Parliamentary Debates
(HANSARD)

FORTIETH PARLIAMENT
FIRST SESSION
2019

LEGISLATIVE COUNCIL

Wednesday, 4 December 2019

Legislative Council

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THE PRESIDENT (Hon Kate Doust) took the chair at 1.00 pm, read prayers and acknowledged country.

TONKIN HIGHWAY — HALE ROAD ACCESS

Petition

HON DONNA FARAGHER (East Metropolitan) [1.02 pm]: I present a petition containing 4 000 signatures couched in the following terms —

> To the President and Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned are opposed to the plan to remove the access to Tonkin Highway from Hale Road. We welcome a proper interchange between Tonkin Hwy and Hale Road but we do not accept being disadvantaged in the following ways (including but not limited to)—forcing traffic through residential streets that are not equipped to cope with the increased load which will therefore intensify risk to our residents, and exacerbate commute times
>
> We therefore ask the Legislative Council to support us by ensuring Main Roads WA keep access to Tonkin Highway from both Wattle Grove and Forrestfield side of Hale Road.
>
> And your petitioners as in duty bound, will ever pray.

[See paper 3480.]

ENVIRONMENT — ROYALTIES FOR REGIONS FUNDING

Petition

HON DIANE EVERS (South West) [1.03 pm]: I present a petition containing 309 signatures couched in the following terms —

> To the President and Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned are concerned about:
>
> - the increasing environmental degradation and pollution as a result of mining and gas sector activities;
> - the insufficient effort the Government is providing for environmental rehabilitation and the preservation of the State's unique biodiversity demonstrated by the reduction in estimated Royalties for Regions allocations to environmental projects across the forward estimates;
> - the impact of climate change on our environment;
> - the lack of support for community based Natural Resource Management organisations across the State; and
> - the potential impacts of the loss of valuable ecosystems resulting from insufficient action.
>
> We therefore ask the Legislative Council to request the Government to direct a minimum of 10% of all Royalties for Regions funding on an annual basis for environmental rehabilitation and for the preservation of the State's unique biodiversity. This will greatly assist in building regional economies, complement existing carbon sequestration initiatives and aid in the reversal of global warming.
>
> And your petitioners as in duty bound, will ever pray.

[See paper 3481.]

RED IMPORTED FIRE ANTS

Statement by Minister for Agriculture and Food

HON ALANNAH MacTIERNAN (North Metropolitan — Minister for Agriculture and Food) [1.04 pm]: The red imported fire ant is one of the world's most invasive species, affecting agriculture, the environment, the economy and social amenity. Six red imported fire ant nests were detected at Fremantle port and destroyed last week. Today, the state government has put in place quarantine measures for parts of Fremantle to stop the possible spread of the fire ant. At this stage we have had no further detections of the fire ant, but we are taking every step to ensure the ant does not spread. From tomorrow, the movement of red fire ant host material will be restricted from a quarantine zone. That includes soil, potted plants, grass, turf, hay, manure, mulch, bark and woodchips, or machinery and equipment that has been used to move soil. The quarantine zone runs from Port Beach, as far south

as South Fremantle dog beach, and east to East Street. We are not aware of any garden nurseries or soil businesses that operate within the quarantine area, although items such as potted plants are a component of trade that some businesses engage in. Commercial movements of host and nest material and any machinery or equipment that has been used in agriculture or earthmoving activities will require approval from the Department of Primary Industries and Regional Development. DPIRD is following up with local businesses about these requirements.

The Fremantle community has been a great supporter of biosecurity efforts in the past, including the successful eradication of Queensland fruit fly from the area in April 2018. We ask Fremantle residents and businesses to once again do their bit to protect our state's biosecurity, and thank them in advance for their cooperation and support.

PAPERS TABLED

Papers were tabled and ordered to lie upon the table of the house.

LEGISLATIVE COUNCIL — TEMPORARY ORDERS

Notice of Motion

HON SUE ELLERY (South Metropolitan — Leader of the House) [1.07 pm]: I give notice that at the next sitting of the house I will move —

> That the temporary orders set out in the attached schedule be adopted and agreed to until their expiry on 31 December 2020.

I table the attached schedule.

[See paper 3482.]

TEMPORARY ORDERS — CONSIDERATION OF COMMITTEE REPORTS — EXTENSION

Notice of Motion

Hon Sue Ellery (Leader of the House) gave notice that at the next sitting of the house she would move —

> That the operation of the temporary orders with respect to the consideration of committee reports, adopted by the Council on 7 December 2017, be extended to apply until, and including, 31 December 2020.

McGOWAN GOVERNMENT — REGIONAL WESTERN AUSTRALIA

Notice of Motion

Hon Jim Chown gave notice that at the next sitting of the house he would move —

> That this house expresses its concerns regarding the McGowan government's policies and decisions affecting regional Western Australia.

LEGISLATIVE COUNCIL — TEMPORARY ORDERS
TEMPORARY ORDERS — CONSIDERATION OF COMMITTEE REPORTS — EXTENSION

Made Order of the Day — Motion

On motion without notice by **Hon Sue Ellery (Leader of the House)**, resolved —

> That the notices of motion I have just given for the extension of two sets of temporary orders be made orders of the day for the next sitting of the house.

PUBLIC WORKS AMENDMENT (WA BUILDING MANAGEMENT AUTHORITY ABOLITION) BILL 2019

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Stephen Dawson (Minister for Environment)**, read a first time.

Second Reading

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [1.09 pm]: I move —

> That the bill be now read a second time.

The bill seeks to amend the Public Works Act 1902 to abolish the Western Australian Building Management Authority. The authority was established under the Public Works Act in 1984. Originally called the Western Australian Building Authority, it was created to provide government with the ability to raise capital in its own right. In 1994, the Public Works Act was amended to make the Western Australian Building Authority an agent of the Crown. The authority was renamed the Western Australian Building Management Authority. The authority has been used on two occasions as a fundraising vehicle—to borrow approximately $285 million in 1984 and approximately $55 million in 1996. These loans were repaid in 2008. In 2014, the Department of Treasury reviewed the Financial Management Act 2006 and concluded that the authority was no longer required because, since 1996, the state has had the ability to meet its capital works borrowing requirements through other means.

The PRESIDENT: Minister, I am sorry to interrupt the second reading speech, but there is a lot of noise bubbling around the chamber and I am struggling to hear you. If people need to have a conversation, please step outside and let the minister read in his bill, please.

Hon STEPHEN DAWSON: Consequently, it was recommended that the Western Australian Building Management Authority be abolished and the relevant provisions of the Public Works Act repealed. Abolishing the Western Australian Building Management Authority will reduce red tape by removing the need for an annual report to be prepared for a body that is no longer required. The Western Australian Building Management Authority has no known assets, rights, liabilities or obligations. Nevertheless, as a precautionary measure that is generally taken in cases like this, the amending legislation includes a provision that any assets, rights, liabilities and obligations of the Western Australian Building Management Authority be assigned to the Minister for Works on behalf of the state.

The bill also makes other minor amendments to the Public Works Act 1902 that are unrelated to abolishing the authority. Specifically, the term "judge" has been deleted as it is now defined in section 5 of the Interpretation Act 1984.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 3483.]

Debate adjourned, pursuant to standing orders.

GOVERNMENT RAILWAYS AMENDMENT BILL 2019

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Stephen Dawson (Minister for Environment)**, read a first time.

Second Reading

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [1.12 pm]: I move —

That the bill be now read a second time.

The purpose of this bill is to increase the maximum fine for trespass on the rail network from $200 to $5 000. Trespass on the rail network is a serious offence that impacts on the safety of the trespasser, the public and railway workers. The current maximum penalty under the Government Railways Act 1904 for trespass is a fine of $200. An increase in the penalty for the offence of trespass reflects the seriousness of that offence. The increase in penalty is intended to discourage premeditated and deliberate acts of trespass and to reduce the risk of serious injury.

The Public Transport Authority has implemented a range of initiatives to discourage and deter trespassing on railway land, including a targeted social media campaign highlighting to the public the dangers of trespassing; a media campaign to stop photographers taking pictures of wedding parties on tracks; deploying transit officers to build valuable relationships with high-risk youths through social activities to promote rail safety and the dangers of trespassing; providing ongoing support and delivery of the Right Track education program to encourage young people to become more responsible for their own safety while using the rail network and to alert young people to the dangers and consequences of trespassing in the rail corridor; and Transperth Train Operations working with the Western Australia Police Force to prevent graffiti-related trespass incidents at railcar depots at Nowergup, Claisebrook and Mandurah and at stations and sidings on the PTA rail network. Nevertheless, the number of trespass incidents on the rail network has continued to rise.

Under the Rail Safety National Law (WA) Act 2015, specific railway incidents must be reported to the Office of the National Rail Safety Regulator. These notifiable occurrences are defined in the Rail Safety National Law (WA) Regulations 2015 as either category A, which are incidents that have caused death, serious injury or significant property damage, or category B, which are incidents that may have the potential to cause a serious accident. In 2016–17, there were 328 category B notifiable occurrences of trespass; in 2017–18, that number increased to 510; and in 2018–19, the number of category B notifiable occurrences of trespass increased further to 885 incidents. Although this larger than expected increase in notifiable occurrences of trespass can be attributed to changes in the reporting guidelines of the Office of the National Rail Safety Regulator, it nonetheless demonstrates that the increase in the number of these offences has corresponding adverse impacts on rail safety, railway operations, railway workers and the community as a whole. Prosecutions for the offence of trespass under the act are conducted through the court system. This bill will increase the maximum fine to $5 000, which reflects the actual cost of prosecuting an offence of trespass and ensures that the increased penalty is commensurate with the gravity of the offence.

Rail safety is a shared responsibility. This bill is one measure to manage a risk to the safety of the public associated with railway operations. By increasing the penalty for the offence of trespass, the bill will discourage the public from accessing parts of the railway where access by the public is not allowed by law.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 3484.]

Debate adjourned, pursuant to standing orders.

VOLUNTARY ASSISTED DYING BILL 2019

Committee

Resumed from 3 December. The Chair of Committees (Hon Simon O'Brien) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

Clause 99: Inducing another person to request or access voluntary assisted dying —

Progress was reported after the clause had been partly considered.

Hon NICK GOIRAN: When we concluded yesterday evening, we were looking at clause 99(2) that indicates that a person commits a crime if the person, by dishonesty, undue influence or coercion, induces another person to, amongst other things, request access to voluntary assisted dying or access it. My concern was: what would happen if the person who had been induced died as a result of the inducement? As I understand the minister's explanation yesterday evening, the minister seemed to indicate that that would be captured by clause 100. Does clause 100 therefore capture all circumstances of voluntary assisted dying in the event of an inducement?

Hon STEPHEN DAWSON: For self-administration, yes, it does.

Hon NICK GOIRAN: If it is not self-administration, and a person has been induced, what offence will apply to the inducer other than clause 99(2), particularly if the person dies as a result of the inducement.

Hon STEPHEN DAWSON: I am advised that it is potentially captured by section 288 of the Criminal Code, which refers to a person being guilty of a crime if they procure, counsel and thereby induce, or aid another person in killing themselves. The penalty is life imprisonment.

Hon MICHAEL MISCHIN: I appreciate that observation, minister, because I was going to ask about the relationship between clause 99(2) and section 288 of the Criminal Code. The minister assured us that in the event that there has been some dishonesty, undue influence or coercion and a person is induced to access voluntary assisted dying, then notwithstanding that all the other necessities under the bill have been satisfied, the person who did the inducement would nevertheless be guilty of procuring a suicide within the meaning of section 288 of the code. Perhaps I should be a bit more specific. If it is of any assistance, I can pass over my copy of the Criminal Code so that the minister can take advice on it. Section 288 provides —

> Any person who —
>
> (1) Procures another to kill himself; or
>
> (2) Counsels another to kill himself and thereby induces him to do so; or
>
> (3) Aids another in killing himself;
>
> is guilty of a crime, and is liable to imprisonment for life.

That covers the field so far as it goes, but I want to make sure that there is no hiatus here and that if those circumstances are satisfied, notwithstanding that the bill provides that if someone follows all the procedures it is not a suicide, and notwithstanding that there is particular provision, it would nevertheless leave a person who induces by the means set out in clause 99(2) liable to conviction and punishment for an offence against section 288.

Hon STEPHEN DAWSON: The short answer, honourable member, is, yes; it would be a breach of section 288 of the Criminal Code.

Hon MICHAEL MISCHIN: Thank you. I take it that clause 99(2) is aimed more at inducement that does not lead necessarily to a death. Would that be correct?

Hon STEPHEN DAWSON: The member is correct.

Hon MICHAEL MISCHIN: Given that procuring a suicide or inducing someone to suicide carries life imprisonment—I may be a little rusty on the law—and an attempt to do so that does not succeed in causing that person's death would result in 14 years' imprisonment, why is this set at only seven years' imprisonment as a maximum punishment? Ought it not be something at least comparable to an inducement to get someone to kill themselves that is not successful?

Hon STEPHEN DAWSON: Honourable member, I answered this last night. It was the last comment I made before be broke last night.

Hon Michael Mischin: Sorry.

Hon STEPHEN DAWSON: That is all right. I will point it out briefly. I will not go into it in great detail because it is on the uncorrected *Hansard* from last night.

Hon Michael Mischin: My apologies.

Hon STEPHEN DAWSON: That is okay. The drafting team met with the Department of Justice to discuss the appropriate penalties. The drafting team took advice from the Department of Justice, the Western Australia Police Force, the Solicitor-General and the Director of Public Prosecutions in landing upon this penalty. I am advised it is consistent with sections 301 and 304 of the Criminal Code—so, offences causing someone to take poison or other noxious things. If a person does any act as a result of which bodily harm is caused to any person or the life, health or safety of any person is or is likely to be endangered, it is a similar penalty regime.

Hon MICHAEL MISCHIN: It is comparable to the maximum penalty for simple stealing, fraud—actually, I think with fraud, it is 10 years if it is someone over the age of 60 years—forging and uttering and those sort of offences. Nevertheless, the government has selected that. My only other question is: what is meant by induces another person to access; can the minister give an indication as to what that involves because it seems to be very broad and vague?

The CHAIR: President—I mean minister.

Hon STEPHEN DAWSON: Mr Chair, you are giving me status above my paygrade.

The CHAIR: Well above, yes.

Hon STEPHEN DAWSON: To access is to progress beyond the request and assessment process. It includes prescription and supply, to final administration.

Hon NICK GOIRAN: Earlier when the minister provided an explanation for clause 99(2), he indicated that if the elements set out in clause 99(2) are made out, but an additional element is present—that is, the person died as a result of the inducement—section 288 of the Criminal Code would capture that circumstance. If that is true, why do we need clause 100?

Hon STEPHEN DAWSON: I am advised that it is because we want a discrete offence in the bill similar to that in the Victorian legislation.

Hon NICK GOIRAN: If we want a discrete offence in the bill, why do we not have one similar to that sitting on the supplementary notice paper at 491/99?

The CHAIR: Member, are you proposing to move the amendment in your name on the supplementary notice paper at this point? If the member is going to canvass it, it really needs to be on the business in front of us.

Hon NICK GOIRAN: I am waiting for the minister's response before I decide whether to move the amendment.

The CHAIR: I will indicate to the chamber that we are not going to get into a debate on a mooted amendment, but I will allow a brief inquiry of the nature that the member has proposed.

Hon STEPHEN DAWSON: The reason is that this is the way that the drafters have drafted the bill and a decision has been made to include clause 100.

Hon NICK GOIRAN: I move —

Page 66, after line 24 — To insert —

(3) A person commits a crime if —

(a) the person, by dishonesty, undue influence or coercion, induces another person —

(i) to make a request for access to voluntary assisted dying; or

(ii) to access voluntary assisted dying;

and

(b) as a consequence, the other person accesses voluntary assisted dying and dies.

Penalty for this subsection: imprisonment for life.

The purpose of this amendment is to mirror what is currently found in the bill at clause 99(2). The same language applies; the only difference is that if someone induces a person by way of undue influence, coercion and the like to access voluntary assisted dying—in other words, they have been put under pressure to access it—and they die as a result, there will be a maximum penalty of life imprisonment. Members will see that precisely the same penalty applies at clauses 98 and 100. We agree that under clause 100, if a person uses dishonesty, undue influence or coercion to influence a person to self-administer the substance, they are up for a penalty of potentially life imprisonment. This issue was canvassed in the other place by the member for Hillarys in a dialogue with the Premier, who was filling in at the time for the Minister for Health. Interestingly, the response provided by the Premier to the same questions effectively asked by the shadow Attorney General and me were different. The Premier referred the member for Hillarys to section 273 of the Criminal Code, yet today we are told it is section 288. I do not think we

can have confidence that all the offences have been adequately covered when the Premier of Western Australia tells members in the other place that section 273 of the Criminal Code will capture things and today we are told that it is section 288.

Hon Michael Mischin: Section 273 is not an offence anyway.

Hon NICK GOIRAN: This was the advice of the very learned Premier of Western Australia to the member for Hillarys. Perhaps it was given at an inappropriate time of the day or morning; I do not know. In any event, the point is that if members intend to support clause 100 of the bill, there should be no problem supporting the amendment that currently stands in my name. It ensures that there is no gap. If somebody is put under pressure to access voluntary assisted dying—not just to self-administer, but in any circumstance—the person applying that pressure should be up for life imprisonment. This amendment would achieve that. In conclusion, I draw to members' attention the submission provided by the Law Society of Western Australia. I know that the minister now has a copy of it because it was kindly tabled by the shadow Attorney General yesterday. The Law Society states at 4.1.5 on page 8 of the submission —

> Arguably, the maximum sentence for clause 99(2)(b), which is substantially the same offence as clause 100, except that it may be committed in cases not involving self-administration, is inadequate, and should be the same as for clause 100.

For those reasons, I seek the support of all members.

Hon STEPHEN DAWSON: The government does not support this amendment to clause 99. I am advised that clause 100 adequately deals with inducement for self-administration. Clause 99 has a broader application, which also includes when practitioner administration is chosen. The offence in clause 99 of the bill is not substantially the same as at clause 100. Clause 99 deals with request for access and when an administration decision is made. Clause 100 specifically relates to self-administration when there is no intermediary. Practitioner administration has an intermediary—the practitioner—so it would not have the same penalty. I am advised that in relation to proposed clause 99(3)(b) that is unclear because a person could access voluntary assisted dying but die from natural causes rather than from the administration of the prescribed substance. I want to make the point that, as stated previously, the government formulated clause 99 in consultation with relevant agencies and the penalty reflects the penalties at sections 301 and 304 of the Criminal Code.

Hon NICK GOIRAN: Whatever agencies the government decided to consult with, it did not consult with the Law Society of Western Australia, because we just received its submission this week, which I understand the minister received yesterday. The other point that needs to be made is that the government's view seems to be that it is okay because there is an intermediary. If there is an intermediary—a consulting practitioner and an administering practitioner—who knows nothing about the inducement whatsoever, they can proceed along their merry way and inject the patient, having complied entirely with the act. What will happen if, unbeknownst to this intermediary that the minister referred to, the patient is under pressure? What does the minister propose should be the penalty if the patient is told by a family member, "If you don't go ahead with this, I'm going to kill one of the other family members"? What will happen if that kind of pressure is exerted on the person and the patient does not report it to anybody out of fear for the safety of their loved one and does not tell the intermediary, as the minister now likes to refer to him? The inducement is shocking and disgraceful, and imprisonment for life should apply. If the patient under all of those circumstances and pressure decides that they will not self-administer because they cannot cope with what is going on and they want practitioner administration, we are suddenly saying that clause 100 will not apply to them because they chose self-administration. There is nothing in the amendment before the chamber that is going to undermine anything in the bill. It is consistent with the advice of the Law Society and I seek the support of members.

Hon MICHAEL MISCHIN: I have sympathy for what is being proposed, because I see a hiatus. Under clause 100 we are looking at a crime being committed if I were, through dishonesty, undue influence or coercion to induce, say, Hon Nick Goiran, to self-administer. That carries life. It does not matter whether it results in his death; that is not an element of that offence. He may self-administer but not die, or he may stop short of the actual self-administration because he has second thoughts. There is no comparable provision as simple as that in clause 99. The closest it comes to that is at clause 99(2), yet that carries a penalty of a measly seven years' imprisonment. Again, death does not have to be an outcome under clause 99(2), but otherwise it seems to be aimed at the same mischief. Yet, the penalty is a fraction of what might be the case under clause 100. That is one of the points that the Law Society made in its submission tabled yesterday and circulated to the government last week. It says that arguably the maximum sentence for clause 99(2)(b), leaving aside Hon Nick Goiran's amendment, which is substantially the same offence as clause 100 except that it may be committed in cases not involving self-administration, is inadequate and should be the same as for clause 100. I wholeheartedly support that. If the government is not going to increase the penalty in clause 99(2) from seven years, I think it is proper that there be a provision that covers the field in proposed clause 99(3).

