## VOLUNTARY ASSISTED DYING BILL 2019

*Committee*

Resumed from 21 November. The Deputy Chair of Committees (Hon Matthew Swinbourn) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

**Clause 11: Voluntary assisted dying not suicide —**

Progress was reported after the clause had been partly considered.

**Hon ALISON XAMON**: Yesterday, we were debating whether clause 11 should be removed. I rise to indicate that I will not support the removal of this provision and I would like to explain to members why. I recognise that there are some who wish to equate the voluntary assisted dying provisions with the horror of suicide. As someone whose life has been defined by the trauma and horror of suicide, I want to say how much I object to people trying to equate the two.

My grandfather, in his 90s, was dying of cancer and wanted to cut his life short by two weeks, in order to avoid inexpressible suffering and pain—which is what he died with, in his final weeks. My 35-year-old father, strong of body and healthy, but with a troubled mind that was fully capable of recovery, chose to take his life. The fact that people would attempt to equate these two is, for me, abhorrent.

I think it is wrong to try to belittle the trauma of genuine suicide. Suicide is what happens when people give up on life when they have their whole life ahead of them. There is a fundamental difference here. We are talking about people whose time has come, who are at the end of their life, and who are seeking to simply bring forward an inevitable death at the very end. Do not ever try to tell a parent who has buried a child because they have taken their life that the suffering they are going through, the lifelong trauma that they are going to experience, is the same as someone whose time has naturally come to an end and whose body is failing them.

I think it is really, really important that people be very careful when they try to loosely pull together those sorts of provisions, because I think it actually belittles the trauma and the horror of genuine suicide. I feel offended by that, and as someone who is a staunch suicide prevention advocate and will be until the day I die, I am very capable of distinguishing between the provisions in this bill and the horror of suicide.

However, I do have a small amendment that I wish to make. I think there has been an inadvertent error in the drafting, and I am sure the minister, as the former opposition spokesperson for mental health, would have some sympathy with my amendment and would understand why I seek to move it. I move —

> Page 10, line 16 — To delete "commit" and substitute —
>
> die by

I move this amendment because people no longer refer to "committing" suicide. It is recognised as being stigmatising language. If people are not aware of the language that we now use around suicide, I urge them to go to the Suicide Prevention Australia website and look at the language we now use when we talk about the trauma of suicide. People no longer "commit" suicide; that is a hangover from when suicide was in the Criminal Code. Fortunately, it no longer is. We now recognise that suicide is largely a mental health issue, but also an issue of other life circumstances that need to be addressed accordingly. I move that simple amendment because I believe it serves a better purpose within the bill. I also will not support the removal of clause 11 in its entirety.

**Hon MICHAEL MISCHIN**: I can indicate that I would be supportive of such an amendment. I recall that in my contribution to the second reading debate I think I referred to the rather quaint use of the terminology "commit" suicide, which imports the sort of offence that was removed from the Criminal Code some years ago. I queried why it was that we were using that kind of language for what has been acknowledged in both fact and law as being not a criminal or moral offence but simply a tragedy. I indicate that I will support the substitution of the word "commit" with the words "die by" if that is what Hon Alison Xamon has in mind. Might I also say that I am saddened to hear what Hon Alison Xamon has said, because I know her experience in these matters, and I hope that my questioning has not been misinterpreted as trying to conflate the two extremes of action in a way that will trouble her. However, I wish to make a point about the legal status of those sorts of actions, because that will have consequences for the manner in which this bill will operate, not only in the distinction between actions—which will be a fine one—but also in whether the same level of scrutiny will be available to the authorities to ensure that what is done under this bill, or is purported to have been done under this bill in the future, is properly accounted for. I will develop that theme very shortly when I continue the line of questioning that I commenced yesterday. I say at this point that, once again, my sympathies go out to Hon Alison Xamon for her experience in this area, and I hope that my comments have not been misconstrued in a way that will upset her.

I indicate also that the proposed amendment is worthy, and that unless the minister can point out some legal consequence that turns on the word "commit" being necessary for the purposes of this clause, it ought to be supported by the chamber. I asked yesterday what the point of this clause was, and I was told that it fits with the theme and the tone of the legislation. Is there some legal consequence that would require the use of the word "commit" rather than an alternative formulation? I would not want to inadvertently expose people to an undesirable and unintended consequence through a well-meaning amendment that would defeat what the government has in mind. I say that bearing in mind that not only have we had the work of the Joint Select Committee on End of Life Choices, but also the Ministerial Expert Panel on Voluntary Assisted Dying and parliamentary counsel have helped in its drafting. We were assured in the other place by the Premier that this bill was perfection itself when it entered this chamber. Therefore, we need an assurance that this is not simply an inadvertent and infelicitous use of the phrase "commit" but was carefully crafted, because I would not want to interfere with that.

**Hon STEPHEN DAWSON**: I thank Hon Alison Xamon for her contribution, and also for her proposed amendment. I indicate that the government is happy to support the amendment. In fact, the amendment is consistent with the language used in the draft "Western Australian Suicide Prevention Action Plan 2021–2025". My advisers tell me that the change of wording will have no legal consequence. We are of the view that this amendment is warranted and worthwhile. I am told the meaning of the word "commit" is the ordinary English meaning and that it was not intended to import the meaning of the old Criminal Code provision. With those comments, I indicate that the government will support the amendment.

**Hon JACQUI BOYDELL**: I rise to support not only the amendment put by Hon Alison Xamon, but also the principle of her argument around the reason that there is a fundamental difference between an intended suicide and voluntary assisted dying. I do not think anyone could have articulated that in quite the same manner as she has done. I am glad that she has put that to the chamber because that absolutely, in my mind, lays bare any question about whether there is any correlation between voluntary assisted dying or suicide. Therefore, I wholeheartedly support the member's principled view on the matter. I support the amendment.

**Hon TJORN SIBMA**: I also rise to indicate my support for the minor but significant amendment proposed by Hon Alison Xamon. I think it is sound, compassionate and realistic. However, I also want to indicate that although I oppose Hon Rick Mazza's opposition to the entire clause, I do not intend to impugn to him any negative intent; I know him as a person who would not do that knowingly. I have a similar view of suicide versus voluntary assisted dying as enunciated by Hon Alison Xamon; I just indicate that I consider them to be very distinct categories of departure. I will leave it at this: anybody who has witnessed the scene of a suicide would know exactly what I am talking about. I leave it at that.

**Hon ROBIN CHAPPLE**: I commend my colleague for having picked up on this very subtle difference and I certainly will be supporting the amendment moved by my colleague.

**Hon AARON STONEHOUSE**: I rise to support the amendment in this instance, although when we get back to debating the substantive clause, I will have more to say on the topic and the position put by Hon Rick Mazza. At a first reading of this clause, I read "commit" merely to mean to oblige oneself or to commit to an action, rather than any reference to the Criminal Code. However, I understand that it might be read that way and merely changing the language in this instance does not seem to change the effect as far as I can tell. Although I wonder whether rather than "die by", language such as "perform" or "carry out" might have been more suitable. In any case, after surveying the chamber, it seems that there is a significant amount of support for the words "die by" in this instance, so I will not argue the finer points. The effect is the same, from what I read.

**Hon Michael Mischin**: You could probably leave out the words altogether and not have "die by suicide" but just "suicides".

**Hon AARON STONEHOUSE**: The effect does not seem to change insofar as I can tell and I am eager to debate the substantive clause when we get to that point. Therefore, for the time being, I am happy to support the amendment put by Hon Alison Xamon.

**Hon NICK GOIRAN**: The language that I would normally use in this context is just to say "suicide". I associate myself with the element of the remarks by Hon Alison Xamon that it is no longer appropriate to refer to "commit suicide". I have, over many years, retrained myself to not use that language; I just generally talk about a person who suicides. I have no problem with the amendment moved by the honourable member; it achieves the same effect and I think it is worthy of support. However, I foreshadow that I have an amendment of my own on the supplementary notice paper, which this amendment moved by Hon Alison Xamon will not create any impact upon, so this amendment has my support.

