

**CORONERS AMENDMENT BILL 2004**

*Second Reading*

Resumed from 15 June.

*Point of Order*

Mr J.A. McGINTY: The member for Merredin indicated a desire to speak on this Bill. If you will show some indulgence, Mr Speaker, I am sure the member for Merredin will be here in a moment.

The SPEAKER: I am sure I can leave the Chair until the ringing of the Bells, but I now see that there is no need for that.

Mr J.A. McGINTY: In which case I no longer persist with the point of order.

*Debate Resumed*

**MR B.J. GRYLLS** (Merredin) [2.48 pm]: I thank the minister for this opportunity to make a brief comment. Several issues have been raised in this debate, and I thank the member for Southern River for his contribution yesterday. Although people believe that their organs will be used should they die, more often than not, following a tragic accident, when a potential donor's next of kin are asked to consent to the donation, they do not do so. That is of great concern to me because I have indicated on my driver's licence that I wish to be an organ donor should I be fatally injured, and I hope that wish will be carried out. Evidence I have seen leads me to believe that donation will not take place in certain circumstances. For example, even though I have indicated on my licence that I wish to be an organ donor, if my wife happened to be at the hospital after I had been fatally injured and was, naturally, very upset, donation might not occur on the basis that the hospital staff believed she was under such duress that they did not want to seek her consent. That is of great concern to me. I would like the minister to take on board the need to honour the donor's intent to donate. We could do that by promoting discussion of donation prior to a fatality.

I hope that all members of Parliament have indicated on their driver's licence their desire to be an organ donor. At the moment, that is a decision that people make alone. It is not a decision that they make in consultation with anybody. If a person had to get his next of kin to sign his intention to donate as part of the process of filling out his licence form, that would promote that discussion. If the person's next of kin and close family relatives also signed that notice of intent to donate, maybe that would strengthen the process. At the moment, many people have indicated their intention to be donors, but they have not discussed it with their wife or family. Therefore, that intention gets vetoed at the critical time of organ donation at the hospital. We could very much strengthen the process by making a few minor changes to the way in which we indicate our willingness to donate. We could promote discussion of that within our family group and our family circle, so that the intent is made very clear. I would like to make clear to my wife and my family that I am an organ donor. I do not want that to be vetoed, even during a moment of extreme grief. I will be an organ donor, and I want that to occur. If people have had a discussion about that with their next of kin prior to an accident occurring, I believe it would strengthen the process, and it would be a way of increasing the donation of organs and tissues so that many lives can be saved.

Following the David Hookes' tragedy and the great promotion of organ donation, the Australian community is very aware of the need to donate and of the great benefits that will provide to the whole community. I am sure that all of us have had the opportunity to meet organ donation recipients, and have seen what they have contributed to their community after they have been given a new lease of life. I like to think that I could contribute at the time of my death. The only way in which that process will be strengthened, as I understand it, is by making our next of kin and our close family members aware of the fact that we are determined to become organ donors. I ask the minister to perhaps talk with the transport licensing department about strengthening that process. Just promoting discussion may be a real way of strengthening the process. If a family unit has that sort of discussion before an accident takes place, maybe it would strengthen the process.

**MR J.B. D'ORAZIO** (Ballajura) [2.52 pm]: I will add to that point. I have not spoken to the Minister for Health, but in connection with this issue, which I also believe is extremely important and needs rectification, I suggest to the minister that he consider the possibility of treating the right to decide whether a person's organs are donated in the same way as a person's will is treated, whereby a third party or an executor has the ability to decide on that person's behalf. Family members are put in an invidious position - I have just been through this with my father passing away - because they are grief stricken. It is a real problem for them to decide whether they will allow their father's or other loved one's organs or tissues to be donated. We experienced that problem with just having an autopsy. Perhaps we could consider the possibility of a person giving power to a third party or an executor, as happens with a will, to make the decision on his or her behalf when he or she dies. That decision is then taken away from the family. When a family is coming to terms with a sudden death and all its

ramifications, they are not in a position to make the decision that needs to be made. It may solve the problem if someone who is a little removed from the situation, such as an executor or a similar person, has been given the power by the person who is deceased to make the decision about organ donation on his or her behalf. I am not sure how that could be enshrined legally and how that third person could be contacted at the time of the person's death. They may be problems that will arise in reality. However, something should be explored, because the last thing we want is organs not being used because of pressure being put on families at the time of a bereavement, especially a sudden one, which is when most organs are of the greatest benefit for people waiting for organ donations.

