



Greens NSW submission to the Inquiry into Human Organ Trafficking and Organ Transplant Tourism

Thank you for this opportunity to make a submission regarding the proposed offence of Organ Trafficking under division 271 of the Criminal Code and whether it would be practicable or desirable for this offence to have extraterritorial application; and Australia to accede to the 2014 Council of Europe Convention against Trafficking in Human Organs. The Greens NSW strongly support both of these changes.

We have a bill on the books in the NSW Parliament, the *Human Tissue Amendment (Trafficking in Human Organs) Bill 2016*. This bill would create a number of extraterritorial offences applicable to residents of NSW. **A copy of the bill, the Second Reading speech, as well as the report on submissions that we received on the draft of the bill are annexed here.**

This bill is the result of lengthy consultation process starting in 2013. An overwhelming proportion of respondents supported urgent changes to NSW law to recognise the concerns about global organ trafficking and forced harvesting. We received 2,662 online submissions in response to the consultation paper, a relatively unheard of number for even Government consultation papers, let alone those produced by members of smaller parties like the Greens.

Under the existing law of NSW, trading in tissue is prohibited, but this law does not extend to transplants that may occur overseas. There is anecdotal evidence from medical professionals that residents of NSW have engaged in unethical organ transplants overseas, receiving organs or tissues that were either purchased on the black market or taken from people without their consent.

This was confirmed by the NSW Health Minister in correspondence in January 2013:

NSW clinicians involved in the care of patients who may benefit from transplantation actively inform them of the risks of travelling overseas for the procedure. Anecdotally, a very small number of individuals in NSW requiring transplantation travel overseas to access organs.

Two forces have acted together to make the trade in trafficked organs so lucrative. First, medical advances have made organ transplantation more widespread, more affordable and more successful. The second is that across the globe organ donation rates are low and despite the occasional success such as in Spain, have remained low. This means that many people who are waiting for transplants will never receive a matching organ. This can present an incentive for some Governments and organisations to forcibly, or at the very least unethically, obtain organs from their citizens, especially from vulnerable people such as prisoners and minority ethnic and religious groups.

While most countries have laws prohibiting both the sale and forced removal of human organs, evidence suggests that the practice continues to be widespread in a number of countries. This includes countries in our region such as China.



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Member of the NSW Legislative Council

**Greens NSW Submission
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In a number of countries organ sales are disguised as donations with few, if any, records being kept to prove consent to donate organs. This suggests that actual informed consent is at best unlikely. There are also no requirements for ongoing cover of the medical expenses of 'donors', and many of those selling organs may be unaware of the ongoing medical issues they can face as a result.

The objects of the Human Tissue Amendment (Trafficking in Human Organs) Bill 2016 are:

- (a) to increase the penalty for commercial trading in human organs and other human tissue, and
- (b) to create offences relating to the use of organs and other tissue taken from people without their consent, and
- (c) to impose a duty on registered health practitioners to report any reasonable suspicion they have that a patient or other person has received an organ or tissue that was commercially traded or taken without appropriate consent.

The offence of trading in tissue or organs has a maximum penalty of 40 penalty units or imprisonment for 6 months, or both. Where the amount of tissue taken would reasonably be expected to kill the person or where a vital organ is removed the maximum penalty is 25 years.

The removal of tissues without consent from a living or dead person has a maximum penalty of 40 penalty units or 6 months imprisonment. Where the organ removed is a vital organ the maximum penalty is 25 years. Using tissues removed without consent or receiving for transplantation tissues or organs so acquired carries matching penalties.

In order to ensure a level of oversight, recipients of tissues or organs overseas (who ordinarily live in NSW) must notify the Secretary of the Department of Health of the transplant. The bill introduces mandatory reporting for registered health practitioner who have reasonable grounds to suspect that a patient or other person has been transplanted with or received tissue that was either trafficked or removed without consent.

The bill specifies that failure to comply with mandatory reporting requirements is considered "unsatisfactory professional conduct". This can result in suspension of the medical practitioner from practising medicine or the removal of the practitioner's name from the Register.

We hope this bill assists you in your deliberations on this important reform. Please contact my office on 9230 3030 or david.shoebridge@parliament.nsw.gov.au if you would like to discuss this further.

Kind regards,

A handwritten signature in black ink, appearing to read 'D. Shoebridge', written in a cursive style.

David Shoebridge, Justice Spokesperson for the Greens NSW