

Hon Nick Goiran; Hon Robin Chapple; Hon Aaron Stonehouse; Hon Simon O'Brien; President; Hon Rick Mazza; Hon Jacqui Bydell; Hon Tjorn Sibma; Hon Kyle McGinn; Hon Peter Collier; Hon Colin Tincknell; Hon Martin Aldridge; Hon Adele Farina; Hon Diane Evers; Hon Dr Sally Talbot; Hon Stephen Dawson

VOLUNTARY ASSISTED DYING BILL 2019

Discharge of Order and Referral to Standing Committee on Legislation — Motion

Resumed from an earlier stage of the sitting.

The PRESIDENT: Members, we are dealing with the motion that has been moved by Hon Rick Mazza, and the question is that the motion be agreed to. It is the continuation of the remarks by Hon Nick Goiran.

HON NICK GOIRAN (South Metropolitan) [5.07 pm]: I rise to continue speaking in support of the motion moved by Hon Rick Mazza that the Voluntary Assisted Dying Bill 2019 be discharged and referred to the Standing Committee on Legislation. The motion before the house proposes a number of things, including that the committee report by no later than Tuesday, 11 February 2020. As I foreshadowed earlier, it would not be strange or irregular for the chamber to refer this bill to the legislation committee, given that this would be, on my count, the ninth occasion during this fortieth Parliament on which a bill has been referred by this chamber to that committee. As I indicated earlier, if it was good enough for this chamber to send the Animal Welfare Amendment Bill and the Ticket Scalping Bill to the Standing Committee on Legislation, it should be good enough to send the Voluntary Assisted Dying Bill to the committee for investigation.

My only concern about the motion that is before the house is that the honourable member proposes a reporting date of Tuesday, 11 February 2020. I note that the bill that is currently before the committee has a reporting date later than 11 February 2020; in fact, I think the reporting date is May 2020. The problem is that we are currently operating in a highly charged political environment that will not tolerate one moment's pause in the consideration of the Voluntary Assisted Dying Bill 2019. Therefore, I do not feel at liberty to propose a later reporting date, because, in the current political climate, that will be considered to be utterly intolerable. Can I be so bold as to say that it has almost come to the point of hysteria in certain quarters that the Legislative Council might want to pause and consider carefully the 184 clauses in this bill that will lead to the taking of Western Australian lives. Members may very well say, as members have said, that it will be a voluntary process, but just that voluntary process itself, the decision-making capacity of the individuals and whether genuine consent is provided, need to be examined by the Standing Committee on Legislation. The moment any of that goes wrong, it will result in a wrongful Western Australian death.

Before the interruption to take questions without notice, I was taking members through the views expressed by various individuals in the community. I started by looking at the comments of the Minister for Health, Hon Roger Cook, and at comments made and reported in recent times by Australia's first Indigenous surgeon, Kelvin Kong, and touched on the views presented by Senator Dodson and federal Minister Wyatt. I now want to turn to the views expressed by the so-called ministerial expert panel in its final report. I draw to members' attention these remarks made by the Ministerial Expert Panel on Voluntary Assisted Dying on page 24 of its final report, where it states —

Some consultation respondents contended that developing adequate safeguards to ensure that decision-making is voluntary and valid would be challenging.

At the very start of the process by the ministerial expert panel, the chair, Hon Malcolm McCusker, was quoted in the media in Western Australia as saying that this process is a minefield. Again, if the chair of the panel is saying that it is a minefield, should we not pause for a moment and consider what could possibly go wrong in a minefield? If the chair of the ministerial expert panel says this will be a minefield and its report says, "Some consultation respondents contended that developing adequate safeguards to ensure that decision-making is voluntary and valid would be challenging", is that not something the Standing Committee on Legislation should inquire into and report back to the house on? The paragraph goes on to say —

Others noted that there was a need to have a good understanding of cultures that have a collectivist approach to decision-making and for practitioners to better understand how Aboriginal people may choose end-of-life care.

The ministerial expert panel specifically quotes from the submission of the Aboriginal Health Council of Western Australia.

I pause for a moment because it strikes me that sometimes, with some of the advocacy that has taken place, including late last night by the so-called ministerial expert panel, some individuals and advocates think members in this place cannot read! This is straight out of the final report on page 25 —

'Any guidelines or legislation for voluntary assisted dying must make it clear that autonomous, voluntary decision making for Aboriginal people is not precluded by a collectivist approach, and should be accepted'.

(Submission by the Aboriginal Health Council of Western Australia)

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That is what the ministerial expert panel said the Aboriginal Health Council said in its submission. What did the ministerial expert panel have to say about that? This is its discussion at page 25. I ask members to consider whether this response and discussion by the ministerial expert panel would pass any academically rigorous test. I quote —

Most decisions, large or small, are made by people in the context of their usual life which includes family, friends and their community. People have the right to include or exclude whoever they choose in their deliberations on their decision and to seek support in their decision-making process. It is important to consider the needs of people from diverse backgrounds who may be from cultures that have a collectivist approach to decision-making.

End of comment. The ministerial expert panel identifies that the collectivist approach to decision-making is an issue for Aboriginal people. It quotes from the Aboriginal Health Council, which says that this should not be precluded and, indeed, should be accepted. However, the best comment the panel can make is —

It is important to consider the needs of people from diverse backgrounds who may be from cultures that have a collectivist approach to decision-making.

One of the things the Standing Committee on Legislation will clearly need to look into is how a medical practitioner should assess whether the individual's consent to voluntary assisted dying was voluntary and free of coercion or undue influence if the decision can be made by a collectivist approach? That is the type of thing the ministerial expert panel should have been wrestling with and should have provided some recommendations on. That is the whole point of having the ministerial expert panel, and it has not done it. That is exactly why we need the Standing Committee on Legislation to look at these issues. We have to fill the gap left by the ministerial expert panel. It clearly has not done it. Again, I challenge members who have a differing view to point to me the page in the ministerial expert panel's report that does that. It does not exist. This is not some small, insignificant matter. People will have passionate views one way or another on it, and that is fine. However, surely the 36 of us all agree that if the law is passed, it must be safe. What confidence can we have that this Voluntary Assisted Dying Bill is safe when we are told by the government and its chief proponents that there has been massive consultation on this process, including by the ministerial expert panel, when the facts tell us that the bill was drafted before the ministerial expert panel handed down its report? If members take the time to read the report, they will find that it has massive holes in it.

What about the collectivist approach to decision-making for Aboriginal people? Do we care? If we do not care, let us be brutally honest and say that we do not care, we want to ram this legislation through. We do not care what Senator Dodson or federal Minister Wyatt have to say and we do not care what the Aboriginal Health Council of Western Australia has had to say. We do not care that the ministerial expert panel has failed in its duty to address the issues that have been raised. We simply do not care. We think the Voluntary Assisted Dying Bill is a bill of lesser importance than the Animal Welfare Amendment Bill, the Ticket Scalping Bill and the other bills that have been referred to the legislation committee by this chamber in this fortieth Parliament. If that is our view, let us be honest and transparent and say so. However, let us not pretend, as put by the Leader of the House, that we cannot do it because it is a conscience vote. We know that is untrue because that is precisely the argument that was put on the surrogacy legislation and that report speaks for itself.

I turn now to further things the ministerial expert panel had to say on Indigenous interests. On page 27 of the report, the following comment is made by the so-called expert panel —

In some communities, particularly more remote communities, an association with voluntary assisted dying may impact the community's trust in the local health practitioner or health service. There may be times where the use of an independent navigator would provide additional safety and space for a person to make a decision that reflects their personal choice (particularly if their viewpoint differs from that of their family or community).

If we pause and read that for a moment, we realise that the ministerial expert panel is throwing up a red flag to us, saying there will be safety issues in the decision-making process in remote communities. If that is the case, and if we have key Indigenous leaders in our state saying they are concerned, do we not have a duty to pause and refer the bill to the Standing Committee on Legislation so that it can do the consultation that has not been done? As much as the government will say there has been massive consultation, would it not be good, members, if we could have a list of the Indigenous Western Australians who have been consulted on this bill? It will not be a very big list. I can tell members, I served on the Joint Select Committee on End of Life Choices and the list is not very big. How big is the list of Indigenous consultation by the Ministerial Expert Panel on Voluntary Assisted Dying? I bet it is not very big. Should not the last gatekeeper in this process, the Legislative Council of Western Australia, do the job that has not been done by others?

I turn to page 28 of the final report of the Ministerial Expert Panel on Voluntary Assisted Dying and its comments with regard to matters affecting Indigenous interests. It states —

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It was evident to the Panel that education, information and informed decision-making are all very important to the Western Australian community ... all people must be able to access information in a language or manner suitable to them and that this information should be easily accessible.

That comment by the Ministerial Expert Panel on Voluntary Assisted Dying sits well with clause 4 of the Voluntary Assisted Dying Bill 2019, headed "Principles". Hon Rick Mazza earlier referred to clause 4, and it touches on exactly this point. It states in part, under clause 4(1) —

- (g) a person should be supported in conversations with the person's health practitioners, family and carers and community about treatment and care preferences;
- (h) 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;

In that respect, the bill correctly identifies the issue that was spoken about by the Ministerial Expert Panel on Voluntary Assisted Dying, but the report continues, at page 28 —

Further to this there was context of particular relevance to Aboriginal people:

Again, the report quotes from the submission by the Aboriginal Health Council of WA —

'There are English language terms which have no meaning for Aboriginal people and discussions around end of life care must take this into account. For example, even the term 'end of life' is not one that Aboriginal people would use or necessarily recognise as applying to them or their circumstances.'

What are we doing about that? That has been identified by the Ministerial Expert Panel on Voluntary Assisted Dying as a problem, yet there has been no explanation about how that will be addressed. It is no wonder, then, that Senator Dodson and others are crying out for more consultation on this matter. This is no light matter. I remind members again that when it comes to language and the confusion that can be caused on technical matters, we have only to look at the report that was tabled in this fortieth Parliament by the Joint Standing Committee on the Corruption and Crime Commission that looked into the wrongful death of Josh Warneke and the circumstances in which Mr Gene Gibson incorrectly pleaded guilty because of confusion around language and with regard to capacity. We already have an example of this that has happened in our own fortieth Parliament, and now we are having it drawn to our attention by the Aboriginal Health Council of Western Australia, reported to us by the Ministerial Expert Panel on Voluntary Assisted Dying, and there has been no response from the government on how that is to be addressed.

I turn to page 30 of the Ministerial Expert Panel on Voluntary Assisted Dying's report. It states —

The Joint Select Committee specifically recommended that a prohibition on health practitioners starting a discussion about voluntary assisted dying was not adopted in Western Australia.

...

The findings of the consultation demonstrate very strong opinion that legislation in Western Australia should not limit, impede or seek to censor the conversations that health practitioners appropriately conduct with patients.

It continues, further down the page —

Discussions that took place in the Kimberley raised issues in relation to self-harm and suicide and noted that even discussing palliative care with patients can be challenging in this context. There may be complexities surrounding concepts such as blame or 'pay back' in Aboriginal communities and potential implications if the family has a negative perception of the practitioner or health service because of involvement in voluntary assisted dying.

The report quotes from one of the consultation stakeholder meetings with Kimberley palliative care —

'High turnover of staff and GPs is a huge issue. For people to establish a relationship with their GP to even have a discussion about voluntary assisted dying is hard'.

Are these things that the Standing Committee on Legislation should pause and consider? Or, again, should we say, "These things are not of sufficient significance; we prefer to send matters like the ticket scalping bill and others to the legislation committee for consideration because we're very concerned that Western Australian might be ripped off for their ticket, but we're not as concerned that a Western Australian might be coerced or abused or under duress or undue influence with regard to the decision that they make, and we're less concerned about the possibility of a doctor making a mistake, let alone two GPs, to say nothing of the role of a specialist", which apparently is a no-go zone, according to the Minister for Health.

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I turn now to page 31 of the Ministerial Expert Panel on Voluntary Assisted Dying's report and its consideration of matters that are of interest to Indigenous Western Australians. It states —

The complexity of medical terminology and the balance of power between health practitioner and patient was also identified as potentially challenging and would require thorough consideration during any implementation planning (including being part of practitioner education and training).

What did the Aboriginal Health Council of Western Australia have to say to the Ministerial Expert Panel on Voluntary Assisted Dying about that? It said, as quoted in the Ministerial Expert Panel on Voluntary Assisted Dying's report —

'Clinicians often use complex medical terminology when discussing treatment options with Aboriginal people ... This results in the real risk that Aboriginal people may consent to something they don't fully understand. There is also the issue of the disparity of power between a doctor and Aboriginal people; Aboriginal people will often agree with a doctor's advice even if they are not happy with it as they can feel overpowered in the doctor-patient relationship'.

Those are not my words and not my view of the world; that is a submission by the Aboriginal Health Council of Western Australia to the Ministerial Expert Panel on Voluntary Assisted Dying. What did the ministerial expert panel do about that? I expected more from the ministerial expert panel than to be just a collator of information, and to then dump the information into a final report. I expected it to wrestle through the issues at an academically rigorous level and provide us with some solid findings and recommendations. Plainly, in the limited time I have had here, we can see that that has not occurred, especially with regard to Indigenous Western Australians. It is no wonder that Hon Rick Mazza is therefore concerned and asks us to pause for a moment and contemplate a referral to the Standing Committee on Legislation.

As I said earlier—I know the honourable member was out of the chamber on urgent parliamentary business—if there is any point of concern I have with the motion, it is the expectation that the committee report by no later than Tuesday, 11 February 2020. But as I indicated earlier, we are in a highly politically charged environment, and despite the fact that it is a conscience vote, I feel constrained to even propose that there be a later date than February 2020, in circumstances in which the most recent referral of a bill to the committee—Hon Aaron Stonehouse's private member's bill—has been given a greater period for proper consideration by the committee.

