

22 Diagnosing and certifying death and the role of the coroner

Doctors have significant responsibilities in diagnosing the fact of death, certifying the cause of death and reporting particular deaths to the coroner. In the field of organ transplantation, specialist doctors are responsible for diagnosing brain death. This chapter covers these responsibilities and provides advice about the additional requirements to be met where a deceased person is to be cremated and about the use of tissues removed at autopsy.

22.1 Recent developments in the diagnosis of death

Before the advent of intensive care and life-support systems, there was little conflict between the law and medicine about the diagnosis of death. In common law, a breathing person with a circulation was alive; conversely, a person with irreversible cessation of cardiac and respiratory function was dead [1]. In the US in 1968, an ad-hoc committee at Harvard Medical School developed guidelines for the withdrawal of circulatory and respiratory support in patients diagnosed with 'irreversible coma' or 'brain death'. The authors emphasised that the primary purpose of the guidelines was to assist decision making in regard to the withdrawal of futile treatment; organ donation was seen as secondary [2]. As part of the response to developments in organ transplantation, by the mid-1970s there was widespread acceptance by doctors, lawyers and theologians, if not by the public, that the death of the brain was equivalent to the death of a person. In 1977, the Australian Law Reform Commission advised that government had a responsibility to legislate, however generally, on the definition of death. It recommended that the law should state that death occurred when either there was:

- irreversible cessation of all function of the brain; or
- irreversible cessation of all circulation of blood in the body of the person [3].

This definition was subsequently incorporated in state and territory legislation (see Table 22.1), although in South Australia and Western Australia, the legislation achieved the same end through slightly different terminology [4]. In SA, the definition of death is found in the *Death (Definition) Act 1983*. In WA, the *Human Tissue and Transplant Act 1982* does not

define death, but ‘irreversible cessation of all function of the brain of the person’ is required before organs can be removed for transplantation. More recently, legislative changes have been made to make more uniform the legal requirements concerning the certification of death by doctors, aligning the law with the way in which doctors practise. These changes are discussed in section 22.3.

Table 22.1 Legislation providing for the definition of death

State or territory	Relevant legislation
New South Wales	<i>Human Tissue Act 1983</i> , section 33
Victoria	<i>Human Tissue Act 1982</i> , section 41
Queensland	<i>Transplantation and Anatomy Act 1979</i> , section 45
South Australia	<i>Death (Definition) Act 1983</i> , section 2
Western Australia	<i>Human Tissue and Transplant Act 1982</i> , section 24
Tasmania	<i>Human Tissue Act 1985</i> , section 27A
Northern Territory	<i>Transplantation and Anatomy Act</i>
Australian Capital Territory	<i>Transplantation and Anatomy Act 1978</i> , section 45

22.2 Responsibilities of doctors attending a person thought to be dead

In the discussion that follows, certifying death refers to the matters concerning the completion of the death certificate—formally known as the ‘Medical Certificate concerning the Cause of Death’—and is distinguished from diagnosing, or confirming the fact of, death. A doctor, when called to a person thought to be dead, has the following responsibilities:

- to confirm that death has taken place
- to exclude where possible, on medical grounds, any suspicions of foul play in relation to the death
- to issue a death certificate when in a position to do so
- if unable to issue a death certificate, to refer the death to a coroner.

A doctor who is fully registered (that is has general, full or unrestricted registration) may certify a death anywhere in a state or territory. Doctors with provisional registration may only