VOLUNTARY ASSISTED DYING BILL 2019

Committee

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

Clause 108: Application of *Medicines and Poisons Act 2014* Part 7 —

Committee was interrupted after the clause had been partly considered.

Hon NICK GOIRAN: Clause 108 sets out quite a raft of modifications to the Medicines and Poisons Act 2014, particularly part 7. Can the minister table some form of schedule or document that sets out exactly what we are agreeing to at clause 108? As I say, the way it is drafted may well be concise but it is incredibly unhelpful for the reader. As the minister will appreciate, for example, clause 108(6), states that section 101 of the Medicines and Poisons Act is to be read as if section 101(1)(a) and subsection (2) were deleted. One has to go on an excursion—a little like a needle in a haystack—to find out exactly what all the provisions state, what has been deleted, what is to be read in and what is to be replaced. Surely somebody in government must have a schedule that sets out exactly what we are agreeing to in clause 108. Does such a schedule or document exist and, if it does, can it be tabled?

Hon STEPHEN DAWSON: Such a schedule or table does not exist, but I am advised that a table will be provided during the implementation phase to help those who need to navigate this clause.

Hon NICK GOIRAN: I think it is reasonable to assume that someone in Parliamentary Counsel's Office had something at their disposal on this during the drafting process. For instance, subclause (5) states —

> Section 95(1) is to be read as if section 95(1)(c) were deleted.

When somebody was doing the drafting, they must have uplifted part 7 of the Medicines and Poisons Act and would have prepared some form of document and got some instructions on it. In fact, if that was not the case, it means that no-one has turned their mind to clause 108. I doubt very much that everyone in cabinet, everyone in caucus or everyone in the other place have spent time looking through clause 108 and reconciled it with the Medicines and Poisons Act. I acknowledge that the minister said a document would be prepared during the implementation phase. Would it be possible for it to be tabled by the end of this week?

Hon STEPHEN DAWSON: I am told, honourable member, that one does not exist. Drafting instructions were given to Parliamentary Counsel's Office and this was drafted as a result of those instructions, but no table, schedule or list was provided. I have asked the question, but I do not believe it can be provided by the end of the week.

Hon NICK GOIRAN: I will conclude on this point, minister: it troubles me that clause 108 is in the form it is in. It would be useful at the very least, if nothing else happens from this exercise, that some instruction, direction or advice could be given to parliamentary counsel to say that in future, yes, by all means, if it is the drafting convention to draft a clause like this, so be it, but it should be accompanied with something superior, whether it be in the explanatory memorandum or some other document that can be made available to members. I very much have my doubts that 95 legislators in Western Australia have reconciled all the provisions in clause 108. In the absence of doing that, we are, effectively, agreeing to a new part of the law blind. That is not acceptable lawmaking. I recognise that if no document is available, so be it. If it is not possible to table it by the end of the week, could it be tabled by the first sitting day on the resumption in 2020?

Hon STEPHEN DAWSON: I am advised the work is not scheduled to be done until the implementation phase of the bill. I have some sympathy with the view the honourable member has expressed and I will certainly take his suggestion forward and bring it to the attention of the Attorney General, who is the most appropriate person. A few views have been brought to my attention about the drafting during the consideration of the bill and they will also be passed on.

Clause put and passed.

Clause 109: Court to notify CEO of conviction of offence under Act —

Hon NICK GOIRAN: Minister, what is the CEO expected to do when in receipt of notification of a conviction and a penalty imposed?

Hon STEPHEN DAWSON: It is important for the CEO of Health to be kept abreast of convictions pursuant to the Voluntary Assisted Dying Act, particularly as the CEO has investigation and enforcement functions under the act.

Clause put and passed.

Clause 110: Who may commence proceedings for simple offence —

Hon NICK GOIRAN: Why can a prosecution for a simple offence under this act be commenced only by the CEO or a person authorised by the CEO to do so?

Hon STEPHEN DAWSON: This is consistent with the Medicines and Poisons Act under which the CEO or delegate is primarily the decision-maker for prosecutions. The Medicines and Poisons Regulations Branch conducts the investigative work and then makes a prosecution recommendation to the CEO or delegate in accordance with section 122 of the Medicines and Poisons Act.

Hon NICK GOIRAN: Would anything in this clause therefore prohibit the WA Police Force from commencing a prosecution?

Hon STEPHEN DAWSON: The CEO of Health may authorise the WA Police Force to commence a prosecution for a simple offence.

Hon NICK GOIRAN: Would the WA Police Force be able to initiate a prosecution on its own initiative?

Hon STEPHEN DAWSON: No.

Hon NICK GOIRAN: I find that unacceptable because we are talking here about something very serious and very significant. The minister has repeatedly said so himself over the course of this debate. Now we are saying that the WA Police Force is prohibited from commencing a prosecution. Prosecutions on a serious matter to do with voluntary assisted dying should not be at the whim of just the CEO of the Department of Health. If the Commissioner of Police in Western Australia, whose primary duty it is to enforce the laws of our state, considers that an offence has occurred, he should be able to commence a prosecution. I note that the minister indicated that this is consistent with, I think, the Medicines and Poisons Act or some other provision. Under the other act that the minister referred to, is it the case that the WA Police Force is not able to commence a prosecution unless the CEO authorises it to do so, and is this the first time that that would be the case?

Hon STEPHEN DAWSON: I am told that the WA Police Force is currently authorised by the CEO for the purposes of the Medicines and Poisons Act 2014. Authorisation is required only for the prosecution of simple offences.

Hon NICK GOIRAN: Does that mean that the WA Police Force will be able to commence proceedings for a simple offence under this act by virtue of that existing authorisation, or will a new authorisation need to be provided?

Hon STEPHEN DAWSON: The CEO would need to issue a new authorisation.

Hon NICK GOIRAN: Is it the intention of government to ensure that the CEO provides such an authorisation?

Hon STEPHEN DAWSON: I am advised that it will be discussed between the CEO and the WA Police Force during the implementation phase.

Hon NICK GOIRAN: I reiterate that I find that unacceptable. The CEO had better authorise the WA Police Force to do so, because otherwise I can imagine we will be spending plenty of time investigating this matter as a Parliament moving forward. I do not even agree with voluntary assisted dying in the first place, let alone to the CEO of health deciding who is or is not to be prosecuted. That is the trouble with the WA Police Force. If the CEO referred to in clause 110 was a reference to the Commissioner of Police, I would have no issue with this but it is the CEO from the Department of Health—no disrespect to the current incumbent whatsoever, who is a fine upstanding public servant—and that is not his primary role, responsibility or duty. I trust that this matter will be addressed in the implementation phase. If it is not, as I say, I will certainly take this matter up in the coming year. I also note the provision under clause 162 to review the act. If by that stage we still find ourselves in the untenable situation that WA police is not able to commence prosecutions for simple offences, I trust whoever is responsible for conducting that review under clause 162 will have sufficient pride in their own professional work to make sure that they address this issue.

Clause put and passed.

Clause 111: Time limit for prosecution of simple offence —

Hon NICK GOIRAN: Why is a time limit deemed necessary for the prosecution of a simple offence under this legislation?

Hon STEPHEN DAWSON: I am advised that this time limit is consistent with the Western Australian Medicines and Poisons Act 2014.

Hon NICK GOIRAN: Why is it not necessary for the prosecution notice to contain particulars of the day on which the offence is alleged to have been committed under clause 111(2)(b)?

Hon STEPHEN DAWSON: Again, this is consistent with section 123 of the Medicines and Poisons Act.

Clause put and passed.

Clause 112: Protection for persons assisting access to voluntary assisted dying or present when substance administered —

Hon NICK GOIRAN: The eighth of the fundamental legislative scrutiny principles routinely used by the Standing Committee on Legislation when considering bills asks whether a bill confers immunity from proceeding or prosecution without adequate justification. In light of that, why is this clause deemed necessary for inclusion?

Hon STEPHEN DAWSON: These provisions are consistent with the protections in the Victorian Voluntary Assisted Dying Act and section 133 of the Western Australian Medicines and Poisons Act 2014, and the protection provided to persons providing surgical or medical treatment including palliative care under section 259 of the WA Criminal Code. It was felt important to have a clear statement in the act that people are protected.

Hon NICK GOIRAN: The explanatory memorandum states that without this clause, a person might commit a criminal offence by assisting a person or being present when a person self-administers or is administered a prescribed substance. What criminal offence might a person commit by being present when a person self-administers or is administered a prescribed substance?

Hon STEPHEN DAWSON: The offence that might be committed is assisting a person to kill themselves, which is at section 288 of the Criminal Code.

Hon NICK GOIRAN: It is interesting that the only thing that would change whether a person is assisting a person to kill themselves is clause 112. If I understand it correctly, without clause 112, a person would be assisting a person to kill themselves. Have I understood that correctly?

Hon STEPHEN DAWSON: People may fear that they might be prosecuted and this is to give them some comfort that they will not be.

Hon NICK GOIRAN: How does one establish whether the assistance was provided in good faith in order for the person to be availed of these protections from criminal liability?

Hon STEPHEN DAWSON: What will be required for something to be done or omitted in good faith may vary from one case to the next, so it will be for a court to determine whether something was done in good faith.

Hon ADELE FARINA: In the example that I gave earlier today and yesterday about a family member or carer assisting the patient to prepare the substance, would this provide a defence to the carer or the family member?

Hon STEPHEN DAWSON: If the person is authorised to prepare the substance, this would protect them; if they are not, it would not protect them.

Clause put and passed.

Clause 113: Protection for persons acting in accordance with Act —

Hon NICK GOIRAN: Does this clause provide that as long as the coordinating practitioner or consulting practitioner acts in good faith, they will be protected from all civil and criminal liability for their actions and omissions, even if those acts or omissions result in the wrongful death of their patient?

Hon STEPHEN DAWSON: It will provide protection from criminal liability under the Voluntary Assisted Dying Act, and protection from civil liability under all legislation. It is important to note that the criminal liability protection will apply in relation to an offence under only the Voluntary Assisted Dying Act and not other legislation such as the Criminal Code.

Hon NICK GOIRAN: That was not my question. My question was: does this clause as it currently stands provide that as long as the practitioner acts in good faith—that is the only phrase that is in there at the moment; I note that the minister has an amendment standing in his name, but we have not got to that yet—they will be protected from all civil and criminal liability for their acts and omissions, even if those acts and omissions result in the wrongful death of their patient?

Hon STEPHEN DAWSON: The answer is no.

Hon NICK GOIRAN: In which case why does the minister need his amendment?

Hon STEPHEN DAWSON: I am going to speak to my proposed amendment at 407/113 on the supplementary notice paper, and perhaps I will move it at the same time. I move —

> Page 74, line 12 — To delete "faith," and substitute —
>
> faith and with reasonable care and skill,

This proposed amendment specifically addresses concerns that a doctor should not be protected from civil or criminal liability when they act negligently—that is, without reasonable care and skill. The existing clause implicitly provides

that negligent conduct will not be protected, but the amendment will make it explicit in the bill. This amendment has been included following consultation with the Australian Medical Association, and the government considers it to be a good amendment. A number of provisions of the Criminal Code make something unlawful unless it is done in good faith and with reasonable care and skill, or exempts a person from criminal liability if they do something with reasonable care and skill. As such, the proposed amendment reflects the language used in WA legislation.

Amendment put and passed.

Hon NICK GOIRAN: Minister, thank you for that amendment. It satisfies the concern that I had; that is, in effect, the practitioner just simply had to say, "I've acted in good faith and I've done certain thing in accordance with the act. I believe, on reasonable grounds, that I've done those things in accordance with the act and I'm shielded from any prosecution, whether civil or criminal or, indeed, professional misconduct and the like." It is appropriate that we have now added the extra element that it is not good enough to simply say that a person is acting in good faith; they also have to demonstrate that they have reasonable care and skill. We cannot have unskilled, inept practitioners running around, providing voluntary assisted dying in Western Australia, with them saying that they are protected because they did all this in good faith. I congratulate the AMA for its advocacy on that amendment. Interestingly, clause 113, "Protection for persons acting in accordance with Act" is actually listed as safeguard 80 in the list of 102 alleged safeguards contained in the bill. Can the minister explain to us how the protections provided in clause 113 can be considered a safeguard against wrongful deaths under the bill?

Hon STEPHEN DAWSON: This provision provides protection only to persons—for example, doctors—who act in good faith with reasonable care and skill. It is an incentive to doctors who take reasonable care and skill.

Hon NICK GOIRAN: Just for the record, we know now that there are not 102 safeguards in the bill. When the government has prosecuted this fake narrative—not the minister, but others, particularly outside the chamber—that this bill has 102 safeguards, it is laughable when one of the safeguards is this one, clause 113, which has absolutely nothing to do with protecting the patient, but has to do with providing a shield for practitioners. As I always suspected, there are really only two safeguards in this bill, which are the two practitioners who have to sign-off on this.

Hon STEPHEN DAWSON: We will have to agree to disagree on that. We believe it is a safeguard and that list of 102 safeguards are about the bill.

Hon Nick Goiran: Not to the patient.

Hon STEPHEN DAWSON: I do not think anyone said necessarily that they are to the patient.

Clause, as amended, put and passed.

Clause 114: Protection for certain persons who do not administer lifesaving treatment —

Hon NICK GOIRAN: The explanatory memorandum assumes that in these circumstances the person will have made a voluntary, informed and enduring decision to die and the protected persons should not prevent this from occurring. The fact that someone will have administered, or have self-administered, a poison that causes their death, does not make it clear to the health practitioner, ambulance officer or other person with a duty to administer lifesaving treatment that this administration has taken place in accordance with this legislation. How is the health practitioner or ambulance officer or other person with a duty to administer lifesaving treatment supposed to know that the administration occurred in accordance with the act?

Hon STEPHEN DAWSON: Clause 114(2)(b) states "the protected person believes on reasonable grounds that the other person" et cetera. Therefore, if they believe on reasonable grounds, that is a protection.

Hon NICK GOIRAN: What should the health practitioner, ambulance officer or other person with a duty to administer lifesaving treatment do if they hold the belief on reasonable grounds that the other person did not have decision-making capacity to self-administer or capacity to consent to practitioner administration at the time the substance was administered?

Hon STEPHEN DAWSON: If they believe that to be the case, there is a duty to administer lifesaving care. This clause makes it clear that the ordinary obligations to provide life-sustaining treatment or clinically indicated medical treatments do not apply when the patient accesses voluntary assisted dying. The ordinary obligations do not override the process of self-administration of the substance authorised by the voluntary assisted dying scheme. If an ambulance officer or health practitioner believes the person lacked capacity, they cannot believe on reasonable grounds that the patient administration was in accordance with the act.

Hon NICK GOIRAN: What would happen if the administration had been in accordance with the act but the patient was experiencing complications? What would the person do in that situation?

Hon STEPHEN DAWSON: In that case, they could provide care and support to the patient.

Clause put and passed.

Clause 115: Board established —

Hon NICK GOIRAN: Have any other jurisdictions established a board to oversee the functions of their schemes?

Hon STEPHEN DAWSON: Victoria has a board under part 9 of its act. Some other jurisdictions have committees, but not boards.

Clause put and passed.

Clause 116: Status —

Hon NICK GOIRAN: What status, immunities and privileges of the Crown will be held by the board?

Hon STEPHEN DAWSON: I am looking for information for the honourable member, but while we seek it, I make the point that all boards that are established by statute have this provision. I will get information about what status, immunities and privileges it refers to.

I do not have an exhaustive list. I wonder whether I can give the member an example now and keep moving, if it is not pertinent to the member's support of this clause. Perhaps I can provide the member with a list later in the evening. I can give the member the example of protection from civil liability or public interest immunity. I will leave it there and seek to provide a list to the member after dinner or later in the evening.

Clause put and passed.

Clause 117: Functions of Board —

Hon NICK GOIRAN: In Victoria, the website for the review board describes its review role as —

> … reviews all assessments and forms submitted for voluntary assisted dying retrospectively.

Regarding the submission of forms to the board, in a number of places the explanatory memorandum states —

> The intent of this provision is to ensure that the Board is notified progressively of the person's participation in the voluntary assisted dying process, including the outcome of each assessment, to monitor that the correct process is being followed in each case of voluntary assisted dying …

That quote is from the explanatory memorandum on clause 60. Do I take it that the government means that each request and assessment process will be scrutinised before the death and that investigations will be triggered to prevent breaches of the act within the nine days or even shorter periods in some cases?

Sitting suspended from 6.00 to 7.00 pm

Hon SUE ELLERY: First, can I just provide some information to Hon Nick Goiran about the discussion that was going on during the previous clause, if the chamber will grant me that. The range of privileges and immunities at common law that would apply under clause 116 are immunity from being sued, immunity from coercive orders, immunity from execution, the right to withhold documents on the grounds of public interest immunity and priority of crown debts.

I now respond to the issues that were raised about the clause before us. The monitoring function of the VAD board has already been canvassed at several points during the debate in clauses 1, 8, 28, 32, 40, 45, 49, 50, 59 and 73, but essentially the board, supported by the secretariat, will monitor that the correct process is being followed. It is not the role of the board to contemporaneously clinically review each case, but to determine that the processes are being duly followed.

Hon NICK GOIRAN: Minister, is it the case then that the board will have the capacity, with those investigations, to intervene to prevent breaches of the legislation within the nine days in which some of these cases will be handled?

Hon SUE ELLERY: The board's main functions will be advisory and monitoring in the areas of research and analysis, and collecting and maintaining statistical data, for example. It also has the power to refer. The board will not be an investigative body. It will not have an investigatory, a determinative or a punitive role. It will refer any issue related to voluntary assisted dying that it identifies as relevant to the function of a referral body. Those referral bodies are, for example, the Commissioner of Police, the Registrar of Births, Deaths and Marriages, the CEO of Health, the State Coroner, the Australian Health Practitioner Regulation Agency, the CEO of the prisons portfolio, and the director of the Health and Disability Services Complaints Office. The intent is to enable the board to refer any suspected contraventions of the legislation or other matters to the appropriate body.

Hon NICK GOIRAN: The Victorian legislation has additional section 93(1)(b), which states that the review board is —

> to review the exercise of any function or power under this Act;

Why is this function not included for the WA board under clause 117?

Hon SUE ELLERY: The honourable member is right to identify a difference between the legislation before us and the Victorian legislation. We have made a deliberate policy decision to have the board conduct the roles that I have already described—that is, monitoring and oversight of the functions. It will deliberately refer any investigations or reviews to other investigatory bodies. The member is right; there is a difference between the Western Australian model and what is in place in Victoria, but the policy decision made here was that the role of the board was best placed to be a monitoring, advisory and referral one, and if issues need to be further investigated or reviewed, they will be done so by the appropriate external bodies.

Hon NICK GOIRAN: We dealt with the distinction of the investigatory power on the earlier question. This question is about a specific section of the Victorian legislation, section 93(1)(b), which states —

> to review the exercise of any function or power under this Act;

It has nothing to do with investigations, referrals or other elements. It is curious that that particular element of the Victorian legislation has not been included. If it is a deliberate decision of the government not to allow the board to review the exercise of any function or power under this legislation, who will do that task?

Hon SUE ELLERY: I will note a couple of things. Clause 117 states that the functions of the Voluntary Assisted Dying Board are —

> (a) to monitor the operation of this Act;
>
> (b) to provide to the Minister … advice, information and reports on matters relating to the operation of this Act …

In doing that, it is anticipated that the board will provide advice to the minister on what it has found as a result of monitoring the operation of the act. Then, more generally, clause 162 outlines how the minister will review the act, which may well encompass a range of matters. The functions of the board include the monitoring of the operation of the act. If that is read in conjunction with clause 117(b), the board also provides advice. We believe that that encapsulates how the board will advise the government on how the act is operating.