I will finish on this point. If any member in the chamber this afternoon might not want to vote for this motion by Hon Rick Mazza simply because I am on the committee, I say to them that I will be prepared to stand down from this inquiry if that were to be a stumbling block for members. I made it very clear in my contribution to the second reading debate that I have been researching this matter for 10 years and it is my view that it is a legal impossibility to create a safe system. If members then say that it is therefore not appropriate for a member holding that view to be involved in this inquiry and to carry out consultation with Indigenous Western Australians, I will be prepared to consider that very seriously. I do not want that to be the stumbling block, because the stakes are simply too high.

Members have said during the course of this debate that there is no more difficult decision to make than the one on this bill and this will be the hardest decision that they will have to make. If that is the case, should the committee not be looking into the issues? It seems counterintuitive to me that in one breath we can say this is a very difficult matter to deal with, on which people hold very strong views, and in the next breath say that we do not want a committee to look into it—under no circumstances should the committee to look into this. Why would that be? What are we scared of? Is it the fact that on each and every other occasion in this fortieth Parliament when a bill has been referred to a committee, the committee has suggested some amendments and found some issues, whether it is, with all due respect, on a more innocuous piece of legislation such as the Ticket Scalping Bill? Maybe there are members who are very passionate about animal welfare and they feel it is at a higher level than ticket scalping, and that is fine. I do not wish to cast any judgement about the weight that members personally give to any piece of legislation, but surely out of all those bills the one with the greatest gravity, the one with the greatest amount of consequences, is this one. Why would we not want the committee to look at it? If members examine their consciences, the reason cannot be that the government does not want any amendments. We have to rise above the attitude in the other place, otherwise there is no point in having a Legislative Council. We should not bother having this chamber if we are simply going to be the chamber that rubberstamps what comes from the other place. It does not matter whether the government wants amendments; our duty as lawmakers is to ensure that the bill before the house is safe. Is it safe or not? Have Aboriginal people been consulted or not? They are the issues that need to be considered by the Standing Committee on Legislation, and it is for those reasons that I support the motion moved by Hon Rick Mazza. I thank him for his courage in moving the motion, because inevitably he will be criticised for having the temerity to even suggest that this bill go to a committee. I stand with him by indicating to those who would criticise him that the stakes cannot be higher than the Voluntary Assisted Dying Bill, and it is entirely appropriate for this bill to go to a committee.

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HON ROBIN CHAPPLE (Mining and Pastoral) [5.32 pm]: I will be brief. I will not support this motion. I take on board what has been said by Hon Rick Mazza about Indigenous people. I am not going to preclude anybody, but I know that Hon Kyle McGinn and Hon Colin Tincknell have a large connection with Indigenous people, as I do. One of the problems if we want to go down this path is that we are going to have to talk to 128 different tribes that all have different views about this process. There are 90 languages spoken in Western Australia, and from the discussions I have had through the Kimberley and the desert, there is a vast array of views on this matter, in exactly the same way that we have a vast array of views in this chamber. I think it is important to put on the record that Ms Kate George was on the Ministerial Expert Panel on Voluntary Assisted Dying. She is a Martu woman—she is actually a Putijarra woman from the desert. She was the first Indigenous woman to study law and get a degree at the University of Western Australia, and she specialises in human rights, international law and Indigenous matters. Whether it be the saltwater people, the desert language groups, the Murchison bioregion groups or the goldfields Wongutha groups, there are going to be completely different views expounded by all these groups and people. I think that having Kate on the expert panel provided it with that voice, in essence. She is highly respected throughout the Pilbara, Port Hedland, through the Kimberley and down to the goldfields. This is the woman who was put on the expert panel for that very purpose. I will not support the motion. We have to be very, very careful when we go down this path of saying “Aboriginal people”. It is one of the fallacies that we fall into. There is no such thing as “Aboriginal people”. There are lots of Aboriginal tribes and they are all different; they all have different cultural approaches to a whole range of things. I think doing things in that way is almost belittling to Aboriginal people.

HON AARON STONEHOUSE (South Metropolitan) [5.35 pm]: I will be brief. In the lead-up to this debate I spoke with stakeholders, and many of them asked me my views on discharging this bill to the Standing Committee on Legislation. At the time I spoke frankly and I said to them that I thought such an effort was likely be little more than a delaying tactic and I would not see the value in such an effort as the committee would probably not be able to tell us much more than we already knew. I said that the issue of voluntary assisted dying had already been subjected to the Joint Select Committee on End of Life Choices and then to the Ministerial Expert Panel on Voluntary Assisted Dying. However, I note that the motion moved by my learned friend Hon Rick Mazza is far narrower in scope and his intention with this motion seems to be to garner evidence and consult with and receive feedback from specific groups of people. Part (3)(a) and (b) make specific reference to Indigenous persons and part (3)(c) requests that the committee report on whether the bill provides culturally appropriate end-of-life choices for Indigenous persons. It is far narrower in scope than what was being proposed earlier to me by stakeholders, which would have been to discharge the entire bill and have the entire policy of the bill examined. I note that part (2) of the motion mentions that the policy of the bill should be looked at, and I have some thoughts about perhaps amending this motion, which I will discuss later in my contribution.

In my contribution to the second reading debate I spoke about a need for legislators to be vigilant, critical and sceptical of what was brought before us. Even speaking from the position of someone who supports the bill, at least thus far, and is willing to vote for the second reading so we can continue into the Committee of the Whole House, there is still a responsibility for members of the Legislative Council to leave no stone unturned and to examine every aspect of this bill. It is a large and complex bill with 184 clauses. During my second reading contribution, I raised concerns about cultural differences in attitudes towards capacity and consent. Indeed, this was even raised by the Ministerial Expert Panel on Voluntary Assisted Dying. Most of us, having grown up and lived in a liberal democracy with a healthy scepticism for authority and an individualistic identity, likely have no problem questioning advice from a medical practitioner or directions given to us by our family or friends. That may not be the case in different cultures. Other cultures may have very different views about where the individual sits in society, and they elevate community above individual. They may have family-based or community-based decision-making processes rather than individual-based decision-making processes. There may be concerns about language barriers. What do we do with someone with English as a second language who does not quite grasp the technical language used by the medical practitioner when discussing voluntary assisted dying?

It has been put to me that questions about this might best be addressed in the Committee of the Whole House. I think the Committee of the Whole process would be suitable for addressing most of the concerns I have with this bill; however, when I look around the chamber and at the lack of melanin and the make-up of the Legislative Council, I am not so sure that questions about cultural attitudes towards assessment of capacity and consent will be as easily answered in the Committee of the Whole House. It may be more appropriate in those instances to solicit evidence and witnesses from people from unique cultural backgrounds, who can give the Standing Committee on Legislation their take on what voluntary assisted dying means to them and the effectiveness of the safeguards built into the legislation. As the previous speaker Hon Robin Chapple said, there are hundreds of various tribes, groups —

Hon Robin Chapple: And views!

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Hon AARON STONEHOUSE: — and views clumsily clustered together as Indigenous people. They are not one homogenous group with one view shared across the various groups that can be boiled down into a single view on the Voluntary Assisted Dying Bill and its 184 clauses. There may be merit, therefore, in having a select committee look at the issue of culturally appropriate end-of-life choices for not just Indigenous people but all people. I am mindful that discharging the bill in such a way will result in a delay. It has been put by other speakers that the proposed reporting date of 11 February may be a little too early. I fear that it may be too late. If there is the will, it may be possible to have an earlier reporting date. I wonder whether members would consider amending the reporting date to the end of January, because that will allow members to consider the committee's report before returning to Parliament in 2020. I am advised that a committee can table a report when Parliament is not in session by tabling it to you, Madam President. If that is the case, that would allow members to consider the committee's deliberations and report in detail before we resume the debate in February. I will not move that now because I have not had an opportunity to canvass support across the chamber for such an amendment and, to be honest, I am not sure whether it would make much difference. Despite the delay this would cause—I have said this about potential delays caused by the Committee of the Whole House and other Legislative Council processes during other debates—I would much rather err on the side of more than less scrutiny, especially when we are dealing with such a serious matter.

As I said last week, I will support the second reading of this bill. I support the right of individuals to make choices about their own bodies and I support voluntary assisted dying in principle, but it is imperative that we get this right because the price of making a mistake is too severe to pay. If we can get the bill right and address concerns about Indigenous persons, palliative care in regional communities and culturally appropriate end-of-life choices, a delay of four months is a small price to pay and perhaps it is warranted in this case. Therefore—I am doing this from the floor without a prepared motion so let me see whether I can get this right—I will move to address my concern about the scope of this discharge motion by seeking to remove part (2), which makes specific reference to the policy of the bill, so that the scope of the committee inquiry can instead focus on part (3), paragraphs (a), (b) and (c). I am mindful that under the standing orders, the committee may have the power to inquire into the policy regardless of what is in the discharge motion, but I think it might help to provide clearer guidelines to the committee when it begins its inquiry to remove specific reference to the policy. If it begins such an inquiry, the committee would look at the motion to discharge to inform the scope of the inquiry.

Amendment to Motion

Hon AARON STONEHOUSE: I move —

To delete part (2).

Point of Order

Hon SIMON O'BRIEN: I am sure that if you would contemplate this, Madam President, it might be beneficial for all members. I suggest—this is not entering into the debate but is simply a point of order—that if the second reading question has not been resolved, the policy of the bill has not been established by the house. Therefore, I think it is very difficult for you to entertain the amendment to the motion that has been put forward. Indeed, it has been the practice on solid grounds for as long as I can remember—at least my long-term memory is reasonably intact—that a bill referred to a committee for examination and report before the second reading is referred for consideration, including examination of the policy. I understand that the member is very well motivated in what he is proposing, but if the question of the policy of the bill has been decided and after the second reading a referral motion is entertained, that is when the position is that the policy has been decided and is not therefore available for further examination unless so ordered. I throw that in for your consideration, Madam President.

The PRESIDENT: In thinking about the point of order moved by Hon Simon O'Brien and taking into account the proposed amendment to the motion, I refer members to schedule 1(4), clause 4.4, which states —

Unless otherwise ordered, any amendment recommended by the Committee must be consistent with the policy of the bill.

As I understand it, retaining part (2) of the motion will enable the committee to look at the policy of the bill. I listened to Hon Simon O'Brien, who discussed at what stage the policy of the bill could be looked at, depending on whether the referral happens now or after the second reading debate has been completed. I think that if Hon Aaron Stonehouse seeks to remove part (2), that would restrict the committee in terms of what it can look at.

Hon AARON STONEHOUSE: It is certainly my intent to narrow the scope of the committee's inquiry. If it is not out of order, that is why I have moved my amendment to the motion. I want to narrow the scope of the inquiry to help the committee in its inquiry to understand that the Council's intent is part (3)(a), (b) and (c), not a wideranging review of the entire policy as allowed for by part (2). There was a point of order, so I am not sure whether I am speaking on my amendment to the motion, but it is certainly my intention to amend the motion. To make it clear to members, my intention is to narrow the scope of the committee's inquiry, and removing part (2) will help the

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committee because specific issues referred to in part (3)(a), (b) and (c) warrant further investigation, and I would like the standing committee to undertake that. I leave it there for members to give their thoughts.

The PRESIDENT: I am going to work my way through this, members. I am not going to uphold the point of order, but I am going to enable the amendment moved by Hon Aaron Stonehouse to proceed to see what the view of the house is on the question. I am going to deal with the amendment to the motion moved by Hon Rick Mazza. Hon Aaron Stonehouse has moved that part (2) be deleted; that is —

- (2) The committee has the power to inquire into and report on the policy of the bill.

Debate Resumed

HON NICK GOIRAN (South Metropolitan) [5.50 pm]: I rise to indicate to the honourable member my reluctance for the amendment. I understand why the member has moved it and I do not begrudge him moving it at all. I simply make this point: I have a longstanding record, including eight years when we were in government, of saying that if as a chamber we are going to invest the time of members of Parliament to look into a bill, why would we stop them from telling us whether they find a problem? If the Standing Committee on Legislation looks at a bill and identifies a problem—for example, some of the things that Hon Martin Aldridge has been trying to get answers from the government about on the intersection with federal law—why would we block it from saying something about that? I have never understood the need to restrict a committee. My approach has always been, whether in government or opposition, to give the Standing Committee on Legislation as much latitude as possible.

I understand why the honourable member has moved the amendment. I accept that it is moved with the greatest of respect and intent, and no doubt others will have a different view, but if I were to serve on the committee, I would want the freedom to look at all the issues associated with the bill, not just one particular thing. I find it difficult to support the amendment in those circumstances.

HON RICK MAZZA (Agricultural) [5.52 pm]: I rise to say that I will not support the amendment to the referral motion. I understand that Hon Aaron Stonehouse is trying to narrow the scope, but at the end of the day the Standing Committee on Legislation will report back to the house on 11 February, so regardless of whether the policy of the bill is included, the committee will still be subject to that time frame. I am very concerned that if the committee does not inquire into and report on the policy of the bill, some of the other issues may not be able to be properly investigated and there will be no correlation between the policy of the bill and how it relates to Aboriginal people. I will not be supporting the amendment.

Amendment put and negatived.

Motion Resumed

HON JACQUI BOYDELL (Mining and Pastoral — Deputy Leader of the Nationals WA) [5.53 pm]: I rise to indicate that I will not be supporting the motion to refer the Voluntary Assisted Dying Bill to the Standing Committee on Legislation. The intent of the motion is to look into the policy of the bill. I refer in particular to part (3)(a), which states —

consult with and take evidence from Indigenous persons including those residing in regional and remote communities in the state;

I attended consultations undertaken by the ministerial expert panel in the Kimberley, Pilbara and Gascoyne, and note that Aboriginal people attended. They did not attend all those consultation sessions, but certainly they were at some of them.

