VOLUNTARY ASSISTED DYING BILL 2019

Committee

Resumed from 30 October. The Deputy Chair of Committees (Hon Dr Steve Thomas) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

Clause 2: Commencement —

Progress was reported on the following amendment moved by Hon Nick Goiran —

Page 2, after line 8 — To insert —

(aa) Part 1 (other than Division 1) and section 161A — on the day after the day on which this Act receives the Royal Assent;

The DEPUTY CHAIR: For the attention of members, there is a new supplementary notice paper 139, issue 5. For the convenience of members, the Clerk's office has sent out an email to members with a document showing the variations and the mark-up from issue 4 to issue 5, to streamline the debate. I thank the clerks. The question to the chamber is that clause 2 stand as printed.

Minister, do you have any introductory remarks before we continue on the amendment?

Hon STEPHEN DAWSON: Yes, I do. It is not a clause 2 issue, but it is an issue that I undertook to provide a further answer on, so with the Deputy Chair's indulgence, I will provide it now. Yesterday, there was a question from Hon Nick Goiran in relation to Medicare benefits. He asked whether the minister could clarify what I meant. I referred to a figure of 85 per cent. He asked whether that meant that Medicare would cover up to 85 per cent of the fee of a nurse practitioner and how the figure of 85 per cent related to the gap that will be required to be paid by a patient who wishes to access voluntary assisted dying. The Medicare benefits schedule sets a scheduled fee for the nurse practitioner item number, and the benefit it pays is 85 per cent of that scheduled fee. Nurse practitioners may charge the scheduled fee; however, the amount they charge is at their discretion. Whether there is a gap to be paid by the patient will depend on the fee of the nurse practitioner involved. Although that is not strictly on the question that is before the chamber, Mr Deputy Chair, I had given Hon Nick Goiran an undertaking that I would provide an answer to that question, and, obviously, we can delve into it at a later stage.

With regard to the question that is before us, I previously indicated that the government was not supportive of Hon Nick Goiran's amendment.

Hon NICK GOIRAN: We left things yesterday evening in consideration of my amendment to clause 2, specifically at page 2, after line 8, to insert —

(aa) Part 1 (other than Division 1) and section 161A — on the day after the day on which this Act receives the Royal Assent;

This amendment would simply ensure that part 1 in total would start either on the day of royal assent or the day after royal assent. More importantly, it would ensure that proposed section 161A would definitely start on the day after the legislation received royal assent. It is important to mention that, irrespective of the decision of the chamber with regard to this amendment, it is my intention to move the amendment standing in my name for a proposed section 161A, because the difference would simply be whether that provision would be guaranteed to start on the day after royal assent or left to government to proclaim in the fullness of time. That is the purpose of this particular amendment—to make sure that, no matter what, proposed section 161A, if agreed to, would come into force and have effect and commencement on the day after royal assent.

After some of the debate that took place yesterday, particularly after some of the questions from Hon Aaron Stonehouse and Hon Martin Aldridge, I contemplated what effect would be given in the event that this amendment was passed and, at a later stage, proposed section 161A was not passed. It struck me that it would make no difference. It would not undermine the bill in any way because, clearly, a non-existent proposed section 161A would not come into force because it would not exist. Perhaps it may even be something that can be dealt with by clerical amendment, but in any case, whether it is or is not, it would cause no disruption to the bill whatsoever if this particular amendment were to be passed, so I encourage it to be supported.

As I said earlier, the purpose of proposed section 161A is to make sure that there is some regulation around the activities of care navigators. The government previously indicated that one of its suggested solutions for providing voluntary assisted dying to people in the regions—because it has not yet worked out whether telehealth can be provided—is to create care navigators. It seems to me that if it is good enough for us to regulate the activities of health practitioners, surely it must be good enough for us to regulate the activities of the newly invented care navigators. I think it would be simply dangerous to have these individuals, under the guise of care navigation, running around

Western Australia without any regulation. In fact, the minister conceded in an earlier part of the debate that they would be self-regulated if they were social workers. That is plainly dangerous. If the government is serious about care navigators, there should be no problem with regulations being made and then definitely coming into effect on the day after the legislation receives royal assent. I encourage support for the amendment.

Division

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

Ayes (9)

Hon Jim Chown	Hon Nick Goiran	Hon Charles Smith
Hon Donna Faragher	Hon Rick Mazza	Hon Colin Tincknell
Hon Adele Farina	Hon Simon O'Brien	Hon Ken Baston *(Teller)*

Noes (25)

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

Amendment thus negatived.

Hon NICK GOIRAN: The effect of that last amendment, which was 49/2 on , issue 5 of supplementary notice paper 139, being unsuccessful is simply that if in due course my proposed section 161A is agreed to by the chamber, it will now be left to the government to decide when it will come into operation by way of proclamation.

The next amendment I have in my name is 50/2. It is about a related but different issue. I move —

Page 2, after line 9 — To insert —

(2) The day fixed under subsection (1)(b) cannot be earlier than the day on which the first regulations made under section 161A have all come into operation.

Clause 2(b) of the bill before us says that the rest of the act will come in on a day fixed by proclamation. This amendment would indicate that that date fixed by proclamation should not be any earlier than the day on which the first regulations are made—that is, the care navigator regulations. In other words, for those of the view that these care navigators should be regulated, that the government should in due course prepare regulations to regulate their activities and that there should be some kind of standards that these care navigators adhere to rather than mere self-regulation, this amendment would ensure that those things happen before the operative provisions of the bill come into effect. That is the reason I have moved this amendment. It is my view that it would be unsafe to have the care navigation system unregulated, not having been brought before the chamber and not in place prior to the operative provisions being enforced. That is the purpose of this amendment and I encourage support.

Hon SIMON O'BRIEN: In a spirit not of engaging in debate, but trying to facilitate the chamber dealing with this proposed legislation, it would seem to me that this matter should not be considered until the matter of proposed section 161A is dealt with. A similar question arose on the last day's sitting and it was dealt with in a certain way, but this proposed amendment is far more clear-cut. It refers to proposed section 161A. We do not know whether that will come into existence. The government or the proponents of the bill might well say that they are not even going to entertain that proposed section in due course either, so this amendment can be dealt with and voted down. I suggest, with respect, that the most expeditious way to deal with this amendment is to entertain a motion, if it is the government's wish, to defer consideration of this amendment and of clause 2 until after the issue of proposed section 161A has been resolved.

The DEPUTY CHAIR: Hon Simon O'Brien, were you then moving a motion or suggesting a motion be moved?

Hon SIMON O'BRIEN: I was purely suggesting it. The minister might want to proceed with dispatch to go down that path, and I think it might find general agreement. Conversely, the government might want to go some other way, but I am just offering this to help.

Hon AARON STONEHOUSE: I would like to echo the comments made by Hon Simon O'Brien. Of course, I made this case last night when we considered a previous amendment. It is not just about the difficulty of having to deal with questions about proposed section 161A, but that other new sections may be proposed, moved and

agreed to in the course of debate as we progress through the clauses of the bill. If that is the case, there may be a need to revisit clause 2 at a later stage to look at the commencement of those new sections, where they fit and whether they should be proclaimed or come into operation on some fixed date. I think it would be a lot clearer, easier and cleaner and it would help expedite the fate of this bill if we deferred or put off consideration of this amendment and clause 2 until a later time. I will wait to hear what the minister has to say on that matter.

Hon STEPHEN DAWSON: Can I say that I appreciate the helpful nature in which Hon Simon O'Brien has made his suggestion. However, I indicate again that the government does not support the amendment moved by Hon Nick Goiran. I indicated last night that the government is also not supportive of new clause 161A that is proposed to be moved by Hon Nick Goiran at a later stage. I also indicate to the chamber that the government does not support the deferral of clause 2.

The DEPUTY CHAIR (Hon Dr Steve Thomas): I do not propose to allow debate on a postponement unless somebody actually moves a motion of postponement. I have given a little bit of leeway because it is a debate in which leeway is required, but if I do not hear a motion of postponement, we will simply progress to the question that is before the chamber currently—that is, that the words to be inserted be inserted.