If the minister is concerned about the potential of proposed subclause (3)(b) capturing people when the deceased has died of natural causes rather than the administration of a substance, it can be cured by a small addition—with

the words "and dies as a result thereof". I would have thought that that solves that problem of causation and it complements, at least insofar as there is a consequence to the inducement that has led to a fatal result, a sensible penalty, without having to resort, if necessary, to section 288 of the Criminal Code. Frankly, there is a very good argument for saying that the penalty of seven years should simply be increased and it would solve the problem, but if we are concerned about that and want to reserve the penalty of life imprisonment for something for which there is an actual consequence, I think we should support what Hon Nick Goiran proposes. My only caveat is that to solve the problem that the minister has raised, the words "assisted dying and dies" in proposed subclause (3)(b) ought to continue to provide "as a result thereof". Therefore, I move —

Paragraph (b) — To insert after "assisted dying and dies" —

as a result thereof

Division

Amendment put and a division called for.

Bells rung.

The CHAIR: Members, this is a unique situation —

A member interjected.

The CHAIR: Order. The member knows not to address the Chair when he is not in his place.

The voices that were sufficient to declare a no vote have apparently evaporated, and, for the record, I note that every member has moved to the right of the Chair. The situation now is that standing order 80 cannot be employed; therefore, this division will proceed. I do not know how we are going to do it without a teller for the noes. Given the unique circumstances, I am going to rule that the ayes have it. Will all members please resume their places.

Amendment on the amendment put and passed.

Point of Order

Hon Dr SALLY TALBOT: A small point of order, just while we are proceeding—I received several comments last night about the fact that the various speakers are leaving their microphones on while the minister is talking to advisers and while the Chair is talking to the clerks, and several conversations were picked up that were quite extraneous to the debate. I wonder whether it would be appropriate for you, Mr Chair, to remind people that, perhaps if they are talking privately they should switch their microphones off.

The CHAIR: There is no point of order, and you have all been told. Thank you, Hon Dr Sally Talbot. It is something to look out for, and I dare say it happens more often than we realise, so thank you for that point.

Committee Resumed

Hon RICK MAZZA: I rise to say that I am inclined to support this amendment. The way that I have considered this is that clause 100 refers only to someone who self-administers, and then obviously dies as a result. Clauses 99(1), (2) and 100 do not really cover a case of an administrating practitioner who has administered a substance to end a person's life but later evidence shows that the deceased was unduly influenced or coerced into voluntary assisted dying. In my mind, clause 100 is deficient because it deals only with self-administration, and clause 99(2) refers only to coercion, but not coercion resulting in death. On that basis, I am inclined to support Hon Nick Goiran's amendment to insert proposed subclause (3).

Hon ALISON XAMON: I rise to indicate that I have some sympathy for this amendment, but I am still listening to the debate as it unfolds. We need to remember that we are attempting with this legislation to enshrine the principle of individual choice, which we should cherish, and ensure that people are genuinely consenting to voluntary assisted dying. We have gone to a great amount of pain to do this and reinforce how important it is for people to have that personal choice. In the course of my second reading contribution I expressed my concerns about the way that coercion could occur, partly around elder abuse, but also for people with disability, who had expressed deep concern to me about the way coercive factors can work in their lives, and how important it is for them that we ensure that we have appropriate safeguards. We have incorporated a number of processes in this bill to ensure some oversight by practitioners to make sure that coercion does not occur, and we have debated those at length. But it strikes me that we need to look at the penalties that will apply when those safeguards are bypassed and problems emerge. It is important that, as much as possible, this legislation provides disincentives for anyone attempting to abuse its provisions. I remind people who have been lobbying for a very long time for these provisions that it will take only one person to effectively be murdered through these provisions to potentially bring this entire regime tumbling down. I would think that anyone who is advocating for voluntary assisted dying would want to make sure that these provisions are being protected and that every measure is taken to avoid abuse.

We have strong penalties for what we call the "murder offences", and it is very important that we do not differentiate too much between the penalties that various murder offences attract. It is problematic to talk about murder as

defined in the Criminal Code when attracting a life sentence, but then murder in another circumstance, such as the one potentially foreseen here, being of somehow lesser status. I have stood in this place on multiple occasions and talked about industrial manslaughter and said that, as far as I am concerned, manslaughter, in this instance, whether it occurs at work or in other settings, should not be differentiated. Ultimately, if someone dies and someone could have or should have prevented that, there needs to be commensurate penalties. The same applies here. I have always argued that the same penalty should apply to industrial manslaughter as that which applies to regular manslaughter; therefore, I say that murder as it is effectively articulated here, needs to be replicated with our regular murder provision. Indeed, I see this as an important safeguard to maintain the entire regime of voluntary assisted dying, because it is a very, very strong deterrent. The sorts of situations I can foresee in which this might occur are when someone who might potentially be the recipient of a large amount of money puts undue pressure on someone to avail themselves of this. They may be very careful and scrupulous about keeping themselves out of the formal process of voluntary assisted dying so that they never come to the attention of the people who in good faith administer this process; nevertheless, evidence may come to light later that the person who died did not really wish to die but felt that they had no choice. I think in that situation, it is murder and we need commensurate penalties. I am very sympathetic to the principle behind this. I see it as an important protective factor of the regime as a whole, but it is also critical that we do everything possible to make sure that people do not access voluntary assisted dying if they really do not want to.

Hon CHARLES SMITH: I fully urge members to agree with the amended amendment before us. I fully agree that this offence and clause 99 should be regarded as a serious offence. In the current format, there is an option for a summary conviction, and that means that in the real world in a court process, for example, with early pleadings of guilty, a demonstration of remorse for the offence committed, or perhaps it is a first offence, there is a very real possibility that an offender could walk away with a minimal punishment or a fine for trying to get someone to take their own life. I think that is wholly unacceptable. I urge members to consider the amended amendment to make this a serious offence with life in prison.

Division

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

Ayes (16)

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

Noes (18)

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

Amendment, as amended, thus negatived.

Clause put and passed.

Clause 100: Inducing self-administration of prescribed substance —

Hon ADELE FARINA: Can the minister explain whether this offence will cover the situation in which a person prepares the substance for the patient to take?

Hon STEPHEN DAWSON: No, clause 100 does not cover the preparation.

Hon ADELE FARINA: Last night, when I asked the minister this question about clause 98, he told me that, depending on what the substance is, the issue of preparation might be covered under the Misuse of Drugs Act or the Medicines and Poisons Act. I have reviewed both of those acts and neither of them deal with the preparation of the substance. I just want to get some clarification. Is it the case that it is not an offence to prepare the voluntary assisted dying substance on behalf of a patient?

Hon STEPHEN DAWSON: I am advised that to prepare, one must have possession of the substance. If a person is not authorised to prepare, they are not authorised to possess. Possession is criminalised by the Medicines and Poisons Act and the Misuse of Drugs Act by way of consequential amendments. Furthermore, I am advised that section 288 of the Criminal Code may also apply.

Hon NICK GOIRAN: Will the prosecution have more or fewer elements to prove if a charge is preferred under clause 100 of this legislation or section 288 of the Criminal Code?

Hon STEPHEN DAWSON: I am told there is no real difference to what has to be proved—so in either case the inducing has to be proved.

Hon NICK GOIRAN: The minister will see here that, as in the previous clause, we introduced this concept of undue influence. The minister will recall that earlier in our debate on the bill, on several occasions, including under the principles, I suggested that it might be appropriate that we use that terminology. The government resisted that; as I understood it, the explanation was that the language was too legalistic. I notice that the principles as originally proposed by the government say that there is a need to protect persons who may be subject to abuse, and thanks to a very good amendment by Hon Martin Pritchard, that now says that there is a need to protect persons who may be subject to abuse or coercion. In this provision, we talk about both undue influence and coercion. What is the difference between the two?

Hon STEPHEN DAWSON: Honourable member, coercion may be threats. Undue influence is more subtle, so it could be persuasion by someone in a position of influence—for example, a guardian or parent. My advisers tell me that it is appropriate to include undue influence in an offence provision in the bill. What I said previously was that "undue influence" is legalistic terminology that is reflected in the offence provisions of this bill. It denotes when a person uses improper influence that deprives another of freedom of choice or substitutes another's choice or desire for the former person's own. It is a legal term that is understood by the learned profession; however, it is less familiar to the general community.

Hon NICK GOIRAN: The minister indicated earlier that one of the reasons that the government does not believe it is necessary in clause 100 to go beyond self-administration is that a very important intermediary will be involved. I understood that the minister indicated a practitioner would be involved as an intermediary. Given that that will be the only thing standing in the way of what would otherwise be a crime under clause 100, will it be very important for the intermediary to understand where undue influence or coercion might be present so that they might be able to report such action to the police?

Hon STEPHEN DAWSON: The answer is yes, and there will be training on this as part of the implementation phase.

Hon NICK GOIRAN: I just want to alert the minister now that he has said yes to that answer. We will pick up this conversation again when we get to clause 158. I look forward to the minister's support at proposed amendment 74/158, but we will deal with that at that time.

Hon MICHAEL MISCHIN: I just want the minister to confirm, in light of what has happened with clause 99, that although under clause 100 it is a crime punishable by life imprisonment for a person through dishonesty, undue influence or coercion to induce another to self-administer a prescribed substance, there is no comparable offence if a person by dishonesty, undue influence or coercion induces another person to be administered a prescribed substance.

Hon STEPHEN DAWSON: I am advised that that would be a breach of section 288 of the Criminal Code.

Hon MICHAEL MISCHIN: Why is it not thought fit to have a like offence to clause 100 in this bill—a person inducing another person to be administered a prescribed substance—carrying a penalty of life imprisonment?

Hon STEPHEN DAWSON: Honourable member, that was discussed in some detail at clause 99, so I do not think it is appropriate to answer that again.

Clause put and passed.

Clause 101: False or misleading information —

Hon NICK GOIRAN: Who are the persons captured by clause 101? For example, could a nurse practitioner be captured; and, if so, what are the forms, declarations or other documents that nurse practitioners are connected with under this bill?

Hon STEPHEN DAWSON: The Voluntary Assisted Dying Board will rely on the information provided in the various forms, records and statements, made under the bill, to carry out a number of functions. Thus, the information provided must be accurate. Furthermore, to maintain the integrity of the VAD process, it is vital that accurate information is provided between the patient and the practitioner. The forms are any and all required to be completed under the bill. For a nurse practitioner, these will be the practitioner administration form, the practitioner disposal form and, in some cases, it could be the administering practitioner transfer form.

Hon NICK GOIRAN: If a medical practitioner injects a person with a prescribed substance, in compliance with the requirements of this bill, and it results in the death of that person, would it be misleading in a material particular—as the phrase is put in clause 101—for the medical practitioner to report that death as a natural death?

Hon STEPHEN DAWSON: If a practitioner reports such a death as from natural causes to the Voluntary Assisted Dying Board, that would be misleading. It is only misleading if the practitioner provides false information, not information as required to be provided lawfully.

Clause put and passed.

New clause 101A —

Hon CHARLES SMITH: I move —

Page 67, after line 18 — To insert —

101A. Medical practitioner or other person not to be advantaged or disadvantaged in relation to voluntary assisted dying

(1) A person commits a crime if the person gives or promises any reward or advantage (other than reasonable payment for the provision of health services or other relevant services), or causes or threatens any disadvantage, to a medical practitioner or other person —

(a) because the medical practitioner or other person has done anything referred to in subsection (2); or

(b) for the purpose of inducing the medical practitioner or other person to do anything referred to in subsection (2).

Penalty for this subsection: imprisonment for 7 years.

(2) Subsection (1) applies to the following —

(a) participating, or refusing to participate, in the request and assessment process;

(b) prescribing, supplying or administering a voluntary assisted dying substance;

(c) refusing to prescribe, supply or administer a voluntary assisted dying substance.

(3) A person to whom a reward or advantage is given or promised as referred to in subsection (1) is not entitled to retain or receive the reward or to exercise the advantage, whether or not the person knew of the intention to give the reward or advantage, or the promise, at the time that the person did the thing referred to in subsection (2).

Despite the size of this proposed new clause, it is a very short and straightforward amendment and new offence that I believe will plug a hole in this legislation by introducing another safeguard and criminal offence. Coincidentally, last night I received an email from a constituent who reminded me of my stance on crime, and law and order issues. She sent me a snippet of a speech I gave some years ago. I will read out a couple of sentences from that speech —

> Our communities want to see more robust sentencing from magistrates and judges …

I am still firmly of that opinion. I concluded that short speech by saying —

> I believe individuals should be held fully responsible for their actions. Committing crime is fundamentally a matter of rational choice.

I still firmly believe in what I said some years ago. The new clause I propose aims to prohibit people from seeking to influence the actions of a medical practitioner or other person in relation to participating, or indeed refusing to participate, in the request and assessment process; or prescribing or supplying or administering a voluntary assisted dying substance; and also refusing to prescribe, supply or administer a voluntary assisted dying substance. I believe this amendment will plug a hole in the legislation that leaves it open to being abused. Experience shows that people take advantage of holes or gaps in legislation. I urge members to consider this particular gap and how this amendment will fill that and provide yet another safeguard.

Hon STEPHEN DAWSON: The government is not supportive of this proposed new clause. The provision melds together a suite of offences that are better left independent of each other. Furthermore, these actions are already covered by existing legislation and, as my advisers tell me, with more appropriately targeted penalties.

Hon NICK GOIRAN: I listened to Hon Charles Smith and when I read the amendment I did not find anything objectionable in it. My question to the minister is: is it already covered somewhere else in the bill? Can the minister indicate to what extent the amendment is duplicated in the bill?

Hon STEPHEN DAWSON: I did say other "legislation"; essentially it is covered by the Criminal Code. I will give some examples. If a practitioner is being bribed to administer the substance to a patient, the briber could be caught under section 273 of the Criminal Code for a lot longer than seven years. Section 273 of the code might apply if the medical practitioner did something as a result of being offered a reward or advantage, which hastened the death of the patient. The medical practitioner and the briber could be charged with unlawful killing and a penalty of life imprisonment could apply. In the case of the briber, he or she may have arguably procured the commission of an offence pursuant to section 7 of the Criminal Code. The threat aspect of the proposed offence is adequately covered by sections 338, 338A and 338B of the Criminal Code, which specifically deal with threats. If a coordinating, consulting or administering practitioner or an authorised supplier or disposer was bribed to participate or refused to participate in the process, section 82 of the Criminal Code would apply. Section 82 provides that any public officer who obtains or who seeks or agrees to receive a bribe, and any person who gives or offers or promises to give

a bribe to a public officer is guilty of a crime and is liable to imprisonment for seven years. Corruption provisions also apply under section 83 of the Criminal Code with regard to the public officer. In some cases the conduct may constitute fraud under section 409 of the Criminal Code; for example, when there is an intent to defraud and the offender uses deceit for fraudulent means to cause a detriment.

Hon AARON STONEHOUSE: I think I see what the amendment intends to address. I wonder whether there is a possible unintended consequence. Proposed new clause 101A(1) states "or causes or threatens any disadvantage". I wonder how broadly "disadvantage" could be applied. Proposed new subclause (2)(a) states —

> participating, or refusing to participate, in the request and assessment process;

Might that conflict somehow with conscientious objectors—for example, a medical practitioner who refuses to provide assessment, but then their employer puts them in a situation by saying, "At this clinic, we provide that. That is the policy of this organisation. If you do not want to provide VAD as a medical practitioner, you should find employment elsewhere." Alternatively, that situation could be reversed and have a medical practitioner who wants to provide VAD, but their employer says that it is a religious-based hospital and if they want to provide VAD, they must go elsewhere; they will not be employed there. I wonder whether the reference to "disadvantage" in this instance might fall foul of that. I do not think it would, because I do not think it meets the threshold of a threat, but I wonder whether any consideration has been given to that and whether the mover of the motion or the minister, through the advice he gets, has anything to say about any potential unintended consequences. If the criticism is merely that these offences would already be captured in existing criminal law or other aspects of the bill, I do not see any problem with passing this new clause. It is seems to merely spell out a little more clearly what we are trying to prevent. If my concern about unintended consequences can be answered by either the mover or the minister, that would be helpful to me.

Hon STEPHEN DAWSON: My advisers tell me that the member is right. It would not have to be a threat. If it causes a disadvantage, it would be captured.

Hon NICK GOIRAN: When we looked at clause 99, as I understood it, it was about somebody inducing a person, who I will refer to as a patient, to proceed with voluntary assisted dying. As I understand it, this amendment seems to be looking not at the patient, but the practitioner. Earlier, the minister listed a number of provisions of the Criminal Code that he said already capture this. I want to go back to the theme we were looking at earlier—that is, when the outcome of the inducement is the death of a patient. If a person induces a medical practitioner to participate in VAD in the terms that Hon Charles Smith has put before us, or in the terms that the minister has referred to in other sections of the Criminal Code, and it would lead to the death of the person, does one of the sections in the Criminal Code the minister referred to deal with the situation in which death ensues?

Hon STEPHEN DAWSON: Can the honourable member clarify his question and ask it again for us, if he does not mind?

Hon NICK GOIRAN: I was far ahead of the minister and on to another clause. We were looking at the amendment of Hon Charles Smith. My understanding is that it looks at circumstances in which a person, a doctor or practitioner, is induced. I made the point that clause 99, which we dealt with earlier, looked at inducements of what I have described as a patient. This one looks at the inducement of a practitioner. I am keen to know whether any of the sections in the Criminal Code the minister referred to earlier would capture a situation in which there is not just an inducement of the practitioner to participate in this, but that it leads to the death of the patient. Given that the doctor is one of the safeguards and has to assess whether the person has a terminal illness and will die within six months, is not being coerced, and has decision-making capacity—they have to go through all those things—we do not want the practitioner to do that under duress. We do not want them to be unduly influenced. We do not want them to do it because they have been given some inappropriate incentive or threat of disadvantage—all those kinds of things. I think we all agree that we do not want those things to happen. We especially do not want a wrongful death as a result of it. If we have a practitioner who says, "I'm just going to say that this person has only six months to live", I want to make sure that the provisions the minister quoted earlier capture the scenario in which death ensues.

Hon STEPHEN DAWSON: I am advised that in the example the member has provided, murder or manslaughter could apply. That relates to section 273 of the Criminal Code. If it hastens death, it could be murder or manslaughter.

Hon NICK GOIRAN: I am talking about the person who has induced the practitioner to perform the act. Would that still be captured?

Hon STEPHEN DAWSON: Is the honourable member suggesting that somebody might be inducing a practitioner to participate in a lawful voluntary assisted dying process?

Hon Nick Goiran: Possibly.

Hon STEPHEN DAWSON: If so, that would not be an offence. If they were persuading someone to participate lawfully under the bill, that would not be an offence.

Hon NICK GOIRAN: I am not sure that can be right. For example, we talked about conscientious objection earlier in the bill. Let us use that as the hypothetical. If the practitioner has a conscientious objection, but someone started to exert pressure on that person and says, "Listen, sunshine, you put your conscientious objection to one side, thank you very much. I've got a patient here who I want to refer to you and you are going to participate in this thing and help this person. You can forget about your conscientious objection. If you don't do it, I am going to release these photographs that I have of you", or some other kind of inducement of that sort.

Hon Stephen Dawson: That's a threat, and it's probably blackmail.

Hon NICK GOIRAN: We are starting to make progress here. What I am asking is that if, as a result of that, it leads to the death of the person, is that captured by one of the sections that the minister quoted earlier?

Hon STEPHEN DAWSON: If the patient dies after lawful access to voluntary assisted dying, the person who persuaded the practitioner to participate is not guilty of murder. That person may be guilty of the offence of making unlawful threats, which is captured by the examples I gave earlier of section 338(a) and (b) of the Criminal Code.

Hon NICK GOIRAN: I guess it all turns then on whether the patient died lawfully, as the minister described it. I would say that if the practitioner has made an assessment that the person had a terminal illness when they did not have a terminal illness, that is unlawful and there should be major repercussions. Of course, the practitioner has done something unlawful and there should be a penalty for them—no question. But should there not also be an equally severe penalty for the person who induced the practitioner in the first place? That is the mischief that I want to make sure is captured, whether it be by Hon Charles Smith's amendment or some other amendment, or one of the clauses that the minister referred to earlier. The scenario that I want to make sure we properly capture is the initial inducer—the person who induced the practitioner to do the wrong thing that led to the death of a person.

Hon STEPHEN DAWSON: What the honourable member described in his earlier example is a crime that would be captured by clause 98 of the bill, which states, "A person commits a crime if", and there is a penalty associated with that.

Hon NICK GOIRAN: Yes; but, minister, correct me if I am wrong, clause 98 applies only to the practitioner, the person who administered the prescribed substance. I concede that that person needs to be prosecuted and be shown the full force of the law, but I want to make sure that we capture the person who induced the person to do wrong under clause 98. What clause in the bill will capture the inducer in the event that the patient ultimately dies as a result of those actions?

Hon STEPHEN DAWSON: If the practitioner is induced to make a false assessment, the inducer would be guilty of a crime, because that is the counselling or procuring of an offence, and that issue is captured by chapter II, section 7, of the Criminal Code.

