

INQUIRY INTO MODERN SLAVERY ACT 2018 AND ASSOCIATED MATTERS

Organisation: Australian Advocacy and Initiatives Committee (AAIC)

Date Received: 4 October 2019

INTERNATIONAL COALITION TO
**END TRANSPLANT
ABUSE IN CHINA**

Submission

**The Legislative Council Standing Committee on Social Issues
Inquiry into the *Modern Slavery Act 2018 (NSW)* and associated matters**

**Australian Advocacy and Initiatives Committee
The International Coalition to End Transplant Abuse in China
W: <https://endtransplantabuse.org/>**

Table of Contents

About Australian Advocacy and Initiatives Committee	3
Executive Summary	4
Recommendations	4
The unintended consequences of drafting issues with respect to the <i>Human Tissue Act 1983</i> (NSW) and the sale and supply of human tissue	4
China’s transplant industry and the need for extraterritorial laws in Australia	9
Mandatory Reporting	13
Real Bodies: The Exhibit	14
Conclusion	15

Australian Advocacy and Initiatives Committee

Australian Advocacy and Initiatives Committee (**AAIC**) was formed in 2016 in response to serious human rights violations in China associated with the systematic, forced and state-sanctioned organ harvesting and trafficking from prisoners, including non-consenting prisoners of conscience (**forced organ harvesting**).

AAIC comprises lawyers, academics, ethicists, medical professionals and human rights advocates, and is the Australian chapter of the International Coalition to End Transplant Abuse in China (**ETAC**).

ETAC provides leadership and expertise on the issue of forced organ harvesting, and promotes and protects human rights by:

- Undertaking, publishing and disseminating research regarding forced organ harvesting in China;
- Calling for greater transparency and scrutiny of the transplantation system in China;
- Promoting public debate regarding human tissue and organ trafficking laws and policy;
- Raising public awareness regarding the importance of ending the detainment, torture and forced organ harvesting of prisoners of conscience in China;
- Advocating for actions to reduce and avoid international complicity in China's violations of transplant ethics and human rights law; and
- Seeking justice for the victims of forced organ harvesting and their families, and demanding accountability for the perpetrators.

AAIC members include:

- Susie Hughes, Chair
- Madeleine Bridgett, MSW, BSW, PGDip Law, BPTC
- Dr Robyn Clay-Williams, PhD
- Mitchell Coidan, LLB, GDL, BA
- Professor Maria Fiatarone Singh, MD, FRACP
- Nathan Kennedy, LLB
- Professor Paul Macneill, LLB, PhD
- Dr Holly Northam, PhD, RN, RM
- Michelle Nguyen, LLB
- Keith Spencer, LLB
- Professor Wendy Rogers, FRACGP, PhD
- Dr Sarah Winch, PhD

More details about members can be viewed [here](#).

Executive Summary

1. AAIC welcomes the Inquiry into the *Modern Slavery Act 2018 (NSW)* (**NSW Act**) and associated matters by the NSW Legislative Council Standing Committee on Social Issues (**Inquiry**), and commends the Standing Committee for providing this opportunity to strengthen the State of New South Wales' efforts to deter all forms of modern slavery, and to reinforce the prohibitions against certain types of commercial and contractual arrangements involving human tissue, including human organs.

Recommendations

2. **AAIC recommends that, until the Commonwealth organ trafficking laws are amended to adequately address the current lacuna in the law regarding the illicit removal of organs and the solicitation of commercial organ transplants, s 32 of the *Human Tissue Act 1983 (NSW)* should not be repealed as it provides a legal safeguard not contained within the Commonwealth organ trafficking laws.**
3. **AAIC recommends that NSW organ trafficking laws should have extraterritorial application.**
4. **AAIC recommends that the NSW Government amend the NSW Act to include provisions for mandatory reporting, whereby health care professionals are obliged to report, to an appropriate registry or authority, any knowledge or reasonable suspicion that a person has received a commercial transplant or one sourced from a non-consenting donor, be that in NSW or overseas.**
5. **AAIC recommends that the NSW Government amend the NSW Act to include provisions which ensure that any person or body corporate importing human organs and other forms of human tissue into NSW for commercial, educational, or any other purpose produces verifiable documentation of the consent of the donor person or their next-of-kin.**

