

# **Organ Trafficking Inquiry to Federal Parliament**

## **Part 1- Position Overview**

- Human trafficking is the second largest criminal industry in the world. With an increasing amount of thirty-two billion dollars in the trade on human beings.<sup>1</sup> The industry mainly consists of labour, sex, and organ trafficking and occurs across domestic and international borders. While many nations have laws and regimes to prohibit the acts there is a need for greater government action to ensure adequate regulation.
- STOP THE TRAFFIK Australia is part of a global coalition that aims to prevent and stop human trafficking and modern day slavery. We are an organisation that works with large corporations in Australia to assist in the clarity of their supply chains and introduce tactics to eliminate human trafficking, slavery and slavery like practices. Our actions are primarily focused on cocoa, tea, garment, and fishing industries, but is not our limit to the human trafficking sector.
- We would like to applaud and give thanks to the Australian government for taking steps to introduce a new law that will help prevent organ trafficking in Australia; protecting the lives of citizens and those abroad.

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<sup>1</sup> “Infographic: A Global Look at Human Trafficking” last modified 2017, <https://www.unicefusa.org/stories/infographic-global-human-trafficking-statistics>.

## **Part 2- Overview of Organ Trafficking and TOR**

- According to the United Nations Office on Drugs and Crime states that, “Trafficking in persons for the purpose of removal of organs is a form of human trafficking in which an individual is exploited for bodily organs.”<sup>2</sup>
- The Attorney General Department of Australia has stated that, “Men, women, and children are trafficked for a wide range of exploitative purposes, such as: servitude, including the sex industry, forced labour, marry another person against their own will or the harvesting of body organs.”<sup>3</sup> While this has been recognised by the Attorney General, the laws in Australia still have neglected to recognise organ trafficking as a problem that is still prevalent.
- Organ trafficking is a growing industry because of the decrease in voluntary donors. The World Health Organisation has called for more protection for those who are vulnerable exploitation, such as those who are living in poverty or who are poorly educated. These people can be tempted to sell a kidney for as little as US \$1000 while the going price would be around US \$5000.<sup>4</sup> With the shortage of native donation of organs has led to a greater

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<sup>2</sup> “Experts meet in Vienna to address the trafficking of persons for the removal of organs” last modified 2017, <https://www.unodc.org/unodc/en/human-trafficking/2010/egm-vienna-organ-trafficking.html>.

<sup>3</sup> “Human Trafficking” last modified n.d., <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/default.aspx>.

<sup>4</sup> “Organ Trafficking and transplantation pose new challenges” last modified 2017, <http://www.who.int/bulletin/volumes/82/9/feature0904/en/>.

international trade. Where recipients travel abroad to have the organ(s) transplanted through commercial transactions.<sup>5</sup>

- Organ-Importing Countries refer to the nations that have citizens obtaining organs from abroad for transplantation.<sup>6</sup> The top Organ-Importing countries are Canada, USA, Oman, Japan, Saudi-Arabia, and Australia.<sup>7</sup>
- The action of one travelling abroad to obtain an organ is known as Transplant Tourism. Intermediaries and health-care providers have been known to facilitate the international travel for the recipients and recruit the donors. In Taiwan, 118 patients who had been organ donors in China were questioned by the Department of Health. The results concluded that 69 people who reported that their transplantations had been facilitated by doctors even though the authorities in Taiwan have prohibited the act.<sup>8</sup>
- India has been known as an organ-transporting country, as many of their citizens have donated their kidneys to foreigners for sale and purchase. The Human Organ Transportation Act of 1994 lead to a decrease in the number of foreign buyers in India (*Transplantation of Human Organs Act, India; 1994, Act No. 42.*). There is still a consistent underground organ transplantation is still present and persisting.<sup>9</sup> However, while the number of foreign purchases has decreased The Voluntary Health Association of India estimated that about 2,000 Indians

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<sup>5</sup> Shimazono, Yosuke "The state of the international organ trade: a provisional picture based on integration of available information". Bulletin of the World Health Organisation, 2007.

<sup>6</sup> "Trafficking in Persons for the Purpose of Organ Removal" last modified 2016, <https://law.uq.edu.au/research/research-activities/human-trafficking/organ-trafficking>.

<sup>7</sup> Nancy Scheper-Hughes, "Organs Without Borders" *Prime Numbers* (2005): 26.

