

Introduction

- 1.1 On the 21 June 2017 the Human Rights Sub-Committee was tasked by the Joint Standing Committee on Foreign Affairs, Defence and Trade, to undertake an inquiry into the organ trafficking and transplant tourism.
- 1.2 The terms of reference required the Sub-Committee to examine this broad issue including what Australia is doing to prevent and deter the practice of organ trafficking and transplant tourism both in Australia and overseas. In addition the Sub-Committee was asked to consider, whether it would be desirable or practical for Australia to accede to the 2014 Council of Europe Convention against Trafficking in human organs.

Definitions

- 1.3 There are a number of key terms relating to organ trafficking and transplant tourism relevant to this inquiry. This section outlines definitions for each of these terms, as they will be used within this report.

Organ trafficking

- 1.4 'Organ trafficking' encompasses two related types of activity: trafficking in human organs; and the trafficking of persons for the purpose of organ removal.¹ 'Trafficking in human organs' refers to the unethical or illegal removal, transference or commercialisation of human organs, outside of

1 Council of Europe and the United Nations, *Study on trafficking in organs, tissues and cells and trafficking in human beings*, 2009, p. 93.

the governance system of the relevant jurisdiction. Where trafficking in human organs is a crime, the object of that crime is the organ.² The Australian Government considers 'trafficking in human organs' to mean:

...the illicit trafficking in human organs, tissues or cells obtained from living or deceased donors and transacted outside the legal national system for organ transplantation.³

1.5 'Trafficking of persons for the purpose of organ removal' refers to the recruitment of a person, transportation of a person, or transference of a person to the control of another person, for the purpose of removal of an organ, outside of the governance system of the relevant jurisdiction. Where the trafficking of persons for the purpose of organ removal is a crime, the object of that crime is the trafficked person.⁴

1.6 It is important to note that organ recipients or donors may travel internationally legitimately, outside of commercial arrangements. For example, a recipient may travel to another country where a relative is a tissue match and has volunteered to donate kidney or a partial liver without any commercial transaction having taken place.

1.7 Organ trafficking is defined in several international instruments. These instruments will be discussed in detail in chapter 4 of this report. The *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children* supplementing the *United Nations Convention against Transnational Organized Crime* (the Palermo Protocol which is discussed further in Chapter 4) defines organ trafficking in the context of the broader prohibition on trafficking in persons, defining 'trafficking in persons' as:

...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include...the removal of organs...the consent of a victim...shall be irrelevant...⁵

1.8 The *Council of Europe Convention against Trafficking in Human Organs* (the Council of Europe Convention, this is discussed further in Chapter 4) was

2 Dr Maria Soledad Antonio, *Submission 10*, p. 3.

3 Australian Government, *Submission 1*, p. 3.

4 Dr M Soledad Antonio, *Submission 10*, p. 3.

5 *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the *United Nations Convention against Transnational Organized Crime*, opened for signature 12 December 2000, 2237 UNTS 319 (entered into force 25 December 2003), art. 3(a).

established in part in response to a definitional gap in the Palermo Protocol identified by a joint United Nations and the Council of Europe study. The joint study established that the Palermo Protocol addressed only trafficking of persons for the purpose of organ removal, without consideration as to trafficking in human organs themselves. The Council of Europe Convention sought to address this gap, defining ‘trafficking in organs’ as the “illicit removal of human organs...without the free, informed and specific consent of the living or deceased donor” or where a “donor, or a third party, has been offered or has received a financial gain or comparable advantage” or the “transportation, transfer, receipt, import [or] export” of organs removed under these circumstances.⁶

- 1.9 The *Declaration of Istanbul on Organ Trafficking and Transplant Tourism* (the Declaration of Istanbul, this is discussed further in Chapter 4) is a set of principles and proposals towards the prevention of organ trafficking, developed by representatives of international scientific and medical bodies. Agreed at a gathering convened by the Transplant Society and the International Society of Nephrology, the declaration defines organ trafficking as:

...the recruitment, transport, transfer, harbouring or receipt of living or deceased persons or their organs by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving to, or the receiving by, a third party of payments or benefits to achieve the transfer of control over the potential donor, for the purpose of exploitation by the removal of organs for transplantation.⁷

