VOLUNTARY ASSISTED DYING BILL 2019

Consideration in Detail

Resumed from 17 September.

Debate was adjourned after clause 80 had been agreed to.

Clause 81: Notification of death —

Dr D.J. HONEY: The minister is probably aware from previous discussion that this clause gives rise to particular concern. One of the issues that has been raised in discussing this bill is the need to provide protections to ensure that things are done properly and there is adequate review. Clause 81 deals with notification of death. However, there is no requirement that the notification of death record the fact that the person died through the use of the voluntary assisted dying process. I honestly find that dumbfounding. I also find that dangerous. There are several aspects to this. I am sure other members will want to explore this, so I will not dominate all of the time. If we do not record that fact, there will be no way historically that people will be able to understand the relationships, what led to the death, and whether the protections were adequate. There will also be no way of knowing whether the cause of death that is reported on the death certificate is accurate.

An estimate is made that the person will die from something. We have heard in this place, and we know from talking to the experts, that it is only an estimate. It might be an educated estimate. We also know that under this bill, there is no requirement that the two medical practitioners have any expertise in the illness that the person could die from—none whatsoever. The practitioners make an estimate, using whatever knowledge they have, that the person will die from a certain cause. However, no-one can have any idea about whether the person will die from that cause. I will give an example. I am not trying to reduce this to a ridiculous extreme. A person could live for six months or 12 months longer than they were estimated to live. We have heard in this place that it could be 17 years or longer. We have heard of people who lived for an extraordinary length of time. These are not rare examples from some exotic part of the world. Examples have been given in this chamber of people who have lived for decades after their diagnosis. A person could walk out the door and be run over by a bus. People die from any number of causes. If a person dies as a result of the voluntary assisted dying process, it is because they either self-administered, or someone else administered, the poison that killed them. The member for Morley is shaking her head. I would be delighted if she could tell me that that will not be the case. The assumption is made that the person will die from some other cause. I am not sure what the member is laughing about. It is a serious matter. Those assumptions are often completely wrong. Although members of this place are only a tiny subset of the population of Western Australia, members have given a large number of examples of how doctors' estimates have been completely wrong, yet that will be put down as fact on the death certificate. I believe that is fundamentally wrong.

I have said in this place that there is no shame in this. There is no shame in suicide. If some poor person is driven to that desperate act, there is no shame on them. There may be shame on society for not supporting the person enough, but, for that individual, there is no shame. There is no shame if a person accesses voluntary assisted dying. However, in this clause we are denying the simple fact that the person died because they either ingested or were administered a poison. We are also denying the historical record that that occurred, and therefore any opportunity for assessment, review and research about the efficacy of the process. I find that absolutely dumbfounding. I do not know why that has been done. There seems to be an attempt in this bill to say that although voluntary assisted dying is important and is something that everyone wants, we should hide everything so that no-one will know that it has happened.

Mr S.K. L'ESTRANGE: Madam Deputy Speaker, can I hear some more from the member for Cottesloe?

The DEPUTY SPEAKER: I think you should. Go ahead, member for Cottesloe.

Dr D.J. HONEY: Thank you very much. I will not go on at length, because I am not trying to delay this process. However, I believe that we need to be open about this process. We are collectively not ashamed about this process. I know that the member for Morley is genuine and is very proud that this legislation is coming forward and that this option will be available to people. I see no reason whatsoever that we should try to hide from this fact. I am not sure of the appropriate form of words to use. I understand that other jurisdictions may have appropriate forms of words that we can use. We do not want people to make up a cause of death. Make no mistake; they are making it up. They are assuming that someone is going to die from another cause. The minister would know, and the members of the expert panel must know, that when people have one particular illness, quite often they have a range of illnesses and may die from something unexpected, not the main illness. Quite often people die with a serious illness but not because of that serious illness. I see no reason why we should essentially look to falsify a public document by putting down a cause of death that actually was not the cause of death. I think that is a fundamentally wrong thing to do. Honestly, I can see no motivation for it. There is no shame in this and I do not think anyone here is implying that. I do not see why we should react as though there is some shame in it by trying to hide the

fact. I would really like the minister to give a very serious explanation, or a very detailed explanation at least—I know the minister is always serious—for why there is this need to try to hide the cause of someone's death on a death certificate.

Mr R.H. COOK: Member, the intent of this provision is to prevent circumstances in which the information is released into the community by persons who may see the certificate cause of death, which is provided by the medical practitioner to a person making funeral arrangements, for instance. It would not be appropriate for several communities, for cultural and faith-based reasons, for information about the patient accessing voluntary assisted dying to become more widely known. This sentiment was reflected in the consultation led by the ministerial expert panel and the Department of Health. I am informed that the ministerial expert panel very strongly recommended the importance of making sure that we have a system that is compassionate and sensitive to the needs of the person accessing voluntary assisted dying.

I want to address a couple of issues the member discussed and I am sure he will have other questions. Firstly, it comes down to accountability. Under the act, it will be required that a separate report, or form, is made available to the Voluntary Assisted Dying Board. The Voluntary Assisted Dying Board will be required to provide an annual report on the legislation, so we will have an extra level of accountability and transparency. Rather than the member's contention that this legislation is hiding information, the bill explicitly makes that information available to the community. This is important because it is a very serious event that takes place and we want to make sure that we have line of sight on how the legislation is operating. That will be a fundamental role of the VAD panel.

The member contended that a person could die of causes unknown to the medical practitioners, who are essentially making a guess about what ultimately was the cause of that person's death. Two medical practitioners, independent of each other, have to make a finding that the death is imminent and the patient will ultimately pass in six months' time. Two medical practitioners have to make this call. Clearly, this is an extra level of analysis and examination of that patient. We know the cause of the patient's death, because that death is imminent and on the balance of probabilities would take place within six months.

Additionally, the member talked about us hiding information. Currently, if a cancer patient is provided a very large portion of morphine and they are ushered into the other place, in relation to their passing, we do not have on that patient's death certificate "morphine overdose". Similarly, if a patient withdraws from their medication or ceases to eat or take fluids, we do not put on that patient's death certificate "starved themselves to death". That is obviously not what we intend to do. Clearly, we are on the side of the patient and we will protect the dignity of that patient in their final acts. The medical certificate cause of death and the public death certificate will not make reference to voluntary assisted dying. This includes making any references to a self-administered or practitioner-administered death. The Voluntary Assisted Dying Board will receive a separate notification, so the information will absolutely be available. We are not hiding this information. We are making it available to the community so that it can form a view about how well the legislation is operating. To suggest that we are somehow hiding that information really does not do justice to the intent and the desired outcome of this legislation.