<sup>8</sup> The China Post Staff, "Doctors Banned from brokering transplants" *China Post*, 17 August 2006, accessed on 13 July 2017,

<http://www.chinapost.com.tw/news/2006/08/17/88089/doctors-banned.htm>.

<sup>9</sup> "The Transplantation of Human Organs Act" Government of India, 1994.

sell their kidney's each year<sup>10</sup>; and the numbers have increased in other developing countries, such as Pakistan<sup>11</sup>

- The Internet Watch Foundation, found that from 2013 to 2015 the reports of child sexual abuse rose by 417%. The use of TOR, peer to peer networking technology and the increased storage capacity of the program has contributed to this rise.<sup>12</sup>
- The senior officer from the Queensland Project Agros says that, "Look if they are using TOR and they are set up and don't make mistakes, it's impossible. We're reliant on some fairly innovative law enforcement techniques and them making errors..."<sup>13</sup>

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<sup>10</sup> Chris Hogg "Why not allow organ trading?" *BBC News World Edition*, 30 August 2002, accessed on 12 July 2017, <http://news.bbc.co.uk/2/hi/health/2224554.stm>.

<sup>11</sup> Declan Walsh "Transplant tourists flock to Pakistan, where poverty and lack of regulation fuel trade in human organs" *The Guardian*, 10 February 2005, accessed on 12 July 2017, <https://www.theguardian.com/world/2005/feb/10/pakistan.declanwalsh>.

<sup>12</sup> Walsh "Transplant tourists flock to Pakistan" 2005.

<sup>13</sup> Walsh "Transplant tourists flock to Pakistan" 2005.

### **Part 3- Health Tourism rates of Australians to Asia**

- Australian's have always travelled to Asia for years for many reasons such as work, holiday vacation, and/or volunteer programs. However, there is an increasing rate of those that are travelling to Asia for the illegal trafficking of people's organs.
- "A News Corp Australia investigation has found that 100 Australians risked their health to travel abroad for a black market organ transplant between 2001 and 2014 because not enough Australians donate their organs when they die."<sup>14</sup>
- In 2010, Dr. Jeremy Chapman of the Transplantation Society concludes that the number of commercial transplants on an international level as decreases from 10,000 to 2,000, creating a significant demand for organs.<sup>15</sup>
- Dr. Chapman also states, "I know of one patient who was heading for a country overseas; told the unit that they would be unable to come in for dialysis tomorrow because they were shooting her donor tomorrow."<sup>16</sup>
- Professor Randall Faull, President of Australian and New Zealand Society of Nephrology, said in 2010, that he has been closely in contact with a few cases of patients who are consistently at dialysis disappear without a notice to only return with a new transplant. Later they would admit to having gone to another country to obtain that organ.<sup>17</sup>
- During a three-year investigation by News Corp, they found out that in February 2016 an Australian man had bought a kidney from a 26-year-old Pakistani women; with the cost of \$116,000.<sup>18</sup>
- "We interviewed four Australians who purchased an organ overseas including three from Sydney and one from Melbourne and learned

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<sup>14</sup> Sue Dunlvey "Transplant surgeons want Australians who travel overseas for an illegal organ transplant charged on their return" The Advertiser, 9 August 2016, accessed on <http://www.adelaidenow.com.au/lifestyle/health/transplant-surgeon-wants-australians-who-travel-overseas-for-an-illegal-organ-transplant-charged-on-their-return/news-story/95bf3927ba7f35f4684299a46203a32c>.

<sup>15</sup> Simon Lauder "Australian organ tourists drive sinister trade" ABC News, 1 September 2010, accessed on <http://www.abc.net.au/news/2010-09-01/australian-organ-tourists-drive-sinister-trade/966408>.

<sup>16</sup> Lauder "Australian organ tourists drive" 2010.

<sup>17</sup> Lauder "Australian organ tourists drive" 2010.

<sup>18</sup> "Australians turn back to black market for human organs" News, last modified 7 August 2016 <http://www.news.com.au/national/australians-turn-to-black-market-for-human-organs/news-story/06905df7ffc5337cb53927c9de1cce3a>.

that just months ago Australian doctors shut down an attempt by a Sri Lankan to sell their kidney to an Australian patient.”<sup>19</sup>

- Catherine King, the opposition health spokeswoman, says that tissue and organ donation rates have increased since 2012, however, many lives are still being cut short due to the shortage of Australians that are willing to become organ donors.<sup>20</sup>
- In 2016, only six million Australians were registered to donate their organs when they die.<sup>21</sup>

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<sup>19</sup> “Australians turn back to black market” 2016.