I suggest to the minister that we need to think laterally and to consider the possibility of incorporating some other method whereby a third party, who is the equivalent, say, of an executor of a will, has the ability to make the decision on behalf of the deceased person. That is what we are really saying. As the member for Merredin said, he wants to be an organ donor. Therefore, there is no discussion about that. His family may have a different view, but his decision is that he should be an organ donor. I have the same strong view. If that is my decision, it should happen. Maybe it is not the proper procedure to have the person's family decide at the time of the person's death. Perhaps we should think laterally and have an independent person, such as an executor or equivalent person, make that decision on behalf of the deceased person.

**MR J.A. MCGINTY** (Fremantle - Attorney General) [2.54 pm]: I thank all members who have contributed to the debate on this very important issue. Although the legislation before the House deals with tissue donation, it does, in the public's mind, bring on the debate more broadly about both organ and tissue donation. Of course, tissue donation extends to corneas, heart valves and other body tissues. An announcement was made recently about the extension of lung transplantation surgery in Western Australia. Heart transplantation surgery is already done in Western Australia, and I believe that transplantation of all types of organs can now occur in Western Australia as a result of the procedures that are in place in our hospitals. I am delighted that it is recognised on all sides of the Chamber that there is a real problem with donation of tissues and organs, which for some reason has proved too difficult to deal with in the past. No doubt that is because it is, in part, a very sensitive issue, particularly when dealing with people at the time of most intense grieving, which is when they have just lost a loved one.

The initiatives which have been taken and which have been canvassed considerably in the debate already are, firstly, this legislation, which is designed to maximise the supply of tissue by expanding the base from which donation of tissue can be sought. That is, in essence, what this legislation does. The member for Southern River spoke with considerable knowledge and passion about his own circumstances and the initiatives that have been taken at Sir Charles Gairdner Hospital with the appointment of Dr Harry Moody as the clinician in charge of facilitating organ donation at that hospital. Again, that has to do with maximising the supply, in that case, of organs that would be appropriate for transplantation to either improve the quality of life or save the life of the recipient.

One area on which the federal Minister for Health and Ageing, Tony Abbott, and I have been working closely together is this very issue. At the last meeting of the Australian health ministers, the proposition which I was instrumental in drafting but which enjoyed the full support of the Commonwealth - being an issue that has been put on the agenda substantially as a result of the death of David Hookes, but also as a result of the advocacy by Tony Abbott - was the need to ensure that the matter raised by the member for Merredin was properly addressed; that is, the ability of next of kin or family to veto a life decision that has been made by the organ donor. Although there was some discussion about what is termed opting out - in other words, a person is deemed to be an organ donor unless he or she signs a form to the effect that he or she is not an organ donor - the reality that we must deal with is the reluctance of the doctors to remove organs over the objection of the immediate family.

There is an educational aspect, which the member rightly raised. There is a promotional aspect of having a debate about these issues so that people do talk to their loved ones about their post-death wishes, as the member rightly indicated. Rather than change the law so that the wishes of the grieving family are ignored, I believe there are other ways in which we can achieve the same objective, because, ultimately, there will still be the problem that a doctor will say that if the family violently objects, he will not do it. That is the reality. If we can get doctors more involved in saying to the family, "You don't have a right of veto, but obviously we will respect your wishes. However, your son or daughter, or husband or wife, has requested that their organs be donated", I believe in those circumstances we will have the best chance of maximising the organ donation regime.

Ms S.E. Walker: There is no right of veto at the moment.

Mr J.A. MCGINTY: Not in legislation, but in practical terms there is. One of the things that came out of the last health ministers' meeting was a well-worded resolution, which basically called on States to legislate, to the extent that there is a right of veto, to remove it.

Ms S.E. Walker: By the doctors.

