. We emphasise that such practices have the potential to result in detrimental and fatal consequences for victims.⁶⁶

Prohibiting the exchange of human tissue for reward within Australia

85. We received feedback supporting the prohibition against trade in human tissue in Proposal 40. The inclusion of this prohibition—which is consistent with international laws⁶⁷, norms⁶⁸ and existing prohibitions in state and territories around Australia⁶⁹—in a new, nationally consistent legislative framework would help harmonise divergent approaches to the content, scope and language that currently exist across different jurisdictions.
86. In this context, we support the use of consistent language in any proposed legislation on human tissue. Feedback received by the Law Council highlights that the use of the word “reward” does not appear in key legal instruments such as the Council of Europe Convention against Trafficking in Human Organs⁷⁰ and guidance documents such as the Declaration of Istanbul on Organ Trafficking and Transplant Tourism,⁷¹

⁶⁶ Ibid, 15-16 [44].

⁶⁷ *Council of Europe Convention against Trafficking in Human Organs*, opened for signature 25 March 2015, CETS No 216 (entered into force 1 March 2018).

⁶⁸ The Transplantation Society and International Society of Nephrology, *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism* (2018 Edition) Principle 4; World Health Organization, *Guiding Principles on Human Cell, Tissue and Organ Transplantation*, WHA Res 63.22, WHO Doc WHO/HTP/EHT/CPR/2010.01 (2010) Guiding Principle 5.

⁶⁹ Although noting the prohibition of trade varies across Australian states and territories. See Australian Law Reform Commission, *Review of Human Tissue Laws* (Discussion Paper No. 90, November 2025) 109 [11.1]–[11.2].

⁷⁰ *Council of Europe Convention against Trafficking in Human Organs*, opened for signature 25 March 2015, CETS No 216 (entered into force 1 March 2018).

⁷¹ *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism* (2018 Edition).

and suggests the use of other terminology such as “financial gain”⁷² or “comparable advantage”⁷³ instead. We note the word “reward” is used in Guiding Principle 5, and related commentary, of the World Health Organisation’s Guiding Principles on Human Cell, Tissue and Organ Transplantation.

Giving extraterritorial effect to the prohibition

87. The Law Council has been advocating for extending the geographical jurisdiction for the organ trafficking offences under the Criminal Code for some time, including in our response to the Issues Paper.⁷⁴ As noted in the Discussion Paper at paragraphs 11.37–11.38, the *Criminal Code Act 1995* (Cth) currently prohibits the movement of people for the purposes of facilitating the unlawful removal of organs, however, it does not capture “transplant tourism”.
88. The Law Council acknowledges that not all organ transplants that take place overseas are unethical or problematic—for example, where an organ recipient’s overseas friend or family member is willing to become a donor voluntarily. However, transplant tourism—as mentioned earlier in this submission—which includes a commercial element may involve the exploitation of vulnerable people overseas and may pose significant health risks to organ donors and recipients alike.
89. The Compassion not Commerce Report recommended that:
- ... the Australian Government amend the Criminal Code Act 1995 and any other relevant legislation insofar as offences relating to organ trafficking:*
- *include trafficking in human organs, including the solicitation of a commercial organ transplant;*
 - *apply to any Australian citizen, resident or body corporate;*
 - *apply regardless of whether the proscribed conduct occurred either within or outside of the territory of Australia;*
 - *apply regardless of the nationality or residence of the victim; and*
 - *apply regardless of the existence, or lack thereof, of equivalent laws in the jurisdiction in which the offending conduct occurred.*⁷⁵
90. The Australian Government accepted this recommendation in principle.⁷⁶
91. As noted in the Discussion Paper,⁷⁷ following the Compassion not Commerce Report, the Attorney-General’s Department completed a targeted review of

⁷² *Council of Europe Convention against Trafficking in Human Organs*, opened for signature 25 March 2015, CETS No 216 (entered into force 1 March 2018) art 4(1)(b).

⁷³ *Ibid.*

⁷⁴ Law Council of Australia, *Organ Trafficking and Organ Transplant Tourism* (Submission, 14 August 2017) 15. Also see Law Council of Australia, *Review of Human Tissue Laws: Issues Paper* (Submission, 10 July 2025) 16 [45]–[48].

