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The Parliament of the Commonwealth of Australia

# **Compassion, Not Commerce: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism**

**Human Rights Sub-Committee**

**House of Representatives**

**Joint Standing Committee on Foreign Affairs, Defence and Trade**

November 2018  
Canberra

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## Foreword

Human organ transplantation is one of the miracles of medical science that has given hope to hundreds of thousands of people worldwide. The act of organ donation is a tremendous demonstration of the power of compassion to transform the lives of many people.

Australia has a lot to be proud of in the field of organ transplantation. It is a world leader in successful transplant outcomes while our donation rate has more than doubled in recent years. In 2017, 1,675 Australian lives were transformed by 510 deceased and 273 living organ donors and their families. There were 832 kidney transplants, 281 liver transplants, 206 lung transplants, 98 heart transplants, 51 pancreas transplants, and a small intestine transplant.

Sadly, the reality is that the demand for donor organs outstrips supply. Around 1,400 Australians are currently waitlisted for a transplant. A further 11,000 are on dialysis, many of whom would benefit from a kidney transplant.

This shortfall is common to many countries, and it is this gap between the number of people needing organ transplants of all descriptions and the limited supply of freely donated organs, made available through compassion and altruism, that has generated a black-market trade.

In this illicit commercial market of organ trafficking and transplant tourism, desperate people, often facing end stage renal disease and other grave conditions, may travel to distant countries and pay tens of thousands of dollars and more, for an organ transplant where the donor is poor, exploited or unable to give free and informed consent to donation.

Organ trafficking, the unethical removal, transfer or commercialisation of human organs for transplantation outside legal frameworks poses severe risks for both organ recipients and donors. It is an illicit trade that changes over time with developments in transplantation surgery techniques, the availability of medical infrastructure, uneven economic development, migration patterns, demographic trends, socio-economic exclusion, and the evolution of national multinational criminal networks.

This report by the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade was prompted, in the first instance, by longstanding allegations by non-government organisations and individuals about alleged human organ harvesting and trafficking occurring in one country.

During the course of the Sub-Committee's inquiry however, it quickly became clear, especially through input from expert witnesses, that human organ trafficking is a broad international problem encompassing many countries around the world. The organ trade has evolved and continues to evolve under the influence of forces of demand and supply as well as changes in national and international regulation and law enforcement.

Judgements made about the extent and geographical focus of organ trafficking and transplant tourism a decade or more ago may have limited validity in relation to present trends and circumstances, and this report demonstrates that without the collection of accurate data, solutions will be difficult to create.

This report examines the global prevalence of human organ trafficking and the scope of Australian participation within this illicit trade. The report further considers international frameworks to combat organ trafficking and organ transplant tourism and specifically recommends that Australia sign and ratify the Council of Europe Convention against Trafficking in Human Organs.

The report further recommends that the Australian Government pursue a range of measures to strengthen Australia's involvement in international efforts to combat human organ trafficking, improve relevant data collection, support public health education programs, strengthen Australia's legal prohibitions on organ trafficking, and thoroughly investigate reforms that would enhance Australia's domestic organ donation program.

With regard to the last issue it should be noted that surveys show the majority of Australians – 69 per cent - are willing to donate their organs and/or tissue when they die. In Australia, 90 per cent of families say yes to donation when their loved one is a registered donor.

Despite this apparent support for organ donation, and a majority of Australians believing that registering is important, only one in three Australians are registered as donors. While 71 per cent of Australians think it is important to talk about organ donation with their family, only half – 51 per cent -of Australians have held this discussion about whether they want to be a donor with their loved ones.

This report largely deals with measures that are aimed at suppressing human organ trafficking and transplant tourism. However, a comprehensive solution to this grim trade must involve better harnessing the wells of altruism that exist within Australia and indeed, in countries across the world.

Compassion, not commerce is the key.

**The Hon Kevin Andrews MP**  
**Chair**





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## Human Rights Sub-Committee

### Chair

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Ms Maria Vamvakinou MP Calwell, VIC

Mr Trent Zimmerman MP North Sydney, NSW

## **Former members**

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## **Secretariat**

Mr James Rees, Committee Secretary

Ms Sonya Fladun, Inquiry Secretary

Ms Stephanie Woodbridge, Research Officer (*from 20.8.18*)

Mr Daniel Simon, Research Officer (*to 24.8.18*)

Mr Alexander Rae, Research Officer (*to 20.7.18*)

Mrs Dorota Cooley, Office Manager (*from 3.7.17*)

Mr Danny Miletic, Office Manager (*to 30.6.17*)

Ms Natasha Kaleb, Administrative Officer

PO Box 6021

Parliament House

Canberra, ACT 2600

Telephone: 02 6277 2313

Facsimile: 02 6277 2221

Email: [jscfadt@aph.gov.au](mailto:jscfadt@aph.gov.au)

Internet: [www.aph.gov.au/jfadt](http://www.aph.gov.au/jfadt)





## **Terms of reference**

That, pursuant to paragraph two of the Committee's resolution of appointment, the Committee resolves to undertake an inquiry into Strategic Priority 4 of the Attorney General's Annual Report 2015-16, in particular with regard to the offence of Organ Trafficking under division 271 of the Criminal Code and whether it would be practicable or desirable for:

- A) this offence to have extraterritorial application; and
- B) Australia to accede to the 2014 Council of Europe Convention against Trafficking in Human Organs.





