

Case study on alleged human tissue trafficking

‘Real Bodies’

- 6.1 The *Real Bodies* commercial anatomical exhibition, on display in Australia during the course of this inquiry, was brought to the attention of the Sub-Committee by a number of witnesses and is illustrative of an apparent gap in the current legislation. The *Real Bodies* exhibition involves the commercial display of 20 plastinated human cadavers, and ‘over 200’ plastinated organs, embryos and foetuses.¹

Allegations of the trafficking of organs and other human tissue

- 6.2 Mr David Shoebridge MP of the New South Wales Parliament informed the Sub-Committee as to the nature of the exhibition:

...[they] are real bodies ... they are displayed in quite grotesque circumstances – some of them literally sawn down the middle and presented as a human standing and divided in two so that you can look into the internal parts of them. There are pregnant women.

¹ Another exhibition called BODY WORLD’s Vital which also features plastinated human bodies that is currently on display in Australia. The exhibition is not associated with Real Bodies: The Exhibition. The BODY WORLD website states that the bodies on display are from donors ‘who declared during their lifetime that their bodies should be made available after their deaths for the training of physicians and instruction of laypersons.’ See <https://bodyworlds.com>

There are multiple fetuses ... put on display for commercial gain ... it is a grossly exploitative process. The proprietors ... have been asked about the circumstances in which these bodies came into their possession, and they have been unable and unwilling to prove that any of the persons on display ever gave their consent.²

- 6.3 The human tissue used in the exhibition has been preserved through a method known as plastination. Plastination involves the removal of the skin and replacement of tissue fluids through the forced vacuum impregnation of silicone, epoxy, and polyester resin into the tissue.³
- 6.4 Mr Thomas Zaller, president of exhibition organiser Imagine Exhibitions, has stated the human bodies and tissue were sourced from China and were unclaimed by relatives of the deceased.⁴ Mr Zaller told News Corporation that there is “no documentation” as to the identities of the cadavers and fetuses.⁵ Mr Zaller has indicated that the cadavers were sourced from Dr Hong-Jin Sui of Dalian Medical University in China between 2000 and 2004.⁶ In a statement to News Corp, Dr Sui said the cadavers were “originally received from the city morgue and then transferred to medical universities in China” and that the cadavers “have been legally donated ... certified to have died of natural causes.”⁷
- 6.5 According to an investigative report by *Der Spiegel*, a number of human cadavers sourced from Dr Sui between 2000 and 2004 were later observed to have bullet holes in their skulls.⁸ According to the same report, Dr Sui, in email correspondence dated 29 December 2001, described two specific cadavers he had obtained as “very fresh,” having been shot and had their livers removed, allegedly for transplantation purposes, that same day.⁹ According to *The Guardian*, Dalian Medical University is geographically

2 Mr Shoebridge MP, Greens NSW, *Committee Hansard*, 8 June 2018, p. 22.

3 O Singh, et al., ‘Plastination: a promising method for preserving biological specimens’, *International Journal of Scientific and Research*, vol. 3, no. 6, 2013.

4 E Pacitti, ‘Real Bodies controversy: how Australian museums regulate the display of human remains’, *The Conversation*, 30 April 2018, available: <http://theconversation.com/real-bodies-controversy-how-australian-museums-regulate-the-display-of-human-remains-95644>, accessed 12 July 2018.

5 M Palin, ‘Real Bodies: The Exhibition’, controversy about ‘disturbing’ origins of corpses’, *News.com.au*, 9 April 2018, available: <https://www.news.com.au/technology/science/human-body/real-bodies-the-exhibition-controversy-about-disturbing-origins-of-corpses/news-story/fb3e9d7702cfdbb1bba171b87df9ca32>, accessed 12 June 2018.

6 E Joyce, ‘Ever wanted to see a real human body, from the inside out?’, *TimeOut Sydney*, 13 April 2018, available: <https://www.timeout.com/sydney/news/ever-wanted-to-see-a-real-human-body-from-the-inside-out-041318>, accessed 12 July 2018.

7 M Palin, ‘Real Bodies: The Exhibition’, controversy’

8 S Robel and A Wassermann, ‘Händler des Todes’, *Der Spiegel*, 19 January 2004.

9 S Robel and A Wassermann, ‘Händler des Todes’, *Der Spiegel*, 19 January 2004.

proximate to three facilities allegedly used to detain Falun Gong practitioners and other prisoners of conscience, including between 2000 and 2004.¹⁰ A number of advocacy groups claim to have corroborated these allegations.¹¹