⁷⁵ Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Compassion, Not Commerce: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism* (Report No 594, November 2018) 87, Recommendation 7.

⁷⁶ Australian Government, *Australian Government response to the Joint Standing Committee on Foreign Affairs, Defence and Trade report: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism* (February 2021) 12.

⁷⁷ Australian Law Reform Commission, *Review of Human Tissue Laws* (Discussion Paper No. 90, November 2025) 116 [11.49].

Divisions 270 and 271 of the *Criminal Code 1995 (Cth)*.⁷⁸ The Australian Government's response to the Compassion not Commerce Report in September 2024 stated that the Australian Government had agreed to develop potential legislative reforms to address the findings of the targeted review, including potentially extending the jurisdiction of Australia's trafficking in persons offences (including for the purpose of organ removal). This would capture overseas conduct by Australian citizens, residents and bodies corporate, without the need for the trafficked victim or survivor to have crossed an Australian border.⁷⁹

92. The Compassion not Commerce Report further recommended that the Australian Government sign and ratify the Council of Europe Convention against Trafficking in Human Organs,⁸⁰ which requires parties to enact domestic legislation that criminalises trafficking in human organs.⁸¹ The Australian Government noted this recommendation⁸² and subsequently stated that Australia is not a party to the Council of Europe Convention against Trafficking in Human Organs and therefore has no obligation to give it effect.⁸³ The Law Council continues to support the accession to the Council of Europe Convention as set out in our previous submission, as it could assist in addressing a gap in Australian domestic legislation regarding the offence of organ trafficking.⁸⁴
93. The Law Council notes a previous unsuccessful attempt to prohibit transplant tourism at a state level,⁸⁵ and suggests that the extraterritorial operation of the proposed prohibition makes this subject matter an appropriate one to be dealt with at Commonwealth level: for example, by expanding the organ trafficking provisions of the Criminal Code. The Law Council's previous submissions provide further details on how this may be achieved.⁸⁶

Agreement to be void

94. Proposal 41 proposes that new human tissue legislation should provide that an agreement for an exchange of human tissue is not enforceable by any person who

⁷⁸ See Australian Government Attorney-General's Department, *Targeted Review of Modern Slavery Offences in Divisions 270 and 271 of the Criminal Code Act 1995 (Cth)* (Findings Report, 2023).

⁷⁹ Australian Government, *Australian Government response to the Senate Foreign Affairs, Defence and Trade Legislation Committee Report: Migration Amendment (Overseas Organ Transplant Disclosure and Other Measures) Bill 2023*, (Report, September 2024) Annex A, 6.

⁸⁰ *Council of Europe Convention against Trafficking in Human Organs*, opened for signature 25 March 2015, CETS No 216 (entered into force 1 March 2018).

⁸¹ Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Compassion, Not Commerce: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism* (Report No 594, November 2018) 71, Recommendation 6.

⁸² Australian Government, *Australian Government response to the Joint Standing Committee on Foreign Affairs, Defence and Trade report: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism* (February 2021) 11.

⁸³ Australian Government Attorney-General's Department, *Targeted Review of Modern Slavery Offences in Divisions 270 and 271 of the Criminal Code Act 1995 (Cth)* (Findings Report, 2023).

⁸⁴ Law Council of Australia, *Review of Human Tissue Laws: Issues Paper* (Submission, 10 July 2025) 16-17 [49]-[52].

⁸⁵ See the Human Tissue Amendment (Trafficking in Human Organs) Bill 2016 (NSW), which sought to amend the *Human Tissue Act 1983* (NSW) to address extraterritorial commercial organ trafficking.

⁸⁶ Law Council of Australia, *Organ Trafficking and Organ Transplant Tourism* (Submission, 14 August 2017) 15. Also see Law Council of Australia, *Review of Human Tissue Laws: Issues Paper* (Submission, 10 July 2025) 16 [45]-[48].

enters the agreement either knowing it contravenes, or being reckless about whether it contravenes, the prohibition against the exchange of human tissue (in Proposal 40).

