



Australian Government

Australian Government response to the
Senate Foreign Affairs, Defence and Trade Legislation
Committee report:

Migration Amendment (Overseas Organ Transplant
Disclosure and Other Measures) Bill 2023

SEPTEMBER 2024

Introduction

The Australian Government thanks the Senate Foreign Affairs, Defence and Trade Legislation Committee (the Committee) for its Inquiry into the Migration Amendment (Overseas Organ Transplant Disclosure and Other Measures) Bill 2023 (the Bill), and thanks those organisations and individuals who made submissions to the Inquiry and participated in the public hearing.

This whole-of-government response to the Committee's recommendations has been coordinated by the Department of Foreign Affairs and Trade, on behalf of the following Commonwealth entities:

- Attorney-General's Department
- Department of Foreign Affairs and Trade
- Department of Health and Aged Care
- Department of Home Affairs.

The Department of Foreign Affairs and Trade extends thanks to: Department of Agriculture, Fisheries and Forestry; Australian Federal Police; Australian Health Practitioner Regulation Agency (AHPRA); Australian Organ and Tissue Authority (OTA); Australia and New Zealand Organ Donation Registry (ANZOD); state and territory Departments of Health; and others for their contributions to this response.

The Bill was introduced to the Parliament by Senator Dean Smith on 22 June 2023 and seeks to amend the *Migration Act 1958* to:

- require persons entering Australia to respond to specified questions in relation to organ transplants outside Australia
- provide for annual reporting requirements in relation to this information, and
- enable the Minister administering the Migration Act (the Minister) to refuse to grant, or to cancel, a person's visa if the Minister reasonably suspects the person has been involved in conduct constituting an offence involving trafficking in human organs.

The Explanatory Memorandum notes the Bill seeks to amend the Migration Act to include an express reference to 'an offence involving trafficking in human organs' in the character test. This would enable the Minister to refuse or cancel a person's visa if the Minister reasonably suspects the person has been involved in conduct constituting an offence involving trafficking in human organs, whether or not that person has been convicted of the offence.¹

Senator Smith told parliament that features of the Bill derive primarily from the inquiry and recommendations of the Joint Foreign Affairs, Defence and Trade Committee in its 2018 report titled *Compassion, Not Commerce: An inquiry into Human Organ Trafficking and Organ Transplant Tourism*.²

The Australian Government is committed to combatting modern slavery and human trafficking in all of its forms, including organ trafficking. The Government's responses to the three recommendations in the Committee's final report are set out below. Consistent with the guidelines on Government responses, recommendations that a Bill be passed, not be passed or amended have not been responded to. This includes Recommendation 3 of the Committee's report (that the Bill not be passed) and the sole recommendation in the Coalition Senators' Dissenting Report (which supports passage of the Bill).

¹ Explanatory Memorandum, p 3.

² Senator Dean Smith, Second Reading Speech, *Senate Hansard*, 22 June 2023.

Response to the recommendations

Recommendation 1

The Committee recommends that the Australian Government commit to delivering one or more public awareness campaigns:

- to inform the public about the risks, dangers and consequences of illegal overseas organ transplants; and
- aimed at increasing the number of registered organ donors in Australia.

Response:

The Australian Government accepts this recommendation in principle.

The Department of Foreign Affairs and Trade (DFAT) will continue to use its Smartraveller social media and website channels to help educate Australian travellers about the risks of illegal overseas organ transplants through the dedicated Smartraveller page ‘Organ transplant tourism’.³ This page includes advice on the risks of receiving an illegal overseas organ transplant. DFAT will also amplify this content through public relations activities.

The Australian Government currently delivers public awareness initiatives to increase the number of registered organ and tissue donors in Australia. The Australian Organ and Tissue Authority (OTA) is a Commonwealth entity established to improve access to transplants for Australians, including by increasing organ and tissue donation. The OTA leads the national program, in collaboration with state and territory governments, the DonateLife Network, clinicians and the community. A key objective of the national program is to build community awareness, education and stakeholder engagement across Australia, to promote organ and tissue donation.