Australian Government position

- 6.6 The Chair of the Sub-Committee wrote to the Attorney-General and the Ministers for Home Affairs, Health, and Communications and the Arts requesting that they update the Sub-Committee on the circumstances in which the human tissue used in the exhibition came to be on commercial display in Australia and any relevant powers available to their portfolios.¹²
- 6.7 The Attorney General advised the Sub-Committee that he retains administrative responsibility for the *Criminal Code Act 1995*, and that the policies in regards to the *Real Bodies* Exhibition are the responsibility of the Minister for Home Affairs, the Minister for Communication and the Arts and the Minister for Health.¹³ He noted that he “would consider any proposed amendments to the Criminal Code” the Sub-Committee might recommend and he welcomed the Sub-Committee raising this issue with him.¹⁴
- 6.8 The Minister for Law Enforcement and Cyber Security, responding on behalf of the Home Affairs Portfolio, outlined that the circumstances of the removal of organs and their commercialisation is a matter dealt with by state and territory legislation.¹⁵ The Minister indicated that the human remains imported for the purposes of the exhibition do not require importation permits under the *Customs Act 1901* and *Customs (Prohibited Imports) Regulations 1956*.¹⁶ In a related Question on Notice response, the Home Affairs portfolio indicated that the Department of Health has not

10 L Harding, ‘Von Hagens forced to return controversial corpses to China’, *The Guardian*, 23 January 2004.

11 Australian Committee of the International Coalition to End Transplant Abuse in China, ‘Open Letter signed by lawyers, academics and ethicists urges the Australian Government to close “Real Bodies: The Exhibition”’, 19 April 2018, available: <https://endtransplantabuse.org/open-letter-urges-for-real-bodies-the-exhibition-to-be-closed-down/>, accessed 20 July 2018.

12 Copies of letters from each of these ministers are available in Appendix F of this report.

13 The Hon Christian Porter MP, Attorney-General, *Submission 174*.

14 The Hon Christian Porter MP, Attorney-General, *Submission 174*.

15 The Hon Angus Taylor MP, Minister for Law Enforcement and Cyber Security, *Submission 172*.

16 The Hon Angus Taylor MP, Minister for Law Enforcement and Cyber Security, *Submission 172*.

sought an amendment to the *Customs (Prohibited Imports) Regulations 1956* to class these items as prohibited.¹⁷

- 6.9 The Minister for Health advised the Sub-Committee that the Health Portfolio is responsible for administering the human health aspects of the *Biosecurity Act 2015*, which includes the importation of human remains into Australia.¹⁸ The Minister noted that there is no basis provided for by the *Biosecurity Act 2015* for the refusal of importation on any grounds other than biosecurity risk.¹⁹ The Minister informed the Sub-Committee that the human remains imported for the *Real Bodies* Exhibition were assessed to pose no risk to public health.²⁰
- 6.10 The Minister for Communications and the Arts noted the sensitivities associated with the exhibition and confirmed the Arts Portfolio has not provided any funding, support or approvals in relation to the exhibition, nor is the exhibition associated with any publicly-funded arts institution.²¹

Treatment under current legislation

- 6.11 The importation of the organs and other forms of human tissue used in the exhibition does not appear to contravene current Commonwealth human trafficking laws set out in the *Criminal Code Act 1995*. As previously stated, the current legislation captures only trafficking in persons for the purposes of organ removal; it does not capture trafficking in organs and other human tissue itself. This gap appears to be compounded by limitations to the capacity of state and territory legislation to adequately deal with ethical issues relating to human tissue sourced overseas.
- 6.12 The Royal Australasian College of Physicians (RACP) has called for the exhibition to be closed unless Imagine Exhibitions "can prove these bodies and organs have been ethically sourced and have adequate donor consent".²² RACP further argued that the exhibition was in breach of the requirements for the public display of donor consent forms per the *Anatomy Act 1977 (NSW)*.²³

17 Department of Home Affairs, Answer to Question on Notice (QoN), *Supplementary Submission 166.1*.

18 The Hon Greg Hunt MP, Minister for Health, *Submission 171*.

19 The Hon Greg Hunt MP, Minister for Health, *Submission 171*.

20 The Hon Greg Hunt MP, Minister for Health, *Submission 171*.

21 Senator the Hon Mitch Fifield, Minister for Communications and the Arts, *Submission 175*.

22 Royal Australasian College of Physicians, 'Experts call for ban on Real Bodies - The Exhibition', 11 July 2018, available: <https://www.racp.edu.au/news-and-events/media-releases/experts-call-for-ban-on-real-bodies---the-exhibition>, accessed 12 July 2018.