Hon NICK GOIRAN: In what circumstances might the board see fit under clause 117(c)(ii) to refer a matter to the Registrar of Births, Deaths and Marriages, and what is the registrar expected to do once they receive that referral?

Hon SUE ELLERY: The chamber has already had a fairly extensive debate about the certification of death and what might or might not be recorded on the certificate. Births, deaths and marriages is included as a possible referral body because if the board is of the view that something needs to be brought to the attention of births, deaths and marriage, it would respond according to its own legislation, which is separate to what we are dealing with tonight.

Hon NICK GOIRAN: What is that type of thing that the board would refer? Obviously someone thought that it was sufficiently important to specify the Registrar of Births, Deaths and Marriages at paragraph (c)(ii). What is it anticipated that the board would need to refer to the registrar?

Hon SUE ELLERY: The relationship is around the certification of death. It would not be particularly helpful or appropriate for us to second-guess what might happen, but the relationship between the board and the registrar relates to certification. If the board thinks that something related to the certification needs to be brought to the attention of the Registrar of Births, Deaths and Marriages, this is the head of power that gives it that capacity. With the greatest respect, member, I do not know that it is helpful to second-guess what that might be. We know that the legal connection between the Registrar of Births, Deaths and Marriages and this legislation is based around certification.

Hon NICK GOIRAN: At one of the stakeholder round table consultations, the principal registrar from the Coroner's Court identified a number of reasons why a death caused by voluntary assisted dying should be reported directly to the coroner. One of the reasons for that was the coroner already has in place the systems to ensure that an investigation could take place and that steps could be taken quickly to ensure that any post-mortem investigations were undertaken promptly. Why has the government chosen to ignore the advice of the coroner and opted instead for an optional board referral to the coroner?

Hon SUE ELLERY: In order to have the full context of this discussion, I need to refer to a provision in the bill to insert at clause 166 a consequential amendment to the Coroners Act. This is required to exempt deaths brought about by voluntary assisted dying, otherwise these deaths would fall within the definition of a reportable death and result in automatic involvement of the coroner. Deaths associated with voluntary assisted dying are, by their very nature, planned deaths as opposed to —

Hon Nick Goiran: Unexpected.

Hon SUE ELLERY: — unexpected deaths—thank you—that are automatically referred to the coroner. Referral to the coroner would occur if there was reason to believe that something had gone awry and it needed to be investigated. New clause 166, which we will get to eventually, provides that a death that occurs in accordance with

the Voluntary Assisted Dying Act will not automatically be a reportable death under the Coroners Act 1997. The reference here to whom they can refer is related to that.

Hon NICK GOIRAN: What mechanisms will be put in place to ensure that that referral that takes place under clause 117(c)(iii) takes place in sufficient time before the burial or cremation of the person's body?

Hon SUE ELLERY: I am advised that there is not a locked-in, if you like, period of time within which it is anticipated the coroner will need to be advised that a decision has been made to refer; however, there have been discussions with the coroner already, and it is anticipated in the process of implementation that Health will work closely with the coroner to establish the correct protocols, the agreed protocols. That is how it panned out in Victoria. I am advised it was not a precise provision of the bill that things would happen within a specified period of time, but it was worked out as part of the implementation process. I am just getting notes furiously written, so bear with me. In the implementation phase there will certainly be stakeholder consultation and work between the board and the Coroner's Court about the appropriate protocols and whether a time will be attached to that.

Hon NICK GOIRAN: In what circumstances might the board see fit to refer a matter to the CEO of the department of the public service principally assisting in the administration of the Prisons Act 1981, under clause 117(c)(v)?

Hon SUE ELLERY: This applies if the person who is exercising the choice for voluntary assisted dying is a prisoner and in the custody of the CEO of the prisons.

Hon NICK GOIRAN: In those circumstances why would the board need to refer anything to that CEO?

Hon SUE ELLERY: The honourable member will recall that a little bit earlier I said that we needed to consider this in conjunction with the changes we propose to make at clause 166. I have given the member an explanation about a discretionary referral, if you like, to the coroner; however, the note about clause 166 says that a death generally does not have to be reported to the coroner as a matter of course other than if the person was held in care immediately before their death. That means that the death of someone held in the care of the state will be automatically referred to the coroner. The cause the member referred to in clause 117(c)(v) relates to a person held in care in the prison—who is in the custody of the prison. To complete the information for the member, that is an automatic referral to the coroner, and the provisions in clause 166, which we will get to in due course, give effect to that.

Hon NICK GOIRAN: I notice that one thing that has not been listed in clause 117 is the function of the board to provide a notice of no objection to the coordinating practitioner with regard to the administration decision. What is the basis for the government's decision to not give the board the role of providing a notice of no objection?

Hon SUE ELLERY: The no-objection provision is in effect a permit system, and the board must give the coordinating practitioner notice that it does or does not object. I am advised it was canvassed by some members in the debate on clause 1 on 22 November. We have taken the view that it is an extra bureaucratic layer that does not provide additional protection. We do not believe it will add any further safety, but it will cause delays to access for people. Express authorisations are built into the bill that further negate the need for a permit system or a no-objection system like that in Victoria. Those authorisations enable the various identified players to variously—these things have been canvassed broadly in the debate—receive, possess, prepare, supply, dispose or administer, for example, and the bill already enables the board to raise any concerns and refer matters for investigation, if it has concerns about the processes not being followed, as I outlined when we started this clause debate.

Clause put and passed.

Clause 118: Powers of Board —

Hon NICK GOIRAN: Does the board have the power to contact parties to the process, including the patient and the practitioners involved, to seek clarification about matters pertaining to the board's monitoring of the operation of the act?

Hon SUE ELLERY: I draw the member's attention to clause 149, which we are not at yet. That clause goes to requesting information, and reads —

> (1) The Board may request any person (including the contact person for a patient) to give information to the Board to assist it in performing any of its functions.
>
> (2) A person may comply with a request … despite any enactment that prohibits or restricts the disclosure of the information.

Clause put and passed.

Clause 119: Delegation by Board —

Hon NICK GOIRAN: In what circumstances does the government anticipate that board powers or duties may be referred to a member or committee?

Hon SUE ELLERY: This clause enables the board to delegate its power or duties to a member or a committee established under the bill. A delegated power is not further delegable. The delegation function is important to enable the continuity of service. The member asked for examples. For example, the board may simply delegate its function to notify a person from whom the board received a form that the form has been received, or the board may delegate its function to record and retain statistical information to a particular member or committee who specialises in statistics.

Clause put and passed.

Clause 120: Staff and services —

Hon NICK GOIRAN: What "staff, services and facilities and other resources and support" does the government propose to provide the Voluntary Assisted Dying Board to perform its functions?

Hon SUE ELLERY: This is a standard clause for a number of boards under the Department of Health, and it ensures that the board will be able to access the administrative and other resources that it requires to properly execute its functions under the act. I am sure that resources will be allocated in the usual fashion. For example, there will need to be a secretariat that is resourced—that sort of thing.

Clause put and passed.

Clause 121: Assistance —

Hon NICK GOIRAN: Clause 121 indicates that the board can do something with the approval of the minister. Do any other board decisions require the approval of the minister?

Hon SUE ELLERY: I am advised that the answer is no. The member will notice that further on, clause 125 provides for the minister to designate one member of the board as the chair and another as the deputy chair. That is standard operating procedure; it is not really seeking approval for something.

Clause put and passed.

Clause 122: Minister may give directions —

Hon NICK GOIRAN: Clause 122 deals with circumstances in which the minister may give directions. Why is a direction about the performance of a function in relation to a particular person or matter prohibited from being given?

Hon SUE ELLERY: That is to ensure that there cannot be, if you like, political interference in a particular case, and that the role of the minister in issuing directions is around the broad functions and administration, but not about being able to intervene in a particular case.

Hon NICK GOIRAN: We heard earlier that the board did not have the capacity to intervene in a particular case, so it follows that the minister would not be able to either. Is there any other explanation of why clause 122(2) is needed?

Hon SUE ELLERY: I am advised that the purpose is to make it absolutely explicit.

Clause put and passed.

Clause 123: Minister to have access to information —

Hon NICK GOIRAN: Clause 123(3) states —

> … the Minister is not entitled to have personal information about a person unless the person has consented to disclosure of the information.

Will this restriction remain post death?

Hon SUE ELLERY: I am advised that, if the person has died and thus cannot give consent, consent may be obtained by an executor or administrator of their estate, under clause 105(2)(f).

Hon NICK GOIRAN: Minister, if consent is not granted in those circumstances, including by way of an executor or administrator, can the document still be provided to the minister subject to any redactions?

Hon SUE ELLERY: The minister cannot be provided with individual information without consent. However, there might be a circumstance in which the board wants to provide to the minister information that shows perhaps a trend or some particular examples of something that went very right or something that went very wrong, so redacted information might be provided to the minister. The minister would not know whom it was from. It might include information about somebody, because statistical information or analytical research information was being provided to the minister, but the minister would not know whom that information was about. The only way the minister can get personal information that identifies the person and links that person with particular information is with the consent of the person before they pass away or as a result of consent from the executor or the administrator.

Hon NICK GOIRAN: Would the board have that personal information but the minister would not?

Hon SUE ELLERY: That is correct.

Hon NICK GOIRAN: The other point on clause 123 is that the member for Scarborough raised an issue at page 79, line 9. I will get the minister to take a look at page 79, line 9. The view of the member for Scarborough in debate in the other place was that the use of the word "person" should read "patient". As we know, the attitude of government in the other place was very different from that of government in this place. No amendments were supported in the other place and we have passed 51 amendments in this place. What is the view of government regarding the use of the word "person" at page 79, line 9 instead of "patient"?

Hon SUE ELLERY: A person in the context of clause 123(3) is any person, not just a person who may also be a patient exercising their choice around voluntary assisted dying. This might be any of the other people in the chain of the process.

Hon Nick Goiran: Like the doctor?

Hon SUE ELLERY: It could be a doctor; it could be a contact person; or it could be any other person whom the board would have information about. It is not necessarily about just a patient.

Clause put and passed.

Clause 124: Membership of Board —

Hon NICK GOIRAN: What knowledge and skills will be required and considered by the minister to make the appointment of the board members?

Hon SUE ELLERY: WA health service boards are appointed by the Minister for Health. These boards reflect the skills and experience required to provide clinical and organisational governance and oversight across the health system. There is no reason to apply a different approach to voluntary assisted dying. The minister will receive advice from the Department of Health about those whom the department considers competent to carry out those tasks, making sure that the board has the appropriate mix of skills and experience. Currently, the mechanism for people to put their name forward is a government portal called OnBoardWA. All appointments and reappointments that are established by statutes and that specify that appointments are to be made by the minister must be brought to cabinet. In Victoria, an ex–Chief Justice of the Supreme Court has been appointed as chair of its Voluntary Assisted Dying Review Board. That is the sort of status and insight we expect of the people who will serve on the board.

Clause put and passed.

Clause 125: Chairperson and deputy chairperson —

Hon NICK GOIRAN: What act or omission is contemplated by clause 125(3)?

Hon SUE ELLERY: I am advised that this is a provision that applies in other acts around the governance of boards. It essentially cements, if you like, the authority of the person acting as chair. Their authority to make decisions or to omit to do something cannot be challenged on the basis that they were not really the chairperson at the time. It seems to me to be a clumsy way of expressing it, but when I asked, I was advised that it is a standard form of words that appears elsewhere for governance arrangements for boards.

Clause put and passed.

Clause 126: Term of office —

Hon NICK GOIRAN: Is a board member eligible for indefinite appointments under clause 126(2)?

Hon SUE ELLERY: I am advised that nothing prevents that. That reappointment will be determined by the Minister for Health based on the performance of the board member and the needs of the board. Consideration will be given during the implementation stage to the staggering of board appointments. The member will appreciate that a board might appoint somebody for two years and others for three years so that it maintains a kind of continuity of corporate knowledge. The Department of Health considers it good practice for board appointments to be staggered to make sure that there is a rolling consistency of knowledge and experience.

Clause put and passed.

Clause 127: Casual vacancies —

Hon NICK GOIRAN: Does the minister need to provide written reasons for their decision to remove a member from office under clause 127(4); and, if yes, would those reasons be made publicly available?

Hon SUE ELLERY: There is nothing in this clause that requires the minister to—did the member say "publish"?

Hon NICK GOIRAN: To provide written reasons for their decision.

Hon SUE ELLERY: To provide written reasons, no. The removal of a board member by the minister may occur if there is neglect, misconduct or incompetence. "Misconduct" is defined to include conduct that renders the member unfit to hold office as a member even though the conduct does not relate to a duty of that office. A board member may also be removed on grounds of mental or physical incapacity that is impairing the performance of the member's duties or for absence without leave from three consecutive meetings of the board of which the member has had notice. I am advised that this clause is consistent with Western Australian practice and is considered essential for good governance. Nothing prescribes that the minister must provide written reasons; in some circumstances, indeed, if it went to personal circumstances of mental health or other personal reasons, one would expect that it might be prudent for the minister not to. Nothing precludes the minister from doing it; nothing requires the minister to do it.

Hon NICK GOIRAN: Further to that, nothing requires or precludes the minister from providing written reasons, but if there were written reasons, would they be made publicly available?

Hon SUE ELLERY: Not automatically; not as a matter of course. It may be that it is appropriate, but it may also be that it is not appropriate.

Hon Nick Goiran: It would not be exempt from FOI.

Hon SUE ELLERY: No, it would not be exempt from FOI.

Clause put and passed.

Clause 128: Extension of term of office during vacancy —

Hon NICK GOIRAN: Is clause 128 consistent with other statutes setting out the parameters for officers appointed by a minister?

Hon SUE ELLERY: Yes, I am told that this is consistent with practice across the boards in Western Australia. Sorry, public boards in Western Australia.

Clause put and passed.

Clause 129: Alternate members —

Hon NICK GOIRAN: What acts or omissions are contemplated by clause 129(4)?

Hon SUE ELLERY: This is the same explanation that I gave to the question that the honourable member asked on clause 125(3). I may think that it is a clunky way of expressing it, but it is a standard provision. It means that anything that the alternate member does or does not do cannot be questioned on the basis that they were not an alternate member.

Clause put and passed.

Clause 130: Remuneration of members —

Hon NICK GOIRAN: What is intended to be the remuneration of the members of the Voluntary Assisted Dying Board?

Hon SUE ELLERY: The question was what the remuneration is expected to be. That will be developed in the implementation stage. The board will be subject to oversight by the Public Sector Commissioner and the Public Sector Management Act. The Public Sector Commissioner provides advice about the appropriate remuneration of any board. The commissioner forms a view on the level of obligation of board members, the time they would be required to be involved and their individual responsibilities. That advice is then provided to cabinet as part of the appointment process.

Clause put and passed.

Clause 131: Holding meetings —

Hon NICK GOIRAN: Under what circumstances might a special meeting be required to be called by the chairperson under clause 131(2); and, if a special meeting was called, how much notice would be required?

Hon SUE ELLERY: I am not going to be able to give the member specific examples because, like any board, special board meetings may be convened at any time by the chairperson —

Hon Nick Goiran: How much notice—a day; half a day; two days; a week?

Hon SUE ELLERY: — for a whole range of reasons. That is consistent with WA practice. On the implementation and the standing orders that the board might adopt to conduct its own affairs, I am advised that will be worked out during the implementation stage.

Hon NICK GOIRAN: Let us get some matters on the record now if it is going to be dealt with at the implementation phase. The problem here is we have a board that is going to be provided with information. When we asked about

concerns previously, we were told that one mechanism is that the board could refer matters to the CEO. The CEO can carry out investigations, make referrals, start prosecutions and the like. All of those things are of no use to a patient who is being coerced or a patient who has lost decision-making capacity if that patient is now dead.

We know from an earlier debate that the normal time in which a voluntary assisted dying process can happen is as short as nine days. However, there is an express pathway that would allow for the process to happen as quickly as two days. If this provision says that a special meeting of the board may be convened by the chairperson at any time, but they need to give two or three days' notice, for example, then that is hopeless for the person on the express pathway who is being taken advantage of. That is why I am raising this particular concern now. I understand the answer that the minister has given—that it will be looked at during the implementation phase—but for whoever is involved in the implementation phase, potentially even people in the chamber at the moment, I cannot emphasise enough how much we need to get this particular provision right. It is of no use to have a chairperson call a special meeting after a person is dead and, potentially, cremated or buried.

Hon SUE ELLERY: The honourable member is quite right; there are important functions to be carried out by the board, and those functions are at various points very timely. I am sure that in conducting its affairs and determining its own meeting procedures under clause 134, which we will get to in the minute, the board will need to develop a set of meeting procedures that allows it to meet the time requirements that from time to time will be more urgent than at other times.

Clause put and passed.

Clause 132: Quorum —

Hon NICK GOIRAN: Does the requirement set out at clause 132 meet with the standard board administration practised by government boards generally?

Hon SUE ELLERY: I am advised that yes, it does.

Hon NICK GOIRAN: To be clear, does that mean that on government boards a quorum is always three members?

Hon SUE ELLERY: This is standard when the board membership is five, so the quorum rate would depend on the size of the board.

Clause put and passed.

Clause 133: Presiding member —

Hon NICK GOIRAN: It is not clear to me why clause 133 is needed. If this clause were defeated or were not present, would this not be the case in any event?

Hon SUE ELLERY: I am advised that this is a standard provision that applies to other government boards and it makes it explicit that someone has to chair the meeting. It should be the chair or the deputy chair, but if they are not available, those present at the meeting must elect someone to act as the chair.

Clause put and passed.

Clause 134: Procedure at meetings —

Hon NICK GOIRAN: Rather than simply leaving meeting procedures to the board, is there not some sort of expected procedure for public sector boards and committee meetings that ought to be implemented?

Hon SUE ELLERY: I am advised that a—this is my word—mandatory set of board procedures is published and managed or advised by the Public Sector Commissioner. Then various boards, depending on their functions and roles that they carry out, can add to those specific provisions to meet their needs to carry out the functions under their particular statute.

Clause put and passed.

Clause 135: Voting —

Hon NICK GOIRAN: What matters pertaining to patient safety might the board be required to vote on?

Hon SUE ELLERY: I am not sure that we can be specific here. It is not anticipated that the board would function in a way that means it would vote on specific individual cases of individual patients. There might be a broader discussion about the form in which analysis is to be provided or whether it conducts a particular bit of research, and that matter might be subject to a vote. But I am not in a position to advise the member that the board will vote on these matters but it will not vote on those matters. I am not sure that any board functions like that. Most boards, if they are working well, will actually try to achieve consensus in decision-making, so I cannot tell the member that the board will be voting on the safety of a particular patient. It is not anticipated that that is the kind of thing that it would vote on.

Clause put and passed.

Clause 136: Holding meetings remotely —

Hon NICK GOIRAN: We have previously learnt that the intersection of federal law precludes some voluntary assisted dying conversations from taking place. What impact will this have on the board communications that occur via a carriage service?

Hon SUE ELLERY: The advice I have is that we do not expect that the commonwealth Criminal Code, and the particular sections to which the member referred, will have any application to the conduct of board meetings.

Clause put and passed.

Clause 137: Resolution without meeting —

Hon MARTIN ALDRIDGE: This clause states —

> A resolution in writing signed or otherwise assented to in writing by each member has the same effect as if it had been passed at a meeting of the Board.

