VOLUNTARY ASSISTED DYING BILL 2019

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Robin Chapple) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

Committee was interrupted after the new clause 9A moved by Hon Stephen Dawson (Minister for Environment) had been agreed to.

New clause 9A —

The DEPUTY CHAIR: Hon Charles Smith, do you want to move your new clause 9A?

Hon CHARLES SMITH: Thanks, Mr Deputy Chair. The amendment is now new clause 9B.

The DEPUTY CHAIR: It is new clause 9A on the supplementary notice paper. I just make that point.

Hon CHARLES SMITH: I move —

Page 10, after line 5 — To insert —

9A. Palliative care and treatment

(1) This section applies if, at any time after making a first request, a patient is provided with palliative care and treatment that relieves the patient's suffering to a level that is tolerable to the patient.

(2) If the request and assessment process in respect of the patient has not been completed, the request and assessment process ends.

(3) If the request and assessment process in respect of the patient has been completed, the process for accessing voluntary assisted dying under Part 4 ends and no step under that Part (including the prescription, supply or administration of a voluntary assisted dying substance) is to be taken in relation to the patient.

(4) Nothing in subsection (2) or (3) prevents the patient from beginning a new request and assessment process by making a new first request if the palliative care and treatment options available to the patient subsequently cease to relieve the patient's suffering in a manner that is tolerable to the patient.

The remaining amendments under my name on the supplementary notice paper are largely safeguards that I have taken from the Northern Territory model and that are currently absent in our WA model. To that end, these amendments will focus primarily on palliative care, as I attempt to put palliative care first, followed by mental health assessments, and then the changes in accordance with those amendments.

Proposed new clause 9A under my name as it stands currently provides that a specialist palliative care assessment must take place before a patient can access assisted dying. Members will know that an essential eligibility requirement under this bill is that the patient is experiencing suffering caused by disease, illness or a medical condition. This new clause will simply make it clear that if the patient is offered specialist palliative care treatments or services that go on to relieve the patient's pain or suffering, the patient is no longer eligible for access to voluntary assisted dying and the request and assessment process ends there.

The amendment is simple. I think it is reasonable. It is logical. It plugs a small hole in the safeguarding system. I commend it to the chamber.

Hon STEPHEN DAWSON: Hon Charles Smith's amendment seeks to introduce a new clause that requires the voluntary assisted dying process to end if the patient receives palliative care and treatment that relieves the patient's suffering to a level that is tolerable to the patient. We are not supportive of the amendment. The bill already provides for the patient to not continue the process, or withdraw from the process. I refer members to clauses 18, 52 and 56. If the person has been assessed as eligible, they are eligible under the bill. If a patient chooses to receive palliative care and treatment and finds that they are not suffering, or their suffering is tolerable or acceptable to them, it is highly unlikely that they will want to continue in the voluntary assisted dying process. The bill already more than appropriately covers the patient's ability to cease participation in the process or to not continue. It is for those reasons that we will not be supporting the proposed new clause.

Hon NICK GOIRAN: I understand the proposed new clause moved by Hon Charles Smith is based on something in the Northern Territory legislation. The Rights of the Terminally Ill Act 1995 contained 21 sections. Maybe Hon Charles Smith can correct me if I am wrong by way of interjection, but the part of the Rights of the Terminally Ill Act 1995 that appears to deal with palliative care is section 8.

Hon Charles Smith: Yes.

Hon NICK GOIRAN: Section 8 of the Rights of the Terminally Ill Act is entitled "Palliative care". It reads —

(1) A medical practitioner shall not assist a patient under this Act if, in his or her opinion and after considering the advice of the medical practitioner referred to in section 7(1)(c)(i), there are palliative care options reasonably available to the patient to alleviate the patient's pain and suffering to levels acceptable to the patient.

(2) Where a patient has requested assistance under this Act and has subsequently been provided with palliative care that brings about the remission of the patient's pain or suffering, the medical practitioner shall not, in pursuance of the patient's original request for assistance, assist the patient under this Act. If subsequently the palliative care ceases to alleviate the patient's pain and suffering to levels acceptable to the patient, the medical practitioner may continue to assist the patient under this Act only if the patient indicates to the medical practitioner the patient's wish to proceed in pursuance of the request.