**Amendment put and passed.**

**Hon SIMON O'BRIEN**: The question that has just been decided is instructive. I listened very carefully to the words of Hon Alison Xamon and, indeed, have great sympathy for the situation she shared with us. I appreciate the trauma that she and some loved ones around her have suffered and, indeed, I think continue to suffer. I respect that and have great sympathy for it—absolutely. I reach out with those remarks in the first instance.

In contemplating this clause, I want to indicate that that is not an area or a theme that I am seeking to examine. Quite simply, I am more concerned about the actual wording of the clause and what it means in terms of the future administration of the law. We had some discussion about this clause late yesterday and again this morning, and it has all revolved around a sentiment contained in what is proposed in this clause—that is, about whether it is within the tenor or demeanour of the rest of the bill, and about empathy and so on. I think that is a fair way of describing how the minister has expressed it. I actually read the clause quite differently. My attention is drawn to the first phrase, which says —

> For the purposes of the law of the State —

It then goes on to say —

> a person who dies as the result of the administration of a prescribed substance in accordance with this Act does not die by suicide.

It is that first phrase, though, that I think this clause is all about. However, all the discussion has been about the semantics, sensitive though they are, in the balance of the clause. My question on that first part of the clause, which is the words "for the purposes of the law of the state", is this: What law of the state are we talking about? Is it contained only within this proposed act or are there other laws that will be impacted by this consideration?

**Hon STEPHEN DAWSON**: My advisers tell me that this refers to all laws in Western Australia.

**Hon Simon O'Brien**: And what might they be?

**Hon STEPHEN DAWSON**: What laws might they be?

**Hon Simon O'Brien**: What sorts of things do they touch on?

**Hon STEPHEN DAWSON**: I am told that it is every law in Western Australia. It is not a specific law, category or subject, but, indeed, the laws in Western Australia.

**Hon SIMON O'BRIEN**: This is not an attack on the clause per se; I am just trying to get a handle on it, because I think it could be important. I will ask the minister a specific question that has been raised elsewhere. Is this about people with life insurance? If people avail themselves of voluntary assisted dying, could that therefore void an insurance policy that says that the policy will be void if the person dies by their own hand, commits suicide or whatever terminology they use? Is this therefore an attempt to get around that? I make no judgement about whether that is a legitimate thing to do—I am not going there—but it is a valid consideration. If that is one of the drivers of clause 11, we had better know about it to make it explicit.

**Hon STEPHEN DAWSON**: No, honourable member. Insurance and superannuation are private contractual arrangements. This is not about circumventing insurance or superannuation. The Voluntary Assisted Dying Bill specifically provides that a voluntary assisted death is not suicide under Western Australian law. Leaving the Voluntary Assisted Dying Bill silent on life insurance provides agency to all insurers and the public.

**Hon RICK MAZZA**: I just want to make it very, very clear that my opposition to clause 11 is in no way intended to diminish suicide from people in emotional distress—I have also been touched by the horrors of suicide through emotional distress—compared with what we have before us, which is suicide because somebody is reaching the end of their life. That is not my reason for opposing this clause. In fact, I would rather that the bill remained silent on this matter. The reason for my opposition to the clause is more a forensic one on the application of how this would work within the bill. My major concern with it is that the government is still uncertain about whether this could be interpreted as suicide. The email I received on 22 August says —

> Victoria at this stage has instructed its health practitioners not to engage in telehealth …

Clause 156 of this bill refers to not offending the commonwealth law. My opposition to the clause is that I do not want to see a misinterpretation by a medical practitioner that something is not suicide and then later on it be interpreted on the very common application of the definition of "suicide", which is the deliberate ending of one's life. That is my opposition to it. It is the practical application of how this will work, not the distinction between emotional suicide and what we have before us in the Voluntary Assisted Dying Bill. I want Hon Alison Xamon to understand that fully. What I am talking about is the forensic application. I think sometimes we get very emotional, as we should do, but then we have to home in on how this bill will operate and its practical application. That is why I think we may be asking for trouble by retaining clause 11.

**Hon CHARLES SMITH**: I just want to pursue what I think Hon Simon O'Brien was alluding to. I wonder whether the minister could help me with this. How does the government reconcile voluntary assisted dying with legislation such as section 288 of the Criminal Code, which notes that it is a crime to aid another in killing themselves?

**Hon STEPHEN DAWSON**: The short answer is that if the procedures in this bill are properly followed, this clause would override that.

**Hon AARON STONEHOUSE**: I am looking forward to further interrogation of this clause, because I am starting to get a little concerned about how we draw the distinction in this bill, but also in wider criminal law in WA, between what would be physician-assisted or physician-administered voluntary assisted dying and self-administered voluntary assisted dying. With no intention to cause any distress to anybody—I understand how loaded these words can be—self-administered voluntary assisted dying in the most forensic, basic sense, would be suicide, which is the taking of one's own life, whereas when it is physician-administered, it gets a little trickier. I think at its most basic level it would be forensically and technically homicide. That is not to say it is murder or that it is even necessarily criminal, but if a person injected someone with a poison or a voluntary assisted dying substance, it would be the act of one person taking another's life. When we start to redefine things or at least say that something is not what we understand it to be at a forensic level, how we assess an investigated death post–voluntary assisted dying gets very confusing when we try to determine if foul play occurred after all the appropriate procedures were followed. If they were not followed, where do we land within either breach of this act or within the Criminal Code if something goes wrong? Are we talking about somebody who assisted somebody to take their own life, as we understand is already in the Criminal Code, or are we talking about a homicide or something else? It becomes very confusing when we start to say that voluntary assisted dying is not certain things regardless of the circumstances.

It would be just as problematic if we said that voluntary assisted dying is not homicide when the substance is administered by a physician. There may be very serious implications under the Criminal Code. I am paying close attention to not only how this might affect other aspects of the Criminal Code, but also how it might affect post–VAD forensic analysis of the procedure when trying to determine what actually happened when the voluntary assisted dying substance was administered when, at least at law, it is not allowed to be considered as the one thing we know it to be at a forensic level. I am just thinking out loud, I suppose. That is what I am looking at right now. By not remaining silent on this topic, if we are creating more topics for ourselves—aside from the comments I made yesterday about my concern about the changing of terms over time—I am a little concerned about the implications this might have in its intersection with other law and the post–VAD assessment of cases.

**Hon STEPHEN DAWSON**: The issue that the member raised could be discussed further under part 6 of the bill, "Offences", or indeed, part 8 of the bill, "Protection from liability". The member might want to ask further questions when we consider those parts.

I also make the point briefly that this clause also reflects that when a person helps someone access the voluntary assisted dying process in accordance with the bill, they are not assisting suicide; they are assisting with the proper access to voluntary assisted dying.

**Hon MICHAEL MISCHIN**: I listened with interest to the comments that have been made. That gets back to the question I asked initially about the point of this clause. Although I am quoting from the uncorrected *Hansard*—it seems to reflect the explanatory memorandum when I asked what clause 11 is about and what is the point of it—I was told that the clause reflects the tenor of the bill and the views of the government that voluntary assisted dying is not suicide. That is great as far as it goes. We have the blanket statement in the second reading speech that draws a distinction between voluntary assisted dying and the tragedy of suicide and the like. Perhaps some other things have been exposed during some of the contributions. I might be able to assist, even at the risk of the Premier considering that it is a disgraceful antic; we are holding up the passage of the bill and people are suffering while I speak, and I do not mean just because of the sound of my voice! Clause 11 appears to be saying that, for all the purposes of the state, if we follow the very strict procedures that are prescribed under the bill when it becomes law, it is not to be regarded as suicide. When I asked a hypothetical question, the minister did say that if I fulfilled all the criteria in the bill, I would be entitled to end my life by the self-administration of an approved substance or have someone administer that substance to me; if I did not comply with one or more of the provisions or I obtained the approved substance from some other source, I would be committing suicide, but if I tick all the boxes in the bill, then I would not.