If an urgent matter arose that required the urgent consideration of the board, could it do what we do as committees, which is to agree to a circular resolution, say by email or even by a conference call, and have that resolution affirmed at the subsequent meeting of the board, whether that be remotely or not?

Hon SUE ELLERY: Essentially, the point of that clause is to allow resolutions to be reached without holding a meeting. That is just giving the head of power, if you like, for a resolution in writing signed or as otherwise assented to in writing by each member to have the same effect as if it had been passed at a meeting.

Hon MARTIN ALDRIDGE: "In writing" could be a reply to an email assenting to a particular resolution. Would that satisfy the requirement for it to be in writing?

Hon SUE ELLERY: I am advised, yes.

Hon NICK GOIRAN: What types of resolutions are we talking about being made in this kind of context? The work of the Voluntary Assisted Dying Board is a matter of great seriousness and gravity and we need to make sure that the board is not left in a situation in which it is simply passing emails among each other when potentially it is a matter of life or death. What types of resolutions are we talking about? Are we looking to constrain the types of resolutions using this mechanism in comparison with more substantive ones?

Hon SUE ELLERY: There is not a prescription about what nature of things may be resolved without a meeting as opposed to others. Given the powers and responsibilities of the board, given the high expectations of the skills and experience that members of the board, the chair and deputy chair will bring to the board, it is anticipated that they will carry out their functions with the appropriate degree of gravitas that is required. However, there is no prescription before us that says that these kinds of matters may be resolved only in a physical meeting and these may not. It is about the board determining its own protocols about how it will deal with matters and carrying out its functions with the appropriate level of gravitas.

Clause put and passed.

Clause 138: Minutes —

Hon NICK GOIRAN: Will the board minutes be made public?

Hon SUE ELLERY: I am advised that minutes would not, as a matter of course, be made available. They may well be subject to freedom of information requests. However, it is likely that if they were released under FOI, they would be redacted so that any personal information was not released.

Hon NICK GOIRAN: That is a darn sight better than the secret minutes of the Joint Select Committee on End of Life Choices.

Hon Sue Ellery: Fell into that, didn't I!

Hon NICK GOIRAN: Better than that, at least that inquiry kept minutes, unlike the ministerial expert panel, which we were told could not even be bothered to keep minutes. I am pleased to see that a matter as serious as this will be treated accordingly by the board.

Clause put and passed.

Clause 139: Disclosure of material personal interest —

Hon NICK GOIRAN: What would be considered a material personal interest in a matter being considered by the Voluntary Assisted Dying Board?

Hon SUE ELLERY: There is no legislative definition of the term "material personal interest". The concept originates from Corporations Law and is espoused through common law. Material personal interest exists if the relevant interest is material; that is, the interest needs to be of some substance or value, rather than merely a slight, low-value or trivial interest. The materiality of an interest will depend on the particular circumstances of each case. It will be a matter of judgement for each member to determine. Any interest that has the capacity to influence the vote of a member is material, regardless of how it arises. A personal interest means that the interest must be an interest of the member themselves and not the general public, nor an interest of another person. It will not be personal if it is an interest of someone else only. The interest may not be personal if it affects the member as part of a wide group or class and in the same manner and to the same degree that affects the other members of the group or class, such as ordinary shareholders in a company. With respect to money, the interest need not be pecuniary. A member who fails to disclose a material personal interest commits an offence. There is a maximum penalty of $10 000 for that. That is a penalty in common in recent WA legislation for an offence of this type. The disclosure must be minuted. If the disclosure relates to a matter that is included in the annual report, the annual report must include details of any disclosure under this clause.

Hon NICK GOIRAN: Would membership in an organisation—for example, Dying with Dignity Western Australia—be considered a sufficient conflict worthy of disclosure?

Hon SUE ELLERY: I advise the chamber that essentially any interest that has the capacity to influence a member's vote is material regardless of how it arises, but that will be a judgement for each member to make for themselves.

Clause put and passed.

Clause 140: Voting by interested member —

Hon NICK GOIRAN: Would a breach of clause 140 be capable of investigation by the Corruption and Crime Commission?

Hon SUE ELLERY: If the person is holding a public office that fits within the definition of the CCC provisions, potentially that is the case.

Hon NICK GOIRAN: Is membership of the board sufficient to capture the member?

Hon SUE ELLERY: I do not have the CCC act in front of me. I just said that if they met the definition of a "public officer" under the CCC provisions then, potentially, yes, that is possible.

Hon NICK GOIRAN: If it is not capable of being investigated by the CCC, who would have the capacity to do that investigation?

Hon SUE ELLERY: It may be captured by the CCC but if it is not, the Public Sector Commissioner might also have a role.

Clause put and passed.

Clause 141: Section 140 may be declared inapplicable —

Hon NICK GOIRAN: Will the minister with the carriage of the Voluntary Assisted Dying Act 2019, as it will be called, have oversight of, or any power to, overrule a decision to allow a member to vote on a matter on which they hold a material personal interest?

Hon SUE ELLERY: Yes. Clause 143 sets out the provisions in which the minister may in writing declare that section 140 or section 142 or both of them do not apply to a specified matter either generally or in voting on particular resolutions.

Hon NICK GOIRAN: We will get to clause 143 in a moment. My understanding of that particular provision is that it tries to set aside the provisions set out here and that would be in order for the minister to say that the board does not need to worry about dealing with that particular situation. Rather, what we are talking about here is the minister being concerned about some mischief and they want to override or overrule a decision and say that member of the board cannot participate in this particular instance because they hold a material personal interest. I think that is different from clause 143.

Hon Sue Ellery: I think you might be right.

Hon NICK GOIRAN: Does the minister have some other power to intervene in that situation?

Hon SUE ELLERY: I am advised no. If it helps the chamber, effectively clause 140 provides that if a person has a material interest, they must not vote. Clause 141 provides that the rule that states that the person must not vote does not apply if the person disclosed it and the board has passed a resolution that said about that particular declared interest that it is so trivial it does not matter. Hon Nick Goiran questioned whether the minister has the power to override that. I am advised the minister does not.

Hon AARON STONEHOUSE: To clarify, in the vote that would take place under proposed section 140, would the member with a conflict of interest be able to vote to overrule proposed section 140?

Hon SUE ELLERY: I take the member back to clause 140(1)(a). The person with the material interest must not vote and must not be present when that matter is being considered.

Hon Aaron Stonehouse: That would exclude them from voting under clause 141.

Hon SUE ELLERY: Yes, because it is about them and their particular interest.

Clause put and passed.

Clause 142: Quorum where s. 140 applies —

Hon NICK GOIRAN: Why is it necessary to reduce the quorum when a member is disqualified from voting on a matter due to a material personal interest? Could not the agenda item in question be laid down for later consideration when a quorum of three or more is present?

Hon SUE ELLERY: The honourable member himself pointed out that the nature of the board's work will be critically time linked from time to time and it will not want to put off a decision that needs to be made quickly. Clause 142 allows for an exception to the general provision of a quorum of three. That method will ensure that the board can continue to function in what might be exceptional or rare circumstances. It is a common and standard approach to maintain the functions of the board, but I guess of particular relevance here is that the board needs to make time-related decisions and we do not want it to lose a quorum and therefore not be able to make those decisions.

Clause put and passed.

Clause 143: Minister may declare s. 140 and 142 inapplicable —

Hon NICK GOIRAN: Will a copy of the minister's declaration under clause 143(1), which is required under clause 143(2) to be laid before each house of Parliament within 14 sitting days of the house after the declaration is made include the minister's reason for the declaration and will it be considered a disallowable instrument?

Hon SUE ELLERY: I am advised that the nature of the material that will be tabled will not be a disallowable instrument. The minister's declaration may include reasons; there is nothing in the bill that requires them to provide reasons. The provision that the declaration must be laid before the house within 14 days is consistent with WA practice and good governance. It is likely to occur when the minister has come to the view that a potential material interest is not a material interest but it is appropriate that there be transparency about that matter.

Hon NICK GOIRAN: Is clause 143 a Henry VIII clause?

Hon SUE ELLERY: I do not see how it is. It lays the declaration before the chamber; it does not take any power away from the Parliament. I do not think it fits into the category of a Henry VIII clause at all. It is about informing Parliament and maintaining transparency; it is not about the delegation of decision-making.

Hon NICK GOIRAN: I am not concerned about the laying of the declaration on the table of the Parliament; that is an excellent transparency measure. I am concerned about clause 143(1) under which the minister can eliminate two sections of Western Australian statutory law—that is, sections 140 and 142. The minister, by way of edict—the bill refers to it as a written declaration—much like a Henry VIII clause, can come along with a pen and say, "Sorry, I've decided that sections 140 and 142 no longer apply." Clause 143(1) is the provision in question.

Hon SUE ELLERY: I guess it is arguable; the honourable member might want to argue that. The fact that the decision made by the minister is laid before the Parliament is not normally a function of what constitutes the pure definition of a Henry VIII clause. In fact, the Parliament is being advised of the decision-making in this clause.

Hon NICK GOIRAN: So far I agree with the minister. The final point of contention is that I think the minister advised the chamber that it is not a disallowable instrument. Here we have a Henry VIII clause that allows the minister to decide that the law does not apply anymore because he or she has declared that sections 140 and 142 can be tossed away. He or she will let Parliament know, and that is where it stops; the Parliament has no power to do anything at that point. I would have thought that this is a concern. I suspect it would have been picked up had this bill been referred to the Standing Committee on Legislation, as originally suggested by Hon Rick Mazza. That decision has now been made, but is this something that the government is willing to take a closer look at? I realise that it is unlikely to do so at 8.30 pm on 4 December, given the Premier's enthusiasm for this bill to pass before Christmas, but a full and comprehensive explanation to the chamber is needed about clause 143.

Hon SUE ELLERY: I have made the point that it is arguable that it is a Henry VIII clause. I do not think it is arguable that it is a pure Henry VIII clause because a component of it advises the chamber of the decision-making. We can have an argument about whether or not it is a Henry VIII clause, but the government believes that the provisions are an important part of the governance arrangements around the board, and we want to proceed with the provision before us.

Hon AARON STONEHOUSE: It concerns me that this clause grants a minister the power to unilaterally decide that parts of a statute do not apply. It seems to me that that would fit the definition of delegating legislative power to a minister without the ability to disallow. Members can call that what they like, but it is a delegation of legislative power without the ability for Parliament to claw back that power through disallowance. In any case, I am concerned about the effectiveness of section 143(2) as a transparency measure. I understand that a certain level of information may or may not be provided in that tabled declaration, but if that serves as perhaps a notice to Parliament that a declaration has been made, Parliament does not know the circumstances under which it was made. What information is retained by the minister or the board that might be subject to a freedom of information application, so that if a declaration is tabled, future Parliaments may know what to look for?

Hon SUE ELLERY: I have already outlined to the chamber in a couple of instances since I have been at the table the information that will be held by the board and be FOI-able. As long as it does not include identifying information of persons who cannot give their consent for the release of that information, the documents held by the board are FOI-able.

Hon AARON STONEHOUSE: Presumably, there would not be an official request form, but correspondence between the board and the minister would be FOI-able, and the minutes might make mention of the circumstances, and that information would probably be sanitised or —

Hon Sue Ellery: Redacted.

Hon AARON STONEHOUSE: — redacted, and that would be FOI-able. That is all I wanted to clarify.

Clause put and passed.

Clause 144: Establishment of committees —

Hon NICK GOIRAN: Will the committee established under clause 144(1) have the same powers as the board in carrying out its functions?

Hon SUE ELLERY: Clause 119 canvasses the delegation of the board. Clause 119(1) states —

> The Board may delegate any power or duty of the Board under another provision of this Act to a member or to a committee established under section 144.

The honourable member asked whether the committee will have the power of the board. It will depend on what it has been delegated to do.

Hon NICK GOIRAN: Will the committee also be considered an agent of the Crown with the status, immunities and privileges of the Crown?

Hon SUE ELLERY: I am advised that yes, it will, because the committee is effectively part of and captured by the board.

Hon NICK GOIRAN: Yet clause 124 states —

> The Board consists of 5 members appointed by the Minister.

Now we have committee members who may not necessarily include those five members of the board—they may include some members of the board, but not necessarily all of them—so I am not convinced by that response. Nevertheless, can the minister indicate whether the minister with the carriage of this act will have any oversight or input into the determinations and appointments made by the board under clause 144(3)?

Hon SUE ELLERY: The provisions of clause 144(3) outline that the board may determine the membership and appoint members of the board or other persons as it thinks fit to be members of a committee. There is a catch-all provision for what role the minister might have back at clause 122, and we talked about the minister being able to give written directions to the board as long as they were not about a particular case. Theoretically, the minister might be able to say to the board that he or she wants it to appoint X, Y or Z to a committee, but we anticipate that the board will establish its own subcommittees, as boards of this nature do, using its own pool of expertise to recruit people to provide it with information or to perform the functions it requires of the committee, and for the committee to report to the board so that any decisions are ultimately made by the board and not the committee.

Hon NICK GOIRAN: What exactly do we think these committees will do for the board? During the debate so far, we have learnt that really the board is an expert group at catching forms. It will receive a whole stack of forms with respect to people wanting to access voluntary assisted dying, and apart from that it will keep some statistics and some data. It is not abundantly clear what these committees will be needed for when the board has such a limited role. We know they are not going to be monitoring life, and we know they are not going to be investigating; they are going to be referring. What do we anticipate that these committees will be doing?

Hon SUE ELLERY: The committee could be about anything that the board determines that it needs advice on or that it needs a group to be working on concurrently to the board conducting its business. I appreciate the description by the honourable member that this board constitutes nothing more than an organisation to capture forms. With

the greatest of respect, we will have to disagree on the value and importance of the board, because we consider it to be considerably more important than that. For example, the board could set up a committee to look at the best way to record statistics. It could set up a committee to look at best practice policy for supply mechanisms. It could set up committees to look at any range of matters, which is what good boards do across a range of areas in health practice.

Clause put and passed.

Clause 145: Directions to committee —

Hon NICK GOIRAN: Will the minister have any oversight of the directions given by the board to the committee under clause 145?

Hon SUE ELLERY: I will rely on the advice I provided to the chamber before about the establishment of committees. There is a catch-all provision at clause 122 that enables the minister to give direction to the board about a whole range of things, except particular cases. There is a power that the minister could exercise if they chose to, but this is about how the board conducts its subcommittees, which is standard practice for a whole range of boards that operate within the broad range of clinical spheres that Health deals with every day.

Clause put and passed.

Clause 146: Committee to determine own procedures —

Hon NICK GOIRAN: Would it not be more appropriate for all of the committee's procedures to be approved by the board or, indeed, by the minister?

Hon SUE ELLERY: That is not the normal practice across a range of boards. This provision says "subject to any directions of the Board". It would be a very strange board that, in establishing a committee, did not say what it wanted it to do, particularly in this area, which is such an important one and deals with matters of such gravitas. The member may form the view that it would be better to do it a different way, but we have done it this way. This is the standard way that many boards covering a range of matters in Health and elsewhere conduct their business.

Hon NICK GOIRAN: It may be standard practice of boards and committees, but this will be the first time in Western Australian history that we will have a board in place overseeing Western Australian lives being taken. The standard processes of boards and committees are not particularly satisfying in that context. I would have thought that given the seriousness of this matter, as the minister says, we would ensure that the highest levels and standards apply. I think that the minister should take responsibility for any directions provided to the committee rather than it being up to the committee to determine its own procedures, to say nothing of the board. There are two other options, the board or the minister, neither of which is being taken. We are simply letting the committee do as it pleases.

Clause put and passed.

The CHAIR: Members, I am delighted to announce the arrival of supplementary notice paper issue 20, which is now being distributed for your edification as we move to clause 147.

Clause 147: Remuneration of committee members —

Hon NICK GOIRAN: What appropriation has been earmarked for clause 147, "Remuneration of committee members"?

Hon SUE ELLERY: I will give the same advice I gave the honourable member in response to his question about the remuneration of board members. From time to time the minister may make a decision that remuneration and allowances ought to be paid, and the minister would do that on the recommendation of the Public Sector Commissioner.

Clause put and passed.

Clause 148: Board to send information to contact person for patient —

Hon NICK GOIRAN: Clause 148 requires the board to send certain information to the contact person for the patient. As we learnt earlier today, the contact person has some pretty onerous responsibilities, including having to return the substance in the event that the patient has revoked their decision to self-administer and the poison is still at their home. The contact person must bring it to the authorised disposer. The other circumstance in which the contact person must do that is, of course, when the patient has died, if any substance has been left over. The contact person has some pretty heavy responsibilities, not the least of which is that, if they do not comply and return that within 14 days of the date of revocation—a date of revocation they may not even know of—they can be subject to a very significant penalty. I would have to go back to the relevant clause, but I think it was imprisonment for up to a year. In that context, what type of information are we looking to provide to the contact person under clause 148? Will the board provide information to the contact person on how to gain access to the premises to collect the unused or remaining prescribed poison? Will the board provide information to the contact person about who is an authorised disposer, and the contact details of those authorised disposers?

Hon SUE ELLERY: The information provided by the board will remind the contact person of their requirements under the act, to return any unused or remaining voluntary assisted dying substance to an authorised disposer. It will advise the contact person of the support services available to assist them to comply with their requirements and to provide them support in their role as a contact person. It will advise the contact person who the approved disposers are. Furthermore, a list of approved disposers will be publicly available on the department's website. They will be encouraged to formulate a plan with the patient to ensure that they can discharge their responsibilities, and it would be anticipated that included in that plan would be the establishment of how they gain access to the house et cetera. Additional information may be identified during the implementation stage and during stakeholder consultations.

Hon ADELE FARINA: I move —

Page 86, after line 11 — To insert —

(aa) includes the name and contact details of the authorised supplier, and of the authorised disposer, based closest to where the patient resides; and

This is a very minor amendment. As we have heard already, one of the roles of the contact person is to dispose of any unused substance and to deliver it to the authorised disposer. The contact person may also need to collect the voluntary assisted dying substance from the authorised supplier, in which case they need to know where to go to do that. I understand from earlier discussions that the government intends that this information will be provided on the relevant website, and that is great, but throughout regional Western Australia, access to the internet is not all that reliable. Given that the board will already be providing the contact person with information under this clause, I suggest that we amend it so that we also ensure that the contact person is given the details of the closest authorised supplier and authorised disposer, just to make it easier for them to carry out their functions under the act.

Hon SUE ELLERY: I indicate that the government will not support this amendment. We think that it is unnecessarily prescriptive, and it does not add to the bill. The provisions that the honourable member has set out include that the information needs to be based closest to where the patient resides. That may not be relevant for a particular patient. It is too prescriptive. It is anticipated that during implementation the Department of Health will look at the preferred scope of information to be given to the contact person, and it may be that the best way to proceed is to have a list of authorised disposers; it may also be that the contact person would need information on more than one authorised supplier in the hub-and-spoke model as well.