The unintended consequences of drafting issues with respect to the *Human Tissue Act 1983 (NSW)* and the sale and supply of human tissue

6. Given ETAC is Australia's leading organisation specifically tasked with addressing organ trafficking through its advocacy initiatives, this submission will only address paragraph 1(e) of the Terms of Reference of this Inquiry as follows:

"1. That the Standing Committee on Social Issues inquire into and report on the Modern Slavery Act 2018 (NSW), the consultation draft of the Modern Slavery Regulation 2019 (NSW) (the Regulation) with particular reference to:

“(a) – (d) ...

(e). the unintended consequences of drafting issues with the NSW Act, including with respect to the Human Tissue Act 1983 (NSW) and the sale and supply of human tissue”.

7. AAIC has had the benefit of considering the NSW Act, the *Modern Slavery Amendment Bill 2019 (NSW Bill)* and the ‘Submission to the Legislative Council Standing Committee on Social Issues Inquiry into *Modern Slavery Act 2018* (NSW) and associated matters on behalf of the NSW Government dated 6 August 2019 (**Government Submission**).
8. AAIC notes that the proposed amendments to the NSW Act by the NSW Bill are intended to ensure that the NSW Act better aligns with the purported policy intent behind it, and to enhance the legal clarity, constitutionality and operation of the NSW Act.
9. In that regard, the NSW Bill proposes to replace all references within the NSW Act to any prohibition pursuant to s 32 of the *Human Tissue Act 1983* (NSW) (**Human Tissue Act**).
10. The NSW Act presently includes a prohibition against any activity which occurs in another country that would have the effect of breaching s 32 of the Human Tissue Act, had the activity occurred in NSW, and even if the activity is legal in that other country.
11. Section 32 of the Human Tissue Act makes it an offence for a person to enter into a contract or arrangement, for valuable consideration, relating to the sale or supply of human tissue. Those prohibitions are contained within ‘Schedule 2 – offences’ to the NSW Act.
12. Section 32 specifically provides:

“Trading in tissue prohibited

32 Trading in tissue prohibited

(1) A person must not enter into, or offer to enter into, a contract or arrangement under which any person agrees, for valuable consideration, whether given or to be given to any such person or to any other person:

(a) to the sale or supply of tissue from any such person's body or from the body of any other person, whether before or after that person's death or the death of that other person, as the case may be, or

(b) to the post-mortem examination of any such person's body after that person's death or of the body of any other person after the death of that other person.

Maximum penalty: 40 penalty units or imprisonment for 6 months, or both.

(2) Subsection (1) does not apply to or in respect of the sale or supply of tissue if the tissue has been subjected to processing or treatment and the sale or supply is made for the purpose of enabling the tissue to be used for therapeutic purposes, medical purposes or scientific purposes.

(3) Subsection (1) does not apply to or in respect of a contract or arrangement providing only for the reimbursement of any expenses necessarily incurred by a person in relation to the removal of tissue in accordance with this Act.

(4) Where the Minister considers it desirable by reason of special circumstances so to do, the Minister may, by instrument in writing, approve the entering into of a contract or arrangement that would, but for the approval, be void by virtue of subsection (5), and nothing in subsection (1) or (5) applies to or in respect of a contract or arrangement entered into in accordance with such an approval.

(5) A contract or arrangement entered into in contravention of this section is void."

13. Relevantly, s 4 of the Human issue Act defines "tissue" as:

...

"**tissue**" includes an organ, or part, of a human body and a substance extracted from, or from a part of, the human body.

...

14. It is not an offence, pursuant to the exclusion provision contained in s 32(2) of the Human Tissue Act, to sell or supply human tissue that has been subject to processing or treatment, where that sale or supply is made for the purpose of enabling the tissue to be used for therapeutic, medical or scientific purposes (**Therapeutic Tissue Exclusion**).