I also believe that the approach to the Voluntary Assisted Dying Bill and the way it has come to this house has been like no other piece of legislation. The Joint Select Committee on End of Life Choices considered the policy intent of voluntary assisted dying and presented its findings to Parliament and the government. The government's response to the committee's report was for the ministerial expert panel to consult widely with Western Australians in a way that I have not seen done, certainly in my time as a member of this house, with any other piece of legislation. The ministerial expert panel then reported to government, and members have had access along the way to the findings of both the joint select committee and the ministerial expert panel. Opportunities have been given not only to Aboriginal people, but also members of the public in Western Australia. I am not sure that referring the bill to the Standing Committee on Legislation, under part (3)(a), will encourage any more Aboriginal people than have already done so to engage with government. I agree with Hon Robin Chapple in that, like any other cultural group, there will be variations of what Aboriginal people think is acceptable and what is not. That is eminently the way of human nature, and people have differing opinions. I am not sure how referring this bill to the legislation committee will help the house deliberate on this bill.

I do not believe that referring the Voluntary Assisted Dying Bill to a committee can stop the investigation of palliative care for Aboriginal people who reside in this state. That should be done on an ongoing basis anyway. Is

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that a reason to refer this whole bill to the legislation committee? I do not think so. We still have the implementation period to go, should the bill pass this house. Those things that have been outlined, particularly by Hon Nick Goiran, as issues raised by the ministerial expert panel, the joint select committee and us as members when we got feedback from people in our electorates, are absolutely valuable and viable issues that should be considered by the Committee of the Whole House and by the government during the implementation period. We are yet to see that. It is not as though I think they should not be addressed; I do think that the issues that have been raised should be addressed, and the government has set out a plan on how it will do that.

I do not know how the committee will be able to undertake to report on whether the bill provides culturally appropriate end-of-life choices when there are differing versions of cultural appropriateness when managing end-of-life options for Aboriginal people in particular, as the motion refers to, but also for people from other cultural backgrounds. That, again, should be considered in the implementation period, and also, should the bill pass the house, in the management of cultural awareness when health professionals are delivering access to voluntary assisted dying. Those issues will need to be addressed by its navigators, whether they are care providers, GPs or specialists. All health professionals should be culturally aware in the delivery of end-of-life choices.

There has been a lot of reference to Senator Patrick Dodson and his comments published in *The Weekend Australian* of 5–6 October. I highly respect Senator Patrick Dodson, but he is only one person who represents a view—I say that with the greatest of respect to him—and he has had the opportunity to put that view. I would like him to have put that view to the select committee or the ministerial expert panel because he had the opportunity to do so.

I just want to quote some of his comments in that article that refer to cultural awareness and the viability of cultural appropriateness, in his view. He said —

First Nations have always been about survival and balance. Death is about returning your body to the place in the land your spirit to the sky. Your ... essence) —

Or your soul —

may return as part of a newborn member of your people. So, life and death are interwoven with country, community and creation. It is simply not just about the individual leaving this world. It is about being intrinsically interwoven with the dynamic of nature and the powers that sustain it.

There has already been some commentary by members about First Nation people's collectivist approach to life, which all members of the house respect highly. I have no doubt that Aboriginal people will consider cultural appropriateness when making a decision to access voluntary assisted dying should the bill pass the house. Those are considerations for individual people—I come back to the fact that this is a voluntary process—and I do not believe that this house could ever provide culturally appropriate delivery of end-of-life care services or palliative care services that address fully all issues of Aboriginal people, and also other cultural issues. Therefore, I cannot support the motion.

I thank the member for the discussion. It is entirely appropriate, relevant and sensitive, so I have tried to give it due respect. But I believe that a consultation period has been offered and Aboriginal people were at the consultations of the ministerial expert panel that I was at. I believe that the implementation phase was a way to address some of those issues. I thank members, but I will not be supporting the motion.

Sitting suspended from 6.01 to 7.30 pm

HON TJORN SIBMA (North Metropolitan) [7.30 pm]: Before the suspension, I did not have the opportunity to make a very brief contribution to the motion moved by Hon Rick Mazza. I do not feel restricted by the time constraints that I may have laboured under previously, but nevertheless I will keep my remarks brief.

At the outset, I do not support this discharge and referral motion. I say that while acknowledging the great respect that I have for Hon Rick Mazza. Certainly he is a person of integrity, and I believe that the motivation for this motion is absolutely well placed. However, for three very short and sharp reasons that I will outline, I disagree with it and I question the wisdom of it. First of all, in my previous speech, a lot of my position was arrived at by an assessment of the public will. That is an imperfect measure but, nevertheless, I think it is very clearly the public will across all of Western Australia that this bill be passed and that it be subject to appropriate scrutiny here, but that that scrutiny not unduly delay the passage of the bill. Irrespective of the time period that may be set for this committee to report—I reflect on the attempt to amend this motion by Hon Aaron Stonehouse, who made a sensible contribution to this amendment—I believe that any delay to this legislation is, frankly, unwarranted. I believe that the issues that are canvassed in the motion can be appropriately dealt with during Committee of the Whole.

To do it some credit, the government has engaged in an extensive consultation process. I am not necessarily convinced of the merits of opening this up further. I think the prospects through which that inquiry might deliver

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a product or review are highly questionable. I just reflect on part 3(b) of the motion, which deals with the notion of palliative care for Indigenous persons residing in regional and remote communities in the state. I make the observation that, as I have said in this place before, a key consideration for me in arriving at my position to support this bill was an agreement with the Minister for Health that in the next health budget, a clear line of sight will be provided about palliative care funding, as an individual service line. I do not consider that further investigation of the provision of palliative care in the regions will contribute much more to the exercise than the government has already provided. Frankly, I did that for a reason—to bind future governments to honesty and to appropriate service provision of much-needed clinical care at the end of life to all Western Australians from the next budget onwards. I did that for a very important reason. It was a key consideration of arriving at that position. With the greatest of respect, I do not see part 3(b) of the motion contributing much more than that.

Other speakers, including Hon Robin Chapple, reflected on the very homogenous view that we have taken of Aboriginal and Indigenous people in this state. I am by no means a sophisticated appreciator of the Indigenous legacy in this land. That is to my shame. But I know as much not to put all Aboriginal people into one group. I think that is a great injustice. I think that is unsophisticated and naive and it undermines another reason I have chosen to support this bill, which is the upholding of the notion of individual agency and autonomy. I do not agree with grouping people into ethnic blocks. It is fundamentally why I have a problem with the general way in which we transact multicultural policy across Australia and in this state as well. I say that as the grandson of two different migrant streams and the father of a son who is half Lebanese.

That is where I will leave it. I agree with the intent of the motion—I think it is well placed—but I do not support the effect. I will not be supporting the amendment moved by Hon Rick Mazza.

HON KYLE MCGINN (Mining and Pastoral) [7.36 pm]: I rise to briefly put on the record my comments on the motion moved by Hon Rick Mazza. I will reflect pretty quickly on the speakers who have already spoken to this motion. Hon Jacqui Boydell, who is obviously in the same electorate as me, very clearly touched on the fact that there had been plenty of consultation and the Ministerial Expert Panel on Voluntary Assisted Dying travelled throughout the Mining and Pastoral electorate. There has been so much discussion about the inquiry from every parliamentary office across our electorate. I have put out surveys and have received plenty of feedback.

During my speech on the second reading, I spoke about an Indigenous navigator. I am waiting to hear a response from the government when it replies to the second reading. I acknowledge that we need to tread very carefully in this space and make sure that there is an understanding. When a minority group has a history of disadvantage within the health system, the last thing I want to do is be part of a bill that creates a bigger issue. I also think we have a really good capability within the regions, with plenty of Aboriginal organisations that work closely on the ground within communities. Bega Garbarringu Health Service in Kalgoorlie is a prime example. The work it does in the Indigenous space is second to none. It has a really good understanding. I am hoping to hear from the government. If I do not get a response in the reply to the second reading, I will be pressing further during the committee stage to ensure that when the implementation is carried out, all the Indigenous groups are brought in, not the select groups, with some missing out. As Hon Robin Chapple said, there are heaps of different groups and some talk to each other and some do not. That needs to be considered at the implementation stage. I believe that it will be. I think the government is taking a very responsible approach to it. The main thing is that when someone is in need of a navigator, it should be culturally appropriate and not, say, a Noongar from Perth dealing with Martu out in Kalgoorlie. They are some of the key things that I am hoping the government will commit to. I do not think that taking the legislation to a committee to look at again will be much clearer than what will occur at the implementation stage when the resources are on the ground.

Listening to a lot of the speeches throughout this debate, I have come to realise that regardless of how great palliative care is and whether people receive the best palliative care ever, it will not help some people with pain et cetera. Looking into palliative care specifically, I think we will find the same things that we already know about palliative care. As other members in this chamber have already said, there will continue to be a focus on palliative care moving forward if this bill passes. I think it will be under the microscope a lot more than it has been and I think that is a great thing for palliative care, particularly in the regions. I cannot support the motion. I will leave it there.

HON PETER COLLIER (North Metropolitan — Leader of the Opposition) [7.39 pm]: I rise as a humble member for the North Metropolitan Region to make a few comments on this motion. Members of the Liberal Party, as with the bill itself, have a conscience vote on this motion, so I am not aware of how my colleagues will vote on it. I feel duty bound to say that because of what I, quite frankly, regard as the intemperate and at times insulting comments of the Premier about this bill. His comments about intimidation and bullying that is apparently going on on this side of the chamber are completely unfounded. From my perspective, I personally feel insulted. That will mean nothing to the Premier, but it means a lot to me. I am making these comments as an individual.

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The construct of this bill has been given thorough assessment over a number of years. It has been made quite evident through the reports that have been provided that there is an extraordinary number of disparate views on the issue we are dealing with from members of the legal profession, the medical profession, the Aboriginal community, and the community in general. There are a large number of disparate views, and never the twain shall meet. I am not sure that referral to the Standing Committee on Legislation will resolve those issues. In fact, I know that it will not; it simply will not. Having said that, I applaud Hon Rick Mazza for having the courage and conviction to move this motion because, again, comments made in the other place have been insulting to almost every one of us in this chamber—saying that we should somehow just rubberstamp this legislation. No amendments whatsoever were countenanced in the other place, which is extraordinary for a bill of this magnitude. It will change the fabric of a tenet of our society, but somehow we should not assess this piece of legislation thoroughly and meticulously. I take on board the motives of the mover of the motion. The bill is imperfect in a number of ways and is made more defective by the notion that no amendments were countenanced in the other place. That disappoints me. Most pieces of legislation that come to this place are amended in some shape or form. We do that because we improve the calibre of the legislation. It goes back to the other place and in two minutes—bang!—the amendments are accepted. As I said, this piece of legislation, which will shift a fundamental tenet of our society, deserves due scrutiny, and I think we must give it due scrutiny.

Having said that, one area brought up by the motion is to do with Aboriginal people. Members who listened to my contribution to the second reading debate will know that I brought this up. As a former Minister for Aboriginal Affairs, I am very conscious of the extraordinary disparity that exists between the quality of health care that is provided for Aboriginal people—particularly in the north of this state—and non-Aboriginal people. That in itself is problematic. If general health facilities are lacking for Aboriginal people, members can imagine the deficiencies that must exist in palliative care. As a former Minister for Aboriginal Affairs, that pains me. We went through an entire process with the regional services reform. I personally went up to the Kimberley and right throughout the state on a number of occasions to access the views of Aboriginal people, which are as disparate as any cultural diversity that exists in our community. Ideally, as a result of changes that will be made as a direct result of commitments that have been made as a result of this bill, things may just improve. Coupled with the regional services reform, I like to think that in five, 10 or 20 years it will not matter and we will not talk about the quality of life of Aboriginal people and non-Aboriginal people because we will be in the trenches together and the quality of life for all Western Australians will be the same.

Having said that, I think that the bill has been given a significant amount of consideration in its construct. I have made my position clear that I will not be supporting the second reading, but I think that the most effective manner in which we can scrutinise the bill from this point forward is through the Committee of the Whole House stage as opposed to referring it to a committee. For those reasons, I will be doing my fair share of scrutiny of the bill during the committee stage, but I do not think we need to refer the bill to the Standing Committee on Legislation. I do not think we should delay the second reading or the scrutiny of the bill any further. For that reason, I will not be supporting the referral.

HON COLIN TINCKNELL (South West) [7.45 pm]: During my second reading contribution I gave my reasons for my position on this issue. I will be supporting this motion and the referral to the Standing Committee on Legislation. I talked about the concerns I have about this bill and the gaps in it. This is one of those gaps. I would like to see further consultation with Aboriginal groups. I have listened to members' contributions; they have been very valuable and pointed out very pertinent and important matters. That is the value of debate in this house, which will continue with this bill. I would like to see further evidence of consultation with Aboriginal people on this bill. I do not believe there has been enough. I have said before that I would like to see greater palliative care in Aboriginal communities. I know that it is virtually non-existent.

We talk about cultural appropriateness. Hon Aaron Stonehouse brought up an amendment to the motion and I could see what he was about. It was a worthwhile discussion. We often say that we listened to this group or that group. When it is convenient for us, we group them all together, but when it is not convenient for us, we separate them and say that it is too hard because there are too many groups and too many diverging views. That is true in the case of Aboriginal people. I understand that, but that is the business that we have been charged with in this house—to look at this bill and, if it is to go through and be approved, to make it as safe and —

Hon Colin Holt: Effective?

Hon COLIN TINCKNELL: Effective is one word, but I am thinking about vulnerable groups, and Aboriginal people are certainly one of those groups who will be in a vulnerable position if this bill goes through. If we do not consult with them well enough, their understanding of this bill and the ramifications of voluntary assisted dying will be less than it should be. I will be supporting the referral to the Standing Committee on Legislation.