Hon NICK GOIRAN: I have heard a few things over the course of this debate, but this is right up there. Seriously, how can we suggest that of the contact person who has, as I said earlier, a responsibility to return the poison back to the authorised disposer on pain of being jailed for a year if they do not do so within 14 days of the revocation? That is the context that we are operating in here, and now the minister is saying that it is too prescriptive for this board to tell the contact person the name and contact details of the authorised supplier and the authorised disposer based closest to where the patient resides. That is too prescriptive, and too onerous for the board. We do not want the board to be able to do that. The person is in jeopardy of going to jail for up to a year, in actual fact through no fault of their own, and there are two circumstances I give to the minister. The first is that they have never been told about the revocation anyway, but because of a provision that we have already agreed to earlier in the bill we say, "Too bad if you don't know; you have to return the poison within 14 days of the revocation." That is scenario number one. Scenario number two is that the patient has died and they cannot actually enter the premises. I have asked repeatedly in debate on previous clauses what mechanisms and supports are going to be provided by the board to assist the contact person. We keep getting told that we are going to sort this out in the implementation phase, and we are told that the implementation phase is going to be at least 18 months, which is pretty ironic, given that the Premier keeps telling everybody that, if we do not pass this bill, for every day that it does not pass there is another person dying in agony, and yet he does not tell people that he needs at least another 18 months to put this whole program in place. All Hon Adele Farina is doing is saying that we should take a moment, while we are here on 4 December anyway, to make sure that the board actually has to tell the contact person the name and contact details of the authorised supplier. The authorised supplier is something that the government would have determined. As I recall, when Hon Stephen Dawson was in the chair, he indicated to us that the CEO would sort out all these things. The government decides who the authorised supplier is, and the authorised disposer, and all we are going to be doing is saying to the contact person that these are the two people who live closest to the patient. There is no obligation on the part of the contact person to use those particular people. They could go and use one of the other authorised disposers or suppliers in order to comply with their onerous requirements under this bill. Why would we seriously want to block that person from having that information? It makes no sense to me whatsoever, and I would ask the government to reconsider what is plainly a very sensible amendment.

Hon AARON STONEHOUSE: I would like to make an observation here. I take the Leader of the House's point that it is a bit prescriptive, and if we take her at her word, that information like this might be included in the information provided to a contact person anyway, then this might unnecessarily narrow the information that is

provided. However, the language used in proposed new paragraph (aa)—to include the name and contact details of the authorised supplier and the authorised disposer based closest to where the patient resides—is not exhaustive. It does not say that we cannot include, as was suggested by the Leader of the House, a list of all available suppliers. It just says that, at the very least, at a minimum, we must include that information based on the nearest one to where the patient resides. If it is the intention of the CEO during the implementation phase to provide a list or several options to a contact person with information provided to them under clause 148, perhaps at the top of that list it will have the nearest one to where the patient resides. I think that is absolutely appropriate. I do not think we really need to be too concerned that the new proposed paragraph (aa) is too prescriptive, because it is not exhaustive. It will not exclude any information. I think it is wholly appropriate that we make it clear here, in the primary legislation, that we want this information provided to a contact person.

Hon MARTIN ALDRIDGE: I am surprised that the government is opposing this amendment. I thought it would do no harm and certainly, in some regional and remote locations, it could actually do some good. The way I look at it is that we should not make the assumption that the contact person has been on this journey with the patient right the way through. They might not have been there for the first or second practitioner or the referring practitioner; they may not have received the information that the patient has received. The contact person may be mistakenly of the view that they can just pop down to the local pharmacy and fill the script when the patient is ready to receive the substance. Although it has not been determined yet, we have heard that there will be a hub-and-spoke model for distribution of the substance; it will not be done through community pharmacies. That is about as much information as we have received through Consideration of the Whole so far. In regional Western Australia, that could mean a day's travel there and back to the authorised supplier to actually procure the drug. If the contact person has not given consideration to that fact, it could well put the patient in the position of not being able to access the substance at a time of their choosing, or may well delay their access to the substance at a time of their choosing. Similar points have already been made about the disposal of the substance. I struggle to see how this amendment could cause harm and, indeed, I think there could be circumstances in which it could actually improve the information that is provided to a contact person at a potentially very late point in the process, when there is limited access to information.

Division

Amendment put and a division taken, the Deputy Chair (Hon Matthew Swinbourn) casting his vote with the noes, with the following result —

Ayes (17)

Hon Martin Aldridge	Hon Adele Farina	Hon Martin Pritchard	Hon Alison Xamon
Hon Jacqui Boydell	Hon Nick Goiran	Hon Tjorn Sibma	Hon Ken Baston *(Teller)*
Hon Jim Chown	Hon Rick Mazza	Hon Charles Smith	
Hon Peter Collier	Hon Michael Mischin	Hon Aaron Stonehouse	
Hon Donna Faragher	Hon Simon O'Brien	Hon Colin Tincknell	

Noes (17)

Hon Robin Chapple	Hon Sue Ellery	Hon Kyle McGinn	Hon Darren West
Hon Tim Clifford	Hon Diane Evers	Hon Samantha Rowe	Hon Pierre Yang *(Teller)*
Hon Alanna Clohesy	Hon Laurie Graham	Hon Robin Scott	
Hon Stephen Dawson	Hon Colin Holt	Hon Matthew Swinbourn	
Hon Colin de Grussa	Hon Alannah MacTiernan	Hon Dr Sally Talbot	

Amendment thus negatived.

Hon NICK GOIRAN: Given that the chamber has, in its wisdom, decided that we do not want to prescribe this information, will the government in any event ensure that this information is provided by way of the implementation period?

Hon STEPHEN DAWSON: Yes, we will.

Hon NICK GOIRAN: I find it ironic that the government will ensure that it is provided, but we have just said that we will not do it, but let us press on. What support services will be available to assist the contact person to comply with the requirements referred to in clause 148(a)?

Hon STEPHEN DAWSON: The specifics will be determined in the implementation phase, but following consultation, honourable member.

Clause put and passed.

Clause 149: Request for information —

Hon NICK GOIRAN: Could a current or former medical practitioner of the patient disclose the patient's medical record without consent due to clause 149(2)?

Hon STEPHEN DAWSON: They cannot be compelled. It would be up to the practitioner if the information was provided. Good medical practice, though, would be for approval to be sought from the patient, or, if the patient was deceased, from the next of kin or the executor.

Clause put and passed.

Clause 150: Disclosure of information —

Hon NICK GOIRAN: Why is the minister not listed at clause 150?

Hon STEPHEN DAWSON: The minister is listed at clause 123; therefore, the minister is not required to be listed here.

Hon NICK GOIRAN: Apart from the people listed at clause 150, and the minister at clause 123, is there any other clause in this bill or any section in any other act that would require or enable the board to provide or disclose information with regard to the performance of its functions?

Hon STEPHEN DAWSON: If I can speak to the intent of this clause, the purpose of this provision is to enable public authorities, researchers and educational bodies to either directly or indirectly assist agencies to improve the services that they provide to the WA community. Often if there is no express provision re information sharing, this becomes a point of contention between agencies. We wish to offset this issue by including an express provision. This clause will help the board to carry out its function of continuing to improve the legislation and the way it will operate. For example, information may need to be provided to disability services organisations or palliative care networks that are involved in the provision of services to people accessing the voluntary assisted dying process. It is simply to make sure that the board operates in a manner that will enable the continued improvement of the legislation.

Hon NICK GOIRAN: Minister, I support the list in clause 150; I have no objection to that. However, I want to make sure that we are clear about who else is able to obtain information from the board. The minister has identified a clause—I think it was 122 or something —

Hon Stephen Dawson: It was 123.

Hon NICK GOIRAN: — that provides that the minister is able to obtain information from the board. I will give the minister some examples. Could the tribunal obtain information from the board? Could the Supreme Court obtain information from the board? Could a house or a committee of Parliament obtain information from the board? Who, other than the people listed in clause 150, and the minister, are able to access information from the board?

Hon STEPHEN DAWSON: I am advised that the tribunal could, the Supreme Court could, and Parliament could.

Hon ADELE FARINA: I move the amendment standing in my name at 495/148, which I think should actually read 150.

The DEPUTY CHAIR: Thank you. It is a typo, but I think we will stay with the current reference.

Hon ADELE FARINA: I move —

> Page 87, after line 2 — To insert —
>
> (c) either House of Parliament or a committee of either House; or
>
> (d) a joint committee of both Houses of Parliament.

Again, this is a very minor amendment. I am recommending it to put it beyond doubt that the board is able to provide information to Parliament. It is similar to a provision that exists in the Corruption and Crime Commission Act 2003 and other legislation, so there is no reason there should be any great objection to including it in this bill. This bill has a number of clauses that restrict the provision of information for a whole host of reasons—a whole host of good reasons—however, Parliament exists and it needs to scrutinise the activity of government agencies. In order to do that, it needs to gain access to that information. The purpose of this clause is to put the question beyond doubt.

Hon MARTIN ALDRIDGE: I would like to ask a question about this amendment. I support the intent of what Hon Adele Farina is trying to do, but I want to reflect on clause 150, where this will be inserted, where it says, "the board may". My concern is that if this amendment is supported, we will include in this list —

> (c) either House of Parliament or a committee of either House; or
>
> (d) a joint committee of both Houses of Parliament.

If "may" indicates a discretion that the board has, my concern would be us passing a bill that says the board has discretion as to whether to provide information to a house of Parliament, whereas I believe its current standing is that under parliamentary privilege, Parliament is entitled to that information, unless there is some reasonable explanation that it be denied that information. My concern would be that whilst understanding the intent, it would perhaps be asserting a position that we are giving the board some discretion to not provide information to a house of Parliament.

Hon STEPHEN DAWSON: Perhaps I can assist in saying that the government is not supportive of this amendment. It is our view that it is unnecessary to include in the bill the amendment proposed by Hon Adele Farina. It is the right and privilege of Parliament to seek and receive de-identified information from the board, and it is certainly intended that the board perform such a role. Clause 150 of the bill gives the board additional power to disclose information to address disclosure related issues, often by other agencies. It is noted that the provision on the disclosure of information in clause 105 does not apply to the disclosure of statistical or other information that is not personal information.

Hon ADELE FARINA: I apologise, I did not note the word "may". I have been in the Chair and trying to run this with parliamentary counsel in between; it has been difficult. I seek leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause put and passed.

Clause 151: Board to record and retain statistical information —

Hon NICK GOIRAN: The information required to be recorded and retained under clause 151 is, in my view, grossly inadequate. To maintain records and statistical information on voluntary assisted dying, I wonder whether the following should also be required to be recorded and retained by the board: the qualifications of medical practitioners who have been a part of the process; how many times administration of the substance was carried out by a practitioner; how many referrals were made to specialists in relation to diagnosis; how many referrals were made to specialists in relation to prognosis; how many referrals were made to specialists in relation to decision-making capacity; how many referrals were made in relation to coercion; how many deaths were practitioner administered; how many were self-administered; of those deaths that were practitioner administered, how many of those deaths were administered by an authorised nurse practitioner; what was the gender of the patient; what was the ethnicity of the patient; and, the end-of-life concerns cited by the patient that formed the basis for their request for voluntary assisted dying. With regard to the last point, the concerns of the patient, I note that that is precisely what takes place in Oregon. Its list includes: losing autonomy; less able to engage in activities making life enjoyable; loss of dignity; losing control of bodily functions; a burden on family friends and caregivers; inadequate pain control; fear of inadequate pain control; financial implications of treatment both curative and non-curative; and, it should also indicate the number or percentage of patients who cite each of these concerns. During the implementation phase will the government require the board to record and retain this information?

Hon STEPHEN DAWSON: I am advised that statistics will be appropriately determined following consultation with end-of-life researchers.

Hon NICK GOIRAN: Do we have some of these end-of-life researchers in Western Australia? Are they a prevalent group or class of individuals? Do we have any names of these end-of-life researchers, or will we be going to Oregon or Victoria or some other jurisdiction to consult these people?

Hon STEPHEN DAWSON: I am advised that there are some in Western Australia, including one named Lorna Rosenwax, but there could be others.

Hon MARTIN ALDRIDGE: I move —

> Page 87, after line 12 — To insert —
>
> (ba) participation in the request and assessment process, and access to voluntary assisted dying, by patients who are regional residents;

I will be brief, because I have said a little about this at clause 4, regarding principles. This amendment links in with the amendment that was passed at clause 4. I remind members that we passed an amendment to include a new principle, which states —

> a person who is a regional resident is entitled to the same level of access to voluntary assisted dying as a person who lives in the metropolitan region;

"Regional resident" and "metropolitan region" are terms defined in clause 5 by subsequent amendments. This amendment would include a new paragraph (ba) under clause 151, which requires the board to record and retain statistical information and would go to, as the amendment is very self-explanatory —

participation in the request and assessment process, and access to voluntary assisted dying, by patients who are regional residents;

Without speaking to the substance of that, I foreshadow that there will be further consequential amendments and reference to an amendment down the track at 498/154 on the supplementary notice paper, which refers to the information to be provided by the board in an annual report. I seek the support of members of the chamber. It is important that, having established the principle, regional residents—no matter where a person lives in Western Australia—have the right to access the voluntary assisted dying regime, and that should this bill pass, we would in turn support the view that we should collect statistical information and publish that information with regard to a person's access to the scheme.

Hon STEPHEN DAWSON: I indicate that the government is supportive of this amendment. It has always been the intent of government that the Voluntary Assisted Dying Board collect comprehensive statistics on voluntary assisted dying, including statistics pertaining to access to voluntary assisted dying by residents from regional, remote and metropolitan areas. This will assist in the interpretation of the bill, whereby specific reference will be made to regional residents regarding collection of data by the Voluntary Assisted Dying Board.

Amendment put and passed.

Hon ADELE FARINA: I have a question on clause 151(2), which provides —

The Minister may give a written direction to the Board requiring it —

…

(b) to include that statistical information in its report under section 154(1).

If the minister does not provide that direction, does that mean that the board will not provide that statistical information in its annual report?

Hon STEPHEN DAWSON: No; I am advised it does not mean that.

Hon NICK GOIRAN: Earlier during the passage of this bill, one of the 52 amendments that the chamber agreed to—52 more than what happened in the other place—was an amendment in the minister's name referring to the method by which the substance was self-administered. Will the board be reporting on the prevalence of the methods used?

Hon STEPHEN DAWSON: We would expect so, honourable member.

Hon NICK GOIRAN: One of the other 52 amendments that the chamber agreed to—52 more than in the other place—related to the use of an interpreter. Will the board be keeping statistics on the prevalence of interpreters in respect of this matter?

Hon STEPHEN DAWSON: Yes, it will.

Hon NICK GOIRAN: An excellent amendment—one of the 52 excellent amendments passed by this chamber; 52 more than the other place—was moved by Hon Adele Farina. I do not have it readily to hand, minister, but my recollection of it was that we agreed that the board would get information about the complications that arise after a substance has been prescribed. I am looking at clause 60. It was an amendment that was subsequently amended—it was at 481/60. It related to the details of any complications arising from the administration of the prescribed substance. In light of that, will the board retain and report on complications?

Hon STEPHEN DAWSON: The board will set out what it will report on, in addition to what it is required to report on under the bill. In addition, the minister can give direction to the board.

Clause, as amended, put and passed.

Clause 152: Board to notify receipt of forms —

Hon ADELE FARINA: I have an amendment standing in my name on the supplementary notice paper at new clause 152A.

The DEPUTY CHAIR: We are not there yet. We are dealing with clause 152.

Hon NICK GOIRAN: Why is the board required to provide a copy of an authorised disposal form or a practitioner disposal form to the CEO? As I recall, the minister previously indicated that this would all be done on a central database.

Hon STEPHEN DAWSON: The form could be drawn from the database. An extract or a clear setting out of required information will be sufficient to constitute a form. The purpose is the clear provision of written information.

Clause put and passed.

New clause 152A —

Hon ADELE FARINA: I move the amendment standing in my name at 496/NC152A.

The DEPUTY CHAIR: Hon Adele Farina has moved the amendment in her name on supplementary notice paper 139, issue 20, at 496/NC152A—at page 87, after line 29, to insert. It is quite long. Unless a member wants me to read it out, I do not propose to read the clause. I do not want to read it, so I do not need to read it.

Point of Order

Hon NICK GOIRAN: I think we have dealt with this once before in the course of this debate. There are a lot of people following the passage of this particular bill —

The DEPUTY CHAIR (Hon Matthew Swinbourn): Member, if you want me to read the clause, you can just ask me to read the clause.

Hon NICK GOIRAN: Yes.

Committee Resumed

The DEPUTY CHAIR: New clause 152A states —

Page 87, after line 29 — To insert —

152A. Notification of complications relating to use of voluntary assisted dying substance

(1) This section applies if —

(a) a patient self-administers or is administered a voluntary assisted dying substance in accordance with this Act; and

(b) the patient suffers an adverse reaction to the substance or there is otherwise a complication relating to the self-administration or administration of the substance.

(2) Any family member of the patient who is aware that the adverse reaction or complication occurred may notify the Board of the adverse reaction or complication.

(3) Any person who witnessed the adverse reaction or complication may notify the Board of the adverse reaction or complication.

(4) If the Board receives a notification under subsection (2) or (3), the Board must —

(a) investigate the matter; and

(b) if appropriate, do 1 or more of the following —

(i) refer the matter to a person or body referred to in section 117(c);

(ii) in order to avoid a recurrence of the adverse reaction or complication, make recommendations to the CEO for changes to the poisons that are voluntary assisted dying substances or the dosages in which voluntary assisted dying substances are used;

(iii) in order to avoid a recurrence of the adverse reaction or complication, develop or review guidelines to assist medical practitioners who prescribe voluntary assisted dying substances for patients.

Hon ADELE FARINA: Hon Nick Goiran was correct when he said that an amendment was moved to clause 60. It required, in the case of a practitioner-administered voluntary assisted dying substance, the medical practitioner to report and inform the board of any complications that may have arisen during that process. A similar amendment in relation to self-administration of the substance was not supported because of some complications with the clause. From all the research that has been done in other jurisdictions, we know that depending on the location, the year of data being looked at and the substance being prescribed that between five per cent and 17 per cent of people have complications from the self-administration process. They may have difficulty swallowing the voluntary assisted dying substance because it is very bitter, or they regurgitate the substance, which means that they are not absorbing enough for it to be effective. A range of other complications may occur. If we are doing the right thing by people who want to be involved in this process, it is critically important for us to ensure that we are collecting that data, constantly improving the system, learning from and evaluating what has happened and then making the appropriate amendments, be that a change to the substance or a change in the dosage. If we are not collecting that information, we cannot make those improvements, and we will continue to see a portion of the people who self-administer

through the voluntary assisted dying process not having the pain-free and peaceful death that they understood they would get by ingesting the substance.

Members will remember that I raised the situation of David Prueitt in Oregon, who self-administered a voluntary assisted dying substance and went into a coma. Three days later, he came out of that coma. He was clearly very distressed about the fact that he had not died, which is what he intended. There was an outcry at the time and a demand for an investigation to find out exactly what happened. The Department of Human Services, which oversees the scheme in Oregon, replied that it did not have the power to investigate, so it would not investigate. Understandably, the public outcry continued because people wanted answers. In the end, I think the Board of Pharmacy decided to look at it. It was very limited in its scope of what it could look at. The only finding that it could bring was that 100 per cent of the prescribed drug was given to the patient, David Prueitt, and he ingested it all. The board felt that perhaps due to the fact that he had taken a laxative, that may have affected the absorption of the voluntary assisted dying substance. We want to learn from that evaluation so we can put something into the medical practice guidelines for voluntary assisted dying so that doctors are able to provide that information to patients and tell them the things they need to do for the process to be effective. Sadly, at this point, we do not have a means of collecting that data in the case of self-administration. The purpose of this amendment is to enable family members who witness the self-administration of the voluntary assisted dying substance to notify the board of any complications or adverse reactions, and then the board could undertake an investigation. In view of the minister's earlier comments that the government does not want the board to have an investigative function—that concerns me because if we do not have that investigative function, we cannot learn and improve—I am prepared, if it makes this amendment more palatable for the government, to change the term to "preliminary investigation". Someone has to collect the data and then decide who to refer it to.