Hon ADELE FARINA: I have some concerns about this amendment in that proposed new clause 161A does not deal with any time limits to process the regulations, whereas section 42 of the Interpretation Act sets out time frames for dealing with the regulations. My concern is that if some time frames are not incorporated within proposed new clause 161A, it could drag on forever. Some time frames probably need to be included so that I can, at least from my point of view, give it serious consideration, because it could drag on for quite some time.

Hon NICK GOIRAN: To deal with that issue, I certainly have no objection to what Hon Adele Farina has proposed. If there were to be an amendment to proposed new clause 161A to implement some time limits, I indicate in advance that that type of amendment would receive my support, whether it was drafted by a member of this place or by the government. I have no difficulty whatsoever with that. I think a good point has been made. Nevertheless, I encourage support for the current amendment before the chamber.

Hon ADELE FARINA: Herein lies our problem. We are being asked to make a decision on an amendment to clause 2 without knowing what proposed new clause 161A will look like and whether there will be further amendments to address my concern, which leaves me in a position to then vote down this amendment to clause 2. That is not a very good way for this place to be making decisions. I really think some consideration needs to be given to how to progress this, because we are being asked to make decisions based on future clauses but we do not know what they will look like. It is problematic.

Hon MARTIN ALDRIDGE: I want to express a similar view to Hon Adele Farina on this clause. I, obviously, did not support the first clause 2 amendment, and I find myself in a difficult position on this one as well. I opposed the motion moved by Hon Aaron Stonehouse last evening because I felt that if we postpone clauses whilst we deal with other clauses, we would end up with some sort of jigsaw puzzle that would need to be put back together at the end. The other way to deal with the bill would be for the Chair to provide some leeway when dealing with interconnecting amendments on the supplementary notice paper so that we could have a proper debate. Obviously, that was not permitted last evening when I sought some understanding from the government about its intention with regard to care navigators and, indeed, how it intends to regulate or guide, or restrict or control, such care navigators. Given that I am not able to have that debate, I find it very difficult to make an informed view on this clause 2 amendment. We may find ourselves in another situation when we get to new clause 161A when we dive deep into the policy of that particular proposed new clause. If the chamber agrees that new clause 161A should stand in either its current or an amended form, we may have to recommit the bill to reconsider other interconnecting clauses that we will have passed. I am just pointing out some level of frustration about the debate on the second clause of the bill, and that perhaps, in hindsight, a more reasonable option than perhaps I expressed last evening would have been to postpone it. However, I think that presents some challenges and we would probably only be kicking it down the road a bit further.

Division

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

Ayes (11)

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

Noes (23)

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

Amendment thus negatived.

Hon NICK GOIRAN: It is a shame that those amendments were not passed. They would have ensured that the care navigation regulations, in the event that they are approved by the chamber, would come into operation first before the rest of the bill. But we respect the will of the chamber and if it is to be the case that care navigation regulations will come into effect simply at the same time as the rest of the bill, that is what will happen.

As an alternative—perhaps this will satisfy those members who are concerned about time frames and the like—it seems to me that it is possible to look at another way of dealing with this in clause 2, which deals with the proclamation period. I propose to move an amendment and I will give my reasons in a moment. I move —

> Page 2, after line 9 — To insert —
>
> (2) The day fixed under subsection (1)(b) cannot be earlier than the 5th anniversary of the day on which this Act receives the Royal Assent.

Hon Dr SALLY TALBOT: I would like to make a procedural point. Can I ask you, Mr Deputy Chair, to check the supplementary notice paper documents that are being sent around the chamber. We received one today that has some helpful annotations on it so that we can see what is changing. The latest one that was sent around does not have those on it. Can you clarify for the benefit of all members what the arrangements are going to be?

The DEPUTY CHAIR: Member, by way of advice, there will be a comparison. The latest SNP has just come through as is, but a comparison will be made, which requires some work to be done by the clerks.

Hon NICK GOIRAN: By way of explanation, this amendment will allow the government time to implement palliative care service delivery, particularly in regional and remote areas of Western Australia, through the WA Country Health Service as part of its commitment to increase palliative care funding in the regions. It was obvious from the second reading debate that a number of members from various parties were concerned about palliative care delivery in the regions, which at the moment is inequitable. This government has made a commitment to send out some money to try to address that. This amendment will ensure that the government has time to do more than just make a commitment and indicate that it will spend some money. It will give the government five years in which to make sure that palliative care is available in regional Western Australia.

The other reason that members might be interested in supporting this amendment is that it will allow us to give further consideration to the Victorian experience of voluntary assisted dying and the lessons learnt in that jurisdiction. What we know of the Victorian experience so far is that the Victorian Voluntary Assisted Dying Review Board put out its first official report titled "Report of Operations 2018–19". A few small parts of it will be of particular interest to members and explain why we would benefit from learning from the Victorian experience over the next five years. The report states —

> This report is the first from the independent Voluntary Assisted Dying Review Board.

Members will remember that the government also proposes to have a similar review board in Western Australia. The report details, amongst other things, activity under the Voluntary Assisted Dying Act from 19 to 30 June 2019. This is very important because the Victorian experience is based on only 11 days of activity. Now it is 31 October, but this report from the review board was based on that 11-day period from 19 to 30 June. The review board in Victoria has said that it will continue to report openly and transparently, which will assist us in Western Australia. If the board reports openly and transparently, we will have that five years of information at our disposal. The report states —

> In our first public report, we have covered our largely administrative activities over the past 12 months.
>
> Covering only 11 days of the operation of the Act, we are not able to report on any activity other than the number of doctors trained in our portal.

According to the official Victorian review board, it is only able to tell us in its portal about the number of doctors trained. In terms of the data that the board has collected—information that will be of benefit for us in Western Australia over the next five years—the report states —

> The Board receives information about the disease, illness or medical condition of persons who met the requirements of the eligibility criteria, demographic information, and other insights.
>
> The Board will report more of this information in the future.
>
> We cannot yet publish detailed data, as numbers are small and the information could be used to identify patients, doctors and other participants.

At the end of the report, referring to recommendations, it states —

> Under the Act, the Board may make recommendations to improve the operation of the voluntary assisted dying law.
>
> In this reporting period, the board has not made any recommendations.
>
> LOOKING AHEAD
>
> The Board will report again by February 2020. We anticipate we will be able to report more detailed data, depending on the volume of cases we see.
>
> We may also be able to include outcomes of the Board's review process, including compliance with the act, referrals made to other agencies, quality and safety issues, and insights regarding the voluntary assisted dying process.

Only one report is available in Victoria. The Victorian Voluntary Assisted Dying Review Board is reporting on an 11-day time frame. It has been unable to provide very much information other than the number of doctors trained in the portal. But over the next five years, members, there will be four more reports from the board that will provide us with information on improvements to the Victorian system. So the purpose of the amendment is to do two things. First, it will allow the government to roll out palliative care services in the regions, which it has committed to do. Second, it will allow all of us to be better informed about the Victorian experience because, unfortunately, at the moment, we really do not know much at all about the Victorian experience as we can see from Victoria's panel board. Interestingly, we know from page 27 of Go Gentle Australia's "A Guide to the Debate Ahead: Voluntary Assisted Dying in Western Australia" that at least one person in Victoria made a verbal first request to a coordinating doctor on 19 June 2019, which was during the 11-day time frame. The coordinating doctor completed their assessment of that patient for access to voluntary assisted dying on the same day. This information was provided by Go Gentle. I am indebted to Go Gentle for releasing information that the Victorian Voluntary Assisted Dying Review Board was not able to provide. It is curious, is it not, that Go Gentle was able to disclose information—in fact, it disclosed the name of the person, Kerry Robertson—about the one person in Victoria in the 11-day time frame but the official board in Victoria has been unable to provide any information. As I read earlier, the board that said that it will continue to report openly and transparently. I am looking forward to its next four reports so that we can see how to improve the VAD system in Western Australia. The data is not found in the Voluntary Assisted Dying Review Board's 2018–19 report because, as is stated at page 5 of its report, it cannot publish detailed data because the numbers are small and the information could be used to identify patients, doctors and other participants. Of course, it does not need to worry about that because Go Gentle has blown that out of the water. The board will report more information in the future. We need time to consider this information and to determine whether the Victorian act, which, according to Betty King, a former Supreme Court justice and the chairperson of the Victorian Voluntary Assisted Dying Review Board, has been designed to be the safest in the world. We will have a five-year time frame to ensure that the Victorian model is in fact the safest in the world and, if that is the case, that would be the appropriate template for us to consider at that time.