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HON MARTIN ALDRIDGE (Agricultural) [7.48 pm]: I rise as a member who supports the second reading of this bill to indicate that I will be supporting the motion moved by Hon Rick Mazza to refer this bill to the Standing Committee on Legislation. I do so with a long-held view that as we approach the consideration of this bill, which has been anticipated for many months, if not years, I would find it very difficult to find a reason to be compelled to vote against closer scrutiny and examination of a bill of this nature in the context of the many other bills that we have referred to the legislation committee. I do not have the confidence that other members have professed so far during the debate that this bill is as close to perfect as perfect can be. I think there would be no harm in referring this bill to the legislation committee, which has proven itself to be a body of members that has, time and again, if not on every occasion during this Parliament, suggested amendments that improve the substance of the bills that the house has referred to it. I am certainly not convinced that this bill has been through a process of consultation like no other and therefore has no faults. My concern is that addressing those faults on the floor of the Committee of the Whole House will have, in itself, flaws and faults. Members need only look back at some of the bills that we have considered in the last two years and the way in which amendments were rushed together on bits of paper. I think that has resulted in some less-than-ideal outcomes when we reflect on those decisions in the cold, hard light of day. I suspect—to some extent, we have seen already—that significant amendments to this bill will be brought forward by a number of members. I strongly believe that the best way to sort some of those areas on which we may have different views is to have a committee of this place examine those issues more fully and make recommendations to the house, where it can, for improvement.

Regarding part (2) of the motion, my initial view was that my motivation was to have the bill subjected to a technical examination to make sure that it will do what the government intends it to do, and where it is deficient, to make recommendations for improvement. I was initially inclined to support the amendment moved by Hon Aaron Stonehouse to this motion, but I think that there were some good arguments to keep the original wording in place. When we were dealing with the Human Reproductive Technology and Surrogacy Legislation Amendment Bill, I argued that we did not want to restrict the legislation committee if it found a matter of substance that it wished to report upon. We need to keep in mind that part (1) of this motion confines the reporting date to 11 February 2020. Obviously, the committee's overriding constraint will be that reporting time frame, to allow the Legislative Council to then consider the bill post-report. In some respects, that may well assist, if not expedite, the Committee of the Whole's consideration of this bill by us being able to rely upon the work of the legislation committee in navigating some of the very complex issues.

I, for one, have been a member who has tried to attend all the forums that have been held in Parliament House by the subject-matter experts who have presented on this bill, including today, when we heard from two neurologists about their experience with motor neurone disease. It was quite a compelling presentation by those two individuals. I thought that they had probably articulated a way forward in dealing with the issue of having specialist expertise without unnecessarily restricting the operation of, or access to, voluntary assisted dying in Western Australia. Perhaps some of that middle ground can be better navigated in the environment of a legislation committee examination versus on the run in the Committee of the Whole stage, when we seem to have a time constraint put on members to have this matter settled by Christmas.

On the policy of the bill, I take Hon Simon O'Brien's point that we have not yet had a second reading vote; therefore, the policy of the bill is not yet formally settled. But I think all members can count. This bill has had very significant input by nearly all members of this house, and I suspect that by the time we get to a second reading vote, there will have been input by all members. Most members have been very explicit about the way in which they are going to vote. Those people who have been following that progress will know that a clear majority of members intend to support the second reading vote of this bill—some 22 to 23 members, on my count.

I find it difficult that for others who have obviously had the value of the Joint Select Committee on End of Life Choices inquiry, which I understand took some 12 months, the Ministerial Expert Panel on Voluntary Assisted Dying process and cabinet consideration, this journey has taken some two and half years, but we, as a house of review, are now expected to consider and settle this matter in six sitting weeks. Some comparisons should be drawn between the expectations of others about the way in which this house should expedite this bill in a very quick fashion, and the view that the primary motivation of any move, such as this motion, to provide some further examination or scrutiny is one of unnecessary delay. I refute that. That is certainly not my motivation in supporting the motion moved by Hon Rick Mazza.

I am not confident that when we get to the Committee of the Whole stage, we are going to be able to examine the issues that will confront us all as we proceed through the course of this bill in the same way that the legislation committee would be able to examine them. The legislation committee has much broader scope to deal with these issues—it can consult with others, summons documents, hear from witnesses and correspond with the commonwealth

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government and other key stakeholders on a range of matters. Obviously, we cannot do that in the confines of the Committee of the Whole process, which is now likely to be fewer than five weeks in length.

We also do not have the opportunity of having the minister responsible for this bill in this house. Although I have enormous respect for Minister Dawson, he has not had the carriage of this issue from the beginning and he will be limited in the way in which he can respond to some of the answers in Committee of the Whole. It is no criticism, but we have seen those limitations on ministers in this place who represent ministers in the other place—sometimes undertakings are made and sometimes undertakings are not kept. We have that inability to perhaps go as deep as the other place with respect to having ministers at the table who have had direct responsibility for this bill.

I do not want to delay this matter any further, but I want to finish with two points. One is that members will be aware that I have been pursuing the issue of the intersection of the federal Criminal Code and the Voluntary Assisted Dying Bill 2019 since early September. For those members who think that I am being pedantic on this issue, I am not: it has very serious consequences for the way in which the government implements the regime in Western Australia. Indeed, potentially there could be limitations placed on its implementation in Western Australia. As far as I can tell, this matter was raised with the state only as late as 21 August 2019. I am not quite sure when the bill was introduced into the Legislative Assembly but I suspect it might have been around or before that time, so I am pretty certain that these matters were not fully contemplated when this bill was drafted by parliamentary counsel, with the support of the ministerial expert panel and the approval of cabinet. That is one aspect that I think remains outstanding. On four occasions, I have requested that the government provide its legal advice or a summary of its advice or, indeed, even the correspondence between the state and the commonwealth. I recognise that the Leader of the House is assisting me and we have had conversations behind the Chair as late as today on this matter, and that has been helpful. But the answer I received in question time today was that the Minister for Health regrets that he is unable to provide to the Parliament the information that I seek. I am not sure whether that situation is going to improve when we get to the Committee of the Whole stage. Certainly in my mind, that is a very significant issue that will affect my constituents and, indeed, constituents of all members who represent regional or remote Western Australia in terms of being able to reasonably access this legislation.

There is another matter that I want to reflect on. Although I have not seen this and I may be mistaken, standing order 128 is the section of our standing orders on referral to a committee. As I read it, that standing order anticipates that a referral to a committee may occur at any stage once the second reading is moved and prior to the third reading being moved.

Obviously, if Hon Rick Mazza's motion does not succeed this evening and if members are not satisfied with the way in which the government engages during the Committee of the Whole House, when members appear to have some confidence in the government's ability to undertake the scrutiny on the floor of the house that this bill requires, it appears to me that under standing order 128, the house would have further opportunity, if matters remain unresolved, to consider a further referral of the bill at a later stage in the consideration of this potential law. With those few remarks, I outline why I support this motion to refer this bill to a committee. My comments have referred largely to parts (1) and (2) of the motion. I listened carefully to the debate on part (3). I must say that my experience and engagement with the Aboriginal community in my electorate does not necessarily reflect the views that members have put. But I respect those views and I am certainly not in a position to provide a view on whether that consultation process has been thorough enough or whether further accommodations need to be made to sections of the community, such as those outlined in part (3) of the motion. Thank you.

The PRESIDENT: Visitors in the gallery, I ask that you resume your seats, thank you.

Division

Question put and a division taken with the following result —

Ayes (6)

Hon Martin Aldridge
Hon Nick Goiran

Hon Charles Smith
Hon Aaron Stonehouse

Hon Colin Tincknell
Hon Rick Mazza (*Teller*)

Extract from Hansard
[COUNCIL — Tuesday, 22 October 2019]
p7994d-8019a

Hon Nick Goiran; Hon Robin Chapple; Hon Aaron Stonehouse; Hon Simon O'Brien; President; Hon Rick Mazza; Hon Jacqui Boydell; Hon Tjorn Sibma; Hon Kyle McGinn; Hon Peter Collier; Hon Colin Tincknell; Hon Martin Aldridge; Hon Adele Farina; Hon Diane Evers; Hon Dr Sally Talbot; Hon Stephen Dawson

Noes (29)

Hon Ken Baston
Hon Jacqui Boydell
Hon Robin Chapple
Hon Jim Chown
Hon Tim Clifford
Hon Alanna Clohesy
Hon Peter Collier
Hon Stephen Dawson

Hon Colin de Grussa
Hon Sue Ellery
Hon Diane Evers
Hon Donna Faragher
Hon Adele Farina
Hon Laurie Graham
Hon Colin Holt
Hon Alannah MacTiernan

Hon Kyle McGinn
Hon Michael Mischin
Hon Simon O'Brien
Hon Martin Pritchard
Hon Samantha Rowe
Hon Robin Scott
Hon Tjorn Sibma
Hon Matthew Swinbourn

Hon Dr Sally Talbot
Hon Dr Steve Thomas
Hon Darren West
Hon Alison Xamon
Hon Pierre Yang (*Teller*)

Question thus negatived.

Second Reading Resumed

HON ADELE FARINA (South West) [8.05 pm]: The Voluntary Assisted Dying Bill 2019 has generated a great deal of community debate, as it should. Wherever I travel throughout the south west, people want to stop me to tell me their views and urge me to support their particular position on the bill. The bill raises a number of really complex issues and understandably has polarised the community. If the bill passes, it will present a significant shift in our society. It will provide a lawful option for some at the end of their life to terminate their life earlier than would otherwise be the case. Every member in this chamber bears a heavy responsibility in our consideration of the bill. I have lost much sleep over this bill and how I should vote. I have no doubt after listening to other members' contributions that every member in this place is motivated by good intention in reaching a position on the bill, regardless of whether they support or oppose the bill. The fact that members have reached different positions is not a reflection on whether they are doing the right thing, but rather a reflection of the complex issues addressed by the bill and the different personal experiences members bring to this place. It also reflects an understanding that this bill delivers a significant shift to the current situation; once this door is opened, it is very unlikely to be closed again.

I have really struggled to form a position on the bill. For a person who is usually pretty decisive, this is new and not a very pleasant experience. I have oscillated between support for and opposition to the bill, and I continue to struggle in making a decision. People have suggested that the question is very simple: do I want choice in determining how I die? My answer to that question is: yes, I would like to die peacefully in my sleep. I think most people want to die peacefully in their sleep; however, few of us will. Perhaps due to the wide reporting that I am undecided, I have been inundated with people wanting to meet with me on this issue. To the best of my knowledge, I have met with everyone who has contacted my office asking to meet with me over the past year or so, perhaps with the exception of any requests that have come in over the last few days while Parliament has been sitting. Like other members, I have received thousands of letters, emails and phone calls to my office. The majority of representations I received in my office have been in opposition to the bill. In recent weeks, the gap has closed somewhat, with 55 per cent opposing and 45 per cent supporting the bill. I want to thank everyone who took the time to share their views with me on this important bill, both those in support of and those opposed to the bill. Many people shared very personal stories of the harrowing death of a loved one. For many, that experience was still very raw and it was very emotional for them to tell their story. I most sincerely thank all those who shared their personal stories with me. I appreciate how difficult it was for many of you and your stories moved me, often to tears.

I would also like to thank the many doctors, both those supporting and those opposing the bill, who took the time out of their busy schedules to inform me of their views, answer my many questions, and give me the benefit of their medical and lived experiences. In the main, I found people to be genuinely motivated in the position they held and moderate in putting their views to me. Of the people I spoke with who asked me to support the bill and had experienced the suffering of a loved one at the end of their life, most had not discussed voluntary assisted dying with their loved one and did not know whether their loved one would have accessed voluntary assisted dying if it had been available. Despite the view expressed by many that there has been extensive consultation on the bill, I have been surprised by how many people supporting voluntary assisted dying do not know the details of the voluntary assisted dying scheme proposed by the bill. Some thought the bill provided choice to every person nearing the end of their life to choose how and when they would die, regardless of whether they had a terminal illness, with some saying to me, "I want the right to choose when and how I die", or, "When I can't do things for myself anymore, I want to choose to die with dignity." In some cases I found myself having to explain that voluntary assisted dying, as proposed by the bill, would not have alleviated the suffering of their loved one at the end of their life as their loved one did not have a terminal illness and therefore would not have been eligible to access voluntary assisted dying. When I ask people in support of the bill about their views on various aspects of the bill of concern to me, many said that they were not across the detail of the bill and that it was Parliament's job to consider the details and make the necessary amendments to improve the bill.

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I have been surprised at how quickly those in support of the bill have been to characterise those opposed to the bill as religious zealots, and dismiss their views. This is neither helpful nor respectful. Although some of the people I spoke with who opposed the bill did so from a strong religious base, not all who oppose the bill do so on the basis of their religious views. Many expressed genuine concerns, and these included the risk to the vulnerable in our community; that no safeguards can be rigorous enough to ensure that not one wrongful death would result; that they sought an inevitable subtle pressure on those at the end of their life to use voluntary assisted dying and not be a burden on their family; that faced with an inability to access appropriate end-of-life health care, people would view voluntary assisted dying as their only option; concern about the lack of rigour in the assessment of decision-making capacity and the assessment of the loss of decision-making capacity; and, that legalising for the termination of life crossed a threshold that should not be crossed. Although not everyone may agree with these concerns, it does not and should not diminish these concerns genuinely held by people opposing voluntary assisted dying. I concur with Hon Donna Faragher's view that people should not presume that members who vote against the bill lack compassion, do not care about or understand what it is like to see a loved one with a terminal illness suffer a prolonged and difficult death at the end of their life.

My dear dad had many health issues, including prostate cancer, lung cancer and early stages of asbestosis, among a long list of other health problems. He experienced a prolonged end of life and suffered a lot of pain. The medications for his pain really knocked dad about, causing hallucinations, depression and, at times, aggression, and they were not always effective in managing his pain. As the lung cancer progressed and his breathing became more laboured, dad required oxygen. Dad was unconscious for three and a half weeks, slowly dying of dehydration, starvation and organ failure. I was by his bedside throughout, and my family and I experienced great anguish seeing dad suffer and struggle to breathe. I understand why proponents of voluntary assisted dying use the phrase "dying with dignity" to promote their cause; however, I have difficulty with what this statement implies. It implies that my dad and those who died a difficult and painful death did not die with dignity. I challenge this. I think my father died with dignity and great bravery. With his final breath he went gently. Dad died at home, as he wanted, with the love and support of his family. Although watching dad suffer a prolonged death caused me and my family great anguish, I was more than willing to care for him and spend this time with him and I would do it all again.