The minister would cavil at that and say that it is not for him or the government to say; it is up to the coroner. Of course, the minister now has the benefit of Mr Malcolm McCusker, and I mention that only because he was a member of the advisory panel and also he is an adviser to the Minister for Health and is learned in the law. Prima facie, it would be a suicide if I, being entirely eligible, self-administered; if I did it myself, instead of going through several doctors, I would have suicided. That suicide would be the subject of a coronial inquiry to determine the circumstances

and how it could have been prevented. There would be some public accountability through an appropriate authority for that death, which is the whole point of having a coroner—so that deaths in our community are accounted for. That is how much we value life. However, if a person follows, or at least purports to follow, the procedures in this bill, it will not be a suicide and the coroner will have a death certificate in the case of self-administration that will not even reveal the fact that it was done by way of resort to this bill. That troubles me, because we will be relying not on a proper investigation or on public accountability, but on the word of doctors, and we have already had one public case of a doctor who has claimed to have relieved the suffering of a patient and the police have not even been able to identify whether that was the case. That is the sort of level of accountability we will have. A doctor will come in a couple of days later and say they reasonably think this was done by self-administration under the act and comply with it and fill in a death certificate accordingly, even though they did not witness the act. It could have been a suicide or it could have been a murder, but we will not know from the death certificate. I would like to explore later on just how much insight a coroner would have into these circumstances to account for these deaths. It would take only one death that was in fact a murder concealed by the provisions of this bill to raise concerns for me. That is not through a lack of compassion for those who are suffering and wish to be relieved under this regime. It is a concern that some people may—dare I suggest, people such as Hon Adele Farina's father—by a lack of empowerment in a relationship with a medical practitioner and the like, and thinking that they are doing the right thing by their family, be steered into something that they really do not want. That troubles me. I do not expect that any of the advocates for this—the Premier at the least—will stand up and say, "I should have thought of that and fixed it. Perhaps the Legislative Council should have spent a little more time thinking about it, rather than rushing our bill through."

The other implications of this, I thought, were for insurance policies, so that as far as the law of the state is concerned, a person who follows this procedure cannot have their life insurance negated or somehow affected by reason of resort to this lawful strategy. I would like that confirmed. But, of course, there are life insurance policies that are governed by the laws of other jurisdictions. It is not uncommon for a contract executed in this state to have a provision saying that the contract is governed by the laws of New South Wales, the United States or some other jurisdiction. I would like to know the implications of that, and whether this provision addresses that problem.

The other question has been raised by Hon Aaron Stonehouse about the relationship of the operations of this legislation with the criminal law. I do not have the Criminal Code in front of me but, essentially, it goes something like this: an act causing or accelerating the death of another is a killing, and it is an unlawful killing unless it is authorised, justified or excused by law. If a medical practitioner, even with the best of intentions or for the highest of motives, were to inject a patient with an approved substance without the support of this legislation, that would be an unlawful homicide. Quite apart from being a suicide or assisting in a suicide, it would be an unlawful homicide—an unlawful killing. That does not seem to have been addressed by a similar provision stating that any practitioner or other who assists in this process for the purposes of the law of the state has not committed an unlawful killing, that it is lawful killing, or some other formulation. I would like to know whether that has been considered and to get advice on whether that problem needs to be addressed—the problem that Hon Aaron Stonehouse has touched on. I think that needs to be considered and that we need to be given some comfort on that.

We will deal with it at a later stage, when we come to what needs to be disclosed either to the Voluntary Assisted Dying Board that will be responsible for administering this legislation, or for the purposes of public accountability.

**The DEPUTY CHAIR (Hon Robin Chapple)**: Hon Michael Mischin.

**Hon MICHAEL MISCHIN**: That is so that at least someone will know what is really going on and, in due course be able to provide an appropriate assessment of the merits and deficiencies of the operation of this legislation, understand, through a simple check, how many deaths have been attributed to the regime under this proposed law, verify whether the idea that only a small proportion of people are gaining access to and availing themselves of it is correct, and see whether it is being misused. At the moment, I do not see a great deal of accountability that can be extracted from what is being proposed. That troubles me as well. That is for a later argument down the track but, nevertheless, flows from the way that this is being categorised partially by way of proposed section 11 of the legislation. If the minister can address those matters, it may satisfy me. On the other hand, I might ask some further supplementary questions regarding it, but that will be a pretty good start. I hope that I have been of some assistance by putting quite frankly where my concerns lie rather than by a teasing-out process.

**Hon STEPHEN DAWSON**: I think the member was trying to be helpful, but I am not sure he was that helpful to me. He veered over quite a number of issues.

**Hon Michael Mischin**: I was hoping to save a bit of time.

**Hon STEPHEN DAWSON**: But many of those were addressed under clause 1 and, obviously, clause 1 is a more expansive debate. Many of those will be dealt with later on—some of them under clauses in part 6, part 8 and in other

clauses. Those will be more appropriate places to deal with them. There were a number of questions. I make the point that there will be consequential amendments to the Coroners Act as a result of this bill, and clauses 165 and 166 outline those. Clauses 112 to 114 provide for protection from any criminal liability—for example, for unlawful killing under the Criminal Code—for persons acting in accordance with the act. There was also a question about the interaction of this bill and the commonwealth because of provisions in the commonwealth Criminal Code Act. Those issues were asked and addressed at clause 1. I also make the point that the board could refer any concern about a voluntary assisted dying case to the coroner at any stage. A doctor will not complete a death certificate unless satisfied as to the cause of death. Regarding notification, when the medical practitioner reasonably believes or knows that the cause of the person's death was the administration of a voluntary assisted dying substance in accordance with this bill, they must notify the Voluntary Assisted Dying Board in writing of the patient's death on an approved form. In this way, the board will be able to maintain complete and accurate statistics of participation in voluntary assisted dying in WA, and the information will be provided to the Australian Bureau of Statistics and available in a de-identified form to Parliament and the community so that we can form a view on how well the legislation is operating. They were all the pieces of advice I have been given in relation to the comments specific to this clause, but obviously members will get the chance to further tease out or ask questions on some of those issues at more appropriate clauses later.

**Hon MICHAEL MISCHIN**: I also raised specifically the point of this clause and how it interacts with the other matters, and yes, I know them. But the minister said that it only reflects the tenor of the bill. Does it? I ask specifically: to what extent will it preserve life insurance payouts, for example, under contracts governed by laws of another state? Will it protect a person's entitlement to a payout?

**Hon STEPHEN DAWSON**: I have addressed that issue earlier today. I will say it again and I will give the member some further information. This also was an issue addressed at clause 1; we had a very expansive debate. No-one can possibly expect me to continue to go over issues in the bill countless times. There was a very broad discussion at clause 1. I will make this point, generally. It was a very expansive conversation and line of questioning at clause 1. If I referred to answers previously, whether it was at clause 1 or clause 5, I do not propose to go into that level of detail again at every clause to the same extent that I went into at clauses 1 and 5, because I do not think it is appropriate. I will give the honourable member an answer. I make that point generally; there are standing orders about repetition for me as well as everyone else. Insurance is a matter between the insurer and the policyholder. I make the general point that I do not propose to keep going over these points again. With the greatest respect to honourable members in this chamber, if they have been away from the chamber on urgent parliamentary business at clauses 1 or 5, or earlier in the debate, it is not for me to go over those points again. I will provide a concise answer at the appropriate time, but I do not propose to have an expansive debate at every clause on the same issue multiple times. I do not think it is appropriate and Parliament would not expect that of me.

As I said, insurance and superannuation are private contractual arrangements. Leaving voluntary assisted dying silent on life insurance provides agency to all insurers and the public. People can usually access entitlements when they are terminally ill and expected to die within a certain time frame. Upon diagnosis, the individual would either already have life insurance or not; they may be able to take out life insurance after being diagnosed. Many life insurance policies include terminal illness cover, so a person who is diagnosed with a terminal illness and is not expected to live more than 12 months will be entitled to receive their benefits in full prior to their death. Many Australian life insurance policies cover suicide, but only after a specified exclusion period. I am advised that that is usually around 13 months.