Dr D.J. HONEY: I was going to ask to hear more from the minister, but thank you very much, Deputy Speaker. I thank the minister for that explanation, but I do not think it answers my question. I want to clarify something. I have not used the word "guess" in terms of what is going to kill a person; I used the word "estimate". Top of mind, I can recall hearing in this place three examples of when estimates were given by qualified medical practitioners, often with specialists involved. In one case, death was imminent in hours and the person went on to live for a couple of decades almost. Other examples were of people given months to live who went on to live for many years. In fact, again, in another example a person lived for a couple of decades. I appreciate what the minister is saying. I had a good study of the accuracy of estimating a person's time of death. The wording "the balance of probabilities" is used in the legislation because people estimating a probable period for someone to live is the most accurate estimate that medical practitioners make. That is why that wording has been used and that comes out of the research on that. All the research is quite clear; that is, at the end of the day, it is only an estimate and many people live much longer. If we heard of an example from some exotic country of one person who lived for a couple of years longer than expected, I would be saying, "I'm pretty confident these guys get it pretty right most of the time or all of the time, essentially." Given that we in this chamber are such a tiny subset of the population of Western Australia and we have heard examples of people living for an extended time, we know it is only an estimate.

I appreciate what the minister said about cultural sensitivity; there may be a more appropriate form of words to use here. I would be really pleased if the minister could let me know whether that information will go to the VAD board and it will simply record that someone died under the provisions of this legislation. I am not sure how that will benefit any research or provide any insight into causes of death or the relationship of that cause with someone's life and other sorts of information that people research when they are looking at issues related to mortality. I am not sure how that will provide any information. I cannot understand why that is necessary given that there is no shame in this. I think everyone in this place would agree with that. I have not heard anyone in this place express an alternative view to that.

I spoke to a number of specialists in the area on the application of morphine. Morphine is given to people for pain relief. It may be that the amount of morphine applied to achieve the required level of pain relief affects a person's ability to breathe and the like. In that case, the patient's date of death is not estimated to be six or 12 months; they know that that person is literally on their deathbed at that moment. That may be the case when this legislation is applied, but it definitely may not be the case. In fact, a person who takes the substance may be perfectly able to stand up, walk around and carry out their normal activities but it is just that they have decided that their life is unbearable and there is a prognosis that they will live for only around six months in the case of a physical disease or 12 months in the case of a neurodegenerative disease.

Mr S.K. L'ESTRANGE: I have a short series of questions linked to this that drive to the practical aspect of just reporting. What was the view of the Registrar of Births, Deaths and Marriages, the Law Society of Western Australia and the Australian Medical Association on this clause?

Mr R.H. COOK: To the best recollection of the people at this table, the Registrar of Births, Deaths and Marriages was happy with the policy position.

Mr S.K. L'Estrange: With this particular clause?

Mr R.H. COOK: Yes. The Law Society was not and the AMA was silent on the particular point. However, each had the view that it was important that the information was collected and, therefore, that the information was available to understand the incidence of voluntary assisted dying. The reporting to and the reports from the board fulfil that requirement.

Mr S.K. L'ESTRANGE: I notice that one of the advisers provided the minister with information while he was giving his answer. Could the minister let us know what that was about?

Mr R.H. COOK: Yes, it was just that there was concern particularly to enable the collection of accurate statistics and for record keeping. The role of the Voluntary Assisted Dying Board in the collection of accurate statistics and for record keeping should assist to address those issues. I have further information on the AMA's position, if that is helpful.

Mr S.K. L'Estrange: Sure.

Mr R.H. COOK: It is stated on page 87 of the Ministerial Expert Panel on Voluntary Assisted Dying report —

> *'AMA … proposes for completion of death certificates:*
>
> - *The cause of death would be the underlying condition for which a patient has sought assisted dying*
> - *The mechanism of death would be voluntary assisted dying, either:*
>
> *- Self-administered*
>
> *- Assisted by a third party including health practitioner'*

Mr S.K. L'ESTRANGE: If the person's death is caused by the physician-administration or self-administration of a schedule 4 or schedule 8 poison that was administered for the purpose of causing that person's death—as the member for Cottesloe said, that could be six or up to 12 months in some cases out from the expected point of death—why are medical practitioners to be placed in a position of having to misreport the cause of death by this clause?

Mr R.H. COOK: They are not; they are reporting on the underlying cause of the patient's condition. This is the point I made to the member for Cottesloe. Currently they do not put "morphine overdose" or "starved themselves to death" on the form. They report on the underlying condition that ultimately would have provided for that person's death.

Mr S.K. L'ESTRANGE: Let me give an example. Some tragic cases have been outlined in this chamber of people who committed suicide because they feared end of life from the terminal illness they faced. Some of those suicides were incredibly tragic; weapons were used and it sometimes involved hanging. We know how hard that is on the patient and how difficult it is for the families. It is incredibly distressing to families. However, those causes of death are not changed. Those causes of death are still recorded as they are. The minister says in his second reading speech that this is a more compassionate approach to those people. It says to them, "Don't go down the path of a violent, tragic suicide when there is a voluntary assisted dying path here for you." That is a real premise of the government's case for why it brings this legislation forward. If somebody commits suicide and it is recorded as a suicide, but somebody else takes a drug six to 12 months out and that is not recorded, why does the minister not accept that given the premise of this legislation is around compassion and, through the minister's second reading speech, an acceptance by the community of this, why is it not simply being recorded as what it is?

Mr R.H. COOK: We are protecting the dignity and privacy of the patient. Ultimately the patient may not want that information to be in the public domain. Whether we regard it as a good thing or not is not for us to judge in the case of that patient. A suicide is not a regulated planned event; it is something that is ultimately unplanned, unregulated and often unsupervised. To provide the member with some insight on this matter, I will talk about the current process for death certification. The form for the medical certificate into the cause of death is completed by a medical

practitioner who was responsible for the person's medical care immediately before death or a medical practitioner who examined the deceased person's body. Under section 44 of the Births, Deaths and Marriages Registration Act, that medical practitioner is required to complete the "Medical Certificate of Cause of Death". That form requires the medical practitioner to define the disease or condition directly leading to the death and the causes of conditions that contributed to the death. Those details inform what is on the death certificate and also data collected at state and national levels. The form is forwarded by the doctor to the funeral director, who in turn provides it to the Registrar of Births, Deaths and Marriages. However, that form is not completed by the medical practitioner if the death is a reportable death for the purposes of the Coroners Act. The government is saying that this is not a reportable incident under the Coroners Act. We will manage this process under a separate act, the Voluntary Assisted Dying Act. From that perspective, it is not appropriate to record it in the manner in which the member described.