Has the minister obtained any advice on, or can the minister help us to know, whether section 8 of the Northern Territory legislation is consistent with what would be new clause 9B, which is before us.

Hon STEPHEN DAWSON: I ask the chamber to bear with us. We do not have a physical copy of the Rights of the Terminally Ill Act 1995. We are seeking to use the marvels of modern technology to access a copy. I will look for it and come back to the member.

Hon CHARLES SMITH: It is also worth noting that this proposed new clause, for those who are interested in safeguards, will put in additional safeguards. There is nothing new in this proposed new clause to prevent a patient from making a new first request for access to voluntary assisted dying further down the track should the specialist palliative care treatment cease to alleviate the patient's pain and suffering.

Hon COLIN HOLT: While the minister is consulting, I have a question for the mover of the amendment. Is Hon Charles Smith saying that if a patient decides to, for want of a better word, push pause on their assessment journey, they will have to start all over again? Is the premise of the member's proposed new clause that they will have to go back to the beginning and do a first request?

Hon CHARLES SMITH: In a nutshell, yes. It is alluding to that pause/stop situation; they would have to do a first access treatment.

The DEPUTY CHAIR: I am allowing this, with some limitation.

Hon COLIN HOLT: As soon as the minister seeks the call, I will sit down.

Hon STEPHEN DAWSON: I will happily seek the call. I am told that section 8 of the Rights of the Terminally Ill Act 1995 of the Northern Territory is different. I am advised that it prohibits a medical practitioner from assisting a patient in the process if palliative care options are reasonably available to the patient to alleviate their pain or suffering.

Hon NICK GOIRAN: Do I take it from that that the Northern Territory provision to which the minister referred is more restrictive than the one Hon Charles Smith has moved?

Hon Stephen Dawson: Yes, that is my advice.

Hon NICK GOIRAN: Okay. I would prefer the new clause not to be less restrictive; I would prefer it to capture everything in the Northern Territory legislation. Nevertheless, in the absence of another amendment being produced by the government or another member, this would go at least partway towards addressing the Northern Territory safeguard. My next question probably goes to a theme or question that we have asked with other amendments. I assume that, in the end, this will be new clause 9B, so I will refer to it as such. If new clause 9B were to pass, would it undermine the operation of the bill? I know that the health minister has previously said that he would effectively rule out amendments if it was considered that they would make the bill inoperable. Would this make the bill inoperable? I suspect the answer is that it would not make it inoperable. However, would it do any harm?

Hon STEPHEN DAWSON: I am advised that it would not undermine the bill, but it is superfluous, unnecessary and not legislatively concise.

Hon NICK GOIRAN: I note that the amendment uses the words "if a patient is provided with palliative care and treatment". It would be inappropriate to ever suggest that a patient must be provided with palliative care and treatment—that is entirely a decision for the patient—but if it were provided, that is when this clause would kick in. Is there anything in the bill that mandates that palliative care must be offered to a patient?

Hon STEPHEN DAWSON: There is nothing in the bill that says they must be offered palliative care. Clause 26 says that the coordinating practitioner must inform the patient about certain matters, and one of those is the palliative care and treatment options available to the patient and the likely outcomes of that care and treatment. I think clause 37 also refers to something similar.

Hon NICK GOIRAN: Just to clarify, what is difference between offering palliative care to a patient and informing them of the palliative care and treatment options available and the likely outcomes of that care and treatment? What is the distinction?

Hon STEPHEN DAWSON: I guess offering is more affirmative—"Do you want this treatment that is available?"—whereas clause 26 says that we must inform the patient of the options available, not necessarily offer them palliative care.

Hon NICK GOIRAN: This really goes to the intersection between clause 26, which the minister has just raised, and the one we just passed, which is new clause 9A. The minister may recall that that clause prohibits a health worker from initiating a discussion; however, a medical practitioner or a nurse practitioner can initiate it so long as they advise the person of two things, and one of those things is the palliative care and treatment options available. That mandatory requirement on the health practitioner is only if they initiate the conversation. If they do not initiate the conversation, that provision does not apply. Is the minister saying that clause 26 then kicks in? I just want to make sure that, whether the practitioner or the patient initiates the conversation, either way, they will be informed as a matter of law. It will be a requirement that they be informed of the palliative care and treatment options available to the person and the likely outcomes of that care and treatment. I seek clarification that that is the case and there is no gap there, because if that was the case, it would certainly receive my support.

