MR M.P. WHITELY (Bassendean) [4.01 pm]: I move —

That the bill be now read a second time.

The Human Tissue and Transplant Amendment Bill 2011 amends the Human Tissue and Transplant Act 1982. The bill addresses the issue of high community support for organ donation but low registration of adult Western Australians on the Australian Organ Donor Register. The bill compels adults applying for or renewing their drivers’ licences to indicate their willingness to be registered on the Australian Organ Donor Register. Given that every Western Australian is a potential organ recipient, it is reasonable to expect adults to indicate whether they are willing to consider being donors.

Australia has amongst the lowest rates of organ donation per capita in the world. In 2008, the commonwealth government committed $136.4 million of new funding over four years to reform organ and tissue donation for transplantation by introducing legislation to create the Australian Organ and Tissue Donation and Transplantation Authority. Through the national approach, donation rates in Australia are trending upwards, but the results in Western Australia are not as marked as those in some of the eastern states. In 2010, Western Australian donor rates were the second-worst of any Australian state. Although community support for organ donation is high, with 77 per cent of Australians responding in a survey that they are willing to be organ and/or tissue donors, this is not matched with the same level of registrations or discussions with family. In 2010, only 39 per cent of the eligible West Australian population were registered organ and/or tissue donors.

Western Australia has an opt-in organ donation policy, whereby citizens initiate contact with the Australian Organ Donor Register. Potential donors indicate their preference to be organ donors by registering online or in writing via a form available from Medicare Australia, which administers the Australian Organ Donor Register. The Australian Organ Donor Register can register both the intention to be, or not to be, an organ and/or tissue donor. The final consent for organ donation is a two-step process whereby the wishes of the deceased and the consent of next of kin are involved. At the time of death, the next of kin of the deceased is required to consent to organ and tissue donation. Tissue and organs are not removed if it is known that the deceased person expressed the wish to not be an organ donor. If a person does not opt in, it is assumed that either they are not aware of how to register or they do not wish to consent to be an organ donor.

The benefit of registration on the Australian Organ Donor Register is that it provides unambiguous information at the time of death about the wishes of the deceased. Approximately 40 per cent of Australians do not know the wishes of their family members in regard to donation. Although family members can effectively veto the deceased’s wishes, this is far less likely if the deceased is registered on the Australian Organ Donor Register. Obviously, the higher the number of people registered as donors on the Australian Organ Donor Register, the shorter the waiting lists for organ recipients and the less likelihood of potential recipients dying as they wait for suitable organs. The sole purpose of this bill is to increase the number of adult Western Australian registered on the Australian Organ Donor Register.

Western Australian drivers over the age of 18 years applying for or renewing their drivers’ licences will, when practical, be required to complete a simple organ donation registration section on their driver’s licence form. Applicants will be required to make their intention regarding registration on the Australian Organ Donor Register known by marking one of three boxes on the driver’s licence form. The three options are —

1. I believe I am already registered on the Australian Organ Donor Register.
2. I would like to register on the Australian Organ Donor Register.
3. I do not want to consider the issue of organ/tissue donation at this time.

If the boxes on the driver’s licence application are not marked, the driver’s licence cannot be granted or renewed. For electronic renewals, when practical, equivalent questions will be completed through prompted responses. When this is not practical in the opinion of the CEO of the licensing authority, those renewing will be exempted from this process. Electronic renewals can be online or via telephone. Designing an equivalent set of online or telephone pushbutton options should be easily achievable. It may be possible to create online links to the Australian Organ Donor Register to further simplify the process. However, in circumstances in which it is not practical to complete the three-option question electronically, the CEO can exempt an applicant from applying through this process. The details of any driver who indicates a willingness to be registered on the Australian Organ Donor Register or indicates that they believe they are already registered will be forwarded by the Department of Transport to the agency maintaining the Australian Organ Donor Register. The agency could then send new applicants a confirmation—in effect, a partially pre-completed consent form—to sign and return.
The first option, “I believe I am already registered on the Australian Organ Donor Register”, is important because some people are unsure of their organ donor registration status. Some people who intend to be registered donors mistakenly believe that they are already registered. If they mark the box to indicate that they think they are registered donors and they are incorrect, the agency running the Australian Organ Donor Register can inform them that they are not registered and send them a partially pre-prepared consent form. This will have the effect of turning their good intentions into action.

Obviously, for this system to be successful requires not only the passage of this legislation, but also the commitment and cooperation of both state and federal government agencies. Therefore, ultimately it requires the state ministers for health and transport to support its implementation. It is therefore appropriate for me to talk a little about the bill’s development. Approximately 18 months ago I was approached by the member for North West and the member for Jandakot, who suggested that we should act jointly to do something to increase organ donation rates. From memory, there was an early consensus that, regardless of our own positions on the issue, the likelihood of moving from an opt-in to an opt-out system was small. I believed there would be significant community and parliamentary opposition to an opt-out system and I have always favoured a system based on drivers’ licences applications and renewals.

A joint approach was then made to the Minister for Health, who in response commissioned a report on options for increasing organ and tissue donation rates. The report is titled “Adopting an opt-out registration system for organ and tissue donation in Western Australia”. As the name suggests, the report concentrates on the opt-out approach. An opt-out system is not necessarily as effective as might be expected. Families and next of kin still retain the final power of veto after death; just because someone has not opted out does not mean that their families will believe that it was the deceased’s wish to be an organ donor. The bill fosters explicit registration so that there is no ambiguity about the deceased person’s wishes. The report contained much useful information but did not suggest a pathway forward for organ donation other than opt-out. Discussions within the Labor Party and subsequent discussions with the members for North West and Jandakot and the Minister for Health have encouraged me to continue to work towards a driver’s licence–based system.