I conclude by noting that the Victorian board states at page 6 of its report that its next report is due in February 2020. I would think—it is not far away—that we would benefit from seeing that report in February 2020. In my view, we need time to consider the outcomes of the Victorian board's review process, including compliance with the act, referrals made to other agencies, quality and safety issues and insights into the voluntary assisted dying process. For those reasons, I encourage members to support this amendment to give the government a five-year time frame in which it can roll out palliative care in Western Australia, particularly in regional areas, and to give us more of an opportunity to obtain information from the Victorians, who have had the opportunity to provide only one report so far and, unfortunately, it is for only the 11-day period and it has been unable to provide us with any data.

Hon STEPHEN DAWSON: It is blatantly very clear—it has been from the outset—that Hon Nick Goiran does not support the bill before us—plain and simple. He has taken every opportunity to frustrate the bill. The government does not support the amendment. We do not support delaying the bill for five years. I make the point that the government is learning from all jurisdictions with similar legislation, not just Victoria. I have made that point numerous times as have numerous other honourable members during their contributions to the debate thus far, including in their second reading contributions. This amendment would frustrate the will of the Western Australian

community—plain and simple. From my perspective, the honourable member's attempt to delay the bill by five years is objectionable. As I indicated earlier in my comments on clause 2, it is the government's intention to proclaim the rest of the bill in 18 months' time, having learnt from Victoria and the time it took that state to proclaim the remainder of its bill, notwithstanding that we are learning from jurisdictions around the world with similar legislation. Certainly, we will not support the amendment.

Hon NICK GOIRAN: In response to the minister's intemperate remarks, I remind members that the government itself said that VAD will not start for 18 months. I am saying that instead of 18 months, make it five years so that it has more time to roll out palliative care and receive more information about the Victorian system. There is a difference between 18 months and five years. I also remind members that the minister said yesterday in the chamber that it would be a minimum of 18 months. It may well be five years—I do not know—but I am simply saying that we should put a parameter around it because there is no parameter in the bill whatsoever.

Hon RICK MAZZA: I have made it very clear that I do not support the bill, but I support the will of the chamber through this process. I am hopeful of meaningful amendments along the way to change some of the operations of the bill, but to effectively have a five-year moratorium that spans two terms of government—the rest of this term and almost all of the next term—does not serve any purpose if, at the end of the day, this bill passes. I will not be supporting the amendment.

Amendment put and negatived.

Clause put and passed.

Clause 3: Act binds Crown —

Hon NICK GOIRAN: Why was the inclusion of clause 3 considered necessary? What will be the impact in the event that clause 3 is not agreed to?

Hon STEPHEN DAWSON: I am advised that this is a standard clause in Western Australian acts. We wish the act to bind the Crown, and that includes ministers, public servants, public sector workers and individuals in the public service of the Crown. This clause is to put beyond all doubt that the Crown is in fact bound.

Hon NICK GOIRAN: Upon whose advice was the inclusion of this provision recommended?

Hon STEPHEN DAWSON: I am advised that as it is a standard clause, parliamentary counsel provided the advice.

Clause put and passed.

Clause 4: Principles —

The DEPUTY CHAIR: Do we have a number of amendments on clause 4?

Hon MARTIN PRITCHARD: I think there is one in my name.

The DEPUTY CHAIR: Would you like to move the amendment standing in your name?

Hon MARTIN PRITCHARD: If I get the call from yourself, Deputy Chair, I certainly will.

The DEPUTY CHAIR: You have the call.

Hon MARTIN PRITCHARD: I have an amendment standing in my name. It is a fairly simple amendment. It is a matter of adding the word "coercion" on page 3, line 18. It reads —

> Page 3, line 18 — To delete "abuse;" and substitute —
>
> abuse or coercion;

I am seeking to have the words "abuse or coercion" inserted. I do that because the minister's second reading speech states —

> Part 1 of the bill sets out the principles and the key themes for voluntary assisted dying in Western Australia. The principles will serve as a guide in interpreting and applying the bill. They reflect the importance of giving people genuine choice and autonomy over their decision-making, while also recognising the need to protect individuals who may be vulnerable to undue influence.

I am seeking to have "coercion" included in the principles. I understand that it is dealt also within the body of the bill, but I think it is important to be in the principles as well. I urge members to support the amendment.

Hon NICK GOIRAN: I am not sure that the amendment has been moved at this point. While I have the call, I indicate to the honourable member that in the fullness of time when the amendment is moved, I will obviously support it, because, as the member will see, I have an amendment on the supplementary notice paper immediately underneath his. However, I seek to add the words "duress and undue influence".

Perhaps we can get to that in a moment. I have a general question on clause 4. Were the principles in clause 4 modelled on the principles section of the legislation of another jurisdiction?

Point of Order

Hon MARTIN PRITCHARD: Are we discussing the clause? The member quite rightly said that I have not moved my amendment, so are we currently discussing my amendment or the clause?

The DEPUTY CHAIR (Hon Robin Chapple): I was under the impression that the member had moved his amendment.

Hon MARTIN PRITCHARD: It was my endeavour to do so. I am happy to move the amendment standing in my name on the supplementary notice paper.

Committee Resumed

The DEPUTY CHAIR: Hon Martin Pritchard has moved on page 3, line 18, to delete "abuse;" and insert "abuse or coercion;". The question is that the words to be inserted be inserted.

Point of Order

Hon AARON STONEHOUSE: Deputy Chair, I am a little confused. The question was not put for the amendment. The amendment was not moved. Hon Martin Pritchard sought your advice in a point of order, which then resulted in the amendment being moved in the point of order, which seems to be perhaps out of order, so I am a little confused.

Hon Alannah MacTiernan: No; he got a response on the point of order and then he subsequently moved it.

Hon AARON STONEHOUSE: The honourable member did not move the amendment after that. If the Deputy Chair clarified the situation, the member should then have moved the amendment and we could then proceed with the amendment if that was the case. Otherwise, we are back considering the substantive clause.

Hon MARTIN PRITCHARD: I was seeking clarification from the Deputy Chair. It was my belief that I had moved the amendment. I sought your clarification, Deputy Chair. My understanding is that you clarified that I had moved the amendment.

The DEPUTY CHAIR (Hon Robin Chapple): The member is correct. If the member would seek to move it again, we could have this formalised. But he did actually move it.

Hon MICHAEL MISCHIN: I am getting rather confused. We now have the sixth iteration of supplementary notice paper 139. We have just got on to clause 4. A raft of amendments are proposed to clause 4. One of them is an amendment that deals with an earlier part of clause 4 than the amendment of Hon Martin Pritchard. I accept that we will get on to that. With respect, it may be that he has jumped the gun. I wonder whether we can deal with the amendments in some order, because it seems to me that some of what Hon Martin Pritchard is proposing would be incorporated in other amendments. I just feel that we are getting a little out of order in an already difficult and confusing bill.

The DEPUTY CHAIR: I thank the member for his point of order. I think the member has expressed a good position. Is Hon Martin Pritchard prepared to allow the other amendments that precede his to be dealt with first?

Hon MARTIN PRITCHARD: Deputy Chair, I am more than happy for that to be the case. My confusion was that nobody stood to speak to the bill or move an amendment, so the clause would have been put without discussion. I am happy to take the view of the Deputy Chair.

Committee Resumed

The DEPUTY CHAIR: Members, we now go back to clause 4. There are some amendments to clause 4. The first one of those is in the name of Hon Nick Goiran. Would Hon Nick Goiran like to move his amendment or does he want to talk to the clause first?

Hon NICK GOIRAN: I want to talk on clause 4 first. We will get to the amendments. There is no danger of me not moving the amendments in my name on clause 4. I think it is appropriate to discuss clause 4 as it currently sits before we embark on any amendments. My question to the minister was whether the current version of clause 4 was modelled on the principles section of the legislation of another jurisdiction.