<sup>20</sup> “Australians turn back to black market” 2016.

<sup>21</sup> “Australians turn back to black market” 2016.

## **Part 4- Health Concerns of Organ Trafficking**

- The organs most often transplanted are the kidney, heart, liver, pancreas, and lung.<sup>22</sup>
- According to a news report done by FOX News Health, “A recent meta-analysis involving 39 original publications revealed that those obtaining organs abroad are at risk of contracting transmissible diseases, such as hepatitis B or HIV. Furthermore, the patient and organ survival rates abroad are significantly lower. These statistics might even underestimate the risk as the data is vulnerable to survivor bias; those who do not survive the procedure and return home are often not included in.”<sup>23</sup>
- It is also hard to guarantee the cleanliness of the procedures done; this consists of the removal of the organ, the storage of the organ, and how that will affect the person accepting the organ. Typically, in undeveloped countries where majority of these organ removals take place, it involves an unscrupulous doctor and/or health clinic caring and treating for the victim. During this course of treatment, the organ is removed and sold to the highest bidder in the black market. The surgical procedure is often unsanitary and very risky for the donor. The procedure of the removal of the organ typically happens those that are struggling financially and are uneducated.<sup>24</sup>
- The Live Kidney Donation embarks on the real dangers of organ donation under manipulation and trafficking. That many of the organ donors can fall victim to the organ trafficking scheme; meaning that there are times when traffickers lure the donors in with large sums of money and because of the desperate

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<sup>22</sup> “Organs for sale” last modified 2017, <http://www.unric.org/en/human-trafficking/27447-organs-for-sale>.

<sup>23</sup> Dr. David B. Samadi, “Consequences of the rise in illegal organ trafficking” *FOX NEWS Health*, 30 May 2012, accessed on 12 July 2017, <http://www.foxnews.com/health/2012/05/30/consequences-rise-in-illegal-organ-trafficking.html>.

<sup>24</sup> 23 October 2014 (9:05pm), “Organ Trafficking”, *Live Kidney Donation*, <https://livekidneydonation.org/blog/organ-trafficking/>.



financial situation they often offer up organs that one cannot live without.<sup>25</sup>

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<sup>25</sup> “Organ Trafficking” 2014.

## **Part 5- 2014 Council of Europe Convention Against Trafficking in Human Organs**

- While there are several chapters and articles to the Convention on Trafficking in Human Organs, STOP THE TRAFFIK will cover what we believe to be the essential parts of the document.
- The Council of Europe highlights in Chapter 1, Article 1- Purposes
  - “1. The purposes of the convention are:
    - a. To prevent and combat the trafficking in human organs by providing the criminalisation of certain acts;
    - b. To protect the rights of victims to the offences established in accordance with this convention;
    - c. To facilitate co-operation at national and international levels on action against the trafficking in human organs.”
- Under this agreement, the Council of Europe has stated that every nation is to enforce its own domestic law for the criminal act of the removal of human organs from living and deceased donors under certain conditions.
- In Article 4, these conditions are as follows:
  - a. “where the removal is performed without the free, informed and specific consent of the living or deceased donor, or, in the case of the deceased donor, without the removal being authorised under its domestic law;
  - b. Where, in exchange for the removal of organs, the living donor, or a third party, has been offered or has received a financial gain or comparable advantage;
  - c. Where in exchange for the removal of organs from a deceased donor, a third party has been offered or has received a financial gain or comparable advantage”
- In Article 6, the Council of Europe also brings to point that each party within their jurisdiction should have some type of legislation other similar measures for the criminalisation of implantation of human organs from the living or deceased is conducted outside of their domestic framework system or when it is performed and it breaches the principles of the national transplantation laws.
- Chapter 4, goes into more detail about the protection of the victims and witnesses under this agreement. In Article 18, it states that each party shall have necessary legislation or similar

measures to protect the rights and ambitions of these victims.  
These are to:

- a. “ensuring that victims have access to information relevant to their case and which is necessary for the protection of their health and other rights involved;
  - b. assisting victims in their physical, psychological and social recovery;
  - c. providing, in its domestic law, for the right of victims to compensation from the perpetrators.”
- Chapter 5, presents prevention measures for those on a domestic level. In Article 21:
    1. “Each Party shall take the necessary legislative and other measures to ensure:
      - a. the existence of a transparent domestic system for the transplantation of human organs
      - b. equitable access to transplantation services for patients;
      - c. adequate collection, analysis and exchange of information related to the offences covered by this convention in co-operation between all relevant authorities.”
    2. With the aim of preventing and combatting trafficking in human organs, each Party shall take measures, as appropriate:
      - a. “Provide information or strengthen training for healthcare professionals and relevant officials in the prevention of and combat against trafficking in human organs;
      - b. To promote awareness-raising campaigns addressed to the general public about the unlawfulness and dangers of trafficking in human organs”
    3. “Each Party shall take the necessary legislative and other measures to prohibit the advertising of the need for, or availability of human organs, with a view to offering or seeking financial gain or comparable advantage.”

## **Part 6: Legal Actions Towards Other Similar International Criminal Offences**

- There are current laws that apply as felonies when one goes abroad and commits a crime.
- Crimes (Child Sex Tourism) Amendment Act 1994 No. 105 of 199 refers to the act of Australians going abroad and conducting the act of indecency and/or sexual intercourse with minors.<sup>26</sup>
- In 2017, Australia has also inquired on extending that law to become direct in addressing registered paedophiles to be prohibited from travelling to vulnerable countries where they are out of reach of Australian law.<sup>27</sup>
- The Australian government continues to work towards pushing more Australian companies to track their supply chains to ensure that all their practices are ethical and free of exploitation.

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<sup>26</sup> Crimes (Child Sex Tourism) Amendment Act 1994, accessed at:  
<https://www.legislation.gov.au/Details/C2004A04778>.

<sup>27</sup> Hon Julie Bishop 'Tougher laws on child sex tourism' 30 May 2017, Australian Parliament, accessed on 27 July 2017:  
[http://foreignminister.gov.au/releases/Pages/2017/jb\\_mr\\_170530a.aspx](http://foreignminister.gov.au/releases/Pages/2017/jb_mr_170530a.aspx).

## **Part 7- Australian Documented Organ Trafficking Case**

- In 2011, the Australian Federal Police found the first reported case of organ trafficking in Australia. An elderly woman from Sydney, NSW suffering from a kidney condition had allergy trafficked a Filipina women with the intention of obtaining her organ. There was said to be consent for the deal between the Sydney Women and the Filipino women, however, according to, Jennifer Burn, of Anti-Slavery Australia at the University of Technology Sydney, that donor consent is essentially invalid when obtained by deception, threat, payment or abuse of a vulnerable person.<sup>28</sup> Later in the case, authorities were in the process of charging the Australian women with a trafficking offence she died of kidney failure in 2012.<sup>29</sup>

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<sup>28</sup> Yuko Narushima, "Police investigate first case of organ trafficking" *The Sydney Morning Herald*, 28 July 2011, accessed on 12 July 2017, <http://www.smh.com.au/national/police-investigate-first-case-of-organ-trafficking-20110727-1i0d7.html>.

<sup>29</sup> Natalie O'Brien, "Organ trafficker's death closes case" *The Sydney Morning Herald*, 25 March 2012, accessed on 12 July 2017, <http://www.smh.com.au/national/organ-traffickers-death-closes-case-20120324-1vqvn.html>.

## **Part 8- Suggestions to the Australian Government**

- STOP THE TRAFFIK firmly believes that the Australian government does and will continue to ensure the safety of not only its citizens but of those abroad that are affected by this illegal industry.
- The adoption of a similar legal documentation from the Council of Europe Convention against Trafficking in Human Organs would be beneficial to Australia. The content of this existing document is the largest step that Europe has taken to abolish and reduce the number of citizens in the union that are illegally harvesting organs from abroad. It does not only protect the rights, safety, and health of the European citizens but it also protects those offshore who are vulnerable to traffickers who lure them into this industry.
- The victims of organ trafficking should also not be punished for this action, as they are often particularly vulnerable people who are drawn to organ trafficking out of financial desperation and while most of them are uneducated, they consent to the donorship without realising the potential adverse health consequences.
- There is already a law against child sex tourism that makes it a crime to engage in sexual activities with minors abroad. The similar abuse that can be produced by Australian's for sexual purposes are also common to those that are subjected to organ trafficking for wealthy Australian's in need of an organ.