95. Apart from the use of the word “reward”—see discussion at paragraph [86] above—the Law Council supports Proposal 41.

Exceptions to the prohibition on the exchange of human tissue for reward

96. Proposal 42 sets out exceptions to the prohibition on the exchange of human tissue, which would permit human tissue traded for a medical, educational or scientific purpose that is also:
- a biological or medical device included in the register under the *Therapeutic Goods Act 1989* (Cth);
 - a registered good under the *Therapeutic Goods Act 1989* (Cth);
 - human tissue obtained under the ‘Special Access Scheme’ administered by the Therapeutic Goods Administration (**TGA**); or
 - a blood product under the *National Blood Authority Act 2003* (Cth) that is traded by the Commonwealth or an entity mentioned in the national products price list as a supplier.
97. Apart from the use of the word “reward”—see discussion at paragraph [86] above—the Law Council supports Proposal 42.
98. However, we maintain reservations in relation to Proposal 43, which would empower the National Regulator (or alternative) to grant exemptions to permit exchanges, or categories of exchanges, of human tissue. In our view, any exceptions should be legislated and not a function or power of the proposed National Regulator (or alternative), noting that legislating would provide certainty and clarity and prevent the potential for inconsistency or subjective biases.

Guidance on cost recovery

99. Proposal 44 proposes that the National Regulator (or alternative) should be authorised to provide guidance about what expenses, costs, loss or damage can be reimbursed or recovered by persons that retrieve, process, use, and/or distribute human tissue.
100. Feedback provided to the Law Council has raised concerns with Proposal 44 on the basis that the expenses, costs, loss or damage that can be reimbursed by persons who retrieve, provide, use, and/or distribute human tissue should be specified by legislation.

Prohibiting advertising

101. Proposal 45 submits that new human tissue legislation should prohibit the public dissemination of information that invites, promotes, or seeks to induce a person to engage in a prohibited exchange of human tissue.

102. The Law Council supports the prohibition set out in Proposal 45, noting it is consistent with the Declaration of Istanbul on Organ Trafficking and Transplant Tourism⁸⁷ and would unify approaches across Australia.

Reforms relating to tissue importation ethics and oversight

103. Question 40 seeks views on whether new human tissue legislation should include a mechanism to help make sure that imported tissue has been ethically sourced, and if that mechanism should be in the form of a prohibition or a reporting mechanism.
104. The Law Council suggests that new human tissue legislation should not only include a mechanism to help ensure that imported tissue has been ethically sourced, but that the mechanism should also be in accordance with relevant international laws and standards. Our feedback suggests that the prohibition of the importation into Australia of human tissue that was originally obtained without the consent of the donor, or in exchange for financial gain or comparable advantage (option a) would be a more effective deterrent than a reporting mechanism similar to that contained in the *Modern Slavery Act 2018* (Cth) under option b.
105. The Law Council considers that any reporting mechanism should be additional to the legislated prohibition, and its purpose would be to monitor where and how the tissue has been sourced and for what purpose. We also suggest having penalties for failing to comply with the reporting mechanism with regards to human tissue, noting that some modern slavery statements being submitted under the Modern Slavery Act, which does not impose a penalty for non-compliance, fail to meet legislative requirements.⁸⁸

The timeframe for implementing reform proposals

106. Question 46 seeks views on the timeframe/s within which the reforms set out in the Discussion Paper should be implemented, or on how the implementation of the reforms could be staged or prioritised.
107. We have received feedback suggesting that, if the reforms are staged, priority should be given to prohibiting trafficking in organs (as distinct from the existing prohibition against trafficking in persons for the removal of organs). This emphasises that there is a clear need for law reform in this area, noting the absence of prosecutions for organ trafficking since the offences were introduced in 2005⁸⁹ suggests that there may be gaps or practical limitations in the current legislative framework.⁹⁰
108. Further, we suggest that other reforms that strengthen protections against organ trafficking should also be prioritised, including the introduction of mandatory reporting

⁸⁷ *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism* (2018 Edition).

⁸⁸ Freya Dinshaw et al, *Broken Promises: Two Years of corporate reporting under Australia's Modern Slavery Act* (Report, 2022) 2.

⁸⁹ The *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005* (Cth) introduced Division 271 into the *Criminal Code 1995* (Cth). The *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* (Cth) introduced standalone offences in the *Criminal Code 1995* (Cth), including organ trafficking.