**Hon AARON STONEHOUSE**: I appreciate the effort the minister has gone to in trying to get us full and frank answers. It is a credit to him, and it is a credit to the processes of the Legislative Council. Thank you for that. I want to make a couple of comments. The discussion on how this might impact insurance policies makes me a little concerned, perhaps from another perspective. I know it is weird to say so, but the idea of redefining or excluding a certain interpretation of voluntary assisted dying, and that impacting on an existing contract, concerns me somewhat. It seems to undermine the sovereignty of the contract. Someone has a contract that they have entered into voluntarily with their insurance company, and then the state comes along and states that something is no longer that. That then has implications and impacts on an insurance company's contract. That concerns me a little, although I think I might be in the minority expressing that view. It is not that I really care about insurance companies in this case—I do not—I just care about the institution of contracts and keeping those intact, and not trying to retrospectively alter the conditions or terms of the contract. This would not really change the terms of the contract, but it would at least redefine something that we understand now in different terms, and that would have an impact on it. That makes me a little uncomfortable. In any case, it will really depend on the insurance policy and on the contract as to whether that has an impact and how it might have an impact. As the minister has said,

this may not affect some policies at all, but it does make me a little uncomfortable when we go back and redefine things in this way.

I am looking at clause 11 and the language of it, and picking up on something that Hon Michael Mischin was talking about. I forewarn people who find this topic a bit distressing. I normally speak in pretty frank language about this kind of stuff, but I will try to be as sensitive as I can. The unamended clause read —

> 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.

I would like to focus on the aspect of "in accordance with this Act". There might be a couple of ways of reading this. For instance, a patient may have followed the procedures of this act, obtained the substance, took it and died as a result of that, but it was then determined that some form was not filled out properly or the coordinating doctor did not dot their i's and cross their t's. If that person died from a voluntary assisted dying substance, but not in accordance with the act because the procedure was not followed fully, it seems to me that clause 11 would not apply in that case. In those cases, their death could be viewed as a suicide, or at least the prohibition on considering it a suicide would not apply in that instance. I would like the minister to confirm that for me—whether I am right in my reading and understanding of that.

**Hon STEPHEN DAWSON**: Clause 51, in division 6 of part 3, provides that a technical error will not invalidate the request and assessment process. We can delve into that issue further at that stage.

**Hon NICK GOIRAN**: I will leave it to the honourable member to continue to pursue that. I think it is an excellent line of questioning—ascertaining what would be a contravention under clause 10 that would trigger whether clause 11 applies or does not apply. I know that the minister has indicated that, hopefully, by Tuesday, we might have a list of those contraventions and the offences. We will look at that next week when we get to it, but there will be a range of contraventions on that list that will be tabled by Tuesday next week. It will be interesting, Hon Aaron Stonehouse, to know which one of those contraventions in that list that gets tabled next week triggers whether clause 11 is in play. My question picks up on a theme raised by Hon Rick Mazza. I am keen to know, notwithstanding that the proposal is that clause 11 be amended, if clause 11 were to pass in its current form, would the death of a person as a result of the administration of a prescribed substance in accordance with this act still be considered a suicide under commonwealth law?

**Hon STEPHEN DAWSON**: Yes, it would, because this applies only to Western Australian law.

**Hon NICK GOIRAN**: It is unfortunate that Hon Rick Mazza is away on urgent parliamentary business because I know that this point was very much at the heart of his proposal that this clause be opposed. If I understood his rationale, he said that he was concerned that medical practitioners might be left in some state of confusion because, as the minister can understand, if a medical practitioner in Western Australia is trying to understand the VAD scheme and to comply with the law, they will go through this legislation; they are not going to pause for a moment and consider commonwealth law at the same time. If that is the case, one can understand why a medical practitioner could read clause 11 and say, "If we proceed in accordance with this act, it's not a suicide, so therefore I have no problems with any law; for example, I could continue to use telehealth and the like." I think that this demonstrates that what Hon Rick Mazza has said is a legitimate concern and is worthy of further consideration by members.

I have an amendment standing in my name on the supplementary notice paper, but before I move to that, I have a concern that a medical practitioner might be unclear about their duty of where to refer a person. The context of that is the Lifeline website. The Lifeline website lists the changes in a person's life that might make them more at risk of ending their life by suicide. The Lifeline website lists these four situations —

- Recent loss (a loved one, a job … a relationship …
- Major disappointment (failed exams, missed job promotions)
- Change in circumstances (separation/divorce, retirement, redundancy, children leaving home)
- Mental disorder or physical illness/injury

The Lifeline website goes on to state —

> Events and life changes —

Including physical illness —

> can be difficult and sometimes devastating. Most people who experience them don't consider suicide, but some do. Be aware of:

- How the person feels about what's happened
- What it means to them
- Whether the pain feels bearable

Interestingly, Beyond Blue's website also identifies physical illness or disability as a risk factor, or a vulnerability factor, which increases the likelihood of suicidal behaviour. If this bill is passed and a person with a terminal illness indicates that they wish to die, should a medical practitioner refer them to a Lifeline or Beyond Blue counsellor or to a voluntary assisted dying care navigator?

**Hon STEPHEN DAWSON**: The medical practitioner would make a clinical decision. It is probably not for Parliament to speculate on the clinical decisions of medical practitioners; however, the issue would certainly be covered under the implementation phase of the bill. There would be education and training provided to practitioners who want to participate in the actions under this bill. Certainly, I cannot speculate on that issue.

**Hon NICK GOIRAN**: The Joint Select Committee on End of Life Choices received submissions from the State Coroner. I was interested in the exchange that took place between the minister and the shadow Attorney General on the role of the coroner. The coroner's supplementary submission states —

> In some cases, the deceased suffered from both mental and physical conditions which may have contributed to their intentional self-harm. In some instances, it was difficult to determine if the mental or the physical condition made a more significant contribution to their intentional self-harm based on the information provided within the attached documentation …
>
> In addition, it should be noted that the inclusion of reference to the deceased's physical condition is not standardised across coronial documentation. As such, in some cases, it was difficult to ascertain the extent to which the deceased's condition influenced their motivation to self-harm.

My question is: what feedback has the government obtained from the coroner on clause 11 of the bill?

**Hon STEPHEN DAWSON**: The coroner did not provide any advice on clause 11, but we note the coroner's view as provided in her evidence to the joint select committee. She said —

> It is a different nature, a different type of death … from my perspective, if this does come to pass, then I think it is different to a suicide.

**Hon NICK GOIRAN**: There is an amendment standing in my name at 155/11 on supplementary notice paper issue 9. However, listening to the debate that has taken place—I am particularly mindful of the remarks made by Hon Rick Mazza—I am not inclined to move that amendment. I am going to move a substituted motion. I am glad that Hon Rick Mazza is back from urgent parliamentary business. While he was away, the minister was able to confirm the honourable member's suspicion that notwithstanding clause 11 in the bill, under commonwealth law, exactly the same thing would be classed as a suicide. I share the honourable member's concern that this will only confuse medical practitioners who, quite understandably, would look only at this legislation and would not have at their disposal the commonwealth statute and be reading through it to try to understand that this particular clause has no bearing on commonwealth law. If they were to counsel somebody by way of an electronic communication or carriage service, they would be in breach of commonwealth law. That is a big problem for medical practitioners. I am not personally satisfied that it is satisfactory to simply say that we will deal with that in the implementation phase in the hope that the implementation is good and sufficient to train medical practitioners.

The amendment in my name at 155/11, which I do not propose to move because I will move a substituted one, was seeking to concede to the government's position and say, "This type of death is not a suicide because the government and the Parliament have said so, but it is something, so what is it? If it is not a suicide, what is this kind of death?" The proposal was that if it were a death as a result of a section 57 self-administration process, we would describe that as assisted suicide, and if it were by way of a section 58 death or administration by a practitioner, it would be voluntary euthanasia. I am inclined not to move that at this stage, because I think it will re-enter the whole debate about voluntary euthanasia, and that has been had. I do not want that to be a distraction from the good contributions made by members so far. Instead, I move —

> Page 10, line 16 — to delete "suicide" and substitute —
>
> suicide but is taken to have died by assisted suicide —
>
> (a) if the prescribed poison was self-administered in accordance with section 57; or

(b) if the prescribed poison was administered by an administering practitioner in accordance with section 58.

**The DEPUTY CHAIR**: In effect, the amendment is similar to the original proposed amendment on the supplementary notice paper but slightly altered by adding the words "by assisted suicide" and removing at the end of paragraph (b) "by voluntary euthanasia."

**Hon NICK GOIRAN**: Before we proceed further, I seek leave to amend the amendment that is before us, because on two occasions the word "poison" has been used and the correct word is "substance". I seek leave to amend that, and I am happy to sign a corrected copy.