Hon STEPHEN DAWSON: I am very pleased that we were able to get that earlier conversation worked out; I am very happy to answer questions on clause 4.

I am advised that the ministerial expert panel considered Victoria's recommended principles to government. That is stated on page 15 of the ministerial expert panel's discussion paper. The principles that are in the bill took into

consideration Victoria's principles and the recommendations of the ministerial expert panel. Although they were taken into consideration, what we have before us in the bill is where we have landed.

Hon NICK GOIRAN: Has the government deviated in any way from what the ministerial expert panel recommended? Just while the minister is getting advice on that, I have a further question. I think the minister referred me to page 15 of the report by the ministerial expert panel.

Hon Stephen Dawson: Sorry, the discussion paper.

Hon NICK GOIRAN: It is the discussion paper.

Hon STEPHEN DAWSON: The answer to the member's question is yes.

Hon NICK GOIRAN: I understand that to mean that, yes, the government has deviated from what was recommended by the ministerial expert panel. To what extent does what is in the bill differ from what the ministerial expert panel recommended?

Hon STEPHEN DAWSON: I refer to page xi of the final report of the ministerial expert panel, where it states —

> The following Guiding Principles should be included in the legislation to help guide interpretation:

The first guiding principle is that every human life has intrinsic value. The bill refers to every human life having equal value. The second guiding principle recommended by the ministerial expert panel is that a person's autonomy should be respected, whereas the bill states —

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

The report of the ministerial expert panel further states —

- People have the right to be supported in making informed decisions about their medical treatment, and should be given, in a manner they understand and is culturally appropriate, information about medical treatment options, including comfort and palliative care.

The principle in the bill in front of us reads —

> 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;

There are some further ones. The ministerial expert panel said —

- People should be encouraged to openly discuss death and dying, and their preferences and values should be encouraged and promoted.

The bill reads —

> a person should be encouraged to openly discuss death and dying, and the person's preferences and values regarding their care, treatment and end of life should be encouraged and promoted;

The ministerial expert panel recommends the guiding principle —

- People are entitled to genuine choices regarding their treatment and care; this should be regardless of their geographic location and take into account their ability as well as individual cultural and linguistic needs.

The bill states —

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

The ministerial expert panel report states —

- People should be supported in their right to privacy and confidentiality regarding their choices about treatment and care preferences.

There is not a corresponding principle, but I note the prohibition on the recording, use or disclosure of information in clause 105.

The ministerial expert panel's recommended guiding principles also include —

- People who may be vulnerable to coercion and abuse in relation to end of life choices and decisions should be protected.

The bill before us states —

> there is a need to protect persons who may be subject to abuse;

The final principle of the ministerial expert panel is —

- All people, including health practitioners, have the right to be shown respect for their culture, religion, beliefs, values and personal characteristics.

The bill before us states —

> all persons, including health practitioners, have the right to be shown respect for their culture, religion, beliefs, values and personal characteristics.

We can see that there are some differences.

Hon MICHAEL MISCHIN: I have a couple of general questions on division 2. Clause 4 sets out a number of principles to govern how a person exercising a power or performing a function under the legislation should behave. However, the bill does not have an objectives clause setting out what it is hoping to achieve and to which those principles can be applied. As a matter of statutory interpretation, it would be of assistance to people to know what it is meant to achieve, rather than having to glean it from the structure of the legislation. The principles need to be applied to some kind of objective. The long title of the bill is not much assistance to us because all it says, in part, is —

- **to provide for and regulate access to voluntary assisted dying; and**

It does not have, for example, some general statement of objective to provide a compassionate and measured means by which people would be able to choose how their lives ought to be ended in the case of terminal illnesses and the like, which I understood was the objectives of the ministerial expert panel and emerged out of the select committee's recommendations. Why was it not thought useful and advisable to include an objectives section, as well as a statement of general principles, to which those principles can be applied?

Hon STEPHEN DAWSON: I am advised that the government did not feel that it was necessary because the object of the bill is to enable someone to access voluntary assisted dying.

Hon MICHAEL MISCHIN: That might be right, but only under certain circumstances—not at large. We are told that this is not suicide or euthanasia, but we do not have a statement of the objectives that the bill is trying to achieve by which we can judge, let us say, actions and how these principles are to be applied to that. When the minister says that the government did not think it was necessary, is he saying that the government turned its mind to it and made a positive decision that it was inadvisable to do so or simply that the government had not thought about it?

Hon STEPHEN DAWSON: It was considered, but it was considered unnecessary because it is our belief that the principles are more than adequate. The bill sets out the voluntary assisted dying process, so to have a set of objectives, we believe, may well have been redundant. It was considered, and it was decided not to include them.

Hon MICHAEL MISCHIN: I will turn to a couple of the principles and the manner in which they are framed. Clause 4(1)(c) provides —

> 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;

Unless I am wrong, "palliative care" is not defined in the bill.

Hon STEPHEN DAWSON: No, it is not.

Hon MICHAEL MISCHIN: "Treatment" is not defined in the bill. Are "palliative care" and "treatment" meant to be read conjunctively or disjunctively?

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

Hon MICHAEL MISCHIN: In terms of the exercise of the functions under the bill, bearing in mind that no clear objective has been stated, a person is declared to have the right to be supported in making informed decisions about their medical treatment and has the right to be given information on medical treatment options—presumably, avenues of potential cure or arresting of a condition generally. Those options are specifically to include comfort and palliative care and palliative treatment, rather than treatment, for their condition. It is limited only to palliative care and palliative treatment, since they are being read conjunctively. Why is it not "treatment" generally—"comfort", "treatment" and "palliative care and treatment"?

Hon STEPHEN DAWSON: The member has kind of stumped us a little bit; we are just trying to get to the bottom of what the member has actually asked.

Hon MICHAEL MISCHIN: We have some principles, and one of those principles is stated as being that the person has the right to be provided with certain information about medical treatment and their options. The emphasis is that it includes comfort—presumably comfort in the condition they are suffering—and palliative care. The minister has told us that "palliative care" and "treatment" are to be read conjunctively, and that it is palliative care and palliative treatment. Why not "treatment" as a separate entitlement, so that people can be told how they may be cured rather than how they may be palliated towards their death?

Hon STEPHEN DAWSON: I am not actually sure what the honourable member is getting to, but certainly medical treatment is mentioned numerous times in the principle. Medical treatment is mentioned previously, and palliative care treatment is a different form of treatment, but both are captured in this principle, so I think the member's concern is probably unfounded.

Hon MICHAEL MISCHIN: All right. Is there a difference between palliative care and palliative treatment? If so, what is it?

Hon STEPHEN DAWSON: We are told there is probably little difference, although I am further advised that palliative treatment is a subset of palliative care.

Hon MICHAEL MISCHIN: I will move on from there to the principle under clause 4(1)(d), which states —

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

My first question is about "a person approaching the end of life". We are all approaching the end of life. Is the minister talking about a dying person?

Hon STEPHEN DAWSON: The risk of using "dying" is that people could understand that as somebody being in the last couple of days of their life. That is not the case with this bill; it is longer than that, so the term "end of life" was chosen to use under the principles.

Hon MICHAEL MISCHIN: That is where an objectives clause might have been helpful. It is the Voluntary Assisted Dying Bill 2019, to provide for and regulate access to voluntary assisted dying, and we have the Voluntary Assisted Dying Board, yet we cannot use the term under the principles that govern how a person exercises a power or performs a function. There is also "maximise the person's quality of life". Is that meant to be a subjective or objective assessment?

Hon STEPHEN DAWSON: It would, of course, be a subjective thing, given that it is different for every person.

Hon MICHAEL MISCHIN: All right, so maximising a person's subjective quality of life is meant to be one of the principles governing the exercise of a power or the performance of a function under the legislation. Everyone's idea of quality of life is different; okay. Paragraph (f) states —

> a person should be encouraged to openly discuss death and dying, and the person's preferences and values regarding their care, treatment and end of life should be encouraged and promoted;

Why not "care, treatment and death"? What is the difference between that and "end of life"?

