VOLUNTARY ASSISTED DYING BILL 2019

Committee

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

Clause 1: Short title —

Committee was interrupted after the clause had been partly considered.

The DEPUTY CHAIR: Does the minister have anything to progress with before I open the floor?

Hon STEPHEN DAWSON: I certainly do. Before question time was called, I had begun to seek advice from my advisers. I am going to get that advice and I will provide an answer.

Hon Nick Goiran asked some questions about palliative care and asked us to drill down further. I have not got that information yet. We are still seeking that information. I was also asked whether there needed to be provisions in the bill for organisations to conscientiously object. Institutions do not have to participate in the actual process. They are not required to do anything in the voluntary assisted dying process. The Ministerial Expert Panel on Voluntary Assisted Dying received a submission from Bethesda Health Care. I will quote from page 52 of the final report of the Ministerial Expert Panel on Voluntary Assisted Dying. It states —

> *'Bethesda is of the view that an individual healthcare provider or organisation should not be obliged to refer a patient that wants to access voluntary assisted dying on to some other person or service that is prepared to help them.*
>
> *Note, however, that as part of our commitment to compassionate, patient-centred care, Bethesda (at this stage) would be prepared to provide the contact details for an appropriate co-ordination and navigation agency to patients if they request either information about voluntary assisted dying, or to access the process.'*

That was mentioned in one of the submissions. Obviously, we have had just a short break. I have not been able to get further advice about which other organisations may have mentioned their objections to participating in the bill. That is one example.

Hon NICK GOIRAN: This is interesting. Thank you for drawing this to our attention. I note that last week other members asked questions about institutional conscientious objection. It has now been drawn to our attention that some exchange occurred between institutions and the ministerial expert panel. I note that on page 52 of the final report that the minister took us to, it also states —

> In seeking to achieve a balance between these needs, the Panel determined that the most appropriate option was to recommend that practitioners and services that have a conscientious objection have an obligation to provide information to people seeking voluntary assisted dying but are not obliged to refer on. This would appear to be an acceptable 'middle ground'.

The ministerial expert panel then quoted the submission by Bethesda Health Care, as articulated by the minister, and on page 53 stated —

> The Panel is mindful that this is contrary to the Joint Select Committee recommendation that practitioners should be obliged to offer to make a referral.

It appears that there is a difference between the joint select committee and the ministerial expert panel. Where does the government sit in respect of that difference?

Hon STEPHEN DAWSON: The government agrees with the ministerial expert panel.

Hon NICK GOIRAN: Which part of the joint select committee's report does the government disagree with?

Hon STEPHEN DAWSON: With the obligation to mandatorily refer.

Hon NICK GOIRAN: Where do we find that in the joint select committee's report?

Hon STEPHEN DAWSON: Page 225 onwards of the committee's report, "My Life, My Choice: The Report of the Joint Select Committee on End of Life Choices", has the "Voluntary Assisted Dying Legislation Framework" and page 228 has a part on "personal objection", which says —

> At the time the patient makes the first verbal request, any doctor with a personal objection to providing assisted dying must inform the patient of the objection and offer to refer the patient to a doctor who is willing to provide assistance.

Hon NICK GOIRAN: That is what the joint select committee said at page 228 under "personal objection" in the framework that it asked the government to consider. Do I take it that that is not what this bill does?

Hon STEPHEN DAWSON: That is correct. The bill does not have the referral obligation.

Hon NICK GOIRAN: The minister says that the government does not have the referral obligation, despite the fact that that is what the joint select committee suggested to the government. Are there other parts of what the joint select committee has asked the government to do that the government has rejected?

Hon STEPHEN DAWSON: I am advised that the government accepted the recommendations, in principle. Recommendation 21 was that the minister establish an expert panel, including health and legal practitioners and health consumers, to undertake consultation and develop legislation for voluntary assisted dying in Western Australia and that this report, together with the framework contained at the end of chapter 7, be considered by the panel. We accept the recommendations in principle. Further work was then done by the ministerial expert panel so a number of issues were amended, following consultation either on the advice of the ministerial expert panel or those other agencies that I mentioned earlier that were consulted as part of the consultation process.

The DEPUTY CHAIR: Before I give Hon Nick Goiran the call, I will need members to make sure that they are pointing out a relationship between the question they are asking and the bill. I am generally being fairly relaxed because it is a wideranging debate, but there should be a connection between the questions and the bill.

Hon NICK GOIRAN: For the sake of clarity, I am following up on answers that the minister gave to Hon Martin Aldridge's questions last week on clause 1 of the bill and, in particular, the so-called conscientious objection provisions, which, as I understand, from the exchange between Hon Martin Aldridge and the minister last week, applied only to individuals and not institutions. I am asking the government to clarify that. It has taken me to page 228 of the "My Life, My Choice" report and the heading "Personal obligation". The government has confirmed that it has rejected the view of the joint select committee that there should be an obligation to refer the patient to a doctor who is willing to provide the assistance. It has indicated that with respect to the framework. The government has now indicated to us that the ministerial expert panel has considered this issue, taking us to pages 52 and 53 of the panel's final report. It is now apparent that the ministerial expert panel holds a different view from the joint select committee and that the government has accepted the view of the ministerial expert panel but rejected the view of the joint select committee. I am trying to identify what other elements of the work of the parliamentary joint select committee the government has decided to reject and instead support the position of the unelected panel of so-called experts who, I might note, decided not to take any minutes, unlike the parliamentary committee.

The minister has taken us specifically to recommendation 21, which I note reads —

> The Minister for Health establish an expert panel including health and legal practitioners and health consumers to undertake consultation and develop legislation for voluntary assisted dying in Western Australia, and that this report, together with the Framework contained at the end of Chapter 7, be considered by that Panel.

Does the government have in its possession a list of those things that were proposed by the joint select committee that have been rejected by government? Does it also have a list of those things that the ministerial expert panel has proposed to government that it has rejected?

Hon STEPHEN DAWSON: No, I do not have such a list.

Hon NICK GOIRAN: We will follow that up later. For the time being, I want to get back to this issue of the institutional conscientious objection and the view of the government to reject the position taken by the joint select committee. I ask the minister to turn to page 228, which is the page he referred me to, of the "My Life, My Choice" report. Under the heading "Personal objection", the joint select committee in its so-called framework went on to suggest —

> Where a person is an inpatient in a health service unwilling to provide assisted dying, that service must facilitate timely transfer to another service.

Can the minister indicate whether that is supported by the government? Was it supported by the ministerial expert panel? Is there a provision in the bill that makes that happen?

Hon STEPHEN DAWSON: I am advised that the answer to the first two questions is yes. However, there is no provision in the bill. I am further advised that it is good clinical practice for an organisation to do that.

Hon NICK GOIRAN: That provision in the framework found on page 228 says that the service must facilitate timely transfer to another service. Does the absence of something specific on that in the bill mean that a health service that is unwilling to provide assisted dying is not obliged to facilitate timely transfer?

Hon STEPHEN DAWSON: We are trying to find further information, but I am told that this is consistent with guidelines that have been issued by the Medical Board of Australia to practitioners. We are just trying to see what else we have in front of us.

Hon NICK GOIRAN: Last week the minister also indicated that if a patient has requested a transfer from an institution that will not permit voluntary assisted dying to be executed on its premises, the institution would need

to facilitate that transfer. The minister has just indicated that that would be consistent with what the member referred to as "good clinical practice". He further indicated that if a person in the institution was concerned that the patient had been coerced to transfer, they could approach the Voluntary Assisted Dying Board. When I asked the minister what the Voluntary Assisted Dying Board could do, he said it could approach the police. What powers do WA police have to intervene in that transfer process?

Hon STEPHEN DAWSON: I am not sure that is exactly what I said, so we are going to check *Hansard* from last week to see what exactly what I did say. That is our understanding and my recollection of what I said, bearing in mind I have said a significant number of things over the last week and a half or two and a half weeks, so let us check on that.

Hon NICK GOIRAN: We can certainly go back to that, but I do not make this stuff up. I spent time on Friday reviewing that and it is precisely what happened. If the minister wants a moment's pause to consider that, I am happy to facilitate it. I will move on to a separate topic and we will come back to it. The minister also advised last week that WA police were one of a very small number of agencies that were given the luxury of seeing the tenth draft out of 14 drafts of the bill. Have WA police indicated what process they will put in place to ensure that these concerns by any person in an institution will be prioritised, given that an adverse outcome would in this instance be a guarantee of a wrongful death?

Hon STEPHEN DAWSON: Operational implementation of the bill has not been discussed with WA police.

Hon NICK GOIRAN: What concerns did WA police raise about the tenth draft?

Hon STEPHEN DAWSON: I am advised that concerns were not raised by WA police.

Hon NICK GOIRAN: The advice of the chamber is that WA police raised no concerns about the tenth draft. If the institution in question—that is, the institution that does not permit voluntary assisted dying to happen on its premises—was an aged-care facility that is by definition the home of the patient, where would they be transferred in order to execute their VAD process?

Hon STEPHEN DAWSON: I am advised that the transfer would likely be to a hospital, although the patient could be transferred to another residential care facility. The most likely to place to transfer a patient would be a hospital. I am advised that we would expect facilities to work in a collaborative manner with other institutions to enable the transfer to take place, ensuring the patient is looked after as part of that process.

Hon NICK GOIRAN: Perhaps we will take up that issue of how the VAD board would deal with the situation of the police after the next adjournment when the minister has had an opportunity to review *Hansard* from last week. Can I then take the minister to the comments he made in response to Hon Martin Pritchard about whether a doctor is required to raise the topic of voluntary assisted dying with the patient. The minister mentioned that there was no obligation in the bill, but that it would be part of good clinical practice. In fact, I note that the minister made the same remark just this afternoon when we looked at the issue of transfer. He said it would be good clinical practice for a healthcare service to transfer a person if it was unwilling have the process executed on its premises. On what basis is voluntary assisted dying part of clinical practice? Is it some form of medical treatment, palliative care treatment or medical procedure? On what basis do we say it is part of clinical practice?

Hon STEPHEN DAWSON: I think we all heard different things. Would the honourable member mind asking me his question again, if he does not mind?

Hon NICK GOIRAN: Last week, when the minister was asked by Hon Martin Pritchard about whether a doctor was required to raise the topic of voluntary assisted dying, he mentioned that there was no obligation in the bill, but it would be good clinical practice. My question is: On what basis is voluntary assisted dying part of clinical practice? Is it because it is some form of medical treatment, palliative care treatment or medical procedure? On what basis does the government continue to refer to this in the context of good clinical practice?

