



Speech by

GARY FENLON

MEMBER FOR GREENSLOPES

Hansard 18 August 1999

TRANSPLANTATION AND ANATOMY AMENDMENT BILL

Mr FENLON (Greenslopes—ALP) (8.30 p.m.): I rise to oppose the Transplantation and Anatomy Amendment Bill 1998. I do so having received some greater enlightenment on the issue than when we last considered the Bill. At that time a motion was passed to refer this Bill to the Legal, Constitutional and Administrative Review Committee, which I chair. The committee was required to report back to the House by 1 August. It did so by tabling a report titled *The Review of the Transplantation and Anatomy Amendment Bill 1998*. That report was tabled out of session.

The committee's report was the culmination of a considerable number of hearings and great consideration by the committee, which is an all-party committee consisting of representatives from the four parties within this Chamber. At least, there were four parties, but I am not sure whether there are now following today's news about One Nation. That remains for history to determine.

The report canvassed the Bill that was introduced by the member for Thuringowa, which basically sought to impel a hospital authority to ensure that the wishes of the next of kin of a deceased person or, indeed, a person who is brain dead can be overridden in circumstances where a determination is made by the potential donor prior to death. The Bill sought a mechanism to ensure that the notation that is included on a driver's licence would, in effect, provide an overriding provision to ensure that the donor's intention would prevail regardless of the wishes of that person's next of kin. That was really at the centre of the report that the Legal, Constitutional and Administrative Review Committee undertook. Whilst it arrived at a determination on that point, it went on to make further recommendations of a very positive nature. Essentially, in relation to the proposed legislation of the member for Thuringowa, the committee rejected the prospect of overriding the wishes of a deceased person's next of kin if they did not wish that person's organs to be donated.

I make it very clear that—and I am sure that all members of the House join me—that I commend the member for Thuringowa for his good intentions in bringing this legislation before the House. However, the committee found that the effect of the Bill could reverse the goodwill and acceptance of organ donation that has been built up. Indeed, that could jeopardise the whole process. Organ donation is now being embraced through a very sensitive escalation of community awareness. If we override the wishes of a deceased person's family, that goodwill and acceptance may be jeopardised.

That conclusion was reached after a full consideration of over 50 submissions that were received by the committee. Submissions were received from highly professional persons within Queensland, Australia and New Zealand. In the course of other inquiries and inspections that the committee undertook on a trip to New Zealand, we took the opportunity of visiting a hospital in Auckland. Evidence was also taken from a number of sources overseas, including, in particular, an investigation of the models that have been developed by the very well respected and learned Dr Matesanz of Spain. In fact, Dr Matesanz made a submission to the inquiry. I record the committee's appreciation of the fact that Dr Matesanz took great trouble to communicate with the committee from Spain, giving us the benefit of his vast knowledge.

Indeed, Spain and South Australia were mentioned by the member for Thuringowa as having models to which Australia as a whole could aspire to improve donation rates. Whilst comparisons are very difficult to determine, it seems that there are some very fundamental ingredients within the South

Australian and Spanish models that warrant some attention. The main ingredient of those models was the provision of a great deal of support in the intensive care setting. Basically, the models were founded on the principle that a great deal of training and support would be available within the intensive care units to ensure that the process of handling relatives was dealt with in a very sensitive way and that there was a clear, appropriate and concise way of identifying potential donors and working through the whole process.

Overwhelmingly, however, the view of those and other Australian and international submissions was that it is not appropriate to enforce the donor's wishes onto the next of kin. As I said, this is a very sensitive process. I can imagine the public outcry that there would be and the field day that the tabloid media would have, and perhaps even some of the current proponents would have, if the wishes of a grieving family, which would be experiencing a very difficult time, were overridden and their relative's organs were removed. That could be quite a disaster. It could have a very deleterious effect on the entire process. It could create a stigma over the entire process of organ donation.

There is a very important overriding issue of just how relevant this prospect might be. At the centre of the matter is the question of just how frequently a situation might arise where the wishes of a family could be overridden.

On page 8 of its report, the committee cited two examples that serve to guide me. The first concerns a finding in Victoria that, where a patient's positive donor status is known at the time of the declaration of brain death, in all cases the donor family consented to donation. Anecdotal evidence from the various people we consulted supports that proposition. This is further confirmed by a 1998 Statewide survey conducted by Queensland Health in which 94% of respondents indicated that they would provide consent for donation if an immediate family member died and had indicated a willingness to donate their organs. Overwhelmingly, it seems that people who know the wishes of their next of kin at the point of death agree that a donation should proceed.

In relation to whether the Bill addresses the disease as identified by the member for Thuringowa, it can be argued that this is not a big issue and that it is perhaps non-existent. This brings me to one of the fundamental positive aspects that can be drawn from this Bill and the report. The issue of the notification of a person's next of kin is central to this process. If the next of kin know what the intention of a potential donor is, it is very likely that they will agree for a donation to take place. In Queensland we have an opt-in model rather than an opt-out model. The central aspect of the donation process is the potential donor's communication of their intention to their next of kin.

