ABORTION LEGISLATION REFORM BILL 2023

Committee

Resumed from 13 September. The Deputy Chair of Committees (Hon Steve Martin) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 8: Part 12C Divisions 1 to 5 inserted —

Progress was reported after the clause had been partly considered.

The DEPUTY CHAIR: Members, last night the committee considered three amendments moved by Hon Kate Doust. The member moved the three amendments together with leave of the committee and they were related to and contingent upon each other. The first of these amendments on the supplementary notice paper at 3/8 was put to the vote on the question that the words be deleted. The house divided on the question and the proposed amendment was defeated. I note that the notice paper records that the Committee of the Whole House is resuming the debate on the remaining amendments on the notice paper at 4/8 and 5/8. I advise that as the amendments were moved as one question pursuant to standing order 132 and are related to each other, the first amendment having failed means that the remaining two amendments in the group now fall away. The question now is that clause 8 stand as printed.

Hon NICK GOIRAN: Thank you, deputy chair, for your guidance about how we will manage the remaining amendments on the supplementary notice paper. In accordance with your advice, the next amendment is the one standing in my name on the notice paper at 1/8. The amendment immediately under that at 2/8 will flow from that amendment. For the benefit of members, this is what might be referred to as the "Mettam amendment". In other words, this is the amendment that was moved by the member for Vasse in the other place. The basis for the amendment, which I propose to move momentarily, is advice from the Australian Medical Association of Western Australia. In its position statement on proposed section 202ME(4), it says the following —

> There is no sound clinical justification for permitting the medical practitioner with whom the primary practitioner consults for the purposes of Clause 202ME (1)(b), to have a principal place of practice *outside* Western Australia.
>
> There is no situation in which an abortion after 23 weeks gestation can be safely performed without the direct, local involvement of more than one medical practitioner.
>
> Despite the Bill's Explanatory Memorandum being silent, the AMA (WA) understands that the justification for Clause 202ME(4)(a) is to cater for situations where a patient's interstate doctor has an opinion relevant to delivery of abortion healthcare. The AMA (WA) does not agree with or support this justification.
>
> It is critical that two WA-based doctors are involved in supporting the appropriate provision on abortion healthcare in WA. This provides safer access to abortion services by:
>
> - ensuring two doctors who are familiar with the patient, WA's health system and capabilities, will be able to advise and support the safest and most appropriate provision of post 23-week gestation abortion healthcare; and
> - **does not prevent** those WA doctors' seeking the opinion of any other health professional (either interstate or overseas) involved in the delivery of care to the patient and whose opinion may support determining whether an abortion is appropriate, which may in fact be required by virtue of optimal patient care.
>
> An interstate "arbiter" is never required, even if they provide pivotal information influencing the local decision-making. In fact, this notion diminishes the world-class expertise that we are fortunate to have in our State.
>
> **The AMA (WA)'s view is that Clause 202ME(4)(a) should be removed from the Bill to ensure that two WA doctors can determine, in conjunction with the patient, whether performing an abortion is appropriate.**

It is for those reasons that I then instructed for the amendments standing in my name at 1/8 and 2/8 to be put on the supplementary notice paper. I seek the leave of the chamber for amendments 1/8 and 2/8 to be considered en bloc.

The CHAIR: Leave is granted.

Hon NICK GOIRAN — by leave: I move —

> Page 9, line 28 — To delete "(1)(b) —" and insert —
>
> (1) —

Page 9, lines 31 to 33 — To delete "a medical practitioner with whom the primary practitioner consults need not" and insert —

the primary practitioner, and of a medical practitioner with whom the primary practitioner consults, must

Hon SUE ELLERY: The government will not be supporting the amendments moved by the honourable member. We canvassed some of this previously in earlier parts of the debate. I note that this is the Australian Medical Association's view. I met with the AMA, probably about a month ago now, to listen to all its points of view on the bill before us, and on this point we will need to agree to disagree with the AMA. It is not currently a requirement. In fact, the legislation in place now is silent on the matter. The provision has been included to take account of the fact that from time to time practitioners will want to consult a practitioner who may not be residing in WA at that time. That could be for a variety of reasons. It could be that there is particular expertise they want and they know that expertise is with the practitioner interstate. It could be that the interstate practitioner has a particular relationship with the patient because the patient used to be their patient and some knowledge that is of some value is to be considered at this point.