Mr J.A. McGINTY: No, the way in which it works in practice at the moment is not what is prescribed in the legislation. In this State's legislation there is no reference to any right of veto whatsoever, but in a practical sense, the doctors will act on the wishes of the next of kin. In accordance with that resolution from the Australian Health Ministers' Conference, I have instructed the Department of Health to review its protocols to ensure that families are spoken to in a way that does not raise the question of veto, but which does, nonetheless, respect any strongly held views by the family, rather than what is currently the practice. At the moment the family are basically being told that if they wish to veto their loved one's decision to donate his organs, then we will respect that veto. There are ways in which that can be reworked to maximise organ donations. The Department of Health is currently working on protocols that give greater emphasis to the wishes of the deceased organ donor than to his remaining family. However, we are not overriding the wishes of the remaining family. If that is successful, then combined with the other initiatives we should see an increase in the number of organs being donated. At the moment, it starts on the basis of a presumption that the family has a right of veto.

Ms S.E. Walker: I have to say that I am not comfortable with that, but I will bring it up in consideration in detail.

Mr J.A. McGINTY: The final issue that I would like to touch on is whether there is an age at which people's organs are of no great use. It is a pity that the member for South Perth is not in the Chamber. He recently told me of a case in which the organs of a gentleman in his 70s were used in a transplant procedure in Western Australia. It had previously been thought the organs of that age would be too old to be of use. Of course, it depends upon the condition of organs as to how they are dealt with, but there are only clinical limits, not age limits, if I can put it that way, and that goes to the quality of the organs and the purpose for which they are to be used.

With those comments, I thank all members for their contributions to this debate. Hopefully, this legislation will be part of a package that will see an increase in organ and tissue donation occurring in Western Australia.

Question put and passed.

Bill read a second time.

*Consideration in Detail*

**Clauses 1 and 2 put and passed.**

**Clause 3: Section 53A inserted -**

Ms S.E. WALKER: This provisions states that -

Before section 54, the following section is inserted in Part 6 -

**53A. State Coroner may provide information about deaths to human tissue donation agencies**

I understand that at the moment there is only one human tissue donation agency in Western Australia. However, the Attorney General has not named that donation agency in this Bill. The wording has been styled to include multiple agencies. Can the Attorney General tell me why that has been done? Is he suggesting that in the future there may be other human tissue donation agencies?

Mr J.A. McGINTY: The answer to that question is really an issue of drafting style rather than putting in the business name of an agency, which might change over time and therefore necessitate a change in the legislation. The wording was thought to generically describe DonateWest, which in future years might come in a different incarnation. However, there is no intention under this legislation or any other intention being given to change the structure of DonateWest. This is simply an enabling clause, and should DonateWest change its identity in the future it will be caught by the general provisions that are prescribed here.

Ms S.E. Walker: If there were to be another donation agency, could that be enacted by regulation? How does that come about?

Mr J.A. McGINTY: I am told that no regulations would be necessary. If there was an additional or substitute human tissue donation agency, this provision would simply enable that agency to become involved.

Ms S.E. Walker: With regard to the creation of an agency, where is such an agency defined?

Mr J.A. McGINTY: I have been advised that it is not defined in the legislation.

Ms S.E. Walker: It is not in the Coroners Act. However, I cannot see it defined in the Human Tissue and Transplant Act 1982 either. What is a human tissue donation agency capable of doing?

Mr J.A. McGINTY: It is intended to do everything that DonateWest currently does.

Ms S.E. Walker: That is an easy way of saying it, but is there somewhere where -

Mr J.A. McGINTY: No, it is not defined anywhere. Therefore the words “human tissue donation agency” were thought to be sufficiently descriptive of the sort of functions carried out by the current human tissue donation agency, DonateWest, and to pick up any like organisation in the future.

Ms S.E. Walker: Does the Attorney General think that there should be a definition somewhere about such an agency, given that it deals with the removal of body parts?

Mr J.A. McGINTY: It is really a question of drafting style rather than policy or substance.

Ms S.E. Walker: This is not about drafting style. This is so that agencies do not spring up. What we understand the functions of DonateWest to be at the moment could alter if another agency were created. Can the Attorney General see my point?

Mr J.A. McGINTY: I can understand the member’s point. The view that has been taken by the draftsman, not as a result of government policy or anything of that nature, is that this provision adequately describes the general nature of the agency, and it is thought not necessary to provide for that at this stage.

Ms S.E. WALKER: It does not describe the agency at all; it talks about an agency. I could not see in the Human Tissue and Transplant Act a description of what a human tissue donation agency is supposed to be. Some criminal activities have been going on - I am not suggesting that that in any way relates to DonateWest - and because of that I think the public would like to see at some stage a definition of what a human tissue donation agency is all about. The definition may be found in the Human Tissue and Transplant Act and the Attorney General and his advisers might not know about it, but I would like to see that definition given that this Bill is talking about multiple agencies and not just about DonateWest.