Hon STEPHEN DAWSON: Voluntary assisted dying is the lawful option that the doctor in his or her professional view believes is an option that the patient may wish to consider. Preventing a medical practitioner from informing a patient about a legally valid option is an extraordinary measure that is fundamentally out of step with the basic principles of informed decision-making.

Hon NICK GOIRAN: Minister, hang on. Suicide is also a lawful option in Western Australia—that was a finding of the joint select committee. I think that the minister would agree with me that it would not be good medical practice for a practitioner to suggest suicide as an option for a particular individual. I am not asking the minister to start to have a debate with me about the government's view on whether this is or is not suicide; I am simply making the point that it is a lawful option that is available to Western Australians at the moment—one that we do not countenance and do not encourage. It cannot simply be that just because something is a lawful option, it, therefore, falls into the category of clinical practice. I would ask the minister to revisit that answer.

Hon STEPHEN DAWSON: I am told that voluntary assisted dying is an end-of-life option that involves medical practitioners and, therefore, is clinical.

Hon NICK GOIRAN: Last week, the minister mentioned that the Director of Public Prosecutions was consulted on draft 10 of the bill. In evidence to the Joint Select Committee on End of Life Choices, on 27 February last year, the Director of Public Prosecutions, Amanda Forrester, told the committee —

> … there is only one person left, usually, to tell what happened, and that is the person who is under investigation. That is a real problem …
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> …
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> … at the end of the day it is one person's say-so … The patient, of course, is deceased.

Did the Director of Public Prosecutions raise any concerns about draft 10?

Hon STEPHEN DAWSON: I am told that the final draft of the bill takes into consideration any issues that would have been raised by the DPP, the Solicitor-General and the State Solicitor's Office.

Hon NICK GOIRAN: Yes; although, minister, I am only interested in the concerns of the DPP at this point. What concerns were raised by the DPP?

Hon STEPHEN DAWSON: I am not at liberty to tell the member that—cabinet-in-confidence provisions. These consultations happened as part of the drafting of a bill, so I am not at liberty to tell the member what comments were raised. But as I have indicated to the member, any issues raised by the DPP, the SG or, indeed, the SSO have been taken into consideration in the final draft of the bill.

Hon NICK GOIRAN: Is the minister in a position to let us know which of the concerns of the Director of Public Prosecutions were addressed in this bill and which ones were rejected; is he able to tell us that?

Hon STEPHEN DAWSON: I am not.

Hon NICK GOIRAN: Right, so the situation we are in now is that the Director of Public Prosecutions has given evidence to the Joint Select Committee on End of Life Choices, a joint committee of both houses of this place, and the evidence by the DPP plainly demonstrated some concerns, as per the quote that I read earlier. We know that the government has consulted the DPP, but it will not tell us what concerns were raised by the DPP. It now shields those concerns behind cabinet confidentiality. When I asked the minister earlier this afternoon about the concerns the Western Australia Police Force raised, he said nothing then about cabinet confidentiality. He never once said to me, "I cannot tell you about this because it is cabinet-in-confidence." But now when I start to ask questions about the DPP, he raises this shield. That makes me suspicious. That tells me—the implication is—that the WA police had nothing to say on this, but that the DPP had something to say and the minister does not want us to know what that is. That is what that tells me. In circumstances in which I was the only one of the eight members on the joint select committee who attended every meeting and every hearing, and I was present when Amanda Forrester told the committee —

> … there is only one person left, usually, to tell what happened, and that is the person who is under investigation. That is a real problem …
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> …
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> At the end of the day it is one person's say-so … The patient, of course, is deceased.

That set off a red alert, a big alarm, for me when I heard that, so much so that I prepared my own 248-page minority report. The DPP said that to the committee in evidence. I was there; I heard it. The transcript of that public hearing confirms exactly what I have just said. The government does not want us to know what the DPP has said to it.

The minister mentioned that the Department of Justice, State Administrative Tribunal, State Coroner and Health and Disability Services Complaints Office were the others, apart from WA police, who were consulted on draft 10 of the bill. How have their concerns been addressed in the bill and which of their concerns were rejected?

Hon STEPHEN DAWSON: I will say again, for the member's benefit —

Hon Nick Goiran: I've asked a question.

Hon STEPHEN DAWSON: Well, I say again for the benefit of the member: all issues that were raised by the DPP, SG and SSO have been addressed in the final bill.

Hon NICK GOIRAN: Minister, I repeat my question: you mentioned that the Department of Justice, State Administrative Tribunal, State Coroner and Health and Disability Services Complaints Office—to be clear, that is four different agencies—were part of the few people who were consulted in respect of draft 10. I am asking whether they raised any concerns; and, if they have, have they been addressed by the bill or have they been rejected

by the government? I am not asking about the State Solicitor's Office, the DPP or WA police; I am asking about those other agencies.

Hon STEPHEN DAWSON: I am told that all issues that were raised by those organisations were considered as part of the final bill, and the final bill that is before us now has taken on board those considerations.

Hon Nick Goiran: You say that, minister, but how do I know that?

Several members interjected.

Hon NICK GOIRAN: There would be a very simple way for the government to demonstrate it. I am pleased that certain members are listening to this part of the debate. All it would require is for the government to table the response from the Western Australian police, the DPP, the State Coroner, the Health and Disability Services Complaints Office, the State Administrative Tribunal and the Department of Justice. By my calculation, that is six pieces of paper that the government would need to table. We would then be able to be satisfied as to whether the government has addressed the concerns of those agencies. The government says it is not prepared to do that. Curiously, the Chief Psychiatrist was not one of those the minister said was consulted on draft 10. On 14 December 2017, the Chief Psychiatrist said to the Joint Select Committee on End of Life Choices —

> … the stakes go up when you are saying that someone is going to die.

Has he since been consulted?

Hon STEPHEN DAWSON: I am advised that no, he was not consulted on draft 10. The honourable member said that only a number of letters could be tabled. In fact, conversations happen across government—some by correspondence, some face to face and some by telephone—so consultation happened in a multitude of ways.

Hon NICK GOIRAN: To be clear, minister, at no stage during the drafting of this bill nor subsequent has the government consulted with the Chief Psychiatrist?

Hon STEPHEN DAWSON: I am advised that the Chief Psychiatrist presented to the Ministerial Expert Panel on Voluntary Assisted Dying as a subject matter expert. He was involved in that process.

Hon NICK GOIRAN: Did the Chief Psychiatrist raise any concerns with the ministerial expert panel?

Hon STEPHEN DAWSON: I am advised that there is no transcript of the conversation. I am aware that there was a great deal of conversation about decision-making capacity and the issue of coercion. They were the two issues that were most talked about in the conversations between the Chief Psychiatrist and the panel.

Hon NICK GOIRAN: Did the conversation between the panel and the Chief Psychiatrist happen on one day at a meeting or was it over the course of several days or was it by way of exchange of correspondence? How did this consultation happen with the Chief Psychiatrist as a subject matter expert—to use the minister's words—by the ministerial expert panel, which charged the people of Western Australia half a million dollars while proceeding through a process without taking any minutes?

Hon STEPHEN DAWSON: I am advised that the Chief Psychiatrist attended a meeting with the panel. In relation to the honourable member's comment, I am not sure whether he is suggesting that the $491 000 that funded the panel was a waste of money. I do not know what he is suggesting. Certainly, I have given the figure on how much it cost for the panel and the consultation that the panel undertook. I believe that it has been value for money. Certainly, there were a number of very learned and expert individuals on that panel. The value of their work can be seen in the final report. If the honourable member has a different view, he is entitled to that view, but certainly I think it was value for money and I commend the work that the panel undertook. The Chief Psychiatrist absolutely met face to face with the panel.

Hon COLIN TINCKNELL: Minister, I do not think that when someone asks a question they are suggesting anything; they are just asking a question. I have a similar sort of question. Can the minister give us a breakdown of how much the scheme will cost from the consultation process to rolling out and implementing the program? Can the chamber get some detailed information about the sorts of costs we are looking at?

Hon STEPHEN DAWSON: Honourable member, no, I do not have a breakdown like that. The final cost will depend on what the bill looks like. Certainly, I previously indicated on the public record the extra funding that has been provided for palliative care, but we do not have a breakdown of what it might cost to implement voluntary assisted dying should the bill pass this place.

Hon COLIN TINCKNELL: I understand that this is one of the government's signature policies, but is it not the normal process for a government to work out the costs involved, budget for such a scheme and have some idea what each step of the process will cost? It is obviously a substantial amount of money and I think the members of this chamber deserve to have some idea of what it will be. I am happy to put this on notice, but I would like some indication of how we can be guided.

Hon STEPHEN DAWSON: I am told that should this bill pass this chamber and Parliament, there will be a requirement for the Minister for Health to submit a funding request to the Expenditure Review Committee of cabinet. That has not taken place. It will happen post the passing of the bill, because obviously once it passes, we will know what elements are in the bill and they can then be costed.

Hon COLIN TINCKNELL: One of the things that has surprised me with this bill is that a lot has been left to the implementation stage. It is very hard to feel confident about passing bills when we do not have all the details before us to make informed decisions. I understand that Western Australia has never had voluntary assisted dying, but Victoria has been through such a process. The expert panel would have looked at how other regimes have organised their VAD, dignified dying or euthanasia. Why has so much been left to the implementation stage and why have some of the issues not been addressed so that this Parliament can fully debate the pros and cons?

Hon STEPHEN DAWSON: I will talk about some of the services that will be provided under the Voluntary Assisted Dying Bill, including funding for individual services.

Sitting suspended from 6.00 to 7.30 pm

Hon STEPHEN DAWSON: Honourable members, before we broke for dinner, I was about to make a point in relation to the funding of voluntary assisted dying services. A question was asked by Hon Colin Tincknell, who is away from the chamber on urgent parliamentary business, about the funding attached to the Voluntary Assisted Dying Bill 2019. I was going to make the point that funding for the individual services that will be provided by practitioners will need to be compliant with current Medicare billing guidelines. Although some standard consultation items may be applicable, it is recognised that the time investment by practitioners may exceed what is usually provided for and will need to be further addressed during implementation planning.