The DEPUTY SPEAKER: Member for South Perth or member for Churchlands again?

Mr S.K. L'ESTRANGE: Thank you.

The DEPUTY SPEAKER: I remind the member for Churchlands that if the minister is not giving the answer he wants, he cannot keep asking the same question.

Mr S.K. L'ESTRANGE: You will find that I am asking separate questions each time, Madam Deputy Speaker.

The DEPUTY SPEAKER: That is good. Off you go; thank you.

Mr S.K. L'ESTRANGE: This is a serious matter. It is about recording a person's death. I will not labour the point, but the minister mentioned in his answer that if somebody commits suicide, that is almost some sort of random event, but they have still had to come to a decision point to make that decision, just as somebody has to come to a decision point to make the decision to go down the path of voluntary assisted dying. Either way, they are decisions made by the patient—some in tragic circumstances, and some influenced by mental health issues and some not. However, that is a fact; this is not in dispute. I am simply saying that in essence the minister is doctoring a cause of death certificate by excluding from it any reference to the process of voluntary assisted dying. That is a fact, and we are highlighting that we do not think it is an accurate reflection of what is going on in the administration of the process that the patient has undergone. With that in mind, what penalty or consequence will result should a medical practitioner record the factual cause of the patient's death on the patient's death certificate when that is either the physician-administration or self-administration of a voluntary assisted dying substance or approved poison?

Mr R.H. COOK: Clause 10 of this bill sets out the failure of a medical practitioner to act in accordance with this legislation. In that context, it may be regarded as unprofessional conduct. From that perspective, they would be the elements in which it was captured. Essentially, it is a requirement that a medical practitioner, in participating in the voluntary assisted dying process as set out in this legislation, does so in accordance with the legislation.

Mr S.K. L'ESTRANGE: What impact will clause 81(6) have on record keeping and data collection in this state?

Mr R.H. COOK: It will have no material impact on the state records. As I said to the member for Cottesloe, if someone undertakes the voluntary assisted dying process, the person recording the death has to make a report to the board. The board must record and retain statistical information about a range of issues associated with the functions carried out under this act, including the disease, illness or medical condition of the patient that met the requirements of the VAD process, and whether a patient has died after self-administering or having been administered a voluntary assisted dying substance. We will have more rather than less information at hand from the state record perspective.

Mr S.K. L'ESTRANGE: I have almost finished my line of questioning on this clause. Does the minister concede that there is a risk to the collection of accurate data because the Registry of Births, Deaths and Marriages and the cause of death certificate will not make any reference to the VAD process?

Mr R.H. COOK: I reject the assertion, member.

Mr S.K. L'ESTRANGE: We will have to agree to disagree, minister.

In an earlier answer, the minister mentioned that a voluntary assisted dying death would not be reported to the coroner. How might a voluntary assisted death be reported to the coroner?

Mr R.H. COOK: I draw the member's attention to clause 166 on page 96 of the bill. We will come to that in due course.

The DEPUTY SPEAKER: Member for Churchlands, do you have another question?

Mr S.K. L'ESTRANGE: I am on my feet to make sure of that. The minister has referred me to clause 166, so I will have a look at it before we move on. I guess the minister's reference to clause 166 is about subclause (2), which states —

> … does not apply to a … death of a person who immediately before death was a person held in care.

Notwithstanding that, we are talking about the notification of death, which, at worst, goes to whether a coroner needs to be involved. Although we can see that in clause 166, it sits right here with the notification of death. I know that when somebody dies, normally the police or someone has to be notified that day. Notwithstanding that, if there is any evidence of malpractice, will that not trigger the need for the coroner to be involved?

Mr R.H. COOK: Yes, it would. I was pointing out that under clause 166, death under the voluntary assisted dying legislation would not be a reportable death to the coroner. It is the same at the moment for someone who dies in palliative care or is ushered into the other place; that is not a reportable death either. The member asked: what is the relationship to the coroner? In that context it would not be a reportable death to the coroner. If it is malpractice, that is very different. The death would not be reportable to the coroner only if it was consistent with the act. If the death was not consistent with the act, the coroner absolutely will have to be alerted.

Mr J.E. McGRATH: I was a member of the Joint Select Committee on End of Life Choices. I have to support the recommendation of the Ministerial Expert Panel on Voluntary Assisted Dying. That expert panel, as the minister mentioned, looked at this and said that we need to respect the person's dignity. I know that suicide has been mentioned. However, if we put that on the death certificate, it will lead to all sorts of innuendo and supposition about what happened. I know people whose loved ones have committed suicide. One does not ask them what happened. They are not going to say that their loved one committed suicide. They do not say that, because it is a terrible thing. This is not suicide. Members have spoken about this and there is a difference. These people are dying. They have been treated for a condition that is going to end their life within either a six-month or 12-month period. If the fact that a person underwent a voluntary assisted dying death was put on the public record, what would their family say if someone asked them what happened to their mum, their dad, their brother or their sister? They would say that they died of cancer. They might explain how they ended their life in good circumstances and that they were all there for the occasion. In Victoria, the cause of death is not entered on the register but it is recorded by the doctor on his papers. I do not think it is put on the public death certificate, which is what we have to be careful about. These people have made a very conscious decision at the end of their life. Suicide has no resemblance to a voluntary assisted dying death. People commit suicide for all sorts of reasons and most of them are not dying before they make that decision. We have to have some empathy for these people. We have to show some compassion and we have to support this provision in the legislation. As the minister pointed out, people now are dying of palliative starvation and by not taking water and of the potential effect of terminal sedation or double effect, but there is no reference to any of these practices on the death certificate. It is noted that they died of whatever they were suffering from, and that is how it should be.