Andrew Denton of Go Gentle Australia, in advocating for voluntary assisted dying, put to me that not everyone's pain can be palliated, and that even though it is a small number of people whose pain cannot be palliated, surely I would not want them to suffer agonising pain at the end of their life and surely I would support voluntary assisted dying if that was the only way to alleviate the suffering. It is very difficult not to be moved by this argument. It is important to note, however, that the bill does not mention pain or pain that cannot be palliated. If this were a criteria in the bill, I may be more comfortable supporting the bill. The relevant eligibility criteria in the bill refers to the person having a terminal illness that is causing suffering to the person, that cannot be relieved in a manner that the person considers tolerable. The bill provides no definition for the words "suffering" and "tolerable", and the truth is that under the bill, a person with a terminal illness that is likely to cause death within six months and whose pain is being well managed but says they are suffering and that their suffering is intolerable could access voluntary assisted dying. The cause of the suffering could be a loss of will to live; no longer being able to participate in the things in life that gave that person enjoyment; not wanting to be a burden on their family; fear of future pain and loss of control or dignity; or an untreated mental illness or depression. This widens the group of people who may be eligible to access voluntary assisted dying to many more than the small but important number whose pain cannot be palliated. The fact is that aged people at the end of their life who do not have a terminal illness may experience that same range of suffering. They could experience suffering due to the loss of a will to live; no longer being able to do the things that gave that person enjoyment; not wanting to be a burden on family; fear of future pain or loss of control or dignity; or an untreated mental illness or depression. This begs the question of why greater weight, and therefore access to voluntary assisted dying, should be given to the suffering of a person with a terminal illness that is not related to the pain that cannot be palliated as opposed to similar suffering of an aged person without a terminal illness. This question has been put to me, and it is difficult to answer. Both are at the end of life, although in the latter case the time of death is unknown and may be longer than six months. It is this desensitising of voluntary assisted dying in order to make it more palatable that causes my unease with the bill.

The use of the term "loss of dignity" is understood to be a loss of toileting control or requiring assistance with toileting. Are we really saying that a person with a terminal illness and expected to die within six months who is experiencing intolerable suffering due to a loss of dignity should be able to terminate their life? Hon Alison Xamon expressed her concern about the language used by proponents of voluntary assisted dying and how use of the term "loss of dignity" in this way may be offensive or cause fear to people with disability who need assistance with toileting. I concur with those views and it is awful that this debate has caused people with disability these concerns. My position until about midday today was that I would feel more comfortable with the bill if it referred to pain that cannot be palliated rather than suffering. Then I attended a briefing on motor neurone disease and voluntary

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assisted dying organised by Hon Colin de Grussa, with two specialists in this field. The specialist explained the sorts of suffering experienced by people with motor neurone disease, and it was brought home to me that restricting the definition of suffering to pain would be too restrictive. However, surely we do not intend that a person who is suffering due to a loss of toilet control or depression should be able to access voluntary assisted dying. We need to be clear about what we intend the bill to do and who we intend should have access to voluntary assisted dying and be certain that the wording of the bill does not extend that group of people who can access voluntary assisted dying beyond this point.

Also, we need to ensure that the bill safeguards the vulnerable in our community, including people with disability, the elderly and people with mental illness.

Much has been said about palliative care in this debate, and rightly so. The joint select committee acknowledged the lack of adequate funding and resourcing of palliative care in our state, and it is shocking that in a state like WA many people at the end of life who would benefit from palliative care simply cannot access it. The recent announcements of additional investment in palliative care are welcomed. However, the truth is that palliative care in our state needs a massive investment of funding to bring it to the level that it needs to be at and to increase the number of palliative medical specialists from 15 to 50, which is the appropriate level for the state's population. As a regional member, it deeply concerns me that palliative care services in regional WA are seriously lacking. Generally, people can access a palliative care bed in Bunbury or Busselton only if they are in their last days, being the last week or so of life. This is far too late. Due to insufficient beds, many cannot access palliative care even in their last days. However, I acknowledge that those who can access the beds get excellent care.

Despite most people expressing the wish to die in their own home, 24/7 palliative care is not available in regional WA. In the greater Bunbury area when home palliative care was provided by St John Ambulance, it did provide 24/7 home palliative care. However, under the previous government, the WA Country Health Service took the palliative care contract away from St John of God and decided it would deliver the services itself, and as a result 24/7 home palliative care ceased. It now operates only during business hours. This is less than satisfactory for families who are caring for a loved one with a terminal illness and suffering pain. If there is an incident after hours, they need to take their dying loved one to emergency, and only those who have cared for a dying person understand how difficult this can be and the distress it causes the patient. More palliative care beds are needed in regional WA and we need a plan to roll out home palliative care throughout regional WA. Although I do not necessarily agree with the argument that the focus should be on palliative care and that only when this has been delivered at the appropriate level should we look at voluntary assisted dying, it is disappointing and not at all reassuring that it has taken a debate on voluntary assisted dying for additional investment in palliative care. Other members have referred to the palliative care recommendations of the joint select committee and questioned the implementation status of those recommendations. I endorse these comments and ask the minister in his reply to inform the house of the implementation of those recommendations. I also endorse efforts to ensure separate transparent reporting on palliative care in future budgets.

Before I can support the bill, I need to be satisfied that people living in regional WA will have access to voluntary assisted dying equal to that of people living in Perth. I want to hear from the minister how he will ensure that this is the case. People living in regional WA at the end of life and with a terminal illness should not have to travel to Perth to access the voluntary assisted dying system. Other members have raised concerns about the provisions of the commonwealth Criminal Code Act that make it an offence to use a carriage service for suicide-related material. The bill provides at clause 156 for audiovisual communication to be used by doctors in discussing details of voluntary assisted dying with patients. The same provision states that the provision does not authorise the use of a method of communication "if, or to the extent that, the use is contrary to or inconsistent with a law of the Commonwealth", thus leaving doctors and their patients at risk of breaching commonwealth law. Hon Martin Aldridge has been working hard to get clarity on this issue, with little success. Hopefully, clarity on that issue will be forthcoming in the minister's response to the second reading debate. The minister needs to clarify the legal situation and explain how it intends to ensure that people living in regional WA will be able to access voluntary assisted dying without having to travel to Perth to do so.

Some members have talked about the terrible reality that around 10 per cent of suicides in WA are people with a terminal illness choosing to end their life early while they are physically capable of doing so, and that those who cannot complete the attempt are sometimes left with disabilities. I am sure that all members find this deeply concerning. However, I caution members against suggesting that these suicides could be reduced or eliminated only if voluntary assisted dying is available. There could be a number of reasons why people with a terminal illness suicide at the end of life. Perhaps they were depressed, overwhelmed about how they could cope when things got worse, knowing that appropriate palliative care was not available where they lived and if they had been able to get timely and appropriate treatment and palliative care, they would not have suicided and would not choose to access VAD. VAD should not be advanced as the only answer to reducing or eliminating these suicides. In a state like WA, we

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should be able to do better. We should be able to provide people at the end of life with the health care and supports that they need, regardless of where they live, so that they are able to enjoy quality of life in their remaining time. We should not leave them to feel that they have no choice but to accede to an early death.

The bill provides that a person must make at least two verbal requests and one written request to access voluntary assisted dying as well as obtain two independent medical assessments, and that this should not occur in a period of less than nine days. It is argued that these requirements establish that the person's request to access voluntary assisted dying is enduring. I really struggle to see how this can be viewed as enduring. People are provided with a 30-day cooling-off period for certain financial agreements and it concerns me that we are setting the minimum period for going through the voluntary assisted dying process to such a short period as nine days. Like Hon Nick Goiran, I am of the view that assessing decision-making capacity is not as straightforward as proponents of the bill would have us believe or think. There is a real risk that the person could be led in answering questions, thereby suggesting the decision-making capacity when one does not exist. Equally, it is not that straightforward to assess whether a person truly understands what is being put to them. Vulnerable people could be led to access voluntary assisted dying not fully understanding what they are doing and this concerns me.

A couple of years before dad was diagnosed with lung cancer, which resulted in his death, he was suffering after yet another period of prolonged urinary tract infection due to his aggressive prostate cancer treatment. Dad was admitted into hospital and the doctors wanted to perform a procedure that, in their view, would reduce the risk of further urinary tract infections. Dad made it very clear to me that he did not want the procedure. While dad was in hospital, his treating doctor told me that he intended to talk to dad to persuade dad to have the procedure. I explained that dad did not want the procedure. I also explained that English was not dad's first language. Dad was blind in one eye and did not have his reading glasses with him in hospital, so he could not read any information sheet that may have been provided to him. Dad was also hard of hearing and, like every typical Italian male, refused to wear his hearing aids; he usually agreed with everything people said to him because he did not want to admit that he could not understand what they were saying or could not hear them, and also he liked to please people.

I was concerned that dad would not necessarily understand what the doctor said to him and he would simply agree with the doctor in an effort to please the doctor. It was a Thursday night and I was leaving the hospital to travel down south for meetings in my electorate the next day. I asked the doctor to assure me that he would wait until Monday, when I was back in Perth, to discuss the matter with dad, as I wanted to be present when he talked to dad, so I could assess whether dad truly understood what was being said to him. As far as I was concerned, there was an agreement that he would hold off.

I returned at the weekend to find a very angry and distressed dad. Not only had the doctor had the conversation with dad without me, but also he had performed the procedure on dad. As you can imagine, I was shocked and very upset about what had happened, believing that I had put everything in place to ensure that it would not happen while I was not around. Dad assured me that he did not agree to the procedure. When I raised the matter with the doctor, he informed me that he and a colleague, another doctor, had had a lovely chat with dad and explained the procedure to him. Dad had agreed and signed a consent form. As there was an opening in the theatre, they performed the procedure the same day. He showed me the signed consent form, duly witnessed by his colleague. I let him know in no uncertain terms that I was very unhappy and would be taking the matter further, so he arranged for the other doctor to come and talk to me and assure me that dad had indeed signed the consent form. Dad agreed that they did have a lovely chat. However, from dad's viewpoint, he had not agreed to the procedure but had agreed that he wanted to go home. He said that after this discussion he was given a form to sign and he thought this was necessary so that he could go home. Dad could not read the form without his glasses, so he just signed it. He assured me that he had not agreed to the procedure and did not know that he had signed a procedure consent form. I have no reason to disbelieve dad and I know from our discussions that he would not have knowingly signed a procedure consent form because he did not want the procedure.

Although I am prepared to accept that the doctor did what he felt was in dad's best medical interests, regardless, it was not for the doctor to decide this. It was dad's decision. Some people would call this a clear case of elder abuse or just simple assault, but it should not have happened, and it should not have happened in a hospital in Western Australia.

When advocates of voluntary assisted dying tell me that doctors will not persuade or influence patients to the view that voluntary assisted dying is their best option, I am sceptical, because I know this may actually happen. I want to ensure that no vulnerable person finds themselves in a similar position to my dad. The doctor-patient relationship is not an equal one. Doctors can and do exercise significant power in this relationship, and this power can be abused, whether intended or not.

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Hon Nick Goiran talked about the fact that doctors make mistakes when making a diagnosis and prognosis. Some argue that this is very rare, and it is the case now, so why should it be a concern with voluntary assisted dying? The answer is that a person wrongly diagnosed with a terminal illness and with the wrong prognosis of death within six months could access voluntary assisted dying and take their life long before they would otherwise have died. One hopes that the requirement for two independent medical assessments means that the likelihood of this occurring is minimised, if not averted. However, without knowing the details of the training that medical practitioners are required to undertake before they participate in the voluntary assisted dying process, it is difficult for us to accurately assess how big a problem this might be. The training information is not currently available. We are told that this will be worked out in the next 18 months as part of the implementation phase. However, this means that Parliament is being asked to approve the bill on trust and has no opportunity to determine whether the training will in fact be adequate.

In Victoria, this trust resulted in a six-hour online training course being developed, which focuses on the processes, how to fill out the forms and the time frames for doing so, rather than training for assessing decision-making capacity and other critical skills that a doctor would need for the assessments they would need to make under the legislation. When I raise this concern, I am often asked, “Do you know anyone who has been diagnosed with a terminal illness and received a prognosis of death within six months, and both the diagnosis and the prognosis have been wrong?” The person asking this is usually highly sceptical and thinking that this is a highly unlikely situation. When I say, “Yes, I know of one”, they usually respond with a scoff, saying, “But that’s only one person.” Even if it is only one person, and I doubt that is the case, it should not be dismissed.

Just under three years ago, a good friend of mine, Garry, began experiencing health problems, which deteriorated at an alarming rate. Garry is an academic, an author, and he loves to write poetry. He is a thinker and a wonderful person. He began experiencing numbness in his limbs, multiple ministrokes, extremely painful headaches, memory loss, twitches and spasms in his muscles that got worse with time and muscle wasting. It was not long before he could not walk without support and eventually he was confined to bed. Garry had difficulty completing a sentence due to memory loss. He could no longer concentrate to write or read, which frustrated him greatly. He suffered terrible pain and the medication did not seem to alleviate his pain. Garry was diagnosed with a neurodegenerative disease and was told he had seven months to live. At the time of his diagnosis, Garry told me that if voluntary assisted dying were available, he would have accessed it. Almost three years later, Garry is still with us and is feeling much better. Although he is still confined to bed, his memory has improved significantly. He can read and write things, and that gives him great joy. The ministrokes, muscle spasms and extreme headaches are much reduced and his pain is largely managed. About two and a half years after his original diagnosis and prognosis and after a range of tests, Garry was told that the original diagnosis had been wrong, and the cause of his health problems was most likely a virus rather than a neurodegenerative disease.

A few months ago, I visited Garry and his wife, Jeni, to talk to them about the Voluntary Assisted Dying Bill. Garry told me that his views on voluntary assisted dying had changed. He said that had voluntary assisted dying been available when he was first diagnosed, he would have accessed it. Had he done so, he would not have been around to enjoy those three years of life with family and friends. He would have cut short his life journey and he would have hated to miss out on this time with family and friends. Although Garry is still confined to bed, his pain is largely being managed and he can sit up, look out the window, see the sun and the birds and spend time with his beloved dogs, family and friends—all things he would not have been able to do if he had opted for voluntary assisted dying. It is difficult for me to ignore Garry’s story. If voluntary assisted dying had been available, Garry would have ended his life early. I find this deeply disturbing. Balancing Garry’s story with the stories of pain and suffering experienced by people with a terminal illness at the end of life is extremely difficult and I have struggled with this.