Hon STEPHEN DAWSON: Yes, they are given the information.

Hon NICK GOIRAN: Is that why the government says this proposed new clause 9B is not necessary? Is it because in every instance a patient is going to be informed about the palliative care options available to them?

Hon STEPHEN DAWSON: It was not because of clause 26. That was not the reason I gave for why the new clause was not needed.

If a patient is going through a coordinating or consulting assessment, they will receive information about palliative care. The government's position is that there is no additional requirement, as proposed in new clause 9A.

Hon NICK GOIRAN: If Hon Charles Smith's proposal was defeated and the bill continues in its current form without further amendment, would it be open for a patient in Western Australia to access voluntary assisted dying—be it on the VAD pathway—and could they simultaneously access palliative care and treatment?

Hon STEPHEN DAWSON: Yes.

Hon NICK GOIRAN: I ask the minister to help me understand the necessity of a patient in Western Australia wanting to access both simultaneously. I think the amendment would prohibit a patient accessing palliative care and treatment simultaneously; they would either be on one pathway or another—that is, the care pathway or the death pathway. That is unfortunately the situation. I do not think we can suggest that the taking of a lethal substance is the care pathway or the life pathway; it is not. I want clarification on that. On what basis is it appropriate for somebody to be on both pathways at the same time?

Hon STEPHEN DAWSON: The government respects the patient's autonomy to choose voluntary assisted dying at the end of life. Patients can choose to be on the palliative care "pathway", if we wish to use that word, until the moment of administration. They are entitled to palliative care if that is what they want to access. Some patients receiving palliative care still experience total suffering, as we know.

Hon NICK GOIRAN: Is a person in regional Western Australia who wants to, and makes the decision to, access voluntary assisted dying entitled to palliative care up until the point of administration?

Hon STEPHEN DAWSON: Every Western Australian is.

Hon NICK GOIRAN: It is interesting that every Western Australian is entitled to palliative care. Under, I think, clause 1, I asked for a guarantee that if it was the choice of a person in regional Western Australia, they would have a palliative care specialist and an interpreter flown to them, and the minister said that he could not guarantee that that would happen, but he could guarantee that this squad of eight—I am paraphrasing now—would go there. I was concerned about that at the time. If the position has changed or evolved, or whatever language we want to use, since then or we have an enhanced understanding between us, that is a good thing. I just want clarification on that.

Hon STEPHEN DAWSON: That is not what I have said just now; I said that they are entitled to palliative care. How they access palliative care would not necessarily involve a specialist flying to the Kimberley, for example. I said that they are entitled to it.

Hon NICK GOIRAN: I have no further questions, but I just indicate that I will support the new clause because I think, on balance, it is effectively another safeguard against doctor steering. When I consider some of the

experiences in other jurisdictions, it troubles me that there are enthusiastic doctors, proponents of voluntary assisted dying or whatever terminology is used in the various jurisdictions who steer or push patients down a particular pathway. If this is a small measure to mitigate that by saying, "No; if the person is taking palliative care treatment and it's at a level that is tolerable to them, that ceases the voluntary assisted dying process", that will be some kind of a brake on the enthusiasm of a voluntary assisted dying practitioner who wants to enthusiastically continue with the process. It may well be the case that there are not too many voluntary assisted dying practitioners who are enthusiastic, but I remind members and the minister that we all know of Dr Philip Nitschke. I would say that he is a pretty infamous character in this type of regime around the world. I will say this much about him: he is highly experienced and he is intellectually honest, because he has said on the record that where we have these regimes, there will be casualties. On balance, if this is a measure to put a brake on some of the enthusiastic practitioners, it is a good thing.

