

CORONERS AMENDMENT BILL 2004

Second Reading

Resumed from 31 March.

MS S.E. WALKER (Nedlands) [9.19 pm]: The Opposition supports the Bill. This Bill will empower the State Coroner to provide information about deaths to human tissue donation agencies. During the reading of the Bill and preparing for the second reading debate, I had the benefit of a briefing from DonateWest, which is the organisation that the Attorney General referred to in his second reading speech on 31 March 2004. Mr Peter Dhu is the manager of DonateWest, which is the only human tissue donation agency in the State. It was established in 1999 by the former coalition Government under the Department of Health. Mr Peter Dhu informed me that DonateWest employs five people. He is the manager and four former intensive care nurses are the donor coordinators for the State. Proposed subsection 53A(1), which is inserted by clause 3 of the Bill, states -

At the request of a human tissue donation agency, -

In this case DonateWest -

the State Coroner may provide to that agency the following information in respect of any deceased person whose death there is jurisdiction to investigate under this Act . . .

The Bill says “this” Act but it is under the Attorney General’s Bill. This Bill seeks to amend the Coroners Act 1996. Part 4, division 1 of the Coroners Act refers to the State Coroner’s general powers and duties and the coroner’s jurisdiction. Section 19 of the Act states -

- (1) A coroner has jurisdiction to investigate a death if it appears to the coroner that the death is or may be a reportable death.
- (2) Unless the Attorney General directs otherwise, a coroner need not investigate a death if an investigation is held in another State or Territory.

The Coroners Act defines what is a reportable death under section 3. I will read what a reportable death is because I think it will be of interest to anyone who wants to know what this Bill is all about. The Act states -

“reportable death” means a Western Australian death -

- (a) that appears to have been unexpected, unnatural or violent or to have resulted, directly or indirectly, from injury;
- (b) that occurs during an anaesthetic;
- (c) that occurs as a result of an anaesthetic and is not due to natural causes;
- (d) that occurs in prescribed circumstances;
- (e) of a person who immediately before death was a person held in care;
- (f) that appears to have been caused or contributed to while the person was held in care;
- (g) that appears to have been caused or contributed to by any action of a member of the Police Force;
- (h) of a person whose identity is unknown;
- (i) that occurs in Western Australia where the cause of death has not been certified under section 44 of the *Births, Deaths and Marriages Registration Act 1998*; or
- (j) that occurred outside Western Australia where the cause of death is not certified to by a person who, under the law in force in that place, is a legally qualified medical practitioner;

I learned a lot from reading that. Originally I thought that any death that came within the jurisdiction of the coroner was simply an unexpected, unnatural or a violent death. It was a surprise for me to learn that it also included a death that occurred while a person was undergoing an operation involving anaesthetic, for instance, or a death that occurred when a person was held in care. The Coroners Act states that when a coroner takes jurisdiction over a deceased person, information is to be provided to the next of kin. Section 20(1) states that a coroner who has jurisdiction to investigate a death must, as soon as practicable after assuming that jurisdiction, provide to any of the deceased person’s next of kin certain information.

When the Attorney General was talking generally about why he introduced this Bill, he said in his second reading speech -

At present, DonateWest is notified of all deaths within the public hospital system in the Perth metropolitan area by electronic page 24 hours a day.

That was confirmed to me in my briefing. DonateWest is paged 24 hours a day when anyone who is in a public hospital dies in the metropolitan area. However, I understand that that is not the case in public hospitals outside the metropolitan area. The Attorney General's second reading speech refers to wanting to access the tissue of deceased persons that is in the jurisdiction of the coroner. As I understand it, a distinction is drawn between organs and tissue. During my briefings I learnt about the division between organs and tissue. Organs include the heart, liver, lungs and kidneys. They are only viable for transplant if, for instance, a person sustained enormous brain damage and was technically dead but was on a life support system and the heart was beating and the lungs were being artificially ventilated. However, the organs of deceased persons that cannot be retrieved from a body in that state are not viable. The tissues that are required, or the tissues to which DonateWest wishes to have access - for want of a better term - are the corneas, the heart valves and bones of a deceased person. Although I understand why that happens, after I read the Attorney General's second reading speech I also read the Human Tissue and Transplant Act 1982. That Act defines tissue as -

“**tissue**” includes an organ or part of the human body or a substance extracted from, or from a part of, the human body.