**Amendment, by leave, altered.**

**Hon STEPHEN DAWSON**: Can I indicate that we are not supportive of the altered amendment. We do not support the insertion of the term "assisted suicide". I have indicated previously—certainly in debate on clause 1 and indeed probably on clause 5—why the term "assisted suicide", amongst other terms, is not appropriate for the bill. We are committed to the term "voluntary assisted dying" for this bill, and we do not support this amendment.

**Hon NICK GOIRAN**: If I understand correctly, is the minister then saying that the person is taken to have died by voluntary assisted dying?

**Hon STEPHEN DAWSON**: No, I am not saying that, honourable member. What I am saying is that we do not want to change the clause as it stands.

**Hon NICK GOIRAN**: Minister, if they have not died by suicide, assisted suicide or voluntary assisted dying, what have they died of?

**Hon STEPHEN DAWSON**: What we are saying in this clause is that voluntary assisted dying is not suicide.

*Division*

Amendment, as altered, put and a division taken, the Deputy Chair (Hon Dr Steve Thomas) casting his vote with the ayes, with the following result —

Ayes (5)

| | | |
|---|---|---|
| Hon Simon O'Brien | Hon Aaron Stonehouse | Hon Nick Goiran *(Teller)* |
| Hon Charles Smith | Hon Dr Steve Thomas | |

Noes (27)

| | | | |
|---|---|---|---|
| Hon Martin Aldridge | Hon Peter Collier | Hon Colin Holt | Hon Matthew Swinbourn |
| Hon Ken Baston | Hon Stephen Dawson | Hon Alannah MacTiernan | Hon Dr Sally Talbot |
| Hon Jacqui Boydell | Hon Colin de Grussa | Hon Rick Mazza | Hon Colin Tincknell |
| Hon Robin Chapple | Hon Sue Ellery | Hon Kyle McGinn | Hon Darren West |
| Hon Jim Chown | Hon Diane Evers | Hon Michael Mischin | Hon Alison Xamon |
| Hon Tim Clifford | Hon Adele Farina | Hon Martin Pritchard | Hon Pierre Yang *(Teller)* |
| Hon Alanna Clohesy | Hon Laurie Graham | Hon Samantha Rowe | |

**Amendment, as altered, thus negatived.**

**The DEPUTY CHAIR**: Honourable members, Hon Nick Goiran's second amendment to clause 11 therefore lapses.

**Hon NICK GOIRAN**: Mr Deputy Chair, I am not sure about that. I would just like to ask a question of the minister. The further amendment that stands in my name on the supplementary notice paper at 156/11, which I am not necessarily proposing to move, seeks to make clear that it is not the intention of clause 11 to in any way limit the information a medical practitioner may include in a certificate given under section 44 of the Births, Deaths, and Marriages Registration Act 1998. We are wanting to make sure that a medical practitioner is still free and at liberty to record whatever information they deem appropriate, notwithstanding what is in clause 11. Can the minister confirm that that is the case, or does clause 11 impose some limitation; and, if so, what kind of limitation?

**Hon STEPHEN DAWSON**: The short answer is no. Clause 81 applies.

**Hon NICK GOIRAN**: The answer is no, clause 81 applies. Clause 81, "Notification of death", lists what a coordinating practitioner is to do with regard to a death certificate. I note that clause 81(6) states —

> The medical practitioner must not include any reference to voluntary assisted dying in the cause of death certificate for the person.

Do I take it that under clause 11, in conjunction with clause 81, a medical practitioner will not be able to record on the death certificate that the person has died of voluntary assisted dying? They will not be able to do that, and they will not be able to record "suicide", so what will they be able to record?

**Hon STEPHEN DAWSON**: If a person has undergone voluntary assisted dying, it will not be on the death certificate. If a medical practitioner suspects suicide, they will refer to the coroner to make that finding.

**Hon NICK GOIRAN**: I am in two minds about whether to ask the minister this question now or leave it, because my question is about what can be recorded on the death certificate. We will leave it to that stage. I indicate that I will be opposing this clause.

**The DEPUTY CHAIR**: Hon Nick Goiran, you will not be moving amendment 156/11?

**Hon NICK GOIRAN**: No, because the minister has indicated that there is no limitation. I think the answer earlier was that a medical practitioner is at liberty to write whatever they like on the death certificate. Let us just clarify that again so that we are clear: clause 11 does not limit what a medical practitioner can put on the death certificate.

**Hon STEPHEN DAWSON**: No, it does not.

**Hon NICK GOIRAN**: I thank the minister for that confirmation. That is precisely why I will not be moving the amendment standing in my name. The minister is confirming that that is already a matter of law. I could say let us put it in there to put it beyond doubt, but I imagine, given that I am the author of the amendment, that it will not receive much support from the government, so there is no point. If it is already in the bill, according to the minister's advice, let us be satisfied with that. Nevertheless, minister, I will be opposing the clause. The reason is precisely the concern articulated by Hon Rick Mazza. This has been a very beneficial interrogation of clause 11. We now have on the record, I think for the first time in this whole debate, in both the other place and this place, and outside, that, according to the government, a death under this bill is a suicide under commonwealth law. That is pretty telling, members. The commonwealth is going to say this is a suicide, but we are about to say it is not a suicide. That is a plain inconsistency, and I am not going to support that.

**The DEPUTY CHAIR**: Hon Nick Goiran, you will not be moving the amendment in your name, 156/11; therefore, the question before the chamber is that clause 11, as amended, be agreed to.

**Hon RICK MAZZA**: I have just one question. I am not trying to labour this point too much, but just before we divided, the question was asked whether voluntary assisted dying was suicide, and the minister very ardently said no, voluntary assisted dying is not suicide. I do not have the *Hansard* in front of me, but that is my recollection in general terms. I know that we picked up on this in the debate on clause 1 and we thrashed it out somewhat. But I would like to confirm again, if the government is so certain that voluntary assisted dying is not suicide, why is the government going to advise medical practitioners not to use telehealth or an electronic communication in order to consult patients?

**Hon STEPHEN DAWSON**: I think that this issue will probably be aired again at clause 156. Under the act, it will not be suicide; we cannot legislate for the commonwealth.

**Hon ADELE FARINA**: Can the minister clarify for the record whether that will then create an inconsistency between state and commonwealth law and bring about the application of, I think, section 109 of the commonwealth Constitution?

**Hon STEPHEN DAWSON**: I am told that the short answer is no.

**Hon ADELE FARINA**: Would the minister please explain the reason for the advice that he has just given the chamber?

**Hon STEPHEN DAWSON**: The commonwealth does not legislate with respect to suicide; it does have power to legislate with respect to carriage services, which is a different issue.

*Division*

Clause, as amended, put and a division taken, the Deputy Chair (Hon Dr Steve Thomas) casting his vote with the noes, with the following result —

Ayes (24)

| | | | |
|---|---|---|---|
| Hon Martin Aldridge | Hon Stephen Dawson | Hon Colin Holt | Hon Tjorn Sibma |
| Hon Jacqui Boydell | Hon Colin de Grussa | Hon Alannah MacTiernan | Hon Matthew Swinbourn |
| Hon Robin Chapple | Hon Sue Ellery | Hon Kyle McGinn | Hon Dr Sally Talbot |
| Hon Tim Clifford | Hon Diane Evers | Hon Michael Mischin | Hon Darren West |
| Hon Alanna Clohesy | Hon Adele Farina | Hon Martin Pritchard | Hon Alison Xamon |
| Hon Peter Collier | Hon Laurie Graham | Hon Samantha Rowe | Hon Pierre Yang *(Teller)* |

Noes (9)

| | | |
|---|---|---|
| Hon Ken Baston | Hon Simon O'Brien | Hon Dr Steve Thomas |
| Hon Jim Chown | Hon Charles Smith | Hon Colin Tincknell |
| Hon Nick Goiran | Hon Aaron Stonehouse | Hon Rick Mazza *(Teller)* |

**Clause, as amended, thus passed.**

**Clause 12: Inherent jurisdiction of Supreme Court not affected —**

**Hon NICK GOIRAN**: To whom does this clause provide protection?

**Hon STEPHEN DAWSON**: This clause provides that nothing in the bill affects the inherent jurisdiction of the Supreme Court. This is intended to make clear that the parens patriae jurisdiction of the Supreme Court is not excluded. This has often been raised as an issue for matters relating to assisted dying, so an express provision will avoid all doubt. The Supreme Court may, in the exercise of its parens patriae jurisdiction, make orders for the protection of vulnerable people such as children, the mentally ill and the elderly. What is relevant for present purposes is that the parens patriae jurisdiction may be invoked for people who have mental capacity but whose autonomy has been compromised because they are under constraint or are subject to coercion or undue influence. In one case in the United Kingdom, the court granted an injunction to restrain a man who was living with his elderly parents from engaging in various forms of conduct towards his parents, including assaulting or threatening to assault them, or preventing his parents from having contact with friends and family members. An order was also made inviting the official solicitor to investigate the parents' true wishes and ascertain whether they were operating under the influence of their son in relation to the contact they had with him.