Hon NICK GOIRAN: So to be clear, that provision of the Criminal Code, when read in conjunction with clause 98, would capture that particular individual?

Hon STEPHEN DAWSON: I am told that it can be read in conjunction with or in separation.

Hon NICK GOIRAN: We can see from this exercise how torturous it is to identify the relevant offence under which the police or the DPP will prosecute. The solution provided by Hon Charles Smith is far simpler because it will all be in the same bill and we will not have to go through this torturous exercise to decide whether a person should be prosecuted. For those reasons, I support Hon Charles Smith's amendment, albeit I think it could go further.

Division

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

Ayes (7)

Hon Nick Goiran	Hon Simon O'Brien	Hon Aaron Stonehouse	Hon Ken Baston *(Teller)*
Hon Rick Mazza	Hon Charles Smith	Hon Colin Tincknell	

Noes (28)

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

New clause thus negatived.

Clause 102: Advertising Schedule 4 or 8 poison as voluntary assisted dying substance —

Hon NICK GOIRAN: Clause 102 uses the word "advertises"; is that intended to include publish?

Hon STEPHEN DAWSON: I am advised that it does include publication.

Hon NICK GOIRAN: If it includes publication, how is a doctor to be told what the schedule 4 and schedule 8 voluntary assisted dying substance is that has been approved by the CEO? The moment the CEO publishes that information he is liable to imprisonment for three years or a fine of $36 000.

Hon STEPHEN DAWSON: It has to be the publication of an advertisement, not a pamphlet handed out by the CEO, for example. It is the publication of an advertisement.

Hon NICK GOIRAN: My first question was: does "advertises" include publishing; therefore, the answer is no, not yes.

Hon Stephen Dawson: It includes the publication of an advertisement.

Hon NICK GOIRAN: I did ask about publishing. Let us make sure that we are on the same page here. A person cannot advertise or put out a publication. How will the CEO communicate to practitioners about a voluntary assisted dying substance without contravening clause 102?

Hon STEPHEN DAWSON: The offence is directed at advertising, not the communication of information. The word "advertises" has a commercial flavour attached to it. The CEO could provide the information to practitioners by writing a letter or sending information to them about the available substance. This is not advertising if it conveys information.

Hon MICHAEL MISCHIN: What is the mischief at which this is aimed? Is it the advertising of a schedule 4 or schedule 8 poison that has not been approved as a voluntary assisted dying substance, or just advertising these as substances that can be used for voluntary assisted dying? What is it aimed at? It may be that the offence needs to be refined somewhat. If it is talking about a substance that has not been approved pursuant to clause 7 as a voluntary assisted dying substance, then I can understand what this provision is driving at. If it has been approved pursuant to clause 7, what is the harm in saying in a pamphlet, "We produce this particular substance, which is an approved voluntary assisted dying substance", signed off under the banner of the chemical or pharmaceutical company producing it? What are we aiming at here?

Hon STEPHEN DAWSON: The reason for the clause is that schedule 4 and 8 substances are currently supplied to persons pursuant to the WA Medicines and Poisons Act 2014. It would not be prudent to allow the public to know which of these poisons or substances may be used for voluntary assisted dying as it may encourage persons to stockpile their supply for the purpose of suicide or assisted suicide outside the protections of the Voluntary Assisted Dying Act. Furthermore, evidence from overseas has shown that once the medication becomes known as a voluntary assisted dying substance, manufacturers of that substance significantly mark up the price.

Hon MICHAEL MISCHIN: Just on that point then, if I were to find out—inevitably people will find out—which particular schedule 4 or schedule 8 poison is being used for voluntary assisted dying and I were to go on Facebook and say, "Look, this is the stuff they use", would that be advertising contrary to this clause? Just to take that further, if I were simply to write an email to someone and say, "I have found what they use for this process; this is it", would that be advertising it?

Hon STEPHEN DAWSON: This clause is aimed at those seeking to profit, so it relates to commercial advertising. If someone is telling a mate, it would not be captured by this. I think that is probably how I would answer it.

Hon NICK GOIRAN: If the person decides as a measure of generosity to the community to charge nothing, not to profit from the advertisement in any way, would it be okay? Would the clause apply only if they were to make a profit? Is that what triggers clause 102? I do not think that can be the case, surely.

Hon STEPHEN DAWSON: If the person was promoting its use, that could be captured. I talked about someone telling a mate about something and saying, "I know what this is", but if they are promoting the use of it, that could be captured, and the decision about whether charges are laid would be a matter of prosecutorial discretion.

Hon NICK GOIRAN: Would the clause read better as, "A person commits a crime if the person advertises, promotes or in any other way represents a schedule 4 or schedule 8 poison as a voluntary assisted dying substance"?

Hon STEPHEN DAWSON: We are happy with how the clause reads at the moment. Advertising could include promotion, so we do not support an amendment.

Hon ADELE FARINA: I apologise; would the minister mind repeating that?

Hon STEPHEN DAWSON: I indicated that we do not support an amendment to this clause. We believe it should stand as it is. I said that advertising would include promotion. We think the clause reads well as it is and we do not support an amendment.

Hon ADELE FARINA: I am now very confused about the intention behind this clause; I was not when I first read it, but I am now. Does the minister realise that details and information about all of the substances used for voluntary assisted dying, suicide, are extensively available if someone does a Google search? Does that constitute advertising?

Hon STEPHEN DAWSON: I have answered this already; perhaps the member did not hear. The issue is advertising the substance as a voluntary assisted dying substance.

Hon Adele Farina interjected.

Hon STEPHEN DAWSON: No, they are schedule 4 and schedule 8 poisons that are potentially commonly available at the moment, but this clause captures advertising them as voluntary assisted dying substances. That is what I have said multiple times now. As I have indicated, I support the clause as it stands. Regulations 91 and 100 of the Medicines and Poisons Regulations 2016 currently impose restrictions on the advertising of schedule 4 and schedule 8 poisons.

Clause put and passed.

Clause 103: Cancellation of document presented as prescription —

Hon NICK GOIRAN: I move —

Page 68, line 7 — To insert before "cancel" —

Immediately

Hon STEPHEN DAWSON: We are not supportive of this amendment. The government does not want to say "immediately", but we would expect cancellation to be in a timely manner, so if not immediately, then as soon as practicable. There is a significant penalty for failure to do so.

Amendment put and negatived.

Hon MICHAEL MISCHIN: My question regarding clause 103 focuses on subclause (2) and the purported creation of an offence. Clause 103(1) provides the circumstances in which the proposed section will apply. The clause then continues, in subclause (2), to provide that an authorised supplier must cancel a document in a particular way and inform the CEO administering the act that the document has been cancelled and the reasons for cancelling it. It then goes on to state —

Penalty for this subsection: imprisonment for 12 months.

The Interpretation Act 1984 provides that when, in an act, a penalty is specified at the foot of a subsection of a section, unless the contrary is expressly provided, a contravention of the section or subsection, as the case may be, is an offence, and the penalty on conviction is the penalty prescribed. I am a little unclear about what the contravention is in this case. Subclause (2) prescribes an obligation to do something, and then says that the penalty for it is imprisonment for 12 months. I infer that what is meant is that a failure to comply with that clause, or failure to do something under one of those obligations, gives rise to an offence by operation of section 72 of the Interpretation Act, but that is by no means plain in the manner in which that clause is framed. By way of assistance, I think there is a similar issue with clause 104(1) and (2). I wonder if the minister can turn his mind to that and, if there is an issue with it, it may be something that the government will need to correct.

Hon STEPHEN DAWSON: I am told that there is no need to amend, because a contravention of subclause 103(2) gives rise to the penalty, and that is based on section 72(1) of the Interpretation Act 1984.

Hon MICHAEL MISCHIN: I am not going to argue with the minister about the matter. I once again draw his attention to the view of the Law Society in its submission, at paragraph 4.1.7, which tends to reinforce the position that I have expressed. It states —

> The Society notes that sub-clauses 103(2), 104(1) and 104(2) of the Bill create obligations and then declare a penalty. They do not provide that a crime or offence is committed if a person acts in a particular way, as clauses 98, 99(2), 100 and 102 do. On the face of sub-clauses 103(2), 104(1) and 104(2) they prescribe a penalty for complying with the obligations stated in those sub-clauses. The Society assumes that it was probably intended that those provisions make it an offence to **not** comply with those obligations. If so, those provisions are required to be amended accordingly.

If the advice that the minister has received, and with which the government is comfortable, is that there is no ambiguity or uncertainty about what is meant there and that there will be no problem down the track, I am not going to argue the toss with him, but I simply draw to his attention that perhaps some clarity would be useful.

Hon STEPHEN DAWSON: I am told it is a drafting convention, and similar to regulation 26 of the Medicines and Poisons Regulations 2016. We have taken advice from the Parliamentary Counsel's Office and the State Solicitor's Office, and they agree with the position in the bill.

Hon NICK GOIRAN: I move —

Page 68, line 9 — to delete "inform the CEO" and substitute —

within 2 business days after cancelling the document, inform the CEO and the Board

Hon STEPHEN DAWSON: The government does not support this amendment. The board will be notified via the database that we have spoken about previously. The CEO will be informed in a timely manner. I note that the cancellation of the prescription means that the voluntary assisted dying substance is not supplied to the patient or the agent.

Hon NICK GOIRAN: By way of explanation of this amendment, clause 103 outlines what must be done when an authorised supplier is given a document that is presented as a prescription for a voluntary assisted dying substance and the authorised supplier is satisfied that the document does certain things as set out in subclause (1)(b), which states —

> the authorised supplier is satisfied that the document —
>
> (i) does not comply with section 69; or
>
> (ii) is not issued by the coordinating practitioner for the patient to whom it relates; or
>
> (iii) is false in a material particular.

Clause 103(2) provides that the authorised supplier must cancel the document by marking the word "cancelled" across it and inform the CEO that the document has been cancelled and give the reasons for cancelling. The penalty for failure to cancel the document and informing the CEO of the document cancellation is imprisonment for 12 months. The amendment I have moved will do two things: firstly, it will insert a time frame within which notification by the authorised supplier to the CEO must occur—that is, within two business days after cancelling the document. Secondly, it will require the authorised supplier to notify not only the CEO of the cancellation but also the Voluntary Assisted Dying Board. I note that other important notifications within this bill are required to take place within two business days of a form being completed, yet in this instance, when the document is a false or noncompliant prescription and the authorised supplier has to cancel the document, there is no requirement for that notification to the CEO to occur within a set time frame. This deficiency was identified by the Law Society in the submission it circulated to us over the last week. I quote from its submission dated 27 September 2019, particularly the paragraph on page 8, where the Law Society states —

> Clause 103 of the VAD Bill provides for the cancellation of documents presented as a prescription by an authorised person but there is no timeframe for compliance.

If we are going to ask the person to inform the CEO—if they do not do it, they are liable to go to jail for 12 months—we should at least let that person know how long they have before they are prosecuted and potentially go to jail. I do not think it is asking too much. I do not really mind whether the period is two days or some other period, but it is the complete absence of a period in this provision that concerns me. As I say, the Law Society itself has raised it with members. The Law Society's solution was that we could deal with this by way of a prescription by regulation. I understand from previous discussions, particularly under clause 1, that the government is not intending to move any regulations. I would rather we insert it now while we have the opportunity before us, given the constraints with otherwise trying to handle this matter. The second part of the amendment deals with the information being provided not merely to the CEO, as is currently set out in clause 103, but also to the board. This was picked up by the member for Hillarys in debate in the other place on 18 September. I note that this is the only clause that I can identify in the bill that requires a person to provide notification to the CEO only. Clause 93 requires the CEO, amongst a list of persons, including the board, to be notified by the tribunal that a review application has been made. Clause 95 requires the CEO, amongst a list of persons, including the board, to be given the written reasons for a tribunal decision, and clause 109 requires a court to notify the CEO of a conviction for an offence under this act. I cannot see why clause 103 is the exception within this act when the CEO and only the CEO is required to be notified of something by an individual who holds responsibilities under this act in the request assessment and administration process.

I ask for members' support, emphasising that this is an issue identified by the Law Society in its submission to us dated 27 November this year; and, secondly, if we do not do this, according to clause 103 as it currently stands, an authorised supplier can go to jail for up to 12 months for not providing information to the CEO but we will not tell them how long they have to do so. If it continues to be the position of the government that it does not want to support the amendment in either its current or an alternative form, I ask the minister to, at the very least, clarify how long the authorised supplier will have to inform the CEO that the document has been cancelled before prosecution proceedings commence?

Hon STEPHEN DAWSON: I am told that this provision is consistent with the requirement to inform the CEO in regulation 26 of the Medicines and Poisons Regulations 2016. It was inserted specifically to mirror the MPA in relation to schedule 4 and schedule 8. The penalty is higher to reflect that it is a voluntary assisted dying substance. The board can access the information on the database and the CEO has the discretion to initiate prosecution of this simple offence. It may well be that the practitioner is reminded that they need to do this before any prosecution is initiated. Certainly, the view is that it be done as soon as practicable.

Hon NICK GOIRAN: How much time will the authorised supplier have to inform the CEO before being in jeopardy of a charge? Is it 24 hours, one week, one month or one year? If the government is not going to put in

a period when everywhere else in the bill it says two business days, we have a responsibility to make sure we make it clear to the authorised supplier that they have to do that within a certain period because if they do not, they could go to jail for 12 months. What amount of time will be taken before deciding whether the CEO will proceed or not?

Hon STEPHEN DAWSON: It will be at the CEO's discretion, but the likelihood is that the length of time will be decided upon as part of the guidelines during the implementation phase.

Hon NICK GOIRAN: What makes the provision of this document different from every other document that needs to be provided? Why do all the other documents have to be provided within two days but not this one?

Hon STEPHEN DAWSON: The cancellation of the prescription means that the voluntary assisted dying substance will not be supplied to the patient or the agent, so there is less of a degree of urgency than in other parts of the bill. The board will know whether a prescription has been issued, so if it does not get notification of supply, it can check the reasons.

Amendment put and negatived.

Clause put and passed.

Clause 104: Contact person to give unused or remaining substance to authorised disposer —

Hon NICK GOIRAN: I understand from Hon Rick Mazza that he is not moving any further amendments. On that assumption, I want to ask a few questions on clause 104. What mechanism will be in place to ensure a contact person is notified within 14 days of the date on which the patient made the revocation decision?

Hon STEPHEN DAWSON: The board is required under clause 148 to send the contact person certain information about their obligations and the support services available to them. The board will follow up with the contact person to remind them to return the substance in time or to request information as required.

Hon NICK GOIRAN: What part of the support services or information that will be provided to the contact person will assist them to ensure that they have been notified within 14 days of the date on which the patient made the revocation decision?

Hon STEPHEN DAWSON: The patient must inform the contact person of the revocation.

Hon NICK GOIRAN: If they do not do that, how will the contact person comply with the 14-day time frame?

Hon STEPHEN DAWSON: The coordinating practitioner and the board will remind the contact person to keep in contact with the patient so they know what is going on.

Hon NICK GOIRAN: That sounds like an excellent way to coerce the patient. Will it be a defence to a prosecution under clause 104(1) for the contact person to say that they did not know the day on which the decision was revoked?

Hon STEPHEN DAWSON: As I previously stated, the contact person is expected and likely to be a person who remains in close contact with the patient. The patient will know to tell the contact person. But in answer to the member's last question, there is no such defence in the bill.

Hon NICK GOIRAN: How will the contact person, appointed by the patient, gain entry to the premises to collect any unused or remaining poison in order to provide that poison to the authorised disposer for disposal?

Hon STEPHEN DAWSON: They would make an arrangement with the patient prior to the event. As part of the role, they will need to make an effective plan with the patient about how to do this.

Hon NICK GOIRAN: Clause 104 refers only to the return of a prescribed substance for disposal when a self-administration decision is revoked or the patient has died. What about the circumstance in which the patient loses decision-making capacity but remains in possession of the prescribed substance? How will that be dealt with and provided for in this bill?

Hon STEPHEN DAWSON: In that case, the contact person can contact the coordinating practitioner or the board, and the CEO can work out how to retrieve the substance.

Hon NICK GOIRAN: Is there some sort of power of seizure that would enable the CEO to direct somebody to go to the premises and seize the substance on the grounds that the person has lost decision-making capacity?

Hon STEPHEN DAWSON: Section 103 of the Medicines and Poisons Act 2014 allows for it to be seized.

Clause put and passed.

Clause 105: Recording, use or disclosure of information —

Hon NICK GOIRAN: Clause 105(2) sets out an exhaustive list of occasions when recording, using or disclosing information will be lawful. What are the unlawful occasions that will be captured by clause 105(1) that are not allowed for by virtue of clause 105(2)?

Hon STEPHEN DAWSON: An example of that is that an officer employed by the board cannot disclose confidential information that is received by the board and accessed in his role.

Hon NICK GOIRAN: The minister will see that clause 105(2)(f)(ii) empowers an administrator of the estate to authorise the disclosure of information. Would that person need to have obtained letters of administration before being able to make use of the power; and, if so, are there any circumstances in which that person would need to disclose such information to obtain the letters of administration in the first place?

Hon STEPHEN DAWSON: I am advised that yes, letters of administration would need to be obtained, but there would be no need to disclose such information.

Clause put and passed.

Clause 106: Publication of personal information concerning proceeding before Tribunal —

Hon NICK GOIRAN: In response to some answers yesterday, the minister indicated that it was apparent that there had been quite a bit of consultation between the government and the president of the State Administrative Tribunal, so I take it that the tribunal has been consulted about clause 106. Be that as it may, if the tribunal uncovers some mischief during a proceeding under part 5, how will it report or deal with that information if clause 106 remains in its current form?

Hon STEPHEN DAWSON: Under clause 95(2)(f) the board gets a copy of the reasons for the decision and, further, under clause 96(2), it can disclose that personal information in those reasons.

Hon NICK GOIRAN: I move —

Page 70, after line 18 — To insert —

(da) a former coordinating practitioner or consulting practitioner for the patient if the person is not a party to the proceeding;

Hon STEPHEN DAWSON: The government accepts this amendment for reasons that were given in the discussion on amendment 475/96.

Amendment put and passed.

Hon NICK GOIRAN: I move —

Page 70, lines 20 and 21 — To delete "the administering practitioner for the patient." and substitute —

a person to whom the role has been transferred.

Hon STEPHEN DAWSON: Again, the government supports this amendment. Reasons were given when a similar amendment was moved at 476/96. For the very same reasons, we support it.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 107: Failure to give form to Board —

Hon NICK GOIRAN: What defences would be available to a person charged with a clause 107 offence?

Hon STEPHEN DAWSON: The normal Criminal Code defences in chapter V would apply; for example, incapacity. I am further advised that clause 113(2) of this bill may also provide protection from criminal liability under the act. I was not clear that the amendments at 47/107, 48/107 and 452/107 were not being moved. I have an amendment at 406/107. This amendment will mean that there will not be a $10 000 penalty for a medical practitioner who fails to report a first request to the board. This amendment follows concern from medical practitioners that doctors who were otherwise ineligible to participate, or inexperienced doctors, such as junior doctors, could inadvertently fail to lodge a first request form; however, the practitioner can still be held accountable via clause 10 of the bill. Contravention of the act is capable of constituting professional misconduct and unprofessional conduct. The government considers this to be a good amendment and obviously I support it. I move —

Page 70, after line 27, the table, the first row, the first column — To delete —

s. 21(1)

Hon NICK GOIRAN: I support this amendment—the fiftieth that will be agreed to by this chamber on this bill that we were told required no further consideration; no amendments needed. That is not the only reason I support it. Members may recall that when we were first considering this alleged perfect bill I indicated that it was totally over the top. I put on the *Hansard* record several times during the consideration of that particular clause that it was totally over the top to ask a medical practitioner to have to supply a form to a board about a first request and then say to them, "By the way, if you do not do that within two days, you will be fined $10 000", including when the bill states that the person is not available. I am grateful that commonsense has prevailed, and this amendment has my full support.

Hon STEPHEN DAWSON: I want to make it clear, because Hon Nick Goiran has reminded us of amendments having passed this place thus far, that I have always made it clear in this place that I would give consideration

to proposed amendments. We have listened to all members in this place and, indeed, stakeholders like the Australian Medical Association. The government has engaged with them about their genuine concerns. I have no problem moving amendments if I believe they are beneficial to the bill. As I said, that is consistent with my point during this lengthy consideration of the bill.

Hon NICK GOIRAN: I take no issue whatsoever with the conduct of this minister, who has been exemplary in the handling of a difficult and lengthy debate. However, I put on the record that that type of approach has not been shared by the Premier who said that anyone who wants to suggest amendments will be wrecking the bill. "Wrecking" has been used repeatedly in the public domain by that individual who has been intemperate in his remarks. I simply make the point that this will be the fiftieth—five-zero—amendment that has been passed by the chamber.

Amendment put and passed.

Clause, as amended, put and passed.