Hon STEPHEN DAWSON: Death is the culmination of end of life; end of life can be a broader period. Honourable member, this is obviously an issue of semantics. If the member has issues with the words that have been used in the principles, it is of course open to him to move amendments. But, certainly, this issue has been considered by government and the words that are before us now have been landed on because we think they encapsulate what we are trying to achieve through this bill. We could probably have a great deal of toing and froing this afternoon in relation to what the member's belief is, or what he thinks would be better words to use, but these are the words we have landed on, so I am not sure that either of us would get too much joy. Perhaps the member might get some joy out of that process, but if he has the view that other words should have been used, perhaps he might want to consider amending the words before us.

Hon MICHAEL MISCHIN: I do not get any joy out of the process. I am not doing this for my amusement. I have other things I could be doing that would give me far more pleasure and would be far more enlightening. I have a problem with the bill—I have already said so—and I have a problem with the process by which it was crafted. I am trying to understand whether the government has given some thought to these things, because this is pretty important stuff. It is not a question of word games. After all, we have reframed the definition of suicide to suit the government and we have reframed the definition of euthanasia to suit the government. We talk about openly discussing death and dying, but then say that the person's preferences and values regarding their care, treatment and end of life should be encouraged and promoted. Is the government saying the way in which people end their lives should be encouraged and promoted? We need to remember that these are principles that someone is supposed to have regard to in the exercise of their functions under the legislation. Medical practitioners will have to have

regard to these things, and their own ethics in dealing with their patients, so some level of precision is necessary. Are we saying "regarding their care, treatment and how they end their life should be encouraged and promoted"? Is that what the government really means by that?

Hon STEPHEN DAWSON: This really is an issue of semantics. I can assure the honourable member that the government has given the words in these principles due consideration. I remind the member of the information I provided to Hon Nick Goiran in response to his question about the differences between the principles that are before us in the bill and those that were in the Ministerial Expert Panel on Voluntary Assisted Dying's final report. Words were provided by the ministerial expert panel and different words have been landed on.

Sitting suspended from 1.00 to 2.00 pm

The DEPUTY CHAIR (Hon Martin Aldridge): Members, we are dealing with the Voluntary Assisted Dying Bill 2019 in Committee of the Whole House and we are on clause 4. I draw to members' attention the latest supplementary notice paper 139, issue 6, dated Thursday, 31 October 2019.

Hon NICK GOIRAN: I noticed a couple of well-crafted amendments by Hon Martin Aldridge appear on issue 6 of the supplementary notice paper.

With regard to clause 4, the explanatory memorandum states —

> The principles will serve as a guide in interpreting and applying the Bill but do not create any new obligations.

For which interpreters is it intended to be a guide?

Hon STEPHEN DAWSON: I am advised that that refers to anybody reading the bill.

Hon NICK GOIRAN: For which appliers is it intended to be a guide?

Hon STEPHEN DAWSON: That refers to people who have a role under the bill.

Hon NICK GOIRAN: Who has a role under the bill and will be then guided by these principles?

Hon STEPHEN DAWSON: I am advised that it is registered health practitioners, the State Administrative Tribunal, the Voluntary Assisted Dying Board or anyone who has a role subsequent to the bill or arising from processes coming out of the bill.

Hon NICK GOIRAN: I understand the registered health practitioners, the State Administrative Tribunal and the Voluntary Assisted Dying Board, but who are these people to whom the minister referred who will have a role after the bill?

Hon STEPHEN DAWSON: Although this is not an exhaustive list, honourable member, it would include healthcare workers, staff assisting the board and people helping the patient, including the contact person, family and public servants.

Hon NICK GOIRAN: Is there an exhaustive list of people who will be expected to use these principles as a guide as they apply the bill?

Hon STEPHEN DAWSON: No, there is not an exhaustive list.

Hon NICK GOIRAN: The minister mentioned earlier that the Victorian legislation also has a principles provision. Who in Victoria uses those principles to apply the bill there? One would like to think that they would probably be similar people to those in Western Australia. The minister mentioned registered health practitioners; the State Administrative Tribunal, of which there would be an equivalent in Victoria; and the VAD board, of which there is obviously an equivalent there. Which individuals, agencies or groups in Victoria apply the principles there?

Hon STEPHEN DAWSON: I am told that the Victorian act is written in the same way, so I imagine it is the same people, honourable member. That is certainly my understanding, but we are straying now into the Victorian principles, and obviously the Victorian principles are not those under consideration today; in fact, it is the principles in this bill in front of us. I do not have exhaustive information about the Victorian bill, if that is the path the honourable member was going down. Certainly, our explanatory memorandum does set out Western Australia's intent.

Hon NICK GOIRAN: What remedy is available in the event that a person exercising a power or performing a function under this legislation does so without having regard to the principles in clause 4?

Hon STEPHEN DAWSON: I am advised that the principles are guiding tools by which the provisions of the legislation are considered. They are not binding, but set the proper pathway for how the other provisions are applied.

Hon NICK GOIRAN: Does that mean that no remedy is available?

Hon STEPHEN DAWSON: I am advised that there is no remedy in relation to the breaching of the principles; they are something that we have regard to. They would likely aid interpretation in legal proceedings in a court or the State Administrative Tribunal, for example.

Hon NICK GOIRAN: If a person is able to exercise a power or perform a function under this legislation without having regard to the principles, knowing that no remedy is available, what is the point of them?

Hon STEPHEN DAWSON: The principles make clear that the intent of the bill is to respect individuals, their autonomy, decisions and beliefs, rather than imposing one person's values onto another or questioning the value of a person's life. Voluntary assisted dying is about recognising an inevitable death and giving people genuine choice about the timing and manner of their death. It is not about questioning or comparing the value of an individual's life. The principles also recognise the importance of providing people with all the potential options and information at the end of their life to enable them to make informed decisions and a genuine choice. The principles will serve as a guide in interpreting and applying the bill, but they do not create any new obligations.

Hon NICK GOIRAN: Clause 4(2) refers to —

> … the Tribunal exercising its review jurisdiction in relation to a decision made under this Act.

What decisions made under this legislation will be able to be reviewed by the tribunal?

Hon STEPHEN DAWSON: The issues that can be determined or can go before the tribunal will include decision-making capacity, residence in Western Australia and whether somebody is acting voluntarily and without coercion.

Hon NICK GOIRAN: Does the requirement under clause 4(1) for a person exercising a power or performing a function under this act to have regard to the principles listed in paragraphs (a) to (j) also apply to a person hearing any appeal from a decision made by the tribunal?

Hon STEPHEN DAWSON: I am advised that the court or the State Administrative Tribunal must have regard to the principles of the act in a judicial or administrative review of an administrative decision under the act.

Hon NICK GOIRAN: This time, the minister used the word "must"—that the court or SAT must have regard to that. I note that clause 4(2) states —

> In subsection (1), the reference to a person exercising a power or performing a function under this Act includes the Tribunal exercising its review jurisdiction in relation to a decision made under this Act.

There is no mention of the court; it refers only to "the Tribunal", which I take to be the State Administrative Tribunal. On what basis does the minister now include the court in that, and why would the court then have to have regard to that, in circumstances in which the minister previously indicated there are no obligations?

Hon STEPHEN DAWSON: I am advised that when the court is determining a matter under its jurisdiction regarding legislation, the court must have regard to the act in its entirety, including any principles in the legislation. That is standard judicial interpretation. Is that what the member was asking? Yes.

Hon NICK GOIRAN: Would it be possible for a person to appeal a decision from the tribunal on the basis that the tribunal has not had regard to the principles?

Hon STEPHEN DAWSON: I am advised that a person may make an application to appeal, but it is for the tribunal to consider the strength of that application.

Hon NICK GOIRAN: Sorry, there is a misunderstanding. I am talking about an appeal from the tribunal. The tribunal has already made a decision. The minister indicated earlier that a court could be involved. I take it that the only circumstance in which a court would be involved would be an appeal from the tribunal; that is what I am referring to.

Hon STEPHEN DAWSON: A decision to appeal to the Supreme Court may in some circumstances be an appeal on a question of law, and in other circumstances may be on a question of law and fact. In this case, it seems that the honourable member is asking about a question of law. There is a right of appeal to the Court of Appeal under section 105 of the State Administrative Tribunal Act.