23 RACP, 'Experts call for ban on Real Bodies - The Exhibition'

- 6.13 Mr Shoebridge MP argued that the existing provisions under New South Wales (NSW) legislation – the *Anatomy Act 1977 (NSW)* and the *Crimes Act 1900 (NSW)* – are “defective,” as they are not sufficiently robust or practical to prevent the exhibition of human remains without identity and consent documentation.²⁴ Mr Shoebridge indicated that he had sought to refer this matter for prosecution to the NSW Police who responded, ‘we’re not in a position to identify whether or not consent was given in China.’²⁵ Mr Shoebridge called upon the Commonwealth to ensure:
- ...if bodies and body parts are brought into this country for commercial or other exploitative use, there be certification as to consent.²⁶
- 6.14 After an examination of the available evidence regarding the circumstances of the *Real Bodies* exhibition, Mr David Matas observed:
- Consent alone should not be sufficient. The consent must come from someone not in prison. Consent obtained from a prisoner that his/her body could be displayed after death in a body exhibit should not be considered a truly free consent, and therefore should not be acceptable.²⁷
- 6.15 Mr Matas further recommended that, for Australia to better control the entry of human remains from overseas, three conditions should apply. Each body or body part, in addition to consent, should have documentation that shows ‘the source of the body and body part and the cause of death.’²⁸
- 6.16 Doctors Against Forced Organ Harvesting expressed concern surrounding how the exhibition was classified by Customs, the Department of Home Affairs, and the Department of Health.²⁹ They contend that the process for approval was not rigorous enough and that under the existing *Biosecurity Act 2015*, human remains cannot be classified as ‘goods’.³⁰ They suggest that under the current laws, the *Real Bodies* exhibition could have been denied entry to Australia.³¹
- 6.17 Doctors Against Forced Organ Harvesting noted a number of international approaches to such exhibitions and recommended that

24 Mr Shoebridge MP, Greens NSW, *Committee Hansard*, 8 June 2018, Canberra, p. 22.

25 Mr Shoebridge MP, Greens NSW, *Committee Hansard*, 8 June 2018, Canberra, p. 22.

26 Mr Shoebridge MP, Greens NSW, *Committee Hansard*, 8 June 2018, Canberra, p. 22.

27 Mr David Matas, *Submission 168*

28 Mr David Matas, *Submission 168*

29 Doctors Against Forced Organ Harvesting, *Supplementary Submission 22.1*

30 Doctors Against Forced Organ Harvesting, *Supplementary Submission 22.1*

31 Doctors Against Forced Organ Harvesting, *Supplementary Submission 22.1*

Australia make clear amendments in relevant legislation that specifies the need for comprehensive documentation in regards to any human remains to be imported.³² They also recommends banning exhibitions of human remains that are a commercial venture, “to protect the dignity of the deceased”.³³

Sub-Committee view

- 6.18 The Sub-Committee considers that the Commonwealth is best placed to consider the ethical provenance of human tissue imported into Australia from another country.
- 6.19 The Sub-Committee stresses that it has not been presented with evidence of a breach of Commonwealth legislation or any form of legal wrongdoing by Mr Zaller or Imagine Exhibitions. The Sub-Committee instead contends that, it is not desirable for human tissue, regardless of its source, to be brought to Australia without appropriate documentation of free, informed and specific consent obtained from either the donor person, or from their next-of-kin. The Sub-Committee considers that the burden to demonstrate the ethical, consent-based sourcing of organs and other forms of human tissue should fall upon the organisers of the exhibition in this case, and in others like it.
- 6.20 The concerning circumstances raised by the allegations of the killings of prisoners of conscience in China, during the period this human tissue was sourced, illustrate the importance of that documentation. These concerns are of particular significance with regard to public, commercial exhibitions such as this. Cognisant of the extent to which these matters may fall to the States and Territories, the Sub-Committee considers that the Commonwealth should work with the jurisdictions to ensure adequate controls are in place to prevent a reoccurrence of such a case.
- 6.21 The Sub-Committee notes that accession to the Council of Europe Convention would obligate Australia to expand the scope of existing legislation to criminalise, inter-alia, the transportation, transfer, receipt, import and export of organs removed without the “free, informed and specific consent of the living or deceased donor.”³⁴ The Sub-Committee considers this case to be compelling evidence for the value of accession to the Council of Europe Convention.

32 Doctors Against Forced Organ Harvesting, *Supplementary Submission 22.1*

33 Doctors Against Forced Organ Harvesting, *Supplementary Submission 22.1*

34 *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).

Recommendation 12

The Sub-Committee recommends that the Australian Government works with the States and Territories, as a matter of priority, to ensure that any person or body corporate importing human tissue into Australia for commercial purposes produces verifiable documentation of the consent of the donor person or their next-of-kin. This could include appropriate legislative changes at the Commonwealth or State and Territory level where required.

The Hon Mr Kevin Andrews MP
Chairman
Human Rights Sub-Committee
3 December 2018

Senator the Hon Ian McDonald
Chairman
Joint Standing Committee on
Foreign Affairs, Defence and Trade
3 December 2018