Mr J.A. McGINTY: The reference in the legislation to a human tissue donation agency, which is defined as an agency that “coordinates or encourages the donation of human tissue for transplantation”, is a sufficiently generic description. It certainly does not go into a more detailed description of what such an agency or DonateWest does in great detail. To a limited degree, it is defined. It is required to be a public sector organisation as well.

Ms S.E. WALKER: It is interesting to note that clause 3 includes the sort of information that the State Coroner provides to an agency about a deceased person. The information includes the person’s name, age, a brief description of the circumstances of death, the name of the deceased person’s senior next of kin or, if it is not known, the name of the person’s next of kin under section 37(5) and an address, telephone number or other contact details for the person whose name is provided. It is my understanding that the brief description of the circumstances of death is to enable DonateWest to make a determination quickly. It has only a certain number of hours in which it can act concerning corneas. I believe it is 12 hours. I believe it has 24 hours in which to act with regard to bones and heart valves. It has to act quickly. I also believe that the agency is not interested in certain categories of people, such as people who have been murdered or drowned, or prostitutes. There may be other classes of persons. Are there any? Is that the full range of people who may be excluded?

Mr J.A. McGINTY: I am advised there is a reasonable number of exclusions in the policy adopted. Some of the more prominent ones are people with tattoos.

Ms S.E. Walker: Why?

Mr J.A. McGINTY: A number of the exclusions follow the criteria for blood donation and the likelihood of diseases from blood-borne viruses. People with an infectious disease are also excluded. People who have resided in England are excluded.

Ms S.E. Walker: What about ministers of the Crown?

Mr J.A. McGINTY: It is only for odious people or people with particular diseases or problems! As members will know from donating blood, if a person spent a certain period in England during the 1980s -

Ms S.E. Walker: That is to do with mad cow disease. It is not because people are English.

Mr J.A. McGINTY: That is correct. People who lived in England for a period when Creutzfeldt-Jakob disease was prevalent are considered to not be appropriate donors. In addition, people who die of cancer are excluded, for fairly obvious reasons. Other exclusions include persons for whom it has been too long since the death occurred. That picks up the first point made by the member about the short time in which to capture tissue. I am advised that there are between 30 and 35 express exclusions. I have outlined the main ones.

Ms S.E. WALKER: Are those express exclusions in regulations or written anywhere?

Mr J.A. McGinty: I am advised that they are covered by the Therapeutic Goods Administration, which is a commonwealth body. As part of its functions, what it lays down is applied to the Act.

Ms S.E. WALKER: I do not necessarily agree with comments I have heard from three members that there should be almost a right to take organs from people who want to donate them. It seems to me that, even when discussing this issue with loved ones - I have discussed it with my daughter - I am not sure I would want it to happen. I am sure that if she could not bring herself to give permission about my organs, it would not worry me. It is quite intrusive. To call it a right does not take into account the feelings of loved ones. I would not like the legislation to move towards that. I am a little disturbed to hear that that is the current practice, and that the minister wants it to evolve. It is my understanding that he would like to see physicians remove organs from people notwithstanding that loved ones do not want that to happen.

Mr J.A. McGinty: I think I said that the law currently does not give a right of veto.

Ms S.E. WALKER: To whom?

Mr J.A. McGinty: To the surviving next of kin to override the wishes of the deceased.

Ms S.E. WALKER: Where is a right of veto about the removal of organs given to anyone in the legislation?

Mr J.A. McGinty: There is certainly nothing in the Coroners Act. It is not covered by this legislation. If I were to sign a donation form and appear on the Australian Organ Donor Register, the way in which it works in practice is that a physician would recognise the wishes of my wife notwithstanding my wishes when I was alive about whether my organs were donated. I am told that is currently the reality. It does not reflect the current law. That is why we are looking at protocols - it came from the meeting of health ministers - to see how we can respect the wishes of surviving family members but place greater emphasis on the wishes of the deceased donor.