**Hon NICK GOIRAN**: Could the jurisdiction of the Supreme Court in this instance be invoked to intervene in a voluntary assisted dying request and assessment process to prevent the supply or administration of a voluntary assisted dying substance when the decision-making capacity of a person is being challenged?

**Hon STEPHEN DAWSON**: The answer is yes.

**Hon NICK GOIRAN**: Who can make an application to the Supreme Court in relation to a voluntary assisted dying request and assessment process? For example, could a family member be a potential applicant? What class of persons could make a relevant application in this instance?

**Hon STEPHEN DAWSON**: I am told it is any person who has an interest in the care and welfare of the interested person.

**Hon NICK GOIRAN**: Is the phrase "the interest in the care and welfare of a person" a defined term? It is obviously not a defined term in this bill, but is it defined in some other provision or is there some case law that would set out the classes of persons who would qualify as an interested person in the care and welfare of another?

**Hon STEPHEN DAWSON**: It would depend on the factual circumstances. The court would decide in each case whether someone has standing. I am told it is well recognised in common law. In the case of an elderly person, for example, it could be the local government authority that is providing service—care and welfare service—to that person, but the court will decide the standing.

**Hon NICK GOIRAN**: I am interested to know the hierarchy of family members who would be able to apply in this instance. For example, if a son were concerned about the care and welfare of his mother, would the fact that he has a concern for the care and welfare of his mother be enough to be considered as standing—as having an interest in it—or does the interest that the minister talked about refer to something else? I am mindful of the case that was raised when we last had one of these debates, I think in around 2009–10; Brightwater Care Group (Inc) v Rossiter. Christian Rossiter was an individual who I had the honour and privilege of visiting with one of my former parliamentary colleagues prior to that case with Brightwater. The point is that Brightwater clearly had an interest in his care and welfare because it was the provider of the care and welfare. That is quite different from, for instance, a son who might not be providing the care and welfare for his mother. Would that person still qualify?

**Hon STEPHEN DAWSON**: I cannot give the member a definitive answer to that hypothetical question about someone's son. The court would need to determine, in each case, whether an applicant is someone with an interest.

**Hon NICK GOIRAN**: I respect that response but it troubles me somewhat. The context is that quite a few of my constituents have raised their concern about this part of the bill and the hypothetical scenario of an 18-year-old, who is clearly an adult person. Let us assume that that 18-year-old has decision-making capacity. I understand—I have relayed this back to those constituents—that this bill would allow that person to proceed with all of their rights under this legislation without any conferral with a family member. As a father of several children, one of whom is 17 and soon to be 18, it sends a chill down my spine that an 18-year-old would be able to proceed with voluntary assisted dying without conferring with their family. I accept that an 18-year-old obviously has rights under the laws of our state, including the right to autonomy, decision-making capacity and so forth; however, it does trouble me. I would be interested to know in what circumstances a parent of an 18-year-old with a terminal illness would not be able to intervene in this situation, make application to the Supreme Court and be determined as not having an interest in the care and welfare of, in this scenario, their son.

**Hon STEPHEN DAWSON**: I guess they could intervene and go to the Supreme Court but it is up to the Supreme Court to decide whether they have standing. I also make the point that many things an 18-year-old does would probably put chills down the spine of a lot of us!

**Hon NICK GOIRAN**: I accept that, though nothing compares with the final consequences of this particular regime. This situation is irreversible.

Given the very short time frames in this legislation—I think the minister previously referred to a period of nine days—what measures are being put in place by the government to ensure urgent consideration and access to legal aid if somebody wants to avail themselves of this Supreme Court option?

**Hon STEPHEN DAWSON**: It is not part of the bill. The Legal Aid Commission comes under a different act.

**Hon NICK GOIRAN**: I understand that. I understand the purpose of clause 12 is that the government wants to put beyond doubt that applications to the Supreme Court can be made by family members or any person who has an interest in the care and welfare of the person. I am saying that this is the first time under Western Australian law we will have this short, compressed time frame, possibly nine days, in which an 18-year-old with a terminal illness can access voluntary assisted dying, and not consult with their family. I would like to know that a Western Australian family would have access to legal aid in that very urgent situation—that is, having to apply in that nine-day period. Is that under active consideration by the government? Has it been given any consideration? Would a family member in that particular situation even have access to legal aid?

**Hon STEPHEN DAWSON**: They could apply for legal aid but it would be up to Legal Aid WA to determine the merits of the case.

**Hon NICK GOIRAN**: Just to finish off on this particular theme, I obviously understand that a family member could apply to Legal Aid WA. My concern is: is a conversation happening at the moment within government, or will a conversation happen within government, to say to Legal Aid, "If you get one of these applications, you don't necessarily have to approve it, because obviously there are criteria"—personally, I would like Legal Aid to approve it; nevertheless, that is a decision for government—"but you're going to need to drop everything and make sure that you consider this application as a priority because there's no point in considering the application after 10 days if the person has died after nine days"?

**Hon STEPHEN DAWSON**: I make the point that the government would not seek to interfere in the decision-making of Legal Aid about how it uses its resources. A person could approach Legal Aid, and that would obviously be considered on its merits. Following the passage of the bill, during the implementation phase, there could be dialogue between the Department of Health —

**Hon Nick Goiran**: Or there will be.

**Hon STEPHEN DAWSON**: "There could be" is probably the answer. There could be dialogue between the Department of Health and Legal Aid identifying this clause. Then it would be for others to decide the capacity of Legal Aid and whatever else. Legal Aid might talk to government in the future about resources or whatever.

**Hon NICK GOIRAN**: I hope that is taken up by somebody in government.

This inherent jurisdiction of the Supreme Court does not extend to deceased persons; therefore, an application to the Supreme Court must be made before the administration of the voluntary assisted dying substance. If the death of the person had already occurred, how would the lawfulness of the request and assessment process be reviewed if questions were raised about the decision-making capacity of the person prior to their death?

**Hon STEPHEN DAWSON**: That would be done by the Voluntary Assisted Dying Board.

**Hon NICK GOIRAN**: My final question on clause 12 is: why is it necessary, given that no act can affect the inherent jurisdiction of the Supreme Court?

**Hon STEPHEN DAWSON**: I am told that it has been included to ensure that there is no possible doubt. Similar provisions have been included in other acts. The one that has been brought to my attention is the Children and Community Services Act 2004, but my advisers tell me that it has been used elsewhere.

**Hon NICK GOIRAN**: I just make the observation that if it is being included to make sure that it is clear and beyond any doubt—it sounds like it is beyond any doubt anyway and we are just including it for the sake of including it—it is perhaps no different from the amendment I flagged earlier to indicate that clause 11 is not intended to limit the information that a medical practitioner may include in a certificate given under section 44 of the Births, Deaths and Marriages Registration Act. It seems to me that there is a bit of a double standard in the drafting of the legislation; notwithstanding that, if it does no harm, and keeping in mind the remarks that I made earlier, I hope that someone in government has a conversation with Legal Aid WA to say that once this legislation is operative, which will be in at least 18 months' time, those applications will be given priority consideration.

**Clause put and passed.**

**Clause 13: Relationship with *Medicines and Poisons Act 2014* and *Misuse of Drugs Act 1981* —**

**Hon NICK GOIRAN**: What are the conflicts and inconsistencies that this clause is concerned with?

**Hon STEPHEN DAWSON**: It is included because we want to address any potential inconsistencies. It is about futureproofing the bill.