We are told that the Voluntary Assisted Dying Bill is tight and that only those people who meet all the eligibility requirements will be able to access it. However, we are also told, based on the experience in other jurisdictions, that about 30 per cent of people to whom the lethal substance has been dispensed do not take it. Hon Colin Holt said during his contribution that this should reassure us that voluntary assisted dying works—that simply knowing they can access a lethal substance if they need it has provided people with the comfort they need, and, in the end, it was not necessary for them to take the lethal substance. To me, that rate of 30 per cent is startling. I cannot help but question whether the lethal substance ought to have been dispensed to those 30 per cent of people, and whether they should have been assessed as eligible to access VAD. Were they really experiencing intolerable suffering? Surely, if their suffering was insufferable at the time that they accessed voluntary assisted dying, they would have taken the lethal substance, or at least this rate would have been much lower than 30 per cent. Based on the experience in other jurisdictions, we also know that at least one person took the lethal substance more than two years after it had been dispensed, which illustrates that wrong prognoses do happen.

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On the question of whether medical practitioners should raise voluntary assisted dying with patients diagnosed with a terminal illness, I agree that there should be no prohibition on medical practitioners raising the topic of voluntary assisted dying with their patients. However, I do not support the position that medical practitioners, including those who object to voluntary assisted dying, should be required to raise voluntary assisted dying with their patients and to refer their patients to another practitioner. I met with a number of doctors who are really disturbed by this provision in the bill. One doctor in Bunbury told me he could not believe that in a democracy like Australia, members of Parliament would pass a law requiring doctors to do something that they deeply did not agree with. He told me that he would consider ceasing practice if the bill were to pass with this provision in it. If we argue that we need to respect the right of people with terminal illness to make a choice about how they die, I think we should equally respect the rights and views of doctors who object to voluntary assisted dying. The amendment moved by Tony Buti in the other place and foreshadowed to be moved by Hon Martin Pritchard in this place seeks to address this concern and, in my view, is worthy of our thoughtful and favourable consideration.

Another issue in the bill that concerns me is that the bill provides that a medical practitioner must not include any reference to voluntary assisted dying in the certificate of cause of death. I do not think that we should be passing laws that require a person to falsify a state record. If 80 per cent of members of the community support voluntary assisted dying and it is their personal choice, I do not accept that this is necessary. If the purpose of this provision is to ensure that life insurance contracts are not voided, it is my view that other options should be explored to address this matter. We should not ask public officers and medical practitioners to falsify state records.

I also have concerns about aspects of the bill that in my view are underdeveloped. The safe storage of the lethal substance once it has been dispensed to a patient is one of those areas of concern to me. The lack of information provided to members about the safe storage requirements of the lethal substance is more than a little concerning. It is not clear to me how we can be satisfied that the safeguards in the legislation are adequate if we are not provided with information about the safe storage requirements. This should be included in the bill or, if not in the bill, in the regulations. However, I understand that the Premier has said that although the bill contains a regulation-making power, the bill does not require any regulations to be made and that it is sufficient for directions to be made in relation to safe storage of the lethal substance. This means that Parliament will not be able to scrutinise the safe storage requirements and satisfy itself that these are adequate. This does not sit well with me.

In addition, I would like some clarity about the safe storage requirements that will be imposed for people living in a nursing home or an aged-care facility. Will there be a requirement on managers of nursing homes and aged-care facilities to safely store the lethal substance to ensure that other patients who may wander into the person's room cannot take the lethal substance, or will the person still be able to keep the lethal substance in their room so that they have easy access to the lethal substance and can administer it at the time of their choosing, as is intended by the bill? Surely these circumstances and the safety of others in that nursing facility warrant safe storage provisions being either incorporated into the bill or set out in regulations.

Further to my concerns about the safe storage of the lethal substance, I am inclined to the view that a medical practitioner should be present when a person administers the lethal substance to ensure that the person does not suffer unnecessarily if they manage to ingest only part of the lethal substance. This would avoid concerns about safe storage, as the lethal substance would be held by the medical practitioner, who would bring it with them when it was time to administer the substance.

Not only am I disturbed about the lack of safe storage details in the bill, but also when a person elects to self-administer the lethal substance, there is no requirement for a witness to be present and to verify that the person self-administered the lethal substance and did so voluntarily and to put beyond question the possibility that the lethal substance was administered by another person. I am concerned that as a result of the absence of safeguards in the bill at this point, it may be possible for a family member to administer that lethal substance to the person without the person's knowledge or consent, and I would be interested to hear the minister's view on this and the views of other members. If, however, the person elected for a medical practitioner to administer the lethal substance, the bill provides that a witness must be present when the practitioner administers the lethal substance and, before he does so, he needs to make a further assessment and be satisfied that the person has decision-making capacity and is acting voluntarily and that the person's request for voluntary assisted dying is enduring. This further assessment at the time of administering the lethal substance is not required under the bill if the person elects to self-administer. I wholeheartedly agree with the safeguards in the bill for when the substance is administered by a medical practitioner, and I view those as necessary and appropriate. I am concerned, however, about the lack of safeguards if the person elects to self-administer. It seems to me that the safeguards in the bill for the end of the process are not sufficient.

I am also concerned about the oversight that is provided under the bill and the adequacy of the oversight that will be provided to the board, which, due to a lack of time, I will discuss in greater detail when we go into the committee stage.

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Although I generally support the right of a person with a terminal illness whose death is imminent to choose when and how they die and in the past I have supported voluntary assisted dying bills, I have really struggled on this occasion to support this bill. I am not sure why—whether it is my experience with dad and others, whether it is my friend Garry's experience and his change of heart on voluntary assisted dying, whether it is that I am now a more experienced legislator and better understand that safeguards are not guarantees or whether it is my genuine concern with certain aspects of the bill. I am not sure, but I have really struggled this time to make a decision to support this bill. I think the bill is being rushed. I think the bill is underdeveloped in a number of critical areas. With a bill of this importance, I do not think it is good enough for the executive to tell us to trust it with critically important detail that it tells us will be developed over the next 18 months. This should have been worked out before the bill was presented and preferably incorporated into the bill to allow proper scrutiny by Parliament.

After much consideration and oscillation, I have decided to support the bill in principle at the second reading stage so that it can be thoroughly scrutinised during the committee stage and amendments to improve the bill considered, as I believe this is what the community expects us to do at this point. I trust that concerns that have been raised will be addressed, and there is capacity to improve the bill by appropriate amendments, although I hold reservations as to whether amendments agreed in this place will be accepted by the other place in light of the comments that have been made in the other place. I think it is a concern that we should all share. Whether I support the bill at the third reading stage will depend on what amendments are accepted by government, the minister's response to my concerns and those of other members, and ultimately being persuaded that this is a step we should be taking and that the safeguards are adequate.

HON DIANE EVERS (South West) [8.47 pm]: As I understand our current situation, when in unbearable pain and with a very limited expected life span, it is legal for people to starve themselves. In fact, it is legal for a person to take their own life through whatever means available. It seems to be generally accepted that a doctor, at the doctor's own decision, can prescribe pain-relief medication in an amount high enough to end a person's life. What entitled hypocrisy! How can we possibly say that that is the way to do it? Our social conventions put doctors in a situation in which they not only can make this decision, but also sometimes are expected to take responsibility for it. I just do not see how we can say that that is the way to carry on.

I will not kid myself and think that I will influence anyone in this place with my comments, and there is little reason to expect that I will make any points more clearly than they have already been said, but still I speak to get my voice on the record, to speak for those who have dedicated much of their lives to get this legislation debated and hopefully passed, and to speak the voice of the 80 per cent or more of my electorate who want this legislation passed. I know we have talked a bit about whether that poll is accurate, but I find a poll like that much more accurate than saying, "I had six people write to me who said yes and seven who said no, so that must be okay." No-one in here can say that that is an adequate poll. It is interesting that that poll showed that 80 per cent were in favour. In the Legislative Assembly, the vote was 45–11, or 80 per cent for the legislation and 20 per cent against. It is also interesting to look at the decision we just made about referring the bill to a committee. The vote was 29–6, so very close to that 80 per cent for and 20 per cent against. That is interesting. It would show that we are representative of the community if that was the issue that we were voting on for the whole bill. If the Legislative Council is representative of our community, I expect that we would come back with roughly 80 per cent for and 20 per cent against—28–7. That is how it would work out if we were representative of the state.

Rather than a conscience vote, as Hon Colin de Grussa suggested, it would be very interesting if all members had a free vote to represent their constituents, with no pressure from their party. If we had a free vote, we could represent the people who want the autonomy and the right to self-determination in choosing the time, location and other circumstances of their death. That is what I thought we came in here for—to represent those people.

I have empathy for the members in these chambers as we are making a decision not for ourselves, but for the entire state. We have religious, political, community, cultural and family affiliations, and all these are guiding our decisions. All of us in this chamber are likely to be able to access the best of care and the best of palliative care, and I guess that our families and most of our friends could access that best of care as well. But I cannot imagine that anyone in here believes that the state will be able to provide the hospital care of Sir Charles Gairdner Hospital or Hollywood Private Hospital to people in Port Hedland or Halls Creek. I would certainly be surprised if someone thought that the hospice care that is available in Albany, which has been mentioned many times here and which I wholeheartedly support, could be provided everywhere. I went through a situation at Albany Health Campus with my father-in-law, who nearly passed away, but the people there ensured that he was well enough to fly back to Orange, where he is from, to die peacefully amongst his family. If we all had the strength that he had to survive long enough to say goodbye and then go to sleep peacefully, how ideal would that be? That would be nice. I do not expect that the hospice care that is available in Albany could be replicated in Exmouth, Paynes Find, Norseman

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and possibly even in the city. It would be lovely if it could. To wait until that point, we would be waiting the rest of our lives and then some, and I still do not think it would happen, although I really hope that it does.

This bill is not about euthanasia. The Greek “eu” means “good” or “well”, as in “euphoric”. The Greek “thanatos” means “personification of death”, so it is a good death. We are looking for a good death, but this bill is not about euthanasia. The current usage of euthanasia as a term indicates that it is causing a good death by taking the life, thus implying that a person other than the one dying is taking the life, and that is not what we are looking at; we are looking at people having the autonomy to make their own decision about their own life. Nor is this bill about suicide, as the cause of death has already been acknowledged. The cause of death is from the condition that the person has. The cause of death is not the final step that we are talking about here. How often do we hear that “pneumonia” has been written on the death certificate when the death was not caused by pneumonia; that was just the last thing that caused the person to lose that final breath? So many other things could have led to the point when they were in hospital and contracted a respiratory virus that caused the pneumonia, after 10 years of suffering in other ways. I do not have a problem with putting the cause of death on the death certificate. I think the cause is that thing that comes along early in the process. I have seen cases like this when the grieving happens long before the person takes their last breath. For many people, the grieving usually begins when the diagnosis is made, when we first realise that our loved one is going to pass in a certain time and we know that that death is imminent. Even though we all live with death being the final point, when we get the disease or the diagnosis that means it will be a little quicker than expected, that is really the tough time.

When death is imminent, the choice of the person is only to end their pain or suffering, to speed up the pace of their ongoing slow death, to maintain their dignity and to go gently in peace. That is what they are trying to do. They know it is coming. Why should they have to fight and suffer longer just because of the way our laws are written or not written?

Peace is significant in many religions. I was raised as a Catholic and I still find it natural to respond to “peace be with you” with “and also with you”; it just flows. Forever and a day, tombstones have always said “rest in peace”. I remember years ago, whenever we were speaking to someone who had recently lost a loved one, it was very usual to ask, “Was it a peaceful death?” because that is what we are hoping for, not just for ourselves, but for everyone. For me, and for many people I know, their wish is to live in peace, to die in peace and to rest in peace. I see the legislation that we are looking at affording that opportunity to many people.

I have been sheltered from death pretty much throughout my life. Maybe this was out of good luck or possibly I just do not dwell on the people I lose. I lost my father when I was only 14. It was quick. He was there and then he was not. I have those lasting memories. I did my grieving quite quickly, and it is ongoing. But he is always with me. Having lost him quickly, I learned very early on to carry him with me, to carry him inside me, and to be able to look up at the stars and feel him looking over me. But it was not a long, drawn-out, painful process. I have probably been to fewer than 10 funerals in my entire life. As I said, I have been sheltered from death. The few funerals that I have been to were for people who died in their older years—yes, maybe 10 or 20 years before they could have if they had hung on in some way. It was not that grief that I have seen people face from losing a child or a young parent.

When I am speaking here about death, it is not from a lot of personal experience. In fact, the mother of a good friend of mine lived in the Netherlands. Her mother was dying and chose to determine the time of her own death, with her family around her in a safe environment. It was beautiful. I have heard her story. I understand the love, compassion and grief. She still feels the pain of having lost her mother. Being able to be with her, knowing ahead of time that this was going to happen, being there with her family, and being able to hold her mother’s hand as she passed, how lovely is that? I have been thinking about this and wishing that I could go back to that time when my father had his heart attack and fell. Maybe he hit his head. I was too young to ask questions and did not necessarily know the exact details. I just wish somebody had been there to hold his hand as he breathed his last breath because it would have been comforting to me and I hope it would have been comforting to him.

