

Human Tissue Amendment (Trafficking in Human Organs) Bill 2015

Second Reading

Mr DAVID SHOEBRIDGE (11:14): That this bill be now read a second time.

I am extremely pleased to introduce the Human Tissue Amendment (Trafficking in Human Organs) Bill 2016. This bill would make it a crime for citizens of New South Wales to receive organs sourced by illegal and unethical means, even when that occurred overseas. It includes organ harvesting where organs are removed from people without their consent and organ trafficking where often poor and vulnerable people are taken advantage of and have their organs sold, frequently resulting in lifelong medical complications. This is a serious matter. That is why the maximum penalty of 25 years imprisonment would apply in circumstances where the removal of the organs could reasonably have been expected to have killed the person from whom they were removed.

By adopting this law, New South Wales would be moving into what is increasingly becoming a mainstream approach to organ harvesting around the world. Action similar to this has already been taken in Spain, Taiwan and Israel. The extraterritorial operation of this law is essential for it to be effective. It is rare, but not unheard of, for New South Wales laws to govern the actions of our citizens and residents wherever they are on the planet. Most recently this Parliament moved to apply the operation of Australia's surrogacy laws to residents of New South Wales whether they were in or out of the State. We have similar laws that apply in relation to child sexual exploitation, wherever it happens on the planet. The model used in this bill to apply the operation of its provisions to make it a crime to engage in the illegal or unethical trade of organs anywhere on the planet is modelled on the extraterritorial operation of those Acts.

This bill is the result of a lengthy consultation process that started in 2013 and included community members, law reform groups, medical professionals, legal sector representatives and academics, among many others. We have received input from literally thousands of stakeholders and members of the community that collectively has helped shape the form of the bill that I present today. The response from the community has been overwhelming. Indeed, petitions signed by a near record 294,745 members of the community have been tabled in this House supporting the provisions of this bill and legislation. Why have people done that? The global organ trade is growing and with it comes the temptation for residents of this State to travel overseas and buy an organ that is sourced by unethical means. As a legislative Chamber we must send a strong message that we do not tolerate such behaviour from residents in this State and we will not accept them engaging in it overseas. We must not support a world where someone overseas is quite literally killed to provide an organ to prolong the life of someone in this State.

Of all the interactions that strengthen my resolve to introduce this bill, the most compelling was a discussion I had with New South Wales transplant surgeon Jeremy Chapman. He has taken a sometimes criticised and sometimes supported role in trying to address the illegal and unethical trade of organs around the planet.

He recalled a conversation he had with a colleague who contacted him because she had an ethical dilemma. She was a renal surgeon. A patient had called to say that she would not be attending for

dialysis on the Monday because she was going to China—they were just about to shoot her donor. We must not allow that to become an ordinary practice in this State.

The benefits of this becoming law will go beyond the actual terms and the prescriptive criminal elements of the bill; it will serve a stronger social and educational function. It will raise awareness among medical practitioners and the communities around this State, and hopefully around Australia, about the practice of organ harvesting and the illegal trade in human tissue that, sadly, is a growing problem on this planet. It will also put those involved in organ trafficking, and those potentially wanting to engage in this deeply unethical trade, on notice that the citizens and residents of New South Wales will no longer be able to participate in this inhuman trade. We have an opportunity to set an example to other Parliaments, within Australia and globally, about the use of our legislative powers and use our collective strength to send a strong message condemning unethical organ harvesting and trafficking no matter where it occurs on the planet.

It will also serve to direct attention to the need to improve organ donation rates in Australia and in New South Wales—we lag woefully behind some of the better performing jurisdictions in this country. In this regard I specifically note the arrangements that operate in Spain, which has an opt-out provision for organ donations. I strongly support those arrangements. Clearly one of the reasons why people in this State turn to the organ black market is that the waiting lists in Australia to access an organ are so long and many people literally die waiting for an organ—that cannot be sustained. I am an organ donor. Those who think it is simply enough to have a notation on their driver licence are wrong because over the past 10 years the system has changed.

I strongly encourage people to take the further step of actively noting that they are a willing organ donor. Indeed, I encourage all members to get online and register to be a donor in the event of their death. Just as New South Wales should act to stop organ trafficking globally, in this place we have a responsibility to do what we can on a personal and professional level. To do so, members need to go to www.donatelive.gov.au and, provided they have their Medicare card, in a matter of five minutes they can actively register on the Australian Organ Donor Register. I also urge members to advise their family members of their willingness to become a donor so that they are not taken by surprise and resist any request if your organs are needed. We not only have a joint obligation to fix donation rates here but also to prevent our citizens from engaging in this unethical trade overseas.