I have some further information about funding. There has been $3.5 million allocated for the implementation of the Joint Select Committee on End of Life Choices' voluntary assisted dying recommendations. This includes $1 million for 2019–20 and $1 million for 2020–21. As such, the component of the budget related to the implementation of the voluntary assisted dying recommendations made by the joint select committee is approximately $1.5 million. That is the further information in response to the question asked by Hon Colin Tincknell.

With regard to the other questions that Hon Nick Goiran asked me about funding, I am still waiting on that information, but I will, of course, provide that information when it is provided to me.

Hon NICK GOIRAN: I would like to pick up on the questions that Hon Colin Tincknell asked about costs, but before I do that, prior to the dinner break, the minister said he was going to have a look at what he did or did not say last week with regard to the Voluntary Assisted Dying Board and the approach to police. Has there been an opportunity to do that, so I can ask those questions?

Hon STEPHEN DAWSON: I just want to make sure that this is what Hon Nick Goiran is talking about. We have gone back to the *Hansard* from last week. Hon Nick Goiran asked —

> What happens if the individuals within the institution have grave concerns that the person is being coerced, which I know this government does not want to occur and is why it is one of the principles in the bill? What capacity does the institution have to address those concerns or is it simply obliged to transfer the patient?

The answer I gave at the time was —

> The facility could tell the coordinating doctor of its concerns. It could approach the VAD board with its concerns. If it reasonably suspects that coercion is taking place, it could also report that to the police. In relation to the transfer, I am advised that the transfer is a necessity of good clinical practice.

The honourable member then went on to ask —

> The minister says that the individuals within the institution can approach the VAD board or the police, and, of course, that relates to my example of a patient requesting a transfer but the individuals within the institution are concerned that there has been coercion. What can the VAD board do in those circumstances?

My response was —

> I am told the board can alert the coordinating doctor. The board can look into the case, it can alert the CEO of the department and it can also advise the police. Those options are all available.

That was what happened last week, but our understanding of what the member said tonight is that different words were used. In light of that, that is where we are at, so does the member want to ask a question?

Hon NICK GOIRAN: I agree; that is exactly my recall of what transpired last week. In that context, I will repeat the question I asked earlier. Last week, the minister indicated that if a patient requests a transfer from an institution

that will not permit voluntary assisted dying to be executed on its premises, the institution will need to facilitate that transfer. He further indicated that if a person in the institution was concerned that a patient was being coerced to transfer, they could approach the Voluntary Assisted Dying Board. When asked what the Voluntary Assisted Dying Board could do, the minister said it could approach the police. My question was: what powers do WA police have to intervene in that transfer process?

Hon STEPHEN DAWSON: I am advised that the police have powers to investigate criminal offences and powers to investigate compliance with the act. The police could investigate; that would have to take place first. Obviously, they would investigate whether coercion was taking place, but the CEO of Health could also investigate.

Hon NICK GOIRAN: The WA police can investigate. If coercion were taking place, it could investigate compliance under the act. Is there a criminal offence that they would be able to investigate in that instance?

Hon STEPHEN DAWSON: I am being pointed to clauses 99 and 100 of the bill.

Hon NICK GOIRAN: Minister, are there any criminal offences in the Criminal Code—outside of this piece of legislation—that Western Australian police could use to investigate in the event that someone in an institution is concerned that coercion is taking place and the patient is being transferred to another facility that is going to execute VAD in circumstances of coercion? Is there a criminal offence that would apply in that case outside of this bill?

Hon STEPHEN DAWSON: No, not with regard to VAD—not in the Criminal Code.

Hon NICK GOIRAN: Where in the legislation is the power for the Voluntary Assisted Dying Board to communicate that information to police?

Hon STEPHEN DAWSON: It is in clause 117. Clause 117, in part 9, "Voluntary Assisted Dying Board", outlines the functions of the board. Clause 117(c) reads —

> to refer to any of the following persons or bodies any matter identified by the Board in relation to voluntary assisted dying that is relevant to the functions of the person or body —
>
> (i) the person holding or acting in the office of Commissioner of Police under the Police Act 1892;

Hon NICK GOIRAN: Prior to the adjournment, the minister was answering some questions from Hon Colin Tincknell about the cost of the scheme. The minister indicated that he could not provide a breakdown. The Australian Medical Association surveyed its doctors and, as the minister pointed out earlier, not everyone responded to the survey. Indeed, the outcomes of the survey are only from those who responded; it is not necessarily reflective of the views of every medical practitioner in Australia. Nevertheless, 863 respondents, which is 57 per cent, surveyed by the AMA believed that the state should provide all the funding and facilities required for voluntary assisted dying. Will the government provide all the funding and facilities for voluntary assisted dying if it is to be provided in our state?

Hon STEPHEN DAWSON: Honourable member, there may well be some cost to a patient who wants to access voluntary assisted dying. In my earlier response to Hon Colin Tincknell, I made the point that although some standard consultation items may be applicable under Medicare billing guidelines, it is recognised that the time investment by practitioners may exceed what is usually provided for and this will need to be further addressed during the implementation planning. But the likelihood is that that patient may need to pay to access a specialist, for example, in certain cases.

Hon NICK GOIRAN: Going back to the example that we were working through last week, the first step of the process, as I understand it, is for a coordinating practitioner to be involved. We identified that in some circumstances, there may be a need for an interpreter. What costs would a Western Australian patient be up for in circumstances in which a coordinating practitioner and an interpreter are involved?

Hon STEPHEN DAWSON: I have already indicated that there would be no cost for the interpreter, but if the coordinating practitioner was a specialist, the patient may need to pay the gap.

Hon NICK GOIRAN: If the coordinating practitioner was not a specialist, no payment would be required by the patient; is that right?

Hon STEPHEN DAWSON: This will be as per Medicare billing guidelines. Therefore, if there is a gap under Medicare billing guidelines, there will be a gap in certain circumstances under this bill.

Hon NICK GOIRAN: The minister indicated earlier that they would need to be compliant with Medicare billing guidelines. Is there a Medicare number that would apply in this situation?

Hon STEPHEN DAWSON: No.

Hon NICK GOIRAN: How can they be compliant with Medicare billing guidelines, as the minister has indicated to the chamber, if there is not even an applicable item number?

Hon STEPHEN DAWSON: I am advised that it will be a standard GP consultation.

Hon NICK GOIRAN: I will go back to my earlier question, minister. Is there an item number relevant to this process?

Hon STEPHEN DAWSON: There would be for a standard GP consultation. As to exactly what that number is, we would have to take that on notice.

Hon NICK GOIRAN: As I understand the advice to the chamber, minister, there is some form of Medicare item number that the doctors would need to be compliant with. If it is a GP, they will claim under that item number. If it is a specialist, they will claim under either the same number or a different number, and there will be a gap only for a specialist. If it is a general practitioner, there will be no problem and the patient will not need to pay anything.

Hon STEPHEN DAWSON: I am told that there could be a gap for the GP if they do not bulk-bill, for example.

Hon NICK GOIRAN: We have now identified two scenarios in which there could be a cost to the patient, and that could be whether the person is a general practitioner or a specialist; it really would not matter, as either way there could be a gap. However, the government will make sure that there is no cost for the interpreter. What is the story with the consulting practitioner?

The DEPUTY CHAIR (Hon Robin Chapple): Hon Nick Goiran.

Hon STEPHEN DAWSON: I am advised it is the same.

The DEPUTY CHAIR: I do apologise, minister; I called you Hon Nick Goiran.

Hon Nick Goiran: Take it as a compliment, minister.

Hon Stephen Dawson: I've been called worse.

Several members interjected.

Hon NICK GOIRAN: Minister, what is the situation when it comes to the administering practitioner?

Hon STEPHEN DAWSON: I am advised that it would also be the same.

Hon NICK GOIRAN: That is indeed interesting. Correct me if I am wrong, but does the administering practitioner not just inject the patient with the poison put together by the government for use in this instance? Why would there be a different cost for a practitioner to inject a patient with this poison depending on whether the practitioner was a GP or a specialist?

Hon STEPHEN DAWSON: We are seeking further information. I just make the point that in the first instance, the administering practitioner is likely to be the coordinating practitioner. If for some reason the coordinating practitioner cannot do that, it could be another medical practitioner or a nurse practitioner. The administering practitioner does not just undertake an injecting role. Clause 58(5) states that administration by the administering practitioner can occur only if the administering practitioner is satisfied that the patient has decision-making capacity in relation to voluntary assisted dying, the patient is acting voluntarily and without coercion and that the patient's request for access to voluntary assisted dying is enduring.

Hon NICK GOIRAN: The minister said that nurse practitioners could do the administration; on what basis can they charge in this process?

Hon STEPHEN DAWSON: I am told they have item numbers on the Medicare benefits scheme, too.

Hon NICK GOIRAN: Is there any gap for a nurse practitioner with their item number?

Hon STEPHEN DAWSON: We would have to check that, honourable member.

Hon NICK GOIRAN: The minister mentioned a few times that there could be a gap for the different processes. We have the coordinating practitioner, the consulting practitioner and the administering practitioner. These people can be either a GP or a specialist. In the case of the final administration act, it can be a nurse practitioner. In each of those instances, the minister indicated that there could be a gap. Has the government had any conversations or consultation with private health insurers to identify whether they will cover the gap?

Hon STEPHEN DAWSON: No, we have not.

Hon NICK GOIRAN: That seems strange, minister, because the government has been very quick to boast about how much consultation it has done for this whole process. It was clear from the process in the other house that the government does not like members asking any questions about this matter and it does not like any amendments. Why is that? It is because, according to the government, there has been massive consultation. I have heard some people in government suggest that there has been consultation on this bill for two years, which of course we know is false, because the bill has not been in existence for that period. We have already identified various holes in the work done by the Joint Select Committee on End of Life Choices and the panel that consisted of some experts, and

now we are told that there has not been any consultation with private health insurers. The minister indicated earlier that the government is having ongoing conversations with various entities; are private health insurers one of those?

Hon STEPHEN DAWSON: Not at the moment, but the intention is to have a conversation with that industry during the implementation phase.

Hon NICK GOIRAN: I am sure that will be very comforting for those Western Australians who might want to know what the situation is before this law is passed. I am sure it will be very comforting for lawmakers who might want to know the answer to that question. Whenever we ask an uncomfortable question on this matter, the government once again uses its get-out-of-jail-free card and simply says that it is leaving it to consultation. What is the intended charge-out rate for care navigators?

Hon STEPHEN DAWSON: It will be a publicly funded service.