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

Hon NICK GOIRAN: Clause 108 is complex for even the most experienced of legislators. Clause 108(6) states that section 101 of the Medicines and Poisons Act "is to be read as if section 101(1)(a) and (2) were deleted". I note that, in effect, the government is asking us to agree to obliterate the majority of the provisions in section 101 of the Medicines and Poisons Act. At the moment, section 101 of the Medicines and Poisons Act states —

> (1) An investigation may be carried out for either or both of the following purposes —
>
> (a) monitoring whether this Act is being complied with;

We are taking that out —

> (b) investigating a suspected contravention of this Act.
>
> (2) The regulations may make provision relating to the procedures to be followed by investigators when carrying out functions under this Act.

In those circumstances, why will investigations be unable to be carried out for the purpose of monitoring whether the voluntary assisted dying act is being complied with?

Hon STEPHEN DAWSON: I am told that it highlights the delineation of the role of the Voluntary Assisted Dying Board and that of the CEO of the Department of Health. The latter will have the investigative role and the board will have the monitoring role for this bill.

Committee interrupted, pursuant to standing orders.

[Continued on page 9818.]

Sitting suspended from 4.15 to 4.30 pm

QUESTIONS WITHOUT NOTICE

PAUL WHYTE — WARMUN COMMUNITY PROJECT — LANGOULANT INQUIRY

1535. Hon PETER COLLIER to the minister representing the Treasurer:

I refer to the Special Inquiry into Government Programs and Projects requested by the Treasurer and the Premier to look at projects entered into by the state government between 2008 and 11 March 2017 with a focus on governance arrangements and decision-making processes.

(1) Given the concerns that the Treasurer raised in opposition about the Warmun community, did he ask Mr John Langoulant, the special inquirer, to investigate the project?

(2) If not, why did he not ask Mr John Langoulant to investigate the issues given the extensive powers he had under section 24 of the Public Sector Management Act?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. The following answer has been provided to me by the Treasurer.

(1) Regarding the concerns raised in the Public Accounts Committee by the current Treasurer and former Liberal Party MP Glenys Godfrey, the former Liberal–National government trusted Mr Whyte himself to provide the formal response. On that basis, it can only be assumed that the former government examined the matters raised and determined that Mr Whyte had no case to answer. There can be no other reasonable explanation for why the previous government would have allowed this to occur.

(2) Setting aside the previous government's backing of Mr Whyte, the special inquiry was focused on the waste of WA taxpayer funds in major projects and special contracts, not the regular procurement practices of agencies.

MINISTERS AND MINISTERIAL OFFICES — UNAUTHORISED CREDIT CARD USE

1536. Hon PETER COLLIER to the Leader of the House representing the Premier:

I refer to "Treasurer's Instruction 321 — Credit Cards — Authorised Use".

(1) Has there been any unauthorised use of credit cards by any minister or member of a minister's office in the past three months?

(2) If yes to (1), what was the unauthorised purchase and what was the value of the purchase?

(3) If yes to (1), to which ministerial offices was the credit card or cards allocated?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question.

(1) Yes.

(2) Regarding the nature of purchase, there are four—taxi fares, meal, chemist and meal, and meals. The amounts were $11.44 for taxi fares, $20.50 for meals, $35.29 for chemist and meal and $578.80 for meals. The ministerial offices—this is presented in a table—are Murray, MacTiernan, Wyatt and Quigley. All unauthorised expenditure has been repaid to the department.

(3) Refer to part (2) above.

HOUSING INVESTMENT PACKAGE — JOB CREATION — PREMIER'S COMMENTS

1537. Hon MICHAEL MISCHIN to the Leader of the House representing the Premier:

I refer to the media release of 3 December 2019 titled "New housing boost helps more West Aussies and supports economy" in which the Premier claims —

> The $150 million boost to our housing construction industry will help create 1,000 new jobs and ensure this vital industry in the WA economy continues to grow.

(1) How is the number of alleged jobs calculated?

(2) Are these jobs full time, part time or casual?

(3) Are they new employment positions or merely the labour component in the project?

(4) What is the average and median duration of these alleged jobs?

(5) Will this additional number of jobs be reflected in an increase of 1 000 in the total number of employed persons to be reported in due course by the Australian Bureau of Statistics; and, if not, why not; and, if so, when does the government expect that increase to be reflected in its report?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question.

(1)–(5) A residential construction multiplier endorsed by the Department of Treasury is used to determine the number of jobs created. The package will result in an overall increase in employment activity in the WA construction industry and is anticipated to have a flow-on impact on employment numbers as reported by the Australian Bureau of Statistics. The nature and type of work and associated employment arrangements will vary based on individual projects.

LANGUAGE DEVELOPMENT CENTRES

1538. Hon DONNA FARAGHER to the Minister for Education and Training:

I refer to the five metropolitan language development centres.

For each centre, will the minister advise —

(a) the current total enrolment capacity;

(b) the number of enrolled students in 2016, 2017, 2018 and 2019; and

(c) the most recent enrolment projections for 2020, 2021, 2022, 2023 and 2024?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question.

(a) Language development centres are typically co-located with other primary schools. For each language development centre, enrolments are influenced by available classroom accommodation at each school site. This may vary from year to year.

(b) I am not able to provide the total enrolments for each individual centre today. I undertake to provide the enrolments for each individual centre on 5 December 2019.

(c) Projection data is not generated for language development centres.

CARE LEAVERS — HOME STRETCH TRIAL

1539. Hon NICK GOIRAN to the Leader of the House representing the Minister for Child Protection:

I refer to reports of an extension to the Home Stretch trial for an extra 60 young people.

(1) Where will the expansion be based?

(2) When will the expansion commence?

(3) Will the minister table her two most recent briefing notes about the extension?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question.

Through additional resources from Lotterywest, the Home Stretch trial is being expanded to assist up to 25 extra young people over three years. The additional funding provides a total of 60 places over the three years, consisting of up to 10 places in the first year and up to 25 places in each of the second and third years.

(1) A decision on the location of the expansion has not yet been made.

(2) The expansion will commence in the first half of 2020.

(3) I table the attached briefing notes.

[See paper 3485.]

MILLSTREAM WATER RESERVE — PILBARA

1540. Hon JACQUI BOYDELL to the minister representing the Minister for Water:

I refer to the Millstream Water Reserve water supply in the Pilbara.

(1) What is the current level of Harding Dam?

(2) What is the current status of the 12 bores within the water reserve?

(3) Is the minister aware of any issues pertaining to the supply of water across the Pilbara region; and, if yes, will he please list them?

(4) Does the department have plans to ensure a stable water supply for Karratha if there is a lack of rainfall over the next 12 months; and, if yes, will the minister table those plans?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question. The following information has been provided by the Minister for Water.

(1) Harding Dam is currently at 22.34 per cent capacity and holding just under 14 billion litres of water as of yesterday.

(2) Six bores are currently in use supplying water to the west Pilbara water supply scheme. Four bores are currently not in use due to salinity issues. The remaining two bores are currently awaiting mechanical repairs.

(3) Yes. Given that the west Pilbara region has experienced very dry wet seasons over the last two years, Harding Dam has not received the streamflow needed to supply the town. The minister is aware that due to insufficient capacity, Harding Dam is expected to be taken offline by the end of the month.

(4) The current Millstream and Bungaroo water sources will be capable of supplying the west Pilbara water supply scheme over the next 12 months.

HOUSING INVESTMENT PACKAGE — REGIONS

1541. Hon COLIN HOLT to the minister representing the Minister for Housing:

I refer to the minister's comments that 30 per cent of new public housing units in the housing investment package will be built in regional WA.

(1) What is the lead agency for this project?

(2) From where has the $150 million been budgeted?

(3) How many of the 300 new homes will be built in regional WA?

(4) Where are the 20 refurbishments in regional WA, and will the minister please list the locations of these dwellings?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question.

(1) It is the Department of Communities.

(2) Funding will be provided through consolidated revenue.

(3) Approximately 30 per cent of new homes will be delivered in regional WA.

(4) Individual projects and sites have not been finalised. It is anticipated that locations will be confirmed in early 2020.

POLICE — STRIP SEARCHES

1542. Hon AARON STONEHOUSE to the minister representing the Minister for Police:

I refer the minister to media reports in New South Wales that police in that state have carried out 122 strip searches of girls under the age of 18 years since 2016.

(1) Does the Western Australia Police Force undertake strip searches; and, if so, under what circumstances?

(2) If yes to (1), how many such searches were carried out on males between 2016 and now?

(3) How many, if any, of those males were under the age of 18 years at the time of the search?

(4) How many such searches were carried out on females between 2016 and now?

(5) How many, if any, of those females were under the age of 18 years at the time of the search?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question.

I have not seen that question in my pack. I am aware that certain answers from the Minister for Police could not be provided today, but we will endeavour to have them by tomorrow. I have not actually seen the member's question. If it is around and it has been answered, somebody will provide it to me and I will give the answer at the end of question time.

"CLIMATE CHANGE IN WESTERN AUSTRALIA" ISSUES PAPER

1543. Hon TIM CLIFFORD to the Minister for Environment:

I refer to the response given to question on notice 2608, specifically the claim that a short-term period in relation to rising greenhouse gas emissions is considered to be two to three years.

(1) Given that the "Climate Change in Western Australia" issues paper claims that emissions will rise only in the short term, will the minister confirm that WA's emissions will not rise beyond 2023?

(2) If emissions will rise beyond 2023, does this government consider this to be a medium-term period; and, if so, will the minister please outline what the government considers to be a medium-term period and confirm that emissions will not increase beyond the specified medium-term period?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question.

(1)–(2) Greenhouse gas emissions projections prepared by the commonwealth Department of the Environment and Energy do not include separate projections for individual states and territories. Western Australia's emissions are likely to increase in the short term as a result of previously approved resource proposals in the state, which are in the process of increasing production. Some of these emissions may be offset by removals from land use, land use change and forestry. Opportunities to reduce Western Australia's greenhouse gas emissions consistent with the state's aspiration of net zero emissions by 2050 will be considered as part of the state climate policy.

MENTAL HEALTH — CLINICAL GOVERNANCE REVIEW

1544. Hon ALISON XAMON to the parliamentary secretary representing the Minister for Mental Health:

I refer to the review of the clinical governance of public mental health services.

(1) When will this review be completed?

(2) When will the results of this review be made publicly available?

(3) Will the minister commit to tabling this review when it is completed?

Hon ALANNA CLOHESY replied:

I thank the honourable member for some notice of the question.

(1) The review of the clinical governance of public mental health services in Western Australia has been completed.

(2)–(3) The review is currently being considered by the Minister for Mental Health. No decision has yet been made regarding its public release.

BURRUP PENINSULA — ROCK ACIDITY

1545. Hon ROBIN CHAPPLE to the Minister for Environment:

I refer to question without notice 1266 asked on 29 October 2019 and the answer to (3) about the site known as the big goanna petroglyph on Murujuga.

(1) Has the minister investigated what has caused the change in pH at that site?

(2) If no to (1), why not?

(3) If yes to (1), what were the findings of that investigation?

(4) If yes to (1), who was responsible for the dramatic change in pH of the test site?

(5) Will any action be taken against the perpetrator?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question.

(1)–(5) I have requested the Department of Water and Environmental Regulation to investigate this matter. This investigation is ongoing and I expect to have the report in due course. I commit to tabling this report once it has been finalised.

AUSWEST TIMBERS

1546. Hon DIANE EVERS to the minister representing the Minister for Forestry:

I refer to the minister's media release on 3 December 2019 that states that Parkside Timber, a Queensland-based company, has purchased Auswest Timbers' Greenbushes mill and Nannup timber processing.

(1) Has Parkside Timber been awarded the contract that was stripped off Nannup Timber Processing for breaching conditions by exporting unprocessed Western Australian marri logs; and, if yes, what changes have been made to the conditions?

(2) What is the government doing to ensure that breaches regarding the export of unprocessed native timber do not occur again?

(3) Has the independent investigation into jarrah exports been completed, and —

(a) if yes, what was the result and will the minister table the report; and

(b) if not, why not, and when will the report be completed?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question.

I apologise member; I certainly have not seen that answer. The member indicated to me earlier today that she was putting a question forward, but we have had no answer from the minister and, to my knowledge, my office has not received one, so we will investigate and answer the question tomorrow.

OFFICE OF THE AUDITOR GENERAL — LOCAL GOVERNMENT AUDITING REQUIREMENTS

1547. Hon COLIN TINCKNELL to the minister representing the Treasurer:

I refer to the changes that have been brought about by the enactment of the Local Government Amendment (Auditing) Bill 2017, in particular the requirement for the Office of the Auditor General to audit local councils. I also note that the OAG has reported in its 2018–19 annual report an estimated increase in workload of 80 per cent as there are currently 148 local governments.

(1) How has this increase in entities requiring audit by the OAG been factored into the department's —

(a) budget; and

(b) human resources?

(2) Have there been any significant findings from the 48 audits already done on local governments?

(3) What mechanisms exist to ensure that local governments act on OAG audit recommendations?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. The question before me refers to (1), (2) and (3), but there is no part (a) or (b) so I will answer it accordingly.

(1) Budgets have provided annual appropriation funding for the OAG's local government performance auditing function starting at $1.01 million in 2017–18 and building to $2.06 million per annum by 2020–21. Annual funding recovered via financial auditing fees will grow to approximately $7 million per annum in 2021–22, by which time the OAG's financial audit responsibilities will cover all 148 local government

entities. In terms of human resource implications funded from fees from local governments, the OAG took on nine additional financial audit staff last year—including four additional graduates compared with previous years, two level 9 positions, two level 7 positions and a level 6 position—and a significant number of contract audit firms. The staffing mix depends on the level of contracting in any one year and is therefore subject to change. Appropriation funding has resulted in the OAG receiving funding for an additional nine performance auditors and three support staff.

(2) Yes.

(3) Under section 7.12A of the Local Government Act 1995, all sampled entities are required to prepare an action plan addressing significant matters relevant to their entity for submission to the Minister for Local Government within three months of an OAG performance audit report being tabled in Parliament. This action plan, which is also for publication on the audited entity's website, should address the recommendations as they are relevant to that entity, as indicated in the report.

The OAG's financial audit management letters, which are provided with the local government's financial audit opinions to the CEO and mayor/president and forwarded to the Minister for Local Government, often include findings relating to financial, management and information systems controls weaknesses. Each finding is assigned a rating—significant, moderate or minor—and the possible implications for the entity's business of failing to address the findings are explained. The OAG includes a recommendation designed to help address the finding, and in reply the audited entity indicates whether it agrees to implement the recommendation and provides the name of a responsible officer and an agreed implementation deadline. The minister can request the OAG to provide a copy of a management letter to the Department of Local Government, Sport and Cultural Industries.

Parliamentary committees may ask entities about matters raised in the OAG's financial and performance audit reports, including actions taken in response to recommendations.

SOUTH WEST NATIVE TITLE SETTLEMENT

1548. Hon ROBIN SCOTT to the minister representing the Treasurer:

I refer to a report last week that the Noongar people of south west Western Australia are pursuing more than $290 billion for spiritual damage caused by the alleged loss of their traditional land.

(1) What is the government's estimate of the legal fees to fight this claim?

(2) Will the taxpayer be footing the bill for the legal costs to fight the claim?

(3) Will the government be seeking payment of its legal costs from the Noongar people if the government is successful in defending the claim?

(4) Are there plans by the government to prevent future frivolous and vexatious claims from clogging our courts?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. The following answer has been provided to me by the Minister for Aboriginal Affairs.

(1)–(3) The costs of legal fees are presently unknown. The compensation claim has been brought by one of the applicants to the judicial review proceedings in relation to the south west native title settlement. Those proceedings are challenging the Native Title Registrar's decision to register the six south west native title settlement Indigenous land use agreements. A decision on the judicial review proceedings in relation to registration of the ILUAs will be delivered by the full Federal Court in the near future. The outcome of that decision will impact the resources required to respond to this compensation claim.

(4) The state government cannot prevent individuals from lodging claims with the Federal Court. The Federal Court is responsible for the lodgement of claims and their acceptance for filing under the Federal Court's rules.

WA LABOR PARTY — CHINA LINKS

1549. Hon CHARLES SMITH to the Leader of the House representing the Premier:

I refer to a 12 September WAtoday article entitled "Questions emerge over WA Labor's China links", outlining the details of a 2015 event attended by the now Premier. According to the article, the event in question was to mark the establishment of the Western Australian branch of the now defunct Australian Chinese Labor Party Association, an organisation linked to the Chinese government's United Front Work Department.

(1) Can the state government confirm whether the Premier or cabinet ministers continue to cultivate relationships with organisations and individuals known to be linked to the United Front Work Department?

(2) What is the state government's public position on the united front's foreign influence activities in Western Australia?

Hon SUE ELLERY replied:

The Western Australian organisation referred to in the honourable member's question was not ever—not ever—linked to the Chinese government's United Front Work Department, and therefore I reject the premise of the honourable member's question.

BUSHFIRES — ESPERANCE

1550. Hon COLIN de GRUSSA to the minister representing the Minister for Emergency Services:

I refer to the "Record of Investigation into Death" from the Coroner's Court of Western Australia regarding the 2015 Scaddan bushfires.

(1) When will the state government make a formal response to the coroner's report?

(2) How will the state government consult with the Shire of Esperance, Department of Fire and Emergency Services and volunteer firefighters to identify and work towards implementing the appropriate recommendations from the report?

(3) Will the state government prioritise funding and implement the recommendations of the report?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. The following answer has been provided to me by the Minister for Emergency Services.

(1)–(2) The state government will carefully consider the recommendations of the coronial inquiry. A formal response will be provided following the conclusion of this bushfire season, which is the current focus of the Department of Fire and Emergency Services. This will include consultation between DFES, the Department of Biodiversity, Conservation and Attractions Parks and Wildlife Service, and the Esperance community, which are committed to working together on community safety in the Esperance region.

(3) The state government has already undertaken significant reforms to DFES and prioritised record funding into bushfire mitigation and planning. This includes a landmark $35 million investment in mitigation to reduce bushfire risk, including on crown land; a $15 million mitigation activity fund to support local governments to undertake mitigation in high-risk areas; and another $15 million to fund the bushfire risk management planning program, including 11 new bushfire risk management officers to identify risks and develop bushfire plans. DFES also implemented a number of reforms in the Esperance region following the 2015 bushfires, including boosting the level of local DFES management support in the region; enhancing the partnership between DFES and the Shire of Esperance by basing the Esperance community emergency services manager in the DFES Esperance office, and pre-positioning of aircraft and support personnel ahead of bad fire weather. Local aircraft providers in Esperance and surrounding areas are now registered on ARENA—the National Aerial Firefighting Centre database of aviation service providers. This database is a national system to support agencies' management of aircraft, operator compliance and resource availability. There has also been the establishment of an interagency south east fire working group to identify and prioritise bushfire mitigation across the Shires of Esperance, Jerramungup and Ravensthorpe.

POLICE — CROWD DISPERSAL EQUIPMENT

1551. Hon MARTIN ALDRIDGE to the minister representing the Minister for Police:

I submitted two questions today to the Minister for Police. Four hours after they were lodged, I was advised that the Minister for Police was unavailable due to her travelling, which we were not notified of prior to the 11.00 am cut-off. If it is not too much trouble, I will ask the Minister for Police a question from yesterday.

I refer to the issuance of crowd dispersal equipment in regional WA.

(1) Which regions have local caches of crowd dispersal equipment available for immediate deployment?

(2) Which regions have sufficiently trained officers available for immediate deployment utilising the equipment identified in (1)?

(3) How does the Western Australia Police Force determine and prioritise the deployment of such equipment across regional WA?

(4) Will the minister commit to each police region having sufficient crowd dispersal equipment to mitigate identified risks?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. The following answer has been provided to me by the Minister for Police. The Western Australia Police Force advises the following.

(1) All districts in regional WA have crowd dispersal equipment for immediate deployment.

(2) All officers receive public order training at recruit level. There is also a cohort of officers who form a district support team in each regional WA district. The officers in the DST have received higher levels of training facilitated by the regional operations group, which continues to deliver this specialist training when required.

(3) Regional WA determines and prioritise the deployment of such equipment.

(4) See the response to (1).

DEPARTMENT OF COMMUNITIES — PAUL WHYTE — MEMBER FOR VICTORIA PARK'S COMMENTS

1552. Hon TJORN SIBMA to the Leader of the House representing the Minister for Community Services:

I refer to corruption allegations made against Mr Paul Whyte, lately of the Department of Communities, the concerns the current Treasurer had about Mr Whyte back in 2016 and the minister's answer given on 28 November 2019 that "I accepted Mr Searle's advice on this occasion", regarding the period Mr Whyte acted as the department's director general.

(1) Was the minister aware of the concerns the Treasurer had about Mr Whyte at the time she accepted Mr Searle's advice?

(2) If so, why did she accept the advice of Mr Searle?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question.