I also want to refer to an article by Nick Bruining in *The West Australian* that refers to insurance. It states —

> … it is likely that if a person dies using —

The voluntary assisted dying legislation —

> … the cause of death will be the underlying medical issue. In other words, if a person has terminal cancer and is able to access the assisted dying process, the death certificate will record the cause of death as cancer. That means if your super fund has life insurance or you have a policy operating outside of superannuation, there would be no issue with the cause of death.

That is another issue that we need to bear in mind. This legislation is here to support those who want to make a conscious decision about their death, not put them in a difficult circumstance. They will have to put a lot of thought into this decision and go through a very strict process. They will be very ill; they will not be healthy people. We need to allow them to die with dignity and we have to protect their family after they have passed away.

Dr D.J. HONEY: In response, I do not think there is any lack of care, concern or support in this place. I think that every person in this house has as much compassion as the other person. I do not think that any of us in this debate are not being compassionate. However, the general topic has been explored. I find it perverse that if a person accessing this process walked out and was run over by a bus, that would be recorded as the cause of death. If they decided to commit suicide, that would be recorded as the cause of death and no-one sees any problem with that. People who commit suicide are typically very distressed and at the end of their tether. We have no difficulty whatsoever recording that on their death certificate and in that case we are not concerned about whether we show compassion, but in the case of VAD, even though it is a different form of someone taking their own life or someone taking their life by administering a substance, we say that it is different. I honestly cannot fathom the philosophical difference between those points.

I want to move on to the question of autopsy. As the minister knows, not just I but also others have a concern. In a great majority of circumstances, this process will occur as the proponents of the bill want it to. We know that, but we also know that there are the Philip Nitschkes of this world who are proponents of quite radical voluntary euthanasia laws.

Point of Order

Ms A. SANDERSON: Madam Acting Speaker, I draw your attention to the standing order around relevance. This clause does not refer to the coroner or autopsy in any way and I would seek your guidance in this matter.

The ACTING SPEAKER (Ms S.E. Winton): Thank you, member for Morley. Member for Cottesloe, continue, but can we stick to the clause, please.

Debate Resumed

Dr D.J. HONEY: Absolutely. Thank you very much, Madam Acting Speaker.

Why is there no compunction in this bill to have an autopsy? I am not concerned with a great majority of circumstances. I know, as the minister knows, that in the great majority of circumstances, this process will go forward as people want it to go forward and the estimated time of death will probably be reasonably accurate, but we also know there are people who will take this to the fringe. There will be VAD practices, wherein two practitioners will set up the equivalent of a Nitschke-type practice, that will test this legislation to its limits; they will take it to its limits. That will happen. Why? That is the nature of people. Some people will take this to its limits. I know it is the genuine intention of the minister and the people who put this bill together that that is not allowed to happen. How do we know —

Point of Order

Ms A. SANDERSON: This clause deals with the death certificate and what is on the death certificate. This is not relevant to this clause. The coroner is dealt with in clause 166, later in the bill. This is about what is on the death certificate. It is not relevant.

The ACTING SPEAKER (Ms S.E. Winton): Thank you. Member for Cottesloe, do you have a question for the minister?

Dr D.J. HONEY: I do, thank you very much, Madam Acting Speaker.

Mr S.K. L'Estrange: You have two minutes to make your question.

Dr D.J. HONEY: Exactly, thank you very much, member for Churchlands.

Mr D.J. Kelly: It just has to be relevant.

Several members interjected.

The ACTING SPEAKER: Thank you, members!

Debate Resumed

Dr D.J. HONEY: We have progressed in pretty good faith so far, guys.

Why is this type of death not automatically referred to the coroner? I know that that may come up later in the bill, and I will not duplicate questions if we consider those questions now, in the spirit that we have continued in so far. Why is it? How do we know that there will not be people who will operate at the fringes, who will, in fact, falsify that information and make a misdiagnosis of the estimated time of death to bring people into the envelope of this legislation? If it is not reviewed by the coroner, how will we know that? Otherwise, it is just bits of paper. I would like to understand why that is not a compulsory part of the legislation.

Point of Order

Ms A. SANDERSON: Madam Acting Speaker, the member is straying into a later clause—that is, clause 166. I ask that you bring him to relevance, which is about the death certificate.

Mr Z.R.F. KIRKUP: Madam Acting Speaker, I find it interesting that the member for Morley has interrupted the member for Cottesloe three times, trying to make the same point about a standing order that you have already ruled on.

The ACTING SPEAKER (Ms S.E. Winton): What is your point of order?

Mr Z.R.F. KIRKUP: I ask that she respect your ruling.

The ACTING SPEAKER: Thank you, members. I think members are entitled to make points of order when they so feel. Member for Cottesloe.

Debate Resumed

Dr D.J. HONEY: I have asked my question. I am happy if the minister deals with it later.

Mr R.H. COOK: This issue is dealt with later in the bill under clause 166. Essentially, though, if a death is in accordance with the act, there is no need to refer it to a coroner or for an autopsy. I cannot imagine the distress that would provide to the family in any event. If a death is outside the construct of the bill, obviously there would need

to be further investigation. I take the member's point about extremists and such things; there are extremists in all elements. If an act is unlawful, it is unlawful. As the member can see through careful consideration, this bill details to great granularity how a voluntary assisted dying death is within the confines of the bill. If it fell outside that, further investigation would be required. A voluntary assisted dying death would not ordinarily need to be referred to the coroner, because it is within the framework of the bill.

Dr M.D. NAHAN: The debate on information about the cause of death has been debated, so I will not reiterate that, but it seems to me that we have been focused on listing only one cause. I went to the relevant information at the Australian Bureau of Statistics on cause of death information on death certificates in Australia. It points out a couple of things. Four out of five death certificates in Australia have multiple causes. The main one is the underlying cause, and I readily accept that the underlying cause will be whatever the cause of death would have been without VAD. But if we look at some of the statistics of death certificates, we see that they include all sorts of other causes. The data is very important and I think it is worthwhile quoting it —

> The statistical data obtained from the Medical Certificate of Cause of Death is only as accurate and complete as the information on the actual certificate. Medical Practitioners have a vital role to play in the production of high quality mortality data, by ensuring complete, accurate and detailed information is recorded on the certificate.