The *OTA Strategy 2022–2027* sets out three key goals: build support across the community by raising awareness, increasing family discussion and increasing registrations in Australia; optimise opportunities by identifying donors and increasing consent, driving excellence in donation services and increasing safe and equitable transplantation; and enhance systems by monitoring, collecting, analysing and reporting national performance, advancing quality safety and efficiency and sustaining specialist resources. Australia has an opt-in donation consent system operated through the national Australian Organ Donor Register (AODR). The register enables Australians aged 16 and over to register as an organ and tissue donor. Family agreement is always sought when donation is possible.

The OTA, in addition to ongoing communication and engagement activities, hosts DonateLife Week each year. This is Australia’s flagship public awareness activity to encourage more Australians to register as an organ and tissue donor and have the conversation with their family. Activities to support DonateLife Week are held in June, July and August each year and include a digital campaign, media, events and community engagement with a call to action to register and talk to family.

The Australian Government and all state and territory governments have recently endorsed the National Strategy for Organ Donation, Retrieval and Transplantation (the Strategy). Additional activities aimed at increasing donors registered on the AODR or public awareness activities will be considered by the Australian Government and all state and territory governments as part of Strategy implementation planning.

³ www.smartraveller.gov.au/before-you-go/health/organ-transplant-tourism

Recommendation 2

The Committee recommends that the Australian Government redoubles its efforts to implement the recommendations agreed to in its 2021 response to the Joint Standing Committee on Foreign Affairs, Defence and Trade's report *Compassion, Not Commerce: An inquiry into Human Organ Trafficking and Organ Transplant Tourism*.

Response:

The Australian Government accepts this recommendation in principle.

The Joint Standing Committee on Foreign Affairs, Defence and Trade's report *Compassion, Not Commerce: An inquiry into Human Organ Trafficking and Organ Transplant Tourism* (*Compassion, Not Commerce*) contained 12 recommendations. Of these, the Australian Government accepted (in principle or in part) six of the recommendations (Recommendations 2, 3, 7, 8, 9 and 11) and noted the other six recommendations.

Annex A details how the Australian Government has implemented the recommendations accepted (in principle or in part) in response to *Compassion, Not Commerce*.

Annex A also provides an erratum, which clarifies the Government's 2021 response to Recommendation 12 of *Compassion, Not Commerce*.

Recommendation 3

The Committee recommends that the Bill not be passed.

Response:

The guidelines on Government responses provide that the Government is not required to respond to recommendations in a Parliamentary Committee report that a Bill not be passed. Accordingly, the Australian Government has not responded to Recommendation 3.

Parliamentary Inquiry Recommendation Implementation

Status Update - September 2024

Joint Standing Committee on Foreign Affairs, Defence and Trade – *Compassion, Not Commerce: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism (Compassion, Not Commerce)*

Recommendation 2 - *Compassion, Not Commerce*

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.

Response (December 2021)

The Australian Government accepts this recommendation in principle.

The Foreign Policy White Paper confirms Australia's commitment to advancing human rights globally. All people have the right to fundamental freedoms and to live their lives with dignity. Australia's diplomatic network will continue to monitor local human rights situations around the world and provide appropriate reporting.

The Australian Government notes that while the last Australia-China Human Rights Dialogue took place in 2014, the Government continues to raise human rights concerns with China both bilaterally and in relevant international forums. While the Australian Government is open to resuming the bilateral human rights dialogue at an appropriate time and level, the Government considers the fact of raising and discussing these vital issues is more important than the modality in which they are raised.

The Government has expressed concern to China regarding allegations of organ trafficking on a number of occasions. The Australian Government will continue to examine closely allegations of organ trafficking in China and, as appropriate, raise the issue with the Chinese Government.

China consistently rejects reports of forced organ harvesting. Chinese officials acknowledge that organs have previously been harvested from executed prisoners, but tell us that there is now growing regulation of China's organ transplant system, including requirements that all organ donation must be voluntary. There may be opportunities for Australia to share our own organ matching and transplantation experience and practice.