Hon NICK GOIRAN: When the minister says it will be a publicly funded service, does that mean there will be no gap and there will be no contribution required by a Western Australian who wants to access a care navigator anywhere, whether they live in West Perth, Kununurra, Esperance or anywhere in between? If people want access to a care navigator, they will have access to one, it will be publicly funded and they will not be required to pay anything.

Hon STEPHEN DAWSON: That is the intention.

Hon NICK GOIRAN: Of the various cost processes that will be in place with this legislation, whether it is a care navigator, coordinating practitioner, consulting practitioner or administering practitioner, is the cost of the care navigator the only cost the state government will be up for; and, if not, what other costs will the Western Australian government be up for?

Hon STEPHEN DAWSON: Essentially, the key costs to the state would be the cost of training, the cost of implementation of the scheme, the cost of the interpreters and the cost of the statewide pharmacy. Those are essentially the main ones. That is obviously on top of the navigators; I did not make that point.

Hon NICK GOIRAN: The minister has identified five cost centres—the care navigator, the training, the implementation, the interpreters and the statewide pharmacy. I will just deal with the statewide pharmacy. The statewide pharmacy already exists and already has the resources. Will it be necessary for there to be additional resources for the statewide pharmacy? Why would there need to be extra costs to the state there?

Hon STEPHEN DAWSON: It is not guaranteed that we would use the same service. If the bill passes, the detail of that will be worked out.

Hon NICK GOIRAN: At the moment, someone must be responsible for the statewide pharmacy service. I am not very familiar with the statewide pharmacy. For argument's sake, let us say that the chief of the statewide pharmacy is called the chief pharmacist or the CEO of the statewide pharmacy. Can the minister indicate who the chief of that agency is; secondly, have they been consulted about this?

Hon STEPHEN DAWSON: I am told that the Chief Pharmacist has been consulted on the bill.

Hon NICK GOIRAN: Did the Chief Pharmacist indicate how many additional resources would be required by the statewide pharmacy to facilitate voluntary assisted dying in Western Australia?

Hon STEPHEN DAWSON: No. Neither he nor we can answer that question until we know the shape of the bill. If the bill passes, we will be in a better position to work out the costs and the most appropriate way to dispense medication. It may be the existing service, but it could be the creation of a new central pharmacy service based at a tertiary hospital, for example, with a number of regional hubs. Again, that detail will be worked out upon the passage of the bill, and the costs will be worked out after that as well.

Hon NICK GOIRAN: If it were decided to go with a different approach, would that require a change of legislation other than what is in the bill?

Hon STEPHEN DAWSON: No, it would not.

Hon NICK GOIRAN: The minister has indicated that the state will bear the cost of interpreters. What is the anticipated cost of that on an annual basis?

Hon STEPHEN DAWSON: We do not have an anticipated cost of that at this stage. It is certainly something that we are alive to, if I can use that word. I have previously alluded to the fact that upon passage of the bill, the Minister for Health will need to seek funding through the cabinet Expenditure Review Committee process. There would be contingency for that issue, but we have not done any costing on the potential cost of interpreters. It is certainly Western Australian government policy to provide free interpreting services to support Australian citizens and Medicare-eligible residents who need help to communicate in English.

Hon NICK GOIRAN: The minister previously indicated that the government anticipates a death rate in this instance of 0.4 per cent of all deaths. The minister indicated that that figure is based as best as it can be on the Oregon data—we went through the exercise previously and I certainly indicated my view that the figure would be higher than that because of the differences between the systems. If it were 0.4 per cent of all deaths, what would that be as a raw number in Western Australia on an annual basis?

Hon STEPHEN DAWSON: Again, honourable member, we had a discussion about this last week. Notwithstanding there is a difference of opinion about whether we are closer to the system in Oregon, the Netherlands, Belgium or anywhere else, I provide this answer in the context of the way the question was asked. If it were to be similar to that in Oregon, in 2018, there were 14 873 deaths in Western Australia, so 0.4 per cent of that would be 60-odd deaths. However, again, as we have said, I do not propose to delve deeply into this issue again tonight and go back over old ground on whose figures are right. That is an approximate figure.

Hon NICK GOIRAN: The minister indicated that there were five cost centres—the care navigators, the training, the implementation, the interpreters and the statewide pharmacy. We have asked some questions on those. Would there not also be the cost of sending the care navigator, coordinating practitioner, consulting practitioner or administering practitioner out to the person in regional Western Australia, as we discussed previously? Would there not be costs associated with that?

Hon STEPHEN DAWSON: First of all, honourable member, I did not say "cost centre".

Hon Nick Goiran: No; those are my words.

Hon STEPHEN DAWSON: Those are the member's words. Just to be clear, I have not indicated that there are cost centres, because I think that has to be worked out in the implementation phase. One of the five costs that I indicated is the implementation of the scheme. Of course, the example that the member just gave would fall under that implementation line. But it would not just be flying doctors or specialists to regional Western Australia; it could also be bringing the patient to see a doctor. That falls under that same line as well.

Hon NICK GOIRAN: I accept that, minister. Perhaps, rather than cost centres, the better expression might be "cost lines" or "cost categories".

Hon Stephen Dawson: In inverted commas—provided we understand that.

Hon NICK GOIRAN: Yes. I think we are on the same page on that. The implementation cost line or cost category includes any cost of travel, whether that be for the practitioner or patient involved. At the end of the day, the government, as best as it can, anticipates maybe 60 Western Australian deaths a year from this, but it is not really sure, and it is certainly not sure on the costs. We have identified that there will be a gap in certain instances. The minister indicated that there has been consultation with private health insurers. Has there been any consultation with Medicare to confirm that it will accept these types of practices as claimable under the various item numbers?

Hon STEPHEN DAWSON: Not especially, no, but we would follow the example that has been set in Victoria.

Hon NICK GOIRAN: What is this example in Victoria?

Hon STEPHEN DAWSON: These things are being claimed under Medicare in Victoria. Regarding line items and numbers, I do not have that information, but it is already operating in Victoria and we seek to emulate that.

Hon NICK GOIRAN: Is the government in Western Australia confident that under the Victorian system, costs are being charged by the equivalent of a coordinating practitioner to Medicare and it is being paid for by Medicare? Is it is the same for consulting practitioners and administration practitioners? Are all those individuals, even if they have a different name or terminology, billing Medicare and being paid? Is there no inconsistency, no problem, with the commonwealth law or administration, and all those creases have been ironed out? Is it not like the telehealth issue, when the joint select committee was asked to look into the intersection with federal law and did not do it? Is it not like the ministerial expert panel, when no-one thought about it? On this issue, the minister is giving us an assurance that this is not the first time that anyone in government has thought about the Medicare issue and the possible problems in intersecting with a federal scheme, keeping in mind that we have already identified that the federal law does not accept any assistance being provided for a suicide, which is precisely the problem with the telehealth clause and the use of a carriage service. Has this all been sorted out, there is no problem, and we are very confident we can provide an assurance to the chamber?

Hon STEPHEN DAWSON: Yes, that is certainly my advice.

Hon NICK GOIRAN: I have a wry smile on my face that the minister can say that in circumstances when there has been no consultation with Medicare. How there can be an assurance in circumstances of no communication, I do not know, but that is the advice that has been provided to the chamber.

Prior to the adjournment, we were looking at the consultation that occurred between the ministerial expert panel and the Chief Psychiatrist. The minister indicated that the Chief Psychiatrist was called in to the ministerial expert

panel as a subject matter expert, one meeting took place and an exchange took place on two issues in particular, coercion and decision-making capacity. What did the Chief Psychiatrist tell the ministerial expert panel on the issue of coercion and decision-making capacity; and, how has that been addressed in the bill before us?

Hon STEPHEN DAWSON: First of all, the Chief Psychiatrist was invited to present, not called in or summonsed or anything else, just to make it clear. I am not at liberty to disclose any specific advice; in fact, we do not have that. The advice I have at hand is that those conversations took place, and the issues that he raised were considered and form the basis of the bill before us.

Hon RICK MAZZA: On the issue of coercion, I note that if a patient elects to undertake VAD and they elect to use an administering practitioner, an independent person has to witness the administration of the substance. I note that if the patient elects to self-administer and they have a contact person who will access the substance and bring that home, there is no requirement for an independent person to witness the self-administration of that substance. I am a bit concerned about that. If no witness is required and a contact person could be a family member—there is nothing that will prevent a family member from being the contact person—there may be some risk of coercion. I wonder why the expert panel or the government did not consider it important to have a witness in that circumstance?

Hon STEPHEN DAWSON: A witness will not be required when a patient self-administers the medication. It would not be appropriate to require the patient to have a witness or a practitioner with them in a private place at the time of self-administration of the prescribed substance, unless the patient wishes to do so. However, most patients at this end stage have a network of support around them, such as family and palliative care or other support workers, and it is most likely that the patient who is the subject of self-administration will self-administer at home and be supported by family. The patient's coordinating practitioner will encourage appropriate planning. When the decision is made for practitioner administration, a witness will be required to be present at the time of administration.

Hon RICK MAZZA: I am still struggling a bit here, though, because if there is an administrating practitioner and a requirement for an independent witness to make sure that that is the wish of the patient at the time, from memory, the witness will have to sign a certificate at the end of that process, whereas with self-administration, the minister said there would be a network around the patient et cetera, but there is no guarantee of that. I am very concerned that there is a bit of gap with self-administration and someone could be unduly influenced, or coerced, at the end of life if they have a change of heart or mind. I wonder whether the government is considering any amendments in this area.

Hon STEPHEN DAWSON: No, we are not, and the member's concern is noted.

Hon ADELE FARINA: Following on from the question that was asked by Hon Rick Mazza, I also share those concerns about the self-administration process, because I think it is sorely lacking in protections for the patient. How will we be sure that the patient self-administers if there is no medical practitioner or witness present to observe and witness that the patient actually self-administered?

Hon STEPHEN DAWSON: Honourable member, excuse me having my back to you. I note the honourable member's concern. We have to remember that, at this stage, the person has gone through the assessment process of two doctors. They have confirmed their enduring voluntary decision. In addition, a contact person has been appointed who has obligations in relation to unused medication. If for some reason the concern is around the patient being coerced into self-administration, that is outside the scope of the Voluntary Assisted Dying Bill and that would be a criminal act. Obviously, people can be charged as a result of that. The decision has been made by government that once an enduring voluntary decision has been made by the patient to self-administer, they will be able to undertake that self-administration.