Other than this experience with my friend, as I said, I have no direct experience with someone who may have taken the opportunity to access voluntary assisted dying, but for some reason I have empathy in spades for people who find themselves in an unbearably painful, ongoing and terminal situation. I have probably given suicide too much thought over the years, but it was not in my cultural landscape. I was 13 before I even heard of someone taking their own life. I remember thinking about death as a young child and always hoping that mine would be quick and painless. I was fascinated when I heard that drowning can be a relatively peaceful way to die—a good death, a quick death, a peaceful death. The reason we are discussing voluntary assisted dying now and not many decades ago may have something to do with the advances made in medicine. We have talked about it here. It has come up. Many people have been trying to bring forward legislation on this issue and it kept getting knocked back, but every

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year our advances in medicine give us more ways of keeping people alive. This world is not what it was years ago. We now have medical treatments to keep people alive regardless of their quality of life or, rather, their lack of quality of life. Sometimes they have no quality of life whatsoever but we can keep them alive.

This issue must not be equated with how we treat animals, because we do not use every medical procedure possible to maintain the life of an animal once it is known that its death is imminent and the animal is suffering. It is outrageous to think of it that way. We want to keep our loved ones around and our medical systems can keep them alive, but in our society, where competition is celebrated and medical advances are viewed from a scientific perspective rather than a human perspective, sometimes we forget that the point of life is not just to keep taking breaths, keep a heart beating, and keep a brain receiving signals. Life is so much more than that, and I know that everyone here knows that. This legislation has been drafted with much consideration of legislation in other jurisdictions. My reading of the bill has assured me that it will allow individuals to have control of their own deaths to a degree that may be able to offer them some comfort. That is what I would like at that point. I would love to have the comfort of knowing that if it got too hard for me, I could release those last breaths and the last beats of my heart.

I live in Albany and my community is well supported with palliative care. The people and facilities at the Albany Community Hospice are without parallel. That is not the case for everyone. Steps are being taken to improve and extend palliative care to others in the state, but at this time it is not feasible in anyone's imagination that the government will be able to deliver that service throughout the state. To suggest that we aim for such unachievable ideals before legislating for voluntary assisted dying ignores reality and the expectations of 80 per cent of our community.

If I were dying, I understand that it might be easier to say, "I don't want to be a burden on my family." That line has been used here and we have heard it in many places. I can understand that somebody might say, "I don't want to be a burden on my family. Just let me go." The other option at that point is to say, "I can't tolerate the pain. I give up. Let me go." Like many of you, I grew up with the idea that you should grin and bear it. You never give up. You do not say that it hurts or that something is too hard. You just do it and keep going. You grin and bear it and go on. I can understand that people may say, "Look, I can take this. It is fine, but look what I am doing to my family. Let me go because I don't want to be a burden on them." When people are at that stage of their lives, rationality may not be the first thing that comes to mind. There are a lot of emotions going on when people get close to death, or I assume that is the case. One of the eligibility requirements to access voluntary assisted dying is that the person will need to show that their condition "is causing suffering to the person that cannot be relieved in a manner that the person considers tolerable". This bill does not allow for a person to simply say, "I don't want to be a burden." On its own, that will never be the reason for somebody to be allowed this option.

People have talked about wrongful death occurring. As I said, doctors currently prescribe morphine at a level that will not only relieve a person's pain, but also end their life. Would we not consider that a wrongful death? The practice goes on and it is well known that it does.

I refer to suicides that happen when people feel there is no other option. Imagine if a person had the option of being able to say, "This is getting really hard, but I'd like to stick around until my next birthday or my grandchild's birthday" but they have the option and they have the medication in their house so that if it gets to that point, they can let go. They will have the comfort of knowing that it is there if they need it, but otherwise they can soldier on and keep going and wake up each morning and try to get through to the end of the day. Let them have that option.

It has also been discussed that people need a prognosis of under six months to live and a diagnosis of terminal illness. Even if they said that they would like to make use of the option of voluntary assisted dying because they are going to die in six months and it is going to be horribly painful, that does not mean that they will take the medication as soon as it arrives. It will be there to provide comfort for them, so they know that if it gets bad, it will be available. When we hear stories of people who have a prognosis of less than six months to live and have a terminal disease, just because they make use of this process, it does not mean that they will take the substance. It is an option. It will give them comfort and some relief so that they can carry on living each day at a time, trying to live their life and do the things they would like to do, and being a part of it—being alive, not just breathing with a heart beating and a brain to receive signals, but actually living and knowing that they have the comfort of that option. I think that option is a good thing.

Members have talked about the possibility that we will start with this legislation, but that it can change and other things can be added along the way. But that has not happened much around the world. People are not picking up more things and changing the legislation. Besides, what are we doing here now? If that legislation has to change, it will have to go through this house, whether it is us or other people. They will be representatives of their communities and reflect the needs and desires of the people who put them there. We have this legislation before us, and this is

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the legislation that we are voting on. We are not voting on what may become of it 10, 30 or 50 years from now. We are voting on what is before us, and that is what we should be looking at.

I refer to the free vote. Hon Dr Steve Thomas had the honesty to state that political pressure has been put on people to use their so-called conscience vote and to vote as per the party line, and that seems like such a shame to me. I understand party politics to some degree. I understand that there are pressures and affiliations outside of our individual representations of our communities and regions. That is why I appreciate his honesty in acknowledging that. He also suggested that we are binary creatures. I want to get on the record that I disagree; we are not naturally binary creatures. That paradigm has been created by humans to control other humans and keep us as adversaries. We do not need to be adversaries. I know we can do better than this.

My comment on the bill being debated here is that it feels like the first time that we have been a room full of adults. It has been impressive. I expected that we would always be a room full of adults, but over the past two and a half years there have been numerous times when that was not exhibited very clearly—but in this debate, it has. I want to thank all of you and I appreciate all of you for being able to have a debate in which we were able to respect each other's opinions. It felt really good. I would love to be able to move forward from this point and continue with that maturity.

I refer to amendments. I have not been convinced yet that any amendments are necessary to the legislation as it stands, but I will be listening. I appreciate the contribution of Hon Colin de Grussa. He covered many of those issues very well and at this point I agree with the comments that he made. I would also like to state that as a regional member, I am looking to make sure that we have appropriate regional options available for people who do not want to come to the city and be away from their families, their homes and their communities and want to stay in the regional area. I look forward to the government showing me just how well this can work when a resident in a distant location takes this up and how we can manage to make sure that that person has the best of care in their last few days.

It is time for this bill to be passed. It is time to give people choice in determining when, where and how they will die and who will be with them when they die, when their life is being taken by a terminal condition and they have only time to pass before they take their last breath and their heart stops beating.

HON DR SALLY TALBOT (South West) [9.09 pm]: As many honourable members will know, I have long been in support of legislation to legalise voluntary assisted dying. Tonight, I will outline the reasons why I strongly support the Voluntary Assisted Dying Bill. Before I start, I want to acknowledge one of the speeches that we heard earlier today. Many, many members have spoken so eloquently, particularly about their support for this bill, right throughout the debate. But I want to single out Hon Matthew Swinbourn. I do not think I have ever heard a speech like that in my time in this Parliament. It was really quite an extraordinary speech and I can only admire the member's courage and determination, and I know that it did take courage and determination to come in here and make that speech. What we heard earlier today was an outstanding contribution to the worldwide debate on this subject, and I am very proud to have been here in the moment it was delivered.

It has been one of the great privileges of my time in this Parliament to have played my part, a small part, in bringing us to the stage at which we have in front of us a bill that has been passed by an overwhelming majority in the other place after having been tested for more than two years by the most intense and extensive legal and clinical scrutiny available in our community. This scrutiny, as other members have talked about, included the year-long inquiry by the Joint Select Committee on End of Life Choices, of which I was a member, and another extremely thorough investigation by the Ministerial Expert Panel on Voluntary Assisted Dying, which was headed by Malcolm McCusker, one of the most prominent legal figures in our country.

The last time I spoke on this subject, and I have certainly spoken several times in the 14 years that I have been here, was when the joint select committee tabled its report. In my speech during the tabling of that report, I paid tribute to the people who I regard as the real heroes of this battle to decriminalise voluntary assisted dying. I know that I am not alone in thinking that the real heroes of this story are the people who had the courage and the conviction to provide a really important component of the evidence on which the joint select committee's report is based.

To recap very briefly, during the tabling of that report I mentioned Dr Robert Edis in particular, and I think Hon Adele Farina referred to the fact that Dr Edis was one of our guests at lunchtime, who talked about the experiences of patients with motor neurone disease. I thought it was a very powerful and indeed unforgettable session. When Dr Edis appeared before the joint select committee, he gave what, for me, and I am sure other members who were present, was an unforgettable account of the experiences of his patient Melanie, who, when life with motor neurone disease became unbearable, had to battle the system before she could even start to have a conversation about how to die. I also mentioned Nigel Haines, who comes from our electorate of the South West Region. Nigel

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shared the story with us about what he called the gut-wrenching, living nightmare, lasting many years, watching his wife, Suzie Haines, die of Alzheimer's. I spoke also about the evidence presented to us by William Philip, whose wife, after an unsuccessful attempt to take her own life, eventually died in what Mr Philip described as terror. One of the interesting things about the evidence that we heard was that in many of the cases, and I include Mr Philip's wife amongst the case studies that we heard about, the people who were making the decisions were nurses or had worked in the medical profession and so knew exactly how they were likely to die when they received their final diagnosis.

In talking about heroes, I must mention Belinda Teh, who spent an enormous amount of time in the gallery and is still with us here tonight. Belinda walked home—"home" being Perth—from Melbourne to draw attention to the plight of people like her mother, who, despite having access to the best palliative care, died what Belinda describes as a horrific death. Here is what Belinda said about her walk, and I quote —

Walking from Melbourne to Perth symbolises for me the way our journey to life's end should be—long and arduous, sometimes painful, yes, but supported all the way by empathetic, loving people who reflect on what it might be like to walk in the shoes of others.

In 2010, I spoke in support of the private member's bill introduced by Hon Robin Chapple. I ended with these words —

Fundamentally, what we are talking about today is whether we will respect the decisions of those who decide that a gentle and peaceful death at a time that they choose is the way they want to end their lives. I cannot vote to deny anyone the right to die in this way—not you, and not me. That is why I am supporting the bill.

In the nine years since then, my resolve to regulate for voluntary assisted dying has, if anything, been strengthened by the mass of evidence and testimony collected as part of the process of bringing this bill before the Parliament. Because I have already outlined in previous debates my views on this matter, I will focus here on several specific issues that the current debate in the community and amongst us as members of Parliament have brought to the fore.

I want to start by saying that first and foremost I have been very much struck by how frequently all of us who have been talking about the question of how we die have talked about it in terms of our values. In other words, we talk about the kind of society we want to live in. We are talking about life. We are talking about how we live. For me, there is no contradiction here. We recently heard from a doctor who came to talk to MPs about voluntary assisted dying. I think it was humorous and it sums it up completely. He said, "The one statistic that has remained static since the time we began collecting statistics is that 100 per cent of people die." It would do us well to remember that. Death is not a strange thing; death is part of life. The cause of death is life. It sounds like a cliché but the truth is that, according to me, we will live better if we can contemplate our death.

Our thoughts about how we die are intimately bound up with what we think about life and how it is best lived; therefore, it is important to listen very closely to this talk about values, particularly when the debate gets heated and emotional. It is important because if we really try to understand what everybody is saying, and I mean everybody, both when they support and oppose measures like this, we will make better arguments ourselves. For example, I was quite shocked—genuinely shocked—to hear opponents of this measure say that one cannot logically and consistently oppose capital punishment and yet support VAD. As someone who does precisely that, what do I say? The argument seems to go like this: we reject capital punishment because legal practitioners make mistakes and execute people who are subsequently found to be innocent. Might it not then be the case that medical practitioners also make mistakes and wrongly approve people's access to voluntary assisted dying?

Those members who have made any sort of study of disciplines like philosophy will know that there is a particularly pernicious form of argument, well known to people who argue for a living, such as lawyers and philosophers, where we are led inexorably to a conclusion because all the premises appear to be true even when the conclusion is not one we accept. In the case of capital punishment and voluntary assisted dying, looking at the values or principles that guide thinking is helpful. Although I certainly agree that the execution of an innocent person is a tragedy, this possibility is not the reason why I oppose capital punishment, and it cannot form the basis of a rejection of measures to regulate voluntary assisted dying. Go back to the question about what sort of society we want to live in. For me, that question is answered in terms of dignity and respect. It involves thinking about the way we treat each other, about acting always to promote love and regard over hatred and fear. I do not want to live in a society that executes offenders, because I believe that there is a better way to deal with those offenders by embracing a rule of law that sees imprisonment and loss of liberty as an ultimate punishment. Similarly, I do not want to live in a society in which people who are dying are forced to suffer unbearable pain or are sedated until they die, because I believe there is a better way.

What is that better way? What do we want to be able to say to those people who want to decide for themselves how to spend their dying days rather than allow others to make those decisions? This legislation is about that better

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way. It will enable us to say yes rather than no to somebody when they ask to be able to actively end their life when their suffering, their pain and/or anguish is unbearable to them and there is no chance of a cure for the cause of that suffering. The concept of asking is central to the safeguards included in the bill. These safeguards are a direct result of the legal and clinical scrutiny to which the select committee and the ministerial expert panel have subjected the measures contained in the bill. We will hear a lot about coercion, or to use a term coined by our colleague Hon Nick Goiran “steering”, from opponents of this bill. The bill’s absolute insistence that nobody will be coerced into requesting voluntary assisted dying is manifest in the creation of specific criminal offences making any action intended to coerce a crime. That is right; just as are the measures to ensure that those who ask for voluntary assisted dying have the mental capacity to know what they are asking for are right. This bill is not for people who are not dying. It is not for people who are suffering because someone they love is suffering. Its terms of application are very, very narrow. It will not include people like Dr David Goodall in its scope. It will also not include someone who is dying if they have any form of dementia, even though, for more than two years, the select committee heard—I am sure the ministerial expert panel heard the same thing—very eloquent and passionate arguments that dementia sufferers should be included in the bill. I know that is something that arose frequently in the many forums that Belinda Teh held as she walked across Western Australia. To those people who would like dementia sufferers to be included in the bill, I simply say this: we could not find a way of making the ability to request access to voluntary assisted dying in an advance health directive consistent with the key principles around decision-making capacity in this legislation. That is why we have excluded dementia sufferers and that is why they will not be included in the future.