Looking at all the agencies that are identified in the bill before us to whom the board may refer a complaint, it is hard for me to identify from that list who will undertake the investigation. Clause 117(c)(i) states that the board is able to refer a matter to the Commissioner of Police. In this case, no crime would have been committed, so the Commissioner of Police would not be interested. The Registrar of Births, Deaths and Marriages is also mentioned. Again, the matter would not be relevant to their interests. The clause also refers to the State Coroner. It will not be relevant to the State Coroner, particularly if the case was similar to that of David Prueitt, because he did not die. Then we have the chief executive officer of the department of the public service principally assisting in the administration of the Prisons Act 1981. That person is not relevant. We have the Australian Health Practitioner Regulation Agency. Again, that is basically the national board that oversees the conduct of the practitioner. The chances are that there would be nothing untoward about the conduct of the practitioner, so that would not necessarily work either. Then we have a referral to the director of the Health and Disability Services Complaints Office appointed under the Health and Disability Services (Complaints) Act 1995, and also the CEO. The Health and Disability Services Complaints Office does not take complaints from family members, carers or witnesses; it will only take complaints from the patient.

In the case of David Prueitt, he lived; in other cases, there may be complications and the patient may still die. It may be a longer death than anticipated and it might not be pain free. The case cannot be referred to that body because the patient would need to be alive to effect a referral to that body. That really only leaves the CEO and the question of whether we want to give this function to the CEO or leave it more broadly open for the board to undertake that investigation. I do not think it would be a complicated investigation. The board would simply be trying to find out whether there was a prolonged death, whether there was some adverse reaction to the medication or whether there was some other complication, and for that to be reported back to the board so the board is then able to make informed decisions that might be needed about any changes to the legislation or the practice guidelines. This is all geared to what is in the best interests of the patient. I cannot see why anyone would have any objection to this amendment. It places no obligation on a family member, carer or witness to self-administered voluntary assisted dying. It simply leaves the door open for someone who witnesses a complication to report it to the board, and then the board will take some action. I think that is missing from the bill. This amendment would greatly improve the bill and address the gap that currently exists in it.

Hon STEPHEN DAWSON: The government opposes this amendment. It is our view that the amendment proposed by Hon Adele Farina is unnecessary and extends the board's powers. New clause 152A(2) is redundant as it is already possible for a family member to notify the board, and does not require specific provision in the bill. Subclause (4)(a) requires the board to investigate the matter. Under the bill, the board does not have an investigative function, as has been pointed out by me and by the Leader of the House when she was at the table. The board has the power to refer matters for investigation. Clause 108 under part 7 of the bill provides for investigation by the CEO. As has been said, the board's role is data collection and analysis, which is different from investigation, but it does have the power to refer to appropriate authorities.

Hon NICK GOIRAN: According to the minister, the investigation would be carried out by the CEO, who is the director general of the Department of Health. He is a very busy individual. No doubt he will then employ or subcontract investigators to do this task for him. Do those investigators already exist within the Department of Health?

Hon STEPHEN DAWSON: I am advised that there is a unit in the department—the medicines and poisons branch—that has investigators. We would potentially look at expanding the role of that unit during the implementation phase, once the guidelines are worked out, to enable it to carry out that task.

Hon NICK GOIRAN: If there is already a concession by government that there is going to be a need to expand the number of investigators under the remit of the CEO, why not simply give those investigators to the board?

Hon STEPHEN DAWSON: The board does not have an investigative function and we want to keep it that way.

Hon NICK GOIRAN: There are not that many jurisdictions that have euthanasia, assisted suicide or voluntary assisted dying—however it is described in the variation jurisdictions. Do those jurisdictions have anyone who does these types of investigations—for example, do their boards and the like do these types of things?

Hon STEPHEN DAWSON: I am told that there are different mechanisms under each of the acts in the various jurisdictions, but they all do different things.

Hon NICK GOIRAN: Is it the case that in the Netherlands, regional committees do investigations?

Hon STEPHEN DAWSON: The Netherlands certainly does have regional committees, but I could not tell the honourable member whether they undertake investigations of the sort that he is talking about.

Hon NICK GOIRAN: Let me inform the minister that not only do they do the investigations, but also they even publish judgements about them to address exactly the situation that Hon Adele Farina is trying to address—to ensure that we learn from the mistakes that happen along the journey. We have previously had a debate about the fact that the substance that will be used in this particular regime in Western Australia will be an experiment, because there is no ability to do clinical trials on human beings with a substance that will guarantee the death of individuals. As we know from the very few number of jurisdictions that have been down this path already, they have had to experiment with the type of substance that is used. In one jurisdiction—I think it might have been Washington state—they had to try four times before they eventually got the right concoction to ensure the death of the person. This is pretty serious stuff. In the case of David Prueitt, which the honourable member raised with us, after ingesting the prescribed barbiturate, he spent three days in a deep coma. He suddenly woke up, turned to his wife and said, and I quote from page 136 of my minority report: "Honey, what the hell happened? Why am I not dead?" He survived for a further 14 days afterwards, before dying naturally from his cancer.

Since 2005—this is after the Prueitt case—five other people in Oregon have regained consciousness after ingesting the lethal substance. Forget about the Netherlands, Belgium, Luxembourg and those other jurisdictions that have this regime; I am talking about one jurisdiction—Oregon. I know that the government has said, and plenty of members have indicated, that this legislation is based on the Oregon model and the Victorian model. Indeed, in Oregon in 2010, two patients regained consciousness after ingesting medication. One patient regained consciousness 88 hours after ingesting the medication and subsequently died from the underlying illness three months later. The other regained consciousness within 24 hours and subsequently died from the underlying illness five days following ingestion. In 2011, two patients regained consciousness after ingesting the medication. One patient very briefly regained consciousness after ingesting the prescribed medication and died from the underlying illness about 30 hours later. The other patient regained consciousness approximately 14 hours after ingesting the medication and died from an underlying illness about 38 hours later. This is in the context of what we are apparently trying to organise for people in Western Australia—I have heard the phrase "go gently". It does not sound to me to be a very gentle way of going when somebody can regain consciousness 88 hours after ingesting the medication and subsequently die from the underlying condition three months later, amongst other things.

This is the very problem. The minister, the government and the chamber have already agreed that some statistics on complications will be kept. That amendment moved by the honourable member that the government agreed to had my full support. What the honourable member is now trying to do, which also has my support, is to say that it is all very good to collect information about the complications, but then what will we do with it? Why did we even bother agreeing to the previous amendment to count and collate the complications if we are going to do nothing about it? Is it so that we feel good because we have kept data and we will table it in Parliament once a year? We are going to feel great about ourselves because we will table an annual report in Parliament that lists all the complications and the number of times that people have awoken from their lack of consciousness. We are going to feel good about that, but we are going to do nothing about it. That is pointless. If we support this new clause, at least then we will know with confidence that the board will investigate the matter, as the member said, maybe in

a preliminary fashion—I do not particularly care whether it is in a preliminary fashion or otherwise—and, if necessary, then refer to any other body to avoid any recurrence of the adverse reaction. That is the most important thing of all.

After we have learnt that there have been complications as a result of the potion that has been authorised by the CEO—"potion" was the term used by the Attorney General in the other place—at least somebody will investigate it and ensure that a recurrence is avoided. I really do not understand the fundamental objection to this new clause, other than the government does not want to investigate these things. It does not want anyone to investigate these matters; it wants to make sure that they are kept secret. It is just like yesterday when we had a debate about whether any mention should be made of voluntary assisted dying on the death certificate and we said that no, we do not want to do that; we do not want anyone to investigate and we want to make sure that the coroner is not involved. If we do not agree to this new clause, it seems to me that we will be agreeing to a cover-up. I cannot imagine that that would be appropriate on a conscience vote. I indicate that I support the amendment moved by the honourable member.

Division

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

Ayes (16)

Hon Jim Chown	Hon Nick Goiran	Hon Martin Pritchard	Hon Dr Steve Thomas
Hon Peter Collier	Hon Rick Mazza	Hon Tjorn Sibma	Hon Colin Tincknell
Hon Donna Faragher	Hon Michael Mischin	Hon Charles Smith	Hon Alison Xamon
Hon Adele Farina	Hon Simon O'Brien	Hon Aaron Stonehouse	Hon Ken Baston *(Teller)*

Noes (19)

Hon Martin Aldridge	Hon Stephen Dawson	Hon Colin Holt	Hon Matthew Swinbourn
Hon Jacqui Boydell	Hon Colin de Grussa	Hon Alannah MacTiernan	Hon Dr Sally Talbot
Hon Robin Chapple	Hon Sue Ellery	Hon Kyle McGinn	Hon Darren West
Hon Tim Clifford	Hon Diane Evers	Hon Samantha Rowe	Hon Pierre Yang *(Teller)*
Hon Alanna Clohesy	Hon Laurie Graham	Hon Robin Scott	

New clause thus negatived.

The DEPUTY CHAIR: I will leave the chair until the ringing of the bells.

Sitting suspended from 10.02 to 10.15 pm

Clause 153: Execution of documents by Board —

The DEPUTY CHAIR: Honourable members, it may come as some surprise to know that we are dealing with the Voluntary Assisted Dying Bill 2019. We are currently up to clause 153. The question before the chamber is that clause 153 stand as printed.

Hon NICK GOIRAN: Minister, it has been well noted during our debates that the board will be receiving a great number of documents under this legislation. However, what type of documents will it need to execute?

Hon STEPHEN DAWSON: I am advised that it could be that it is engaging an expert or it could have to sign off the annual report to the minister.

Clause put and passed.

Clause 154: Annual report —

Hon NICK GOIRAN: Why does clause 154 not require the board to include information on the number of referrals made by the board under clause 117(c), and to whom those referrals were made?

Hon STEPHEN DAWSON: Clause 154(2) sets out what it must include. Subclause (2)(b) provides for the board to include any information that it considers relevant to the performance of its functions.

Hon NICK GOIRAN: Under clause 117(c), one of the functions of the board is that it can refer to a raft of people. Seven discrete agencies or individuals are listed. This has been given sufficient importance in the bill to be listed as a function of the board. It strikes me that the board should include in its annual report how many referrals it has made under that particular provision. For those reasons, I move —

Page 88, after line 19 — To insert —

(ba) the number of any referrals made by the Board under section 117(c); and

Hon STEPHEN DAWSON: The government does not support this amendment. The amendment proposed by Hon Nick Goiran details the inclusion of the number of any referrals made. My advice is that this does not add qualitative value and is, in any case, unnecessary. As I have pointed out, clause 154(2)(b) provides for the board to include any information that it considers relevant to the performance of its functions. The functions of the board at clause 117(c) relate to referrals that may be made, and it is implicit in the bill that this detail would be included in the annual report.

Hon NICK GOIRAN: If it is implicit, we will make it explicit by agreeing to my amendment. I was with the minister right until the end when he said that it was implicit that it would be included in the annual report anyway. I notice that one of the objections was about the quantity of information that might be provided with regard to the referrals at clause 117(c) being of no particular value. Would we as a chamber not want to know that the function we have provided the board at clause 117(c) is useful? If, year after year as the annual reports continue being tabled we are continually told that there have been zero referrals under clause 117(c), at some point in the history of this scheme someone might reasonably ask the question, "What is the point of that referral function? It's never being used." To give another example, clause 117(c) indicates that a referral can be made to the chief executive officer of the department of the public service that is principally assisting in the administration of the Prisons Act. I would be concerned if those were the only referrals that were reported every year, because it would be an indication that the only time any referrals were taking place was when a person in prison was trying to access voluntary assisted dying. This is the type of information that we have just agreed, at clause 117(c), to be sufficiently important as to give the function and power to the board to refer to these particular bodies. As the minister has indicated, it is implicit that it will be included as part of their annual reports; I would have thought so, too. It is not clear to me what the manifest objection would be to including in the annual reports something that is implicit in any event.

Hon AARON STONEHOUSE: I indicate that I wholeheartedly support this amendment. It increases transparency, it will increase accountability and it will ensure that information that I think will be valuable to this Parliament will appear in these reports, whether implicit or not. I agree with Hon Nick Goiran that if it is implicit that that information would appear in an annual report, it would certainly do no harm to be explicit about it. I do not see that agreeing to this amendment would cause any mischief; it would merely provide a little further clarity around what goes into these reports.

Division

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

Ayes (18)

Hon Martin Aldridge	Hon Adele Farina	Hon Martin Pritchard	Hon Colin Tincknell
Hon Jacqui Boydell	Hon Nick Goiran	Hon Tjorn Sibma	Hon Alison Xamon
Hon Jim Chown	Hon Rick Mazza	Hon Charles Smith	Hon Ken Baston *(Teller)*
Hon Peter Collier	Hon Michael Mischin	Hon Aaron Stonehouse	
Hon Donna Faragher	Hon Simon O'Brien	Hon Dr Steve Thomas	

Noes (17)

Hon Robin Chapple	Hon Sue Ellery	Hon Kyle McGinn	Hon Darren West
Hon Tim Clifford	Hon Diane Evers	Hon Samantha Rowe	Hon Pierre Yang *(Teller)*
Hon Alanna Clohesy	Hon Laurie Graham	Hon Robin Scott	
Hon Stephen Dawson	Hon Colin Holt	Hon Matthew Swinbourn	
Hon Colin de Grussa	Hon Alannah MacTiernan	Hon Dr Sally Talbot	

Amendment thus passed.

Hon MARTIN ALDRIDGE: I move —

Page 88, after line 27 — To insert —

(f) information about the extent to which regional residents had access to voluntary assisted dying, including statistical information recorded and retained under section 151(1)(ba), and having regard to the access standard under section 154A.

Just briefly, this follows on from the amendments that the chamber made earlier this evening at clauses 4 and 151 with regard to the collection of statistical information and the retention of that information by the board. Inserting this provision into clause 154 will require the board to report that information. Similar to the previous two amendments, I seek the support of the chamber in this respect.

Hon STEPHEN DAWSON: I indicate that the government is supportive of this amendment. Our reasons for this were given at clause 151, so for reasons already given, we support the amendment.

Hon NICK GOIRAN: I take it, honourable member, that by agreeing to this amendment at 498/154, we are pre-emptively also agreeing to the amendment at 499/154?

Hon MARTIN ALDRIDGE: Yes, that is a good point, and I had planned to raise it in my brief contribution. The amendment we are now dealing with makes reference to clause 151(1)(ba), which is the amendment I mentioned that we passed earlier this evening, having regard to the access standard established under proposed new clause 154A. Members will see that a proposed new clause 154A stands in my name on the supplementary notice paper. Should this amendment pass, I intend to move an amendment to establish that standard.

Amendment put and passed.

Clause, as amended, put and passed.

New part 9A —

Hon MARTIN ALDRIDGE: I indicate that I will move a new amendment from the floor. I will explain the reasons for that once I have moved it. I move —

Page 89, after line 11 — To insert —

Part 9A — Access standard

154A. Standard about access to voluntary assisted dying

(1) The CEO must issue a standard (the ***access standard***) setting out how the State intends to facilitate access to voluntary assisted dying for persons ordinarily resident in Western Australia, including how the State intends to facilitate those persons' access to —

(a) the services of medical practitioners and other persons who carry out functions under this Act; and

(b) prescribed substances; and

(c) information about accessing voluntary assisted dying.

(2) The access standard must specifically set out how the State intends to facilitate access to voluntary assisted dying for regional residents.

(3) The CEO may modify or replace the access standard.

(4) The CEO must publish the access standard on the Department's website.

In order to facilitate debate and avoid the need for a further supplementary notice paper, I have moved that amendment from the floor. I have signed the amendment, and it is now being circulated. I apologise to the chamber. As members would be aware, the words "Part 9A — Access standard" have been omitted from my proposed amendment on supplementary notice paper 139, issue 20. If that is not corrected, proposed new clause 154A will have to sit under part 9, which deals with the operations of the board. It is more appropriate that this amendment sits under new part 9A, as I had originally intended. Therefore, the amendment I have moved from the floor is slightly different in that respect from the one on the supplementary notice paper.

I hope that this amendment will assist all Western Australians who wish to access voluntary assisted dying to understand how they will be able to do so. I have spoken during the course of this debate, including during the second reading debate, about some of the great difficulties and challenges faced by people who live outside our metropolitan region in accessing the simplest and most basic of medical services, including medical practitioners. Obviously as the bill before us reaches an advanced stage, those barriers will present significant challenges. That is notwithstanding the challenge that will be faced with the operation of the federal Criminal Code Act. I have spoken about that challenge previously. I stand with the government in understanding the challenges it will face in those aspects of voluntary assisted dying that could have been delivered more readily through technologies such as telehealth. A number of issues face regional Western Australians. The government has made a commitment that every Western Australian will be given access to voluntary assisted dying. The amendment that was made at clause 4, "Principles", with the government's support, reflects that intention.

I must point out that this proposed standard will apply to all persons ordinarily resident in Western Australia. Subclause (2) refers more specifically to the facilitation of access to voluntary assisted dying for regional residents. The amendment provides that the CEO will be required to issue the access standard, the CEO may modify or replace the standard, and the CEO must publish the access standard on the department's website. This is an important measure for the operation of voluntary assisted dying should this bill pass both houses of Parliament.

With those few words, I encourage all members to support this amendment, which will ensure that people within our electorates and constituencies are given a fair opportunity to access voluntary assisted dying and have a full understanding of how that access will be facilitated.

Hon STEPHEN DAWSON: I indicate that the government is supportive of this amendment. The access standard to be published by the CEO will articulate how access to voluntary assisted dying will be facilitated to all Western Australians. As Hon Martin Aldridge pointed out, subclause (2) provides that the standard must have particular regard to access in regional areas. I acknowledge that throughout this debate, honourable members have expressed concerns about equity of access to both palliative care and voluntary assisted dying. The government shares that same determination to ensure that the best possible palliative care is available to all Western Australians, and that every Western Australian, regardless of where they live, has equity of access to voluntary assisted dying. I understand that the Minister for Health will also instruct the department CEO to publish a charter of patients' rights to illustrate what all Western Australians can expect.

Hon NICK GOIRAN: What advice has the government obtained about the impact of federal law on proposed new clause 154A(4)?

Hon STEPHEN DAWSON: I am advised that nothing will be published that will offend the commonwealth restrictions.

Hon NICK GOIRAN: Could that mean that nothing is published at all?

Hon STEPHEN DAWSON: No.

Hon NICK GOIRAN: Why not, minister?

Hon STEPHEN DAWSON: The short answer is that the commonwealth code is very specific, and this standard is broader than just the restrictions in the commonwealth act.

Hon NICK GOIRAN: Could it be the case that the restriction applies to subclauses (1)(b) and (c) but not necessarily to subclause (1)(a)?

Hon STEPHEN DAWSON: Possibly. Those issues may need to be tailored so that we do not breach the commonwealth act.

Hon NICK GOIRAN: To be clear about what we might be agreeing to in practice, despite the good intentions of the member, we might be agreeing to the state having to put together an access standard that would include subclauses (1)(a), (b) and (c). It would then be heavily redacted. The only part that could be put on the department's website would be subclause (1)(a) —

> the services of medical practitioners and other persons who carry out functions under this Act; and

Subclause (1)(b), "prescribed substances", might also need to be redacted. As an aside, I think the government's position, as explained during this debate, is that it does not want anyone to know what the prescribed substances are. Subclause (1)(c), "information about accessing voluntary assisted dying", might also need to be redacted. I want to be clear about the likely outcome, given the ongoing debate about the impact of federal law.