(1)–(2) The now Treasurer in opposition raised concerns for the former Liberal–National government to investigate. Given the former Liberal–National government trusted Mr Whyte to provide the formal response to the concerns raised by the Public Accounts Committee, it was assumed that the former Liberal–National government had examined the matters raised. If the honourable member has information to the contrary, I would welcome him sharing it.

DROUGHT — SOUTHERN RANGELANDS — FARMERS ACROSS BORDERS

1553. Hon JIM CHOWN to the Minister for Agriculture and Food:

There is an opportunity for donated fodder to be transported to regions of Western Australia such as the southern rangelands and other areas that have experienced protracted drought conditions that are likely to continue into mid-2020.

(1) Is the McGowan government prepared to adopt and implement a similar policy to the New South Wales government, by which there was subsidised transportation of donated fodder from community groups or other voluntary organisations?

(2) If not, why not?

Hon ALANNAH MacTIERNAN replied:

I thank the member for the question.

(1)–(2) I recently met with Farmers Across Borders, and I recognise that they are highly motivated to reach out and provide some camaraderie and support to farmers who are going through dry conditions. Senior personnel from the Department of Primary Industries and Regional Development have contacted Farmers Across Borders to get some detail so we can really better understand the merit of the proposal, acknowledging that there is a social benefit, but looking at what the benefit will be in assisting to deal with these issues. We understand that we are probably largely dealing with a very low nutritional product, with a protein content of maybe around one per cent, so the value it might present to the animals may be limited. We want to look at the destinations that are being proposed and what the plan basically is. For example, a load of this straw might be taken to a property and it might provide some sustenance for a few days. The question is what assistance that provides other than the acknowledged mental health benefit that it may have. We are just trying to quantify that. We are also proposing to have some more discussions with the affected groups to see whether some other proposals might provide a bit more benefit. We acknowledge that Farmers Across Borders are well motivated, but I think we have to do a little bit more work on the degree to which this offers a practical solution.

SHARK BAY SCHOOL

1554. Hon KEN BASTON to the Minister for Education and Training:

I refer to the temporary closure of Shark Bay School on 7 November 2019.

(1) Who is responsible for making the final decision to temporarily close a school due to fire danger?

(2) Is it a statewide policy for a school to close if it is located within an area where catastrophic fire danger weather conditions are declared?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question.

(1) Upon receiving an alert from Department of Fire and Emergency Services, the final decision to temporarily close a school due to fire danger rating of catastrophic is made by the deputy director general of schools or the manager of security and emergency management.

(2) Yes. The Department of Education's guidelines state that public schools listed on the bushfire zone register with a rating of very high or extreme will close on the day of the catastrophic fire danger rating. I table a copy of the Department of Education document "The Principal's Guide to Bushfire".

[See paper 3486.]

PORT GEOGRAPHE RECONFIGURATION PROJECT

1555. Hon Dr STEVE THOMAS to the minister representing the Minister for Transport:

I refer to the Department of Transport's coastal management of the Port Geographe reconfiguration project and to my question without notice 868 of 28 November 2017—two years ago.

(1) What is the current volume of seagrass wrack accumulated west of the Port Geographe groynes?

(2) What is the volume that must accumulate before intervention by the Department of Transport is triggered?

(3) What was the average volume of seagrass wrack that accumulated on the western beach at Port Geographe prior to the current groynes being installed?

(4) Why is the trigger point for Department of Transport intervention, previously stated in question without notice 868 of 2017 as 60 000 cubic metres of accumulated wrack, set so high when the impact is so severe at lower volumes?

(5) Who determined this trigger level originally, and which parties agreed to it?

(6) Given that the answer to question 868 says "the Department of Transport has developed a comprehensive environmental monitoring and management plan for Port Geographe", how is the success of this management plan in managing the seagrass wrack and odour issues being assessed?

Hon STEPHEN DAWSON replied:

I thank the honourable member for some notice of the question. The following answer has been provided by the Minister for Transport.

(1) The current volume is approximately 20 000 cubic metres on the western beach.

(2) Approximately 60 000 cubic metres must accumulate on the western beach.

(3) In the 10 years prior to the reconfiguration, the average volume was approximately 100 000 cubic metres annually.

(4) The 60 000-cubic-metre trigger level was set following an assessment of the volumes likely to result in hydrogen sulphide levels exceeding the Department of Health's guidelines. It also acknowledges the comments from residents during the environmental monitoring and management plan public consultation period that disruptive coastal maintenance works on the western beach be minimised.

(5) This trigger level was determined by the Department of Transport following consultation with environmental consultants, coastal engineers and the public. This process began in 2015, with public consultation occurring in 2016. This trigger level was approved by the Office of the Environmental Protection Authority.

(6) The Department of Transport assesses the compliance against the environmental monitoring and management plan each year and then makes these compliance statements publicly available.

CRIMINAL RESPONSIBILITY — AGE

1556. Hon ALISON XAMON to the Leader of the House representing the Attorney General:

(1) Does the Attorney General support calls to raise the age of criminal responsibility?

(2) If no to (1), why not?

(3) Given recent reporting that the federal Attorney-General is "not overly enthusiastic" about raising the age, will the McGowan government move to increase the age of criminal responsibility in WA in the absence of Council of Australian Governments agreement on this issue?

(4) If no to (3), why not?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question.

(1)–(4) The Attorney General placed the issue of the age of criminal responsibility on the agenda of the Council of Attorneys-General in November last year following the recommendations of a royal commission in the Northern Territory and the Northern Territory government's commitment to raise the age to 12 years. A working group led by the WA Department of Justice was formed and reported to the most recent CAG in Adelaide last week. The working group will shortly commence public consultation and report back to the Council of Attorneys-General in 2020. The results of that consultation will inform the position of the McGowan government on the issue. The communique from last week's Council of Attorneys-General noted that there was "strong interest in the review of the age of criminal responsibility".

HUAWEI — RADIO SYSTEMS REPLACEMENT CONTRACT

1557. Hon PETER COLLIER to the minister representing the Minister for Transport:

I refer to question without notice 1463 asked on Thursday, 28 November 2019.

(1) Have all the of the milestones in the contract that were scheduled to be met to date been achieved?

(2) If no to (1), what milestones have not been met and what is the reason for each delay?

(3) Has the minister or her office been briefed, either verbally or in writing, in the past 60 days by the Public Transport Authority about any delays in this project?

(4) If yes to (3), what were the specific issues that were raised with the minister or her office?

Hon STEPHEN DAWSON replied:

I thank the Leader of the Opposition for some notice of the question.

(1)–(2) The schedule for the delivery of a range of activities under the contract is adjusted as appropriate from time to time, as with all infrastructure projects. The scheduled completion date for the project remains unchanged.

(3)–(4) The minister's office has been kept informed on the progress of this project.

DEPARTMENT OF COMMUNITIES — STAFF

Question without Notice 1431 — Answer Advice

HON SUE ELLERY (South Metropolitan — Leader of the House) [5.05 pm]: On behalf of the Minister for Child Protection, I would like to provide an answer to Hon Jim Chown's question without notice 1431 asked on 26 November. I seek leave to have the answer incorporated in *Hansard* and I table the lengthy attachment.

[See paper 3487.]

Leave granted.

The following material was incorporated —

(1) As at 25 November 2019, 1,587 employees have left the Department of Communities through accepting redundancy or by resignation since the creation of the department on 1 July 2017.

(2) I table the attached list of positions held by the Department of Communities employees prior to their departure from the department.

(3) As at 30 September 2019, there are 6,379 people employed by Communities.

(4) As at 27 November 2019, there were 484 vacant positions within Communities. Due to the size and nature of Communities' business, some documentation may still be in the process of being finalised, and the number of vacancies may fluctuate.

JOBS — TEMPORARY MIGRANT VISAS

Question without Notice 1519 — Answer Advice

HON SUE ELLERY (South Metropolitan — Leader of the House) [5.06 pm]: On behalf of the Premier, I would like to provide an answer to question without notice 1519 asked yesterday by Hon Charles Smith, which I seek leave to have incorporated into *Hansard*.

Leave granted.

The following material was incorporated —

(1) The Premier notes that the policies of the McGowan Labor Government have support the creation of 56,000 jobs in Western Australia since 2017.

HOUSING — DISPOSALS

Question without Notice 1512 — Answer Advice

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [5.06 pm]: I have the following answer to question without notice 1512, asked of me yesterday, as minister representing the Minister for Housing, by Hon Peter Collier. I seek leave to incorporate the answer in *Hansard.*

Leave granted.

The following material was incorporated —

(1) Social Housing dwellings disposed of and value.

	2017–18	2018–19	2019–20 (YTD)
Number	434	513	110
Book Value	$106,716,523	$82,509,837	$23,975,659

(2) Government Regional Officer Housing and Key Workers Housing dwellings disposed of and value.

	2017–18	2018–19	2019–20 (YTD)
Number	211	116	36
Book Value	$33,933,786	$21,840,178	$5,094,666

(3) Housing Inventory (affordable housing stock) disposed of and value.

	2017–18	2018–19	2019–20 (YTD)
Number	502	287	131
Book Value	$120,124,036	$68,752,188	$19,609,013

(4) Aboriginal Housing Services dwellings disposed of and value.

	2017–18	2018–19	2019–20 (YTD)
Number	0	1	0
Book Value	N/A	$255,000	N/A

QUESTIONS ON NOTICE 2654, 2663, 2664 AND 2665

Answer Advice

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [5.06 pm]: Pursuant to standing order 108(2), I wish to inform the house that the answers to the following questions will be provided by Friday, 6 December 2019: question on notice 2654 asked by Hon Alison Xamon on 30 October of me, the Minister for Environment representing the Minister for Transport; and questions on notice 2663, 2664 and 2665 all asked by Hon Alison Xamon on 31 October of me, the Minister for Environment representing the Minister for Corrective Services.

WATER CORPORATION — LOCAL LABOUR

Question without Notice 1529 — Answer Advice

HON ALANNAH MacTIERNAN (North Metropolitan — Minister for Regional Development) [5.07 pm]: I would like to provide an answer on behalf of the Minister for Water to question without notice 1529 asked yesterday, which I seek leave to have incorporated in *Hansard*.

Leave granted.

The following material was incorporated.

(1) The Minister regularly discusses the importance of maximising local, regional jobs with the Water Corporation.

(2) The Water Corporation monitors the contractor's performance based on commitments that are given within the contract. The requirement is that a minimum 10% of the contract value is spent within the designated region on local goods, services and labour. The Water Corporation considers additional local content (i.e. greater than 10%) as a selection criteria in determining the preferred contractor.

(3) No contractors have failed to meet the 10% target of regional spend as per their contract terms. Indeed the actual spend within the region where the work is done as a proportion of overall spend is around 66%.

FOREST PRODUCTS COMMISSION — INDEPENDENT AUDIT
MINISTER FOR WATER — PORTFOLIOS — STAFF LEAVE BALANCES
REGIONAL DEVELOPMENT COMMISSIONS — STAFF

Answer Advice

HON ALANNAH MacTIERNAN (North Metropolitan — Minister for Regional Development) [5.07 pm]: Pursuant to standing order 108(2), I wish to inform the house that the answers to the following questions will be provided by Friday, 6 December 2019: question on notice 2660 asked by Hon Martin Aldridge on 31 October 2019 of me as Minister for Regional Development; question on notice 2619 asked by Hon Diane Evers on 29 October 2019 of me as the Minister for Regional Development representing the Minister for Forestry; and question on notice 2639 asked by Hon Tjorn Sibma on 29 October 2019 of me, representing the Minister for Water; Fisheries; Forestry; Innovation and ICT; Science.

QUESTION ON NOTICE 2669

Paper Tabled

A paper relating to an answer to question on notice 2669 was tabled by **Hon Alannah MacTiernan (Minister for Regional Development)**.

WHEATBELT MENTAL HEALTH SERVICE
HOSPITALS AND HEALTH CAMPUSES — CODE ACTIVATIONS

Questions without Notice 1396 and 1494 — Answer Advice

HON ALANNA CLOHESY (East Metropolitan — Parliamentary Secretary) [5.08 pm]: In relation to questions without notice 1396 and 1494, both asked by Hon Jacqui Boydell on 22 November and 29 November respectively, the Department of Health has now provided answers, which I seek leave to have incorporated into *Hansard*.

Leave granted.

The following material was incorporated —

Question without Notice 1396 —

I thank the honourable member for some notice of the question.

(1)

Position Name	FTE	Clinical or Non-clinical
SENIOR HEALTH PROFESSIONAL MENTAL HEALTH	1.00	Clinical (Allied Health)
CLINICAL NURSE SPECIALIST-MENTAL HEALTH	0.50	Clinical
CLINICAL NURSE SPECIALIST-MENTAL HEALTH	1.00	Clinical
SENIOR HEALTH PROFESSIONAL MENTAL HEALTH	0.80	Clinical (Allied Health)
ADMINISTRATIVE ASSISTANT	0.50	Non-Clinical
CLERICAL OFFICER	0.90	Non-Clinical
MENTAL HEALTH OFFICER	0.90	Non-Clinical
CLINICAL NURSE SPECIALIST-MENTAL HEALTH TRIAGE	3.60	Clinical
CLINICAL NURSE	1.00	Clinical
MANAGER MENTAL HEALTH	1.00	Non-Clinical
SOCIAL WORKER	1.00	Clinical (Allied Health)
SENIOR SOCIAL WORKER	1.00	Clinical (Allied Health)
SENIOR HEALTH PROFESSIONAL MENTAL HEALTH	2.00	Clinical (Allied Health)
CLINICAL NURSE SPECIALIST-COMMUNITY MENTAL HEALTH	2.00	Clinical
CLERICAL OFFICER	3.00	Non-Clinical
COORDINATOR MENTAL HEALTH CHILD AND ADOLESCENT	1.00	Clinical (Allied Health)
COORDINATOR MENTAL HEALTH ADULT	1.00	Clinical (Allied Health)
HEALTH PROFESSIONAL MENTAL HEALTH ADULT	3.60	Clinical (Allied Health)

Position Name	FTE	Clinical or Non-clinical
CLINICAL NURSE SPECIALIST-COMMUNITY MENTAL HEALTH	2.00	Clinical
HEALTH PROFESSIONAL MENTAL HEALTH CHILD AND ADOLESCENT	2.00	Clinical (Allied Health)
ADMINISTRATIVE COORDINATOR	1.00	Non-Clinical
ABORIGINAL MENTAL HEALTH PROFESSIONAL	1.00	Non-Clinical
CLINICAL PSYCHOLOGIST	2.50	Clinical (Allied Health)
SERVICE REGISTRAR - PSYCHIATRY	1.00	Clinical
SENIOR HEALTH PROFESSIONAL MENTAL HEALTH	3.00	Clinical (Allied Health)
SENIOR HEALTH PROFESSIONAL MENTAL HEALTH CHILD AND ADOLESCENT	1.00	Clinical (Allied Health)
CLINICAL NURSE SPECIALIST-MENTAL HEALTH OLDER ADULT	0.80	Clinical
CONSULTANT - PSYCHIATRIST	1.00	Clinical
DIRECTOR CLINICAL SERVICES MENTAL HEALTH	1.00	Clinical
ABORIGINAL MENTAL HEALTH COORDINATOR	1.00	Non-Clinical
SENIOR ABORIGINAL MENTAL HEALTH WORKER	1.00	Non-Clinical
ABORIGINAL MENTAL HEALTH WORKER	3.30	Non-Clinical
ABORIGINAL MENTAL HEALTH WORKER (MALE)	1.00	Clinical

CONSULTANT - PSYCHIATRIST	0.40	Clinical
HEALTH PROFESSIONAL MENTAL HEALTH CHILD AND ADOLESCENT	1.00	Clinical (Allied Health)
SENIOR HEALTH PROFESSIONAL MENTAL HEALTH	1.00	Clinical (Allied Health)
MENTAL HEALTH SAFETY AND QUALITY OFFICER	0.50	Non-Clinical
MENTAL HEALTH OFFICER	1.70	Non-Clinical
BUSINESS MANAGER	1.00	Non-Clinical
COORDINATOR MENTAL HEALTH OLDER ADULT	1.00	Clinical (Allied Health)

(2)

Position Name	**FTE**	**Days Vacant**
CLINICAL NURSE SPECIALIST-MENTAL HEALTH OLDER ADULT	0.80	< 6 Months
ABORIGINAL MENTAL HEALTH WORKER (MALE)	1.00	6 - 12 Months

(3) 2017–18

1548

Peak month – November

2018–19

1952

Peak month – November

(4) The Mental Health Commission does not set minimum clinical staffing requirements.

Question without Notice 1494 —

I thank the Honourable Member for some notice of the question.

(1) The following Code Blacks were reported for the period 1 July – 31 October 2019

Health Campus/ Hospital	**Month**	**Total Activated**	**Reason**
Broome	July	0	Not applicable
	August	4	Physical and/or verbal aggression
	September	0	Not applicable
	October	1	Physical and/or verbal aggression
Kalgoorlie	July	10	Physical and/or verbal aggression
	August	7	Physical and/or verbal aggression
	September	11	Physical and/or verbal aggression
	October	5	Physical and/or verbal aggression
Hedland	July	0	Not applicable
	August	4	Physical and/or verbal aggression
	September	8	Physical and/or verbal aggression
	October	1	Physical and/or verbal aggression
Karratha	July	0	Not applicable
	August	0	Not applicable
	September	2	Physical and/or verbal aggression
	October	1	Physical and/or verbal aggression

(2) There were no Code Black Alphas reported for the period requested at Broome, Kalgoorlie, Port Hedland and Karratha.

(3) There were no Code Yellows reported for the period requested at Broome, Kalgoorlie, Port Hedland and Karratha.

(4) There were no Code Browns reported for the period requested at Broome, Kalgoorlie, Port Hedland and Karratha.

BUSINESS OF THE HOUSE — EXTENDED SITTING HOURS — CATERING

Statement by President

THE PRESIDENT (Hon Kate Doust) [5.08 pm]: I just need to let members know that some arrangements have been put in place to provide refreshments until the house rises. The members' dining room will remain open until 11.00 pm. The members' bar will remain open until 2.00 am. From 11.00 pm until 2.00 am, refreshments will be available in the members' lounge. From 2.00 am, a tea and coffee service will be available in the strangers' lounge.

VOLUNTARY ASSISTED DYING BILL 2019

Committee

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

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

Committee was interrupted after the clause had been partly considered.

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

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

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

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

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

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

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

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

Clause put and passed.

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

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

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

Clause put and passed.

Clause 110: Who may commence proceedings for simple offence —

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

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

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

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

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

Hon STEPHEN DAWSON: No.

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

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

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

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

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

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

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

Clause put and passed.

Clause 111: Time limit for prosecution of simple offence —

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

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

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

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

Clause put and passed.

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

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

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

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

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

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

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

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

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

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

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

Clause put and passed.

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

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

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

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

Hon STEPHEN DAWSON: The answer is no.

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

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

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

This proposed amendment specifically addresses concerns that a doctor should not be protected from civil or criminal liability when they act negligently—that is, without reasonable care and skill. The existing clause implicitly provides that negligent conduct will not be protected, but the amendment will make it explicit in the bill. This amendment has been included following consultation with the Australian Medical Association, and the government considers it to be a good amendment. A number of provisions of the Criminal Code make something unlawful unless it is done in good faith and with reasonable care and skill, or exempts a person from criminal liability if they do something with reasonable care and skill. As such, the proposed amendment reflects the language used in WA legislation.

Amendment put and passed.

Hon NICK GOIRAN: Minister, thank you for that amendment. It satisfies the concern that I had; that is, in effect, the practitioner just simply had to say, "I've acted in good faith and I've done certain thing in accordance with the act. I believe, on reasonable grounds, that I've done those things in accordance with the act and I'm shielded from

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

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

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

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

Hon Nick Goiran: Not to the patient.

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

Clause, as amended, put and passed.

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

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

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

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

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

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

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

Clause put and passed.

Clause 115: Board established —

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

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

Clause put and passed.

Clause 116: Status —

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

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

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

Clause put and passed.

Clause 117: Functions of Board —

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

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

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

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

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

Sitting suspended from 6.00 to 7.00 pm

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

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

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

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

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

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

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

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

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

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

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

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

(a) to monitor the operation of this Act;

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

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

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

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

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

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

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

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

Hon Nick Goiran: Unexpected.

Hon SUE ELLERY: — unexpected deaths—thank you—that are automatically referred to the coroner. Referral to the coroner would occur if there was reason to believe that something had gone awry and it needed to be investigated. New clause 166, which we will get to eventually, provides that a death that occurs in accordance with the Voluntary Assisted Dying Act will not automatically be a reportable death under the Coroners Act 1997. The reference here to whom they can refer is related to that.

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

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

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

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

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

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

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

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

Clause put and passed.

Clause 118: Powers of Board —

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

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

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

Clause put and passed.

Clause 119: Delegation by Board —

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

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

Clause put and passed.

Clause 120: Staff and services —

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

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

Clause put and passed.

Clause 121: Assistance —

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

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

Clause put and passed.

Clause 122: Minister may give directions —

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

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

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

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

Clause put and passed.

