



Speech by

Mrs J. GAMIN

MEMBER FOR BURLEIGH

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TRANSPLANTATION AND ANATOMY AMENDMENT BILL

Mrs GAMIN (Burleigh—NPA) (8.51 p.m.): The Opposition does not fully support this amendment Bill, but we are not totally opposed to it either, because we understand the very laudable motives behind its presentation by the member for Thuringowa. In believing that more work and research needed to be done on legislation as important and as emotive as this Bill, we recommended that it be referred to the all-party Legal, Constitutional and Administrative Review Committee, and honourable members have just heard the chairman of that committee speak very well on this issue.

Throughout Australia the way an organ donor is identified varies, but the most common method is by an endorsement on a driver's licence, and in Queensland a system of driver's licence endorsement is used. Alternatively or as well as licence endorsement, a person can sign a uniform donor card which carries several options. Donor cards are carried by persons indicating their consent to be an organ and/or tissue donor on their death and must be signed and are usually witnessed. But in order to be effective, the donor would need to carry the card at all times so that, in the event of an accident or emergency admission to hospital, the consent to donate would be immediately apparent to hospital staff. The donor can nominate his or her willingness to donate any needed organs or tissue or can restrict his or her donation to specific organs or tissue.

A deceased person's next of kin may also give permission for removal of organs or tissues for transplantation purposes, even if the deceased person has given no prior indication of his or her views on this matter. In practice, however, organs or tissue are not removed after death without the consent of the next of kin, even if the deceased person has his or her driver's licence endorsed or is carrying a donor's card. If this consent is refused, the organ or tissue retrieval does not go ahead, even if the deceased person had during his or her life expressed a desire to be a donor after death. Doctors are extremely sensitive to the feelings of grieving families and never take actions which are not approved of by the next of kin. So it is the combination of medical ethics as well as clearly indicated consent of prospective donors which control the way in which organ and tissue removal is effected for transplantation purposes.

There is sufficient legislation covering definition of death, conduct and requirements of post-mortem examinations, and retention of post-mortem material and its subsequent disposal. However, there are still anomalies in terms of retrieval or non-retrieval of organs, consent of donors and next of kin. The intent of the amendment Bill before the House is to iron out these anomalies, to endorse the legal value of an organ donation indication on a driver's licence, to make such indication fully binding and to remove the need to seek the consent of the next of kin.

The ability to provide transplantation service to every patient who needs it is severely limited by the availability of organs or tissue, that is, by a critical shortage of donor organs or donor tissue, and that means a critical shortage of donors. Waiting lists are getting longer. Patients can wait up to three years for kidney transplants while all the time undergoing constant and draining dialysis procedures to keep them alive as they wait for a suitable and willing kidney donor.

To overcome some of these problems, strategies are now being devised whereby hospital staff and the medical profession are honing their skills in communication with potential donors and particularly with the general public, who are potential relatives and who may one day be asked to give permission for the removal of organs or tissues from their recently departed loved ones. This could well be extended into the field of general practice where GPs quite often have a closer personal relationship

with their patients. However, as I have explained, the need to seek formal consent of the next of kin is not presently required by legislation but is a matter of ethical consideration on behalf of members of the medical profession.

In light of current medical practice it seems unlikely that, if this amendment Bill is passed, the medical profession and hospital staff would then agree to totally disregard the wishes of next of kin. It would be more likely that the medical profession and the hospital staff would continue to abide by the wishes of grieving family members, even if by doing so they contravene legislation which allowed them to ignore those wishes. No medical practitioner or reputable hospital would want the unfavourable publicity that could result from organ retrieval against the wishes of distressed relatives, even if the practitioner was acting strictly in accordance with the legislation.

That is why the amendment Bill was referred to the Legal, Constitutional and Administrative Review Committee for further review and consideration. The member for Thuringowa should be commended for bringing these matters forward, but they are very complicated. There is no doubt that the Legal, Constitutional and Administrative Review Committee had the ability to undertake more extensive research into this delicate, sensitive and indeed emotional subject and, as the member for Greenslopes has said, the committee produced an excellent report. We put a great deal of thought, work and effort into this report. Although the committee endorses the broader objective of the Transplantation and Anatomy Amendment Bill—that is to increase organ donation rates in Queensland; there is great potential to save lives and benefit others through organ donations—the committee does believe that the Bill in practice would not succeed in achieving its objective and that regardless there are better ways to achieve these objectives.

In seeking legal effect to the donor consent notation on a driver's licence, which would remove the need to consult with the deceased's relatives regarding donation, the Bill links the shortage of organs with the need to consult the families. Yet the organ donation process involves a number of steps, all of which must be considered in light of legal, medical, ethical, social and moral considerations. Of particular concern to the committee was that the proposal ignores that there are sound ethical and practical reasons why hospitals always consult with the deceased's families about donation.

In addition, the proposal does not take into account that driver's licences are of limited value in that the Queensland licence database is currently not accessible by donor coordinators, very few people actually have their licence with them when they are brought to an intensive care unit and in any case licences are not always a reliable indicator of consent. There are many other reasons, apart from the family refusing to consent, why potential donors do not become actual donors.