Implementation Status (September 2024)

Implementation of the Australian Government's 2021 response is ongoing.

The Australian Government is committed to upholding human rights globally. Our diplomatic network monitors local human rights situations around the world and provides reporting to inform government policy making and response. Sources of information include independent reports of UN Special Procedure Mandate Holders and the Office of the High Commissioner for Human Rights (OHCHR).

The Australian Government continues to follow developments in transplantation practices of other countries and review available evidence as new reports are published. The Government is aware of statements by UN experts, human rights organisations, and government representatives alleging 'organ harvesting' that targets minorities in detention in China, including Falun Gong practitioners, Uyghurs, Tibetans, Muslims and Christians.

Officials from the Department of Foreign Affairs and Trade have raised concerns about reports of organ harvesting directly with China. The Australian Government also consistently raises our human rights concerns more broadly, directly with China and in multilateral forums. Most recently, the Prime Minister raised human rights with Chinese Premier Li during his visit to Australia in June 2024. On 23 January 2024, the Government used China's Universal Periodic Review (UPR) in the Human Rights Council to make specific recommendations to China to improve its domestic human rights situation, including with regard to Hong Kong, Xinjiang and Tibet. On 4 July 2024, in a statement at the adoption for China's UPR report, the Government expressed its disappointment that China did not accept any of the recommendations that Australia had made.

The Australia-China human rights dialogue was last held in 2014 and a future dialogue is not scheduled. The dialogue was suspended in 2014 based on considerations at the time with regard to the level of representation from China and the relative effectiveness of the forum. The Australian Government considers consistently raising and discussing these vital issues is more important than the modality in which they are raised. The Government will continue to raise human rights concerns at every appropriate opportunity, directly with China, including at the highest levels, and in multilateral forums including the United Nations General Assembly and the Human Rights Council.

As the United Nations directing and coordinating authority for health, the World Health Organization (WHO) supports international collaboration to strengthen global health systems, promote health and manage health threats and emergencies. Australia engages with the WHO's normative and technical functions, including the development of global health policy guidelines and standards, through our participation in the WHO's decision-making body, the World Health Assembly, which is comprised of 194 WHO Member States.

In 2024, the 77th World Health Assembly adopted resolution WHA77.4: Increasing availability, ethical access and oversight of transplantation of human cells, tissues and organs by consensus (i.e. with the backing of the international community). The resolution urges WHO Member States to take measures to prevent and combat human trafficking for the purpose of organ removal and trafficking in human organs, and to protect victims and survivors, including by strengthening legislative frameworks and reporting to law enforcement agencies. The resolution calls on the WHO Director-General to strengthen cooperation with United Nations agencies, and other relevant stakeholders, to improve country, regional and global capacity to respond to identified cases of human trafficking for the purpose of organ removal and of trafficking in human organs. WHO will report on the implementation of WHA77.4 in 2026.

Recommendation 3 - *Compassion, Not Commerce*

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.

Response (December 2021)

The Australian Government accepts this recommendation in principle.

Enhancements to organ donation and transplantation data collection have been considered as part of the review of the Australian organ donation, retrieval and transplantation system.

On 13 April 2018, the Council of Australian Governments (COAG) Health Council agreed that it would undertake a review of the organ donation, retrieval and transplantation system led by the Commonwealth in collaboration with states and territories. The review report was presented to the COAG Health Council to seek agreement to publicly release the report, and it was published in February 2020. It includes the development of a long-term strategy for organ retrieval and transplantation.

The Department of Health is working with all states and territories and the Australian Organ and Tissue Donation and Transplantation Authority (Organ and Tissue Authority) to consider the review report, including recommendations that relate to changes to existing registries of organ transplantation outcomes. The long-term strategy is now being developed.