Organ transplant tourism

- 1.10 The term ‘organ transplant tourism’ refers to the cross-border travel of a person to facilitate an organ transplant. While there is no legal definition of transplant tourism under Australian law, the Australian Government considers the term to mean:

...a prospective organ recipient voluntarily travelling to a foreign country for the purpose of undergoing organ transplantation. The organ may be acquired through legal, illegal or unethical means, including without the full and free consent of the donor.⁸

6 Council of Europe Convention against Trafficking in Human Organs, open for signature 25 March 2015, CETS 216 (entered into force 1 March 2018), art. 2(2).

7 *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism* (Declaration of Istanbul), ‘Definitions’, p. 2.

8 Australian Government, *Submission 1*, p. 3.

- 1.11 The World Health Organization (WHO) and the Declaration of Istanbul provide a shared definition, considering transplant tourism to be a subset of ‘travel for transplantation’:

Travel for transplantation is the movement of organs, donors, recipients or transplant professionals across jurisdictional borders for transplantation purposes. Travel for transplantation becomes transplant tourism if it involves organ trafficking and/or transplant commercialism or if the resources (organs, professionals and transplant centers) devoted to providing transplants to patients from outside a country undermine the country’s ability to provide transplant services for its own population.⁹

- 1.12 The Law Council of Australia notes that while the WHO/Declaration of Istanbul definition is not binding, it is “internationally accepted and hence instructive.”¹⁰ The importance of the WHO/Declaration of Istanbul definition, as the basis of a common framework between international standards bodies and the international medical community, is highlighted by the United Nations, which has noted that the previous lack of an agreed definition “made it more difficult to understand and analyse the problem and its extent, and eventually to take appropriate countermeasures at the national, regional and international levels.”¹¹

Origins and conduct of the inquiry

- 1.13 The inquiry of the Joint Standing Committee on Foreign Affairs, Defence and Trade, Human Rights Sub-Committee into Human Organ Trafficking and Organ Transplant Tourism arose from a series of private briefings.
- 1.14 The Human Rights Sub-Committee was approached by the Falun Dafa Association of Australia who provided a private briefing together with authors David Matas and David Kilgour on 22 November 2016 regarding the alleged ‘harvesting of organs’ sourced from political prisoners, prisoners of conscience, and those sentenced to execution by China.
- 1.15 Kilgour, Matas along with fellow author Ethan Gutman had published an update to an earlier account of the alleged trafficking of organs in China entitled: *Bloody Harvest/The Slaughter - An Update*. This publication examines information concerning the transplant programs of hundreds of

9 Declaration of Istanbul, ‘Definitions’, p. 2; World Health Organization, *Global glossary of terms and definitions on donation and transplantation*, 2009, p. 14.

10 Law Council of Australia, *Submission 61*, p. 7.

11 United Nations. *Yearbook of the United Nations*, 2006. New York: United Nations Publications, vol. 60, 2009, p.1306.

hospitals in China and claims that the Chinese government has been performing 60,000 to 100,000 transplants per year since the year 2000 (as opposed to the official Chinese claim of approximately 10,000 per year) and the primary source for transplanted organs were imprisoned Falun Dafa practitioners.¹²

