

Anatomy Act Submissions
Disaster Management, Regulation and Planning
Public Health & Clinical Services
The Department of Health
189 Royal Street
EAST PERTH WA 6004

Email: AnatomyActSubmissions@health.wa.gov.au

Dear Prof Weeramanthri

Re: Consultation on the *Reform of the Anatomy Act 1930 Position Paper October 2014*

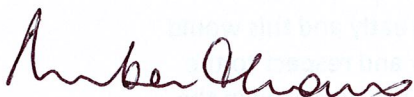
Thank you for inviting Australian College of Nursing (ACN) to make a submission to the *Reform of the Anatomy Act 1930 Position Paper October 2014* (the Position Paper). ACN is pleased to provide comments in response to the Position Paper.

As a key national organisation representing nurses ACN welcomes the Government of Western Australia's Department of Health's modernisation of the *Anatomy Act 1930* (the Act) as since the establishment of the Act, the focus on individuals' rights in the health system have been strengthened and widely promoted.

Nurses have a professional obligation to protect the rights of individuals in their direct or indirect care, during lifetime and in death. The national *Code of Ethics for Nurses in Australia* includes the value statement: '*Nurses value informed decision making*'. Further, the Code obliges nurses to protect human dignity as part of the profession's commitment to universal human rights: '*The nursing profession recognises the universal human rights of people and the moral responsibility to safeguard the inherent dignity and equal worth of everyone. This includes recognising, respecting and, where possible, protecting the wide range of civil, cultural, economic, political and social rights that apply to all human beings.*' ACN considers nurses to have a professional moral obligation to protect the human rights and dignity of all people including protecting the dignity of the deceased body.

Please do not hesitate to contact me for further discussion of ACN's feedback.

Yours sincerely



Adjunct Professor Debra Thoms FACN (DLF)
Chief Executive Officer

21 November 2014

ACN's comments to the Position Paper

ACN provides the following comments on the proposed legislative framework for the regulation of education in anatomy through the study of dissected human bodies in Western Australia:

- As a general observation, the Position Paper lacks explanatory comments elucidating the reasons for some of proposals it presents. For example:
 - Section 2.3 pages 6-7, briefly mentions legislative frameworks protecting the dignity and respect of the deceased employed by other jurisdictions before presenting the alternative approach of imposing an obligation through a statement of principle. The Position Paper asserts that a clear statement of principles is an approach that carries merit but fails to present an analysis of the pros and cons of the options presented.
 - Section 2.12 page 12, states 'a penalty of imprisonment is not considered appropriate in the context of the proposed legislative framework, although it is acknowledged that the recent approach in Tasmania is to provide for some minimal terms of imprisonment'. The Position Paper does not provide a justification why imprisonment is not considered appropriate.

ACN considers it difficult to offer well-informed feedback on the Position Paper because the paper lacks adequate discussion of the issues raised and rationales for proposals presented.

- **Proposal 1: The proposed legislative framework should apply to anatomical examinations, defined to mean the examination of a deceased body (or part of a deceased body) for the purpose of the study and teaching of anatomy.**
ACN supports Proposal 1.
- **Proposal 2: There should be a provision requiring persons acting under the proposed legislative framework to afford dignity and respect to the deceased body.**
ACN offers in principle support for a provision requiring 'persons acting under the proposed legislative framework to afford dignity and respect to the deceased body'. However, ACN queries the rationale for *not* adopting the approach with additional obligations as recommended by the Australian Law Reform Commission (ALRC). As first raised by ACN as a general observation, in rejecting the ALRC's stance, the Position Paper states that there is 'considerable merit' in taking an approach that 'provides a clear statement of principle' rather than legislation that imposes additional obligations. However, the position paper does not provide a clear rationale for rejecting the ALRC's stance nor does it canvass the legislative and practice implications of the two different legislative approaches.