Hon NICK GOIRAN: I want to be clear. The minister has told the chamber that a person can appeal to the Supreme Court from a decision of the tribunal, on the basis that the tribunal did not have regard for the principles set out in clause 4, which the minister indicated it must have regard for.

Hon STEPHEN DAWSON: My advice is yes; they can make an appeal.

Hon NICK GOIRAN: If that is the case, these principles all of a sudden start to take on a whole new meaning and significance. It was a little unfair earlier, before the adjournment, when the minister suggested to the shadow Attorney General that he was playing semantics with the words. We now realise that this could come before the Supreme Court, and the Supreme Court could decide whether an appeal will be upheld, solely on the basis of whether the tribunal had had regard to these principles. Therefore, it sounds to me as though these principles have now risen to a quite high standard. Not only will the tribunal have to have regard for these principles, but also, in fact, the Supreme Court will have to have regard for them. I have no difficulty with that. I am not criticising that. I am just making sure that we are all aware of the significance of the principles, which were almost suggested beforehand to have limited significance, because in fact there was a suggestion from the minister that there would be no remedy. I asked whether there would be a remedy, and eventually the answer was no, there would not be a remedy. Actually, of course there would be a remedy, because a person can make an application to the tribunal, and, on top of that, they can appeal to the Supreme Court. Those are pretty significant avenues for a person in the event that they think that the tribunal has not performed its power or function having regard to the principles.

The minister mentioned that the State Administrative Tribunal could make a number of decisions. I am going to refer to them as "categories" of decision. I understood the minister to refer to three categories—again, my words—of decision. The first is about decision-making capacity, the second is about residency in Western Australia and the third is about whether things are done on a voluntary or coerced basis. To what extent would the principles be applicable to a decision by the tribunal about a person's residency in Western Australia?

Hon STEPHEN DAWSON: First of all, I make the point that every clause in this bill is significant, not just clause 4. Every clause in the bill has been put in due to its significance and due to our view that it needs to be in the bill.

In relation to the question of "ordinarily resident", clause 15(1)(b) provides that the person must meet the following requirements —

> the person —
>
> (i) is an Australian citizen or permanent resident; and
>
> (ii) at the time of making a first request, has been ordinarily resident in Western Australia for a period of at least 12 months;

The member is asking, I think, how SAT would make a decision on this issue. SAT would make a decision on this issue taking into consideration the principles. Clause 4(1)(h) provides —

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

It says "regardless of where the person lives in Western Australia". We are identifying that the person needs to live in Western Australia. Clause 15(1)(b) of the bill also refers to the need for residency in Western Australia.

I am told that the broad principles will apply in any proceedings. SAT, whilst holding its hearings, must demonstrate a respect for the person—for example, the principle that there is a need to protect persons who may be subject to abuse. Clause 4(1)(j) is also useful in that regard.

Hon NICK GOIRAN: Minister, when an application is before SAT to determine whether the person meets the residency requirements, it is not clear that any of these principles would assist SAT in any way. SAT must have regard to these principles. I will give the minister a practical example. Clause 4(1)(a) provides —

> every human life has equal value;

When SAT makes a decision about whether a person is resident in Western Australia, that principle is of no relevance to that decision. The reason I am asking this particular line of questions is that it seems to me that of the different categories of decision that SAT can make, some of the principles would have some bearing or some weight or provide some assistance to SAT, and others would be immaterial because they are simple matters of fact. That is what I am seeking to clarify.

Hon STEPHEN DAWSON: SAT must have regard to the principles. But it is not a case of SAT needing to tick off on each of the principles.

Hon NICK GOIRAN: I agree, minister. The context is that the minister has indicated that it is possible for a person to appeal to the Supreme Court if SAT has not had regard to the principles. The minister indicated that SAT must have regard to the principles. I am trying to establish what type of application a person will be able to take to the Supreme Court on the basis that SAT has not had regard to the principles.

It seems to me to be an absurd outcome if somebody can appeal to the Supreme Court on a residency application—a decision about whether the person is ordinarily resident in Western Australia—because SAT did not have regard

to the principle at clause 4(1)(a). It would be intolerable if that were the case. If I assume for a moment that we are of one mind on that—that that would not be an intended outcome—what type of applications would be before SAT that then would become appealable to the Supreme Court, and the person would have a right to do so because SAT did not have regard to the principles? If it is not the residency in WA type of application, is it because of the voluntary or coercive nature of the decision? Is it the decision-making capacity? What categories of applications would go before SAT in which these principles would be so crucial that a person could appeal to the Supreme Court?

Hon STEPHEN DAWSON: My apologies; we were getting advice from all over the place, honourable member, but I want to make sure that we give an appropriate answer. I draw the member's attention to the fact that he has said "Supreme Court" numerous times; it is the Court of Appeal in particular. I just wanted to bring that to his attention.

The member posed a hypothetical question about principles. The response related to judicial interpretation and the right of appeal. It may be the case that a person comes before the tribunal and is treated with disrespect and disregard for their autonomy. The person may be aggrieved and institute appeal proceedings on the basis that they were not treated by the tribunal with proper regard under the relevant principles. It may be the case that a person required additional support during the proceedings and this was denied to them by the tribunal. If aggrieved, they could institute an appeal on the basis that the tribunal failed to have regard to the principle at clause 4(1)(c), for example. SAT has regard to the principles generally in performing its review functions, and specifically when a principle is relevant to a decision being reviewed; for example, the need to protect persons who may be subject to abuse when considering whether a person is acting voluntarily or without coercion.

Hon NICK GOIRAN: I will move on to a different topic, but I will make the observation that none of that explains how the principles would be used as a mechanism to appeal to the Court of Appeal on an application dealing with the factual issue of residency. A person has to demonstrate residency in Western Australia—that seems to me to be a matter of fact. Whether one of the principles has or has not been considered by the tribunal, I do not think should be a basis upon which somebody would be able to launch an appeal to the Court of Appeal; that is not apparent to me. Nevertheless, given the nature of these appeals that the minister indicates can be launched to the Court of Appeal, would it be possible for the State Administrative Tribunal, having regard to the principles in clauses 4(1)(d) or (h), to order that palliative care must be provided to a patient living in the Kimberley, for example, before a voluntary assisted dying request can proceed?

Hon STEPHEN DAWSON: My advisers tell me no.

Hon NICK GOIRAN: Minister, if we have a look at the principle in clause 4(1)(h), it states —

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

If that is a principle that we are saying the tribunal must have regard for, why can it not order that palliative care be provided to that patient living in the Kimberley before a voluntary assisted dying request can proceed, if that is the patient's choice?

Hon STEPHEN DAWSON: I do not think that example would happen, honourable member, because if the patient wanted palliative care but did not want to access voluntary assisted dying, they would not be before the tribunal in the first place.

Hon NICK GOIRAN: Could a person want to make a request for voluntary assisted dying and make an application for that—I understand that there is also the possibility of self-administration under this bill, so they could even have the substance in their own home in the Kimberley—because they want to make sure that they are doing all that in the context of the principle in clause 4(1)(h), which is that they have genuine choices, and they may say, "Before I take this final substance, I want to have access to palliative care"? Would it not be possible for the tribunal to order that to happen?

Hon STEPHEN DAWSON: No. The tribunal's jurisdiction is established in proposed section 83 and it is limited to three things.

Hon NICK GOIRAN: If every Western Australian is to have equal access to voluntary assisted dying but not every Western Australian has equal access to palliative care, does it not mean that the principle in clause 4(1)(h) is not being followed in practice?

Hon STEPHEN DAWSON: With the greatest of respect, honourable member, this issue was canvassed previously in the debate, so I do not think it is appropriate that we go over it again.

Hon NICK GOIRAN: Minister, I note in the debate in the other place that the Leader of the Opposition, the member for Scarborough, had concerns about the use of the term "genuine choices". What is meant by the phrase "genuine choices" as found in clause 4(1)(h)?

Hon STEPHEN DAWSON: This refers to people having a genuine choice about the type of treatment that they would like to access. Quite simply, they should be able to choose whether they want to have such things as palliative care or other treatments at the end of their life, and that is a choice that they can make themselves.