I raise this matter with the Attorney General because although we are talking about tissue, the Act is meant to mean corneas, bone and heart valves. The definition of “tissue” in the Western Australian Human Tissue and Transplant Act is different. It includes organs. I would like the Attorney General to confirm on the record that when reference is made to tissue regarding the access to the bodies of deceased persons under the jurisdiction of the coroner, the reference is just to tissue and not organs.

Mr J.A. McGinty: In terms of what is being amended by this Bill?

Ms S.E. WALKER: Yes.

Mr J.A. McGinty: It is tissue.

Ms S.E. WALKER: I have a difficulty because of the definition in the other Act.

In the Attorney General's second reading speech he said that in 2003, 1 578 bodies were admitted to the state mortuary. Of those, he said the State Coroner's office referred 143, or 9.7 per cent, to DonateWest. There were only 26 actual tissue donors during the year. I am an organ donor. It is written on my driver's licence. The Attorney General may correct me on this but when a person applies for or renews a driver's licence, he or she can request to become an organ donor. Currently, the situation is not, as the Attorney General says, managed by the Department for Planning and Infrastructure. Apparently that process fell away two years ago. Now when a Western Australian fills in his wish to be an organ donor on his driver's licence, that information is fed into the Health Insurance Commission in Canberra and is put onto a national organ donation register. I am told that the only people who can access that information are the four donor coordinators in DonateWest and the mortuary staff. The Attorney General may be able to clarify that of all the 1 578 deceased persons admitted to the state mortuary in 2003, only 9.7 per cent were referred to DonateWest because they were organ donors and that that was written on their drivers' licences. I am not sure whether, out of that number, only 26 were tissue donors. It could have been for a variety of reasons. It could have been because the senior next of kin could not agree to an organ donation even though the deceased person stated he wanted to be an organ donor.

I am also led to believe that certain categories of persons are not accessed in the retrieval of tissue. Perhaps the Attorney General can advise the House of that.

My main concern about this Bill is how intrusive DonateWest may be with the families of deceased persons in a mortuary. It is very dramatic for any one of us to be telephoned and told that a loved one has died. It concerns me that I might be called to a mortuary because a loved one has died and be asked by a group of people to authorise the donation of body parts. In relation to that, I am comfortable with the answers given to me by Mr Dhu. He referred to the three questions asked of relatives. The senior next of kin is asked whether the loved one expressed any desire to be an organ donor. He or she is asked whether any objection was expressed about being an organ donor. Thirdly, he or she is asked whether he or she wishes to pursue the issue. If a person does not, DonateWest does not pursue the issue. He told me that, since 1999, they had not received any complaints from anyone they had approached in public hospitals. Several thousand people have donated through private hospitals, with many more through public hospitals. Approximately 1 500 people have donated through the coroner's office. A very soft approach is made to the senior next of kin. If a person is not interested, he or she is not pursued by the process. That is the end of the matter. In discussing this Bill with people, a few have told me that they are signing up. They are putting their permission to be an organ donor on their drivers' licences. Those

people want to be organ donors. However, they ask why the senior next of kin can stop them from donating. DonateWest has told me - I can understand it - that it will not pursue someone who cannot bring himself to give permission. It is an important point. I believe it was raised by the Attorney General. When a person wishes to become an organ donor, it is a good thing if he tells his family members what he feels about the issue so that when it comes time and a decision has to be made on behalf of that person, the senior next of kin can do so. It would be a difficult decision, I do not doubt.