Ms S.E. WALKER: I read the Human Tissue and Transplant Act. Putting aside people who want to donate and state as much on their driver's licence, when a person dies what happens with the body comes within the jurisdiction of the coroner. Even before an autopsy is performed, the senior next of kin has the right to object. I believe that objection is heard in the Supreme Court. It appears to me that the legislation envisages the ownership or control of what happens to the deceased person to be assigned to the senior next of kin. I do not see any legislation, nor have I been given any evidence of any legislation, that would override the general control by the senior next of kin unless it comes under the jurisdiction of the coroner because it is a reportable death. In that case, I would find the development of protocols to override that quite disturbing. Mr Dhu is sitting next to the minister. I had a briefing with him, and one of the reasons DonateWest does not do that is because of the uproar in the community that would occur. It seems to me that what the Government is trying to do is analogous to domestic violence. When a wife reports an assault by her husband and the police pursue the charge, the wife may resolve things with her partner and the prosecution does not proceed. There may be legislation on foot - I do not know - to state that that decision is taken out of the control of the person who is assaulted. It seems to me that the Government is developing protocols to take that right from the senior next of kin, who currently has control over the body of a loved one. It is removing the capacity to object. I do not agree with that, and I hope that the protocols are not developing that way, because I do not see that as a right. However, yesterday the member for Southern River said that a trial was being conducted at Sir Charles Gairdner Hospital. Does that have anything to do with overriding the wishes of loved ones, and the removal of organs and tissue? Can the minister explain what is going on there?

Mr J.A. McGINTY: Dr Harry Moody, a senior doctor at the hospital, has accepted responsibility for coordinating organ donations at the hospital. My understanding of my discussion with Dr Moody at the hospital is that, when a person is admitted to the intensive care unit or the emergency department of the hospital, and it appears that that person is unlikely to survive and will be appropriate for organ donation - that is not confined to young car crash victims - Dr Moody takes responsibility for liaising with the family to discuss these issues. That is thought to be, in a cooperative way, the best way of maximising the number of organs donated from dead bodies for the purposes of transplantation. It is very much based, as the member for Southern River explained, on what occurs in Spain, where there is a very proactive involvement by the medical profession at the places to which bodies are brought that are likely to make good organ donations, and in maximising the sense, from the family and everyone else, that organ donation is an appropriate thing to do. It involves becoming proactive, rather than sitting back and waiting and missing the window of opportunity that often presents itself with organs. Some organs have a far smaller window of opportunity, as I think has been referred to, than some of the tissues we have been talking about here, for donation purposes, and making sure that everything is agreed for that donation to take place. The experience in South Australia, where they have been more proactive, is that donation rates have risen in that State. We have not been as proactive in this State, and our donation rate is very low. It is a practical discussion with the family in the circumstances in which they find themselves in the emergency department and the intensive care unit at the major hospitals. If that works at Sir Charles Gairdner Hospital, and we see a significant increase in organ donations there, it could beneficially be extended to the other major hospitals and perhaps even to some of the major country hospitals as well.

Ms S.E. WALKER: I would not have any objection if the physician or the doctor working with the family in these circumstances had discussions. It seems to me that there are three categories of persons - firstly, those who have signed on - by this, I mean on their driver's licence - as organ donors; secondly, those who have not signed on as organ donors; and, thirdly, children, people with a disability, or people who do not have a driver's licence any more. As I understand it, people can sign on via their driver's licence or through the register. Can the minister give the categories, so that I can get them right?

Mr J.A. McGINTY: When a person is on the Australian organ donor register, the approach taken by Dr Moody, as I understand it, is to work from the presumption that organ donation is consented to. Obviously the relatives are spoken to in order to ensure that there is broadly-based consent there. If there is no registration - if someone does not appear on the Australian organ donor register - then the family is spoken to, and if the family consents, and the body is appropriate for organ donation, then that is done with the consent of the family. In the first place, the consent of the donor, already in existence, is the authority for removing the organs.

Ms S.E. Walker: What about children and other persons? Would they come into the second category as well?

Mr J.A. McGINTY: We are talking here about people who are deceased, so the decision is made by the family, and they are picked up by the second category of people about whom the member spoke.

Ms S.E. Walker: So you are lumping them all together?

Mr J.A. McGINTY: Yes.

Ms S.E. WALKER: That is what worries me a little bit. The minister said that, for those who sign up as organ donors, the presumption is that the organ donor has consented, so there will be a broad-based consent. Is this trial taking away the right of the family?

Mr J.A. McGinty: No.

Ms S.E. WALKER: Is the Government moving towards a situation in which the State owns the body, in order to harvest organs and tissue? Is that where the Government is moving?