15. Further, it is not an offence pursuant to s 32(3) of the Human Tissue Act (and thereby Schedule 2 of the NSW ACT) to enter into a contract or arrangement, which only provides reimbursement of expenses necessarily incurred by a person in relation to the removal of tissue, which removal is permitted in accordance with the Human Tissue. That includes removal pursuant to the Therapeutic Tissue Exclusion. Additionally, the Minister also has the power to exempt certain agreements from s. 32, if there are "special circumstances to do so" (s. 32(4)) (collectively, **Additional Exclusion Provisions**).

16. It has been suggested in the Government Submission¹, that all of the present provisions within s 32 of the Human Tissue Act (and consequently the references to that provision within the penalty provisions in Schedule 2 to the NSW Act) have the unintended effect of making it an offence for a person to enter into an arrangement, for valuable consideration, under which a person donates blood or blood products (including whether that arrangement occurs in another country).

17. AAIC is of the view that such impediment could easily be remedied by the inclusion of a further exclusion to the prohibitions pursuant to s 32(1) of the Human Tissue Act, as has already been appropriately accommodated in the Therapeutic Tissue Exclusion Provision and the Additional Exclusion Provisions, so as to lawfully permit the supply of those blood and therapeutic products.

18. AAIC further notes that the Government Submission states

the purpose of including section 32 of the Human Tissue Act within the definition of 'modern slavery offence' was to prevent organ trafficking, not the payment of donors for supplying blood and other tissue products. Accordingly, to ensure the continuing supply of blood and blood products from comparable overseas countries, it is proposed to amend the NSW Act to make clear that a modern slavery offence includes organ trafficking, but does not include activity, when occurring overseas, in relation to the sale and supply of blood and tissue that is not an organ, by replacing the reference to section 32 of the Human Tissue Act in Schedule 2 of the NSW Act with references to the relevant Commonwealth organ trafficking offences.

19. AAIC submits that substitution of the important penalty provisions contained within s 32(1) of the Human Tissue Act (and thereby Schedule 2 of the NSW Act), with those contained within Commonwealth offences in the *Criminal Code Act 1995* (Cth) (**Code**), would not provide sufficient protection, given that the provisions within the Code only extend to partial extraterritorial application (see: ss. 271.7A – 271.7E of the Code).

20. AAIC further submits that the prohibitions against trading in human tissue, contained within s 32 of the Human Tissue Act and the current NSW Act, are important legislative mechanisms to prevent and deter human tissue and organ trafficking for financial gain, both within and outside of NSW.

¹ <https://www.parliament.nsw.gov.au/lcdocs/submissions/64692/0001%20%20NSW%20Government.pdf>. Accessed 1 October 2019.

21. The provisions contained within s 32 of the Human Tissue Act promote the objects of the NSW Act provided for in s 3 of the NSW Act, in particular the object to “combat modern slavery”. This is particularly reinforced by the present recognition of certain arrangements for the procurement of human tissue as a “modern slavery offence” pursuant to s 5 of the NSW Act, to which s 32 of the Human Tissue Act applies.
22. Incorporation, and maintenance, of the important prohibitions against the unlawful entering into an arrangement or contract for the sale or supply of human tissue (by inclusion of s.32(1) of the Human Tissue Act prohibitions in to Schedule 2 to the NSW Act) may also provide additional protection against the increased trafficking of human organs, and have the effect of raising awareness of this form of modern slavery, which remains hidden and a taboo in society.
23. Human organ trafficking and organ transplant tourism around the world is increasing, particularly by citizens of economically wealthy countries.² This reflects the inadequacy of the current supply of organs donated through ethical and lawful means, especially in countries who do not have effective donor programmes, such as China.
24. In China, there is particular concern that minority communities, including the Uyghurs and Falun Gong, are detained, without trial, in forced labour camps and re-education detention centres, where they are tortured and subjected to the involuntary and forced removal of organs, resulting in their death.
25. The evidence about forced organ harvesting against prisoners of conscience is now conclusive given the China Tribunal’s recent findings whereby it concluded, unanimously and beyond reasonable doubt, that “in China forced organ harvesting from prisoners of conscience has been practiced for a substantial period of time involving a very substantial number of victims”.³
26. The China Tribunal also concluded that the commission of crimes against humanity against the Falun Gong and Uyghurs has been “proved beyond reasonable doubt”.⁴
27. Relevantly, the Tribunal found that

forced organ harvesting has been committed for years throughout China on a significant scale and that Falun Gong practitioners have been one – and probably the main – source of organ supply....The Tribunal has had no evidence that the significant infrastructure

² Hughes, N. *Prime Numbers: Organs without Borders* [2005] (146) Foreign Policy 26.
<http://foreignpolicy.com/2009/10/21/organs-without-borders/>.