Clause 123: Minister to have access to information —

Hon NICK GOIRAN: Clause 123(3) states —

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

Will this restriction remain post death?

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

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

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

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

Hon SUE ELLERY: That is correct.

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

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

Hon Nick Goiran: Like the doctor?

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

Clause put and passed.

Clause 124: Membership of Board —

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

Hon SUE ELLERY: WA health service boards are appointed by the Minister for Health. These boards reflect the skills and experience required to provide clinical and organisational governance and oversight across the health

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

Clause put and passed.

Clause 125: Chairperson and deputy chairperson —

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

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

Clause put and passed.

Clause 126: Term of office —

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

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

Clause put and passed.

Clause 127: Casual vacancies —

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

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

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

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

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

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

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

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

Clause put and passed.

Clause 128: Extension of term of office during vacancy —

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

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

Clause put and passed.

Clause 129: Alternate members —

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

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

Clause put and passed.

Clause 130: Remuneration of members —

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

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

Clause put and passed.

Clause 131: Holding meetings —

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

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

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

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

Hon NICK GOIRAN: Let us get some matters on the record now if it is going to be dealt with at the implementation phase. The problem here is we have a board that is going to be provided with information. When we asked about concerns previously, we were told that one mechanism is that the board could refer matters to the CEO. The CEO can carry out investigations, make referrals, start prosecutions and the like. All of those things are of no use to a patient who is being coerced or a patient who has lost decision-making capacity if that patient is now dead.

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

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

Clause put and passed.

Clause 132: Quorum —

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

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

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

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

Clause put and passed.

Clause 133: Presiding member —

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

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

Clause put and passed.

Clause 134: Procedure at meetings —

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

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

Clause put and passed.

Clause 135: Voting —

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

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

Clause put and passed.

Clause 136: Holding meetings remotely —

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

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

Clause put and passed.

Clause 137: Resolution without meeting —

Hon MARTIN ALDRIDGE: This clause states —

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

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

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

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

Hon SUE ELLERY: I am advised, yes.

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

Hon SUE ELLERY: There is not a prescription about what nature of things may be resolved without a meeting as opposed to others. Given the powers and responsibilities of the board, given the high expectations of the skills

and experience that members of the board, the chair and deputy chair will bring to the board, it is anticipated that they will carry out their functions with the appropriate degree of gravitas that is required. However, there is no prescription before us that says that these kinds of matters may be resolved only in a physical meeting and these may not. It is about the board determining its own protocols about how it will deal with matters and carrying out its functions with the appropriate level of gravitas.

Clause put and passed.

Clause 138: Minutes —

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

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

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

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

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

Clause put and passed.

Clause 139: Disclosure of material personal interest —

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

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

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

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

Clause put and passed.

Clause 140: Voting by interested member —

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

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

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

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

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

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

Clause put and passed.

Clause 141: Section 140 may be declared inapplicable —

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

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

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

Hon Sue Ellery: I think you might be right.

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

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

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

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

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

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

Clause put and passed.

Clause 142: Quorum where s. 140 applies —

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

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

Clause put and passed.

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

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

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

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

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

Hon NICK GOIRAN: I am not concerned about the laying of the declaration on the table of the Parliament; that is an excellent transparency measure. I am concerned about clause 143(1) under which the minister can eliminate

two sections of Western Australian statutory law—that is, sections 140 and 142. The minister, by way of edict—the bill refers to it as a written declaration—much like a Henry VIII clause, can come along with a pen and say, "Sorry, I've decided that sections 140 and 142 no longer apply." Clause 143(1) is the provision in question.

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

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

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

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

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

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

Hon Sue Ellery: Redacted.

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

Clause put and passed.

Clause 144: Establishment of committees —

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

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

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

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

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

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

Hon NICK GOIRAN: Yet clause 124 states —

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

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

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

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

Hon SUE ELLERY: The committee could be about anything that the board determines that it needs advice on or that it needs a group to be working on concurrently to the board conducting its business. I appreciate the description by the honourable member that this board constitutes nothing more than an organisation to capture forms. With the greatest of respect, we will have to disagree on the value and importance of the board, because we consider it to be considerably more important than that. For example, the board could set up a committee to look at the best way to record statistics. It could set up a committee to look at best practice policy for supply mechanisms. It could set up committees to look at any range of matters, which is what good boards do across a range of areas in health practice.

Clause put and passed.

Clause 145: Directions to committee —

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

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

Clause put and passed.

Clause 146: Committee to determine own procedures —

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

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

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

Clause put and passed.

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

Clause 147: Remuneration of committee members —

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

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

Clause put and passed.

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

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

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

Hon ADELE FARINA: I move —

Page 86, after line 11 — To insert —

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

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

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

Hon NICK GOIRAN: I have heard a few things over the course of this debate, but this is right up there. Seriously, how can we suggest that of the contact person who has, as I said earlier, a responsibility to return the poison back to the authorised disposer on pain of being jailed for a year if they do not do so within 14 days of the revocation? That is the context that we are operating in here, and now the minister is saying that it is too prescriptive for this board to tell the contact person the name and contact details of the authorised supplier and the authorised disposer based closest to where the patient resides. That is too prescriptive, and too onerous for the board. We do not want the board to be able to do that. The person is in jeopardy of going to jail for up to a year, in actual fact through no fault of their own, and there are two circumstances I give to the minister. The first is that they have never been told about the revocation anyway, but because of a provision that we have already agreed to earlier in the bill we say, "Too bad if you don't know; you have to return the poison within 14 days of the revocation." That is scenario number one. Scenario number two is that the patient has died and they cannot actually enter the premises. I have asked repeatedly in debate on previous clauses what mechanisms and supports are going to be provided by the board to assist the contact person. We keep getting told that we are going to sort this out in the implementation phase, and we are told that the implementation phase is going to be at least 18 months, which is pretty ironic, given that the Premier keeps telling everybody that, if we do not pass this bill, for every day that it does not pass there is another person dying in agony, and yet he does not tell people that he needs at least another 18 months to put this whole program in place. All Hon Adele Farina is doing is saying that we should take a moment, while we are here on 4 December anyway, to make sure that the board actually has to tell the contact person the name and contact details

of the authorised supplier. The authorised supplier is something that the government would have determined. As I recall, when Hon Stephen Dawson was in the chair, he indicated to us that the CEO would sort out all these things. The government decides who the authorised supplier is, and the authorised disposer, and all we are going to be doing is saying to the contact person that these are the two people who live closest to the patient. There is no obligation on the part of the contact person to use those particular people. They could go and use one of the other authorised disposers or suppliers in order to comply with their onerous requirements under this bill. Why would we seriously want to block that person from having that information? It makes no sense to me whatsoever, and I would ask the government to reconsider what is plainly a very sensible amendment.

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

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

Division

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

Ayes (17)

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

Noes (17)

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

Amendment thus negatived.

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

Hon STEPHEN DAWSON: Yes, we will.

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

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

Clause put and passed.

Clause 149: Request for information —

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

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

Clause put and passed.

Clause 150: Disclosure of information —

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

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

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

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

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

Hon Stephen Dawson: It was 123.

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

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

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

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

Hon ADELE FARINA: I move —

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

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

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

(c) either House of Parliament or a committee of either House; or

(d) a joint committee of both Houses of Parliament.

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

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

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

Amendment, by leave, withdrawn.

Clause put and passed.

Clause 151: Board to record and retain statistical information —

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

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

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

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

Hon MARTIN ALDRIDGE: I move —

Page 87, after line 12 — To insert —

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

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

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

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

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

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

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

Amendment put and passed.

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

> The Minister may give a written direction to the Board requiring it —
>
> …
>
> (b) to include that statistical information in its report under section 154(1).

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

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

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

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

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

Hon STEPHEN DAWSON: Yes, it will.

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

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

Clause, as amended, put and passed.

Clause 152: Board to notify receipt of forms —

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

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

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

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

Clause put and passed.

New clause 152A —

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

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

Point of Order

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

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

Hon NICK GOIRAN: Yes.

Committee Resumed

The DEPUTY CHAIR: New clause 152A states —

Page 87, after line 29 — To insert —

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

(1) This section applies if —

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

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

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

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

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

(a) investigate the matter; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This is the very problem. The minister, the government and the chamber have already agreed that some statistics on complications will be kept. That amendment moved by the honourable member that the government agreed to had my full support. What the honourable member is now trying to do, which also has my support, is to say that it is all very good to collect information about the complications, but then what will we do with it? Why did we even bother agreeing to the previous amendment to count and collate the complications if we are going to do nothing about it? Is it so that we feel good because we have kept data and we will table it in Parliament once a year? We are going to feel great about ourselves because we will table an annual report in Parliament that lists all the complications and the number of times that people have awoken from their lack of consciousness. We are going to feel good about that, but we are going to do nothing about it. That is pointless. If we support this new clause, at least then we will know with confidence that the board will investigate the matter, as the member said, maybe in a preliminary fashion—I do not particularly care whether it is in a preliminary fashion or otherwise—and, if necessary, then refer to any other body to avoid any recurrence of the adverse reaction. That is the most important thing of all.

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

we do not want to do that; we do not want anyone to investigate and we want to make sure that the coroner is not involved. If we do not agree to this new clause, it seems to me that we will be agreeing to a cover-up. I cannot imagine that that would be appropriate on a conscience vote. I indicate that I support the amendment moved by the honourable member.

Division

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

Ayes (16)

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

Noes (19)

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

New clause thus negatived.

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

Sitting suspended from 10.02 to 10.15 pm

Clause 153: Execution of documents by Board —

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

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

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

Clause put and passed.

Clause 154: Annual report —

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

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

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

Page 88, after line 19 — To insert —

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

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

Hon NICK GOIRAN: If it is implicit, we will make it explicit by agreeing to my amendment. I was with the minister right until the end when he said that it was implicit that it would be included in the annual report anyway. I notice that one of the objections was about the quantity of information that might be provided with regard to the referrals at clause 117(c) being of no particular value. Would we as a chamber not want to know that the function we have provided the board at clause 117(c) is useful? If, year after year as the annual reports continue being

tabled we are continually told that there have been zero referrals under clause 117(c), at some point in the history of this scheme someone might reasonably ask the question, "What is the point of that referral function? It's never being used." To give another example, clause 117(c) indicates that a referral can be made to the chief executive officer of the department of the public service that is principally assisting in the administration of the Prisons Act. I would be concerned if those were the only referrals that were reported every year, because it would be an indication that the only time any referrals were taking place was when a person in prison was trying to access voluntary assisted dying. This is the type of information that we have just agreed, at clause 117(c), to be sufficiently important as to give the function and power to the board to refer to these particular bodies. As the minister has indicated, it is implicit that it will be included as part of their annual reports; I would have thought so, too. It is not clear to me what the manifest objection would be to including in the annual reports something that is implicit in any event.

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

Division

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

Ayes (18)

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

Noes (17)

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

Amendment thus passed.

Hon MARTIN ALDRIDGE: I move —

Page 88, after line 27 — To insert —

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

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

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

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

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

Amendment put and passed.

Clause, as amended, put and passed.

New part 9A —

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

Page 89, after line 11 — To insert —

Part 9A — Access standard

154A. Standard about access to voluntary assisted dying

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

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

(b) prescribed substances; and

(c) information about accessing voluntary assisted dying.

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

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

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

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

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

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

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

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

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

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

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

Hon STEPHEN DAWSON: No.

Hon NICK GOIRAN: Why not, minister?

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

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

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

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

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

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

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

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

Hon STEPHEN DAWSON: My advice is possibly. It is a complex legal argument. During the implementation phase, we will work out how this could be done. The information will be provided to relevant bodies in a hard copy, essentially; however, what appears on the website may need to be restricted based on the commonwealth act. That detail relating to the commonwealth act would be worked out at a later stage during the implementation phase. The point that the member made about privilege is a good one, and I will certainly bring it to the minister's attention. I want to acknowledge the work that the Minister for Health has put into this amendment. I certainly want to acknowledge that Hon Martin Aldridge has been having conversations with the minister about this issue, and we have landed in a good place. We are certainly cognisant of the commonwealth act. We will take into consideration those points I have made tonight.

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

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

New part put and passed.

Clause 155: Transfer of coordinating practitioner's role —

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Hon ADELE FARINA: Hon Nick Goiran asked—I apologise if I am repeating it, but I am sure the minister will tell me if I am—what happens if the original coordinating practitioner dies. The original coordinating practitioner would then not be in a position to transfer the role in accordance with this provision, so what happens if that person dies?

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

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

Clause put and passed.

Clause 156: Communication between patient and practitioner —

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

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

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

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

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

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

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

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

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

I say again that if the bill becomes law, there will be an implementation period of at least 18 months before the Voluntary Assisted Dying Act becomes operational. This time period will enable the Department of Health to develop, in consultation with the commonwealth, appropriate administrative measures to ensure compliance with state and commonwealth laws. Assessments may need to be undertaken in person with either the patient travelling to the practitioner or the practitioner travelling to the patient. If the bill passes and this is required, WA Health will provide packages to support access for regional patients when needed. The training for health professionals will reflect the outcome of the ongoing consultations between the state and the commonwealth. We are confident, though, that, as in Victoria, this issue will not compromise health professionals or prevent eligible Western Australians from accessing voluntary assisted dying. The parameters of what can and cannot be discussed will be the subject of further consultation with the commonwealth.

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

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

Hon NICK GOIRAN: I agree with the minister. I am going to get rid of this letter from the Attorney General, John Quigley, because it is not worth the paper it is written on. He tried to tell people that, in his view, the communications about voluntary assisted dying via a carriage service will not contravene the commonwealth Criminal Code Act, in an attempt to try to persuade, either intentionally or unintentionally, and mislead members about the truth on this. It is no wonder the Attorney General was confused about this matter, given that he refers to the substance as "potions and the like". He has received absolutely no assistance whatsoever from the "My Life, My Choice" report because, as the minister confirmed earlier, there is nothing in the report about that, despite the fact that the committee was asked to look at the intersection with federal law. It ignored that. We do not know whether it ignored it because the minister kept it secret, despite the fact that I asked for it to be released. We also know that the ministerial expert panel—the panel that consists of some experts—has said nothing about this particular issue. In that context, no wonder the Attorney General, the chief law officer of Western Australia, is

confused and has written rubbish that now needs to be assigned to the wastepaper basket. It is one thing for the Attorney General to be confused; it is no good for the 36 members of this place to be confused when we are going to pass a clause that indicates that communication between a patient and a practitioner can happen by audiovisual communication, but then snuck into the back of the clause, subclause (4) states —

> However, subsections (2) and (3) do not authorise the use of a method of communication if, or to the extent that, the use is contrary to or inconsistent with a law of the Commonwealth.

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

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

Clause put and passed.

Clause 157: Information about voluntary assisted dying —

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

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

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

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

Clause put and passed.

Clause 158: CEO may approve training —

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

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

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

Several members interjected.

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

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

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

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

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

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

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

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

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

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

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

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

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

Amendment, by leave, altered.

Division

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

Ayes (17)

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

Noes (18)

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

Amendment, as altered, thus negatived.

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

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

Clause put and passed.

Clause 159: CEO may approve forms —

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

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

Clause put and passed.

Clause 160: Interpreters —

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

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

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

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

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

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

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

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

Clause put and passed.

New clause 160A —

Hon NICK GOIRAN: I move —

Page 94, after line 18 — To insert —

160A. Parliament to establish joint standing committee

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

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

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

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

We already know from the course of the debate and consideration of clause 1 through to the last clause we considered, clause 160, that the board will provide only the most modest oversight. Hon Adele Farina earlier asked for the board to be given the opportunity to investigate, and the government said no. That is fine; that was the decision of the chamber, on the government's recommendation. But ought not there be oversight for something as significant as this? That is the first question members need to answer. The second question relates to Hon Martin Aldridge having quite successfully prosecuted an argument in this debate about issues to do with regional access. Who is

going to supervise that? He put forward an amendment, which was agreed to by the chamber, that provides for an access standard. That is a good thing, because the member has now managed to extract a commitment from the government that it will have to table this access standard for parliamentary consideration. Which committee is going to look into that to ensure that the government adheres to that standard?

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

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

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

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

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

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

I supported this bill at the second reading. I have certainly been critical of some of its clauses, and I have endeavoured to ensure that there are adequate safeguards, but foreshadowing my likely support of the bill at the third reading—depending on what it looks like at the end of the Committee of the Whole House—I think it is appropriate, even for those who support voluntary assisted dying and this bill, to ensure that there is adequate parliamentary oversight and a parliamentary review of the legislation. Members on the government side of the chamber may not be in that

position in a couple of years, or in six years. They may want to be assured that their regime is being rolled out effectively, by whatever government succeeds it. The best way to ensure that is done is through a parliamentary committee that has been given oversight of this legislation. I implore all members to think for themselves, exercise their conscience and see the merit and benefit of establishing a joint standing committee that will have the power to review not just this bill but palliative care across the state.

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

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

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

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

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

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

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

Division

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

Ayes (16)

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

Noes (19)

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

New clause thus negatived.

Clause 161: Regulations —

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

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

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

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

Clause put and passed.

New clause 161A —

Hon NICK GOIRAN: I move —

Page 94, after line 22 — To insert —

161A. Regulations about care navigators

(1) In this section —

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

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

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

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

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

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

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

Members will recall that we touched on this issue early in the debate, particularly under clause 1, when it was identified that care navigators will be one of the instruments and mechanisms used by the government to facilitate access to voluntary assisted dying in Western Australia. Some members identified that there is going to be a difference, particularly because of the use of carriage services and the like, and the ongoing confusion with regard to commonwealth law. The government solution to that is to ensure that through care navigators, Western Australians will have access to voluntary assisted dying. We went through quite a lengthy process to identify that the government will spare no expense whatsoever. Indeed, if needs be, if a person in regional or rural Western Australia needs access to a care navigator and an interpreter, the government will fund that. It will fly the person out there. It is the same with regard to the consulting practitioner, the coordinating practitioner, the interpreter and indeed even the administering practitioner. We discovered that up to eight people would be possibly flown out to regional Western Australia. What became clear as part of that debate is that there is no definition of care navigators anywhere in the bill, and the government said, "We'll sort all this out during the implementation phase."

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

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

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

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

Division

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

Ayes (13)

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

Noes (22)

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

New clause thus negatived.

Clause 162: Review of Act —

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

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

Clause put and passed.

Clause 163: Act amended —

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

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

Does the explanatory memorandum contain an error?

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

Clause put and passed.

Clause 164: Schedule V amended —

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

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

Clause put and passed.

Clause 165: Act amended —

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

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

Clause put and passed.

Clause 166: Section 3A inserted —

Hon NICK GOIRAN: The explanatory memorandum states —

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

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

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

Clause put and passed.

Clause 167: Act amended —

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

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

Clause put and passed.

Clause 168: Section 3B inserted —

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

Hon STEPHEN DAWSON: No.

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

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

Clause put and passed.

Clause 169: Act amended —

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

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

Clause put and passed.

Clause 170: Section 3 amended —

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

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

Clause put and passed.

Clause 171: Act amended —

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

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

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

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

Clause put and passed.

Clause 172: Section 3 amended —

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

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

Clause put and passed.

Clause 173: Section 7 amended —

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

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

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

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

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

Hon STEPHEN DAWSON: There is nothing.

Clause put and passed.

Clause 174: Section 14 amended —

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

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

Hon Nick Goiran: Yes, please.

Hon STEPHEN DAWSON: Section 14(1) states —

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

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

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

Clause put and passed.

Clause 175: Section 28 amended —

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

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

Clause put and passed.

Clause 176: Section 83 amended —

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

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

Clause put and passed.

Clause 177: Section 115 amended —

Hon NICK GOIRAN: The explanatory memorandum states —

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

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

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

Clause put and passed.

Clause 178: Act amended —

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

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

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

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

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

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

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

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

Clause put and passed.

Clause 179: Section 5C inserted —

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

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

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

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

Clause put and passed.

Clause 180: Section 5 amended —

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

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

Clause put and passed.

Clause 181: Section 6 amended —

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

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

Clause put and passed.

Clause 182: Section 7 amended —

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

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

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

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

Clause put and passed.

Clause 183: Section 7B amended —

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

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

Clause put and passed.

Clause 184: Section 27 amended —

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

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

Clause put and passed.

Title put and passed.

Report

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

As to Third Reading

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

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

Point of Order

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

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

Debate Resumed

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

Question put and passed.

ADJOURNMENT OF THE HOUSE

Special

On motion without notice by **Hon Sue Ellery (Leader of the House)**, resolved —

That the house at its rising adjourn until Thursday, 5 December 2019 at 11.00 am.

House adjourned at 1.00 am (Thursday)

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QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

ATTORNEY GENERAL — PORTFOLIOS — STAFF LEAVE BALANCES

2629. Hon Tjorn Sibma to the Leader of the House representing the Attorney General:

As at 30 June 2019, for each agency/department within the Minister's portfolio can the Minister please provide in tabular form, the total dollar value of accrued annual leave balances and the number of staff to whom those balances apply for leave balances of the following periods:

(a) 4 weeks or less;

(b) 4 to 5 weeks;

(c) 5 to 6 weeks;

(d) 6 to 7 weeks;

(e) 7 to 8 weeks; and

(f) more than 8 weeks?