The Australian Government currently contributes funding through the Organ and Tissue Authority to maintain national organ specific outcome registries for:

- kidney – Australian and New Zealand Dialysis and Transplant Registry (ANZDATA)
- heart and lung – Australia and New Zealand Cardiothoracic Organ Transplant Register
- liver – Australia and New Zealand Liver Transplant Register
- pancreas – Australia and New Zealand Islets and Pancreas Transplant Register.

The ANZDATA also collects and reports data on the incidence, prevalence and outcome of dialysis treatment and kidney transplantation for patients with end-stage kidney disease in Australia and New Zealand.

Implementation Status (September 2024)

Implementation of the Australian Government's 2021 response is in progress.

The Australian Government invests in continued improvements to organ donation and transplantation data collection in Australia.

The Australian Government contributes funding through the Organ and Tissue Authority (OTA) to maintain clinical quality registries for national donation and transplantation activities and outcomes. The OTA delivers the OrganMatch system in partnership with the Australian Red Cross LifeBlood. OrganMatch is a centralised donation, laboratory and transplant system that facilitates patient waitlisting, recipient matching and offer management, enabling a national capture of key transplant metrics for all waitlisted and

transplant patients in Australia and New Zealand. Patient outcomes are captured in the individual registries below.

Clinical quality registries exist for:

- deceased kidney donation – Australian and New Zealand Dialysis and Transplant Registry (ANZDATA)
- living kidney donation - Australia and New Zealand Living Kidney Donation Registry (ANZLKD)
- heart – Australia and New Zealand Heart Transplant Register (ANZHRT)
- lung – Australia and New Zealand Lung Transplant Register (ANZLUNG)
- liver – Australia and New Zealand Liver Transplant Register
- pancreas – Australia and New Zealand Islets and Pancreas Transplant Register, and
- organ, eye and tissue donation - Australian and New Zealand Organ Donation Registry (ANZOD).

National Strategy for Organ Donation, Retrieval and Transplantation (Strategy)

On 13 April 2018, the COAG Health Council agreed that it would undertake a review of the organ donation, retrieval and transplantation system (Organ Review) led by the Commonwealth in collaboration with states and territories.

Recommendations from the Organ Review were reviewed by all governments to inform content for the development of the draft Strategy. Development of the Strategy commenced in 2019 and was delayed due to COVID-19 impacts. In April 2022, all Health Ministers' agreed to the draft Strategy, with public consultation undertaken between May and November 2022. The Australian Government and all state and territory governments have recently endorsed the Strategy. Further consultation with the sector will occur as planning for Organ Strategy implementation activities are developed.

The Australian Government has committed ongoing funding to allow continued improvements and efficiencies to be made to OrganMatch, with the aim to create efficiencies and improve patient outcomes. The Strategy aims to continue to support the use of OrganMatch to drive optimal clinical best practice, ensuring Australia has a system with the capability to work with future capacity requirements and technological advancements.

Recommendation 7 - *Compassion, Not Commerce*

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.

Response (December 2021)

The Australian Government accepts this recommendation in principle.

The Australian Government is committed to combating all forms of human trafficking and slavery, including organ trafficking. Australia has a comprehensive legal framework in place to prevent and respond to organ trafficking. Organ trafficking has been criminalised in the *Criminal Code Act 1995* since 2005. In 2013, the Government strengthened its response by introducing four standalone organ trafficking offences in the Criminal Code:

- Section 271.7B: Offence of organ trafficking – entry into and exit from Australia
- Section 271.7C: Organ trafficking – aggravated offence
- Section 271.7D: Offence of domestic organ trafficking, and
- Section 271.7E: Domestic organ trafficking – aggravated offence.

These offences comprehensively criminalise trafficking in persons for the purpose of organ removal, including organising or facilitating the entry into, exit from, or transportation within, Australia. Organ transplant tourism will be captured by these offences where a person organised or facilitated the transport, or proposed transport, of the donor to, from or within Australia.

These offences have extended geographical jurisdiction and apply to conduct that occurs wholly or partly in Australia or has a result in Australia, as well as applying to conduct occurring wholly overseas by Australian citizens.