³ <https://chinatribunal.com/>. Accessed 2 October 2019.

⁴ Ibid.

associated with China's transplantation industry has been dismantled and absent a satisfactory explanation as to the source of readily available organs concludes that forced organ harvesting continues till today.⁵

28. Forced organ harvesting against prisoners of conscience in China, which stems from religious and spiritual persecution of minority communities, amounts to heinous and serious breaches of fundamental human rights. Prisoners of conscience are denied a right to a fair trial; subjected to torture, inhumane and degrading treatment; and are killed on demand for their organs and denied the right to life. There can be no greater crime.
29. Yet, despite the findings of the China Tribunal, and the recent media regarding China's internment camps⁶, Australia's organ trafficking laws lack the sufficient protections for conduct overseas involving the illicit procurement of organs and the illicit removal of organs.
30. Given China's close geographical location to Australia, and given the lengthy wait times to receive an organ transplant in Australia⁷, AAIC recommends that s 32 of the Human Tissue Act should not be repealed.
31. Further, AAIC supports legislation which enables the application of extraterritorial jurisdiction, particularly given the nature of international organ trafficking and organ transplant tourism.

China's transplant industry and the need for extraterritorial laws in Australia

32. In 2005, after longstanding denials, it was officially acknowledged that organs were harvested from executed prisoners in China.⁸
33. Before China introduced a pilot voluntary organ donation programme in 2010, over 90% of organs transplanted were procured from prisoners, many imprisoned because of their religious and spiritual beliefs, and many who have been denied the right to a fair trial and killed on demand for their organs.⁹

⁵ Ibid.

⁶ <https://www.youtube.com/watch?v=Wmld2ZP3h0c>;
<https://www.news.com.au/world/asia/chilling-video-shows-chinese-police-transferring-hundreds-of-blindfolded-shackled-prisoners/news-story/67a3f1742b261c6dc78334ff16b6d775>; <https://www.abc.net.au/news/2019-07-05/china-xinjiang-urumqi-riots-10th-anniversary-uyghur-muslims/11270320>. Accessed 2 October 2019.

⁷ <https://donatelife.gov.au/about-donation/get-facts/facts-and-statistics>. Accessed 2 October 2019.

⁸ Huang J. "Ethical and legislative perspectives on liver transplantation in the People's Republic of China". *Liver Transplantation* 2007; 13: 193–196; 人民日报 (People's Daily), "收回死刑核准權：我國死刑數量必會逐步減少" ("As the [Supreme People's Court] gets back the authority to review death penalty cases: our country's death penalty figures will certainly come down gradually"), 1 November 2006, <http://npc.people.com.cn/BIG5/14957/53049/4982508.html>.

⁹ Norbert, W.P., Caplan, A., Shapiro, M.E., Els, C., Allison, K.C. and Huige, Li. 2017. "Human rights violations in organ procurement practice in China" in *BMC Medical Ethics* 18:11.