**Hon NICK GOIRAN**: As far as the government is concerned, there are no conflicts or inconsistencies with any provisions in the Medicines and Poisons Act or the Misuse of Drugs Act.

**Hon STEPHEN DAWSON**: No, we do not believe there are. We have sought to address those issues through express provisions in the bill and consequential amendments.

**Hon NICK GOIRAN**: It is interesting that even though the government cannot identify any provisions in which there is an inconsistency or a conflict, it is taking this measure to put it beyond doubt. Yet I seem to recall that in a dialogue that the minister had with Hon Charles Smith about an earlier clause today, he indicated that, to the extent that there is a conflict between this legislation and the Criminal Code, this legislation would prevail. If that is true, should we not include the Criminal Code in clause 13?

**Hon STEPHEN DAWSON**: No, we do not think it is necessary, because this legislation will prevail.

**Hon NICK GOIRAN**: That is a circuitous situation. If this act prevails, the logic that the minister has just given about the Criminal Code must surely follow for the Medicines and Poisons Act and the Misuse of Drugs Act. As far as I understand, the Criminal Code does not have some special status that makes it impeachable, and the Medicines and Poisons Act and the Misuse of Drugs Act do not have some kind of second-class status in the statutes of Western Australia. They are all the same. Hon Charles Smith has rightly identified a specific provision in which there is a conflict, and it has been acknowledged by the minister. The minister has indicated that this legislation will prevail in that conflict. In relation to this clause, I have asked the minister what conflicts exist with the Medicines and Poisons Act and the Misuse of Drugs Act and the minister has said, "Nil. We can't find any. But just in case we're wrong, we want to make sure that we put this in place." At the very least that is illogical. I ask for some clarification, or, if there is an unwillingness to provide that, would there be any harm in including the Criminal Code in the list of statutes captured by clause 13?

**Hon STEPHEN DAWSON**: We rely on the common law principle that the latest statute prevails over the earlier when a provision is inconsistent. Either or both the Misuse of Drugs Act and the Medicines and Poisons Act could be amended to create an inconsistency in the future.

**Hon Nick Goiran**: Is it same with the Criminal Code?

**Hon STEPHEN DAWSON**: We do not believe that that inclusion is needed in the legislation before us.

**Hon NICK GOIRAN**: We will take a little longer on this then. We have to apply the same standard and principles with our statutes in Western Australia. Clause 13 is either necessary or unnecessary. The minister indicated to us that it is the government's preference to have it in the legislation, yet he cannot identify a single clause, a single sentence or, dare I say it, a comma in the Medicines and Poisons Act 2014 or the Misuse of Drugs Act 1981. He cannot identify a single thing in those two acts, yet he wants us to agree to clause 13. When Hon Charles Smith brings to the minister's attention that section 288 of the Criminal Code is in conflict and the minister agrees with

him and says, "Don't worry about it, member, because this act prevails", and I say to him now, "Why don't we include that?", he says that it is not necessary. That is illogical. Surely, if we are going to say, according to the minister, that clause 13 is necessary as a futureproofing mechanism, because—if I understand the minister's answer correctly—his concern is that perhaps in the future, whether it be this Parliament or another, the Medicines and Poisons Act or the Misuse of Drugs Act might be changed and he wants to ensure that under no circumstances is anyone ever going to interpret that the latter amendment will prevail over this legislation, the same logic will apply with the Criminal Code. Can the minister explain to us why it is necessary for us to include the Medicines and Poisons Act and the Misuse of Drugs Act but not the Criminal Code?

**Hon STEPHEN DAWSON**: The Criminal Code makes it an offence to assist a suicide; this act before us says that it is not suicide. The Criminal Code does not regulate poisons, whereas the Misuse of Drugs Act and the Medicines and Poisons Act do. I have already said that we believe we have already found inconsistencies between those two acts, and we have sought to fix those by express provisions in this act or by consequential amendments to other acts. As I said earlier, should an issue arise in the future, or should the MDA and the MPA be amended to create an inconsistency, then this general provision will allow us to address that issue.

**Hon NICK GOIRAN**: I draw to the attention of the minister that clause 13 does not draw the Medicine and Poisons Act and at the Misuse of Drugs Act together; it looks at any inconsistency with this bill —

**Hon Stephen Dawson**: Sorry, if you thought I was drawing the two together, I wasn't. I was saying any inconsistency between this and the others.

**Hon NICK GOIRAN**: I draw to the minister's attention that, in part 11, six Western Australian statutes are sought to be amended. Why are only the fifth and the sixth included in clause 13, and not the first four?

**Hon STEPHEN DAWSON**: The others do not regulate poisons.

**Hon NICK GOIRAN**: Is the only reason that clause 13 is necessary a concern about poisons?

**Hon STEPHEN DAWSON**: Yes.

**Hon NICK GOIRAN**: What other Western Australian statutes engage poisons?

**Hon STEPHEN DAWSON**: My advisers are not aware of any other such statutes.

**Hon NICK GOIRAN**: That gives me great comfort, minister. Is there any other Western Australian statute with which there could be a conflict or an inconsistency with this piece of legislation before us?

**Hon STEPHEN DAWSON**: We do not know of any at all.

**Clause put and passed.**

**Clause 14: When person can access voluntary assisted dying —**

**Hon NICK GOIRAN**: I acknowledge that other members have amendments to clause 14 on the supplementary notice paper, but I have one theme I want to pursue with the minister at the moment. Section 6 of the Victorian Voluntary Assisted Dying Act 2017 is the equivalent to the clause before us. Section 6 of the Victorian legislation includes the requirement that a person is subject to a voluntary assisted dying permit. I draw members' attention specifically to section 6(g) of the Victorian Voluntary Assisted Dying Act 2017. Why is it that the permit process has not been included in the Western Australian bill?

**Hon STEPHEN DAWSON**: In the WA context, the provisions in the Voluntary Assisted Dying Bill and the Medicines and Poisons Act 2014 provide appropriate mechanisms to ensure safe and appropriate prescription, supply and dispensing of the voluntary assisted dying substance. The permit system adopted in Victoria is a bureaucratic layer that is based on its existing medicines regulation model and does not confer additional protection. The WA bill reflects practices consistent with how medicines and poisons are issued in this state. We already have our own permit and authorisation system built into the Medicines and Poisons Act; thus, there is no need to replicate this in the bill. A permit system in the WA context does not materially add any further safety, but may cause delays to access for people. Furthermore, express authorisations are built into the bill, which further negates the need for a permit system like that in Victoria.

**Hon NICK GOIRAN**: Would not the Victorian safeguard of a permit ensure that there was confirmation that all the various criteria and elements of the process have been concluded to the satisfaction of the authoriser of the permit?

**Hon STEPHEN DAWSON**: Is the honourable member asking about internal Victorian processes? Sorry, the member might have to ask his question again.

**Hon NICK GOIRAN**: I am not, minister; I am simply asking about the lack of a safeguard in the provision currently before us. We are considering clause 14. Clause 14 is largely replicated in section 6 of the Victorian legislation, but the one stark safeguard that is absent in our legislation is this notion of a permit. I note that section 6(g) of the Victorian legislation says that a person may access voluntary assisted dying if "the person is the subject of a voluntary assisted dying permit." I am simply asking why that particular safeguard has not been included in the Western Australian legislation. If we were to include a new clause 14(h) that replicates the Victorian legislation saying that the person is the subject of a voluntary assisted dying permit, would that not be a superior safeguard, because at least then somebody—the certifier of the permit—would be able to say that everything else has been done?

**Hon STEPHEN DAWSON**: As I have indicated, we do not believe that this is needed. In the Western Australian context, a permit system based on Victorian legislation would not materially add any further safety, but may cause people bureaucratic delays to access voluntary assisted dying. Furthermore, express authorisations are built into the bill that further negate the need for a permit system like that used in Victoria. It is expected that a system would be developed to ensure that only medical practitioners eligible to participate would have access to the system, and that they would have access to the prescription component of the system for an individual only once all requirements are completed, thus negating the requirement for arbitrary bureaucratic checking.

**Hon CHARLES SMITH**: Can the minister confirm that, just then, he was answering why a person should not have first undertaken palliative care prior to their voluntary assisted dying journey?

