



The New South Wales Council for Civil Liberties (CCL) is one of Australia's leading human rights and civil liberties organisations. Founded in 1963, NSWCCL is a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. To this end the NSWCCL attempts to influence public debate and government policy on a range of human rights issues by preparing submissions to parliament and other relevant bodies. CCL is a Non-Government Organisation (NGO) in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

The CCL thanks the Greens Party MPs for the invitation to comment on the draft Human Tissue Amendment (Trafficking in Human Organs) Bill and the accompanying discussion paper. We thank you also for the extension of time to make our response.

We have considered the clauses carefully. We cannot support the proposed legislation.

1. As you note in the Consultation Paper, it would be easy for a person to avoid the bill's penalties by changing her or his address to another state or overseas. In our view, laws that can easily be flouted are not good law, and help to bring the institution of the law itself into contempt.

2. We are gravely concerned by any law that would criminalise behaviour in another country.

i. As a matter of principle, it is up to the people of a country to determine what is a crime in their country. It is perhaps in recognition of this that while the Supplementary Protocol to the Convention Against Transnational Crime¹ inter alia urges states parties to outlaw threat, force or other forms of coercion for the purpose of the removal of organs, it does not itself support extra-jurisdictional criminalisation.

ii. In CCL's view, any Australian legislation which criminalises actions in other countries should be passed by the Federal Parliament, not by any of the States. There are considerations of diplomacy and international affairs which need to be taken into account before such legislation is introduced, and these matters are properly the concern of federal government. We are aware that the Australia Act (in both its forms) gives the Australian states the power to legislate with extra-jurisdictional effect--for the peace, order and good government of the state itself. We do not believe that that power was ever intended to apply to actions carried out overseas.

iii. We are concerned by the open-endedness of the argument that because an action is considered wrong simpliciter, it should be made a crime to do it in another country. There is nothing in that principle, or in the argument in the discussion paper which would imply a limit to what could be criminalised. A future parliament might criminalise abortion, or

¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime.

opposition to police forces, or any manner of actions which are thoroughly justified in some other countries, on the basis of a belief, by a temporary majority, that the actions are wrong. A parliament of the late 1960's might have criminalised homosexual activities between consenting adults, which would have put NSW residents returning from the UK, where those activities were legal, in prison.

iv. Consider further the impact of the universal adoption of this practice. Persons might return to another country and find themselves arraigned for actions which are legal in this one. The argument might apply even to visitors—there is nothing in the *arguments* used to restrict them to the citizens of the country legislating.

Note that these arguments apply to the *principles* that are implicitly or explicitly appealed to in attempts to justify such legislation as you propose. It is those principles which would be appealed to when the legislation is used as a precedent.² There is nothing in what you are arguing which would restrict that development, no step to stand on on a slippery slope.

Indeed, the consultation paper itself appeals to a precedent in precisely this way, and expresses hopes that the new legislation might itself become an international precedent. This is highly dangerous.

CCL holds therefore that legislation which is to operate extra-jurisdictionally outside Australia should be confined to matters where the United Nations has mandated such extra-jurisdictional operation in an international treaty.

We urge the Greens, therefore, not to proceed in the manner proposed. We urge you, further, to resist attempts by others to apply criminal law extra-jurisdictionally.

Yours faithfully,

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² Thus an arbitrary restriction inserted into the legislation would not help.