I read the annual report of the Coroner's Court from 1 July 2002 to 30 June 2003. It recorded a total of 1 897 deaths. The coroner stated that cases were reportable deaths and that in every coroner's case a body is in the possession of the coroner until it is released for burial or cremation. In all coroner's cases an investigation takes place, and either on the basis of that investigation or following an inquest subsequent to the investigation, a coroner completes findings on the identity of the deceased, how the death occurred and the cause of death. I do not have the figures with me but I remember that tissue can be taken from quite elderly deceased persons. As I understand it, corneas can be retrieved from people as old as 75 years. Heart valves and bone tissue can be retrieved from people up to the age of 55 years. The institutions that take these tissues happen to be in my electorate. I have some information given to me by DonateWest concerning the Lions Eye Bank, which is in the electorate of Nedlands. It has confirmed that approximately 55 Western Australians are waiting for corneal transplants to restore their sight. Most of them are young people who have keratoconus, a genetic disorder that causes the cornea to lose shape, resulting in a person losing his sight. Corneal plantation can restore sight. The waiting list has gradually increased over the years, as demand outstrips the supply of donated corneas for transplantation. The Perth Bone and Tissue Bank does not have a waiting list at the moment. One bone donation is made into many grafts and can be stored for up to five years before use. However, the stock of donated bone is gradually declining, as demand, once again, outstrips supply. Donated bone is the second-most commonly donated tissue after blood. Bone donation can be used to restore limbs when otherwise they would be amputated. Bone has many other uses, including spinal repairs, hip replacements and other joint repairs. I have not looked extensively at the systems in other States, but I have been supplied with some information from DonateWest. The Donor Tissue Bank of Victoria is part of the coronial system and occupies the same premises as the Victorian state mortuary. As such, the tissue bank has access to all deceased individuals who enter the mortuary. Victoria does not have a waiting list for corneal transplants. In New South Wales information on all deceased individuals admitted to the state mortuary is forwarded to the donor coordinator for action. That is done by the police, who fax a copy of the police report. The donor coordinator follows it up. I am advised that a similar situation exists in Queensland. Tasmania does not have a tissue bank as yet.

When DonateWest was established in 1999, it was with the aim of maximising organ and tissue donation in Western Australia. The second most important aspect of its work is to establish a strong donor family support network. Prior to the establishment of DonateWest, donor families were not well supported. DonateWest provides resources, support, information and counselling to all donor families. I was also provided with statistics from the Australian Bureau of Statistics population survey monitor for 1999 that revealed that approximately 70 per cent of Australians support or are in favour of organ and tissue donation. However, only 30 per cent have registered their wish to become a donor on their drivers' licences or the new Australian Organ Donor Register. Approximately 680 000 Western Australians - 32 per cent of the population - have registered their wish to be a donor through their driver's licence or the Australian donor register. That means approximately 40 per cent of the Australian population supports organ and tissue donation but have not yet indicated as much on their drivers' licences or on the Australian Organ Donor Register. In the current system, the 40 per cent would not be able to donate through the coronial system in Western Australia. Australia has an organ donation rate of approximately 10 donors for every one million people. I am told it is one of the worst rates in the world for organ donation. Be that as it may, that is the view of people on organ donation.

I am confident that, having spoken to DonateWest, my colleagues and I will support this Bill: firstly, because of the ABS population survey monitor; secondly, because of the large percentage of Western Australians who are registered as donors; thirdly, because we have well established institutions in Western Australia that deal with tissue donations; and lastly, because although I was uncomfortable about how the relatives of deceased persons were approached, I now understand that it is a very soft approach - not one complaint has ever been made.

Mr R.C. Kucera: They are a very sensitive group of people.

Ms S.E. WALKER: I believe that. I found Mr Peter Dhu great to talk to. We are comfortable with this Bill. Save for the problem I had with the definition of "tissue" in the Human Tissue and Transplant Act 1982, the Opposition is happy to support this Bill.

