

**Discussion Paper: Human Tissue Act 1983 Statutory Review
Comment Template**

The Office of the Chief Health Officer would appreciate your feedback on the questions raised in the **Discussion Paper: Human Tissue Act 1983 Statutory Review**.

The comment template is set out in sections which address each of the questions posed in the Discussion Paper.

Please add more lines as required.

Feedback from NSW Health Pillars, Local Health Districts and Specialty Networks must be endorsed by the relevant Chief Executive.

Submissions should be made to:

Human Tissue Act 1983 Statutory Review
Office of the Chief Health Officer
NSW Ministry of Health
Locked Mail Bag 961
NORTH SYDNEY NSW 2059

Submissions may also be made via email to organ@doh.health.nsw.gov.au and marked "Human Tissue Act 1983 Statutory Review" as the subject title.

Submissions must be received by 3 August 2018.

Individuals and organisations should be aware that generally any submissions received may be made publically available under the Government Information (Public Access) Act 2009. The Ministry of Health, in considering the submissions received may also circulate submissions for further comment to other interested parties or publish all, or parts, of the submissions. If you wish your submission (or any part of it) to remain confidential (subject to the Government Information (Public Access) Act), this should be clearly stated on the submission.

Enquiries:

Office of the Chief Health Officer
NSW Ministry of Health
T: 9391 9140
E: organ@doh.health.nsw.gov.au

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| Name: | Claire Celia | Position: | Senior Policy & Advocacy Officer |
| Organisation: | The Royal Australasian College of Physicians (RACP) | Email: | Policy@racp.edu.au |
| Phone: | 0468 410 465 | Submission endorsed by The RACP College Policy & Advocacy Committee | |
| Date submitted: | 9 August 2018 | | |

DISCUSSION PAPER: Human Tissue Act 1983 Statutory Review
Please add more lines as required

Question 1: Have the amendments to sections 23, 24 and 27 assisted in increasing the rates of organ donation?

| Comments / Recommendations |
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| <p>The Royal Australasian College of Physicians (RACP) recognises the considerable benefit that follows from organ transplantation - for patients, their loved ones and the community - and so is supportive of measures to increase public awareness of and support for organ donation and also of measures to increase rates of organ donation.</p> <p>The increase in organ donation rates since 2012 appears likely to have resulted from a complex interplay of factors which may include the amendments to sections 23, 24 and 27 of the Act. It is impossible, however, to attribute weight to any one factor in particular.</p> |

Question 2: Are there any other strategies that should be considered to assist in raising awareness and improving the organ donation rates in NSW?

| Comments / Recommendations |
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| <p>Organ donation and transplantation is, of course, a moral and medical 'good'. But it is not the only 'good' that defines Australian (or any other) society and measures to increase organ donation will therefore inevitably be constrained by other 'goods' and values - such as respect for autonomy, consent and care for families - particularly during times of loss. At this point the RACP believes that the Act has the balance right and that at this stage there is insufficient public or professional support for, nor a clinical/policy necessity to move to, an 'opt-out' system for organ donation.</p> |

Question 3: Does s27A appropriately assist with improving communications with family members when a family objects to organ donation despite the deceased consenting while alive?

| Comments / Recommendations |
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| <p>The amendments to s27A provide sufficient space for communication with family members regarding refusal of donation and should not be revised further to mandate donation contrary to the wishes of family members - which is likely to not be supported by intensive care unit (ICU) staff and to generate considerable public disquiet - leading to reductions in organ donation rates and reducing public trust in the health care system - especially among disempowered groups.</p> |

Question 4: Are additional measures required to respond to NSW residents travelling overseas to buy organs?

| Comments / Recommendations |
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| <p>The RACP is enormously concerned with the persistence of organ trafficking and suggests that further measures be taken to combat purchase of organs for transplantation or Australian residents travelling overseas to obtain organs. In doing so the RACP believes that it would be useful to communicate further with the Human Rights subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade which has been holding an Inquiry into Human Organ Trafficking and Organ Transplant Tourism. Additional measures to reduce organ trafficking may include:</p> <ul style="list-style-type: none"> • Creating an offence of Organ Trafficking (as opposed to solely trafficking of persons) under division 271 of the Criminal Code to have extra-territorial application • Supporting the 2014 Council of Europe Convention against trafficking in Human Organs • Mandating reporting of all Australian organ transplants and expanding the Australia & New Zealand Organ Donation Registry (ANZOD) database to record whether an Australian citizen has received their organ overseas. • Requiring international transplant professionals to indicate that they have not been involved in organ trafficking in any way before visiting NSW hospitals for research or educational purposes and taking steps to prohibit their engagement with the NSW health service where they have. • Producing guidance and educational resources for potential organ recipients and for transplant physicians regarding the personal health and social dangers of transplant tourism |

5) Should the Act be amended to allow the Coroner to give consent prior to death for organ donation (with the consent to only be acted upon after death)?

| Comments / Recommendations |
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| <p>The RACP believes that there may be merit in amending the act to allow the Coroner to give consent prior to death for organ donation to increase efficiency and utility of organ donation in coronial cases.</p> |

6) Should the Act be amended to include a power to include or exclude certain bodily materials from regulation by the Act?

| Comments / Recommendations |
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| <p>The National Health and Medical Research Council (NHMRC) Ethical guidelines on the use of assisted reproductive technology in clinical practice and research Guidelines for Assisted Reproduction published in 2017 make clear that posthumous retrieval of gametes may be ethically and clinically appropriate in certain situations and provides excellent guidance to clinicians and clinics regarding this practice. Given the legal inconsistency around Australia and the overlap between different Acts, the RACP believes that there may be merit in amending the Act to include a power to exclude certain bodily materials, such as gametes, from regulation by the Act where there is clear ethical guidance and strong public support for doing so.</p> |

GENERAL COMMENTS

| Comments / Recommendations |
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