Hon NICK GOIRAN: If the tribunal has an application before it and it has to have regard to the principles, is it open to the tribunal to say that a person does not currently have a genuine choice in regional Western Australia, because to have a genuine choice, they would need to have access to palliative care, and because they do not have access to palliative care, they do not have a genuine choice, and so the application cannot proceed. Would that be open to the tribunal, given that it has to have regard to the principles?

Hon STEPHEN DAWSON: Again, I draw the honourable member's attention to proposed section 83 of the bill and the limited jurisdiction that the tribunal has. The genuine choice is that a person can choose to access palliative care or voluntary assisted dying or, indeed, both. This is not about the provision of the services. In regional Western Australia, palliative care is available and will become more available through the significant investment that the government has made over the past year, which we have spoken about previously, and it will continue to be rolled out over the next few years.

Hon NICK GOIRAN: One of the applications that the minister has drawn to our attention that can be made to the tribunal is whether the person is acting voluntarily and without coercion. Would it be open to the tribunal to determine that a person is not acting voluntarily because they do not have a genuine choice in regional Western Australia because they do not have access to palliative care?

Hon STEPHEN DAWSON: I think we have a difference of opinion here, honourable member. People do have access to palliative care in regional Western Australia, and, in some cases, that access may be over the phone and it may involve visits, whether it is monthly or regularly. Therefore, I would contend that people in regional Western Australia have access to palliative care already and that access will become more accessible—if I can use that word—as the rollout of the extra investment in palliative care made by this government continues.

The DEPUTY CHAIR: Members, before I give the call to Hon Nick Goiran, I am receiving indications from members in the chamber that they are having difficulty hearing the debate, so if there are unnecessary conversations that can be taken outside the chamber, that would be appreciated.

Hon NICK GOIRAN: I am not sure whether that is true, because earlier in the debate we identified that the government is prepared to guarantee that up to eight people will be flown to regional Western Australia for the voluntary assisted dying process. The minister might recall that when I asked whether the government would guarantee that a specialist would go out with an interpreter, he indicated that he could not guarantee that. There is no criticism from me at this point; I am just refreshing our memory on the sequence of events.

When the minister said that Western Australians living in regional areas have access to palliative care, yes, some Western Australians in regional areas do, but I am talking about a situation in which a person in regional Western Australia is before the board and the board says, "Look, this person doesn't have a genuine choice because the government has said that it will fly out only the eight-person team; it will not fly out the two-person team." Is it within the power of the tribunal to say, "This person is not acting voluntarily, and the basis upon which we make a decision is the principles that are set out in clause 4"?

Hon STEPHEN DAWSON: SAT will consider whether someone is acting of their own volition and not whether health service options are available.

Hon NICK GOIRAN: The availability of health services is not part of the consideration of whether a person is exercising or has access to genuine choices about their care treatment and end of life?

Hon STEPHEN DAWSON: I think the honourable member is confusing the principles with the review jurisdiction of SAT. I think he is conflating two issues.

Hon NICK GOIRAN: If I am, it is because the minister indicated that SAT must have regard to the principles. The minister said that the review jurisdiction of the tribunal, which is SAT, must have regard to the principles, so clearly they should be conflated. The bill conflates them. The minister indicated that they must be conflated.

Hon STEPHEN DAWSON: Again, I would say that SAT will consider whether someone is acting of their own volition. It will not consider whether health services are available where someone is located.

Hon NICK GOIRAN: The principle set out in clause 4(1)(b) states —

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

If a person expresses their end-of-life choices by way of an advance health directive, should they be respected?

Hon STEPHEN DAWSON: Obviously, advance health directives do not appear in the bill before us.

Hon NICK GOIRAN: I know that. That is not the question. The minister wants everybody who is performing a power or a function under this act to have regard to these principles. One of the principles is a person's autonomy, including autonomy in respect of end-of-life choices and the decision that this should be respected. If a person expresses their end-of-life choice by way of an advance health directive, should it be respected?

Hon STEPHEN DAWSON: It should be respected, but it does not mean that it will be a legally available option with voluntary assisted dying.

Hon NICK GOIRAN: Are there other ways in which the bill before us constrains a person's individual autonomy?

Hon STEPHEN DAWSON: As with other legislation, the bill creates obligations, but it seeks to balance individual choice with respecting the needs of a patient.

Hon NICK GOIRAN: Yes, minister, but there are 184 clauses in the bill before us and we are on clause 4. I am interested to know which clauses in this bill constrain a person's autonomy. At the moment, clause 4 indicates that autonomy is a very important principle to be respected; in fact, it specifically says that a person's autonomy, including autonomy in respect of end-of-life choices, should be respected. The minister has already indicated that if somebody wants to record their choice in an advance health directive, that process of autonomy should be respected but it will not be legal; in other words, our law will disrespect that regard. I want to know in what other ways this bill constrains a person's autonomy. I am trying to make sure that the bill is consistent with the principle set out in it.

Hon STEPHEN DAWSON: Just because a law is contrary to someone's belief, it does not mean that they are disrespected.

Hon Dr SALLY TALBOT: Mr Deputy Chair, I make not a point of order, but I will make a few comments and draw your attention to something that happened yesterday. Hon Nick Goiran has asked more than 30 questions about the principles in clause 4, and he is quite entitled to do that, but the minister has responded more than 30 times in a way that makes it crystal clear that the minister and the government have a very clear idea about how these principles are supposed to operate. It is completely clear. I would be amazed if it was not completely clear to anybody in this chamber that the set of principles clearly relates to legal options that are available to governments, tribunals and individuals. That is perfectly obvious and that is what the minister has affirmed now more than 30 times in his responses to Hon Nick Goiran. Yesterday, the Chair of Committees introduced us to what, for me, is a slightly nuanced concept of a point of order. He signalled that he was aware of an approaching point of order. I ask you, Mr Deputy Chair, whether you are also aware of an approaching point of order about relevance and repetition.

The DEPUTY CHAIR (Hon Martin Aldridge): Hon Dr Sally Talbot, no point of order has been made and the Chair does not have the discretion to make comments otherwise from the chair, but I will let you know when I feel that the debate is becoming repetitious. Thank you for your point.

Hon NICK GOIRAN: I expect nothing less from Hon Dr Sally Talbot, having served with the part-time member for a year on the Joint Select Committee on End of Life Choices. I thought it would have been pretty obvious to those following the debate that what the minister indicated earlier was that the ministerial expert panel provided certain recommendations about principles and the government decided to deviate from those principles. I thought it would be obvious to the pretty experienced member that it is okay for members to ascertain the extent to which there has been deviation from the ministerial expert panel's recommendation in the bill before us, considering that taxpayers have paid half a million dollars for the work of the ministerial expert panel. Hon Dr Sally Talbot might forgive me if I have a few more questions about the principles, which, I remind the member, we have just learnt will be a reason for appeal to the Court of Appeal if the tribunal does not have regard to the principles set out in the bill. I ask the member to follow the debate more closely rather than make pointless contributions.

I would like to consider another one of the principles before us. In particular, I would like to turn to the matter that deals with coercion, duress and the like. There is an amendment standing in my name. I take it, Mr Deputy Chair, that it is not necessary for us to move the amendments precisely in the order they appear on the supplementary notice paper. The next amendment on the supplementary notice paper is amendment 52/4, which I intend to move, but given the discussion we have been having with the minister, it seems to me that it might be better if I move amendment 55/4 standing in my name. I want to check with you that that can be done and that, irrespective of the outcome of that, we can go back to other amendments that are listed under clause 4.

The DEPUTY CHAIR: Members, Hon Nick Goiran has signalled his intention to move amendment 55/4 on the supplementary notice paper. The advice I have received—this is probably going to come up again during the

debate—is that ordinarily on each clause, we would move chronologically through the amendments listed on the supplementary notice paper, or at least invite those members with amendments standing in their name to move that amendment as we move through the supplementary notice paper from top to bottom. The other option is that I seek the agreement of the chamber, through no objection, for us to move to a different amendment other than the first amendment standing under clause 4.