Mr J.A. McGinty: No.

Ms S.E. WALKER: When the minister says that the State is being more active in South Australia, is he talking about moving towards state ownership of the body, or is he talking about education programs? If so, what does he mean by that?

Mr J.A. McGINTY: We are talking about the doctors who are responsible for the transplant program becoming more active in discussing matters with the family, rather than sitting back and waiting for the family to come forward to offer a donation. Discussing matters proactively with the family has, in South Australia, resulted in more donations being made. The consequence of not being proactive is a significant number of unnecessary deaths and people whose lives are a misery, as the member would have heard the member for Southern River explaining yesterday. I am 100 per cent supportive, and that is the reason I authorised the appointment of Dr Moody to this position, so that we can become more proactive and increase the donation rates.

Ms S.E. WALKER: I understand about people who are suffering, but it seems to me that there is something of a shift to accommodate those people who are alive and need an organ and, to do that, the Government will need to undermine the right of the senior next of kin to override what happens with the donor body. Are the protocols already written for the trial that is going ahead with Dr Moody? If not, when will they be written?

Mr J.A. McGINTY: The member is overstating the case when she speaks of the "right" of the senior next of kin to veto. No right of veto is vested in the senior next of kin.

Ms S.E. Walker: There is no right of veto in the State. That is what I asked. There is no right.

Mr J.A. McGINTY: If a person signs a form expressing a wish to be an organ donor in the event of death, that is the authority necessary to act upon. The legislation does not give a right to the senior next of kin to object, and therefore exercise a right of veto.

Ms S.E. Walker: What does that form say? It just says that the person wishes to be an organ donor. It does not say on the form that the State has authority to take control of the body of the person signing up.

Mr J.A. McGINTY: Because that is not a relevant consideration. This has nothing whatsoever to do with the legislation presently before the House, which is about enabling the State Coroner to provide information about deaths to human tissue donation agencies only; it goes no further than that. It is an interesting discussion nonetheless. It is wrong to categorise it as the State assuming rights over the human body or the right of veto of the next of kin, because neither of those concepts is relevant to this debate.

Ms S.E. WALKER: They are very relevant to this debate, because the Coroners Act refers to the senior next of kin in relation to deceased persons. We are seeking to amend that legislation. It is actually quite on point. We are seeking under proposed section 53A(1)(d) to provide the name of the deceased person's senior next of kin so that that person can be contacted. What I find a little disturbing is that there seems to be an undermining of the right of the senior next of kin to be able to veto organ donation. That person can veto it. The Attorney General is saying that there is no veto in the legislation, but that is clearly implicit in the legislation. It has to be, because there would be an uproar if the State went ahead with that. Mr Dhu recognises that. The fallout would be horrendous if, for instance, a young woman who was an organ donor died and 10 of her senior next of kin - the parents, brothers, sisters, aunts and uncles - did not want her organs to be donated. The Attorney General is saying that it will be done anyway. It does not work that way. I would like the Attorney General to give an undertaking that the protocols he is putting in place will be tabled. Have they been produced?

Mr J.A. McGinty: Not to the best of my knowledge.

Ms S.E. WALKER: When does the trial commence?

Mr J.A. McGinty: It is operating at the moment. It has been operating for some months.

Ms S.E. WALKER: Are there no protocols in place?

Mr J.A. McGinty: Not to the best of my knowledge.

Ms S.E. WALKER: Will the Attorney General undertake to find out whether protocols are in place; and, if there are, to table them?

Mr J.A. McGinty: I will make the inquiry. I will go no further than that.

Ms S.E. WALKER: The other issue I want to raise on this clause relates to the definition of a deceased person's senior next of kin. Under proposed section 53A, the coroner may provide the name, address and telephone number of the deceased person's senior next of kin. The reason for that is to enable someone to get on the blower to ask whether he can discuss the very issue that is the subject of this Bill. Why is the definition of senior next of kin in this legislation different from the definition of senior next of kin in the Human Tissue and Transplant Act 1982? The Human Tissue and Transplant Act 1982 provides for and is about the removal of human tissues for transplantation, post-mortem examinations and related purposes. The Attorney General or Mr Dhu can correct me if I am wrong, but it seems to me that the main Act concerning the transplantation of human tissue and organs in this State is the Human Tissue and Transplant Act. The definition of the senior next of kin under that Act is different from the definition in the Coroners Act. This point is relevant to clause 3 of the Bill, which we are discussing. In the Coroners Act, senior next of kin is defined in section 37(5), which states -