⁹⁰ We are only aware of one prosecution for attempted organ trafficking, which was discontinued. See Natalie O'Brien, 'Organ trafficker's death closes case', *The Sydney Morning Herald* (online, 25 March 2012) <<https://www.smh.com.au/national/organ-traffickers-death-closes-case-20120324-1vqvn.html>>.

for overseas transplants and the establishment of a central repository of data for all transplants in Australia and of those travelling overseas for a transplant.⁹¹

Proposals 46 to 49: Reforms relating to how information can be disclosed and shared

109. The Law Council considers that data integrity and accountability are critical for an effective regulatory system concerning human tissue laws and the access and sharing of information for identification and screening purposes should be considered in this context.
110. The Law Council has received feedback supporting Proposal 46, which provides that new human tissue legislation should prohibit the public disclosure of a human tissue donor's or human tissue recipient's "personal information", unless consent to disclosure has been provided (in accordance with Proposal 48).
111. Our feedback states, however, that it is important for the legislation to provide, as per Proposal 47, that it is permissible for health practitioners to disclose a donor's personal information to a potential recipient, as long as the information is clinically relevant to the tissue recipient's decision, and the information is disclosed in a manner that mitigates the risk of the donor being identified without compromising the ability of the potential recipient to make an informed decision.⁹² The feedback also agrees with Proposal 48, which specifies who can consent to the disclosure of a donor's or recipient's personal information.
112. Practitioners also support Proposal 49 that new human tissue legislation could use sections 45(4)–(6) of the *Human Tissue Act 1982* (Vic) as a model to ensure that hospital staff, health authorities, and DonateLife staff can access and share with each other relevant information for donor identification and screening. While the Victorian provisions could be used as a model, the Law Council received the following suggested changes to better achieve the aim of authorising the sharing of relevant information:
- add to the list of purposes in subsection 45(4) to explicitly refer to donor identification and screening, to give better effect to Proposal 49;
 - add to the list in subsection 45(5) of the *Human Tissue Act 1982* (Vic), which presently does not include all the persons who may hold relevant information for the purposes of donor identification and screening. For example, pathology services should be expressly included; and
 - clarify access to relevant information in a person's My Health Record, for the purpose of enabling access to information which is relevant to donor identification and screening. Currently, sections 45(4)–(6) of the *Human Tissue Act 1982* (Vic) do not enable access to a potential donor's My Health Record. This is because section 59 of the *My Health Record Act 2012* (Cth) prohibits access to information in a person's My Health Record unless it is authorised under the *My Health Record Act 2012* (Cth) (such as where the person has

⁹¹ As addressed above in response to Questions 4 and 43 of the Discussion Paper.

⁹² Australian Law Reform Commission, *Review of Human Tissue Laws* (Discussion Paper No. 90, November 2025) 127.

consented).⁹³ In many situations involving potential organ donation, there might be no lawful way to access relevant information under the *My Health Record Act 2012* (Cth). This problem, it is suggested, could be overcome if a reference to accessing information which is relevant to donor identification and screening were included in section 65(3) of the *My Health Record Act 2012* (Cth).

⁹³ *My Health Records Act 2012* (Cth) s 66.

About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its constituent bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice, and general improvement of the law.

The Law Council advises governments, courts, and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents its constituent bodies:

- the Australian Capital Territory Bar Association;
- the Law Society of the Australian Capital Territory;
- the New South Wales Bar Association;
- the Law Society of New South Wales;
- the Northern Territory Bar Association;
- the Law Society Northern Territory;
- the Bar Association of Queensland;
- the Queensland Law Society
- the South Australian Bar Association;
- the Law Society of South Australia;
- the Tasmanian Bar;
- the Law Society of Tasmania;
- the Victorian Bar Incorporated;
- the Law Institute of Victoria;
- the Western Australian Bar Association;
- the Law Society of Western Australia; and
- Law Firms Australia.

Through these bodies, the Law Council represents more than 110,000 Australian lawyers.

The Law Council is governed by a board of 23 Directors: one from each of the constituent bodies, and six Executive members elected by Directors. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President. In 2026, the Law Council Executive comprises:

- Ms Tania Wolff, President
- Ms Elizabeth Shearer, President-elect
- Mr Lachlan Molesworth, Treasurer
- Ms Jennifer Ball, Executive Member
- Mr Justin Stewart-Rattray, Executive Member
- Mr Ante Golem, Executive Member

The Chief Executive Officer of the Law Council is Dr James Popple.

The Law Council's Secretariat is based in Canberra. Its website is www.lawcouncil.au.