Hon MARTIN PRITCHARD: If it may assist, I have a very similar amendment to the same part of the bill and I have no concern. It seems to me that if the honourable member's amendment is accepted, it will make mine redundant. I have no concern with that particular amendment being dealt with before mine, if that assists the chamber.

Hon NICK GOIRAN: Further to this, I am happy to move that amendment, but I do not want to move that amendment and then be precluded from moving amendment 52/4, which is the first one listed on the supplementary notice paper under clause 4. If, by custom and practice or under standing orders, that amendment has to be moved first, I am happy to do that, but it seems that it would be better to move amendment 55/4 at this point in the debate.

The DEPUTY CHAIR: Hon Nick Goiran, you will not be precluded from moving that amendment later, but if you wish to move amendment 55/4 now, I will seek a decision from the chamber by asking whether there is any objection; and, if there is no objection, we will proceed with that question. The question now is that clause 4 stand as printed.

Hon STEPHEN DAWSON: I am not trying to be unhelpful, but I think it would make the debate a little more chaotic if we did not deal with the amendments in the order that they are listed on the supplementary notice paper. I think everybody, including Hon Nick Goiran, would agree with me that this is a complex piece of legislation. The easier we allow the debate to flow, the better it will be for us all so that we can follow what is going on. It is certainly my preference that the amendments be dealt with in the order that they appear on the supplementary notice paper as opposed to going back and forth.

Hon ALANNAH MacTIERNAN: I support the minister in that comment and note that this issue came up earlier when Hon Martin Pritchard sought to move his amendment. It was considered that because Hon Nick Goiran had several amendments on the supplementary notice paper, it would not be appropriate to deal with that amendment. As the minister has said, this is going to be immensely complex for people to manage. I think that we should stick with the principle that we deal with these amendments in order.

Hon NICK GOIRAN: I am very relaxed about that. I am very happy to move the amendment standing in my name at 52/4. I move —

> Page 2, line 28 to page 3, line 1 — To delete "treatment, including palliative care and treatment," and substitute —
>
> > treatment (including palliative care and treatment, psycho-oncology treatment and consultation-liaison psychiatric treatment)

By way of explanation, we are dealing with clause 4(1)(d), which reads —

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

I imagine that all members would agree to that principle. I seek to try to improve that principle ever so slightly. The amendment I propose looks to add to clause 4 (1)(d) so that it would read —

> a person approaching the end of life should be provided with high quality care and treatment (including palliative care and treatment, psycho-oncology treatment and consultation-liaison psychiatric treatment) to minimise the person's suffering and maximise the person's quality of life;

The Department of Health's WA Cancer and Palliative Care Network 2008 "Psycho-Oncology Model of Care" states —

> **Psycho-Oncology** is concerned with the psychological, social, behavioural, and ethical aspects of cancer. This sub-speciality addresses the two major psychological dimensions of cancer: the psychological responses of patients to cancer at all stages of the disease (and that of their families and caretakers); and the psychological, behavioural and social factors that may influence the disease process.

Consultation-liaison psychiatric is a little-known sub-specialty of psychiatry that deals with mental illness associated with general illness in a hospital setting. Consultation-liaison psychiatrists act as consultants called in to help manage patients on the general medical or surgical wards who have psychological or mental health problems associated with medical ones. Members may be interested to look at the article "Doctors of Mind and Body" published in the *Medical Journal of Australia* of December 2010.

The transcript of evidence of Dr Lisa Miller, who is a consultant-liaison psychiatrist, to the Joint Select Committee on End of Life Choices reads —

> General data around liaison psychiatry would suggest that around 40 per cent of people in a general hospital setting may be experiencing some degree of significant mental health comorbidity along with their physical health morbidity.

That evidence was given at one of the many hearings I attended. In fact, I was the only member of the committee who attended all the meetings and hearings. That hearing took place on 13 December 2017.

We know from overseas experience that undiagnosed depression remains an issue amongst those who request and are offered voluntary assisted dying, including patients in Oregon. I refer members to the 2019 article on that point by Peisah, Sheehan and White.

An article from 2017 illustrates the impact of the failure to identify psychiatric comorbidity in terminal patients. The author, Professor Greg Crawford, states —

> One of the motivators was that I looked after a 15-year-old girl who had a malignancy who looked like she was dying. I was working as the clinical head of palliative care at a hospital in Adelaide, and she was referred to us on the basis that she only had weeks to live. She had difficult pain to manage and other symptoms that led to her becoming more and more withdrawn.
>
> I was slow to recognise that she was depressed and I found it hard to find advice and support about to manage it.
>
> I looked in the literature and talked to psychiatrists and other colleagues. I ended up changing her antidepressants and she made a miraculous improvement, both physically and psychologically. She improved and lived for another 12 months. She had serious, progressive disease but her physical function and her ability to interact and live improved. She went off on a holiday, achieved some other things on her wish list and made lots of other nice memories for her family.
>
> She died at home, supported by our palliative care service and her GP, and we had support from the paediatric palliative care service.
>
> It showed me that sometimes the symptoms of impending death and the symptoms of advanced depression can look very much the same. I felt a bit like I had failed, having taken so long to recognise her depression and then act on it, which made me determined to learn more about depression in this context. It drove me to try and understand more about psychological illness.
>
> There has been a large amount of research in this area, but it is still very difficult to really determine what is a normal reaction to what is happening, like sadness, and what is an abnormal reaction, like a major depressive illness.

Professor Greg Crawford goes on to say —

> The implications of not diagnosing are that patients have increasing suffering and may not be getting the best treatment. They may be losing an opportunity to have more time or meaningful interaction with people around them. For their families, this can be a very large trauma; to not understand why somebody has turned their back on them or why they might be rejecting relationships, being overwhelmingly sad, or wanting to die precipitously. When triggered by depression, those responses can be quite challenging.

After me reading that the implications of not diagnosing psychiatric comorbidities are that patients have increased suffering and may not be getting the best treatment, I would hope all members would support my amendment to clause 4(1)(d). At its core, the intention of the amendment is to ensure that all Western Australians approaching end of life are getting the best treatment, and their suffering is minimised and their quality of life is maximised. I believe that this amendment to clause 4 recognises the link between physical and mental comorbidities in patients and strengthens the principle in clause 4(1)(d) by explicitly recognising the best care that can be offered to patients approaching the end of life to minimise that person's suffering and maximise their quality of life.

Hon STEPHEN DAWSON: I indicate that we do not accept the honourable member's amendment. We cannot accept the additional words after "treatment". The honourable member is attempting to insert subspecialties that are ordinarily not required for the vast majority of people at end of life. In fact, the term "treatment" already includes the subspecialties of psycho-oncology and consultant-liaison psychiatric treatment, and it is therefore unnecessary to include the proposed words. The honourable member is requiring these persons, who under the legislation must have regard to the principles, to have regard to treatment involving practitioners who are not commonly available and, in any event, whose care is rarely appropriate for most people who are dying.

Hon NICK GOIRAN: I want to make one observation. If the government's view is that psycho-oncology treatment and consultation-liaison psychiatric treatment are a subset of palliative care and treatment, what is its objection to including it? I would remind members, as the co-chair of the Parliamentary Friends of Palliative Care, we had a briefing from Dr Lisa Miller and we have had many briefings from specialists in palliative care, recognising that this is a very important area that remains under-resourced in Western Australia. If we are setting principles and aspirations to agree to, it seems to me that there is no difficulty in including these subsets that the minister indicates are part of palliative care and treatment anyway. It certainly does not undermine the bill in any way; all it does is enhance and strengthen the existing clause.

Hon COLIN HOLT: If we accept the amendment put by Hon Nick Goiran and go to a subset as described in the amendment, and, as an example, a person who is suffering from motor neurone disease at the end of their life applies for the scheme under the bill, is there a risk that that person will fall outside the scope of the principles of the bill?

Hon STEPHEN DAWSON: It will not legally narrow it, but it will focus on narrow subcategories that do not necessarily reflect those who wish to access voluntary assisted dying. Palliative care or treatment is wider terminology that is more commonly applicable to those at the end of their life.

Progress reported and leave granted to sit again at a later stage of the sitting, on motion by Hon Stephen Dawson (Minister for Environment).

[Continued on page 8698.]