I turn now to the objects of the bill, which are to increase the penalty for commercial trading in human organs and other human tissue; to create offences relating to the use of organ or another tissue taken from people without their consent; and to impose a duty on registered health practitioners to report any reasonable suspicion they have that a patient or other person has received an organ tissue that was commercially traded or taken without appropriate consent. The offence of trading in tissue or organs has a prescribed maximum penalty of 40 penalty units or imprisonment for six months or both. Where the amount of tissue taken would reasonably be expected to kill the person, or where a vital organ is removed, the maximum penalty is set at 25 years imprisonment. The removal of tissue without consent from a living or dead person has a maximum penalty of 40 penalty points or six months imprisonment. Again, where the organ removed is a vital organ the maximum penalty is set at 25 years imprisonment. Using tissue removed without consent, or receiving for transplantation tissues or organs so acquired, carries matching penalties. The bill also contains exclusions for blood products, hair and semen.

The bill introduces mandatory reporting for registered health practitioners who have reasonable grounds to suspect that a patient or other person has been transplanted with or received tissue that was either trafficked or removed without consent. The bill specifies that failure to comply with mandatory reporting requirements is considered "unsatisfactory professional conduct". This can result, depending on the discretion of the oversight body, in suspension of the medical practitioner from practising medicine or, in the most extreme case, the removal of the practitioner's name from the register. Under the existing law in New South Wales, trading in tissue within the State is prohibited, but that law does not extend to transplants that may occur overseas. There is anecdotal evidence from medical professionals that residents of New South Wales have engaged in unethical organ transplants overseas, having received organs or tissues that were either purchased on the black market or taken from people without their consent. This was confirmed by the Minister for Health in correspondence received as early as January 2013, and I quote:

NSW clinicians involved in the care of patients who may benefit from transplantation actively inform them of the risks of travelling overseas for the procedure. Anecdotally, a very small number of individuals in NSW requiring transplantation travel overseas to access organs.

The numbers from the national register are now clearer. We know that dozens of people from Australia have travelled overseas to acquire organs, and the ethical restraints on those organs is simply not considered by Australian authorities. Two forces have acted together to make the trade in trafficked organ so lucrative. First, medical advances have made organ transplantation more widespread, more affordable and more successful. Indeed, Australia and New South Wales have played a proud part in developing the skills and the capacity to allow for organ transplantation. Some of our largest teaching hospitals and finest universities have honed the skills and the talents for organ transplantation and, in part, this has created a problem.

Places such as the University of Sydney, my alma mater, has trained transplant surgeons who are now core players in the illegal unethical trade in China. Topping that list is Mr Huang Jiefu, who was shamefully given honorary professorship from that university notwithstanding the fact the he has openly admitted to engaging in the transplantation of livers from hundreds and hundreds of executed prisoners in China. Secondly, across the globe organ donation rates remain low and, despite the occasional success such as we see in Spain, remain low across the planet. This means that many people who are waiting for transplants will never receive a matching organ. This can, and does, present an incentive for some governments and organisations to forcibly, or at the very least unethically, obtain organs from their citizens, especially from vulnerable people such as prisoners and minority ethnic groups like the Uighur people and religious groups such as House Christians and Falun Gong in China.

While most countries have laws expressly prohibiting both the sale and forced removal of human organs, compelling evidence suggests that the practice continues to be widespread in a number of countries around the globe. We know organ harvesting is a problem in our region in countries such as China. We also know that organ trafficking is a real and recognised problem in countries including Brazil Colombia, Ecuador, Georgia, Haiti, India, Mexico, the Philippines, Russia and the United States of America. Recently troubling evidence has emerged that Egypt is increasingly a source for the unethical trade in organs and the profits are being diverted to terror links within the Middle East.

We should be clear about the financial incentive available for a government, organisation or criminal gang to have somebody killed to order for their organs.