- 1.16 It is outside the capacity of the Sub-Committee to prove or disprove these allegations. However given the importance of this issue, the Sub-Committee wished to establish how extensive the practice of organ trafficking may be with regard to Australian and what Australia might do to combat the illicit sale and purchase of human organs.
- 1.17 A briefing was requested from the Department of Health, the Department of Foreign Affairs, and the Attorney-General's Department to discuss organ trafficking predominantly from an Australian perspective.
- 1.18 The Sub-Committee also held a private briefing involving academics specialising in organ transplant medicine and international organ trafficking on the 9 May 2017 which was interrupted by business in the Parliament on the day. Witnesses were invited back on the 13 June 2018 to complete this briefing. These witnesses discussed the extent of organ trafficking participated in by Australians, allegations brought by the Falun Dafa Association against China, and the issue of organ transplant trafficking and tourism more broadly.
- 1.19 The Sub-Committee was concerned with the allegations raised by the Falun Dafa Association and by the apparent growth in this trade worldwide. The Sub-Committee wished to ascertain if Australian measures to deter and prevent organ trafficking in Australia and by Australians have kept pace with this growing trade.
- 1.20 Pursuant to paragraph two of its resolution of appointment, the Committee is empowered to consider and report on the annual reports of government agencies, in accordance with a schedule presented by the Speaker of the House of Representatives.¹³
- 1.21 On 21 June 2017, the Committee resolved to undertake an inquiry into the *Attorney General's Department Annual Report 2015-16*, particularly Strategic Priority 4: Pursuing national responses to serious and organised crime and improving community safety.¹⁴

12 D Kilgour, E Gutmann, and D Matas, *Bloody Harvest/The Slaughter: An Update*, 2017 revised edition, pp. 268, 364. *Exhibit 2*.

13 JSCFADT, 'Resolution of Appointment', *House of Representatives Votes and Proceedings*, No. 7, 15 September 2016, p. 157; *Journals of the Senate*, No. 4-12 September 2016, pp 138-140.

14 Attorney-General's Department, *Annual Report 2015-16*, Part 2: Strategic Priority 4, www.ag.gov.au/Publications/AnnualReports/15-16/Pages/Part2-Performance-statement/strategic-priority-4.aspx accessed 16 March 2018.

- 1.22 The Committee referred the inquiry to the Human Rights Sub-Committee to undertake with the following terms of reference:
- The Committee will have regard to the offence of Organ Trafficking under division 271 of the Criminal Code and whether it would be practicable or desirable for:
- this offence to have extraterritorial application; and
 - Australia to accede to the 2014 Council of Europe Convention against Trafficking in Human Organs.¹⁵
- 1.23 The Human Rights Sub-Committee launched the inquiry on 23 June 2017 with a press release.¹⁶
- 1.24 As the terms of reference for the inquiry were quite specific, the Sub-Committee took a targeted approach and sought to contact organisations and individuals with expertise in transplantation, medical ethics and the law. Contact was also made with the people and organisations that had appeared at earlier private briefings. Inviting written submissions. The Committee received and published over 170 submissions. Submissions are available on the Committee's website.¹⁷ The full list of submissions and other evidence is at Appendix A.
- 1.25 Permission was sought from the participants of the private briefings that were held prior to the commencement of the inquiry to publish the transcripts so that the information taken at the briefing could be used as evidence for the inquiry. The transcripts of the briefings are available on the Committee's website. The full list of witnesses is at Appendix B.
- 1.26 The Committee thanks those submitters and witnesses who have provided evidence to the inquiry.

Outline of report

- 1.27 Chapter 2 assesses the global prevalence of organ trafficking, international legal frameworks and the risks of organ transplant tourism for donors and recipients.

15 JSCFADT, Inquiry into human organ trafficking and organ transplant tourism, *Terms of reference*, www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/HumanOrganTrafficking/Terms_of_Reference accessed 16 March 2018.

16 JSCFADT, Human Rights Sub-Committee, 'Deterring International Human Organ Trafficking', *Media release*, 23 June 2017, www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/HumanOrganTrafficking/Media_Releases accessed 16 March 2018.

17 See: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/HumanOrganTrafficking/Submissions

-
- 1.28 Chapter 3 examines the scope of Australian participation in organ trafficking and transplant tourism and the adequacy of the data available on organ trafficking by Australians.
- 1.29 Chapter 4 examines international frameworks to combat organ trafficking and organ transplant tourism and considers the question of whether Australia should sign and ratify the European Convention against Trafficking in Human Organs.
- 1.30 Chapter 5 examines the current Australian legal framework relating to participation in organ trafficking, and considers whether or to what degree extraterritorial jurisdiction should be extended.
- 1.31 Chapter 6 examines as a case study of alleged human tissue trafficking, the issues relating to the *Real Bodies* commercial anatomical exhibition on display in Australia during the course of this inquiry.