34. China has claimed that the organs from executed prisoners were from prisoners who had been tried, found guilty, and executed according to Chinese law. China has not produced any evidence to support such assertions.
35. It is estimated there were thousands of people executed in China in 2015.¹⁰ The ‘true extent of the use of the death penalty in China is unknown as data is treated as a state secret’.¹¹ A recent report by Amnesty International states that ‘as of 2017, it appears that China is still sourcing organs from prisoners on death row’.¹² Despite Chinese declarations to the world in 2014 that the country would cease using organs harvested from prisoners¹³, they have not made available any robust data as to how they currently supply organs for the extraordinarily large numbers of transplants performed each year.¹⁴ Nor has China provided any evidence that it adheres to international standards such as the Declaration of Istanbul¹⁵, and the WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation.¹⁶
36. Australians receiving organs in China are therefore at risk of participating in the illicit procurement of organs, organ trafficking, and the subsequent extra-judicial and intentional killing of the non-consenting person from whom the organ is sourced. Unwitting complicity or willful blindness to the unethical or illegal nature of the organ harvesting is inextricably bound with such transplant tourism.
37. Evidence and figures from primary Chinese sources reveal the nature and scale of these crimes, which act as a means of supplying China’s vast, lucrative organ transplantation industry. On June 22, 2016, three highly respected independent investigators published the 680-page report *Bloody Harvest/ The Slaughter: An Update (The Update)*, illustrating a state-driven industry that transplants far more organs—by an order of magnitude—than can be accounted for by official sources, which China claims are all voluntary donors. The report concludes that 60,000 to 100,000 transplants per year are currently taking place in China - as opposed to the official Chinese claim of 10,000 per year.¹⁷

¹⁰ Amnesty’s Report ‘China’s Deadly Secrets’. 2017. <https://www.amnesty.org/en/documents/asa17/5849/2017/en/>; Amnesty International Global Figures 2015, <https://www.amnesty.org/en/latest/news/2016/04/death-penalty-2015-facts-and-figures/>.

¹¹ Ibid.

¹² Ibid.

¹³ Delmonico, F, Chapman, J, Fung J, Danovitch, G, Levin A, Capron A, Busuttill R, O’Connell P. Open Letter of the People’s Republic of China: China’s fights against corruption in organ transplantation. *Transplantation*. 2014; 97(8):795-6

¹⁴ Kilgour, D., Gutmann, D. and Matas, D. 2016. *Bloody Harvest/The Slaughter: An Update* (available from <http://endorganpillaging.org/an-update/>).

¹⁵ Website for Declaration of Istanbul <http://www.declarationofistanbul.org/>.

¹⁶ WHO Guidelines can be found here: <http://www.who.int/transplantation/en/>.

¹⁷ Ibid.

38. The large-scale development of China's transplantation system coincided with the Communist Party of China's determination to wipe out the practice of Falun Gong.¹⁸ This involved a campaign of government propaganda, large-scale extrajudicial imprisonment, torture and coercive reeducation, leading to the incarceration of hundreds of thousands of Falun Gong practitioners in labor camps, where many remain today. A key finding in the February 2017 Freedom House report, "*The Battle for China's Spirit*" states that:

At least 100 million people—nearly one-third of estimated believers in China—belong to religious groups facing "high" or "very high" levels of persecution (Protestant Christians, Tibetan Buddhists, Uighur Muslims, and Falun Gong).¹⁹

39. China's organ harvesting has become a focus of media investigations around the world.²⁰ In response, there is growing international political awareness of, and concern about, forced organ harvesting in China. In June 2016, U.S. Congress passed House Resolution 343 condemning the practice,²¹ followed by a House of Representatives Committee on Foreign Affairs joint hearing at which authors of *The Update* gave evidence. The European Parliament has held several hearings and passed various resolutions,²² notably and most recently *Written Declaration 0048/2016*.²³ The UK parliament has also held hearings and the Conservative Party's Human Rights Commission recent report documents the practice.²⁴

40. China has developed an extensive organ transplant system, and until there is clear evidence of significant changes to China's organ procurement regulations and practices, there remains grave concerns for Australians who travel to China for organ transplants.

41. It is unlikely Australians travelling overseas for an organ transplant would know the true source of their organ when they embark on their journey. The transplants that they receive may have only been possible because of the systematic, forced and state-sanctioned killings of thousands of prisoners, in particular prisoners of conscience.

¹⁸ The former Communist Party leader Jiang Zemin saw the popularity of Falun Gong, and the associated revival of traditional values as a threat to his rule, and launched a violent campaign to "bankrupt them financially, ruin their reputations, destroy them physically." *The Diplomat*: <http://thediplomat.com/2016/06/organ-harvesting-in-china/>.