MR P.W. ANDREWS (Southern River) [9.39 pm]: I am very pleased to support this Bill. I have obviously had a fair bit of interest in it for a number of years. The proposed amendment to the Coroners Act is relatively simple. I will not go over the same ground that the Minister for Health and the member for Nedlands have gone over. The amendment will simply increase the pool of potential donors. As we all know, if something happens

to us after we walk out of this place tonight and we end up in the state mortuary, DonateWest would be informed if our driver's licence noted that we were registered as an organ donor and could approach our family. If one of us supported organ and tissue donation but had not registered as an organ donor and on leaving here tonight the same thing happened, DonateWest could not receive that information from the coroner. Another example is of someone who walks to a hospital with a headache but collapses outside the hospital and dies. That person's unexpected death would come under the auspices of the coroner. However, the death of someone who had stepped through the door of the hospital would come under the auspices of the hospital. Although the person in hospital might not be on the national organ donation register, DonateWest would still, hopefully, approach the family in the hospital. The coroner could not refer a person who collapsed outside the door of the hospital to DonateWest. This amendment to the Coroners Act will fix that problem.

I will put the amendment in a wider context. I have said before in this place that people would be up in arms and an inquiry would be held if the Eagles and the Dockers were on the bottom of the AFL ladder. However, on the organ donation ladder, Western Australia is either at the bottom or fluctuates along the bottom. Until about the past 12 months, the question of organ donation has tended to be a matter of out of sight, out of mind. Quite a significant step forward has taken place in the past 12 months. Although many people in this place have expressed to me their support for organ donation, in the wider community a lot of people support it quietly but never talk about it. A campaign was, therefore, launched to get people to talk about organ donation. However, speaking about organ donation and educating people has had no effect on increasing the rate of donation. From the time DonateWest was set up until now there has been a small but steady increase in the number of organ donations, but it is virtually unchanged compared with the 1994 figure. However, DonateWest has been very successful at providing support to families whose relatives have been the source of donations and tissue.

One point that the member for Nedlands raised was one that is commonly asked; that is the degree of intrusion on a family, particularly by the coroner. If a person goes to hospital, perhaps has a head bleed and is in intensive care, at least the family has some degree of opportunity to come to grips with that fact and, before the person dies, go through some of the process that people need to go through. Unfortunately, when the death of someone comes under the auspices of the coroner, the family in those circumstances very rarely gets any sort of warning at all. The member for Nedlands, therefore, asked a very important question about how a family would be approached by DonateWest at that moment of grief. I would put it this way: time has moved on and organ and tissue donation is not an event out of the ordinary. It has become very ordinary, very common and mainstream medicine. I think people's attitudes have changed sufficiently to be close to the point that it would be deemed inappropriate not to approach the family when someone dies unexpectedly.

Members should think about this: if I for some reason had dropped off the organ donation register and had a car accident tonight and unfortunately passed away, my death would come under the auspices of the coroner. If I were still alive, I would be very upset and disappointed that my body could not be used to help someone else. In the past it was an unanticipated concept to be approached to donate bone and tissue organs. I think time has moved on. There is enough understanding in the community that people have rightly begun to think of organ donation as a right. That is a bit of a transition in thought. The concept is that when people pass away, they have the right to expect their family will be approached. Once members accept that principle, it puts the onus on the Government - that is, any Government, be it our Government on this side of the House or the Government on the other side of the House if it wins the next election - that if someone's family is not approached, the system is not working correctly. I will repeat that. If we accept the concept that an individual has the expectation that on passing away the family of that person will be approached for organ donation, the onus will be on the Government to make sure that the family of such a person is approached. I believe we are at a point at which we expect that to happen. This Bill will facilitate that happening.

The rate of donation in Australia is about 10 persons per million a year compared with 35 donations per million a year in Spain; in other words, Spain is three and a half times ahead of Australia and probably four times ahead of Western Australia. WA is, therefore, far below world's best practice. If I am re-elected to this place and spend more time here, I will want the Western Australian health system to deliver world's best practice; in other words, after allowing for certain geographical conditions peculiar to Western Australia, we should attain world's best practice. We, therefore, have a long way to go but a very short time in which to get there. The figures vary, but about 20 per cent of people die waiting for an organ to be donated. Time is of the essence. That is why I intend to praise the minister. I call him the world's best minister for organ donation, as he is one of the few ministers in Australia who has gone beyond the step of saying yes, we need to do more about it and yes, we do need to educate people. He has put in place some strategies to improve the situation, and this amendment to the Coroners Act is one. He has ensured that there is continuous pressure on DonateWest to carry out death audits in hospitals, which means that on a regular basis DonateWest sits down with various members of the medical fraternity and examines the deaths in hospitals to make sure the families of people who were suitable for organ donation had been approached. I can tell you, Madam Deputy Speaker, that is not happening enough. A lot more work must be done inside hospitals. The problem of organ and tissue donation is not in education; it is not