In this section, unless otherwise prescribed, "**senior next of kin**" in relation to the deceased person means the first person who is available from the following persons in the order of priority listed -

- (a) a person who, immediately before death, was living with the person and was either -
  - (i) legally married to the person; or
  - (ii) of or over the age of 18 years and in a marriage-like relationship (whether the persons are different sexes or the same sex) with the person;
- (b) a person who, immediately before death, was legally married to the person;
- (c) a son or daughter, who is of or over the age of 18 years, of the person;
- (d) a parent of the person;
- (e) a brother or sister, who is of or over the age of 18 years, of the person;
- (f) an executor named in the will of the person or a person who, immediately before the death, was a personal representative of the person; or
- (g) any person nominated by the person to be contacted in an emergency.

I presume that the Attorney General has the Coroners Act before him and has looked at the Human Tissue and Transplant Act to see whether he will bring the definitions of senior next of kin into line.

Mr J.A. McGINTY: We do not have any plans to further amend this legislation or to amend the Human Tissue and Transplant Act. I will make two points. Firstly, I am told that 95 per cent of families give their consent when their loved one is already registered as a donor. In other words, if someone appears on the donor register, in 95 per cent of cases the family raises no objection to the donation being given effect to. Secondly, the provision of notification to the next of kin serves two purposes. Firstly, to obtain any relevant information on the medical history of the donor and, secondly, to give the family an opportunity to discuss the donation. In other words, in the case of someone who is not a registered organ donor, it gives the next of kin the opportunity to give

consent. For somebody who is a registered organ donor, it provides the family with the opportunity to discuss giving effect to the wishes of that person.

Ms S.E. WALKER: On the issue of consent, the Attorney General said in the second reading speech that in the year to the end of 2003, 1 578 deceased persons were admitted to the state mortuary. Of those, 143, or 9.7 per cent, were referred to DonateWest by the State Coroner's office. Firstly, why were those 143 referred? What was the basis for them being referred? Was it just the fact that they were on the organ donors register? Secondly, given that there is a 90 per cent consent rate, why were only 26 tissue donations made from the 143 deceased people who were referred during the year?

Mr J.A. McGINTY: I am told that approximately 90 per cent of those people were not referred to DonateWest because of the exclusion criteria, which we referred to earlier.

Ms S.E. Walker: Sorry, of the 143?

Mr J.A. McGINTY: No; 143, or nine per cent, of the total number of bodies admitted to the morgue were referred to DonateWest. The other 90 per cent were not referred to DonateWest because of the exclusion criteria. Sorry, I got that wrong. Nine per cent were referred to DonateWest. The rest were not referred because they were not registered as organ tissue donors.

Ms S.E. Walker: Sorry, were the 143 all organ donors? Is that why they were referred?

Mr J.A. McGINTY: Yes, that is right. They were referred to DonateWest. From those 143, 26 tissue donations were made. The balance of the 143, which is approximately 80 per cent, were not suitable.

Ms S.E. Walker: The parents or loved ones did not -

Mr J.A. McGINTY: No, they were not suitable under the exclusion criteria. A deceased person might have been a prostitute or might have died of cancer.

Ms S.E. Walker: I understand what the Attorney General is saying. The 143 were referred because they were on the register.

Mr J.A. McGINTY: Yes.

Ms S.E. Walker: Of the 143, how many were not suitable, and what was the percentage of cases in which the senior next of kin refused to consent? Do you have those figures?

Mr J.A. McGINTY: The answer is as I indicated before; there was no next of kin refusal in relation to those figures.

Ms S.E. Walker: Was it 100 per cent acceptance?

Mr J.A. McGINTY: Yes, but a very large number of them were excluded because of the exclusion factors to which I referred earlier.

Ms S.E. WALKER: Were the 26 actual tissue donors cases in which people had been on the register and in which the next of kin had given consent?

Mr J.A. McGinty: And were eligible.

Ms S.E. WALKER: Was there a 100 per cent success rate?

Mr J.A. McGinty: In those figures, I am told, yes.