Therefore, if someone has cancer, that is the underlying cause of death. Often contributing factors are also listed. People often have different types of morbidity that will not cause death and are not the underlying cause, but also listed are unrelated causes of death not related to morbidity. This goes back to ensuring that we have accurate information. The decision is that we will be adding a new address to people in the last periods of life—that is, VAD—and we are saying that we will excise that from the data collection process to protect, I think, the sensitivities of the person. That is a generalisation. Maybe the minister has data that shows that some people would be sensitive to it. I am not sure that that is altogether accurate, I was not on the committee, but I can assure members that relatives of people who commit suicide or die of a drug overdose often do not want that on their death certificate. There are also causes of death that people would be sensitive about being on the death certificate, but they are included.

This is really important data. Yes, we are going to collect some other information in the reporting process, but that will not be collated with the death certificate data. That will be a separate database. It will be very difficult to collate it with this information. I used this type of data when I was an undergraduate. I had a job to go through all the morbidity data in Hawaii and analyse the cause of death by race and so on over periods of time. It is extremely valuable data. I will just make a statement. The minister's justification for leaving VAD off the death certificate does not hold water. It is not justified. Yes, I accept that it is not the main cause of death that would have happened, but we now have on death certificates all sorts of morbidities. Four out of five death certificates have a variety of contributing factors for death. One is the main cause, but there are other factors, which provide information to researchers about the circumstances of the death, and VAD should be listed as such. After all, I think this bill, if passed—I suggest it will be—will become a rare but standard procedure in addressing people at the end of their life, and therefore it is going to be part of our health system. I struggle to see why we would leave it off.

Mrs A.K. HAYDEN: Madam Speaker, I would like to hear more from the member for Riverton.

The ACTING SPEAKER (Ms S.E. Winton): Minister.

Mr R.H. COOK: The Western Australian Ministerial Expert Panel on Voluntary Assisted Dying recommended that none of the death certification documents include information pertaining to —

Mrs A.K. Hayden interjected.

Dr M.D. Nahan: No, I will just listen.

The ACTING SPEAKER (Ms S.E. Winton): Member for Darling Range, I am giving the minister the opportunity to respond to the member for Riverton's comments, if that is all right.

Dr M.D. Nahan: The minister stood and I would like to hear.

Mr R.H. COOK: The ministerial expert panel recommended that none of the death certification documents include information pertaining to voluntary assisted dying. It recommended—I am informed that this was widely advocated by the community—that a separate reporting mechanism should be used, whereby only the doctor should notify the Voluntary Assisted Dying Board. The panel's concern was that if a third party, such as a funeral director, leaked any death certification documents, the knowledge could be used to cause distress or negative interactions between family or community members. I provided the same response to the member for Cottesloe when he made the point that we are losing data in this situation, and that we do not have insight into the nature of incidents that occur under this bill. We have been very careful to make sure that the bill's approach is that it protects the family's privacy and enables

data collection. The data collection is by virtue of the separate reporting that goes to the Voluntary Assisted Dying Board and the information that it then provides to the community about the activities that have taken place under the act. Indeed, they should all be publicly available. I accept the member's final contention: yes, the member is right that this event will be rare, but we want to make sure that we get the balance right.

Dr M.D. NAHAN: I have a follow-up question. The death certificate date and other collected information is widely used for research. Will the data collected under the VAD process be collated with the existing death certificate data so that it can add value, or bring it back in? That way, perhaps we could protect the privacy of the loved ones of the person who has accessed VAD, but still bring the data from the Voluntary Assisted Dying Board into the assessment process. Can those separate databases be brought together for accurate research purposes?

Mr R.H. COOK: It probably goes to a completely different act of Parliament, but, yes, my understanding is that it would be. Obviously, one of the clear advances that we have made in data analytics is the cross-matching of different datasets.

Mrs L.M. HARVEY: It seems to me that this could probably have been cleared up a bit earlier if there had been a cross-reference to the Births, Deaths and Marriages Registration Act. As I understand it, that act is quite broad in prescribing what is to be recorded on a death certificate in any event. There are causes of death, such as a specific injury, a disease, or something that leads to a person's death; then there is the manner of death, which might be a traffic accident, a suicide, a homicide, or undetermined—whatever it might be. It seems to be fairly broad. I seek the minister's advice on a situation in which, for example, an individual who is quite ill has access to a lot of boxes of OxyContin, as can happen. After my late husband passed away, I checked what I had in the safe, and I had box loads of OxyContin, tramadol, fentanyl lollipops, and a whole range of things, which gave me a bit of a shock, actually. I put it all into a box and took it to the pharmacist for them to dispose of. But if an individual had access to drugs such as that and decided that they could not be bothered with the rigmarole of going through the voluntary assisted dying process, overdosed on OxyContin and ended their life prematurely, how would that be recorded?

Mr R.H. COOK: Exactly as that, member. I think the member raises a very important point. The coroner reported to the Ministerial Expert Panel and the Joint Select Committee on End of Life Choices that 10 per cent of suicides are, in fact, people who are confronting end-of-life choices. That incidence would definitely be a death that takes place outside the voluntary assisted dying act; therefore, it would have a different recording on the death certificate.

Mrs L.M. HARVEY: Would that be recorded on the death certificate as heart failure due to OxyContin toxicity, for example, or a suicide or some other cause of death linked to the initial disease?

Mr R.H. COOK: I cannot provide the member with that information from my understanding or expertise in the issuing of a death certificate, but I simply observe and emphasise that that death would take place outside the voluntary assisted dying act, so it would be captured under the normal processes associated with the issuing of a death certificate.

Mrs L.M. HARVEY: I have one further question on this matter. I suggest it might be helpful if the minister could get some advice from the State Solicitor or from the Attorney General on how that circumstance might be recorded. I know it is of interest to quite a number of members. Perhaps it might help them understand the way in which these deaths are recorded now, and potentially deaths by voluntary assisted dying may not be recorded in a different manner from how those deaths are recorded at present. If we could perhaps get some clarification prior to the third reading debate, I think it might be helpful for members to understand how this would work, and if it will operate differently from how those other circumstances are recorded at present.

Mr R.H. COOK: I am happy to provide that information.

Ms M.M. QUIRK: I have a couple of questions. Whilst the majority of submissions to the ministerial expert panel certainly supported the approach taken in the legislation, I note some consideration was given—I gather it is the path that Victoria has gone down—to a situation in which a public extract issued for a death does not make a notation of the exact circumstances of the death, but the medical practitioner nevertheless records the relevant information. In my view, to do otherwise further corrupts the role of medicos. We put store and faith in those certificates, and if we cannot be completely certain about the cause of death, I think that further corrupts their role.