Hon ADELE FARINA: I do not think the minister has actually answered my question. My question is: how can we be certain that the patient has actually self-administered the lethal substance? A considerable period could have passed between the time when the substance is dispensed and when the patient chooses to ingest the substance. We do not know whether the patient will still have decision-making capacity. We will not know whether the patient will have ingested the drug voluntarily and we will not know whether their decision to access that will be enduring because there will be no need for a medical practitioner to be present to then sign documentation witnessing that all these elements have been satisfied. There will be no requirement for a witness to be present. I can see circumstances in which family members who are exhausted caring for the patient might rationalise within themselves, given that the patient has seen the doctors on two occasions, met all the eligibility criteria, provided the written authorisation that they want to access VAD and has the substance at home, that by putting the lethal substance into their coffee or their food and helping them along, they are fulfilling the patient's wishes. It is a circumstance that could easily arise when the substance is readily available and there is no need for any witnesses to be present. That is my concern. I think this is one of the big holes in the so-called safeguards that are being provided in this legislation. At the most critical time and when people are likely to be highly stressed through lack of sleep and very vulnerable, we are providing no safeguard at all to ensure that the patient self-administered the drug.

Hon STEPHEN DAWSON: I had made the point earlier about the likelihood of most patients at this stage having a network of family or, indeed, friends, support workers or professionals around them when this act takes place. It is most likely that the patient who is the subject of self-administration will self-administer at home and be supported by family. A doctor will have to certify the death and must be satisfied with the manner of death and that it complies with the Voluntary Assisted Dying Act or they will not complete the death certificate. In that case, if the doctor does not certify the death, an investigation will take place into the circumstances around what has happened. I do not think the member will get an answer that she is happy with. This is the decision that has been made. This is where we have landed. Although she may not be happy with that decision, this is where the government has landed on this issue.

Hon ADELE FARINA: If I understand the minister correctly, despite the very clear principles for the legislation set out in clause 4 of the bill, the government's position is that provided the person has successfully met all the eligibility requirements, the drug has been dispensed to the patient and the patient has opted for self-administration, it does not really matter. The government is not interested in being certain that the patient has self-administered the drug. The minister has put to me that that is the government's position. Is that correct?

Hon STEPHEN DAWSON: I guess, at the end of the day, it is a balance between autonomy and risk. This is the balance that has been struck. There are obligations on people who participate. For example, post self-administration having taken place, the contact person has to return the leftover medication to the pharmacy. The principles that a person performing a function under this legislation must have regard to include —

(a) every human life has equal value;

(b) a person's autonomy, including autonomy in respect of end of life choices, should be respected;

(c) a person has the right to be supported in making informed decisions about the person's medical treatment, and should be given, in a manner the person understands, information about medical treatment options including comfort and palliative care and treatment;

Respect for the person's autonomy is within the principles. It is absolutely not the case that we do not care and say, "Sure, go for your life." That is not what we are saying. We are saying that a balance has been struck whereby we appreciate the process people have been through and we believe we have safeguards around it.

Hon ADELE FARINA: How can the minister say that the provisions of the bill have regard for the principle of a person's autonomy when, without a medical practitioner or witness present, we will not know whether the person voluntarily self-administered the drug? To me, this is as critical issue that flies in the face of having regard for the person's autonomy and ensuring that it is protected.

Hon STEPHEN DAWSON: Requiring the person to have a medical practitioner or witness present takes away from the person's autonomy. If at any stage in the process one of the practitioners involved has a concern about the person's capacity, they will need to report that to the VAD board and the action could be stopped at that stage. We believe this is about balance and this is where we have landed with this issue.

Hon ADELE FARINA: I understand what the minister is saying about a doctor who has any concern having to report it. However, the patient may not have seen the consulting or coordinating doctor for two months—the drug may have been dispensed two months ago—so they will not have seen anyone and they will be at home in bed surrounded by maybe just their carer or one or two family members. I do not know how the medical practitioner, be it the consulting or the coordinating medical practitioner, can form any concern because they will have been out of the picture for two months. I do not understand how the minister's answer addresses the concern I am expressing.

I do not understand why someone who chooses voluntary assisted dying, and is dying in their home, but has a problem ingesting, so needs to opt for the medical practitioner administering the lethal drug, should be treated any differently from a person dying in their home and who has opted to self-administer. It is all about protecting the patient and ensuring that the patient's wishes are honoured and respected, and reducing the risk that someone may administer the drug to the patient without the patient's consent or knowledge.

Hon STEPHEN DAWSON: Most people who are at the end of life would be in contact with either a palliative care specialist, a doctor or a health specialist. We do not believe people would go for months without seeing somebody from the medical profession. There could be individual examples, but that is not my understanding of what happens. Some of this stuff happens outside of the process and outside of a framework. People take their lives on a daily basis—not necessarily on a daily basis, but it certainly happens outside of this process. What we are doing with this bill is putting a framework around it and putting safeguards in place so that we know that a process is in place around a person's end-of-life choices. That, quite frankly, does not exist currently. The member may not be happy with it, but this is where we have landed in relation to this bill.

Hon ADELE FARINA: Where is the safeguard for a patient who has elected to self-administer and who finds themselves in a situation in which they might be going cold on the idea, but a family member has had enough of

caring for the patient and thinks, "They have gone through the process. They have signed all the forms. They have agreed to this. I am not doing anything wrong by administering the substance for them", and that is done without the patient's knowledge and without their consent? Where in this bill and in this process is there a protection to ensure that a patient will not find themselves in that situation?

Hon STEPHEN DAWSON: The protection is outside the bill. It is in the Criminal Code. It would be a criminal offence if a person were to take that action. The process in the bill is how that would be carried out legally. If a person were to do something outside of that, they would be breaking the law. That is the protection. The Criminal Code contains a range of offences, as does the bill. Part 6 of the bill lists the offences. Proposed section 98 states —

> A person commits a crime if —
>
> (a) the person administers a prescribed substance to another person; and
>
> (b) the person is not authorised by section 58(5) to administer the prescribed substance to the other person.

The penalty is imprisonment for life. That is a very strong deterrent.

Hon ADELE FARINA: I understand that those provisions exist. However, in order for those provisions —

Hon Stephen Dawson: You asked me where in the bill it was.

Hon ADELE FARINA: I appreciate that those provisions exist in terms of the offences and the penalties. The issue is that if a single family member or a single carer was caring for the patient, and they decided to administer the drug to the patient without the patient's consent or knowledge, where are the witnesses who would support a criminal case and a prosecution? The reality is that in those circumstances, there are no witnesses, and the person has been killed. There is no protection for the patient under the legislation.

Hon Peter Collier: Mr Deputy Chair —

The DEPUTY CHAIR: I am just waiting for the minister to respond.

Several members interjected.

The DEPUTY CHAIR (Hon Robin Chapple): Members, please! I am controlling. I am asking the minister to finish his response to Hon Adele Farina, and then somebody else can have the call.

Hon STEPHEN DAWSON: I do not think there is an answer that will satisfy the member in relation to her question.

Hon PETER COLLIER: I want to reinforce the point that Hon Adele Farina has made. It is a valid point. It is too late, after the person's life has gone, to reflect on what might have been. This is the point that I raised in my second reading contribution, and also last week. I acknowledge and I respect the will of the house with regard to the second reading speech, but I want to make sure that we have all the checks and balances that we possibly can to ensure that this piece of legislation is watertight. There is a fundamental issue here. It may be a philosophical issue between what the government wants and what has been delivered. There is a real possibility that the life of a person with a terminal illness may be ended not through self-administration of the lethal injection but by, potentially—believe it or not—a loving wife or a loving husband, who may decide that it is best that their loved one goes. That is highly feasible. It is highly likely that that could occur in this circumstance, without a check and balance. If there is only one witness, it is all well and good to talk about the Criminal Code, but who will be called as a witness to the case? The minister has made his point clear on this. I understand that. However, the minister has not satisfied me. I would like to think that somehow we can find our way through this, through an appropriate mechanism or an appropriate amendment. At this stage, this, yet again, opens up a Pandora's box with regard to checks and balances in this piece of legislation.

Hon STEPHEN DAWSON: I appreciate the honourable member's comments. I thought the member was having a go at me earlier for taking a minute to seek advice from the advisers. I apologise if that was not the case.

I had previously identified that a doctor will have to certify the death and must be satisfied about the manner of death and that it complied with the voluntary assisted dying act, or they will not complete the death certificate and it will become a reportable act. I also make the point that palliative care patients in the community have access to schedule 4 and schedule 8 medications. That is a fact of life that exists currently. In this bill, we are putting a safeguard around the process.

Hon NICK GOIRAN: That was a very interesting exchange between Hon Adele Farina and the minister. That highlights to me that the government, among other things, has not read the minority report. I draw to members' attention findings 105 to 116 of the minority report. The minister responded by saying that as far as he and the government are concerned, it is not normal for someone not to have an ongoing rapport with a doctor at end of life,

and although two months might have passed, that really would not happen. I draw to members' attention these findings in the minority report. Finding 105 states —

> The law on assisted suicide in Oregon —

Keep in mind that the government says this bill is based on the Oregon model —

> has been in force for more than 20 years and requires a prognosis of less than six months to live.

Finding 106 states —

> The data from the Oregon Public Health Division between 1998 and 2015 indicates that the longest recorded duration between initial request for assisted suicide and ingestion of the prescribed lethal drug was 1009 days.

Under the Oregon regime, people are supposed to have only six months to live. The longest recorded duration was 1 009 days. Finding 107 states —

> The data from the Oregon Public Health Division in 2015 indicates that the longest recorded duration between initial request for assisted suicide and ingestion of the prescribed lethal drug was 517 days.

Just in case members thought that was a rogue set of data between 1998 and 2015, we find out that in 2015, it was still 517 days. The minority report continues —

> The data from the Oregon Public Health Division between 1998 and 2015 indicates that in 4 of the 17 years there was at least one case where the duration between initial request for assisted suicide and ingestion of the prescribed lethal drug was more than two years.

In four out of the 17 years in that set of data, there were people who took the drug more than two years after it was initially provided. It continues —

> The experience in Oregon demonstrates the inadequacies of safeguards due to consistent medical error in prognosis.
>
> …
>
> In Oregon a 76-year-old cancer patient was assisted to suicide by his cancer specialist notwithstanding the presence of depression and the non-concurrence of the original doctor who referred the patient to the specialist for treatment.