Hon MARTIN PRITCHARD: To the honourable member who has moved the new clause, I am afraid that I am not going to support it. Of course, many of us have had doctors and such talk to us about whether they are for or against voluntary assisted dying. During that time, it was explained to me that for a small number of people in palliative care, palliative care treatment cannot get on top of their suffering. A number of people I spoke to said that they have good days and bad days. They have intolerable pain, but on occasion they do not feel too bad. My concern is that a person who wishes to be on a path towards voluntary assisted dying might shy away from palliative care treatment that may help them during the intervening period because at some point when they are not feeling too bad, it may be viewed that they have to start the whole process again. My view is that the process is fairly onerous for a person in their last six months of life and we should not force them to go through it twice. I am glad the member brought the new clause to the chamber, but after thinking about it deeply, I am not sure that I can support it.

Hon AARON STONEHOUSE: I have been listening to the debate on this new clause and trying to weigh up its pros and cons. I am not entirely sure that it is necessary. That comes from someone who is very sceptical about the clauses in this bill. I am very interested in ensuring that the safeguards are adequate, but in this case clause 18 already provides that a person has no obligation to continue the voluntary assisted dying process and that they can cease the process at any time. I am unsure why it is necessary to put in another break. A break is already there for a person to initiate if they like. Having an additional one for a specific circumstance seems somewhat redundant. A person can call a stop to the process for any reason. Specifying an additional reason—if palliative care addresses someone's suffering—seems a little unnecessary.

This may be intentional, but I also see a problem in that someone merely having their suffering addressed by palliative care being a reason for a patient to have to opt out ignores the fact that patients whose suffering is addressed by palliative care may still wish to access voluntary assisted dying. Someone with a degenerative disease with a 12-month prognosis may still wish to access voluntary assisted dying because they know that it will get worse. Their suffering may currently be addressed by palliative care, but they may still want to go through the process. Some members may find the idea disturbing that someone who is not in pain may want to access voluntary assisted dying, but the bill allows for people who have a degenerative disease to access voluntary assisted dying. As I understand it, a lot of people with degenerative diseases want to have that choice. They want to empower themselves, so they know that when it starts to get to the point where they lose functionality and are facing incapacitation, that option will be available to them. They may start the process a little earlier with the goal of taking the substance later. For those reasons, I am not sure that this is necessary. I see that it would require somebody who puts a stop to the process to go back to the beginning and start again. I do not mind that aspect necessarily. It would make it a little more onerous, but I do not think that it is a bad idea that someone's capacity is constantly reassessed and that they are provided with updated information. I do not mind that aspect of it. I get back to the redundancy of new clause 9A(1) or 9B(1), or whatever it ends up being numbered in the end. For that reason, I find it difficult to support this amendment.

New clause put and negatived.

Clause 10: Contravention of Act by registered health practitioner —

Hon NICK GOIRAN: What provisions might a registered health practitioner contravene that would enliven this clause?

Hon STEPHEN DAWSON: I am told that it would be any provision of this bill.

Hon NICK GOIRAN: All right. If I take the minister to clause 1, clause 2 or clause 3, I think he will agree that that is not correct. Can we get some proper advice about which provisions a registered health practitioner might contravene that would enliven this clause? This is not an insignificant matter. We are talking about a registered health practitioner in Western Australia being capable of an action constituting professional misconduct or unprofessional

conduct. I think registered health practitioners in Western Australia have a right to know which of the 184 clauses, if contravened, will enliven this clause.

Hon STEPHEN DAWSON: Thank you for that clarification. I am advised that it is any provision in which a registered health practitioner has a duty.

Hon NICK GOIRAN: Which clauses create a duty on a registered health practitioner in our state?

Hon STEPHEN DAWSON: There are quite a lot in the bill, but I can give the honourable member an example. A registered health practitioner would fall foul of this provision, if, for example, they did not lodge a form under clauses 45, 54 or 59(1). There are a range of clauses that that would contravene. There are quite a few throughout the bill.

Hon NICK GOIRAN: Maybe just to speed up the process, because this particular theme does not necessarily have to be dealt with today and does not need to hold up the passage of clause 10, would the minister be agreeable to undertaking, between now and not necessarily tomorrow, but, if possible, prior to us resuming next week, to provide a list of the clauses that a registered health practitioner might contravene that would enliven this clause, and also what penalty or offence would be applicable to that contravention? Could we get a schedule or a table and maybe have that tabled next week?

Hon STEPHEN DAWSON: I do not have a list in front of me, but I will undertake to get a list for next Tuesday. I do not think it would be available before tomorrow, but I can provide that for next Tuesday.