Mr R.H. COOK: We were conscious not to create a whole new separate process with the passage of the medical certificate. In Western Australia, the medical certificate goes from the medical examiner to the funeral director, who ultimately passes it on to the Registry of Births, Deaths and Marriages. That is not necessarily the case in other jurisdictions. From that perspective, we have crafted a system that fits within the processes of Western Australia.

Mr P.A. KATSAMBANIS: I must say that I find clause 81(6) to be one of the most egregious provisions in this bill. It has nothing to do with the subject matter of the bill that I find it so egregious. It is because this legislative provision authorises the falsification of a state record. As other members have pointed out, including the member for Riverton, birth, marriage and death certificates have been used as primary historical records for generations—I would say for centuries. They have been relied upon as a historical reference point and as an important data

source for both genealogy and the breadth of state records, including for statistical purposes. This clause in the bill not only permits, but also mandates, the falsification of a state record—that is, a death record—because it says that the medical practitioner must not include any reference to voluntary assisted dying in the cause of death certificate for the person.

I understand the sensitivities and I also understand about respecting the wishes of the patient involved in the case. I totally understand that, but, as other members have pointed out, those sensitivities are handled all the time in dealing with death and recording the cause of death. I would have expected that a provision in a bill such as this would have encompassed both the underlying cause and the eventual use of an assisted dying method. The proponents of the legislation, including the minister, tell us that this is welcomed by the public and ought to be discussed openly and that there is no shame in this process, yet despite going through a legislative process, we will be hiding one of the ultimate causes of death. I do not discount at all that the underlying cause is a factor and it ought to be recorded on the death certificate. I am not suggesting that it ought not be included, but I think the ultimate method of death—the assisted dying method—ought to be incorporated. It could be done very easily. It could simply be an addendum, with the word "assisted" in brackets. If the underlying cause was lung cancer, it could say, "Cause of death: lung cancer (assisted)". It could be very simple and completely and utterly factual for historical purposes. I do not think it would offend the sensitivities of anybody, particularly someone who voluntarily chose to partake in this system, which will be the law of the land if this bill becomes law. I find it egregious that an act of Parliament would mandate the falsification of a state record. I just wanted to put that on notice. It is a strong concern of mine. I know that the minister has made his point. Take it as a statement, if you like, minister, and we can move on.

Mr K.M. O'DONNELL: Greetings, Madam Acting Speaker.

The ACTING SPEAKER (Ms S.E. Winton): Greetings to you.

Mr K.M. O'DONNELL: Firstly, I voted with the government on this. However, I have only one issue with the bill and it is in clause 81(6). I have learnt in the two and a half years that I have been here that a full stop, a comma or one word can change the interpretation of something. Under subclause (6), the medical practitioner must not include any reference to voluntary assisted dying in the cause of death certificate for the person. They are very strong words—"must not". I have said this numerous times and I do not want to bore people again, but as a police officer for 34 years, I attended many, many deaths—accidental deaths, car deaths and suicides. When my partner and I were given a job to go to a place where somebody was deceased, we would cross our fingers that a death certificate would be issued. Police know that if they do not get a death certificate, they will be off the road for the rest of their shift and they will have to take statements, undergo inquiries and various other things for the coming weeks, so a death certificate is valued by police. It is not that the two officers do not want to do the work, but they know that if they are off the road, especially in country areas, there will be no more police on the road that day. Many times when autopsies were done, from memory, the cause was myocardial infarction atherosclerosis—basically, a heart attack. I sat here for about 25 minutes trying to remember those words! I knew it was something. It did not just say "heart attack"—full stop; it said myocardial infarction atherosclerosis.

This is an open bill. The public is divided on it; it is not necessarily 50–50 but the public is divided. I think that if someone is dying and they shorten their remaining time by three months, six months or five days, voluntary assisted dying will have had an impact on that death. A person may be dying of something, but they would have lived if they had not taken the substance. If someone is dying from cancer but they are shot by police on the street because they did not do what they were told, their doctor would know that they are dying from cancer—this is extreme and I do not want to go down this path, but it is an example—but the post mortem would not say that they died of cancer. The death certificate would not say that. They have been shot, but they died as a result of something else, whether it be a substance or an implement. I have been to a suicide by hanging and the doctor said that the person was going to die, but they could not issue a death certificate and the cause of death was death by hanging. Would there be an issue if voluntary assisted dying was included on the certificate? What problem would that create?

Mr R.H. COOK: There was very clear advice from the ministerial expert panel that was informed by community consultation that people did not want voluntary assisted dying to be recorded on the death certificate, but obviously there is a requirement that we capture the data and have some line of sight over the incidence of voluntary assisted dying. That position was informed by the ministerial expert panel and the plethora of community consultations that it undertook.

Mr K.M. O'DONNELL: I thank the minister. I think it would take a strong-willed person to die by voluntary assisted dying. I refer to Belinda Teh's mother, who was a staunch Catholic. She would have jumped at this if this had been law. If I were to go down the voluntary assisted dying path, the last thing I would think of would be saying that I did not want this recorded on the death certificate. If someone was dying from prostate cancer, prostate

cancer would be on the death certificate, not voluntary assisted dying. I will finish, minister; I will not go on. I would bet five cents that this —

Several members interjected.

Mr K.M. O'DONNELL: Times are hard. I do not mean to belittle or humour this in any way, but I cannot see the upper house accepting clause 81(6), which precludes any reference to voluntary assisted dying on the death certificate. I have not discussed this with any member, or any of my party, but I firmly believe that subclause (6) will cause a lot of angst. This is my opinion. I fully support the bill, and I am still running with the minister, but I believe that that will need to be looked at. I think that was it. One last thing was that, when the government was elected, words that I remember were "gold-plated transparency", and I know from community consultation that it has come out that people do not want this. I believe in having that transparency. There is no shame. If someone has voluntary assisted dying when this bill gets passed, I believe it should be included on the death certificate. It is not for the public to go and look up to see who died of what, but voluntary assisted dying is not shameful. In my opinion, if anybody does it, and it is on the death certificate, I am not saying it is a badge of honour, but if somebody had that I would know that they were in so much pain and they were so strong that they opted for voluntary assisted dying. I believe in being open and transparent. I believe that this subclause should be taken out, and it should be included on the death certificate. I am sorry to go on, minister.