Hon Sue Ellery replied:

The Department of Justice (Including State Solicitor's Office and Solicitor General's Office. Excluding judiciary):

	Weeks	Dollar value	Number of staff
(a)	4 weeks or less	$3,796,442	1,713
(b)	4 to 5 weeks	$1,035,884	130
(c)	5 to 6 weeks	$1,200,528	109
(d)	6 to 7 weeks	$719,899	55
(e)	7 to 8 weeks	$452,933	29
(f)	more than 8 weeks	$2,189,111	73
	Total	$9,394,797	

Equal Opportunity Commission

	Weeks	Dollar value	Number of staff
(a)	4 weeks or less	$62,480	13
(b)	4 to 5 weeks	$50,075	4
(c)	5 to 6 weeks	$8,827	1
(d)	6 to 7 weeks	$32,422	3
(e)	7 to 8 weeks	Nil	Not applicable
(f)	more than 8 weeks	Nil	Not applicable
	Total	$153,084	

Legal Practice Board (including Legal Profession Complaints Committee)

	Weeks	Dollar value	Number of staff
(a)	4 weeks or less	$117,065	30
(b)	4 to 5 weeks	$43,219	5
(c)	5 to 6 weeks	$51,179	4
(d)	6 to 7 weeks	$11,802	1
(e)	7 to 8 weeks	$24,960	1
(f)	More than 8 weeks	$107,919	2
	Total	$356,145	

Legal Aid WA

	Weeks	Dollar value	Number of staff
(a)	4 weeks or less	$545,581	249
(b)	4 to 5 weeks	$208,478	23
(c)	5 to 6 weeks	$200,436	21
(d)	6 to 7 weeks	$157,783	14
(e)	7 to 8 weeks	$122,512	10
(f)	More than 8 weeks	$189,649	8
	Total	$1,424,439	

Office of the Commissioner for Children and Young People

	Weeks	Dollar Value	Number of staff
(a)	4 weeks or less	$57,208	16
(b)	4 to 5 weeks	$34,622	1
(c)	5 to 6 weeks	Nil	Not applicable
(d)	6 to 7 weeks	Nil	Not applicable
(e)	7 to 8 weeks	Nil	Not applicable
(f)	More than 8 weeks	Nil	Not applicable
	Total	$91,830	

Office of the Director of Public Prosecutions

	Weeks	Dollar value	Number of staff
(a)	4 weeks or less	$838,209	210
(b)	4 to 5 weeks	$260,038	22
(c)	5 to 6 weeks	$201,658	15
(d)	6 to 7 weeks	$211,426	14
(e)	7 to 8 weeks	$136,441	8
(f)	more than 8 weeks	$579,990	19
	Total	$2,227,762	

Office of the Information Commissioner

	Weeks	Dollar value	Number of staff
(a)	4 weeks or less	$27,891	10
(b)	4 to 5 weeks	$12,453	1
(c)	5 to 6 weeks	Nil	Not applicable
(d)	6 to 7 weeks	Nil	Not applicable
(e)	7 to 8 weeks	Nil	Not applicable
(f)	More than 8 weeks	$42,007	2
	Total	$82,351	

Corruption and Crime Commission

	Weeks	Dollar value	Number of Staff
(a)	4 weeks or less	$358,218	89
(b)	4 to 5 weeks	$215,264	19
(c)	5 to 6 weeks	$128,393	11
(d)	6 to 7 weeks	$112,474	7

(e)	7 to 8 weeks	$60,764	3
(f)	more than 8 weeks	$89,047	4
	Total	$964,160	

MINISTER FOR COMMERCE — PORTFOLIOS — STAFF LEAVE BALANCES

2630. Hon Tjorn Sibma to the minister representing the Minister for Commerce:

As at 30 June 2019, for each agency/department within the Minister's portfolio can the Minister please provide in tabular form, the total dollar value of accrued annual leave balances and the number of staff to whom those balances apply for leave balances of the following periods:

(a) 4 weeks or less;

(b) 4 to 5 weeks;

(c) 5 to 6 weeks;

(d) 6 to 7 weeks;

(e) 7 to 8 weeks; and

(f) more than 8 weeks?

Hon Alannah MacTiernan replied:

Please refer to Legislative Council Question on Notice 2634.

CRIMINAL APPEALS AMENDMENT BILL 2019

2650. Hon Alison Xamon to the Leader of the House representing the Attorney General:

I refer to the *Criminal Appeals Amendment Bill 2019*, and I ask:

(a) can a Royal Commission quash the conviction;

(b) will the Bill apply to people who have already completed their sentence;

(c) in what "special circumstances" can the decision on the application for leave be made during the appeal or when giving judgment on it, rather than as a separate matter;

(d) is the special leave decision itself appellable:

  (i) if yes to (d), in what circumstances; and

  (ii) if no to (d), what is the policy reason for Western Australia taking a different approach from Tasmania, where I understand that if leave is refused, that decision is reviewable;

(e) is the special leave decision reviewable under South Australia's similar law;

(f) regarding the requirement that the application for special leave must be served on any other person the court requires (as well as the parties to the trial):

  (i) who is this likely to be; and

  (ii) if it could include victims, what would their role in the proceedings be and what is the position of the Victim Support Service regarding that;

(g) what if any impact does the Bill have on either the criminal injuries compensation or civil damages process, for example:

  (i) is there any change regarding when or how the victim can apply;

  (ii) what happens if the victim has received compensation/damages and afterwards the conviction is quashed, especially if it's on the basis the person is likely innocent; and

  (iii) what happens if the previously convicted person has reimbursed criminal injuries compensation paid to the victim or paid damages to the victim, and afterwards the conviction is quashed, especially if it's on the basis the person is likely innocent;

(h) if the appeal is successful, is there (still) no compensation for the previously convicted person unless an ex gratia payment is made by Government;

(i) regarding legal aid:

  (i) in what circumstances will legal aid be available for these criminal appeal cases;

  (ii) how many cases are expected to be brought immediately; and

  (iii) does Legal Aid WA need increased resources to meet this need;

(j) was the 2012 report of the South Australian Parliament's Legislative Review Committee on the *Criminal Cases Review Commission Bill 2010*, which discussed a variety of models in other jurisdictions for dealing with this sort of issue, considered when developing this Bill:

(i) if yes to (j), is any of the information about those models now outdated;

(k) what was the motivation for the Attorney General's amendment in the other place to include negligence/incompetence of defence as a ground;

(l) what is the policy reason for Western Australia taking a different position on substitute verdicts from Tasmania's version of this law;

(m) will this Bill apply to a case of tainted evidence as that term is understood in section 46H *Criminal Appeals Act 2004*; and

(n) has any negative feedback been received on the Bill:

(i) if yes to (n), please provide details?

Hon Sue Ellery replied:

(a)–(n) The Member will be offered a full briefing on the *Criminal Appeals Amendment Bill 2019* before it is brought on for debate in the Legislative Council, which has not been able to occur this year. The Government is using the intervening period to monitor the experience of other jurisdictions introducing similar legislation, including the *Justice Legislation Amendment (Criminal Appeals) Bill 2019* introduced to the Victorian Parliament on 16 October 2019. The McGowan Government is currently considering proposed amendments to the Bill. The Member will be offered a briefing on any proposed amendments well before debate moves to Committee of the Whole.

GREYHOUND RACING — BREEDING LICENCES

2651. Hon Alison Xamon to the minister representing the Minister for Racing and Gaming:

(1) I refer to the requirement to obtain a breeding license for greyhounds with Racing and Wagering WA before any breeding activities take place, and I ask:

(a) after a license is obtained are breeders required to undertake continuing education as a condition of their license; and

(b) if no to (1)(a):

(i) why not; and

(ii) what mechanisms are in place to monitor compliance with the conditions of the license?

(2) I refer to the Code of Practice for the keeping of Australian Greyhounds in Western Australia, and I ask:

(a) is there an inspection regime to monitor if the Code of Practice is being adhered to;

(b) if yes to (2)(a):

(i) how frequently are these inspections carried out;

(ii) are inspections unannounced; and

(iii) are inspections and/or inquiries undertaken proactively or only as a result of a report; and

(c) if no to (2)(a), why not?

(3) I refer to the Government's commitment to injury monitoring and continual research for racing greyhounds, and I ask:

(a) have any changes to racing practices been made as a result of additional monitoring and research;

(b) if yes to (3)(a):

(i) what modifications have been made; and

(ii) has there been a decrease in death and injury rates; and

(c) if no to (3)(a), why not?

(4) I refer to monitoring of compliance of welfare regulations for owners of racing greyhounds, and I ask:

(a) how many inspections were undertaken of owners' premises during 2015, 2016, 2017, 2018, and 2019 to date;

(b) were any breaches uncovered as a result of these inspections; and

(c) if yes to (4)(b), for each of the years 2015, 2016, 2017, 2018, and 2019 to date, please list the number of breaches and what the breaches were issued for?

(5) I refer to the requirement to track greyhounds throughout their life, and I ask:

(a) how are greyhounds that are adopted as a result of trainer direct adoptions monitored after their adoption;

(b) is this information subject to further verification and/or audit;

(c) if yes to (5)(b), how; and

(d) if no to (5)(b), why not?

(6) I refer to the socialisation requirements outlined in the Code of Practice for the keeping of Australian Greyhounds in Western Australia, and I ask:

(a) what mechanisms are in place to monitor compliance with this standard; and

(b) what is the penalty for breaching the socialisation requirements in the code?

Hon Alannah MacTiernan replied:

(1) (a) No. There is no direct requirement, however our on track veterinarians and Industry Veterinarian Dr Judith Medd are accessible for any education, advice or support regarding the breeding of greyhounds.

(b) (i) Prior to licensing, the breeders are to undertake an extensive 'Breeders Competency Package.' The vast majority of breeders are greyhound trainers that have experience in the caring and breeding of greyhounds. Upon completing the relevant modules to obtain such licence, fundamental competency standards are established and do not alter. Thereafter breeders are monitored by way of performance metrics with respect to success rates to ensure they continue to meet acceptable standards.

(ii) The stewards continue to conduct unannounced kennel inspections including breeder's properties. The stewards attend the properties between 12–16 weeks to complete ear tattooing and check on the welfare of the greyhounds and their accommodation. The vast majority of breeders use our own on track veterinarians at the 6 week, 12 week and 12 month vaccinations. These vets report any concern to the stewards for immediate action. In addition, breeders breeding statistics are regularly monitored by stewards to ensure quality breeding is occurring. From this review, certain breeders have been directed to appear before stewards due to their breeding statistics not meeting the required standards to show cause as to whether they should retain their licence. Some breeders have their licenses cancelled forthwith due to inactivity to ensure only successful and active breeders remain eligible to breed greyhound.

(2) (a) Yes.

(b) (i) Stewards conduct inspections on a weekly basis as part of operational duties. Active trainers are inspected at least once a year with a large number inspected several times a year. Stewards attend all breeding properties at approximately 12 weeks post whelping for puppy identification and ear tattooing.

(ii) Attendance for puppy identification and ear-tattooing is arranged by appointment. All other kennel inspections are unannounced.

(iii) Inspections and inquiries are undertaken both as part of proactive regulation and response to any reports received.

(3) (a) Yes.

(b) (i) Introduction of hoop arm for races aimed at easing race congestion.

Advancement of track surface monitoring to obtain sufficient data to conduct statistical co-relations with injury data to determine any correlations and "ideal" racing surfaces.

Currently engaged in contracting David Eager from UTI to review WA race tracks as has been conducted in other States.

(ii) As published in RWWA Annual Report (table below) following is the relevant data showing changes to all injury rates. The percentage of starters affected by either a major or catastrophic injury is extremely low at 0.5% from a total of 736 starters.

> In 2018/19 we have seen a decrease in catastrophic injuries from a rate in 2017/18 of 1.7 per 1000 starts to 2018/19 rate of 1.2 per 1000 starts.
>
> This equates to a 30% reduction in the number of greyhounds that sustained a catastrophic injury compared to the previous year.

The reasons behind this decrease are multifactorial but would include; the trainer injury recovery rebate scheme and advancements in track surface monitoring, preparation and maintenance.

As the new Greyhound Injury Full Rebate Scheme commenced in August 2019 we expect that this scheme plus the expanded rebate for the trainer rebate scheme will result in a further significant reduction in the number of greyhounds euthanased on track for serious injuries by the time of next annual report publication in 2019/20.

Number of race injury incidents, injury rates and severity reported at WA race meetings by on track veterinarians between 1 August 2018 and 31 July 2019. (Figures for 2017/18 in blue)

Rating	Incapacitation period	Total numbers of injury incidents	Injury rate (injury incidents/ 1000 starts)	Injury rate as % of total starters
Minor – I	0 days	36	1.4 (1.7)	0.14% (0.17%)
Minor – II	1–10 days	366	13.8 (12.7)	1.38% (1.27%)
Medium	11–21 days	221	8.3 (8.1)	0.83% (0.81%)
Major	Greater than 21 days	113	4.2 (4.3)	0.42% (0.43%)
Catastrophic	Deceased or euthanased immediately	31	1.2 (1.7)	0.12% (0.17%)

(4) (a) Kennel inspections completed; year 2015 – inspections 233, 2016 – 243, 2017 – 215, 2018 – 188, as of (4/11/2019) 2019 – 174.

(b) Yes.

(c) 19/1/15 – No prescription on medication. $300

12/5/15 – Failed to seek vets attention. $500

29/5/15 – Lure not free of animal tissue. $1500

29/5/15 – Refused to answer steward's questions. 18 month disqualification.

23/7/15 – Unclean kennels. $750

28/7/16 – Offensive language towards an official. 5 months disqualification.

4/8/15 – Failed to provide proper accommodation. $1000.

2/8/16 – No prescription on medication. $150

5/9/16 – Misleading evidence. $1500. Improper act $1000. No prescription $300.

5/10/16 – Possession of medications with no prescription. $1000.

5/10/16 – Unclean kennels. $500.

25/10/16 – Possession of a permanently banned substance. $1500.

5/12/16 – No prescription on medication. $150.

28/3/17 – Possession of prohibited substance. $300.

19/7/17 – Unclean kennels. $500

2/10/17 – Possession of an expired permanently banned substance. $500 x 2.

18/9/18 – Possession of a substance. $400

19/10/18 – Possession of an unregistered product. $150

20/3/19 – Unclean kennels. $300

19/9/19 – Possession of an unregistered product. $300

(5) (a) Stewards contact the new owners approximately a month after the retirement to confirm the presence of the retired greyhound and offer educational material in the care of greyhounds.

(b) Yes.

(c) If they are retired to a registered person. The stewards will randomly enquire regarding the status of a retired greyhound under a registered person care. No, if they are retired to an unregistered person.

(d) The person is not bound by the Rules of Greyhound Racing and the stewards have no jurisdiction.

(6) (a) Inspections and inquiries are undertaken both as part of proactive regulation and response to any reports received as outlined in response to question 2. At these times stewards will observe and monitor the compliance with the Code of Practise, including the socialisation requirements.

(b) No prescribed penalty. Penalties determined upon inquiry taking into account all relevant factors. As the socialisation heading is broad, the stewards, depending on the individual circumstances can impose penalties of fines up to $100 000.00, suspensions, disqualifications of cancel of licences or a combination of those depending on severity of the matter.

LEGAL AFFAIRS — LAW REFORM INITIATIVES

2652. Hon Michael Mischin to the Leader of the House representing the Attorney General:

I refer to the following Law Reform Initiatives announced as Labor election commitments in January 2017, and ask in respect of each, the date when the Attorney General issued instructions to initiate it, its progress and current status and, to the extent that legislation is necessary, when the Bill will be introduced into Parliament:

(a) the "BOCSAR" or Bureau of Crime Statistics and Research in partnership with a Western Australian university;

(b) the Law Reform Commission's "review of enforcement schemes from around Australia" to advise on "best practice;

(c) the sentencing database "that will provide comprehensive data of all sentences"; and

(d) the amendments to the Director of Public Prosecutions (DPP) legislation to require the DPP to report annually to a Standing Committee of Parliament and appear and explain the rationale for decisions not to prosecute, to discontinue prosecutions, to accept pleas to lesser charges, and not to appeal?

Hon Sue Ellery replied:

(a) The Office is in the process of being established.

(b) This election commitment was instead delivered by the Department of Justice as part of extensive preparation for the drafting and introduction into Parliament of amendments to the *Fines, Penalties and Infringement Notice Enforcement Act 1994*.

(c) See (a).

(d) This election commitment was superseded by outcomes from the Royal Commission into Institutional Responses to Child Sexual Abuse, which in its 2017 Criminal Justice report recommended Directors of Public Prosecutions implement a complaints system and publish data in their annual reports. The WA Government accepted in principle recommendations 41–43 of the Criminal Justice Report on 27 June 2018. As per the recommendations, the WA Director of Public Prosecutions has implemented a robust and formalised complaints mechanism to allow victims to seek internal merits review of key decisions. The results of the annual auditing were published in the Office of the Director of Public Prosecutions 2018–19 annual report. It should be noted that the ability of victims to seek review of "key decisions" under the Royal Commission recommendation goes further than the election commitment to provide explanations for certain selected decisions, including discontinuances and plea deals. Including this information in the ODPP annual report enlivens the ability of the Legislative Assembly's Community Development and Justice Standing Committee and the Legislative Council's Standing Committee on Estimates and Financial Operations to scrutinise the material in annual report hearings. Upon tabling of the ODPP's annual report for 2018–19, the Attorney General wrote to the Community Development and Justice Standing Committee, which has specific portfolio responsibility for the Attorney General's agencies, to advise it of the changes in the ODPP's annual report brought about by the Criminal Justice Report recommendations. Separately and going beyond the Criminal Justice Report recommendations, the DPP has revised her Office's procedures to give broader explanations for key decisions. Prosecutors lodging a discontinuance must now announce the reasons behind it in open court, and media can be provided with reasons beyond the bare legal descriptor (ie 'no reasonable prospect of a conviction', 'no prima facie case'). These changes were gazetted on 1 August, 2018.

POLICE — STRIP SEARCHES

2653. Hon Alison Xamon to the minister representing the Minister for Police:

I refer to strip searches undertaken by police, and I ask:

(a) how many strip searches were conducted in:

(i) 2014–15;

(ii) 2015–16;

(iii) 2016–17;

(iv) 2017–18; and

(v) 2018–19;

(b) for each year (a)(i) to (v), how many of those searches were conducted on:

(i) Aboriginal men;

(ii) Aboriginal women;

(iii) all women; and

(iv) young people under the age of 18 years;

(c) for each year (a)(i) to (v), in which region were the searches conducted; and

(d) for each year (a)(i) to (v), how many searches were undertaken at:

(i) a police station or watch house; and

(ii) other location (please advise where)?

Hon Stephen Dawson replied:

The Western Australian Police Force advise:

Strip searches are primarily conducted during custodial episodes and recorded in the Custodial Management Application. Therefore, custody strip search events have been used to answer questions (a), (b), (c) and (d) below.

Strip searches may be conducted by Western Australia Police Force officers in circumstances other than custody episodes; however, there is no systematic recording practice for these strip searches across systems and data holdings, and as a result they cannot be readily identified in all cases. On this basis, circumstances of strip searches outside of custody episodes have not been included in the counts provided.

(a) and (c) Table 1. Number of strip searches conducted by police during a custody episode from 2014–15 to 2018–19 by region[1]

Year	Metropolitan Region North	Metropolitan Region South	Regional WA	Unknown	Total
2014/15	12 278	2 708	6 488	141	**21 615**
2015/16	15 938	4 029	7 318	207	**27 492**
2016/17	18 736	4 749	8 675	209	**32 369**
2017/18	19 696	5 698	9 169	269	**34 832**
2018/19	20 458	6 126	8 591	309	**35 484**

[1] Region has been determined where practical from the free text location field. Therefore, the location information should be considered indicative only.

(b) Table 2. Number of strip searches conducted by police during a custody episode on selected demographics from 2014–15 to 2018–19

Year	Aboriginal Males	Aboriginal Females	All Females	Persons Aged Under 18
2014/15	6 194	2 449	4 714	1 056
2015/16	7 771	3 156	6 117	1 203
2016/17	9 250	3 903	7 516	1 456
2017/18	10 262	4 506	8 303	1 867
2018/19	9 968	4 579	8 640	1 450

(d) Table 3. Number of strip searches conducted by police during a custody episode from 2014/15 to 2018/19 by location type[1]

Location	**2014–15**	**2015–16**	**2016–17**	**2017–18**	**2018–19**
Police Facility[2]	21 548	26 966	31 733	34 115	34 661
Airport		2	2	6	7
Breath and/or Drug Bus	1	1	1	36	46
Court	2	14	12	17	15
Hospital / Medical / Health Centre	4	30	35	32	33
Prison / Detention Centre		6	4	9	11
Other[3]	60	473	582	617	711
Total	**21 615**	**27 492**	**32 369**	**34 832**	**35 484**

[1] Location type has been determined based on a free text field. Therefore the location information should be considered indicative only.