Hon NICK GOIRAN: I thank the minister for that. Would a student who is registered under the national law be capable of professional misconduct or unprofessional conduct?

Hon STEPHEN DAWSON: Can the member clarify whether he is talking about a student or a student doctor? I am not trying to be smart; I am trying to give the honourable member an answer.

Hon NICK GOIRAN: I actually had not considered that, so my question applies to both.

Hon STEPHEN DAWSON: A medical student could not, but a junior doctor could.

Hon NICK GOIRAN: I go back to the schedule that will be prepared hopefully for next Tuesday. Clause 10(2) states —

> Subsection (1) applies whether or not the contravention constitutes an offence under this Act.

For the sake of clarification, it would be good if the different contraventions could be listed, and obviously some of them will have an offence associated with them and some will not. I make that as a point of clarification, and perhaps if that is not clear, we can talk about it behind the Chair after today.

The next question on clause 10 is: how is clause 10 to be read in light of the provisions in clause 113?

Hon STEPHEN DAWSON: Clause 113 essentially provides that a person is not breaching clause 10 if they are acting in good faith. Clause 113 is a protection when a person acts in good faith, and then clause 10 operates outside of that.

Hon NICK GOIRAN: I am not suggesting that there be an amendment; I am just making sure that we all understand clause 10 correctly. In effect, are we saying that if we were to insert into clause 10 the words "in bad faith" after "a contravention", is that how clause 10 would operate in practice; in other words, "A contravention in bad faith of a provision of this act by a registered health practitioner is capable of constituting professional misconduct or unprofessional conduct for the purposes of the Health Practitioner Regulation National Law (Western Australia)", and, conversely, if it is a contravention but it is in good faith, there is no professional misconduct or unprofessional conduct? Is that how we are to read clause 10?

Hon STEPHEN DAWSON: No; not necessarily. Clause 113 mentions good faith. It would not necessarily need to be in bad faith, just not in good faith. There is a difference.

Hon NICK GOIRAN: I will perhaps pick up that issue of good faith when we get to clause 113 but I think it is potentially a disturbing element that given the stakes here, the taking of a patient's life, albeit said to be with the consent of the person, that good faith shields practitioners from any liability whatsoever. But we will look at that at clause 113. Just to round out clause 10, minister, I notice that in the other place on 4 September 2019 there was an exchange between the member for Churchlands and the health minister when the member for Churchlands said —

> Picking up on the contravention of the act, if a mistake is made, what remedies would be available to a patient or, in the worst-case scenario, a family that is left, after a malpractice has occurred with wrong advice or whatever?

The health minister replied —

> The remedies under this bill, as the member would be aware of, are detailed in the relevant clauses. The remedies, as the member has said, under the national health practitioner law would, essentially, relate to the way that AHPRA views the severity of the offence.

The member for Churchlands then asked —

> Is the minister intending to establish some sort of redress scheme attributed to any contraventions of the legislation?

The Minister for Health responded, "No."

Given that the health minister mentions that the remedies under this bill are detailed in the relevant clauses, can the minister identify for the chamber which remedies are detailed in this bill and in which clauses?

Hon STEPHEN DAWSON: Is the honourable member talking about criminal breaches or civil breaches?

Hon NICK GOIRAN: I am talking about any contravention because clause 10(1) refers to —

> A contravention of a provision of this Act by a registered health practitioner is capable of constituting professional misconduct or unprofessional conduct …

Any contravention, as we described, that is not in good faith would be capable of constituting those categories of either misconduct or conduct. I would like to know what remedies would be available to patients, given that the health minister said in the other place that the remedies under the bill are detailed in the relevant clauses. I could not find any clauses that detail that. Perhaps the minister has advice to the contrary.

Hon STEPHEN DAWSON: Under part 6 of the bill there are specific offence provisions, but there are also Australian Health Practitioner Regulation Agency sanctions. With regard to AHPRA notifications and sanctions, I am advised that there are possible outcomes following an AHPRA investigation.

The CHAIR: Order, members. The question is that clause 10 do stand as printed. We are not considering part 6, and I am sure we will not be for some time.