In the absence of a clear rationale, ACN has concerns that a provision that is a statement of principle may not provide adequate guidance on what constitutes acting in a manner consistent with community expectations. In Australia's diverse society cultural norms vary greatly and this would include different expectations on how to act in a manner that affords dignity and respect to the deceased. ACN is of the view that provisions to afford dignity and respect to the deceased in the context on this legislative framework should be subject to further and more comprehensive consultation. The need for further consultation also applies to the proposal that the provision be

aspirational rather than legally binding. ACN recommends that the provision in Proposal 2 to afford dignity and respect to the deceased body should include a definition of what is meant by affording dignity and respect.

- **Proposal 3: Teachers and students should not be required to hold individual licenses to conduct anatomical examinations.**

ACN supports Proposal 3 and notes the importance of reducing unnecessary administration.

- **Proposal 5: The person (or organisation) responsible for the place authorized by the EDPH should be required to report to the EDPH every two years about their compliance with the Act.**

ACN believes the intent of Proposal 5 to reduce unnecessary reporting to be reasonable but would prefer if the Position Paper had thoroughly examined the possible implications of this change. Changing reporting requirements from each occasion that a school receives a body for anatomical examination to a broader compliance mechanism requiring reporting every two years represents a significant change in policy.

- **Proposal 6: An anatomical examination should not be performed unless the deceased person provided, during their lifetime, their express written consent to that examination by completing an approved form.**

ACN supports the position taken that Western Australia's new legislative framework ought to reflect the deceased person's autonomous decision to make his/her body available to anatomical study. In the interests of protecting a person's rights to self-determination, ACN provides complete support for the new legislative framework to 'reflect the absolute autonomy of the deceased person'.

However, ACN recommends that Proposal 6 be strengthened by incorporating the principle of *informed* consent. In ACN's view any approved form should include the information necessary to enable a person to give *informed* consent about donating their body for anatomical study. As noted in the Position Paper the use of an approved form for obtaining consent would 'ensure that the consent addressed all relevant matters, such as wishes about the disposal, which the deceased might not otherwise turn their mind to'.

ACN understands that the expressed wish of a person in their will to have their deceased body used for anatomical purposes may not constitute *informed* consent. When making a will the person may not be aware of the range of matters associated with their decision, for example that his/her body, or body parts, could be transported across jurisdictions. In ACN's view the likelihood of *informed* consent being given in a will would be increased if information sheets about issues pertaining to donating the body and a copy of the approved form were made available in will kits and in lawyers' offices.

- **Proposal 7: A place authorised to receive a body for anatomical examination should be able to access medical information about the deceased person in order to assess suitability for examination.**

This proposal reinforces the need for an approved form that contains pertinent information such as the potential for an authorised place to have access to medical information about the deceased.

- **Proposal 8: The identity of the deceased person should not be disclosed except in limited circumstances.**

The discussion raises the potential for giving powers to the next of kin contradicting Proposal 6 that seeks to ensure all powers of decision making remain with the person making their deceased body available for anatomical study. ACN is of the view that the autonomy of the deceased should also be protected in relation to confidentiality about their identity. The use of an approved form would provide a suitable opportunity to explain matters to do with protecting the person's identity and to obtain the person's informed consent. The need to confirm matters after a person has died should be eliminated.

- **Proposal 9: There should be no statutory time limit for the retention of the deceased body**
Proposal 10: Interstate transfers of a deceased body should be permitted unless the deceased expressed an objection to transfer.

ACN is of the view that matters relating to the retention, disposal and interstate transfer and loans of the body could be addressed within the approved form and thereby reduce circumstances for issues to arise due to a deceased person not specifying their wishes. This would also address the need to refer to the next of kin. ACN has no concerns with the intent of either proposals 9 or 10.

- **Proposal 11: The proposed legislative framework should impose penalties of up to \$10,000 for contravention of the framework.**

ACN considers the penalty of a maximum \$10,000 fine to be sufficient, particularly taking into account that teaching institutions may have as punishments conditions placed on them or their authorization to undertake anatomical examinations revoked. ACN notes that the Criminal Codes' section 214(2) *Indecent interference with a dead body* may offer further recourse to the law should violations of the proposed legislation occur.