I remind members that the Oregon experience does not allow for practitioner administration. It allows only for self-administration, which goes to the very heart of the concerns that have just been discussed. It continues —

> In Oregon an octogenarian cancer patient was assisted to suicide notwithstanding that two doctors, including her own physician, were concerned about the presence of depression and refused to prescribe the lethal drug requested.
>
> …
>
> The experience in Oregon demonstrates the ease with which the prolific practice of doctor shopping pierces the veil of even well intentioned safeguards.
>
> …
>
> The data from the Oregon Public Health Division for 2016 indicates that in 79.4 per cent of assisted suicides no physician or healthcare provider was known to be present at the time of ingestion of the prescribed lethal drug.

It was 79.4 per cent of the time. That is nearly 80 per cent, so at eight out of every 10 of these deaths in Oregon, there was no physician or healthcare provider. That is not in accordance with my view of the world, but in accordance with the Oregon Health Authority Public Health Division's own data. It continues —

> The rate of suicide among Oregonians has been increasing even when assisted suicides are excluded from the data set.
>
> …
>
> The inherent difficulty in prosecuting after the event is underscored by at least five assisted suicides in Oregon that occurred by illegal overdoses administered by a nurse.
>
> …
>
> The experience observed in Oregon should be reason alone to militate against legalisation in Western Australia.

When I hear the minister saying to Hon Adele Farina, who raised very reasonable concerns, "Sorry, the government can't assist you with your concerns. There's nothing that we're going to be able to say that's going to satisfy your concerns", it is no wonder, because it should be self-evident and commonsense that if there is not going to be anybody in the room, there will be no safeguard. We know there is an elder abuse problem in Western Australia and that psychological and emotional elder abuse is a significant problem. It is as high and prevalent as financial elder abuse. My question is: what could possibly go wrong in this situation?

Earlier, the minister indicated that there had been no consultation with private health insurers or Medicare. Has the government taken any advice from either the Joint Select Committee on End of Life Choices or the ministerial expert panel to ascertain whether the private health insurer of some Western Australians will fund the gap for their voluntary assisted dying process, to go to the specialist and make sure that they have the coordinating practitioner, the consulting practitioner and the administering practitioner—it will make sure that there is no gap for that—but if they would like to have other life-saving treatment, it will not fund them for it? Has the minister obtained any advice from the joint select committee or the ministerial expert panel, after the plethora of consultation that has allegedly taken place? Has there been consultation on that point so that we can provide an assurance to Western Australians that they will not be left in the unenviable position of a private health insurer saying that it will fund them for the death option, but it will not fund them for the life option?

Hon STEPHEN DAWSON: No.

Hon NICK GOIRAN: I would like to ask the minister about the "My Life, My Choice" report. I draw the minister's attention to recommendation 1, which states —

> The Attorney General, in consultation with the Minister for Health, appoint an expert panel to review the relevant law and health policy and practice—and provide recommendations in relation to the following matters:
>
> - the establishment of a purpose-built central electronic register for advance health directives that is accessible by health professionals 24 hours per day and a mechanism for reporting to Parliament annually the number of advance health directives in Western Australia.
> - a requirement that health professionals must search the register for a patient's advance health directives, except in cases of emergency where it is not practicable to do so.
> - amendments to the current Western Australian template for advance health directives in order to match, as a minimum, the leading example across Australia, taking into account Finding 7 …
> - consider how the increasing numbers of people diagnosed with dementia can have their health care wishes, end of life planning decisions and advance health directives acknowledged and implemented once they have lost capacity.

Has that been done by government?

Hon STEPHEN DAWSON: I am advised that this question has been asked and answered previously in this debate. The Attorney General gave an interim response to the Ministerial Expert Panel on Advance Health Directives. This matter was raised last week.

Hon NICK GOIRAN: When was the expert panel appointed, and who was on the panel?

Hon STEPHEN DAWSON: We do not have that information before us. Advance health directives are not captured by the bill, so we were not anticipating questions about that. It could well be outside the scope of the bill but, anyway, we do not have it in front of us. I would be happy to seek further information.

Hon NICK GOIRAN: Rest assured, minister, I never ask a question that is outside the scope of clause 1 or the bill.

Can I ask the minister when this panel published its report, and whether it contained any recommendations related to voluntary assisted dying?

Hon STEPHEN DAWSON: We are seeking further information. I am advised that the advance health directive panel made a number of recommendations, but one recommendation was that the state government investigate how people with dementia could be included in a voluntary assisted dying scheme—or words to that effect.

Hon NICK GOIRAN: Let me assist the minister. Recommendation 23 of the Ministerial Expert Panel on Advance Health Directives states —

> If, at a future point, voluntary assisted dying legislation is implemented in Western Australia, the State Government could consider establishing an Expert Panel to provide advice and recommendations on how to provide people with a neurodegenerative condition access to choice regarding voluntary assisted dying, in particular through the potential application of advance directives.

What is the position of the government on recommendation 23?

Hon STEPHEN DAWSON: I am advised that the Attorney General has made it clear that the government does not accept recommendation 23 and will not accept that recommendation.

Hon NICK GOIRAN: Upon whose advice did the government determine to reject the recommendation of its own expert panel?

Hon STEPHEN DAWSON: That matter was considered by cabinet.

Hon NICK GOIRAN: It makes one wonder how cabinet makes its decisions when it decides, without any other information, "We're going to accept some of the recommendations and we're going to reject other ones, but we don't actually provide any explanation as to why we accept some and reject others." It also makes one wonder what is the point of the taxpayer funding expert panels in these circumstances. Do I understand correctly that the government is categorically of the view that it will not support this recommendation of that ministerial expert panel, it does not support it now, it is not under any conversation with the Australian Medical Association or other stakeholders, it is not one of these amendments that it has in its back pocket, ready to slip out at any moment during the progression of this bill, that this is one of those ones that is absolutely off the table, there is no point in a member bringing forward any amendment, the government is not going to consider it, it has already considered this, it is out of the question and, to put it in the words of the Minister for Health, it is a deal-breaker?

Hon STEPHEN DAWSON: We believe that decision-making capacity is a fundamental element of this bill, so no, that issue will not be considered.

Hon NICK GOIRAN: The minister mentioned earlier that the ministerial expert panel had invited the Chief Psychiatrist to give its advice, particularly around the issue of decision-making capacity. The minister indicated that there had been one meeting, but he cannot tell us what transpired at that meeting. How can we be confident that a meeting even took place, when the expert panel did not take minutes?

Hon STEPHEN DAWSON: Because I have told the member it took place, so I am confident it took place. My advisers have told me it took place, and I am confident that that information is correct.

Hon NICK GOIRAN: To be clear, the minister was not present at the meeting with the Chief Psychiatrist. There were no minutes but, on the basis of verbal advice that the minister has received today, we are told that there was one meeting with the ministerial expert panel, but there is no documentation to confirm that that took place. How do we know that the Chief Psychiatrist discussed coercion and decision-making capacity with the ministerial expert panel in the absence of any file note, briefing note, minutes, transcript or documentation? On what basis does the minister have the confidence to tell us that that is what the Chief Psychiatrist told the ministerial expert panel?

Hon STEPHEN DAWSON: I have great confidence in the advisers that I have with me and have had with me for the debate on this bill. I have relied on them thus far for everything I have told this chamber, and they have confirmed that that meeting took place, and I am very happy with that confirmation.

Hon NICK GOIRAN: Were any of the advisers present at the meeting with the Chief Psychiatrist?

Hon STEPHEN DAWSON: Just to clarify: although there are no minutes from meetings, documentation exists from a number of meetings. Whether one or more of the people with me now were at the meeting, I do not think is a matter for discussion this evening. But I have spoken to advisers who were at that meeting and have told me that the conversation took place.

Hon NICK GOIRAN: The ministerial expert panel, or the panel that contained some experts, at page 51 of its final report raises this issue of advance health directives on which, as the minister has indicated, the government's position is that decision-making capacity is at the very heart of this bill, and that was the issue that the Chief Psychiatrist consulted with the ministerial expert panel on, so we are told. The minister will see that it states, at page 51 —

> Nevertheless, community concern about dementia means that the role of advance planning under the voluntary assisted dying scheme is likely to remain a live issue.

Hon Stephen Dawson: Can you just identify again what you're reading from?

Hon NICK GOIRAN: It is page 51 of the "Ministerial Expert Panel on Advance Health Directives: Final Report" of August 2019. I may have inadvertently —

Hon Stephen Dawson: Sorry; wrong ministerial panel.

Hon NICK GOIRAN: Yes. It is page 51 of the "Ministerial Expert Panel on Advance Health Directives: Final Report". It states —

> Nevertheless, community concern about dementia means that the role of advance planning under the voluntary assisted dying scheme is likely to remain a live issue.

I take that to mean that, irrespective of what we do in respect of the bill before us and the government's position, the expert panel is saying that this is an issue that remains live with the community. What is the government

planning to do to educate the community around the importance of decision-making capacity, given that it is the one recommendation that it has categorically ruled out?

Hon STEPHEN DAWSON: A significant body of work will take place during the implementation phase to identify to the community what is in and out of this bill. But I say again, in relation to recommendation 23, that the government has categorically ruled that out; it is not for consideration.

Hon NICK GOIRAN: I want to ask the minister some further questions about this, but I am not sure the minister has at his disposal this evening the final report of the Ministerial Expert Panel on Advance Health Directives. Instead, I will ask him some questions pertinent to this point in the Ministerial Expert Panel on Voluntary Assisted Dying's final report. I take the minister to page vii, where the chairman states —

> Although it is not within the Panel's brief, nor does it appear in the JSC's Legislation Framework, the Panel considers that it should acknowledge the strong body of opinion that has been expressed, during the consultation period and in submissions, that there should be legislation to enable a person to express, in an advance health directive, a wish to access voluntary assisted dying at a point where all enjoyment of life has disappeared and he or she no longer has capacity as, for example, in the case of dementia; and that such directive must be acted on. Those views, by members of the Western Australian public, have also been expressed in Canada and other jurisdictions. However, when this has been raised in submissions, or by those attending the public forums, Panel members have been at pains to explain that this will not form part of the Panel's recommendations, as it is not within our terms of reference.

Why did the government exclude that from the terms of reference for the panel?

Hon STEPHEN DAWSON: I am advised that the government accepted the advice of the joint select committee that the person must have decision-making capacity throughout the process.

Hon NICK GOIRAN: Where do we find that as a view of the joint select committee?