in things that are happening outside hospitals; it is in things that are happening inside hospitals. I congratulate the minister for taking the step to put in place a trial program at Sir Charles Gairdner Hospital through which it is hoped to double the rate of organ and tissue donation.

I have been to Kavanagh Street in Melbourne where the Victorian Institute of Forensic Medicine is located. In the same complex is the Donor Tissue Bank of Victoria run by Lyn Ireland, the general manager. I went into the room that had a computer screen set up on which I could read the list of all the cases that were coming before the coroner that day, and it was truly awful. Information was provided on the background of the persons who had died. I do not really want to go through what I saw, but the computer essentially gave the information that a number of suicides involving very young people had taken place, the places where they committed suicide and the names of the police stations that were attending. A person could see where that body was at any particular time and that action was being taken. Before the body had even arrived at the state mortuary, contact had been made with the coroner. The coroner's office was next door, so it is all located in one place. The process tends to be a rather seamless one, and the organ and tissue bank has a very good working relationship with the coroner. One of the interesting differences with the process in Victoria, if it is still run in the same way, is that when an autopsy takes place a strange system is used by which the heart valves are sent to Queensland and then reimported to get around some of the local laws relating to the Coroners Act, which I did not quite understand at the time. However, the process is done differently from that in Western Australia. On a positive side, however, it is a very seamless process in which information is reasonably readily available to the tissue bank. In Victoria, the equivalent to DonateWest is the Red Cross, which is located separately. However, the tissue bank itself, the state mortuary and the coroner's office are all located in the one spot.

Ms S.E. Walker: In Victoria, are any other tissues retrieved apart from the ones we have mentioned?

Mr P.W. ANDREWS: I understand that what we call solid organs, such as the heart, liver and kidneys, are comprised of tissue. When we talk about tissue in this sense, this Act refers to anything other than solid organs.

Ms S.E. Walker: Such as skin?

Mr P.W. ANDREWS: Yes, skin, cornea, heart valves and bone.

Ms S.E. Walker: Anything else?

Mr P.W. ANDREWS: I think that is about it.

Ms S.E. Walker: I understand that we do not take skin here because Dr Fiona Wood grows it.

Mr P.W. ANDREWS: I am not too sure about that. I will give the member another example. I visited the equivalent of the bone and tissue bank in Spain - they call it a bone and tissue bank but they also collect skin. The Spanish are very low key about everything they do, but they do it very well. Up until that point, for some reason, the people showing me around thought I was a doctor, but when they started showing me the slides of the eyes, they soon realised that I was not a doctor! The bank certainly collects skin. I am not sure, but I thought we did as well.

Ms S.E. Walker: I think it is because we grow skin at Royal Perth Hospital.

Mr R.C. Kucera: We do, but it's for a different purpose than burns. There are graphs that other specialists and surgeons use.

Mr P.W. ANDREWS: Yes, I would be surprised if we did not collect skin, but I stand to be corrected. Our success rate is quite phenomenal. We have the technical expertise to do these things and the success rate is very high with tissue donation as well as soft organs. The irony is that we might have success rates of over 90 per cent for kidneys and a very high rate for heart and lung transplants - lung transplants tend to be done in the eastern States - but we are really lacking in organs. We need to keep up the supply for bone and tissue, and there are obviously different requirements throughout the year. The greater the range we have, the better the prognosis for recipients. As I say, we have to make some serious changes over the next few years. With regard to the changes that the minister has made, I look forward to the results and the outcomes of the trial program at Sir Charles Gairdner Hospital and to pursue that further. However, this is only one part of an excellent amendment.

