Submission No 26

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Chairman
Legal, Constitutional and Administrative Review Committee

Submission re: Transplantation and Anatomy Amendment Bill 1998

Introduction:

The proposed amendments to the Transplantation and Anatomy Act 1979 indeed raise many ethical and legal issues. The cited aim of the Transplantation and Anatomy Act 1998 is to increase the current level of organ donation in Queensland by improving the existing system of organ donation through driver's licence authorisation. The proposed Bill also stresses the need for "a model designed to increase the number of organ donors" and develop in the long term, an organ database. The giving of a "legal effect to marking the organ donor space in the driver's licence" is thus proposed as an interim measure until more comprehensive organ harvesting guidelines and procedures can be adopted.

Organ and Tissue Transplantation:

There are three types of transplantation.

1. Tissue, a paired organ or bone marrow from a **living** person where the tissue or organ must not be essential for the life or health of the donor.
2. Tissue **after death** eg: the cornea, heart valves, skin, bone and connective tissue such as tendon and ligaments.
3. Unpaired vital organs such as the heart, lungs, both kidneys and the liver after a **declaration of brain death**. Such determination of "brain death" is based on criteria, which attempts to determine absence of functioning of the brain cells.

The proposed Bill fails to distinguish between the types of transplants involving human tissue and organs. This submission will mainly address the issue of organ donation following declaration of "brain death" – the third type of transplantation.

The Definition of Brain Death:

Since 1968 it has become ethically acceptable for physicians to excise functioning organs from the body of a person who has been declared "brain dead". Although brain death is supposed to mean total loss of function of the entire brain, there are many different sets of criteria used for diagnosis.

The first U.S. guidelines developed to establish brain death "standards" were proposed by the Ad Hoc Committee of the Harvard Medical School to Examine the Definition of Brain Death. This 1968 report was (interestingly) entitled "A Definition of Irreversible Coma". One of the reasons given to "define irreversible coma as a new criterion for death" was "controversy in obtaining organs for transplantation". A coma occurs only in someone who is living. This article, which was the blueprint for brain

death criteria around the world and redefined the term "irreversible coma" to now mean brain death. No reports on patient data were included in that report.

By 1978, there were more than thirty published sets of brain-related criteria for death (N. Enl. J. Med. 1978; 299:339,393) In the last two decades many other sets of criteria have been formulated. Thus, there are currently numerous "ways to be dead" according to existing brain death criteria. The application of brain death criteria has become widespread as a direct result of the demand for organ transplants.

Further Developments in the Use of Brain Death Criteria Preceding Organ Transplants:

Worldwide controversy continues as to the reliability of various standards of "brain death criteria", in determining partial or total cessation of **brain function**. These criteria **are not determining destruction of the brain or death of the person.** Many examples of unreliability of such tests have been cited in professional journals.

The use of brain death criteria has now been extended to the harvesting of organs from anacephalic babies born alive but subsequently declared "brain dead". There is a current push to change the semantics of the brain death criteria and thus widen the application of the criteria to broaden the scope for potential organ donors. Thus it has been suggested the previous term of "whole brain death" criteria be replaced with a "higher brain" standard of criteria to allow organ harvestation from those person in a persistent comatose state.

The Reality which is "Brain Death":

A person declared brain dead looks and feels like a living, unconscious person- pink and warm, yet unresponsive. The heart is beating, there is normal blood pressure and temperature, there are normal salt and water balances and many internal organs and systems are functioning to maintain the unity of the body. Furthermore, cessation of **all** functions of the entire brain, whether irreversible or not, has not been linked necessarily to total destruction of the brain or to death of the person. Intensive Care Unit patients are sometimes "resuscitated" even though they have been declared "brain dead"!

Are all organ donors really dead? Some of the health professionals involved in the organ transplant team are nominated the "harvest team". The word harvest, revealingly, implies gathering of that which is living.

A heart transplant involves approximately an hour of operating time to excise the beating heart of the donor whilst he or she is paralysed, but is he or she anaethetised? This question becomes pertinent when the following case histories are considered.

Brain Death/Organ Transplant Horror Stories:

A comatose accident victim who was "clinically dead" for more than nine hours coughed while preparations were made to remove his kidneys. (Omaha World Herald February 9, 1984)

As preparations were being made to take the organs from a man who had suffered a heart attack, someone noticed a blink of his eye. ("Wink Saves Man Believed Dead", Kansas City Times, February 13, 1975, p.3A)

In Nashville, Tennessee, as preparations were being made to excise a liver from a "donor", the man moved his right foot. ("Liver Donor Shows Reflex",The Tennessean, Nashville, February 8, 1984)

It is no wonder the Honorable Member for Thuringowa sees a "need to reassure Queenslanders that the acquisition of organs is something good". Facts indicate that this is not always the case; as organ transplants involving prior declarations of "brain death" raise more questions than have been satisfactorily answered to date.

Furthermore, it was disturbing to read in the above mentioned Bill that in South Australia, "medical co-ordinators who are usually involved in the intensive care units are able to influence the **timing** and manner of the request for organ donations". This implies scope for flexibility in determining the moment of another's "cessation of life". This concept undermines the credibility of the definitiveness of the term "brain death", as applied to the death of a person.

Comments:

Time restricts this submission to the above information, however the author respectfully requests that the Chairman of the Committee and Members carefully review the contents of the proposed Bill and apply the following:

1. Before support is considered for widening the basis for organ donation in Queensland, it must be asked, do Queenslanders **now** have truly informed consent with respect to the declaration of brain death when it precedes a request for organ donation?

2 Is information currently and readily available to potential organ donors which differentiates between types of tissues and organs suitable for donation; and whether a person is declared "brain dead" or "dead" prior to excision of such tissue or organ/s?

3. Do and would Queenslanders considering organ donation have access to information which details that there is a difference in begin declared "dead" and being declared "brain dead"?

4. Declaration of brain death in the majority of cases is preceded by accidental injury to the brain by external force/s and/or internal bodily malfunction eg: cerebral haemorrhage. Such circumstances can occur irrespective of age, position, wealth, previous state of health etc..... It is therefore imperative that Members of the Committee apply questions raised and any recommendations resulting from this inquiry to the scenario of themselves as the individual whose organ/s may be harvested to improve the quality of life of another.

This particular Bill seeks only to legally endorse consent to organ donation by means of legal effect of the driver's licence option. Committee Members are urged to

consider the current world wide concerns regarding declaration of brain death and organ donation; and the wider recommendations of the Bill in relation to long-term means of increasing organ donation compliance. Committee Members are also urged to seek further submissions in this area before final recommendations are made.

Conclusion:

Is "brain death" really death? If there is any doubt, and many medical journals allude to this possibility, then so called "beating heart, brain- death" organ donors are in fact living patients. It is the life that is in "brain dead" organ donors that makes their gift worthwhile.

A recommendation to legally enforce the organ donation option on driver licences **now** expands the power base to discard the need for such an option in the future. Each small step taken to enhance the credibility of the "brain death" declaration as a prelude to excising living organs closes the gap to the day **when only the brain death declaration, not the consent will be required** to harvest one's living organs for another.

Suzanne Savage (Mrs.)

Friday June 11, 1999.