Hon STEPHEN DAWSON: That issue can be found in the previously mentioned voluntary assisted dying legislation framework, which is on page 226 of the "My Life, My Choice" report of the committee.

Hon NICK GOIRAN: Thank you, minister. I can see that on page 226, under the framework and the heading "Capacity", it reads —

> In order to request assisted dying the person must have decision-making capacity in relation to a decision about voluntary assisted dying.

I am hearing from the minister that that was very important to the government, so important, in fact, that it decided to rule out and reject recommendation 23 of the "Ministerial Expert Panel on Advance Health Directives". Is that right?

Hon STEPHEN DAWSON: I am advised that the issue was considered previously, although, obviously not recommendation 23, because that came out at a later stage after the government had considered the issue.

Hon NICK GOIRAN: Yes, but, minister, to be clear, the government's view is that decision-making capacity is crucial and that is why it has insisted upon it being in this bill. That is why it has also—albeit, separately—decided to reject recommendation 23 of the "Ministerial Expert Panel on Advance Health Directives" because its view is that decision-making capacity is crucial; it is fundamental to the overall scheme.

Hon STEPHEN DAWSON: The ability to make a decision is a fundamental principle in this bill.

Hon NICK GOIRAN: That being the case, if it is so fundamental, as the minister has indicated, why does the minister and the government dismiss the concerns raised by Hon Adele Farina about self-administration? What confidence does the government have that at the time of self-administration, the person has decision-making capacity? Let us remember that the minister has just informed the chamber that it is crucial; it is fundamental and it is at the heart of the scheme. At the time of self-administration, when there are no witnesses present and there is no practitioner present, what confidence does this government have that that fundamental principle, the decision-making capacity, that thing that was most important to this government—so important that it rejected recommendation 23 of the other expert panel—will be present in those circumstances?

Hon STEPHEN DAWSON: I have answered the questions of Hon Adele Farina, perhaps not to her satisfaction, granted, but I have answered those questions previously.

Hon Nick Goiran: Not to my satisfaction.

Hon STEPHEN DAWSON: Not to the member's satisfaction, but I have answered those questions, so I do not propose to provide a further response on that issue.

Hon COLIN TINCKNELL: As the minister can see, these are the concerns that all the experts, other than the Ministerial Expert Panel on Voluntary Assisted Dying, have shown concern for, and today we have not had any explanations. We do not see any encouragement from the government to seriously look at amendments when people have concerns. We are very worried about wrongful deaths that could happen. In the initial vote of 25–10, many members who voted that initial yes had concerns. I am talking to this government about amendments and at this stage there does not seem to be any give whatsoever. It is like there is only one expert panel and no-one else—no other professional or specialist—has any idea what they are talking about. Can the minister give us any confidence that this government will seriously look at these amendments and these concerns of the members in this place, who are representing the community out there in WA? Can the minister please give us some confidence that there will not be any wrongful deaths?

Hon STEPHEN DAWSON: With the greatest of respect, the honourable member has been out of this chamber this evening on urgent parliamentary business at various times. I have indicated to the chamber tonight that of course the government will consider amendments. There are no amendments for clause 1 of the bill. In fact, there are no amendments in the member's name for us to consider that I have received.

Hon Colin Tincknell interjected.

Hon STEPHEN DAWSON: There you go; we will consider those when we get to those clauses. As I have said, we will consider amendments and we will consider those when we get to the clauses for debate, but there is no amendment in front of us for clause 1. I have indicated that conversations are taking place and I am certainly aware of a number of other members of Parliament who are involved in discussions with the Minister for Health. I am certainly aware of the Australian Medical Association being involved in conversations about amendments. I am not aware of the member being involved in conversations about amendments. I am certainly happy to facilitate a conversation between the member and the Minister for Health's office, if that is what the member wishes. But I indicate again that the government is open to amendments, provided they do not alter the bill substantially or in a way that detracts from the purpose of the bill. Amendments will be considered when we get to those clauses, but there is certainly nothing before me for clause 1.

Hon COLIN TINCKNELL: For the minister's information, I do have some amendments and there will be some more coming. I have been talking to members of the government, as well as opposition and crossbench members, and also the Minister for Health about amendments on many occasions over the last three months.

Hon NICK GOIRAN: On this question of dementia, where in the Joint Select Committee on End of Life Choices' majority report is it that the committee considers whether voluntary assisted dying should be provided through an advance health directive?

Hon STEPHEN DAWSON: While my advisers find that information for me, the honourable member is now asking questions that are really starting to skirt outside of the bill that is before us. He is asking questions about expert panels, which is outside of the bill that is before us today. I am happy to see what answer can be provided, but I would say that the policy of the bill had been decided at the second reading. When the member is asking me questions about external things that could have an impact, I tend to think that we are straying.

Hon NICK GOIRAN: To alleviate the concerns of the minister, I remind the chamber that recommendation 23 of the government's own Ministerial Expert Panel on Advance Health Directives was —

> If, at a future point, voluntary assisted dying legislation is implemented in Western Australia, the State Government could consider establishing an Expert Panel to provide advice and recommendations on how to provide people with a neurodegenerative condition access to choice regarding voluntary assisted dying, in particular through the potential application of advance directives.

That is what the government's own ministerial expert panel recommended. Those are its words. They are not my words; it is not the minority report, hence why I am asking about it now. Earlier I referred to page 52 of the "Ministerial Expert Panel on Advance Health Directives: Final Report", but I was trying to avoid raising it with the minister because I was cognisant of the fact that he does not have the report at his disposal. At page 52 of the report, that particular expert panel raises these questions on this issue for consideration —

(i) Should the making of an advance voluntary assisted dying directive be subject to the same decision-making capacity requirements as other voluntary assisted dying decisions?

(ii) Should there be a 'cooling off' period before the advance voluntary assisted dying directive takes effect?

(iii) What information would need to be given to the person making an advance voluntary assisted dying directive?

(iv) When should an advance voluntary assisted dying directive be implemented (for example, when the person has lost capacity and meets the eligibility criteria for access to voluntary assisted dying)?

(v) Who should be responsible for determining that the person meets the eligibility criteria and has lost capacity, and that their advance voluntary assisted dying directive should be given effect (for example, a substitute decision-maker or an independent tribunal)? How would that person or body decide whether or not that person is, for example, experiencing suffering that cannot be relieved in a manner the person considers tolerable?

(vi) How are the protections going to be implemented, and by whom?

(vii) What happens if a person, having made an advance voluntary assisted dying directive and having lost capacity, makes it clear that they do not wish to die?

Those questions specifically in relation to voluntary assisted dying were not raised by me, but by the government's own ministerial expert panel. I am trying to ascertain what consideration the government has given to those various questions put forward by the expert panel and I seek some clarification from the minister on what those answers might be.

Hon STEPHEN DAWSON: I would just point out that this question is on the report of the Ministerial Expert Panel on Advance Health Directives, not the Ministerial Expert Panel on Voluntary Assisted Dying, and, of course, we are dealing with the Voluntary Assisted Dying Bill. Notwithstanding that, I have made the point, and I am happy to make it again, that the Attorney General has categorically ruled out advance health directives applying to voluntary assisted dying. The member would know the obvious complexities in relation to advance health directives.

Hon NICK GOIRAN: That is fine. I am happy to pursue another theme, given that the minister does not have that information before him. But I reiterate the point that it is the government's own ministerial expert panel, not on voluntary assisted dying, but on advance health directives, that has said that these questions need to be considered if and when voluntary assisted dying legislation is implemented in Western Australia. That is what we are doing at the moment. The government is asking us to approve the implementation of voluntary assisted dying and its advance health directives expert panel has asked these questions. The government does not want those questions asked now. I do not know when they could be asked.

Hon Stephen Dawson: By interjection, would you like me to answer that?

Hon NICK GOIRAN: Sure.

Hon STEPHEN DAWSON: I said earlier that these questions have been considered by government and by cabinet and as part of the formulation of the bill before us. The questions have been considered and ruled out categorically. They were asked by a ministerial panel examining a different issue; albeit, they refer to an issue before us now. The questions have been asked and the response was that they have been ruled out categorically.

Hon NICK GOIRAN: Last week, Hon Rick Mazza moved a motion to have the bill referred to the Standing Committee on Legislation. That motion was unsuccessful. Had that motion been successful, the committee would have routinely considered the fundamental legislative scrutiny principles. Have those principles been considered by government in the drafting of this bill?

Hon STEPHEN DAWSON: The honourable member might have to ask his question in a different way because neither my advisers nor I appreciate what the question is. Obviously, none of us is reflecting on the Council's decision last week, because that decision was made and this bill did not go to a committee at that stage. If the member could perhaps ask that question in a different way, we might understand what he is getting to.

Hon NICK GOIRAN: When a bill is referred to the Standing Committee on Legislation, the committee does a number of things. One of the things the committee does routinely and customarily is to consider the fundamental legislative scrutiny principles. It is actually not that uncommon for those principles to be appended as an annexure to its reports. It is something that it does very customarily and very routinely. I am asking whether the government has considered any of those principles as part of the drafting of this bill.

Hon STEPHEN DAWSON: Not being on that committee and not having served on that committee, I am not sure what those principles are. Perhaps if the honourable member wants to mention those principles, my advisers and I can consider those matters and tell him whether they were considered in the drafting of the bill.

Hon Dr SALLY TALBOT: I am very familiar with the fundamental legislative principles, as Hon Nick Goiran knows very well, because it is something that the legislation committee considers. However, the issue I want to raise is whether we are really doing justice to the very measured advice that the Chair of Committees gave to this chamber when we started the Committee of the Whole House stage. He drew our attention very carefully and, as I say, in a very considered way to the scope of the clause 1 debate.

I have listened to this debate for many hours, as most of us have. I do not think I have seen the chamber as consistently full as it has been for the last two weeks, with members listening to this debate. I can only complement the minister on his patience and the forensic nature in which he answers these very detailed questions, but I think we are on the verge of getting to the point at which a couple of honourable members are effectively asking the minister to do their work for them. We made the point in the second reading debate and I would stress that the second reading debate settled the policy of the bill. The policy of the bill is not set out in skeletal legislation; it is set out in the 184 clauses before this chamber. We are at the stage at which we have established the policy of the bill, but a couple of honourable members are constantly referring to the huge body of work that went into informing these 184 clauses. All that material is available for honourable members to read, and I know most members in this chamber have read every word of every inquiry that has been done into this bill. To get to the point at which Hon Nick Goiran is asking the minister to expand on fundamental legislative principles, which he knows are a loose way of formulating an inquiry into legislation, is way beyond anything that we are supposed to be considering in clause 1. It concerns me that I had thought that if we all honoured the set of principles that the Chair of Committees put to us nearly a week ago, when we started the Committee of the Whole House stage, we would not be at this stage now.