[2] WA Police Force facilities have been defined where the event location description indicates a police station, watch house, district office or special squad premise.

[3] Other locations are those where the event location description does not provide any discernible information so as to include in any meaningful grouping. These are predominantly some form of street address.

Notes:

(1) Statistics are provisional and subject to revision.

(2) Western Australia Police Force defines the term 'strip search' as:

> *An authorised officer(s) undertaking a search of a person under the Criminal Investigation Act 2006, (CIA), and may do any or all of the following:*
>
> > *Remove any article that the person is wearing including any article covering their private parts*
> >
> > *Search any article removed*
> >
> > *Search the person's external parts, including their private parts*
> >
> > *Search the person's mouth but not any other orifice.*

(3) The term 'custody' refers to the process undertaken by WA Police Force to detain an individual which under the custodial operational philosophy is necessary to:

> Secure the attendance of people for judicial processes;
>
> Ensure the integrity of evidence (physical, identifying particulars and interview); or
>
> Provide care to vulnerable people in a safe and secure environment where no alternative to police detention exists.

(4) The count of strip searches conducted by WA Police Force has been derived from events recorded in the Custodial Management Application during a period of custody where the event description indicates that a strip search has taken place. The descriptions identified as relevant are:

> Search – strip
>
> Detainee search – strip
>
> Other custodial event – strip search
>
> Other custody event – strip search
>
> Other custodial event – strip search conducted

As this is a free text field, it is possible that a small number of strip searches have not been included where they have been recorded using a different description; however, analysis indicates that this margin would be less than 2%.

(5) Section 135 Criminal Investigation Act 2006 provides authorised officers' with a specific power to search certain persons who are in police custody for security risk items. A security risk item is defined in section 135 and includes things such as:

Items that could be used to cause self-harm or harm to any person in the place – e.g., belts, pocket knives, razor blades, any sharp object, weapons or things that could be adapted to be a weapon

Items that may be used to escape – e.g., multi-tools, picklocks, crowbars, etc.

Items that could adversely affect the security, good order or management of the place where the person is being kept. This category can include basically any property that represents a risk for WA Police and would include valuables, bags, money and any other personal property.

(6) Strip searches may be conducted by police in other circumstances however there is no systematic recording practice and therefore these cannot be reliably identified. On this basis, circumstances outside of custody have not been included in the counts provided.

(7) Aboriginality has been determined where a person's stated ethnicity includes Aboriginal and/or Torres Strait Islander, or if unspecified, this is based on an officer's subjective assessment of ethnic appearance.

(8) Gender is based on that stated by the detainee and (where possible), confirmed through identifying information. Counts of 'male' and 'female' include only those recorded as such and do not include events where the person has a recorded gender of 'other' , 'trans man' or 'trans woman'.

(9) Age has been determined based on the date of birth and the strip search event date. Cases where the date of birth is unknown have not been included in counts of persons under 18.

(10) Location type and region of custody strip searches have been determined based on the free text location description. Therefore the location breakdowns provided should be considered indicative only.

(11) Data includes that obtained from the retired Administration of Justice Application active between 2004 and September 2015 and the replacement application, the Custodial Management Application (CMA), introduced in September 2015. Significant changes in the custodial management process came into effect when the new CMA was introduced in September 2015 and therefore caution should be exercised when interpreting any CMA data over this break in time series.

SILVER CHAIN — REMOTE AREA SERVICE CENTRES — SNAKEBITES

2655. Hon Martin Aldridge to the parliamentary secretary representing the Minister for Health:

I refer to Silver Chain Remote Area Service Centre's, and I ask:

(a) how many patients have presented with suspected snake bites in the past five years in regional Western Australia, by site;

(b) which antivenin is ordinarily available at each site;

(c) how does the WA Country Health Service or the Department of Health who administers the relevant contract assist Silver Chain to meet the high cost of antivenin; and

(d) does the Western Australian Therapeutics Advisory Group (WATAG) recommend antivenin stocking levels at these sites?

Hon Alanna Clohesy replied:

I am advised:

(a) The Department of Health does not routinely collect information regarding suspected snake bites from Silver Chain nursing posts and is therefore unable to provide an answer to this question.

(b) Shark Bay

Black Snake antivenom x 2

Brown Snake antivenom x 2

Lancelin

Tiger Snake antivenom x 1

Brown Snake antivenom x 1

(c) In 2018, WA Country Health Service (WACHS) initially issued Anti-Venin to Silver Chain. Under current contractual obligations, Silver Chain is responsible for the ongoing costs associated with the provision/replacement of Anti-Venin.

(d) Yes, at Shark Bay and Lancelin Nursing Posts.

REGIONAL DEVELOPMENT TRUST

2656. Hon Martin Aldridge to the Minister for Regional Development:

I refer to Legislative Council question on notice No. 2430 and the Ministers refusal to table the minutes and I ask, when does the Minister intend to satisfy her obligations under Section 82 of the *Financial Management Act 2006*?

Hon Alannah MacTiernan replied:

I have previously advised the Member that should he have a particular area of concern that he would like to raise, I would consider his request. To date the Member has not taken advantage of this offer.

REGIONAL DEVELOPMENT COUNCIL

2657. Hon Martin Aldridge to the Minister for Regional Development:

I refer to Legislative Council question on notice No. 2431 and the Ministers refusal to table the minutes and I ask, when does the Minister intend to satisfy her obligations under Section 82 of the *Financial Management Act 2006*?

Hon Alannah MacTiernan replied:

I have previously advised the Member that should he have a particular area of concern that he would like to raise, I would consider his request. To date the Member has not taken advantage of this offer.

PRIMARY INDUSTRIES AND REGIONAL DEVELOPMENT —
"REPORT ON CONSULTANTS ENGAGED BY GOVERNMENT" — CAPABILITY REVIEW

2658. Hon Martin Aldridge to the Minister for Regional Development:

I refer to Legislative Council question on notice No. 2390 and the Ministers refusal to table the "Provision of DPIRD capability review, develop capability review evaluation plan, strategic logic and public value assessment, functional analysis and final report" and I ask, when does the Minister intend to satisfy her obligation under Section 82 of the *Financial Management Act 2006* in relation to the report?

Hon Alannah MacTiernan replied:

I have sought further advice from the Department on the tabling of the report before making a final decision.

I am aware of my obligations under Section 82 of the *Financial Management Act 2006*.

POLICE OFFICERS — REGIONAL

2661. Hon Martin Aldridge to the minister representing the Minister for Police:

I refer to the Western Australian Police Force at 1 July 2015, 2016 and 2017, and I ask:

(a) for each regional Police district, what was the authorised strength expressed as FTE positions at each of those dates; and

(b) for each regional Police district, what was the actual number of police officers employed expressed at FTE positions at each of those dates?

Hon Stephen Dawson replied:

The Western Australian Police Force advise:

	As at 30 June 2015		As at 30 June 2016		As at 30 June 2017	
District	Authorised	Actual	Authorised	Actual	Authorised	Actual
Goldfields Esperance	222.0	217.18	223.0	211.28	228.0	207.44
Great Southern	188.0	181.74	188.0	178.32	193.0	182.38
Kimberley	176.0	174.62	196.0	191.22	208.0	196.03
Midwest Gascoyne	209.0	197.94	224.0	205.73	248.0	228.43
Pilbara	198.0	193.42	198.0	188.74	220.0	208.30
South West	227.0	220.58	227.0	212.69	269.0	240.68
Wheatbelt	157.0	149.97	157.0	144.68	164.0	149.56
Total	1 377.0	1 335.45	1 413	1 332.66	1 530	1 412.82

The total authorised strength for Regional Districts on 30 June 2019 was 1543. This compares to an authorised strength on 30 June 2016 of 1413 – an increase of 130. The total actual strength for Regional Districts on 30 June 2019 was 1446.8. This compares to an actual strength on 30 June 2016 of 1332.66 – an increase of 114.14.

Vacancies in Police Districts can change daily and reflect natural attrition, leave without pay and transfers in and out of Regional WA. Reports for 30 June each year have been provided as this is the WA Police Force's usual reporting cycle.

ENERGY — HORIZON POWER AND SYNERGY — CUSTOMERS

2662. Hon Ken Baston to the minister representing the Minister for Energy:

(1) What is the total number of Horizon Power residential customers either in arrears or on payment plans, for the following months:

(a) July 2019;

(b) August 2019; and

(c) September 2019?

(2) What is the total value of outstanding debt for those Horizon Power customers who are either in arrears or on a payment plan, for the following months:

(a) July 2019;

(b) August 2019; and

(c) September 2019?

(3) What is the total number of Synergy residential customers either in arrears or on payment plans, for the following months:

(a) July 2019;

(b) August 2019; and

(c) September 2019?

(4) What is the total value of outstanding debt for those Synergy customers who are either in arrears or on a payment plan, for the following months:

(a) July 2019;

(b) August 2019; and

(c) September 2019?

Hon Stephen Dawson replied:

(1) (a) 4,926

(b) 4,701

(c) 4,731

(2) (a) $2,758,945.98

(b) $2,941,628.30

(c) $2,890,965.25

(3) (a) 146,648

(b) 150,799

(c) 146,711

(4) (a) $140,861,871

(b) $149,572,813

(c) $150,880,092

HEALTH — SPEECH PATHOLOGY SERVICES

2666. Hon Alison Xamon to the parliamentary secretary representing the Minister for Health:

I refer to the provision of public speech pathology services to children, and I ask:

(a) for each geographical region and for each health service provider in the Perth metropolitan area, what were the mean speech pathology wait times in:

(i) 2016;

(ii) 2017;

(iii) 2018; and

(iv) 2019;

(b) how many speech pathologists were employed in each geographical region and for each health service provider in the Perth metropolitan area (please provide both head count and FTE) in:

(i) 2016;

(ii) 2017;

(iii) 2018; and

(iv) 2019; and

(c) how many of the positions in (b)(iv) are currently vacant?

Hon Alanna Clohesy replied:

I am advised:

(a)

	(i) 2016	(ii) 2017	(iii) 2018	(iv) 2019
Community Health South metro (Sou)	4.7 months	4.2 months	4.1 months	6 months
Community Health Central metro (Cen)	4.9 months	4.0 months	3.4 months	3.2 months
Community Health North metro (Nor)	5.5 months	3.3 months	3.6 months	4.1 months
Perth Children's Hospital and Princess Margaret Hospital for Children (Hosp.)	Inpatient referrals are seen within two working days. Outpatient referrals are triaged and seen within 30 days if urgent. All accepted referrals are seen within 90 days unless they are second opinion referrals already in the care of community service providers. Second opinion referrals are seen within 365 days. These standards have remained consistent across this time period.			
JHC	Inpatient referrals are seen within 24 hours of referral and this has remained consistent over the period of 2016–19.			
Peel Health Campus (PHC)	An onsite speech pathologist provides services to all inpatients including paediatric patients. Inpatient referrals are seen within 24 hours of referral except for a weekend where there is no speech pathology service. Inpatients admitted over a weekend requiring speech pathology input will be prioritised and seen on a Monday. This has remained consistent over the period 2016–19.			

(b) (i) 2016

	Nor	**Cen**	**Sou**	**Hosp.**	**PHC**
FTE	23.4	16.7	32.2	13.2	0.6
HC	28	26	41	21	2

(ii) 2017

	Nor	**Cen**	**Sou**	**Hosp.**	**PHC**
FTE	23.4	16.6	32.3	12.2	1
HC	30	23	45	18	3

(iii) 2018

	Nor	**Cen**	**Sou**	**Hosp.**	**PHC**
FTE	23.9	16.1	32.3	12.2	1
HC	36	23	39	18	4

(iv) 2019

	Nor	**Cen**	**Sou**	**Hosp.**	**PHC**
FTE	25.4	16.2	33.2	12.8	1
HC	34	25	43	18	3

(c)

North	**Central**	**South**	**Perth Children's Hospital**	**PHC**
0.7 FTE	0	0	0	0

FRACKING — IMPLEMENTATION PLAN

2669. Hon Robin Chapple to the minister representing the Minister for Mines and Petroleum:

I refer to the Government's implementation plan on fracking, and I ask:

(a) according to Action 2, the Government will "Define, and identify 'places of iconic natural heritage' within, and in the vicinity of, onshore petroleum titles existing as of 26 November 2018." and "Release proposed list of 'places of iconic natural heritage' for public comment and feedback via the Implementation Plan website." by October 2019. Has the Government done this;

(b) if no to (a), why not;

(c) if no to (a), when will the Government release the proposed list of "places of iconic natural heritage" for public comment and feedback via the Implementation Plan website;

(d) according to Action 3, the Government will "Ensure appropriate and adequate community consultation for acreage releases associated with hydraulic fracturing." by October 2019. Has this been done;

(e) if no to (d), why not;

(f) if no to (d), when will this be done;

(g) according to Action 4, the Government will "Develop a hydraulic fracturing stakeholder engagement and consultation guide covering whole of project lifecycle for industry and Government." and "Determine stakeholder engagement and consultation opportunities in a project lifecycle." and "Draft hydraulic fracturing stakeholder engagement and consultation guide." and "Release the draft guide for public comment and feedback via the Implementation Plan website." by October 2019. Has the Government released the draft guide for public comment and feedback via the Implementation Plan website;

(h) if no to (g), why not;

(i) if no to (g), when will this be done;

(j) according to Action 5a, the Government will "Introduce a requirement for consent of relevant Traditional Owners before hydraulic fracture stimulation production is permitted." and "Release draft process and procedure documentation for considering Traditional Owners' consent via the Implementation Plan website" by December 2020. When will the Government release draft process and procedure documentation for considering Traditional Owners' consent via the Implementation Plan website;

(k) according to Action 12 the Government will "Establish a central point of contact within Western Australian Government agencies for hydraulic fracture stimulation non-compliance complaints." and "inform stakeholders via the Implementation Plan website once the action is completed.". Has this action been completed and when was it put on the Implementation website;

(l) if the action in (k) has not been completed, why not, and when will it be completed;

(m) according to Action 16 the Government will "Ensure better separation of the auditing and compliance, and the promotion of the petroleum industry." by April 2019. Has this action been undertaken and when were stakeholders informed about the change via the Implementation Plan website;

(n) if Action 16 has not been completed, why not; and

(o) if Action 16 has not been completed, when will it be completed?

Hon Alannah MacTiernan replied:

(a)–(o) The State Government published its first progress report on the Implementation Plan website on 31 October 2019, providing an update of progress on all actions. [See tabled paper no 3488] for a copy of that progress report, which is freely available via the Government's dedicated website for communicating updates relating to implementing Government's policy on hydraulic fracture stimulation.

DEPARTMENT OF BIODIVERSITY, CONSERVATION AND ATTRACTIONS — STAFF — AUGUSTA

2691. Hon Dr Steve Thomas to the Minister for Environment:

I refer to question on notice 2424, answered on 3 September 2019, on the Department of Biosecurity, Conservation and Attractions (DBCA) officer living in the town of Augusta who had a change in working arrangements and is to commence working from the DBCA Margaret River work centre, and I ask:

(a) has the job description for this officer been changed, or is it proposed to be changed;

(b) if yes to (a), will the Minister please provide a copy of the original and the proposed new job description, and identify any changes;

(c) if yes to (a), does the new job description require a change of residential address of the officer;

(d) if yes to (c), why;

(e) how much time does the existing officer currently spend in the DBCA Margaret River work centre and is this expected to change;

(f) how much time does the existing officer currently spend in the Augusta region outside of the work centre;

(g) how much time does the existing officer currently spend in other regions outside of the work centre, and in what regions does this work occur; and

(h) is vehicle garaging a part of any proposed job description changes and, if so, what savings are expected to be made by these changes?

Hon Stephen Dawson replied:

(a) The job description has not been changed and no changes are proposed.

(b) Not applicable.

(c) Not applicable.

(d) Not applicable.

(e) The Margaret River work centre provides support and office space for the existing officer along with four other national park rangers and a number of operational staff. Park rangers (including the existing officer) work in the Department of Biodiversity, Conservation and Attractions' Blackwood District parks most of the time with limited time spent working in the office. This is not expected to change.

(f) The officer works mainly in the southern section of Leeuwin–Naturaliste National Park, including the Augusta area.

(g) In accordance with the formal job description form, the officer works in parks throughout the Blackwood District as work priorities require. As explained in (f) the officer mainly works in the southern section of Leeuwin–Naturaliste National Park.

(h) There are currently no proposed job description changes.

CITY OF PERTH — FACIAL RECOGNITION CAMERAS

2692. Hon Simon O'Brien to the Leader of the House representing the Attorney General:

I refer to the use of facial recognition technology by the City of Perth, among others, to monitor Western Australians going about their normal lawful activities, and ask:

(a) what legislation, if any, regulates the use of facial recognition technology in public;

(b) are State agencies subject to State Government or Commonwealth restrictions and/or protocols on the use of this technology; and

(c) which State agencies are using facial recognition technology?

Hon Sue Ellery replied:

(a) There is no legislation which specifically regulates the use of facial recognition technology in Western Australia. *The Surveillance Devices Act* 1998 (WA) regulates the use of surveillance devices which may be used to obtain facial images.

(b) No, WA Police Force has advised that internal policy governs access to, and use of, facial recognition technology.

(c) As far as can be ascertained WA Police Force is the only State agency using facial recognition technology.

METHAMPHETAMINE — SENTENCING

2693. Hon Charles Smith to the Leader of the House representing the Attorney General:

I refer to the recent 2017 amendment to the *Misuse of Drugs Act 1981* allowing sentencing for the possession of methamphetamine of 28 grams or over to life imprisonment and I ask, how many people have been sentenced to life imprisonment since the law gained Royal Assent?

Hon Sue Ellery replied:

Nil.

ENERGY — STANDALONE POWER SYSTEM

2697. Hon Martin Aldridge to the minister representing the Minister for Energy:

I refer to Legislative Council questions on notice 1893 and 2502 in relation to standalone power systems (SPS) and the Minister's decision to refuse to provide the cost of each SPS unit, and I ask again:

(a) what is the cost of each SPS unit by supplier; and

(b) if the Minister refuses to provide the information sought, when will the Minister satisfy his obligation under section 82 of the *Financial Management Act 2006*?

Hon Stephen Dawson replied:

Please refer to Legislative Council Questions on Notice 1893 and 2502.

POLICE — BODY-WORN CAMERAS

2698. Hon Martin Aldridge to the minister representing the Minister for Police:

I refer to Legislative Council question without notice 1248 in relation to the State Government's commitment to deploy 4,200 body cameras to frontline police officers, and I ask:

(a) how many body cameras have been deployed to date by Police region; and

(b) what will be the total number deployed by Police region?

Hon Stephen Dawson replied:

The Western Australia Police Force advise:

4 254 body worn cameras are being purchased of which 44 will be held in reserve.

(a) Metropolitan Region 798

Regional Western Australia 420

375 body worn cameras have also been deployed to other areas, and a further 369 will be rolled out in coming days.

(b) Metropolitan Region 2 355

Regional Western Australia 1 377

INDUSTRIAL RELATIONS — STATE WAGES POLICY

2699. Hon Martin Aldridge to the minister representing the Minister for Industrial Relations:

I refer to the Minister's media statement of 19 August 2019 entitled "CPSU/CSA accept Government's State wages policy", and I ask:

(a) how has the Minister drawn the conclusion that the CPSU/CSA has accepted the State wages policy when their media statement of same date claims they have "… broken the government's wages policy";

(b) how many employees by headcount and FTE are subject to the agreement;

(c) has Treasury costed the impact of the final agreement;

(d) if yes to (c), will the Minister please provide the detailed costing of the agreement;

(e) will the financial impact of the agreement exceed what has been provided for in the 2019–20 State budget; and

(f) where costs exceed the $1,000 per employee State wages policy in paragraph 2 of the policy, paragraph 6 anticipates these costs being met by relevant departments and organisations, what is the cost impact expected on departments and organisations in meeting the expense of the agreement?

Hon Alannah MacTiernan replied:

(a) The Public Sector Wages Policy Statement 2019 (Wages Policy) requires increases in industrial agreement wages for full time equivalent (FTE) public sector employees be limited to $1,000 per annum. This was the salary outcome negotiated for the Public Sector CSA Agreement 2019 (the Agreement).

(b) At the time the Agreement was drafted (June 2019), it was estimated that it covered 29,918 employees and 26,713 FTE. Data subsequently provided by the Public Sector Commission shows that, as at June 2019, the Agreement covered 30,767 employees and 27,399 FTE.

(c) Yes.

(d) The Department of Treasury (Treasury) advises that there is no impact on net debt and the operating balance over the forward estimates beyond the 2019 State Budget, as the application of Wages Policy was already incorporated in those figures.

(e) See (d).

(f) Treasury advises that the cost impact for employees covered by the Agreement for any agency will be met within approved budgets.

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