Hon STEPHEN DAWSON: The Department of Health in WA is aware of the provisions in the commonwealth Criminal Code Act 1995 about use of carriage services for suicide-related material and the instruction given to medical practitioners in Victoria. If the bill becomes law, there will be an implementation period of at least 18 months before the Voluntary Assisted Dying Act becomes operational. This time period will enable the Department of Health, in consultation with the commonwealth, to develop appropriate administrative measures to ensure compliance with state and commonwealth laws. The answer to Hon Nick Goiran's question is no. The access standard would still be developed and be able to be provided through relevant bodies through information packages, but there may be a restriction in what exactly appears on the website and whether some information may need to be redacted.

Hon MARTIN ALDRIDGE: I thank the minister for that response. I think the minister went to this issue. My understanding is that the line in the sand, if you like, that Victoria has drawn is about the patient to practitioner—or to other person—communication and avoiding being captured by the federal Criminal Code Act, which contains offences relating to inciting or inducing a person to commit suicide. Victoria publishes information generally on its government websites. Notwithstanding that, if matters need to be redacted from public information, with regard to this provision to establish the access standard, would anything prevent a minister tabling that standard and therefore protecting that standard by privilege so that it cannot be impeached or questioned in a place outside Parliament?

Hon STEPHEN DAWSON: My advice is possibly. It is a complex legal argument. During the implementation phase, we will work out how this could be done. The information will be provided to relevant bodies in a hard copy, essentially; however, what appears on the website may need to be restricted based on the commonwealth act. That detail relating to the commonwealth act would be worked out at a later stage during the implementation phase. The point that the member made about privilege is a good one, and I will certainly bring it to the minister's

attention. I want to acknowledge the work that the Minister for Health has put into this amendment. I certainly want to acknowledge that Hon Martin Aldridge has been having conversations with the minister about this issue, and we have landed in a good place. We are certainly cognisant of the commonwealth act. We will take into consideration those points I have made tonight.

Hon ADELE FARINA: In response to the question posed by Hon Martin Aldridge, yes, the minister could table the access standard in Parliament and it would be protected by parliamentary privilege, but any distribution of that access standard by any individual, in order to get the information out to regional people, would not be covered by privilege. We would run into the same problem if it falls foul of the federal Telecommunications Act 1997.

Hon STEPHEN DAWSON: I add that if it were passed on by a carriage service, it would breach the commonwealth act.

New part put and passed.

Clause 155: Transfer of coordinating practitioner's role —

Hon NICK GOIRAN: The coordinating practitioner transfer form is required to be signed only by the original practitioner—that is, the coordinating practitioner who wants to transfer out of the role. That form is not required to be signed by the consulting practitioner who consents to taking on the role. Why is the consulting practitioner not required to certify that they have consented to taking on the role of coordinating practitioner and the attendant responsibilities of that role?

Hon STEPHEN DAWSON: The consulting practitioner who consents will then be on subsequent forms. I am advised it is unnecessary to state that they consented. Professional obligations apply to the coordinating practitioner not to misrepresent the agreement to transfer. Further, clause 155(5)(d) provides for the date when the acceptance was given, and that is sufficient.

Hon NICK GOIRAN: Why is the consent of the patient not required to be obtained by a coordinating practitioner before they transfer out of the role?

Hon STEPHEN DAWSON: I am told the usual practice will be that the original coordinating practitioner will discuss this with the patient in the first instance.

Hon NICK GOIRAN: That may be the usual practice but it does not have to be the practice. I draw to the minister's attention clause 155(2), which states —

> The transfer of the role can be —
>
> (a) at the request of the patient; or

There is no issue there. But the other circumstance is —

> (b) on the original practitioner's own initiative.

They may say, "I've had a gutful of this particular patient. I'm not dealing with this patient anymore. I'm out, and I've now found another practitioner who has accepted the role", as per clause 155(4). That subclause states —

> If the consulting practitioner accepts the transfer of the role, the original practitioner must —
>
> (a) inform the patient of the transfer …

We are creating a mechanism by which one guy goes out and says, "I've had enough", and he transfers to another practitioner. The other practitioner says yes, and the patient has no say. Surely that cannot be right. Whenever there has been an opportunity during the course of this debate, the government has waxed lyrical about how this whole approach is a patient-centric model. It seems to me that this gap that has been identified works contrary to that patient-centric approach. I have no doubt the minister will tell me that this will be good clinical practice and that this is how it should be done. I totally agree that that is how it should be done, but that is not how clause 155 reads. Can an amendment be made to clause 155 to ensure that the patient has to consent to the transfer?

Hon STEPHEN DAWSON: As the honourable member pointed out, the transfer may be at the patient's request, but otherwise the patient cannot force the practitioner to remain in the role by refusing consent to the transfer. If the patient did not agree or did not like their new coordinating practitioner, they could seek another coordinating practitioner.

Hon NICK GOIRAN: If that were the case, would they have to start the whole process from the very beginning?

Hon STEPHEN DAWSON: If it was not transferred in accordance with this clause, yes.

Hon ADELE FARINA: Hon Nick Goiran asked—I apologise if I am repeating it, but I am sure the minister will tell me if I am—what happens if the original coordinating practitioner dies. The original coordinating practitioner

would then not be in a position to transfer the role in accordance with this provision, so what happens if that person dies?

Hon STEPHEN DAWSON: They would not be in a position to transfer in that case. The process would have to start again.

Hon NICK GOIRAN: I will make a comment at this point. I find it interesting that we have identified an obvious problem with regard to the patient-centric model. All the proponents who spoke very loudly during the course of the second reading debate about autonomy and "my life, my choice" are absolutely silent on this particular issue. We are about to pass it—why? Because it is five minutes until 11.00 pm and everyone is too tired, so we are not going to be bothered to move an amendment to sort out this problem.

Clause put and passed.

Clause 156: Communication between patient and practitioner —

Hon NICK GOIRAN: Regardless of the legalities of the use of audiovisual communication in the voluntary assisted dying request and assessment process, does the government consider audiovisual communication, including Skype services and the like, to be sufficient to enable both a coordinating and a consulting practitioner to adequately assess a patient's eligibility for access to voluntary assisted dying, including making very important assessments about the patient's decision-making capacity and whether the patient is subject to any coercion?

Hon STEPHEN DAWSON: I am told that there may be situations in which this is appropriate and other situations in which it is not.

Hon NICK GOIRAN: With regard to the federal law intersection issue, the minister might recall that at some earlier point in the debate a letter was provided. I think it might have been pursued by Hon Martin Aldridge, but somebody managed to extract it from the government. It is a letter written by the Attorney General of Western Australia to the commonwealth Attorney-General. In this letter from Hon John Quigley dated, I think, 20 August 2019—it is either 20 or 28 August; anyway, it is August this year—it says —

> I have taken advice at the highest level and it is my view that communications about voluntary assisted dying via a carriage service do not contravene the Cth Criminal Code.

Has there been any update on the status of the government's view? During the course of this debate, I recall asking whether an administration decision could be done via a carriage service and I was told no, because of the commonwealth Criminal Code Act. It appears that the government's position has perhaps evolved since August. It would be helpful, before we pass clause 156, to get the latest update from the government on this issue.

Hon STEPHEN DAWSON: I am advised that there has been no update since we last discussed the issue. Perhaps it was discussed under clause 1; it was certainly discussed early in the debate.

Hon NICK GOIRAN: We have had conversations since clause 1. During debate on whatever clause deals with an administration decision, I can recall—I can go back to the *Hansard* if I need to—specifically asking about that. The answer that I received was that an administration decision cannot happen via a carriage service. That is obviously different from other parts of the process. During the debate—well after clause 1—we were told that if a patient rings the doctor, there is no issue with that. Things might be enlivened when the doctor is communicating to the patient, which depends on the stages of the process. For example, if the consulting practitioner is talking to the patient during that second phase of the whole process—trying to ascertain whether the person has decision-making capacity—there is no problem. If the consulting practitioner is trying to identify whether the person has a terminal illness and whether they think the person is going to die within the next six months, there are no problems with any of those conversations.

Provisions under this bill require the applicant to have been resident in Western Australia for a period of 12 months. There are provisions that require an identification process to take place. None of those provisions contravene the commonwealth law. There are certain provisions, like the administration decision, under which the patient has to decide whether to proceed with the practitioner or carry out the process themselves. I recall being told by the minister during that debate that that would be a problem under commonwealth law. I think the position has changed since we debated clause 1. Before we pass clause 156, we need a clear statement from the government about exactly what does and does not contravene commonwealth law.

Hon STEPHEN DAWSON: I referred to clause 1 because that was the last time I could pinpoint exactly when the issue was addressed, but of course it was addressed at other times during the debate over the past few weeks.

I say again that if the bill becomes law, there will be an implementation period of at least 18 months before the Voluntary Assisted Dying Act becomes operational. This time period will enable the Department of Health to develop, in consultation with the commonwealth, appropriate administrative measures to ensure compliance with

state and commonwealth laws. Assessments may need to be undertaken in person with either the patient travelling to the practitioner or the practitioner travelling to the patient. If the bill passes and this is required, WA Health will provide packages to support access for regional patients when needed. The training for health professionals will reflect the outcome of the ongoing consultations between the state and the commonwealth. We are confident, though, that, as in Victoria, this issue will not compromise health professionals or prevent eligible Western Australians from accessing voluntary assisted dying. The parameters of what can and cannot be discussed will be the subject of further consultation with the commonwealth.

Hon NICK GOIRAN: For the present time, as we are about to pass clause 156, is the minister able to at least advise the chamber that some communications about voluntary assisted dying via a carriage service contravene the commonwealth Criminal Code Act, but not all communications?

Hon STEPHEN DAWSON: Some may but not all. We cannot give a legal opinion on that until the implementation phase.

Hon NICK GOIRAN: I agree with the minister. I am going to get rid of this letter from the Attorney General, John Quigley, because it is not worth the paper it is written on. He tried to tell people that, in his view, the communications about voluntary assisted dying via a carriage service will not contravene the commonwealth Criminal Code Act, in an attempt to try to persuade, either intentionally or unintentionally, and mislead members about the truth on this. It is no wonder the Attorney General was confused about this matter, given that he refers to the substance as "potions and the like". He has received absolutely no assistance whatsoever from the "My Life, My Choice" report because, as the minister confirmed earlier, there is nothing in the report about that, despite the fact that the committee was asked to look at the intersection with federal law. It ignored that. We do not know whether it ignored it because the minister kept it secret, despite the fact that I asked for it to be released. We also know that the ministerial expert panel—the panel that consists of some experts—has said nothing about this particular issue. In that context, no wonder the Attorney General, the chief law officer of Western Australia, is confused and has written rubbish that now needs to be assigned to the wastepaper basket. It is one thing for the Attorney General to be confused; it is no good for the 36 members of this place to be confused when we are going to pass a clause that indicates that communication between a patient and a practitioner can happen by audiovisual communication, but then snuck into the back of the clause, subclause (4) states —

> However, subsections (2) and (3) 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.

When asked what that might mean, we were told to wait for the implementation phase and all will be well. At that point, we would no longer have a vote. The bill would have already passed and it would be too late.

Hon STEPHEN DAWSON: I certainly do not believe that the Attorney General was trying to mislead or deceive the chamber. I do not want to leave the chamber with that hanging. The Attorney General has been trying to deal with a complex issue that will not be fully resolved, as I have indicated, until a later stage—until the implementation phase of the bill.

Clause put and passed.

Clause 157: Information about voluntary assisted dying —

Hon NICK GOIRAN: What operation will clause 157(4) have in light of the commonwealth Criminal Code Act 1995?

Hon STEPHEN DAWSON: I indicate to the honourable member that we will work with the commonwealth to ensure that we do not impinge on commonwealth act provisions.

Hon ADELE FARINA: Would it not be more appropriate if we inserted at the start of subclause (4) the words "subject to section 156(3)" so that at least it would draw people's attention to the problem with the telecommunications law, which we have at the beginning? It just seems to me strange that in clause 156 we make reference to that problem, but in clause 157 we do not.

Hon STEPHEN DAWSON: The issue that the honourable member has raised is provided for in subclause (5). We do not propose to change subclause (4).

Clause put and passed.

Clause 158: CEO may approve training —

Hon NICK GOIRAN: We had a discussion on clause 100 about training being provided to doctors to identify undue influence and coercion. The minister might remember that I flagged that I had this amendment standing in my name. I now move —

> Page 93, lines 10 and 11 — To delete "abuse or coercion;" and substitute —

abuse, coercion, duress or undue influence;

Hon STEPHEN DAWSON: It will not surprise the honourable member to find out that the government does not agree —

Several members interjected.

Hon STEPHEN DAWSON: It is certainly not for the reason that we did not agree to the 52 or however many amendments that have been moved previously, and this makes an extra one. As I have indicated previously at least one time—in fact, multiple times—when the honourable member put forward a similar amendment, we do not support any amendment to insert the words "duress or undue influence". As I have indicated previously, both "coercion" and "abuse" are terms commonly understood by health practitioners and the wider community and thus are appropriate for use in the principles clause of this bill and, indeed, in other places. My advice multiple times previously has been that this amendment would add unduly technical, legalistic words that do not advance the legislation.

Hon NICK GOIRAN: We had this discussion on clause 100, which refers to a crime being committed. It states —

> A person commits a crime if the person, by dishonesty, undue influence or coercion, induces another person to self-administer a prescribed substance.

I asked the minister whether a doctor in Western Australia would have to understand what undue influence and coercion are and whether they would need to be trained about those things so that they could report the matter to the police, and the minister jumped up and said yes. I said to him on clause 100 that I would pause there and take it up again on clause 158, "CEO may approve training". The minister told me on clause 100 that it is very important for Western Australian doctors to know the difference between undue influence and coercion. The minister may even recall that I asked for an explanation of the difference between the two, and this massive silent filibuster took place at that point when advice was taken to try to ascertain the difference between the two. After all that information was obtained, an explanation was provided, and that is why I wanted to be sure that doctors would understand the difference.

With all due respect, minister, there is a very big difference between the government opposing this and it opposing the original amendment to the principles clause. At that time, the explanation provided to members was that the government does not want to use unnecessarily legalistic language in the principles clause because it wants every Western Australian to be able to understand it, and we voted on that and that is fine. This is a very different thing. We are not talking about every Western Australian; we are talking about doctors being trained to understand their responsibilities in accordance with what is approved by the CEO under the legislation. The minister indicated to me on clause 100 that it is very important for doctors to understand what undue influence and coercion are so that they can report the matter to the police. In fact, it is one of the tenets of this bill—that is, a patient is able to proceed through the process only if a practitioner is sure that they are not suffering under coercion and the like. It seems to me that we cannot expect practitioners to understand those things if we do not train them in the first place. I fail to see what would be objectionable under clause 158 to the CEO approving training relating to the following matters. We would be saying that the training could include training about abuse, coercion, duress or undue influence. I ask the government to reconsider its position and support the amendment.

Hon AARON STONEHOUSE: If I have the right number, I think we discussed something similar to this on not just clause 100, but also clause 83. In fact, we discussed it in quite some detail on clause 83. Clause 83 refers to the eligibility criteria and it makes it clear that an eligible applicant may apply for a review of a decision of the coordinating practitioner for a patient in a first assessment that the patient is or is not acting voluntarily and without coercion. I think it may appear in another clause, but the number eludes me at the moment. It is right that at that time there was concern that that language might be too legalistic, but I pointed out that merely including a reference to "coercion" leaves aside a wide range of abuse that may occur. In clause 100, there is a specific penalty for a person who, through dishonesty, undue influence or coercion, induces another person to self-administer a prescribed substance, which is appropriate. But how do we prevent it from getting to that point? It seems to me that it is incredibly important that medical practitioners are trained in how to recognise those things. They will be the last line of defence, so to speak, to protect patients from being coerced, unduly influenced or somehow induced to take a voluntary assisted dying substance. It is all good and well to have a penalty after a patient has died, but ideally we want to prevent it from getting to that stage, and providing adequate training to medical practitioners is part of that process.

As to whether we need to spell out duress or undue influence, when we discussed this matter on previous clauses, I said that I do not think that reference to "duress" is necessary, as duress implies some element of violence or force and I think it is already covered under coercion. However, it is very important to have reference to "undue influence". The term "abuse" may capture undue influence, depending on the reading of it, but it is not guaranteed. It would

be much safer to spell that out clearly. Undue influence is a well-understood concept in contract and common law. It is perhaps a valid criticism to say that the average member of the public does not understand what undue influence is. But we are not talking about the average member of the public; we are talking about the CEO and the training that the CEO has to provide to medical practitioners. It is quite reasonable to accept that the CEO of the Department of Health would understand what undue influence is; and, if he does not, I think we have a problem. A reference to "undue influence" is absolutely appropriate. It would cover the types of relationships that exist within families. It is appropriate to include it to prevent the kind of elder abuse that a lot of us are worried about. An overbearing family member who is pushing, nudging or steering a family member to go down the path of voluntary assisted dying would not necessarily be covered under abuse. They would certainly not be covered under coercion. I believe that would be undue influence. It would also cover a situation in which someone is in a position of authority—a medical practitioner, perhaps a boss or a religious or spiritual leader. Those types of relationships would be covered by undue influence but not necessarily by abuse and certainly not by coercion. By leaving out undue influence, we are leaving a type of relationship that may be misused completely uncovered by the training provided under clause 158. I think it is imperative that we include, at the very least, undue influence. Therefore, as I did previously, I support the amendment put forward by Hon Nick Goiran.

Hon ALISON XAMON: I rise to indicate some concern about this amendment. I want to be very clear that when we had the debate previously about incorporating the words "duress or undue influence" after the words "abuse" and "coercion", I was quite happy to have that additional explanation in the clause. I am concerned that incorporating those words in this clause may have the unintended consequence of minimising previous provisions in the bill that refer only to abuse and coercion. When we had the debate on this issue previously, as I heard it, we were assured that abuse and coercion in the broadest possible sense was intended to incorporate elements of duress and undue influence. On that basis, I hope that the bill will be read as incorporating all four elements automatically within the use of those two terms. I am concerned that by somehow introducing the two terms at this point in the bill, it may serve to undermine the assertion that abuse and coercion as previously described are intended to incorporate all four elements. Can the minister please confirm that the way the words "abuse" and "coercion" are used previously in the bill is automatically intended to include duress or undue influence? Of course, if they do not include duress or undue influence, we should look at incorporating those terms. Otherwise, I do not want to inadvertently undermine the full effect of the clause in which these words appear previously in the bill.

Hon STEPHEN DAWSON: It does feel like groundhog day because this was debated not just at clause 1; this issue has been debated multiple times. I am looking at honourable members' smiling faces; they are also reminded of the fact that it has been dealt with numerous times. My advice is that, yes, they are sufficiently wide terms to include all.

Hon ADELE FARINA: I can understand the concern raised by Hon Alison Xamon, but if we accept this amendment, it is not the first time we have incorporated the words "undue influence". We already did that at clause 100, which states —

> A person commits a crime if the person, by dishonesty, undue influence or coercion, induces another person to self-administer a prescribed substance.
>
> Penalty: imprisonment for life.