Driver’s licence applications and renewal offers a regular, periodic, usually five-year, interface between government and the vast majority of healthy Western Australian adults. Initially, it was my preference to have an integrated system whereby the entire process of registration would be completed as part of the licence application or renewal process. However, research of the experience of the driver’s licence–based system in New South Wales indicated that there are dangers in that one-step approach.

New South Wales has a system of tying organ donation to driver’s licence applications; however, the New South Wales system is significantly different from that contained in this bill. Its system operates independently of the Australian Organ Donor Register and does not provide information on registrations to the national system. Its driver’s licence organ donation registration states that an applicant should also advise the Australian Organ Donor Register at Medicare. The New South Wales driver’s licence application includes a registration of consent to donate on its form. Like the system proposed in the bill, applicants are required to mark one of three boxes; however, the wording and effect of the three options is very different.

The first organ donation option on a New South Wales driver’s licence application form states —

I consent, in the event of my death, to the removal of any of my organs or tissues and will advise my next of kin of this decision.

The second option states —

I consent, in the event of my death, to removal of the organs or tissues indicated only, and will advise my next of kin of this decision.

It then requires the applicant to tick boxes specifying which organs and tissue would be available for donation in event of death.

The third option states —

No, I wish to register my decision not to be an organ … donor.

Transplant Australia believes that the New South Wales system, operating separately from the national register, is causing problems. The first two options involve the applicant taking action by advising family members or next of kin. By forcing the issue there is potential for, and anecdotal evidence of, time-pressured drivers selecting the easy “no” option, effectively preventing them from becoming donors. For those of us supporting efforts to increase organ donor rates, the New South Wales system has the superficial appeal of simplicity by offering a single-step process. However, operating separately from the Australian Organ Donor Register, the New South Wales system is not supported by experts, including Transplant Australia and DonateLife.
South Australia also has a one-step-based driver’s licence system that is a little simpler than the New South Wales approach. The downside is that it is not sufficient to allow registration on the Australian Organ Donor Register. It is important not to undermine national efforts, particularly with the increasing mobility of the Australian population. This bill will establish a system that complements and does not compete with the Australian Organ Donor Register.

Care needed to be taken in drafting this bill to ensure that, unlike the New South Wales system, there were no unintended consequences. The bill has addressed this concern by removing any potential for non-registration to be interpreted as opposition to organ donation. The non-registration option in the bill is framed as “I do not wish to consider the issue of organ/tissue donation at this time” and therefore avoids the pitfall of the New South Wales system. This is further enhanced by the fact that the Australian Organ Donor Register allows people to register their intention not to be an organ/tissue donor. Of course, the vast majority of those who register with the Australian Organ Donor Register are donors; however, it also offers the opportunity for those who choose not to be donors to have their wishes recorded.

Very few private members’ bills introduced by opposition members are supported by the government and therefore the Parliament. As the Minister for Health knows, we sought advice on whether it was possible for the members for North West and Jandakot to jointly sponsor this bill. However, the advice was that this was not possible, which highlights a possible parliamentary reform worthy of consideration. It is of course possible for this bill to become legislation without the support of the Liberal Party. However, that would seem to be a very hollow win. As previously stated, it is absolutely essential that the government, in particular the Ministers for Health and Transport, are enthusiastic about its implementation. So far, the process of developing the bill for consideration has been refreshingly free of partisanship. I am hopeful this approach can continue.

Before finishing, a number of other people deserve recognition for either their efforts with this bill or their work in regard to organ donation. I want to pay special tribute to my dear friend the former member for Southern River the late Paul Andrews who was, to the best of my knowledge, the first organ recipient elected to an Australian Parliament. Improving organ donation procedures was a focus of Paul’s parliamentary work. I wish he were still here. I miss his wise counsel and friendship. I will briefly quote from Paul’s inaugural speech in which Paul thanked his donor for the gift of life. Paul said —

I have never been able to tell anyone the extent of the debt I owe that person who, in giving up life, enabled me to have a transplant. Part of my reason for speaking today—as I said, I have never been able to do it before—is to acknowledge those people who make the decision to be organ donors and those families who honour that decision.

I also want to acknowledge the courage of Paul’s remarkable wife Gim who, because of a shortage of suitable organs, became Paul’s second donor when, after 15 years, Paul’s first donated kidney failed. Paul finished his inaugural speech with the words —

I cannot thank Gim enough. She is my wife, my love, my partner in life and my comrade.

Gim, as a live donor, demonstrated her courage and love for Paul.

I also want to thank Dr Kevin Yuen, who on behalf of DonateLife, worked with me on the bill. Dr Yuen was initially concerned about the idea of tying donation to drivers’ licences because he thought the plan was to copy the New South Wales system. With Dr Yuen’s guidance, an earlier draft of the bill was reworded to make the distinction from the New South Wales system even clearer. Doctor Yuen is now a strong supporter of the bill.

I have already acknowledged the roles of the Minister for Health and the members for North West and Jandakot, and I now acknowledge the leadership of my own party. The Leader of the Opposition and the Deputy Leader of the Opposition both supported my examination of initiatives to increase donor rates. I particularly want to acknowledge the Deputy Leader of the Opposition who, as the Labor spokesperson for health, worked closely with me on the issue and assisted the passage of the draft bill through caucus processes.

In summary, with 77 per cent of the Australian population in support of organ donation, but less than 40 per cent of adult Western Australians actually registered, there is a clear need for this bill. By triggering the process of donor registration, the bill helps translate the good intentions of the majority of Western Australian adults into action by complementing the operation of the Australian Organ Donor Register. I commend the bill to the house.

Debate adjourned, on motion by Mr D.A. Templeman.