The Australian Government will explore potential legislative options to strengthen the Criminal Code offences to address this crime to capture conduct by Australians overseas that does not involve the trafficking of a person into or from Australia for the purpose of organ removal – for example, a situation where an Australian citizen trafficked a person within a foreign country for the purpose of organ removal.

Within Australia, all states and territories have legislated against the sale of organs, regardless of consent. The Australian Government will explore potential legislative options to strengthen the Criminal Code offences to capture the wilful exploitation of individuals for the purposes of organ transplantation by an Australian citizen, resident or body corporate outside of Australia.

Implementation Status (September 2024)

Implementation of the Australian Government's 2021 response is in progress.

The Attorney-General's Department completed a targeted review of Australia's modern slavery offences in Divisions 270 and 271 of the *Criminal Code* (Cth) in 2023 in collaboration with the Australian Federal Police and the Commonwealth Director of Public Prosecutions. This was an initiative of the *National Action Plan to Combat Modern Slavery 2020-25*.

The targeted review included consideration of Australia's offences for trafficking in persons for the purpose of organ removal in Division 271, including their alignment with international good-practice, consistent with the terms of reference for the targeted review. In line with the terms of reference, the targeted review also considered and had regard to reports from parliamentary inquiries, including *Compassion Not Commerce*. The targeted review was informed by public consultations and the findings report was published in August 2023.⁴

The Australian Government has considered the findings report and agreed to develop potential legislative reforms to address the findings of the targeted review.

Addressing key findings may require extending the jurisdiction of Australia's trafficking in persons offences (including for the purpose of organ removal) to capture overseas conduct by Australian citizens, residents and bodies corporate, without the need for the trafficked victim or survivor to have crossed an Australian border.

⁴ www.consultations.ag.gov.au/crime/modern-slavery-offences/

Recommendation 8 - Compassion, Not Commerce

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.

Response (December 2021)

The Australian Government accepts this recommendation in principle.

The Australian Government already provides information to medical professionals on organ trafficking through a fact sheet available on the Department of Home Affairs website.⁵ Information for the general public on the risks of medical tourism is available on the Department of Health website⁶ and the Department of Foreign Affairs and Trade's Smartraveller website.⁷

The Australian Government's national reform program to increase organ donation rates includes coordinated community education and awareness activities to increase knowledge about organ donation and transplantation. Multilingual resources are available at donatelife.gov.au in more than 20 languages.

Implementation Status (September 2024)

Implementation of the Australian Government's 2021 response is in progress.

The Australian Government continues to provide information to medical professionals on organ trafficking through a fact sheet available on the Department of Home Affairs website. Information for the general public on the risks of medical tourism continues to be available on the Department of Health website and the Department of Foreign Affairs and Trade's Smartraveller website, including the dedicated webpage on organ transplant tourism.⁸

The OTA's national program for increasing organ and tissue donation includes the OTA's Partnership program and DonateLife Community Awareness Grants (CAGs). These initiatives support a range of activities to raise awareness and engage the community on the importance of organ and tissue donation, encouraging all Australians to talk to their family about donation and to register on the Australian Organ Donor Register.

The 2024 CAGs aim to extend the reach of existing community awareness and education activities regarding donation and transplantation by reaching and engaging Australians from Culturally and Linguistically Diverse (CALD) backgrounds.

The OTA has also developed multilingual educational and awareness materials.

⁵ www.homeaffairs.gov.au/criminal-justice/files/organ-trafficking-fact-sheet.pdf

⁶ www.health.gov.au/internet/main/publishing.nsf/Content/health-pubhlth-strateg-quaranti-index.htm

⁷ www.smartraveller.gov.au/before-you-go/health/medical-tourism

⁸ www.smartraveller.gov.au/before-you-go/health/organ-transplant-tourism

Recommendation 9 - Compassion, Not Commerce

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.

Response (December 2021)

The Australian Government accepts this recommendation in part.

