



Organ trafficking: INFORMATION FOR MEDICAL PROFESSIONALS

What is organ trafficking?

In Australia, state and territory laws criminalise the **removal of organs**:

- for the trade or sale of the organs, or
- where there is no consent for the removal of the organs.

The Commonwealth's organ trafficking laws criminalise the **movement of people** into, from or within Australia for the unlawful removal of their organs. For an organ trafficking offence to apply, both elements of 'movement' and 'removal of organ' must be present, for example:

- If a donor is moved into Australia in order to sell their organ, this will constitute an Australian organ trafficking offence. This applies regardless of whether the donor provided full and free consent to the donation.
- If an Australian citizen travelled overseas in order to purchase an organ ('transplant tourism'), this would not constitute an Australian organ trafficking offence as the donor would not have been moved to, from or within Australia.

While there are few incidents of organ trafficking reported in Australia, the clandestine nature of human trafficking means that victims of organ trafficking may be difficult to identify.

Any kind of human trafficking, including organ trafficking, is a crime in Australia.

Which donors are at risk of organ trafficking?

Medical professionals are most likely to encounter organ trafficking with **living donors**.

Generally, organs are not able to be moved or traded independently of their source, as they will only survive for short periods of time independent of the body (at most 24 hours). Accordingly, the most likely organs to be trafficked are kidneys and livers, as these are able to be procured from living donors.

Conversely, tissues from parts of the eye, bone, skin and heart can generally be moved independently of their source, as they can exist for much longer periods of time outside of the body. Tissue is generally procured from a deceased donor, which usually negates the need to traffic a living donor. If the donor is living, whether the removal of tissue constitutes an organ trafficking offence would also depend on whether the relevant state and territory defines 'organ' to include that tissue.

A living donor may be trafficked into, from or within Australia. For example:

- A person from overseas may be trafficked into Australia to be a living donor if an Australian recipient has been unable to find a donor domestically.
- A person from Australia may be trafficked overseas to be a living donor for an Australian recipient if medical professionals refuse to perform the transplant in Australia.

The trafficker could potentially be a member of a criminal syndicate motivated by profit or they could be the prospective organ recipient or a member of the recipient's family.

Laws about organ trafficking

The *Criminal Code Act 1995* (Cth) contains the Commonwealth's human trafficking laws and comprehensively criminalises the trafficking of a person for the removal of an organ.

- The offences criminalise the trafficking of persons both **into** and **from** Australia.
- The offences also criminalise the trafficking of persons domestically **within** Australia in certain circumstances.

The movement of a person to remove their organ does not necessarily constitute an offence of organ trafficking. The Criminal Code outlines that removal of an organ will constitute an offence of organ trafficking where:

- removal **is contrary to the law of the Australian state or territory** where it is meant to be carried out. As all states and territories have criminalised the trade and sale of organs this criminalises the trafficking of a person for the sale of their organ, and/or
- there is a **lack of consent and no medical need**. Consent must be full and free and the victim must not have been coerced, threatened or deceived to induce their consent.

Importantly, the Criminal Code does not prevent a medical professional removing an organ of a person without their consent if doing so would save the person's life or avoid significant harm to that person.

An organ does not ultimately need to be removed for there to be an offence of organ trafficking, nor does a person need to intend to commit an offence; a person only needs to be **reckless** to the possibility. A person will be reckless if they are aware that a substantial risk exists and it is unjustifiable for them to take that risk.

The maximum penalty for an organ trafficking offence is **12 years**. If one of the following aggravating factors applies, the maximum penalty is **20 years**:

- the offender intends to remove an organ, rather than just being reckless to the removal of the organ
- the offender subjects the victim to cruel, inhuman or degrading treatment, or
- the offender engages in conduct that gives rise to a danger of death or serious harm to the victim or another person and is reckless to that danger.

If the victim is under 18 years of age, the maximum penalty is **25 years**.

What support is available to trafficked people?

Victims of human trafficking, including organ trafficking, are able to access the Australian Government's Support for Trafficked People Program, which provides individual case-managed assistance to eligible trafficked people, including access to accommodation, financial assistance, legal and migration advice, training and social support.

If a trafficked person is not an Australian citizen and does not have a valid visa, the Australian Government's Human Trafficking Visa Framework enables suspected trafficked people and witnesses of trafficking to remain in Australia and support the investigation and prosecution of trafficking offences.

Signs that a person may have been trafficked

If medical professionals in Australia refuse to perform a transplant in Australia, there may be a risk that the living donor will be trafficked overseas to a less regulated transplant system. Be aware of the following signs that a prospective living donor may be about to be trafficked overseas:

- the donor is in the control of another person and does not, or is not allowed to, speak for themselves
- the donor is escorted by another person at all times, including to and from appointments
- there are indications that the donor's consent has been induced or coerced, such as through threats of violence
- there are indications that the donor is nervous, intimidated, distressed or traumatised

- there are indications of physical injuries, such as bruises
- the donor does not appear to understand the transplant procedure and associated risks
- the recipient no longer appears interested in exploring options within Australia
- there are indications that the recipient is intending to travel overseas with the donor, especially to countries common for 'transplant tourism'.

For a prospective living donor in Australia, be aware of the following signs that they may be a victim of human trafficking:

- the donor is from a foreign country, and does not appear to have a relationship or connection to the recipient and their family
- the donor does not understand English and does not appear to understand the transplant procedure and associated risks
- the donor is in the control of another person and does not, or is not allowed to, speak for themselves
- the donor is escorted by another person at all times, including to and from appointments
- the donor appears to be confined or isolated in a place owned/controlled by another person
- the donor's living expenses appear to be being paid by another person
- the donor's personal documents, such as passports and residency documents or Medicare and health insurance documents, are being held by another person
- there are indications that the donor's consent has been induced or coerced, such as through threats of violence
- there are indications that the donor is nervous, intimidated, distressed or traumatised
- there are indications of physical injuries, such as bruises
- there appears to be a third party procurer.

What to do if you suspect someone has been or will be trafficked

If you are aware of, or suspect someone has been, or will be trafficked, report it to the Australian Federal Police on 131 AFP (131 237) or report it online at

https://forms.afp.gov.au/online_forms/report_a_crime.

In an emergency, call 000.