

HUMAN TISSUE AMENDMENT (CHILDREN IN CARE OF STATE) BILL 2008

Page: 7780

Bill introduced on motion by Ms Noreen Hay, on behalf of Ms Reba Meagher.**Agreement in Principle****Ms NOREEN HAY** (Wollongong—Parliamentary Secretary) [10.42 a.m.]: I move:

That this bill be now agreed to in principle.

I am pleased to bring before the House the Human Tissue Amendment (Children in Care of State) Bill 2008. As members would be aware, this legislation arose from a tragic incident in February 2007 when a young girl who was in the care of the Minister for Community Services died following a motor vehicle accident. During her life this girl had expressed a wish to be an organ donor and all the significant adults in her life—her birth parents, stepfather and foster parents—agreed with that wish and that her organs should be donated to assist others. Unfortunately, the Human Tissue Act currently includes a blanket prohibition on the donation of organs and tissues by children who are in the care of the State. The bill removes this restriction and will allow for the organs of children who are in the care of the State to be donated for transplantation into the body of another person in a manner similar to that applying to all other children.

Part 4 of the Human Tissue Act 1983 currently allows for a child's organs to be donated in circumstances where the child during his or her lifetime has not expressed an objection to donation and the child's senior available next of kin gives consent. The proposed amendments to the Act will allow the organs of a child in the care of the State to be donated if the child during his or her lifetime has not expressed an objection to donation and the principal care officer for the child gives his or her consent. The principal care officer will be required to consult with relevant interested parties before giving his or her consent. The principal care officer will also be precluded from giving consent if any of the relevant interested parties do not agree to the donation. In other words, each and every person who is a relevant interested party will have the power to veto a donation.

As members will be aware, the family situations of children who come to be in the care of the State can be extremely complex. A wide range of people can have played an important role in these children's lives and have strong concerns for their welfare. These people can include birth parents, grandparents, foster parents, and brothers and sisters, and in the case of indigenous children may also include community elders. I do not wish, however, to give the impression that those examples are in any way exhaustive. It is inevitable that there will be situations where people who are not covered by these examples are people that the child would have expected and wanted to be consulted. Accordingly, the legislation does not seek to define who is a relevant interested party. However, I give an undertaking to the House that the Children's Guardian will develop guidelines to assist principal care officers in determining who is a relevant interested party and in consulting with those parties. I expect that the Children's Guardian will consult widely in developing those guidelines.

As well as requiring consent from the principal care officer, the bill maintains the usual role of the designated officer in approving organ donations. As members may be aware, hospitals involved in organ donations appoint a designated officer who must authorise the removal of any organs or tissues from the body of a dead person. In effect, the designated officer is an independent authority who ensures that all the legal and procedural requirements have been complied with. As a final matter, members will be aware that any death of a child in the care of the State must be referred to the Coroner. Accordingly, the Coroner's permission will be required before any organs can be removed from the body of such a child.

Item [1] of schedule 1, "Amendments", inserts in the definitions section of the Act the definitions of child "in the care of the State" and "principal care officer". The definition of a child "in the care of the State" has simply been moved from section 34A of the Act, which is to be repealed by item [8] of schedule 1. The definition of "principal care officer" provides that this person is the principal officer of the designated agency that has supervisory responsibility for the child under the Children and Young Persons (Care and Protection) Act. Designated agencies include the Department of Community Services or a non-government organisation that is accredited to provide out-of-home care services for children and young people in the statutory care of the State. This definition has been developed in consultation with the Department of Community Services.

Items [2] and [3] of schedule 1 establish a new structure for obtaining consent for the donation of tissue by a child in the care of the State where the child's body is at a hospital. The role of the hospital's designated officer has been retained and, as far as possible, the procedures to be followed by the hospital for collecting tissue from

the body of a child who was in the care of the State will be the same as those for other children. Items [4] and [5] of schedule 1 relate to obtaining consent for the donation of tissue by a child in the care of the State where the child's body is not at a hospital. The role of the principal care officer is essentially the same in this instance as it is when the child's body is at a hospital. Members will note that the proposed amendments items [3], [5] and [7] make it clear that in all cases any tissue that is taken from the body of a child in the care of the State may be used only for the purpose of transplantation into the body of another living person.

In other words, tissues cannot be donated for medical or scientific research. Item [10] is a transitional provision that clarifies that the proposed amendments have no retrospective effect and will apply only in the case of deaths that occur after the amendments commence. On the subject of commencements, I draw the attention of the House to the fact that the proposed amendments are to commence by proclamation. This will allow the Children's Guardian to consult all interested stakeholders and to develop appropriate guidelines for the exercise of the functions of principal care officers. I commend the bill to the House.