¹⁹ *The Battle for China's Spirit Report*, Freedom House, <https://freedomhouse.org/report/china-religious-freedom>.

²⁰ The International Coalition to End Organ Pillaging in China website: <http://press.endorganpillaging.org/>.

²¹ United States House of Representatives, H.Res.343, "Expressing concern regarding persistent and credible reports of systematic, state-sanctioned organ harvesting from non-consenting prisoners of conscience in the People's Republic of China...", June 13, 2016. Available at: <https://www.congress.gov/bill/114th-congress/house-resolution/343>.

²² <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0603+0+DOC+XML+V0//EN>

²³ European Parliament Written Declaration 0048/2016 - <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FNONGML%2BWDECL%2BP8-DCL-2016-0048%2B0%2BDOC%2BPDF%2BV0%2F%2FEN>.

²⁴ The Conservative Party Human Rights Commission, "Forced Organ Harvesting in China," September 23, 2016. Available at: http://www.conservativehumanrights.com/reports/CPHRC_ORGAN_HARVESTING_REPORT.pdf.

42. In Australia, data are not collected on the numbers of citizens who travel overseas each year for organ transplants. Despite the lack of data, there is general agreement that at least some Australians engage in organ tourism.²⁵ Of these, an unknown proportion travel to China. In response to a question by Senator Scott Ludlum to the Minister of Health in September 2016 about the numbers of Australians who have received Chinese organ transplants, Senator Nash for the Minister for Health answered:

Limited kidney transplantation data is available for the period 2001 to 2014. This data, from the Australian and New Zealand Dialysis and Transplantation Registry, identifies 53 Australian transplantations in China. While the data describe the fact and place of transplantation, information about the circumstances is not provided.²⁶

43. Laws in Australia should protect and prevent Australians from participating in such crimes against humanity. It is for this reason that AAIC recommends that NSW organ trafficking laws should have extraterritorial application.

44. Ensuring that s 32 of the Human Tissue Act has extraterritorial application is necessary due to international organ trafficking and transplant tourism, and is consistent with a number of international treaties which Australia has ratified including the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons*; the *International Covenant on Economic, Social and Cultural Rights*; the *International Covenant on Civil and Political Rights*; the WHO's *Guiding Principles on Human Cell, Tissue and Organ Transplantation*; and the *International Convention Against Torture*.

45. Given that China procures organs through the extra-judicial killing of prisoners, including prisoners of conscience, the conduct of Australians overseas with regard to organ procurement and organ trafficking needs to be captured in Australia's laws, so that Australians requiring organ transplants overseas are not engaging in criminal conduct by procuring illicit organs. Such a legal framework will also have the effect of raising awareness and empowering Australians to make better choices regarding their healthcare.

46. Trafficking in human organs violates human dignity and the right to life and constitutes a serious threat to public health. AAIC notes that the *Council for Europe Convention against Trafficking in Human Organs* (CETS No.216)²⁷ provides a comprehensive legal framework to

²⁵ "Australian organ tourists drive sinister trade" <http://www.abc.net.au/news/2010-09-01/australian-organ-tourists-drive-sinister-trade/966408>; "Organs for sale: Australians turn to black market to save their lives" <http://www.dailytelegraph.com.au/news/special-features/in-depth/organs-for-sale-australians-turn-to-black-market-to-save-their-lives/news-story/6f967138d4af1403a2e9289f5f47e2b0>; "Tough new laws to crack down on illegal organ trade to be considered by parliamentary inquiry" <http://www.news.com.au/national/tough-new-laws-to-crack-down-on-illegal-organ-trade-to-be-considered-by-parliamentary-inquiry/news-story/6734f8d6b5501578e8e21007cb1c7051>.

²⁶ Parliament of Australia, Parliamentary Business, Chamber documents, Work of the Senate Notice Paper - Questions on Notice, Question 100, notice given September 2, 2016

http://www.aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/qon.

²⁷ <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/09000016806dca3a>

which the Standing Committee can refer when considering provisions to prohibit the illicit activity in respect of human organs, in particular the illicit removal of organs and the solicitation of commercial organ transplants.