The provisions in the bill before us will make it clear that they can. There is nothing stopping them now, but the legislation is silent on it. All this will do is make it clear that they can, if they have reason to, consult a medical practitioner outside WA. It does not require them to consult someone outside WA. It just makes clear that they are able to if that is their best clinical judgement. That is what it comes down to.

Who is consulted is really dependent on the particular clinical circumstances that present at the time. They might have, as I said, particular expertise or knowledge or some knowledge of, and relationship with, the patient. The provisions of the bill just make it clear that a medical practitioner can exercise their clinical judgement in determining who is the most appropriate practitioner for a particular patient's circumstance. It is not a statement about any perceived lack of clinical expertise in WA. It just allows consultants to access those consultants who know best for the particular circumstances in which the patient presents or indeed for the patient themselves. We say that if we are putting the patient at the centre of care, there is no reason that we would want to make it a further barrier to access.

I might leave my comments there, but we have canvassed this to some degree in earlier parts of the debate. The government will not support the amendment.

Hon MARTIN PRITCHARD: Very quickly, the minister mentioned interstate; does "outside Western Australia" also mean overseas?

Hon SUE ELLERY: No, they would need to be registered to practise in Australia, not overseas.

Hon NICK GOIRAN: The government has indicated that it will not support the amendments. Two reasons have been provided and I will deal with them separately. The first is that the minister indicated that it is not currently the case in Western Australia. Obviously, what she means by that is that the legislation at the moment in Western Australia is silent on whether the ministerial panel of doctors, two of whom have to agree to a late-term abortion, need to be in Western Australia. Is it the case that any of the WA panel doctors reside outside Western Australia?

Hon SUE ELLERY: No, it is not. My recollection is that I answered that question earlier in the debate.

Hon NICK GOIRAN: The minister did. I thought it was worthwhile the minister repeating it given that the government says that this amendment recommended by the AMA should not be supported because the legislation is silent. My point is that that carries no weight, respectfully, given that it has been the consistent practice in Western Australia that the two doctors who make a decision on this are based in Western Australia. To say that the current legislation is silent and use that as some sort of a support for not expressly making it the case that others outside the state could be involved, respectfully, does not follow.

The second objection that the government has to the amendment is stated to be about conferral. If the amendment was put forward and supported, would it prohibit the principal practitioner or indeed the consulting practitioner from conferring with anyone outside Western Australia?

Hon Sue Ellery: Is that if the member's amendment was carried? Is that the question?

Hon NICK GOIRAN: That is right, yes.

Hon SUE ELLERY: There is no restriction on their ability to confer with anyone else. We are talking about what restrictions we will put in place on the two doctors who make the decisions for an abortion post–23 weeks. The bit before us is about the baseline that we have set for them. Do we say we are going to place restrictions on them as to whether one of them can be registered in Australia and practising interstate?

Hon NICK GOIRAN: I think the answer to that, according to the AMA, is yes.

Hon SUE ELLERY: Is the member asking me a question?

Hon Nick Goiran: No. It was rhetorical.

Hon KATE DOUST: Minister, I am curious. Is this type of provision, which would enable the practitioner to seek advice elsewhere, a fairly standard provision that would be found in other states' legislation? Let us imagine, in New South Wales or South Australia, which has probably had the most recent series of changes, would it enable doctors in this circumstance to seek advice from a practitioner here in Western Australia?

Hon SUE ELLERY: The best advice available at the table is that no other jurisdiction has made it clear in this way; similarly, our existing legislation. The legislation of other jurisdictions is silent on it, so there is no prohibition; their legislation just does not cover it.