This brings me to another specific matter that is likely to be discussed in great detail by opponents of the bill if we move into the committee stage. In any debate about reform of this kind, the conservative argument will always be about the slippery slope. I know other members have raised this issue in their contributions to the debate. The slippery slope argument is the “give them an inch and they will take a mile” fallacy about the inevitability of certain outcomes being precipitated by an initial action. I call it a fallacy because unless it is supported by evidence, that is all it is. When we look for evidence of the slippery slope in relation to voluntary assisted dying laws around the world, it simply is not there. It is extremely rare for legislation to be changed once it is in operation. I will give members an example. In Oregon, where laws relating to voluntary assisted dying have been in operation for more than 22 years, there has been one single amendment. That amendment, which had to go right through the parliamentary process, made a change to the statutory waiting period for people with less than 15 days to live. In the Netherlands, laws on assisted dying have not changed at all since they were introduced in 2002. The joint select committee report presented to this Parliament found —

The published evidence does not support claims that legalisation of assisted dying results in an inevitable move toward the erosion of safeguards and an increase of non-voluntary euthanasia. Indeed, the evidence supports the opposite conclusion ...

I will go further and say that it is not even common for legislators to try to change the legislation. No legislature anywhere in the world has ever taken lightly the step of introducing voluntary assisted dying. Legislators, like us here tonight, are under an obligation to get it right—to make sure that the laws passed by Parliaments are sound and workable as well as supported and understood by the community. Although some jurisdictions, such as Victoria, have introduced their voluntary assisted dying laws relatively recently, others have had laws for decades. If there were evidence of legislation becoming more liberal—of categories being expanded, criteria being widened or safeguards being watered down—we would see it, at least in the jurisdictions that have had voluntary assisted dying laws for a considerable number of years. Members, we do not see it, because it is not there. It is not true that laws like this change over time to expand their scope or weaken their sanctions and safeguards. As lawmakers, we should not be swayed by false arguments and we should not vote on the basis of fears that are not justified.

I will say something about how we might understand the evidence that both supporters and opponents of this bill have put before this house. The fact is, and I use the term “fact” without irony, that not all evidence is sound. I was discussing this matter in a different context recently when the person with whom I was speaking put it very succinctly. He said, “Not all evidence is created equal. Some is created to sell things.” That is not exactly the charge I would bring against those attempting to undermine the bill, but it does highlight the wariness we should all have when it comes to the evidence for some of the claims being made to substantiate the case against voluntary assisted dying.

I will make some general points and then I will move on to some specifics. I go back to my earlier comments about values and particularly the values that guide our thinking about death and dying. It is really important that we start with a clear understanding about what is a factual claim and what is a moral claim because, Madam President, there is a difference. A factual claim depends on evidence. A moral claim depends on values. It is the failure to make this distinction that leads to confusion and we should be wary about some of the more outlandish claims made in relation to this topic. I suggest to honourable members that what may carry weight as a moral claim—for

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example, that all life is sacred—can be substantiated only in terms of values. What would be the values underlying the statement that all life is sacred? They would be something like: life is a gift and it is always wrong to throw it away. That is a moral claim. What carries weight as a factual claim—for example, that it is not possible to design a safe voluntary assisted dying law—must be substantiated by evidence. What counts as evidence? Honourable members would be aware of some of the material written by Ben White, Andrew McGee and Lindy Willmott. They have done extensive academic examinations of how arguments work and point out that if we are serious about gathering evidence, we should give little weight to anecdotes, opinion pieces, editorials and letters to the editor, and only slightly more weight to single individual and small group case reports and series. It is only when we get to epidemiologic studies, meta-analyses and systematic reviews that evidence becomes robust. It is only at this level that we find evidence that is tested by courts, expert panels, non-partisan parliamentary committees and peer reviewers.

The proposition has been put in this place by opponents of the bill that it is intellectually dishonest to deny the impossibility of creating a safe voluntary assisted dying law. I take very strong exception to this claim. It is a classic case of a failure to be honest about the evidence on which a proposition is based. The conclusion is based on so-called wrongful deaths, which are supposed to have occurred under existing voluntary assisted dying laws. These are not new claims; they constitute the bulk of the joint select committee minority report submitted in the name of Hon Nick Goiran. I suspect there will be plenty of opportunities later in the debate to go into detail about how seriously flawed these arguments are, but for now, I will make three points about these claims. First, these wrongful death case studies were based on the omission of important facts and inclusion of unsubstantiated information and half-truths copied from pro-life websites. This is not trustworthy evidence from any intellectual perspective. Second, most of the authors who put their names to these so-called wrongful death case studies argue solely from the viewpoint of a religious and/or fundamental opposition to VAD. They are not unbiased researchers. Third, all cited deaths were legal in the jurisdiction in which they occurred. Not one of them was found to be wrongful by any inquiry in those jurisdictions.

I said earlier that we all need to be wary when it comes to the evidence used to back up some of the claims made to substantiate the case against voluntary assisted dying. Nowhere is this wariness more necessary than in the assessment of claims that coercion is not preventable by having strong legislative measures that criminalise such action. This claim, which is another version of the “impossible to create a safe voluntary assisted dying law” claim, has been tested in the courts of Canada and found to be untrue. Let me be absolutely clear what I mean by this: it would not be untrue if there was a reliable body of peer-reviewed evidence that voluntary assisted dying was being accessed disproportionately by vulnerable people. There is no such evidence. Yes, there are letters to the editor making these claims. Yes, anti-choice websites are full of anecdotes and stories about cases in other places. No, this does not constitute evidence. What the evidence—that is, independent, testable, expert and exhaustive evidence—says is that there are no signs in any of the jurisdictions in which voluntary assisted dying is lawful that there is an increased risk to vulnerable groups or that the laws are being abused to inflict harm on vulnerable people. Those are the facts. They may not suit that particular argument, but they remain the facts.

Perhaps the most preposterous claim made by opponents of this bill is that voluntary assisted dying and suicide are the same thing, or are at least likely to be construed as the same thing in the popular imagination. It is clear to me, both from the evidence and from my reflections and personal experience, that this is not true. Suicide and voluntary assisted dying involve two completely different kinds of death. This does not seem to me to be a particularly contentious or provocative statement. Take these two propositions. The first proposition is that it is acceptable for someone who is very close to death and has no prospect of a cure to take their own life. The second proposition is that it is acceptable for someone who is not close to death and has every prospect of a cure to take their own life. These propositions are not the same; these propositions are not equivalent. To say that they are is simply wrong. For me, the key concept here is hope. The bill is not about removing hope for a cure, hope for an end to the pain, hope for the future or hope for a better life; it is about what we say when hope has run out—when there is no hope for a cure, no hope for an end to the pain, no hope for the future and no hope for a better life.

The report by the Ministerial Expert Panel on Voluntary Assisted Dying addressed this question with eloquence, drawing on similar observations made by the Ministerial Advisory Panel on Voluntary Assisted Dying in Victoria, which reported in July 2017. On page 11 of the Western Australian “Ministerial Expert Panel on Voluntary Assisted Dying: Discussion Paper”, the panel says —

Suicide involves the tragic loss of life of a person who is otherwise not dying, whereas voluntary assisted dying involves a person’s choice about their mode of death when they are already dying. Suicide is usually undertaken alone as an act of desperation, whereas voluntary assisted dying is a pathway involving medical and family support. Suicides are potentially avoidable; “every effort should be made to prevent these deaths” and there is a “range of critical work being undertaken to prevent suicide”. By contrast, the

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people “who are the focus of voluntary assisted dying face an inevitable death as a result of an incurable disease, illness or medical condition. It would not be appropriate to use the same terminology to describe” their choice about the circumstances of their impending death. For these reasons, the Panel believes the word ‘suicide’ should not be used in relation to voluntary assisted dying. It is wrong to confuse these two very different kinds of deaths.

Let me turn finally to the question of whether this bill would be improved and, indeed, and perhaps more importantly, whether the outcomes for individuals requesting access to voluntary assisted dying would be improved if we were to prohibit doctors from discussing voluntary assisted dying with their patients in the same way that they routinely discuss other medical options. Again and again, people whose narratives we listened to in the select committee inquiry spoke about the moment when a doctor says to a patient, “I have bad news for you.” What we heard came next was always a variation of the same questions. Those questions were: will I have to suffer; and, if I do, what will you be able to do for me? For us in this Parliament to contemplate imposing a limit on the information provided at this critical point would, I suggest, be outrageous. Yes, Victoria has this prohibition, but it is the only jurisdiction in the world to do so. Such a move would be a complete subversion of good clinical practice, which relies as much on patients being fully informed as it does on doctors adhering to high professional standards. I put it to members who are considering this matter that there is no other circumstance whatsoever in which we would consider it good practice for a Parliament to impose a restriction on a doctor discussing lawful treatment options with a patient. In debate in the other place, the proposition was put forward that such a measure was necessary to protect people with a disability, and particularly those whose disability might render them susceptible to suggestion. Such a proposition, I think, constitutes a fundamental misreading of the safeguards contained in this bill, which are specifically designed to ensure that eligibility is confined to those whose decision is their own and nobody else’s. I find such propositions deliberately overlook current practice, which has never found anything sinister in the fact that doctors are allowed to have uncensored conversations about all other treatment options, including refusal of treatment and palliative starvation and dehydration. Indeed, the fact that palliative sedation of terminally ill patients is often administered in the absence of any consent by the patient appears not to have troubled proponents of this argument until now—a fact that at least seriously undermines, if not completely derails, their claims.

No doubt many of these issues will surface if we proceed to the committee stage, and I will make further comments then should we return to them. But let me conclude by saying that it is my firm belief that we cannot continue as we are. We cannot continue pretending that accounts of people dying in agony are exaggerated and we cannot continue to criminalise the actions of those who seek to help.

The title of this bill is well chosen. Under this law, assisted dying will always be voluntarily accessed. Many will choose not to take that route, and their reasons will be many and varied and must be respected. Evidence shows that amongst the small minority of people who access voluntary assisted dying, many use palliative care services and most die without using the medication. That means that few people in our community will not find themselves in palliative care at some point, and I remain a staunch advocate for improving palliative care services, especially for people in regional and remote communities whose dearest wish is to die at or at least near home.

I want to end with a challenge to those who would oppose this bill. I want to ask whether we can imagine that one day your partner or your child or someone about whom you care very deeply might be close to death and might want to make the choice about how they die. I then ask: will you be prepared, when this person has made that choice, to deny them that choice and to tell them that they made the wrong choice? I ask that question because this is the reality of the law as it stands today. I ask again today the question I proposed to this house in 2010 on the bill introduced by Hon Robin Chapple. I say again: are we prepared to take away from people who have a terminal illness the right to choose how to die? Can you imagine this is a choice that one day you might want to make or that somebody you love might want to make? What we say to people now is that if you make that choice, either you will have to depend on others to break the law or you will have to do it yourself; and, if you do it yourself and you do not want to implicate others, you will have to do it on your own. I am not prepared to contemplate that. I cannot see how it would be right to force that onto people, in any sense, as a result of a decision that we make in this place.

I want to end on a completely different note and I want to share with honourable members, as many members have done earlier in this debate, something that was sent to me by a constituent. This constituent happens to be a woman whom I love very dearly. She is an 80-year-old woman who lives in Pinjarra and she has a close relationship to other members of this house as well, not only people on my side of the house; she is the woman whom Hon Simon O’Brien refers to as Auntie Pat. I share with honourable members a poem that was sent to me by Trish Briggs, also known as Auntie Pat. Auntie Pat writes a lot of this poetry and I think it is just a lovely way of summing up how many people in our community feel about the nature of this bill and the fact that they just want it to happen. These are Pat’s words that I want to end with. Here is her poem *V.A.D.* —

I’ve lived until I’m eighty

Hon Nick Goiran; Hon Robin Chapple; Hon Aaron Stonehouse; Hon Simon O'Brien; President; Hon Rick Mazza; Hon Jacqui Boydell; Hon Tjorn Sibma; Hon Kyle McGinn; Hon Peter Collier; Hon Colin Tincknell; Hon Martin Aldridge; Hon Adele Farina; Hon Diane Evers; Hon Dr Sally Talbot; Hon Stephen Dawson

I've earned the right to choose.
Don't take that choice away from me
For if you win, I lose.
Your view of life is positive
At present mine is too
But I want death with dignity
The decisions up to you.
I do not want my family
To suffer at my death
I want them to remember,
As I take my final breath,
The time we've spent together
And the joys that we have shared
And acknowledged my decision,
For a painful going, spared.
So when you come to cast your vote
Give a thought to those like me
And since death comes in many ways
Vote yes for V.A.D.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [9.42 pm] — in reply: I begin by thanking everybody who has made a contribution over the past week or so in this debate on the Voluntary Assisted Dying Bill 2019. I have been in this place for about six years and I think this is the first debate in which essentially every member of the chamber who could make a contribution has made a contribution, and it just shows how we are all treating this debate, how important it is to us and to the community. Thus far, it certainly has been conducted civilly and with great respect, and I congratulate members on that.

I acknowledge those members who shared difficult personal stories, like Hon Alanna Clohesy; Hon Peter Collier; Hon Robin Chapple; Hon Colin de Grussa, who talked about his own experience with cancer; and Hon Matthew Swinbourn, who today spoke to us about his loving son and the reasons for his support of the bill that is before us.

I also want to acknowledge Belinda Teh and Noreen Fynn who have been here during the debate. Their suffering has been emblematic of the many families across the community who have borne witness to the harrowing last days of their loved ones. Both Noreen and Belinda have demonstrated great courage during the community debate and I thank you for that.

The evidence is clear. Complete relief of suffering is not always possible, even with optimal palliative care. To argue that palliative care does achieve complete relief is to deny the reality of those who have shared with us their personal experiences. It is also clear from the evidence that compassionate assistance is already rendered to those for whom death is imminent, but that assistance is reliant on the decision-making of the medical practitioner, with no safeguards and sometimes without consent.

Debate adjourned, pursuant to standing orders.