Division

Clause put and a division taken, the Acting Speaker (Ms S.E. Winton) casting her vote with the ayes, with the following result —

Ayes (42)

Ms L.L. Baker	Mr M. Hughes	Mr S.A. Millman	Ms J.J. Shaw
Dr A.D. Buti	Mr D.J. Kelly	Mr Y. Mubarakai	Mrs J.M.C. Stojkovski
Mr J.N. Carey	Mr Z.R.F. Kirkup	Mr M.P. Murray	Mr C.J. Tallentire
Mrs R.M.J. Clarke	Mr F.M. Logan	Mrs L.M. O'Malley	Mr D.A. Templeman
Mr R.H. Cook	Mr R.S. Love	Mr P. Papalia	Mr P.C. Tinley
Ms M.J. Davies	Mr W.R. Marmion	Mr S.J. Price	Mr R.R. Whitby
Mr M.J. Folkard	Mr M. McGowan	Mr D.T. Punch	Ms S.E. Winton
Ms J.M. Freeman	Mr J.E. McGrath	Mr D.T. Redman	Mr B.S. Wyatt
Ms E.L. Hamilton	Ms S.F. McGurk	Ms C.M. Rowe	Ms A. Sanderson *(Teller)*
Mrs L.M. Harvey	Mr D.R. Michael	Mr P.J. Rundle	
Mr T.J. Healy	Mr K.J.J. Michel	Ms R. Saffioti	

Noes (10)

Dr D.J. Honey	Mr S.K. L'Estrange	Mr D.C. Nalder	Mrs A.K. Hayden *(Teller)*
Mr P.A. Katsambanis	Ms L. Mettam	Mr K. O'Donnell	
Mr A. Krsticevic	Dr M.D. Nahan	Ms M.M. Quirk	

Clause thus passed.

Clause 82: Terms used —

Ms M.M. QUIRK: Part 5 deals with review by the State Administrative Tribunal. I would like to ask what resources are likely to be allocated to the tribunal for dealing with these applications.

Mr R.H. COOK: I am not quite sure which part the member is looking at.

Ms M.M. Quirk: We are dealing with clause 82, but if you want to deal with that at a later stage, we can.

Mr R.H. COOK: It may be more appropriate to dig in a bit longer. Obviously, those issues will be dealt with in the implementation phase, in conjunction with the Department of Justice.

Ms M.M. QUIRK: Is there no clause within this bill on which we will be able to canvass the anticipated workload on the tribunal?

Mr R.H. COOK: No, member.

Dr M.D. NAHAN: Paragraph (b) of the definition of "eligible applicant" states —

> an agent of a patient referred to in paragraph (a); …

How is "agent" defined? Who is an agent? I could not find a definition of it. I will provide a hypothetical example. If a relative of mine were going through this process and I was on the periphery of it and had some concerns, could I be an agent of my relative and go and make an appeal to the tribunal to have the process reviewed?

Mr R.H. COOK: Yes, member, we anticipate that it could be a family member. It will obviously be someone who acts on behalf of the patient, so the patient will have to engage that person. It might be a family member or someone else.

Dr M.D. NAHAN: Could the minister explain some of the delimiting factors of who is and who is not an agent? I could not find a definition of "agent". For instance, let us say that my relative, who is the patient, is very keen on this process but I, as the relative, am concerned about coercion or something else but the patient does not give me permission. Can I act on their behalf out of, let us say, reverence to my relative rather than with my relative's authorisation or indication that I am their agent?

Mr R.H. COOK: In that case, member, you would not be the agent but you might come under paragraph (c), which provides for —

> any other person who the Tribunal is satisfied has a special interest …

A person who has a special interest in the medical treatment and care of a patient may also apply to the tribunal. However, merely being a member of the person's family is not, alone, intended to be sufficient to constitute a special interest for the purpose of this clause.

Dr M.D. NAHAN: This is very important. When I read the words "special interest in the medical care and treatment", I took it to be the coordinating practitioner or one of the many people involved in that process. I understand that thoroughly. However, I can envisage other circumstances. I will give a good example. People who will undergo the voluntary assisted dying process will often want relatives to come from wherever they live to see them in their last days. There might be a relative who has been distant from the process but who is closely intimate with the patient as a member of the family. There might not be very much time before the substance is taken, but this person has significant data that no-one else might have access to because of the relationship. Can the minister explore, for the record, what he thinks will be the delimiting factors of who can act as an agent? The minister did say that being a relative does not justify it. Is there some other criteria that will be used?

Mr R.H. COOK: I stress that the agent must be chosen or authorised by the patient. Again, I think what the member is exploring is whether the person he described is someone who will have a special interest and will be able to take an action to the tribunal which the patient has not authorised. The member gave the example of someone who comes to visit their aunt before she passes away and considers themselves to have a legitimate reason to go to the State Administrative Tribunal to intervene in the process. That person would not be going to the tribunal as an agent but they may be appealing to the tribunal as a person who the tribunal is satisfied has a special interest. In that context, the agent is someone who is there on behalf of the patient. It might be a family member or it might be a lawyer or somebody like that who they have asked to take particular issues to the tribunal.

Ms M.M. QUIRK: As the minister mentioned, under paragraph (c), an eligible applicant includes —

> any other person who the Tribunal is satisfied has a special interest in the medical care and treatment of a patient …

What kind of people would the minister contemplate will come under that provision? For example, could it be the proprietor of a nursing home in which the applicant resides, or are there other people whom the minister has in mind?

Mr R.H. COOK: In this instance, we consider that the tribunal will consider someone who is a relative carer of the patient to be someone who would have a special interest. This is someone who has gone on the journey with the patient or has special insights into them. Ultimately, it would be up to the tribunal to make the decision about whether someone who comes before it has standing to bring a particular issue to the tribunal's attention. In relation to that, the tribunal is its own agent.

Dr D.J. HONEY: There are two parts to this. I know the minister has made a number of comments about this bill being patient-centric. As I understand it, one part of the appeal process is that the patient feels that the doctor has got it wrong in terms of the estimate and so on. Obviously, it will be their right to do that if this process were to exist. The other concern is around someone believing the process is wrong. The minister will recall that back when we were having a debate around clause 15 and the issue of coercion, there was considerable discussion of the fact that there are many circumstances in which someone might be motivated to encourage someone to go into this process when it would otherwise not be the patient's free decision—it could be motivated out of love, all the way through to a terrible motivation of greed. I will not go through that whole debate, but by its very nature, that is typically something that occurs in private and is hard to detect. Quite often, many people may not be aware of it, but a cleaner in the house may be aware of it. They may see a son or daughter come in and put constant pressure on the mother or father or some like thing. I appreciate this is an estimate, but will someone who is not a direct relative but who is in a position to observe what occurs in a household and that there could be undue influence be able to go to the SAT?