I will make another point quickly that members might appreciate and that perhaps the media and our constituents do not realise. I was the one that came up with the suggestion of making the amendments to the Coroners Act. Coincidentally, the Department of Health was working on the same thing at the same time. Often we get criticised for taking our partners with us on trips for various purposes. However, two years ago I went to Melbourne for work on this matter and I took my wife with me. I travelled economy class with Virgin Blue and it cost \$400 for my wife to go along with me, and she put in four days of work. If I had not had my wife with me, I would not have known what follow-up questions to ask about this topic or, when we looked at other projects, the questions to ask about the various types of medication and so on - I am talking about asking real

questions rather than collecting just superficial information. If I had not had my wife with me on that trip to give me the prompts to ask the right questions, we would not have got the trial up and running. If this trial at Sir Charles Gairdner Hospital is successful, it will save hundreds of thousands of dollars.

Ms S.E. Walker: What is the trial at Charlies? It is different from what we've heard about?

Mr P.W. ANDREWS: There is a general assumption that if a person in our hospital system is a suitable candidate for a solid organ and tissue donation, the relatives of that person will be approached, but that is not true. We do not have sufficient physicians acting as organ donor coordinators in hospitals to identify potential donors, and that is the thing that needs to be changed. In our system, if a donor comes through the front door, that person has to go to the intensive care unit for his organs to be retrieved. The ICU is like a piece of lucky. There will always be people to fill the beds in the ICU if a spot is available; it will never be empty. Therefore, in order to get a donor into ICU, someone has to decide who will be taken out in order to free up a bed so that the donor can be ventilated and his organs retrieved. It involves minute-by-minute decision making. DonateWest operates outside the hospital system, and even though it might be paged, informed and so on, it then has to go into the hospital, which is where the negotiation, the identification and so on take place. Dr Moody's job at Sir Charles Gairdner Hospital is to act like a floor operator; he has to go to the accident and emergency department, to negotiate with ICU and to do the sort of work that needs to be done. A physician is the right person for that job. Spain has a donation rate of 55 persons per million per year. If we had such a figure we could wipe out our entire waiting list. We could wipe out a large number of people who are suitable for donation from having to use dialysis. It is a very cost-effective treatment. Of the seven coordinators at the hospital I visited in Spain, six were physicians and one was a nurse who had been around forever. Essentially, it is a job for a physician to negotiate the clinical aspects of the task. Western Australia is the first place to appoint someone to that position, and I can tell members that there is a lot of resistance to that.

Ms S.E. Walker: Who has been appointed?

Mr P.W. ANDREWS: Dr Harry Moody, a nephrologist. Nephrologists tend to be the major drivers of organ donation because they have people on dialysis and are always looking for organs. In fact, back in the 1990s, it was the nephrologists in the public hospitals who were quite often the ones who found a potential donor. Even though DonateWest is very successful in terms of supporting families and so on, and it has increased the donor rate since 2001, it is only bringing it back to where it was 10 years ago. A lot of work needs to be done, such as legislative work with the Coroners Act, but essentially it is a process within the hospital, and like any change to the hospital system, we are dealing with people who are highly motivated and strong willed. Anyway, I support the amendment.

MR R.C. KUCERA (Yokine - Minister for Tourism) [9.58 pm]: I take this opportunity to place on record my appreciation to DonateWest in a very personal way. A very close friend of mine, John Gleeson, who recently received a kidney donation, is now in the bloom of health after being on the brink of death for almost five years. I place on the record my appreciation for the amendments being made through this Bill and, in doing so, commend the enormous courage of the Hopkins family, who have been involved in this field. During my time as Minister for Health I had nothing but admiration for the groups involved in organ donations. I commend the Minister for Health for pushing through with this amendment. There is always more that can be done in this area, and I agree totally with the member for Southern River about pushing forward. If we could increase the numbers of kidney donations in this State, we would be able to deal with issues, particularly in the area of kidney donations, that would put Western Australia at the forefront. I commend this Bill to the House.

Debate adjourned, on motion by Mr J.A. McGinty (Attorney General).

House adjourned at 10.00 pm