It carries a hefty penalty. I fail to understand why including "undue influence" in clause 158 would create any problems, because we already have it. This clause is about training. Hon Aaron Stonehouse is absolutely right; we will be relying on our medical practitioners as the first line of defence. They will have to pick up all these issues and a whole lot of other issues, and they need to be trained to identify and pick up these issues and to deal with them. I take Hon Aaron Stonehouse's point, which is supported by Hon Alison Xamon's comments, that perhaps we could eliminate the word "duress" so that we have consistency with clause 100. But to make the argument that incorporating it into a training program will somehow offend the rest of the bill is just ridiculous.

Hon NICK GOIRAN: I seek leave to alter the amendment standing in my name to delete ", duress".

Amendment, by leave, altered.

Division

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

Ayes (17)

Hon Martin Aldridge	Hon Nick Goiran	Hon Tjorn Sibma	Hon Alison Xamon
Hon Jim Chown	Hon Rick Mazza	Hon Charles Smith	Hon Ken Baston *(Teller)*
Hon Peter Collier	Hon Michael Mischin	Hon Aaron Stonehouse	
Hon Donna Faragher	Hon Simon O'Brien	Hon Dr Steve Thomas	
Hon Adele Farina	Hon Martin Pritchard	Hon Colin Tincknell	

Noes (18)

Hon Jacqui Boydell	Hon Colin de Grussa	Hon Alannah MacTiernan	Hon Dr Sally Talbot
Hon Robin Chapple	Hon Sue Ellery	Hon Kyle McGinn	Hon Darren West
Hon Tim Clifford	Hon Diane Evers	Hon Samantha Rowe	Hon Pierre Yang *(Teller)*
Hon Alanna Clohesy	Hon Laurie Graham	Hon Robin Scott	
Hon Stephen Dawson	Hon Colin Holt	Hon Matthew Swinbourn	

Amendment, as altered, thus negatived.

Hon NICK GOIRAN: Will every Western Australian medical practitioner need training on the first request requirements?

Hon STEPHEN DAWSON: I am advised that they will need educational information, but they will not necessarily need training.

Clause put and passed.

Clause 159: CEO may approve forms —

Hon NICK GOIRAN: The approved forms required under the Victorian voluntary assisted dying scheme are provided for in schedule 1 of the Voluntary Assisted Dying Act 2017. The forms that are required under the Western Australian scheme are not provided in a schedule to the bill, as we discovered earlier. However, will they be tabled once they have been approved?

Hon STEPHEN DAWSON: I am advised that it is not really intended that they will be tabled. They will be linked to the database, which will be locked down and available only to some people.

Clause put and passed.

Clause 160: Interpreters —

Hon NICK GOIRAN: Who will ensure that the interpreter used in a request and assessment process is not ineligible to act as an interpreter under clause 160(2)(b)?

Hon STEPHEN DAWSON: I am told that in practice it will be the practitioner who is involved in the circumstance, but I am aware that standard information about interpreters is already gathered in the medical system, including their accreditation number et cetera. It is proposed that a similar process will happen.

Hon NICK GOIRAN: As part of that process, will the interpreter be required to certify that they do not fall into one or more of the categories listed in clause 160(2)(b)?

Hon STEPHEN DAWSON: In practice, we would expect that, honourable member.

Hon NICK GOIRAN: Can an interpretation service be provided through audiovisual communication or by telephone?

Hon STEPHEN DAWSON: I have provided this answer before at an earlier stage of the debate, but I will provide it again to the honourable member. It is unlikely that the requisite intent for the commission of the Criminal Code Act offences would be satisfied by an interpreter who was merely assisting the doctor and patient to communicate. This is one of the matters that will be closely worked on in consultation with the commonwealth if the bill is assented to.

Hon NICK GOIRAN: This is my final question on clause 160. Has the government considered the eighth report of the Joint Standing Committee on the Corruption and Crime Commission entitled "The More Things Change…: Matters Arising from the Corruption and Crime Commission's Report on Operation Aviemore: Major Crime Squad Investigation into the Unlawful Killing of Mr Joshua Warneke", and in particular the evidence contained in that report relating to the use of interpreter services and the impact of this upon the wrongful conviction of Mr Gene Gibson?

Hon STEPHEN DAWSON: I am advised that the government is acutely aware of the difficulties for some Aboriginal communities and the need for accredited interpreters.

Clause put and passed.

New clause 160A —

Hon NICK GOIRAN: I move —

Page 94, after line 18 — To insert —

160A. Parliament to establish joint standing committee

(1) The Houses of Parliament are to establish a joint standing committee on palliative care and treatment and voluntary assisted dying comprising an equal number of members appointed by each House.

(2) The functions and powers of the joint standing committee are determined by agreement between the Houses and are not justiciable.

This is a matter that I have considered for quite some time. Members will see that it has been on the supplementary notice paper for a substantial period. That is indicated by the fact that it is denoted by the number 74—in other words, it was the seventy-fourth amendment that was put on the supplementary notice paper. I note that the amendment that was just given notice of by Hon Martin Aldridge was number 499. I gave notice of this amendment very early on in the piece. Its genesis was the Joint Standing Committee on the Corruption and Crime Commission, on which I served as chair for eight years, and also the Joint Standing Committee on the Commissioner for Children and Young People, on which I had the opportunity to serve for four years.

If this amendment is passed, it will be the third time a Parliament will have decided to enshrine in legislation an obligation on the part of the Parliament to establish a joint select committee. My rationale for it is not particularly complicated; it goes something like this. The Corruption and Crime Commission has extraordinary powers, so it was quite understandable for the Parliament of the time to decide it wanted to have some oversight of a body that held those extraordinary powers. If we compare and contrast that with the Commissioner for Children and Young People, the Commissioner for Children and Young People performs a very important role in our society but does not have the same extraordinary powers that the Corruption and Crime Commission has. Both those institutions are, nevertheless, oversighted by a parliamentary committee. I have repeatedly heard members on both sides of this debate, both for and against voluntary assisted dying, say how important and significant this debate is to the community. If it is as significant as people say it is—and it is ultimately the matter of a person's life—should there not be some form of oversight provided by the Parliament, or will this be the last time we decide to have any role in this matter?

We already know from the course of the debate and consideration of clause 1 through to the last clause we considered, clause 160, that the board will provide only the most modest oversight. Hon Adele Farina earlier asked for the board to be given the opportunity to investigate, and the government said no. That is fine; that was the decision of the chamber, on the government's recommendation. But ought not there be oversight for something as significant as this? That is the first question members need to answer. The second question relates to Hon Martin Aldridge having quite successfully prosecuted an argument in this debate about issues to do with regional access. Who is going to supervise that? He put forward an amendment, which was agreed to by the chamber, that provides for an access standard. That is a good thing, because the member has now managed to extract a commitment from the government that it will have to table this access standard for parliamentary consideration. Which committee is going to look into that to ensure that the government adheres to that standard?

The committee I have proposed will look at both palliative care and voluntary assisted dying. I have included both because throughout the course of the debate the government has made it clear that it is committed to both. I speak as the co-chair of the Parliamentary Friends of Palliative Care, a group that was established not long after the defeat of Hon Robin Chapple's private member's bill in 2010. I established that group with the member for Girrawheen. I say to members: no matter who is on the treasury bench, whether it is a Labor or Liberal government, we need to create an incentive for the government of the day to provide palliative care to the regions, in particular, but also to the metropolitan area. Do members think that over the last couple of years this government would have put as much money into palliative care as it has, were it not for this bill? I believe that the majority of members know in their heart of hearts, when they exercise their conscience vote, that were it not for this bill, there is no way in the world that the government would have provided as much funding to palliative care. When we looked at the establishment of the Joint Select Committee on End of Life Choices two years ago, some of my colleagues said to me, "Why are you bothering to get involved in that committee? Can't you see what's going on?" I said to them, first of all, "Never vacate the space", which is my longstanding philosophy. Secondly, I said, "If this whole process does nothing else but provide greater emphasis on and resources to palliative care, then that's a good outcome for Western Australia, and I want to be part of that."

Once this bill passes, as it inevitably will at some point this week—and then it will go down to the other place, which will have to deal with the horror of the 50-plus amendments it said it did not need—what incentive will there be to exert continued pressure on either a Labor or a Liberal government to ensure proper access to palliative care in the regions? One way we can make that happen is by agreeing that there should be a joint standing committee of both houses of Parliament to look into those issues and to oversee the voluntary assisted dying process. For those reasons, I seek members' support.

Hon TJORN SIBMA: I rise to support the amendment moved by Hon Nick Goiran, and I do so while being quite obviously on the other side of this debate. I express my support for the amendment for exactly the same reasons as have been enunciated. The significance of this bill has also been expressed by all members of this chamber. When we are on the precipice of passing a bill of this significance, I think it warrants a significant measure of parliamentary oversight. I also concur with the views put that the status of palliative care, particularly in regional Western Australia, would not have reached this crescendo of interest and action were it not for this debate. I actually see that as a positive thing. Part of the reason for my decision to support the bill is contingent on the Minister for Health's commitment to provide a discrete service line item in future health budgets, which I think will hold future governments to account for their ongoing support of palliative care services. I think that is a good thing. We also need to ensure, as custodians of the public's trust—people put here by the people of Western Australia—that we provide the utmost oversight to legal regimens as they apply to end-of-life choices. I will leave it there, but I commend the amendment, and I hope all members of this chamber support it.

Hon AARON STONEHOUSE: I rise to indicate my support for the amendment; I think it is wholly appropriate. If we are looking at how we might provide oversight of and accountability to this regime going forward, it is worth noting that clause 162 provides for a statutory review of the legislation. I do not really hold much stock in statutory reviews; they are reviews done within the executive government, and Parliament does not really have too much control over how they are conducted. Neither is it new for there to be parliamentary reviews of legislation; we heard two examples from Hon Nick Goiran, and I might give members another recent example from the forty-first report of the Standing Committee on Legislation, which looked into the Ticket Scalping Bill 2018. In recommendation 7, under the heading "16. Review of Act", the report states —

> (1) An appropriate Standing Committee of the Legislative Council must review the operation and effectiveness of this Act, and prepare a report based on the review, as soon as practicable after the 3rd anniversary of the day on which section 6 comes into operation.

That obviously refers to the Standing Committee on Legislation. In this instance, with such a complex piece of legislation, there is a need to review not only the legislative instrument of the bill but also the quality and coverage of palliative care across the state. It is appropriate to establish a new standing committee, built for that specific purpose, rather than sending it to the Standing Committee on Legislation, which in my view would be rather limited in its scope of looking at the provision of palliative care.

I supported this bill at the second reading. I have certainly been critical of some of its clauses, and I have endeavoured to ensure that there are adequate safeguards, but foreshadowing my likely support of the bill at the third reading—depending on what it looks like at the end of the Committee of the Whole House—I think it is appropriate, even for those who support voluntary assisted dying and this bill, to ensure that there is adequate parliamentary oversight and a parliamentary review of the legislation. Members on the government side of the chamber may not be in that position in a couple of years, or in six years. They may want to be assured that their regime is being rolled out effectively, by whatever government succeeds it. The best way to ensure that is done is through a parliamentary committee that has been given oversight of this legislation. I implore all members to think for themselves, exercise their conscience and see the merit and benefit of establishing a joint standing committee that will have the power to review not just this bill but palliative care across the state.

Hon STEPHEN DAWSON: The government is not supportive of the amendment that stands in the name of Hon Nick Goiran. We do not believe that the Voluntary Assisted Dying Bill is the appropriate mechanism to establish such a joint standing committee. On rare occasions, a joint standing committee is required to be established under an act. Hon Nick Goiran in his contribution rightly gave the example of the Corruption and Crime Commission, so I will not go over that again.

Many members have expressed concern about the issues of palliative care and treatment that are sought to be included within the parameters of the proposed clause. I draw to honourable members' attention that the Minister for Health has given a commitment that the WA Health budget will include discrete reporting of palliative care services, as was mentioned by Hon Tjorn Sibma, to ensure transparency and accountability of the resources allocated by the state government for palliative care. Commencing in the 2020–21 state budget, the "Significant Issues" section of the WA Health budget statement will include a standalone table and supporting commentary illustrating the funding, expenditure and services that have been provided for palliative care.

Although we do not support the amendment standing in Hon Nick Goiran's name, I indicate to the chamber that the government would be supportive of the establishment of a joint select committee into palliative care. My suggestion is, and I give the commitment, that we would at the first opportunity after the bill is passed, so in February 2020, move a motion along these lines —

> That this house establish a joint select committee into palliative care in Western Australia.
>
> (1) That the committee inquire into and report on —
>
> (a) the progress in relation to palliative care and implementation of the recommendations of the Joint Select Committee into End of Life Choices;
>
> (b) the delivery of the services associated with palliative care funding announcements in 2019–20;
>
> (c) the delivery of palliative care into regional and remote areas; and
>
> (d) the progress on ensuring greater equity of access to palliative care services between metropolitan and regional areas.
>
> (2) That the standing orders of the Legislative Council relating to standing and select committees will be followed as far as they can be applied.
>
> (3) That the joint select committee report to both houses by November 2020.
>
> (4) That the Legislative Assembly be requested to agree to a similar resolution.

The reason we have suggested that the committee report in November next year is that it would not be appropriate to give the committee 12 months in which to report, in light of the fact that an election will be held soon afterwards. Therefore, we want to limit the reporting date to November.

We do not support the proposed amendment. We do not believe it is appropriate that this bill includes the establishment of a committee. However, as I have indicated, we would support the establishment of a joint select committee into palliative care, and we will move that motion early in the new year. I am hopeful that those members who have rightly expressed concerns about palliative care will support this proposal and will take my word that the government will move this motion early in the new year after this bill is passed.

Hon NICK GOIRAN: With respect, I think the government has missed the point. The point of my proposed amendment is that it does not matter whether the Labor Party or the Liberal Party is on the treasury bench. Parliament has the opportunity now to put a fire under the government's backside to ensure that it does something about palliative care. The minister's proposed joint select committee that will start in February next year and finish in November next year is all well and good. I say that particularly on a partisan basis, as a Liberal, because it will enable the Liberal members of Parliament to keep attacking and criticising the government for its lack of movement on this issue. I want to move past that. I want to ensure that we take a bipartisan approach to palliative care so that no matter which party is on the treasury bench, someone will always be watching and saying, "What are you doing about palliative care? Don't blame the former government. You're there now. What are you going to do about it?" This amendment would achieve that. I also want to ensure that the committee is enduring, because whichever party is on the treasury bench typically has more influence and greater numbers, and it is much more difficult to get these types of committees up.

Division

New clause put and a division taken, the Deputy Chair (Hon Martin Aldridge) casting his vote with the ayes, with the following result —

Ayes (16)

Hon Martin Aldridge	Hon Adele Farina	Hon Simon O'Brien	Hon Dr Steve Thomas
Hon Jim Chown	Hon Nick Goiran	Hon Tjorn Sibma	Hon Colin Tincknell
Hon Peter Collier	Hon Rick Mazza	Hon Charles Smith	Hon Alison Xamon
Hon Donna Faragher	Hon Michael Mischin	Hon Aaron Stonehouse	Hon Ken Baston *(Teller)*

Noes (19)

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 Martin Pritchard	Hon Darren West
Hon Alanna Clohesy	Hon Laurie Graham	Hon Samantha Rowe	Hon Pierre Yang *(Teller)*
Hon Stephen Dawson	Hon Colin Holt	Hon Robin Scott	

New clause thus negatived.

Clause 161: Regulations —

Hon NICK GOIRAN: What regulations does the government consider will be required to be made to give effect to this legislation?

Hon STEPHEN DAWSON: This clause is a general regulation-making power allowing the Governor in Executive Council to make regulations for or with regard to any matter or thing required to be prescribed to give effect to the voluntary assisted dying act. The bill does not require any regulations be made. The bill has been drafted as a comprehensive piece of legislation to operate as is. The bill has far more detail than the Victorian bill, with CEO approvals required for certain aspects within the purview of the Department of Health. This clause serves as a futureproofing mechanism; however, it is not anticipated at this stage that any regulations will be made under this bill.

Hon NICK GOIRAN: Could regulations be made around the activities of care navigators?

Hon STEPHEN DAWSON: My advice is that it is unnecessary. It would be a standard operational issue for the department to deal with.

Clause put and passed.

New clause 161A —

Hon NICK GOIRAN: I move —

Page 94, after line 22 — To insert —

161A. Regulations about care navigators

(1) In this section —

care navigator means a person approved by the CEO to facilitate another person's access to voluntary assisted dying.

(2) The Governor may make regulations for or in relation to how the State will regulate the function and powers of care navigators.

(3) The power to make regulations under section 161A(2) must not be exercised unless —

(a) a draft of the regulations to be made under section 161A(2) has been laid before each House of Parliament; and

(b) both Houses of Parliament pass a resolution originating in either House approving the draft of the regulations, with or without an amendment.

(4) If the resolution under section 161A(3) approves the draft of the regulations with an amendment, the power to make regulations under section 161A(2) must not be exercised unless the amendment is made to the draft of the regulations.

(5) The *Interpretation Act 1984* section 42 does not apply to regulations made under section 161A(2) of this Act.

Members will recall that we touched on this issue early in the debate, particularly under clause 1, when it was identified that care navigators will be one of the instruments and mechanisms used by the government to facilitate access to voluntary assisted dying in Western Australia. Some members identified that there is going to be a difference, particularly because of the use of carriage services and the like, and the ongoing confusion with regard to commonwealth law. The government solution to that is to ensure that through care navigators, Western Australians will have access to voluntary assisted dying. We went through quite a lengthy process to identify that the government will spare no expense whatsoever. Indeed, if needs be, if a person in regional or rural Western Australia needs access to a care navigator and an interpreter, the government will fund that. It will

fly the person out there. It is the same with regard to the consulting practitioner, the coordinating practitioner, the interpreter and indeed even the administering practitioner. We discovered that up to eight people would be possibly flown out to regional Western Australia. What became clear as part of that debate is that there is no definition of care navigators anywhere in the bill, and the government said, "We'll sort all this out during the implementation phase."

By supporting this amendment, we are not requiring the government to make regulations about care navigators, we are simply saying, "If you do, it needs to be tabled in Parliament; we need to agree to them first", and at that point they will then have full effect. The necessity for this particular amendment is simply the Governor being unable to define for us who the care navigators will be. The government has been unable to indicate the process around its regime, and, in particular, we know that there will be some care navigators, according to the government, who will not fall under the same auspices and oversight regime of some of the medical and health practitioners. Indeed, we found out that social workers might be included as part of this. This amendment will ensure that whoever is in government will be able to put together some regulations, if it wants to, around care navigators to regulate that service and ensure that Parliament is aware of them and approves them.

Hon STEPHEN DAWSON: I indicate that the government is not supportive of this amendment. As we know, the making of regulations involves an exercise of legislative power, and the purpose of tabling regulations is to enable them to be considered by Parliament, which may disallow the regulations. Proposed clause 161A excludes the operation of section 42 of the Western Australian Interpretation Act 1984, which is the provision that requires all regulations to be laid before Parliament and subjected to disallowance. It is unusual for the operation of section 42 of the Interpretation Act 1984 to be excluded. The regulations cannot be made unless approved. This is a more rigorous process than normal, particularly as the purview of care navigators is something that is appropriate to fall under the management of the Department of Health and managed operationally at that level. We do not believe it is appropriate to require the role of care navigators, which is to assist patients who need support in obtaining information about or access to voluntary assisted dying, to be subject to regulation.