**Hon STEPHEN DAWSON**: Sorry, member, there is a bit of noise around. I did not hear what the member said.

**Hon CHARLES SMITH**: Sure. In the answer that the minister just gave, was he explaining why a person should not have first undertaken palliative care before embarking on their VAD journey?

**Hon Stephen Dawson**: No; that is not what I said.

**Hon CHARLES SMITH**: I would like to ask the minister to explain why the government's position is that a person should not first have undertaken —

*Point of Order*

**Hon STEPHEN DAWSON**: We have not moved on to the member's amendment. I am not talking about the amendment. I have not mentioned palliative care. I was answering particular questions from Hon Nick Goiran on the requirements under the Victorian legislation for a permit and the differences between the Victorian legislation and ours. Just to clarify: I have not mentioned palliative care or, indeed, the amendment that stands in the member's name.

**The DEPUTY CHAIR (Hon Martin Aldridge)**: Minister that is not a point of order. That is an explanation.

**Hon Stephen Dawson**: That's the only opportunity I have got.

**The DEPUTY CHAIR**: You will get that opportunity when the member takes his seat and you get to respond to him.

*Committee Resumed*

**Hon CHARLES SMITH**: It was a new question. What are the government's reasons why a person should not have first undertaken a mental health assessment or received palliative care before their VAD journey begins?

**Hon STEPHEN DAWSON**: It is our view that it would be impinging on a person's medical autonomy to require that they seek palliative care.

**Hon CHARLES SMITH**: I would now like to move amendment 31/14 standing in my name. I move —

> Page 11, after line 10 — To insert —
>
> (ba) the person has been assessed by a palliative care specialist who has advised the person about the palliative care and treatment options and other services available to the person to treat their pain symptoms and discomfort and address their physical, psychosocial and existential distress; and

This is another safeguard amendment from the Northern Territory model. In this case, it is section 7(3) and section 8 of the Rights of the Terminally Ill Act 1995. It focuses on palliative care requirements. The amendment requires that before a patient can access voluntary assisted dying, the patient must have received or at least have had the opportunity to have been informed and made an informed decision to refuse specialty palliative care treatments and services. It is associated with another new clause, 25B, and sits well with clause 4(1)(d), which states —

> a person approaching the end of life should be provided with high quality care and treatment, including palliative care and treatment, to minimise the person's suffering and maximise the person's quality of life;

Indeed, clause 4(1)(h) states —

> a person is entitled to genuine choices about the person's care, treatment and end of life, irrespective of where the person lives in Western Australia and having regard to the person's culture and language;

Minister Cook even stated in the other place, "Palliative care is the solution for nearly everyone", in which case, it should be available to someone before they access voluntary assisted dying to hasten their death.

**Hon AARON STONEHOUSE**: I am just considering the amendment moved by Hon Charles Smith. It is worth taking this in context as yesterday the chamber agreed to an amendment moved by the minister that when a patient raises the question of voluntary assisted dying, it would require medical practitioners to inform the patient of the palliative care and treatment options available to the person and the likely outcomes of that care and treatment. Under a later clause in the bill—I forget the number—there is a requirement that after a medical practitioner has assessed the eligibility of a patient, they must inform the patient of their palliative care options. This amendment would go a little bit further and instead put in place a requirement for a palliative care specialist to inform a patient of their treatment options. It sets a much higher standard rather than having a medical practitioner, who may not be that well versed in the available palliative care options, informing a patient of their palliative care options; it would require a palliative care specialist to inform a patient of their options. It is far more thorough in ensuring that patients are aware of their palliative care options. I am not sure yet if that is necessary, but I wanted to make sure that we are very clear about the higher standard of information that would be provided under the proposed amendment of Hon Charles Smith. In this case, it is a very high standard of information than what is currently required in the bill, even taking into account the amendments moved by the minister and agreed to yesterday.

**Hon STEPHEN DAWSON**: Can I indicate that I am not supportive of this amendment. In fact, I will broaden my comments to a couple of amendments that stand in the name of Hon Charles Smith on the issue of palliative care specialists. There is a suite of amendments on that topic. We do not support these amendments. Firstly, whether a disease, illness or medical condition is causing suffering to the patient that cannot be relieved in a manner that the patient considers tolerable is a subjective element to be determined by the patient. This is consistent with the person-centred approach of the bill to voluntary assisted dying. Both the Joint Select Committee on End of Life Choice and the Ministerial Expert Panel on Voluntary Assisted Dying formed the view that a patient's suffering is an intensely personal experience and may take a variety of forms such as physical, mental, emotional, social, spiritual or existential. Secondly, the bill already requires that a person have a disease, illness or medical condition that is advanced, progressive and will cause death within the time frame of six to 12 months, on the balance of probabilities. Thirdly, it is not appropriate to require a person to exhaust all treatment options or be deemed ineligible because of options that the practitioner considers would reduce or remove their suffering. Every person is able to choose which treatment options they want to undertake. An adult patient of sound mind may refuse medical treatment even if that refusal will lead to their death. The bill does not require a patient to undergo treatment that will prolong the life or that might cure them, because to do so would cut across the fundamental principle of patient autonomy. It should be noted that the bill requires the assessing medical practitioners to provide the patient with a suite of information, including treatment and palliative care options.

**Hon NICK GOIRAN**: I am supportive of this amendment. I am grateful to Hon Aaron Stonehouse. I think his explanation of the distinction in what is going on with this amendment is excellent. As I read it, this amendment absolutely lifts the standard of ensuring that a person cannot access voluntary assisted dying unless a palliative care specialist has assessed them. From my perspective, that is a very good thing. I take the point of the minister. Maybe a palliative care specialist assesses a person, the person gets some advice and then says, "Thanks, but no thanks." But at least they have been informed. This amendment would ensure that we as legislators create an environment in which an expert in the field—in this instance, a palliative care specialist—can inform a person. I support this amendment to clause 14, moved by the honourable member. I think it will actually see a huge improvement in palliative care access statewide, but most especially in regional and remote Western Australia. I note there has been quite a bit of discussion about that. I also note that Hon Charles Smith, in prosecuting the case for his amendment, referred us to a couple of principles. We spent a bit of time debating the principles under clause 4. Hon Martin Aldridge moved an amendment that sought to say—I am paraphrasing—that every Western Australian should have equal access to voluntary assisted dying. I sought to amend that amendment to include palliative care. One of the reasons members gave for opposing my amendment to the amendment was the view that clause 4(1)(d) already captured it. Clause 4(1)(d) states —

> a person approaching the end of life should be provided with high quality care and treatment, including palliative care and treatment, to minimise the person's suffering and maximise the person's quality of life;

We have all agreed to that as a principle—that a Western Australian approaching the end of life should be provided with high-quality care and treatment, including palliative care. High quality, in that context, is from a palliative care

specialist; it is not from somebody who has a rudimentary understanding of palliative care. That is not high quality; it has to be something higher than that. In this context, where the stakes could not be any higher, I passionately hold the view that Western Australians, if they are going to access this, need to be fully informed. I am particularly passionate about that in light of the response that was provided during the interrogation of clause 1. The government has said that it would guarantee access to voluntary assisted dying in regional Western Australia, even if it means flying up to eight people out to somebody in remote Western Australia, but it cannot provide that guarantee with regard to palliative care. That still troubles me. I think this amendment will go some way towards addressing that. For members from regional areas who might be concerned about access, I note that Hon Charles Smith has not said that the assessment has to be in person. Unlike voluntary assisted dying, which cannot happen via telehealth because that would breach commonwealth law, Hon Charles Smith's palliative care specialist assessment could be done by telehealth. Would it not be a good thing for a Western Australian to have that sort of information before making a final decision? This amendment has my support.

**Hon AARON STONEHOUSE**: When reading this amendment on its own, I see a problem in that there is a requirement for someone to be assessed by a palliative care specialist, but it does not provide for a process. We have to really read this along with new clause 25B, which the mover of this amendment has on the supplementary notice paper. When we get to clause 25 we will have to discuss the operation of new clause 25B and how it might work. There is a process there for the assessment, which I will not go into. The minister raised the question of patient autonomy, which is an important issue.

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