Where the family does know that the deceased has consented to organ donation, they are unlikely to object to donation proceeding, and even if a donor consent notation on a licence was made legally binding, it would not eliminate the need for the hospital to consult with the family to establish whether the deceased's consent had been withdrawn or to establish the deceased's social and medical history. Indeed, the committee believes that, rather than increasing donor numbers, the proposal in the Bill if implemented might, in fact, have the opposite effect. Instead, the committee's research reveals that the Bill's objectives can be achieved by implementing more appropriate strategies, and there is a range of recommendations in the report that deal with these.

In his second-reading speech, the private member urges Queensland to introduce a model designed to increase the number of organ donors and to educate Queenslanders that the acquisition of organs is good, necessary and saves lives. Steps have since been undertaken in this regard by Queensland Health through its recently established program Queenslanders Donate. This program is designed to be complementary to, and supportive of, Australians Donate, the new national body responsible for increasing national donor rates.

I notice that the member for Greenslopes has tabled the letter from Australians Donate that was recently received by the committee. That was a very great compliment to the committee and on the work it has done.

In addition, in chapter 5 the committee suggests that the following might assist Queenslanders Donate and Australians Donate to increase organ donor rates: appointing as part of Queenslanders Donate an organ donor advocate to further develop and promote education and awareness strategies regarding organ donation in the Queensland community in addition to maintaining current programs which seek to educate and increase hospital staff awareness of organ donation; enabling people to provide for organ donation in advance health directives and providing Queensland drivers with more information about organ donation by utilising the driver's licence application and renewal process and amending the traffic regulations to provide licence holders with an express statutory right to require the amendment of the donor notation on their licences; expediting steps to overcome the current restrictions on Queensland Health accessing the organ donation information on the Queensland Transport driver's licence database; and monitoring the viability of a national donor database.

The committee believes that implementation of such specific suggestions in the context of Queensland's newly established organ donation program will in the short and long term be far more effective and acceptable. However, the Opposition has a problem here because if we vote this Bill down at the second reading, that is the end of it. The committee has submitted the report with the recommendations to the Minister and has written to the Minister. Under the Parliamentary Committees Act the Minister has three months to respond to the Parliament, but the Opposition would like something a bit more definitive. We would like to have amendments put forward in the Committee stage that it is not possible to put forward at the second-reading stage. We hope we can get the Bill to the Committee stage so that we can produce some amendments and call on the Government to ensure that satisfactory legislation is produced in three months.

There are three Ministers involved— primarily the Minister for Health, but also the Minister for Transport and the Attorney-General. The sorts of amendments we would like to put forward are covered completely in the summary of recommendations in the report. The summary of recommendations states—

- "1. The committee recommends that the Parliament not support the Transplantation and Anatomy Amendment Bill 1998 in its current form.
2. The committee recommends that the Minister for Health, as the minister responsible for the Transplantation and Anatomy Act 1979 (Qld), consider reviewing Part 3 of the Act (Donations of tissue after death) with the aim of establishing whether those provisions should be amended to more accurately reflect current practice in relation to organ donation and transplantation. Given the relative uniformity of these provisions in Australia (and given the desirability of maintaining that uniformity), this is a matter which the minister might wish to raise at an appropriate Australian Health Ministers' forum.
3. The committee supports the efforts of Australians Donate and Queenslanders Donate to increase education and awareness about organ donation both in the community and in hospitals. In particular, the committee supports the emphasis on educating people about the importance of communicating their decision to be a donor with their family. The conduct of periodic surveys will assist in measuring the effectiveness of these efforts. The committee recommends that the Minister for Health consider the appropriateness and feasibility of appointing (as part of Queenslanders Donate) an organ donor advocate to further develop and promote education and awareness strategies regarding organ donation in the Queensland community. To assist people in recording their decision to be a donor, the committee recommends that the Attorney-General, as the Minister responsible for the Powers of Attorney Act 1998 (Qld), investigate amending that Act so as to allow people to record a wish to be an organ donor after their death in an advance health directive."

That is a very important recommendation and one which I would hope to see the Attorney-General follow up. The recommendations continue—

- "4. The committee recommends that Queensland Health continue to liaise with Queensland Transport (and Australians Donate) about utilising the driver's licence application and renewal process to provide people with information about organ and tissue donation. This information should encourage people to communicate their decision to be an organ donor with their family and be such that it gives the potential donor's next-of-kin confidence that the potential donor has made a well-informed or considered decision about organ donation. Where appropriate, changes should be made to the Traffic Regulations 1962 and current administrative procedures to achieve this. In addition, the committee recommends that the Minister for Transport amend the Traffic Regulations 1962 to provide licence holders with an express statutory right to require amendment of the donor consent notation on their driver's licence at any time.
5. 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."

This is a very important recommendation. The summary continues—

- "6. 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. (In this regard the committee notes that Queensland Health is represented on the National Council of Australians Donate.)"

As I said before, if this Bill is voted down tonight we have problems in that it is knocked out and we simply have to rely on the Minister tabling her response in Parliament in three months' time. She has three months under the Parliamentary Committees Act to produce her response to the Legal, Constitutional and Administrative Review Committee report. We cannot amend the legislation at the second-reading stage, but if we could get this legislation to the Committee stage this evening, we could move amendments along the lines of those recommendations of the Legal, Constitutional and Administrative Review Committee, which I have already read to the Parliament, and hopefully have them included in the Bill.

There are three Ministers involved—the Minister for Health, the Minister for Transport and the Attorney-General. We call on the Government to produce legislation in three months along the lines of the committee recommendations. It is an excellent report with excellent recommendations.