Hon NICK GOIRAN: This new clause does not do that. It does not mandate that it has to be subject to regulations; it is just saying that if the government puts together some regulations—look at proposed subclause (2)—the Governor may make regulations. If the government's objection is proposed subclauses (3), (4) and (5), it should move an amendment to delete those subclauses.

Hon AARON STONEHOUSE: I note what the minister pointed out, and that there is a slightly different way to go about allowing for regulations, but at the very least, proposed subclauses (1) and (2) of the new clause are very sensible and important to have. The government has gone to great pains to detail and describe the eligibility of coordinating practitioners, consulting practitioners, administering practitioners and all the other roles of people involved throughout the process of voluntary assisted dying. Through the interrogation of clause 1, we discovered a new hidden class of persons involved in the process of voluntary assisted dying—the care navigator. Through the questioning of clause 1, we found that it may be appropriate to have this person, especially when we run into difficulty with the commonwealth Criminal Code Act around using a carriage service to communicate suicide. If we are going to have that role, it is important that Parliament has some oversight of the eligibility of the person filling the role of care navigator and has the ability, at the very least, to disallow. I see that Hon Nick Goiran has gone a little further; rather than the regulations being accepted proforma, his amendment will allow them to be accepted by a resolution of both houses of Parliament. It goes a little further; that is, the houses of Parliament need to take positive action to approve the regulations rather than them being moved proforma, in the absence of a disallowance motion. I would be happy to entertain either form—either relying on section 42 of the Interpretation Act or accepting the process laid out in new clause 161A(3). The principle that has been put forward by Hon Nick Goiran is sensible and not really controversial. If a new role is involved in the process of voluntary assisted dying, it is appropriate that Parliament has some oversight of that role. We are delegating quite a lot of power to the CEO of Health for the operation of this bill. Whenever possible, Parliament needs to retain its power to disallow regulations and to disallow the delegated legislation that will come into effect as a result of that power delegated to the CEO. Whether we accept the mechanism created under new clause 161A(3) or we rely on section 42 of the Interpretation Act, either way the principle behind this amendment is very sound, and I support it on that basis.

Division

New clause put and a division taken, the Deputy Chair (Hon Matthew Swinbourn) casting his vote with the noes, with the following result —

Ayes (13)

Hon Jim Chown	Hon Rick Mazza	Hon Charles Smith	Hon Ken Baston *(Teller)*
Hon Peter Collier	Hon Michael Mischin	Hon Aaron Stonehouse	
Hon Donna Faragher	Hon Simon O'Brien	Hon Dr Steve Thomas	
Hon Nick Goiran	Hon Tjorn Sibma	Hon Colin Tincknell	

Noes (22)

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

New clause thus negatived.

Clause 162: Review of Act —

Hon NICK GOIRAN: This is an unusual provision because the government has selected the second anniversary. What was the basis for that decision?

Hon STEPHEN DAWSON: We have taken into consideration the implementation period. Rather than a normal three-year review period, it will be about three and a half years.

Clause put and passed.

Clause 163: Act amended —

Hon NICK GOIRAN: The explanatory memorandum states, under clause 163 —

> This clause provides that Division 2 amends the *Constitution Acts Amendment Act 1899* (WA).

Does the explanatory memorandum contain an error?

Hon STEPHEN DAWSON: I am advised it is an error, honourable member; it should say division 1.

Clause put and passed.

Clause 164: Schedule V amended —

Hon NICK GOIRAN: Why is it deemed necessary for the Voluntary Assisted Dying Board to be included in the list of bodies in the Constitution Acts Amendment Act 1899, of which membership must be vacated on election to the legislature?

Hon STEPHEN DAWSON: I am advised it is usual practice for boards to be on that list, honourable member.

Clause put and passed.

Clause 165: Act amended —

Hon NICK GOIRAN: Why is it deemed necessary for division 2 to make any amendments to the Coroners Act 1996?

Hon STEPHEN DAWSON: A consequential amendment is required to the Coroners Act 1996 to exempt deaths brought about by voluntary assisted dying. Otherwise, these deaths would fall within the definition of a reportable death and result in the automatic involvement of the coroner.

Clause put and passed.

Clause 166: Section 3A inserted —

Hon NICK GOIRAN: The explanatory memorandum states —

> This clause does not prevent the Coroner from voluntarily investigating the death … where a contravention of the *Voluntary Assisted Dying Act* is suspected since such a death may be a reportable death.

How would the coroner be made aware of a death when a contravention of the voluntary assisted dying act is suspected?

Hon STEPHEN DAWSON: The medical practitioner who is certifying the cause of death may advise, or the family or the board may advise.

Clause put and passed.

Clause 167: Act amended —

Hon NICK GOIRAN: Why is it deemed necessary for division 3 to make any amendments to the Guardianship and Administration Act 1990?

Hon STEPHEN DAWSON: This clause makes it clear that nothing in the Guardianship and Administration Act 1990 authorises the making of a treatment decision, whether in an advance health directive or otherwise, in relation to voluntary assisted dying. Voluntary assisted dying cannot be included in an advance health directive as a treatment decision for a person's future treatment for the purposes of part 9B of the Guardianship and Administration Act. Furthermore, a treatment decision on voluntary assisted dying cannot be made under the Guardianship and Administration Act.

Clause put and passed.

Clause 168: Section 3B inserted —

Hon NICK GOIRAN: In light of the wording of proposed new section 3B, inserted into the Guardianship and Administration Act 1990 via clause 168, is voluntary assisted dying considered by the government to constitute a treatment for patients in Western Australia?

Hon STEPHEN DAWSON: No.

Hon NICK GOIRAN: In which case, can the minister explain the wording outlined in the clause?

Hon STEPHEN DAWSON: It is for the avoidance of doubt and it is at the request of the Public Advocate.

Clause put and passed.

Clause 169: Act amended —

Hon NICK GOIRAN: Why is it deemed necessary for division 4 to amend the Health and Disability Services (Complaints) Act 1995?

Hon STEPHEN DAWSON: The intent is to make clear that the Health and Disability Services Complaints Office is able to consider voluntary assisted dying as a health service for the purposes of receiving and assessing a complaint under the Health and Disability Services (Complaints) Act 1995.

Clause put and passed.

Clause 170: Section 3 amended —

Hon NICK GOIRAN: The minister will see that there is a separation in proposed subparagraphs (i) and (ii) between palliative health care and voluntary assisted dying. On that basis, is the government able to confirm that this separate inclusion of voluntary assisted dying is because it is not a health service that falls within palliative health care?

Hon STEPHEN DAWSON: I confirm that it is not part of it.

Clause put and passed.

Clause 171: Act amended —

Hon NICK GOIRAN: The Medicines and Poisons Amendment Regulations (No. 2) 2019 were tabled by the government on 19 November 2019. What impact do they have on this bill?

Hon STEPHEN DAWSON: I am advised that they have no impact because this legislation has not passed yet.

Hon NICK GOIRAN: The minister indicated in earlier parts of the debate that these various acts that we are now in the process of amending have some bearing on the Voluntary Assisted Dying Bill. Some regulations were tabled the other day—on 19 November 2019, less than a month ago. It is not the case that just because they were tabled before this bill passes, they have no bearing upon this bill. They may well impact upon the bill. I do not know the answer to that; I am just making sure. The answer cannot be just because it was tabled beforehand. It would make as much sense as saying that the Medicines and Poisons Act passed through Parliament in 2014 and has bearing on this particular bill. Clearly, it does. It is referenced many times throughout the bill and, indeed, division 5 will amend sections of that act. I want categorical confirmation that those regulations that were tabled on 19 November 2019 have nothing to do with voluntary assisted dying or any element of the process.

Hon STEPHEN DAWSON: They have no unintended consequences for the bill.

Clause put and passed.

Clause 172: Section 3 amended —

Hon NICK GOIRAN: Why is it necessary to include the definition of "voluntary assisted dying substance" in section 3 of the Medicines and Poisons Act 2014 when that section already includes definitions of "schedule 4 poison" and "schedule 8 poison"?

Hon STEPHEN DAWSON: This clause inserts a new definition of "voluntary assisted dying substance" into section 3 of the Medicines and Poisons Act 2014. The definition refers to a schedule 4 or schedule 8 poison that is a voluntary assisted dying substance as defined in clause 7(2)—namely, "for use under this Act for the purpose of causing a patient's death".

Clause put and passed.

Clause 173: Section 7 amended —

Hon NICK GOIRAN: Why is it deemed necessary to alter the definition of "prescriber" in section 7 of the Medicines and Poisons Act 2014 when the current definition is sufficient to encompass authorised suppliers of schedule 4 and schedule 8 poisons under this bill?

Hon STEPHEN DAWSON: The new definition of "prescriber" distinguishes between a schedule 4 or schedule 8 poison, other than a voluntary assisted dying substance, and a voluntary assisted dying substance. A prescriber in relation to a schedule 4 or schedule 8 poison, other than a voluntary assisted dying substance, is an authorised health professional who has authority to prescribe the poison; however, a prescriber in relation to a voluntary assisted dying substance is a person who is authorised under the legislation to prescribe the substance. This amendment is required because the coordinating practitioner for the patient is the only person who may prescribe a voluntary assisted dying substance under the legislation.

Hon NICK GOIRAN: What requirements for the use or administration of a schedule 4 or schedule 8 poison will be prescribed by the regulations?

Hon STEPHEN DAWSON: I am sorry; the honourable member is going to have to ask that question again. I did not hear it; there was some noise in the chamber.

Hon NICK GOIRAN: What requirements for the use or administration of a schedule 4 or schedule 8 poison will be prescribed by the regulations?

Hon STEPHEN DAWSON: There is nothing.

Clause put and passed.

Clause 174: Section 14 amended —

Hon NICK GOIRAN: In what circumstances is a person currently permitted to supply a schedule 4 or schedule 8 poison under the Medicines and Poisons Act 2014?

Hon STEPHEN DAWSON: It is set out in section 14(1) of the Medicines and Poisons Act 2014. Does the member want me to identify section 14(1)?

Hon Nick Goiran: Yes, please.

Hon STEPHEN DAWSON: Section 14(1) states —

> A person who manufactures or supplies a Schedule 4 or 8 poison commits an offence unless the person does so —
>
> (a) under and in accordance with an appropriate licence or a professional authority; and
>
> (b) in accordance with the regulations.

Hon NICK GOIRAN: Why is it deemed necessary to amend section 14 of the Medicines and Poisons Act 2014 with the insertion of proposed subsection (3A) under clause 174(3) and (4)?

Hon STEPHEN DAWSON: It is because there are additional restrictions in the Voluntary Assisted Dying Bill in relation to supply.

Clause put and passed.

Clause 175: Section 28 amended —

Hon NICK GOIRAN: The amendment at clause 175 provides that there are grounds for taking action against an authorised health professional under division 2 of part 3 of the Medicines and Poisons Act 2014 if the health professional or an employee or agent of the health professional has, in connection with the person's administration, manufacture, possession, prescription, supply or use of a poison, contravened the Voluntary Assisted Dying Bill. What grounds for taking action may arise and what contraventions of the legislation are covered by this amendment?

Hon STEPHEN DAWSON: Division 2 of part 3 of the Medicines and Poisons Act 2014 gives the CEO of the Department of Health the power to impose conditions on, suspend or cancel a person's professional authority—authorisation under section 25 to administer, possess, prescribe, supply or use a medicine or authorisation under section 26 to relevantly manufacture a medicine. The amendments to section 28 of the Medicines and Poisons Act 2014 mean that a contravention of the legislation may be treated in the same way as contraventions of, for example, the Medicines and Poisons Act 2014, the Misuse of Drugs Act 1981 and the commonwealth Therapeutic Goods Act.

Clause put and passed.

Clause 176: Section 83 amended —

Hon NICK GOIRAN: Why does clause 176 provide that regulations referred to in section 83(1) of the Medicines and Poisons Act 2014 cannot make provision in relation to the supply or prescription of a drug of addiction that is a voluntary assisted dying substance that is supplied or prescribed for the purposes of this bill?

Hon STEPHEN DAWSON: This amendment is required because the legislation makes separate provision for the prescription and supply of a voluntary assisted dying substance.

Clause put and passed.

Clause 177: Section 115 amended —

Hon NICK GOIRAN: The explanatory memorandum states —

> The effect of the amendment is that the maximum penalty for an offence contrary to sections 14(1), 14(2), 14(3) and 14(4), 21 and 22 in respect of a voluntary assisted dying substance prescribed, supplied, possessed or used for the purposes of the *Voluntary Assisted Dying Act* is a fine of $45,000 and imprisonment for 3 years. Without this amendment, the maximum penalty would only be a fine of $45,000.

However, according to the current section 115 of the Medicines and Poisons Act 2014, the penalty for an offence relating to a drug of addiction defined in section 77(1) of that act as a schedule 8 poison or a schedule 4 reportable poison is a fine of $45 000 and imprisonment for three years. In light of this, can the minister clarify whether the explanatory memorandum is in error?

Hon STEPHEN DAWSON: It is not wrong. We had to make an insertion for the purposes of a voluntary assisted dying substance, so it is not just the schedule 4 or 8 poison.

Clause put and passed.

Clause 178: Act amended —

Hon NICK GOIRAN: The explanatory memorandum states that the consequential amendments in clause 178 are required to ensure that a person who is authorised to do something under the legislation does not commit an offence under the Misuse of Drugs Act 1981. Without the consequential amendments proposed in division 6, which provisions of the Misuse of Drugs Act 1981 would be at risk of being breached by someone authorised to do something under the Voluntary Assisted Dying Bill?

Hon STEPHEN DAWSON: I am advised that it is sections 5, 6, 7 and 7B.

Hon NICK GOIRAN: Are there any circumstances in which a patient is currently able to lawfully possess a prohibited drug under the Misuse of Drugs Act 1981; and, if so, what drug is it lawful to possess and what laws or regulations are in place to ensure drug safety and security?

Hon STEPHEN DAWSON: There is a general authorisation provision under subsection (5)(b) and specific requirements under sections 6(3), 7(3), and 7B(7). One example is that a person does not commit a crime contrary to section 7(1) of the MDA if he or she is authorised to have possession under the Medicines and Poisons Act.

Hon NICK GOIRAN: The second part of that question was: what is the drug that is lawfully permitted in those circumstances?

Hon STEPHEN DAWSON: I am told that all schedule 8 poisons and some schedule 4 poisons are prohibited drugs under the Misuse of Drugs Act 1981.

Hon NICK GOIRAN: Are there any circumstances in which a patient is currently able to lawfully self-administer one of these prohibited drugs under the Misuse of Drugs Act 1981?

Hon STEPHEN DAWSON: I am advised that the use of opiates in palliative care would be an example of that.

Clause put and passed.

Clause 179: Section 5C inserted —

Hon NICK GOIRAN: Is the new section 5C inserted by clause 179 necessary for inclusion in the Misuse of Drugs Act 1981 in light of the amendments proposed in division 5 of part 11 of this bill?

Hon STEPHEN DAWSON: I am advised that it is required.

Hon NICK GOIRAN: Since division 5 of part 11 amends the Medicines and Poisons Act 2014 in relation to schedule 4 and schedule 8 poisons approved by the CEO for use in voluntary assisted dying, would not section 5B of the Misuse of Drugs Act 1981 then also cover the preparation, selling, supply, possession and use of schedule 4 and schedule 8 drugs for voluntary assisted dying?

Hon STEPHEN DAWSON: I am advised, no, there has to be a special provision.

Clause put and passed.

Clause 180: Section 5 amended —

Hon NICK GOIRAN: In light of clause 180 and section 5 of the Misuse of Drugs Act 1981, where does the government anticipate voluntary assisted dying substances will be prepared by authorised suppliers? While the minister is taking advice on that question, could he also deal with this supplementary question: in that same respect, where does the government anticipate that the voluntary assisted dying substance will be sold and supplied from by authorised suppliers?

Hon STEPHEN DAWSON: I am advised that this has been touched on earlier, honourable member. Essentially, this will be dealt with during the implementation period of the bill.

Clause put and passed.

Clause 181: Section 6 amended —

Hon NICK GOIRAN: This goes to the tricky issue of the contact person having to return the substance. I seem to recall that the government moved an amendment at some earlier point in the bill to remove the obligation, possibility or even power for the patient to return the substance. Does that impact on this clause in any way? As I understand it, it will be an offence committed under section 6 of the Misuse of Drugs Act if a self-administration decision is revoked but the voluntary assisted dying substance is not returned to an authorised disposer within the required time frame, which from memory is 14 days. I want to be clear about who will be held liable in those circumstances. Will it be the patient or their contact person? I know that we moved an amendment earlier to remove the patient, but is any supplementary or consequential amendment required at this point?

Hon STEPHEN DAWSON: I am told that the amended clause, which was clause 72, is about labelling of the voluntary assisted dying substance; it is not about authorisation.

Clause put and passed.

Clause 182: Section 7 amended —

Hon NICK GOIRAN: Which prohibited plants referred to in section 7 of the Misuse of Drugs Act can be used to cause the death of a person and will likely be approved by the CEO for use as a voluntary assisted dying substance under the legislation?

Hon STEPHEN DAWSON: The issue will be dealt with during the implementation phase. We are not presupposing the work of the clinical panel.

Hon NICK GOIRAN: So why is this amendment necessary, minister?

Hon STEPHEN DAWSON: The effect of the amendments in this clause is that a person will not commit an offence contrary to the Misuse of Drugs Act 1981 by reason only of the person having in their possession a prohibited plant, if the person proves that he or she was authorised to do so under the act.

Clause put and passed.

Clause 183: Section 7B amended —

Hon NICK GOIRAN: What drug paraphernalia will be required to be used in conjunction with voluntary assisted dying substances in accordance with the act, and will this paraphernalia be provided to the patient or their agent or contact person by the authorised supplier of the voluntary assisted dying substance?

Hon STEPHEN DAWSON: Again, this issue will be dealt with during the implementation phase. We are not presupposing the work of the clinical panel.

Clause put and passed.

Clause 184: Section 27 amended —

Hon NICK GOIRAN: Why is it deemed necessary to amend section 27 of the Misuse of Drugs Act 1981 under clause 184?

Hon STEPHEN DAWSON: The effect of the amendments in this clause is that if a voluntary assisted dying substance is seized, acquired or detained under section 26 of the Misuse of Drugs Act 1981, the substance may be disposed of in accordance with section 27. If no person is to be tried with the commission of an offence in relation to the substance, a police officer may release the substance to a person authorised by or under the act to have possession of the substance. If a person is tried for the commission of an offence and the substance has not been destroyed, the court which tries the person must give a person claiming to be authorised by or under the act to have possession of the substance an opportunity to show cause why the substance should be released to him or her. The court may make an order to release, destroy or forfeit the substance.

Clause put and passed.

Title put and passed.

Report

Bill reported, with amendments, and, by leave, the report adopted.

As to Third Reading

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [12.57 am]: I move —

That the third reading of the bill be made an order of the day for the next sitting of the house.

Point of Order

Hon SIMON O'BRIEN: Possibly this is in hand, but my understanding of the suspension of standing orders arrangements to enable these sittings to be held was that at the conclusion of today, we were to complete not only the committee stage but also any recommittal. Supplementary notice paper 139, issue 20, bears a number of amendments intended for consideration upon recommittal of a number of clauses. I am just wondering whether that will happen, because we will not get a chance otherwise.

The PRESIDENT: Member, I understand that nobody has asked for a recommittal to deal with any of those matters. Where was I?

Debate Resumed

Hon STEPHEN DAWSON: Madam President, just before that point of order, I had moved that the third reading of this bill be made an order of the day for the next sitting of the house.

Question put and passed.