Conservative estimates suggest that the value of a person's organs sold at open market and distributed to unethical recipients who are willing to pay exceeds \$US250,000. There are many people on this planet who governments and criminal organisations see as more valuable for their spare parts than as whole humans. In a number of countries organ sales are disguised as donations with few, if any, records being kept to prove consent to donate organs. This suggests that actual informed consent is, at best, unlikely. There are also no requirements for ongoing cover of the medical expenses of so-called donors, and many of those selling organs may be unaware of the ongoing medical issues they can face as a result. Case after case has been documented in countries in our region such as in the Philippines, as well as in India, where impoverished people are given the equivalent of \$AUS200, \$AUS300, \$AUS400 or \$AUS500 to have a kidney removed in brutal, unsanitary conditions and are then left with the lifelong consequences of a botched operation. We cannot allow residents of New South Wales to be a part of that problem.

The World Health Organization has identified organ trafficking as something that is "likely to take unfair advantage of the poorest and most vulnerable groups, undermines altruistic donation and leads to profiteering and human trafficking". Globally, there is strong evidence that it is a multibillion dollar industry and it continues to grow. I note the support this bill has had from members of the community, including those who are in the gallery today, and I thank them for attending, and also from organisations such as Australian Lawyers for Human Rights. We have representations in support of the bill from the Human Rights Relief Foundation, whose chairman says:

We believe that the passing of this legislation is:

(a) a positive and important step for Australia to keep abreast of legislative responses in other jurisdictions around the world; AND

(b) is important to raise awareness among legal practitioners and the wider community about the practice of organ harvesting and the illegal trade in human tissue.

We have support from the Vietnamese Australian Lawyers' Association, which says:

The legislation will ensure that the most vulnerable are protected from the unconscionable conduct for financial advantage.

We have support from QT Lawyers and Associates. We also have support from the Australian Council for Human Rights Education Incorporated, whose president, Dr Ozdowski, says, in part:

We believe that the passing of this legislation is especially important to stop the practice of organ harvesting in a number of countries including China, where there is a history of selling organs from executed prisoners and prisoners of conscience. As you would know, there is evidence that residents of NSW have purchased illegally obtained organs for transplantation. Legislative initiatives such as this contribute to addressing the problem of global organ trafficking and forced organ harvesting.

We have support from Wendy Rogers of Macquarie University, who is Professor of Clinical Ethics, Department of Philosophy and Department of Clinical Medicine, and Deputy Director of the

Macquarie University Research Centre for Agency, Values and Ethics. Amongst other things, Professor Rogers says:

While the actual numbers of NSW residents who travel to receive illegal trafficked organs may be small, this proposed amendment sends a strong message that the NSW government cares about the plight of those from whom trafficked organs are sourced, no matter where in the world they reside. Organ trafficking, in its most extreme forms, amounts to a crime against humanity. In China prisoners of conscience are routinely killed on demand for their organs. We should do anything that is in our power to prevent abuses such as this. By passing this amendment, the NSW government will send a strong message that it does not tolerate abuses of human rights, and in particular, that it does not tolerate NSW residents seeking to further their own health interests at the cost of disadvantaged and abused citizens of other countries.

I have spoken with a number of transplant doctors who are in broad support of aspects of the proposed amendment, including a judicial process to determine guilt.

Professor Rogers goes on to note that there are ongoing conversations within the medical profession about the provisions in the bill that deal with unsatisfactory professional conduct. I look forward to contributions from other members of the House that deal with those difficult issues for medical practitioners. We accept that it is a difficult balancing act to protect human rights and ensure the maintenance of the doctor-patient relationship remains strong in this State. We also have support from the Sunrise Daily, the first and only Vietnamese daily newspaper in Australia, as well as support from the Vietnamese Community in Australia NSW Chapter, whose president, Dr Peter Thang Ha, says:

I am writing to you in my capacity as the President of the Vietnamese Community in Australia (NSW Chapter). I am aware of the above mentioned Draft Bill and on behalf of our constituents, I wish to advise our support for the passing of the Bill.

On behalf of the Vietnamese Australians in Australia, many of whom have experienced oppression and denial of human rights in the past and during the Vietnam war, I believe that it is important for us to support Bills such as this which will assist to protect human rights on a global scale.

We believe that this Bill is important as it sends a strong message to the international community that Australia is willing to support international human rights.

This bill is timely and necessary. The passage of this bill would make New South Wales a global citizen and would make a firm statement that we believe human life is precious and that nobody's life can be bought and sold to save another life. I thank the members of the community who have supported this bill. I look forward to ongoing discussions with members of the House on the passage of this bill. It is time for New South Wales to act. I commend the bill to the House.