The Department of Foreign Affairs and Trade will publish information about organ trafficking and organ transplant tourism, and the risks associated with both, under the health section in the ‘before you go’ advice on the Smartraveller website.⁹

As trafficking in human organs and transplant tourism is a complex, evolving problem encompassing many countries, and due to the limitations of specific data, the Department of Foreign Affairs and Trade considers that a central point of reference on the Smartraveller website¹⁰ is most suitable at this time. The Department of Foreign Affairs and Trade will keep country-specific pages under review in consultation with relevant Australian embassies and high commission.

Implementation Status (September 2024)

The Australian Government’s 2021 response has been implemented.

The Department of Foreign Affairs and Trade published a dedicated Smartraveller page on organ transplant tourism on 27 February 2024.¹¹ The content addresses the legal and ethical issues of receiving an organ transplant overseas, including the potential risk of unknowingly participating in organ trafficking.

During the 2024-25 financial year, the Department of Foreign Affairs and Trade will use its Smartraveller social media channels to amplify the website content to a broader audience.

⁹ www.smartraveller.gov.au/before-you-go/health

¹⁰ www.smartraveller.gov.au

¹¹ www.smartraveller.gov.au/before-you-go/health/organ-transplant-tourism

Recommendation 11 - Compassion, Not Commerce

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); and
- 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.

Response (December 2021)

The Australian Government accepts this recommendation in part.

The Australian Government accepts the need for ongoing promotion of organ donation, and the continued funding of the Supporting Living Organ Donors Program and the Australian and New Zealand Paired Kidney Exchange Program (ANZKX).

The Australian Government notes the recommendation that there be further investigation into other international donation programs, including consent models.

Promotion of organ donation

The Australian Government remains committed to further increasing organ donation rates to increase the number of Australians receiving a transplant. Since the implementation of the Australian Government's national reform agenda on organ and tissue donation for transplantation in 2009, deceased organ donation has more than doubled.

The Organ and Tissue Authority was established in 2009 by the Australian Government to lead the national program in collaboration with states and territories. A key part of the program is increasing education and awareness.

As outlined in response to Recommendation 3, work is currently underway on the development of a new long-term strategy for organ retrieval and transplantation which will build on the Government's national reform program on organ and tissue donation for transplantation.

Supporting Living Organ Donors and Australian and New Zealand Paired Kidney Exchange programs

The Australian Government is also committed to improving the lives of more Australians through living organ donation.

The Supporting Living Organ Donors Program is an important part of the Australian Government's commitment to increasing organ donation rates, ensuring that cost is no barrier for living organ donors in Australia. The program allows donors to claim reimbursement for some out-of-pocket expenses incurred as a result of their organ donation.

In 2018-19, 109 patients accessed support through the program, with total expenditure of around \$428,000.

The Program provides:

- financial contribution to employers to either replenish an employee's leave or contribute towards reimbursing an employer who has made a payment to their employee in place of income lost due to organ donation; and/or
- funding of up to \$1,000 directly to the donor to meet some of the out-of-pocket expenses incurred as a result of the donation.

The Australian Government is also committed to supporting patients through funding provided to the Organ and Tissue Authority to coordinate the ANZKX Program.

The ANZKX Program matches incompatible kidney donor/recipient pairs with other incompatible pairs enrolled in the program across Australia and New Zealand. The ANZKX Program finds matches for people:

- who are eligible for a kidney transplant;
- who have a living donor who is willing to donate; and
- whose living donor is unable to donate because their blood or tissue type is not compatible.

Investigation of other countries' organ donation programs

The Australian Government draws on findings from international programs to inform organ donation and transplantation policy in Australia.

The international experience was taken into account in the decision by all Australian governments in 2009 to maintain Australia's informed consent or 'opt-in' model. This gives individuals the option to record their intent or legal consent to donate their organs and/or tissues on the Australian Organ Donor Register.

The current Australian position of 'opt-in' has been informed by research, evidence and discussions with state and territory governments, which have responsibility for the legislative framework for organ and tissue donation for transplantation under their respective human tissue legislation.