Ms S.E. WALKER: In relation to the trial at Sir Charles Gairdner Hospital, if there is a 90 per cent success rate for the people who want to be organ donors, how many people from intensive care would that involve each year? We should bear in mind that the only people who would be viable for organ donation at Sir Charles Gairdner Hospital would be people on a life support system. Why is the trial being pursued if there is a 90 per cent success rate? How many people are we looking at?

Mr J.A. McGinty: I cannot give you those figures.

Ms S.E. WALKER: Why is the trial running if the Attorney General cannot give me those figures?

Mr J.A. McGinty: I cannot provide the figures in this debate. If the member wants to put a question on notice, I am more than happy to see if I can get those figures from the Sir Charles Gairdner Hospital, but that does not relate to this Bill.

Ms S.E. WALKER: It does, actually. I am beginning to feel a little bit duped, because I did not know about the trial. The whole crux of the Opposition agreeing to this Bill was the reassurance that was given to me by Mr Dhu that there would not be an intrusion for people who had lost a loved one. Does the trial at Sir Charles Gairdner Hospital - the Attorney General and the member for Southern River have raised this issue - relate only



to people in intensive care, or are we talking about tissue donors? Does the trial that is taking place at Sir Charles Gairdner Hospital involve organ transplants or is it about tissue transplants, which are the subject of this Bill?

Mr J.A. McGINTY: It does not relate only to intensive care, and it is only organs.

Ms S.E. WALKER: What else does it relate to besides intensive care?

Mr J.A. McGinty: Emergency departments.

Ms S.E. WALKER: What else?

Mr J.A. McGinty: I think that is it. There may be other areas that I am not familiar with, given that it does not relate to this legislation.

Ms S.E. WALKER: In relation to this legislation and human tissue donation agencies, I think a trial into donation of tissues being conducted at Sir Charles Gairdner Hospital would be very relevant to this legislation, because if a person is taken to the emergency department and dies, that case could be a reportable death under the Coroners Act. Therefore, it would be relevant to this legislation. It is important when dealing with this whole area of human tissue donation that we realise that tissue means organs and tissue under the Human Tissue and Transplant Act. It is important that the community knows what is happening about trials for seeking organs and tissues from people who are about to die or who have died. I understood from my briefing that public hospitals took only from people who were on life support systems. I presume that people move from the emergency department into intensive care. Can the Attorney General tell me how long that trial will go for?

Mr J.A. McGinty: Twelve months.

Mr J.H.D. DAY: The member for Nedlands is raising some very pertinent issues and I would like to hear some more of what she has to say.

Ms S.E. WALKER: The whole thrust of clause 3 is basically about empowering the State Coroner to give to DonateWest the name of the senior next of kin. What was the purpose of that? Why does the senior next of kin have to be contacted?

Mr J.A. McGINTY: I will repeat myself once more: the purpose of seeking to provide, in proposed section 53A(1)(d), the name of the senior next of kin is to obtain medical history and to give the family an opportunity to discuss the donation or, in the case of someone who is not on the register, to give consent.

Ms S.E. WALKER: There is an implication that the senior next of kin's wishes are important. There is an implication that the senior next of kin has power to veto; otherwise, I do not know why the Attorney General would bother to introduce this legislation. I refer to the definition of "tissue" in the Human Tissue and Transplant Act. The Attorney General may have answered this question already. He has spoken about wanting only the corneas, heart valves and the bone from deceased persons to be provided through the Coroner. Is it envisaged that that practice will ever include anything other than those three types of tissue?

Mr J.A. McGINTY: In respect of tissue, possibly skin; and, in respect of organs, although it is not covered by this legislation, the pancreas is a possibility for the future.

Ms S.E. WALKER: Does the Attorney General expect a big increase in the workload of DonateWest; if so, does he expect an expansion of the staff; and, if so, have any resources been put aside?

Mr J.A. McGINTY: The expectation is that the tissue donation will double, and that is expected to be handled within existing resources.

Ms S.E. WALKER: When the Attorney General says it is expected to double -

Mr J.A. McGinty: That means twice as much.

Ms S.E. WALKER: I know that. When the minister says it is expected to double, is he saying that the staff currently at DonateWest have the capacity to take up all that work?

Mr J.A. McGinty: Yes.

**Clause put and passed.**

**Title put and passed.**

Leave granted to proceed forthwith to the third reading.

*Third Reading*

Bill read a third time, on motion by Mr J.A. McGinty (Attorney General), and transmitted to the Council.