We now come to the next point, which is the significance of drivers' licences and databases as an indication of intention. Their greatest value is not in impelling the transplant unit of a hospital to remove organs. Their greatest value is in ensuring that the next of kin has a satisfactory understanding of the deceased person's real intentions. For example, let us look at what happens when a road trauma victim is taken to a hospital and that person's driver's licence cannot be located. In such an instance, we see that the value of having a database lies more with the next of kin being informed prior to the accident of the intention of the potential donor.

One positive recommendation of the report relates to the database that exists currently in relation to our drivers' licences. I think it would be a revelation to much of the Queensland community if people were to find out that the database on which we are registered when we tick the box on our driver's licence notifying our intentions is not available to hospital staff. It is only of value when the person concerned has their driver's licence on them. The committee addressed this issue in its recommendations to the Minister for Transport. Recommendation 5 states—

"The committee recommends that immediate steps be taken to overcome the restrictions which currently prevent access to the donor information on the Queensland driver's licence database by those involved in organ donation.

In this regard the committee notes that Queensland Health has been negotiating with Queensland Transport to amend the current driver's licence application/renewal form to include a question asking people who do consent to a donor notation being recorded on their driver's licence to also consent to Queensland Transport providing that information to Queensland Health.

The committee urges the Minister for Transport and the Minister for Health to expedite moves to enable full use of this valuable data."

Again, I take this opportunity to urge both of those Ministers to take strong and urgent action to expedite that process. The committee and I believe that this would facilitate the process of organ donation and would assist all concerned—relatives and hospital staff—in terms of their knowing on more occasions what the intention of a donor was. In the circumstances where that intention is not known two things can happen. The relatives can surmise by some other means that a person's intention was to be a donor or they can simply refuse. Those are the alternatives at the moment. The

only way in which those alternatives can be overridden is if prior to death a person has provided an express indication that they did not wish to become a donor.

That particular recommendation also led to recommendation 6 of the report, which states—

"The committee recommends that Queensland Health attempt to ascertain the viability of the Australians Donate proposal to establish a national donor database and support that proposal should Queensland Health consider it viable."

Two main areas are being examined in relation to a national database. One proposal suggests linking up drivers' licences nationally. The second proposal would provide a database via our Medicare cards. That would have a long lead-in period, but it would be a fairly comprehensive and foolproof Australiawide system if we had our data linked to those cards. However, it would probably have a six-year lead-in period. The most viable and immediate proposal would be to link up drivers' licences.

The committee made a number of other positive recommendations in relation to the matters that I have already raised. They relate to education of people within the community and the staff within hospitals. The focus would be on educating the community as to the importance of organ donation in the first instance. More importantly, I reinforce the importance of an individual relaying that information to their next of kin. Without trivialising the subject or being flippant, I point out that we could have all sorts of merchandise, such as key rings, T-shirts and so on. For example, this would encourage people to say at a family barbecue, "I am very proud that I am prepared to be an organ donor." This is a very significant issue for all of us as individuals, families and as a community. The process involves confronting our own mortality—one of the hardest questions for all of us. That is very central to it.

Mr Palaszczuk: I'm a vegetarian.

Mr FENLON: That is probably a very good idea.

We have had some good feedback about the report. Tonight I wish to table a letter from Australians Donate, Australia's national organ and tissue donation and transplantation network. The author of the letter, Bruce Lindsay, the national director, thanks the committee for its report and offers his warmest congratulations on the quality of this report and its work. The letter states—

"The careful consideration given to this issue by the Committee, and the clarity with which their views are then expressed in the Report, produces a document which in itself will be a valuable addition to the literature on organ and tissue donation in Australia.

I am particularly grateful for the comments and indeed the recommendations made by the Committee, which are supportive of project and program directions being undertaken by Australians Donate. The value of the unanimity of approach which is so frequently mentioned in the Report may well lie in its contribution to a collaborative approach to individual programs at national level ..."

I table that letter dated 2 August.

There are many good things to do in terms of improving organ donation in Australia. There are many good approaches, and constructive approaches, and many of those are already being undertaken through Queenslanders Donate and Australians Donate. This report highlights many of those directions, reinforces them, and, I hope, gives further impetus to their expeditious execution in Queensland, in particular by way of linkage to an Australiawide strategy, because an Australiawide strategy is important to providing a wider access to organ donation.

I conclude by recommending that members do not support this particular Bill because it may indeed have a negative effect on the process of organ donation in Queensland.

Mrs Edmond: But they should go home and tell their families.

Mr FENLON: They should indeed. What we should all do tonight is make that choice and go home and tell our families.