Division

Amendments put and a division taken, the Chair casting his vote with the noes, with the following result —

Ayes (7)

Hon Peter Collier	Hon Kate Doust	Hon Tjorn Sibma	Hon Nick Goiran *(Teller)*
Hon Ben Dawkins	Hon Steve Martin	Hon Neil Thomson	

Noes (24)

Hon Martin Aldridge	Hon Sue Ellery	Hon Shelley Payne	Hon Dr Sally Talbot
Hon Klara Andric	Hon Lorna Harper	Hon Stephen Pratt	Hon Wilson Tucker
Hon Dan Caddy	Hon Jackie Jarvis	Hon Martin Pritchard	Hon Dr Brian Walker
Hon Sandra Carr	Hon Ayor Makur Chuot	Hon Samantha Rowe	Hon Darren West
Hon Stephen Dawson	Hon Kyle McGinn	Hon Rosie Sahanna	Hon Pierre Yang
Hon Colin de Grussa	Hon Sophia Moermond	Hon Matthew Swinbourn	Hon Peter Foster *(Teller)*

Amendments thus negatived.

Hon NICK GOIRAN: Noting the time, rather than necessarily moving to further amendments, according to my records, the next amendment on the supplementary notice paper stands in my name. That may take a little time. It deals with the sensitive issue of the identification of trisomy 21, otherwise known as Down syndrome, in cases of late-term abortions. We might deal with that after the luncheon interval. I have some other questions, particularly pertinent to proposed section 202ME within clause 8 that we are currently considering. I specifically draw the minister's attention to proposed subsection (5), which deals with emergency scenarios. It states —

> In an emergency, a medical practitioner is authorised to perform an abortion on a person who is more than 23 weeks pregnant without complying with subsection (1) …

Is that general principle of dealing with an emergency consistent with the existing law in Western Australia?

Hon SUE ELLERY: I am advised that the answer is yes.

Hon NICK GOIRAN: Is any data available on how often that emergency protocol or emergency provision is relied upon?

Hon SUE ELLERY: No, it is not collected centrally. It might be the case that it is recorded in King Edward Memorial Hospital for Women. Maybe that is what it is required to do for its purposes, but it is not collected centrally.

Hon NICK GOIRAN: Is it considered that this information will be collected moving forward?

Hon SUE ELLERY: I am advised that the answer is no. There is no policy reason why we would do so. Having said that, I rely on what I just said in answer to the honourable member's earlier question. For its own accreditation and registration processes and its own management of critical incidents or whatever, a hospital might be required to collect certain information. It may be the case, for clinical purposes, that a health service provider will collect that information if something extraordinary presented in emergency that it was worth collecting information about because it might help if that circumstance presented in the future. For the purposes of what information might be collected by the Chief Health Officer, for example, there is no intention to do that.

Hon NICK GOIRAN: Given that this relies on the judgement of one individual—a medical practitioner—to determine, in their own view, whether an emergency has arisen, what level of oversight or extra review will be put in place to ensure that the judgement made by the medical practitioner is consistent with what we understand to be an emergency scenario?

Hon SUE ELLERY: I am advised that it is an emergency. It would be unlikely that a practitioner finding themselves in this position would not speak to a senior consultant, for example, at King Edward Memorial Hospital, which is

where abortions are carried out now. We expect that would be the practice. If the member is asking whether any oversight is built into the bill as part of this practice, no, there is not, because we are talking about an emergency. We hope that does not happen but from time to time it will.

Hon NICK GOIRAN: Are we saying that despite the fact that the legislation says that we will not need to comply and consult a second doctor, it sounds like it is ordinary practice to consult with a second doctor, even when determining that the emergency protocol would be invoked.

Hon Sue Ellery: That is the expectation.