Hon NICK GOIRAN: I have not asked any questions about part 6; I am asking about clause 10(1), which relates to a contravention by a registered health practitioner being capable of constituting professional misconduct or unprofessional conduct. My question is: what remedies are available to a patient or a family member in the event that there is such a contravention? I note from the debate in the other place that the Minister for Health indicated that those remedies are outlined in the bill. It is not apparent to me that that is the case. I am just seeking clarification. I suspect it is not in the bill at all, in which case I think it would be helpful for patients and family members who might regrettably be subjected to a contravention by a registered health practitioner, not in good faith, to be able to know what remedies are available to them.

Hon STEPHEN DAWSON: The patient can lay a complaint to the chief executive officer of the Department of Health or the board, and they will refer to AHPRA. Also, the patient—or, indeed, the family—could take a civil remedy. They could bring legal action and seek that remedy.

Hon NICK GOIRAN: Obviously the patient cannot take civil action if they are dead, but would the family member be —

Hon Stephen Dawson: I said patient or family.

Hon NICK GOIRAN: Yes. Would a family member be able to take civil action if the patient is now deceased?

Hon STEPHEN DAWSON: I am advised that it is up to the court to decide, on a case-by-case basis.

Clause put and passed.

Clause 11: Voluntary assisted dying not suicide —

Hon RICK MAZZA: I have some concerns about this particular clause. Clause 11 states —

> For the purposes of the law of the State, a person who dies as the result of the administration of a prescribed substance in accordance with this Act does not commit suicide.

However, the definition of "suicide" is that it is an act of intentionally causing one's own death. I think that this statement in the bill does not take away from what voluntary assisted dying actually is—that is, the intentional act of causing one's own death. To simply call it one thing and hope that it will be another is nonsense. At the end of the day, voluntary assisted dying is the act of intentionally causing one's own death.

Hon Alannah MacTiernan interjected.

The CHAIR: Order! Members! Members! Members! We are just about at the end of the day.

Hon RICK MAZZA: I understand that the government is probably trying to limit the stigma around suicide, in that voluntary assisted dying is for someone who is terminally ill. The government does not want that stigma. My concern, however, is how this interacts with the commonwealth law about the use of a carriage service. In around August of this year, the Attorney General wrote to Hon Christian Porter in relation to the commonwealth law. I know that this letter has been tabled. The letter states, in part —

> Clause 11 of the Bill makes it clear that voluntary assisted dying is not suicide. Further, I note that clauses 156 and 157 of the Bill state that those clauses do not authorise the use of a method of communication if, or to the extent that, the use is contrary to or inconsistent with a law of the Commonwealth.

Clause 156 refers to being able to use basically telehealth or some form of communication unless there is a conflict with the commonwealth law. The reason I really worry about this is in the circumstance in which a medical practitioner, quite reasonably, refers to the bill for guidance as to whether they can use telehealth or how they will actually administer voluntary assisted dying. If a medical practitioner on a reading of the bill sees that voluntary assisted dying is not suicide, they may go ahead and use a carriage service in some way to communicate with their patient. I also have a letter from one of the advisers that goes back to August and states, in part —

> Victoria has at this stage instructed its health practitioners not to engage in telehealth, but to consult face-to-face. This is in relation to the Commonwealth Crimes Act. The provisions in that Act were included in 2005 to address cyber bullying.

If we retain the clause that voluntary assisted dying is not suicide, there is the possibility that a medical practitioner may refer to the act, which is quite reasonable, for guidance about whether they are able to use telehealth or some other means of communication apart from face to face, and then find themselves offending the commonwealth law and in all sorts of trouble. That is why I have proposed the following amendment at 414/11 —

> Page 10, lines 13 to 16 — To oppose the clause.

The CHAIR: The question is that clause 11 do stand as printed. The function of placing an "amendment" on the supplementary notice paper in the terms proposed by Hon Rick Mazza is actually as a vehicle to make sure that the clause is debated. But, in effect, it is not an amendment as such. The avenue that Hon Rick Mazza needs to take, of course, is simply to vote against the clause. Therefore, we will not treat it as an amendment as such, and I am not proposing any amendment wording, so we return to the question that clause 11 do stand as printed.