Experience in other countries shows that systems which compel organ donation, such as 'opt out' models, are not necessarily the reason for increased donation rates. Research shows that better long-term results are achieved through systemic approaches that educate and involve hospitals, clinicians, donor families and the general public.

This approach has been implemented in Australia through the work of the Organ and Tissue Authority and its national DonateLife Network. The nationally coordinated program is focused on a best practice clinical system in hospitals, combined with community awareness and engagement. Its success is demonstrated by the trend of growth in organ donation over the past decade. Since the national program started in 2009, the number of deceased organ donors more than doubled (554 donors in 2018), resulting in 11,000 Australians receiving a lifesaving transplant.

The Australian Government continues to monitor international outcomes.

Implementation Status (September 2024)

Implementation of the Australian Government's 2021 response is in progress.

Supporting Living Organ Donors (SLOD) Program

The Department of Health continues to administer and fund the SLOD Program, which aims to remove cost as a barrier for living organ donation.

The SLOD Program provides reimbursement of leave and out-of-pocket expenses associated with donor testing, surgery, and recovery. It seeks to minimise the evidence requirements and administrative burden placed on donors applying for the SLOD Program whilst ensuring the financial reimbursements are not an incentive to donate.

Promotion and optimisation of the SLOD Program will be explored as part of the implementation of the National Strategy for Organ Donation, Retrieval and Transplantation (the Strategy).

Over 2023-24, the SLOD Program supported 93 donors and reimbursed a total \$464,667.07 for leave and out-of-pocket expenses.

Organ and Tissue Authority Strategy 2022-27 (OTA Strategy)

The *OTA Strategy 2022-27* aims to return donation and transplantation activity to pre-pandemic levels and to drive further improvements through:

- building support across the community - raising awareness, increasing family discussion, increasing registrations
- optimising opportunities in the clinical sector - identifying donors and increasing consent, driving excellence in donation services, increasing safe and equitable transplantation, and
- enhancing systems to enable quality outcomes - monitoring, collecting analysing and reporting national performance, advancing quality safety and efficiency, and sustaining specialist resources.

In 2023, around 7.5 million people were registered on the Australian Organ Donor Register (AODR). This is 36% of the eligible Australian population.

The OTA has set a national target of increasing registration to 50 percent of those aged 16 years and over by 2027. To achieve this, the OTA is exploring options with all governments for large scale registration initiatives to significantly increase the number of people on the Australian Organ Donor Register (AODR). This includes a focus on community awareness campaigns.

Implementation of the OTA Strategy will support nationally consistent best practices across the end-to-end system, including retrieval and transplantation.

The *OTA Strategy 2022-27* includes the development of a living kidney national strategy which will include the Australian and New Zealand Paired Kidney Exchange program and the SLOD Program, to increase living donation in Australia.

The OTA has a well-developed network of international colleagues and regularly engages on best practice, emerging technologies and consent systems. All countries agree there needs to be multiple areas of focus to increase donation. The consent system is just one area. The United Kingdom (UK) is the most recent country to change to a deemed consent opt-out system. The evidence is not clear at this point whether this change will see a sustained increase in the number of organ donors in the UK.

Erratum - *Compassion, Not Commerce* – Recommendation 12

The following erratum to the Australian Government's 2021 response to Recommendation 12 of *Compassion, Not Commerce* is noted.

The Department of Agriculture, Fisheries and Forestry advises that the *Biosecurity Act 2015* is not an appropriate mechanism to include when implementing Recommendation 12.

The objectives of the Biosecurity Act are to manage the risk of pests and diseases entering Australian territory and causing harm to animal, plant and human health, the environment and the economy. For the purposes of the Biosecurity Act, ethical considerations around the sourcing of goods are only relevant to the extent that those considerations inform an assessment of the biosecurity risk associated with those goods. As such the Biosecurity Act is not the appropriate legislative instrument to give effect to Recommendation 12.