The DEPUTY CHAIR (Hon Matthew Swinbourn): The member did not raise a point of order, so I take on board her comments. I will note that standing orders on debates apply to the committee stage as well. The debate must be, and remain, relevant. There are rules in relation to tedious repetition and things of that kind. Noting that a clause 1 debate is very broad, I remind members to make sure that their contributions remain relevant to the four walls of the bill before us.

Hon ADELE FARINA: I am really concerned about a deficiency in the bill, and that is in the provisions about the safe storage of the voluntary assisted dying substance. I touched on this in my second reading contribution. I am particularly concerned that no obligation is imposed on aged-care facilities for the safe storage of the VAD substance dispensed to a patient to ensure that other people who live in that aged-care facility do not access that drug and administer it to themselves. The mother of a friend of mine lives in an aged-care facility. The patient in the room next to her has dementia and frequently wanders into her room and takes things, believing that they are hers. It concerns me that this bill does not have any provisions about the obligation of aged-care facilities for the safe storage of the VAD substance. I ask the minister: where do we find those provisions and those requirements for the safe storage of the VAD substance?

Hon STEPHEN DAWSON: Honourable member, I think the question was: where in the bill does it mention storage?

Hon Adele Farina: Does it mention safe storage anywhere?

Hon STEPHEN DAWSON: We are finding that information. While we do, obviously, all medications should be stored securely. The Department of Health is of the view that advising and educating people on safe storage and medication management is very appropriate and, indeed, effective, but we are not seeking to police storage within a person's home. In line with the Department of Health's "Guiding principles for medication management in the community" and the national Poisons Standard, patients using medicines in the community will be encouraged to store their medicines in a manner that maintains the quality of the medicine and safeguards the consumer, their family and visitors in their home. Appropriate methods for storage will be further developed with expert clinical advice during the implementation stage of the bill. Clause 71 of the bill refers to information to be given when supplying the prescribed substance and, in particular, my advisers are drawing my attention to clause 71(2)(b), which prescribes that the authorised supplier must inform the recipient in writing how to store the substance in a safe and secure way.

Upon dispensing the substance to the patient, contact person or other agent of the patient, the authorised supplier must provide written information about the safe and secure storage of the substance; how to prepare and self-administer the substance; information about the disposal requirements of any unused substance; and that the patient is not under any obligation to self-administer the substance. As I said, those requirements are set out in clause 71.

Hon ADELE FARINA: I understand the provisions regarding a person living at home. My concern is about a patient living in an aged-care facility who has been deemed eligible under the VAD process and has had the VAD substance dispensed to them. There does not appear to be any obligation in the bill, that I can see, that requires the patient to inform the aged-care facility that they have had the VAD legal substance dispensed to them, and there does not appear to be any provisions in the bill about the obligation of the aged-care facility to ensure that that substance is safely stored, because it has an obligation to the safety of all patients living within the aged-care facility. I find that this is another area of significant deficiency in the bill and these things have not been addressed. The minister mentioned that this is something that can be looked at later, but where is the head of power in the bill that provides for the executive or the CEO of the Department of Health to impose requirements on aged-care facilities' safe storage of the VAD substance, and where are the offences if they do not adhere to those requirements?

Hon STEPHEN DAWSON: First of all, I make the point that schedule 4 and schedule 8 poisons would likely already be in that nursing home or that aged-care facility.

Hon Adele Farina: They would probably all be locked away.

Hon STEPHEN DAWSON: Not necessarily. If they are locked away already, then they will be locked away as part of this process. I cannot see anything changing, but the federal Department of Health "Guiding Principles for Medication Management in Residential Aged Care Facilities" currently exists.

Hon ADELE FARINA: The minister referred to a document and there being some regulations already. Will he table those?

Hon STEPHEN DAWSON: I do not have them to table, but I referred to a document and I am happy to tell the member what that document is again. It is the commonwealth government Department of Health's "Guiding Principles for Medication Management in Residential Aged Care Facilities". We can take the detail on notice. To be helpful, I am happy to find the document tomorrow. I am also advised that there are safety and quality accreditation standards for aged care, which would also touch on this issue. Further, regulation 107 of the Medicines and Poisons Regulations 2016 indicates that the CEO of the Department of Health can give directions about the storage or use of poisons.

Hon ADELE FARINA: Minister, if an aged-care facility fails to ensure the safe storage of a VAD lethal substance and a patient—not the patient to whom the VAD substance was prescribed—dies as a consequence of ingesting the VAD substance, what penalties or offences are available to prosecute the aged-care facility for that death?

Hon STEPHEN DAWSON: In relation to the storage of schedule 4 and 8 poisons, section 22 on page 23 of the Medicines and Poisons Act 2014 refers to the storage, handling and transport of a poison other than in accordance with the regulations. The penalty is $45 000 or three years' imprisonment.

Hon NICK GOIRAN: Minister, do any clauses in the bill make any rights, freedoms or obligations dependent on administrative power?

Hon STEPHEN DAWSON: I am advised that certain provisions in the bill are reviewable by the State Administrative Tribunal.

Hon NICK GOIRAN: Which provisions are reviewable by SAT, minister?

Hon STEPHEN DAWSON: Part 5 of the bill identifies the issues that are reviewable by the tribunal.

Hon NICK GOIRAN: Is it by virtue of the mechanism that the minister identified, which are the various clauses in part 5, the basis on which the bill is consistent with the principle of natural justice?

Hon STEPHEN DAWSON: In relation to the specific matters, yes.

Hon NICK GOIRAN: Minister, do any clauses in the bill allow for the delegation of administrative power?

Hon STEPHEN DAWSON: There are provisions in the bill that allow the CEO to undertake that, but certainly if the member is talking about the decisions of SAT, then no.

Hon NICK GOIRAN: When there is capacity for the CEO to do certain things under the bill, is there the capacity for the power of the CEO to be delegated?

Hon STEPHEN DAWSON: In relation to the CEO being able to designate, section 95 of part 7 of the Medicines and Poisons Act 2014 refers to designation of investigators. The honourable member has now asked three questions about the fundamental legislative principles that would have been investigated had this bill gone to a standing committee. A decision was made by this chamber not to send the bill to a committee for that purpose, so I do not think it is appropriate that the member go through a list of things and ask if they have happened in relation to the bill. The policy of the bill has been decided previously. If he has clause 1 questions, he should ask clause 1 questions. I am not sure that these are appropriate questions to be asked at clause 1, given the policy has been decided and we have previously decided not to send the bill to a committee for further consideration.

Hon NICK GOIRAN: In the minister's response, he referred to "designating" but I mentioned "delegating". I do not know whether there is a difference in the response that needs to be provided or the answer remains the same regarding what capacity the CEO has to delegate any powers he or she might have under this legislation.

Hon STEPHEN DAWSON: Honourable member, that is a very good question. I would like to take some further advice about that, so we will take that on notice.

Hon NICK GOIRAN: I am glad I asked one of the questions from the fundamental legislative scrutiny principles and I appreciate the acknowledgement that it is a good question that needs to be considered. I look forward to hearing about that tomorrow.

Does the bill reverse the onus of proof in criminal proceedings?

Hon STEPHEN DAWSON: There is no express provision reversing the onus.

Hon NICK GOIRAN: Does the bill confer power to enter premises and search for or seize documents or other property? Obviously, in this context, we would also be thinking about the poison that is available.

Hon STEPHEN DAWSON: Yes, it is under part 7 of the bill.

Hon NICK GOIRAN: Would this power require a warrant to be issued by a judge or other judicial officer?

Hon STEPHEN DAWSON: I am advised that it would in some circumstances.

Hon NICK GOIRAN: Does the bill provide appropriate protection against self-incrimination?

Hon STEPHEN DAWSON: I will need to take some further advice on that point.

Hon NICK GOIRAN: Just to confirm, the two matters that have been taken on notice are whether there are any clauses in the bill that allow for the delegation of administrative power, and whether the bill provides appropriate protection against self-incrimination. That brings me to my next question: does the bill adversely affect rights and liberties or impose obligations retrospectively?

Hon STEPHEN DAWSON: I will have to take further advice on that, too. I note that I will take advice on the three things that have been raised in the current discussion, but I also indicated earlier that I will be taking advice on other issues. I just wanted to clarify that.

Hon NICK GOIRAN: I thank the minister for his diligence in making sure that we are recording each of the matters that are being taken on notice. Does this bill confer immunity from proceedings or prosecution?

Hon STEPHEN DAWSON: Without adequate justification?

Hon Nick Goiran: Just full stop.

Hon STEPHEN DAWSON: Okay. I will take some advice on that, too.

Hon NICK GOIRAN: Does the bill provide for the compulsory acquisition of property? I am particularly interested to know about property in the sense of the voluntary assisted dying substance or poison.

Hon STEPHEN DAWSON: Items can be seized by the investigators, if that is what the member is asking.

Hon NICK GOIRAN: The tenth of the fundamental legislative scrutiny principles routinely used by the Standing Committee on Legislation when considering bills is whether a bill has sufficient regard to Aboriginal and Islander traditions and customs. Is the government aware of the concerns raised by Senator Dodson about the impact of this bill on Aboriginal Western Australians; and, if so, how is the government addressing those concerns?

Hon STEPHEN DAWSON: Yes, I am aware of comments made by Senator Patrick Dodson about the bill before us, as we are aware of comments made by other Aboriginal people about the bill. It may have been in answer to an earlier question asked by an honourable member or it may well have been a comment made by another honourable member during the second reading stage, but members were told that Kate George, an Aboriginal person, was a member of the Ministerial Expert Panel on Voluntary Assisted Dying. We had an Aboriginal person on the panel and consultation took place with a number of Aboriginal people. In fact, it might have been Hon Jacqui Boydell who identified in her contribution to the second reading debate that a number of Aboriginal people and organisations attended some of those fora on the bill around the state. We are aware of a multitude of views from Aboriginal people on the bill. I again make the point that, as a number of members would recognise, Aboriginal people are not a homogenous group and different views are held by different Aboriginal people. One view from an Aboriginal person does not indicate that all Aboriginal people in Western Australia are of the same opinion.

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