## List of abbreviations

AAIC	The Australian Advocacy and Initiatives Committee
ALRC	Australian Law Reform Commission
ANZDATA	The Australia and New Zealand Dialysis and Transplantation Registry
ANZOD	Australian & New Zealand Organ Donation Registry
COTRS	China Organ Transplant Response System
DAFOH	Doctors Against Forced Organ Harvesting
ETAC	The International Coalition to End Transplant Abuse in China
JSCFADT	Joint Standing Committee on Foreign Affairs, Defence and Trade
OSCE	Organization for Security and Co-operation in Europe
OTA	The Organ and Tissue Authority
OTS	Overseas Transplant Survey
RACP	The Royal Australasian College of Physicians
TSANZ	Transplant Society of Australia and New Zealand
WHO	The World Health Organization
WMA	World Medical Association
UN	United Nations

UNODC United Nations Office on Drugs and Crime



# List of recommendations

## 2 Organ trafficking and organ transplant tourism in the global context

### Recommendation 1

The Sub-Committee recommends that the Australian Government pursue through the United Nations the establishment of a Commission of inquiry to thoroughly investigate organ trafficking in countries where it is alleged to occur on a large scale.

### Recommendation 2

Given the contention and ongoing debate around transplant practices in China, the Sub-Committee recommends that the Australian Government:

- monitor the transplantation practices of other countries with regard to consistency with human rights obligations, including with regard to the use of the organs of executed prisoners;
- seek the resumption of human rights dialogues with China;
- continue to express concern to China regarding allegations of organ trafficking in that country; and
- offer to assist with the further progression of ethical reforms to the Chinese organ matching and transplantation system.

## 3 Australian involvement in organ trafficking and transplant tourism

### Recommendation 3

The Sub-Committee recommends that the Australian Government meets international best practice standards by establishing a comprehensive organ donation data collection repository, based possibly on the ANZDATA model, but 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.

#### **Recommendation 4**

The Sub-Committee recommends 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.

#### **Recommendation 5**

The Sub-Committee recommends 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.

### **4 International frameworks to combat organ trafficking and organ transplant tourism**

#### **Recommendation 6**

The Sub-Committee recommends that the Australian Government sign and ratify the Council of Europe Convention against Trafficking in Human Organs, and works with the States and Territories to make the requisite amendments to Commonwealth and State and Territory legislation and ensure non-legislative obligations are met.

### **5 Australian legal and policy issues**

#### **Recommendation 7**

The Sub-Committee recommends 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.

#### **Recommendation 8**

The Sub-Committee recommends that the Australian Government establishes a multi-lingual public health education program that:

- addresses the legal, ethical and medical risks associated with participation in organ transplant tourism;
- includes a stream for educating frontline staff such as medical professionals about how to best identify possible cases of organ harvesting and support both vulnerable victims and desperate patients, based possibly on the Anti-Slavery Australia e-learning model;
- is multi-lingual; and
- is designed in particular to educate Australians who were born in, or have family associations in, countries where human organ trafficking is known or suspected to occur.

#### **Recommendation 9**

The Sub-Committee recommends that the Australian Government includes information on trafficking in human organs and transplant tourism on relevant government websites, including on the *SmartTraveller.gov.au* website, on country-specific pages of countries where human organ trafficking is known or suspected to occur.

#### **Recommendation 10**

The Sub-Committee recommends that the Australian Government

- work with medical professionals, and other relevant stakeholders, to examine the impact of non-specialist prescribing of immunosuppressant medication on the efficacy of post-operative care and;
- examine ways to implement capture of data relating to the prescribing of immunosuppressant medication including that relating to transplants occurring overseas.

#### **Recommendation 11**

The Sub-Committee recommends that the Australian Government seeks to improve organ donation rates through a number of approaches including:

- consultation with the relevant agencies, continue the promotion of organ donation including education and awareness campaigns.

- ongoing funding of the Supporting Leave for Living Organ Donors program and the Australian Paired Kidney Exchange Program (AKX).
- further investigation of other countries donation programs, including Opt-Out organ donation programs to determine whether such a program could be appropriate for the Australian health system.

## **6 Case study on alleged human tissue trafficking**

### **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.