Mr R.H. COOK: Yes, they could certainly make an application. Obviously, the sort of scenario the member has painted is one that would be very serious. But it is ultimately up to the tribunal, once the application is made, to decide whether they will hear the case that has been put before them.

Dr D.J. HONEY: I thank the minister for that. When we were discussing this back in clause 15 and thereabouts, one of the concerns I expressed was that although many people in this place may regard going to the SAT as being a fairly simple matter, in fact it is quite a daunting process. A staff member from my own office went to the State Administrative Tribunal on a private matter. It was a complex matter; it was not trivial at all. Simply getting the application in was a complex matter. I appreciate that it is a small amount of money, and it would not cause someone like our learned consultant here to even blink an eye, but for many ordinary people going to the SAT is a bit like saying they are going to climb Mt Everest. When we were having that discussion, I asked whether there was a simpler path for someone to make a complaint. I believe the minister said that a person could also refer a matter to the board if it was too daunting for them to go through the SAT. Is that option open or could someone only make a complaint to the SAT to intercede in this process?

Mr R.H. COOK: Another remedy might be that they go to the Voluntary Assisted Dying Board to alert it about some part of the process. The Voluntary Assisted Dying Board can then refer the matter to a range of agents. It could be the chief executive officer who could investigate under the powers of the Health Act or this legislation. It could also be the Health and Disability Services Complaints Office or the police force. There are obviously a range of remedies that people can take before having to go to the SAT. Another body people could go to is the Australian Health Practitioner Regulation Agency, for instance, if they think a doctor or a health practitioner is behaving in a manner that is not consistent with their obligations.

Dr D.J. HONEY: I thank the minister; that is really reassuring. This is more of a statement than a specific question. As I say, I have heard reference in this place many times that we go to the SAT, and I appreciate that for members here it seems simple, but it really is daunting for the great majority of people, and I think those simpler mechanisms will provide some comfort for people and allow them to go down that simpler path.

Clause put and passed.

Clause 83: Application for review of certain decisions by Tribunal —

Ms M.M. QUIRK: I have a proposed amendment on the notice paper, but before I deal with that, I want to ask a question. As the State Administrative Tribunal is a trier of fact, it will be reviewing assessments of whether a person is ordinarily resident in Western Australia, does or does not have decision-making capacity and is or is not acting voluntarily without coercion. Is it contemplated that there will be special expert members on the SAT to assess that? If not, will they be subject to the same training regime as will be put in place for medical practitioners?

Mr R.H. COOK: By and large it is up to the State Administrative Tribunal to make a decision about the way it manages things. As I continue to talk and talk, we will identify a clause that provides that. Clause 91 provides for the SAT to seek advice from experts in a particular field about any matter before it.

Dr D.J. HONEY: A thought just occurred to me. If the process goes to the board or the SAT, is it on hold until the review is complete or will it continue to go forward?

Mr R.H. COOK: If the process is in front of the SAT, it is on hold. Obviously, it depends upon the veracity of the claim being brought to the attention of the board.

Ms M.M. QUIRK: I placed on the notice paper a proposed amendment to this clause relating to the eligibility criteria, but since we were unsuccessful in putting the amendment to clause 15 about whether a person is or is not ordinarily a resident of Western Australia, I do not intend to proceed now with my amendment. Given that the existing eligibility criteria states that at the time of making the first request, the person has or has not been ordinarily resident in Western Australia for a period of 12 months, there were some concerns expressed that people would get the diagnosis of a terminal illness in another jurisdiction and then move to Western Australia for the purposes of availing themselves of voluntary assisted dying. Have there been any thoughts about how this might be addressed? Have there been any estimates of numbers or whether any similar occurrences have occurred overseas? Is the minister confident that this will not be a further drain on our health system?

Mr R.H. COOK: Yes. Again, I reflect on the comments from the member for Riverton about this. It is anticipated this would be a relatively small number of patients and I think they will be adequately covered by the resources of the health system.

Clause put and passed.

Clause 84 put and passed.

Clause 85: Consequences of review application —

Mr Z.R.F. KIRKUP: My question is about clause 85(2), which states —

> If the request and assessment process in respect of the patient has not been completed, the request and assessment process is suspended and no further step in the process is to be taken until the review application is determined or otherwise disposed of.

Do we have an understanding of how long that might take and what it looks like? I assume we would want that process to be relatively expedited.

Mr R.H. COOK: I have been advised that we have been advised by the SAT that it would happen very quickly.

Mr Z.R.F. KIRKUP: I appreciate that it would happen quickly. Excuse me for my ignorance, but does the SAT sit over weekends? Are we looking at weekdays or business hours only? I am just trying to get an understanding of extraordinary circumstances that might exist.

Mr R.H. COOK: I am advised that the SAT has an expedited hearing process that involves longer sittings or sittings on the weekend, and obviously we clarify these things in the context of the implementation period.

Mr Z.R.F. KIRKUP: Is this something the clinical expert panel would work together with the SAT on, or would the minister work on this with the SAT? I am trying to understand how the implementation would be fleshed out.

Mr R.H. COOK: The chief executive officer would undertake that process basically to make sure that there are clearly understood pathways, protocols and procedures in place.

Mr Z.R.F. KIRKUP: Has there been any conversation, perhaps with the Attorney General or someone like that, about the need for extra resources at the SAT? I realise we have spoken about a relatively small number of people who might seek to access this process, but obviously if there is the need for it to be expedited, more people might need to be brought in. What might that look like?

Mr R.H. COOK: We have had conversations with the president of the State Administrative Tribunal about this. Ultimately, there will be liaison and discussion with the Department of Justice. Again, this is the nature of the functions of government.

Mrs A.K. HAYDEN: Clause 85(1) states —

> This section applies if a review application is made in relation to a patient.

Other than a patient, who else may be subject to a review application?

Mr R.H. COOK: Maybe I can stand for just a moment and reflect on a whole bunch of things.

Debate interrupted, pursuant to standing orders.

[Continued on page 6983.]