Hon STEPHEN DAWSON: I note the view of Hon Rick Mazza, but the government certainly believes in the inclusion of clause 11. I have spoken at length about this issue, both at clause 1 and, indeed, I believe, during debate on clause 5 too. The views of the government are on the record, so I do not feel the need to further explain its view on that. We certainly support clause 11 as it stands.

Hon MICHAEL MISCHIN: I have a few questions about this clause to simply understand some of the rhetoric around it. To start with, I refer to the second reading speech in which the minister—it reflects, I believe, what was said about the bill in the other place—put to us, and I quote —

> I would like to emphasise that this bill has nothing to do with euthanasia. This is about providing assistance to someone who is dying. It is not euthanasia and it is not suicide. It would be wrong to confuse voluntary assisted dying with suicide. The bill specifically provides that a voluntary assisted death is not a suicide.

I take that on board. But then we get to a general proposition, which is —

> Suicide involves the tragic loss of life of a person who is otherwise not dying. Voluntary assisted dying involves a person's choice about the manner of their death when faced with inevitable and imminent death as a result of an incurable disease, illness or medical condition.

Does the government maintain that blanket definition of what is not suicide and what is suicide?

Hon STEPHEN DAWSON: I stand by the second reading speech.

Hon MICHAEL MISCHIN: If it is not suicide, why is it that we need clause 11 in the first place?

Hon STEPHEN DAWSON: This clause reflects the tenor of the bill and the views of the government that voluntary assisted dying is not suicide. It is our belief that suicide occurs when a person takes their own life in circumstances outside that which is permitted by this bill. Voluntary assisted dying is a new concept and we are making it crystal clear in this case, in clause 11, that voluntary assisted dying is not suicide.

Hon MICHAEL MISCHIN: I would like to tease that out a little more. The blanket comment that suicide involves the tragic loss of the life of a person who otherwise is not dying —

Hon Stephen Dawson: Member, could you say that again, please?

Hon MICHAEL MISCHIN: Is the minister telling us that this is not suicide provided that all the strictures and processes under the bill are followed, but otherwise would be suicide?

Hon STEPHEN DAWSON: There are four of us at the table and we have three different views on what the honourable member asked. I am not being obtuse, but does the honourable member mind asking his question again, please?

Hon MICHAEL MISCHIN: Let us try an example. We are told under clause 11 —

> For the purposes of the law of the State, a person who dies as the result of the administration of a prescribed substance in accordance with this Act does not commit suicide.

Let us say that I fulfil all the criteria mentioned in the second reading speech, but I do not get the approval of two doctors. However, I do get hold of a "prescribed substance", within the meaning of clauses 6, 7 and 11, and I administer it myself. Have I committed suicide?

Hon STEPHEN DAWSON: In that case, it would be a decision of the coroner, but it would potentially be suicide.

Hon MICHAEL MISCHIN: Okay. That gets me back to my earlier point: what is this clause for? As I understand it, the minister is trying to tell us that suicide involves the tragic loss of life of a person who is otherwise not dying. Let us say that I am dying from a terminal illness, death is imminent, and I am in terrible pain and distress. I have a number of choices. I could put myself out of my misery by shooting myself or by using one of the other grim ways to hasten my death described in the second reading speech. However, I happen to acquire one of these prohibited substances—perhaps it was left over from someone else's attempt to use this legislation—and I administer it to myself. Have I committed suicide or not?

Hon STEPHEN DAWSON: If I can answer it in this way: the proper execution of this bill is to access voluntary assisted dying and not suicide. However, if a person seeks to breach the bill, clearly they are not following the intended purpose of the bill.

Hon MICHAEL MISCHIN: Sorry, are they or are they not?

Hon Stephen Dawson: They are not.

Hon MICHAEL MISCHIN: So it is suicide—is that what the minister is telling us?

Hon Stephen Dawson: I said it could be.

Hon MICHAEL MISCHIN: Yes—is.

Hon Stephen Dawson: I said it could be.

Hon MICHAEL MISCHIN: What would not make it a suicide? I have not followed the scheme in the legislation but I have achieved the same end—surely it is a suicide, is it not?

Hon STEPHEN DAWSON: I think I answered that it could be, because it is not for us to decide if it was a suicide. That is a decision that the coroner would make.

Progress reported and leave granted to sit again, pursuant to standing orders.