47. AAIC also refers the Standing Committee to s 32 of the *Human Tissue Act 2004* (UK) (**the UK Act**) which prohibits commercial dealings in human material for transplantation, and s 33 of the UK Act which restricts transplants involving a live donor.
48. Further, the laws in Israel, Spain and Taiwan on international organ trafficking may act as a useful reference point.²⁸
49. In 2018 the Federal Government announced its Inquiry into Human Organ Trafficking and Organ Transplant Tourism. AAIC supports the recommendations in the report published in November 2018, *Compassion not Commerce: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism (the Report)*.²⁹
50. In particular, AAIC supports the recommendation in the Report to amend the Code in relation to the solicitation of commercial organ transplants with the effect that such laws have extraterritorial application.
51. AAIC submits that the Commonwealth's current laws on organ trafficking do not provide sufficient protections for Australians travelling overseas and purchasing illicitly sourced organs and other forms of human tissue.

Mandatory Reporting

52. AAIC supports Recommendation 5 of the Report regarding mandatory reporting 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.³⁰
53. Mandatory reporting³¹ will provide the necessary legal safeguards with regard to Australians travelling overseas who procure an illicit organ or engage in the solicitation of commercial organ transplants.

²⁸ <https://endtransplantabuse.org/legislation/>. Accessed 2 October 2019.

²⁹ The Parliament of the Commonwealth Australia, November 2018, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/HumanOrganTrafficking/Tabled_Reports. Accessed 1 October 2019.

³⁰ *Ibid*, p xxiv

³¹ <https://endtransplantabuse.org/mandatory-reporting-of-transplant-tourism-david-matas-esot-congress-denmark/>. Accessed 3 October 2019.

54. Relevantly, s 27 of the *Children and Young Persons (Care and Protection) Act 1998 (Children's Act)* provides for mandatory reporting for health care professionals who have "reasonable grounds to suspect that a child is at risk of significant harm" and "those grounds arise during the course of or from the person's work".
55. AAIC submits that provisions analogous to s 27 of the Children's Act be included in the NSW Act. The health care professionals who should be mandated to report include health care professionals who in the course of his or her professional work, or other paid employment, deliver health care, welfare, education, residential services, or law enforcement, wholly or partly, to children and adults. Further, the mandate should also apply to a person who holds a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, residential services, or law enforcement, wholly or partly, to children and adults.
56. AAIC recommends that the NSW Government amend the NSW Act to include provisions for mandatory reporting, whereby health care professionals are obliged to report, to an appropriate registry or authority, any knowledge or reasonable suspicion that a person has received a commercial transplant or one sourced from a non-consenting donor, be that in NSW or overseas.

Real Bodies: The Exhibit

57. There is a further lacuna in the law with regard to the importation of human organs where the provenance of the organ is unknown. As was stated in the Report, when referring to the Real Bodies exhibition which took place in Sydney in 2018, 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.³²

58. AAIC recommends that the NSW Government amend the NSW Act to include provisions which ensure that any person or body corporate importing human organs and other forms

³² The Parliament of the Commonwealth Australia, November 2018, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/HumanOrganTrafficking/Tabled_Reports. Accessed 1 October 2019.

of human tissue into NSW for commercial, educational, or any other purpose produces verifiable documentation of the consent of the donor person or their next-of-kin.

Conclusion

59. For the reasons above, AAIC recommends that until the Commonwealth organ trafficking laws are amended to adequately address the current lacunae in the law, s 32 of the Human Tissue Act in the NSW Act should not be repealed as it provides a legal safeguard not contained within the Commonwealth organ trafficking laws.
60. AAIC recommends that organ trafficking provisions should have extraterritorial application.
61. Further, AAIC makes recommendations regarding mandatory reporting and the importation of human organs and other forms of human tissue.
62. If you would like to discuss any aspect of this submission, please contact Madeleine Bridgett and Susie Hughes by email: madeleine.bridgett@endtransplantabuse.org and Susie.hughes@endtransplantabuse.org.

Submission Authors

Madeleine Bridgett, MSW, BSW, PGDip Law, BPTC
Mitchell Coidan, LLB, GDL, BA