Sitting suspended from 1.00 to 2.00 pm

Hon NICK GOIRAN: Prior to the interval for lunch, we were considering clause 8, and specifically proposed section 202ME, which is the primary provision that will enable late-term abortions to continue to take place in Western Australia, albeit from a gestational age of 23 weeks onwards rather than 20 weeks onwards as is the case at present. The other significant change that will occur is that any two medical practitioners in the whole of Australia will be able to sign off on a late-term abortion rather than the current practice, under which it is restricted to six Western Australian practitioners. We were looking specifically at the emergency provision that is set out at proposed section 202ME(5). The dialogue so far has indicated that even though a practitioner will have the capacity to perform a late-term abortion in an emergency without reference to a second practitioner, it is expected that, in more cases than not, as a matter of ordinary medical practice when dealing with emergencies in this situation, a second practitioner would be consulted in any event. I think it was useful to get that on the record and have a proper understanding of how this will play out in practice.

My question is about the collection of data as a result of this. The minister indicated that there is no specific form of oversight either in the legislation or that might otherwise apply. The reason we might be interested in that is to, after the event, ensure that there has been proper practice as a result of this emergency provision. With regard to the data that the Chief Health Officer will be able to direct be reported to him moving forward, there will no longer be form 1 regulations; it will be a direction. At the moment, does form 1 require that the name of the practitioner be listed? When two doctors are involved as a result of the decision of the panel, is that information made available via form 1?

Hon SUE ELLERY: Form 1 requires—I think we tabled it earlier—the name of the medical practitioner who performs the abortion. It does not require the two names of the members of the ministerial panel.

Hon NICK GOIRAN: I guess the argument could be put that under the current law, a late-term abortion could take place, a form 1 would be lodged and the name of the practitioner who performed the late-term abortion would be known by virtue of the form 1, but whether there had been adherence to the provisions that require authorisation from the ministerial panel would not be known from the form 1.

Hon Sue Ellery: Correct.

Hon NICK GOIRAN: I would suggest that that is a deficiency in the current model of oversight and perhaps explains why there has been more than one occasion during this debate when information has not been able to be provided to the chamber. It is because, as the minister has indicated, data has not been collected on those things. That said, would it be open to the Chief Health Officer, through the directions that he will be able to make, to require that the number—not the names—of practitioners involved in late-term abortions be reported?

Hon SUE ELLERY: It could be. There is nothing in the bill before us that would prevent it. There is no intention to do it, but there is nothing that would prevent it.

Hon NICK GOIRAN: With regard to the statement that there is no intention to do so, has the Chief Health Officer been asked whether he intends to collect that information?

Hon SUE ELLERY: We are not aware that he has been asked to consider that. He is certainly comfortable with the list, if you like, of things in proposed section 202MQ, but he has not been asked to consider whether he should collect that information.

Hon NICK GOIRAN: Proposed section 202MQ(e) refers to the administration or enforcement of this legislation, so I would respectfully submit at this time that not only the government, but also the Chief Health Officer consider obtaining that data. The government has decided that it is very important that for post–23 weeks abortions, two doctors must be involved. That is something that I support. For the reasons that we discussed yesterday, I think that two doctors should be involved in abortions at an earlier gestational age when particular decisions are being made about fetal abnormalities. That being the case, that will not be the case moving forward, but the government has said that it would like Parliament to agree that two doctors should be involved from 23 weeks onwards. The government must have a reason for why two doctors are to be involved rather than one, because it has expressly made the decision that only one doctor needs to be involved prior to 23 weeks. After all the hours of debate we have

had, I am not sure that we have yet had an explanation about why the government thinks that two doctors need to be involved from 23 weeks onwards, but I could be wrong. There has not been an opportunity to again review *Hansard*, but I do not recall an explanation ever being given by the government as to why it says two doctors should be involved from 23 weeks onwards. I again hasten to add, I am not arguing against that. I think two doctors should be involved for a longer period of time, but it is not my bill, my reform, or my proposal. If the government is so committed to two doctors being involved from 23 weeks onwards, and if it has said that the Chief Health Officer has the power to obtain this information to enforce the act, it follows that the Chief Health Officer ought to know, in order to enforce the act, whether one practitioner or two practitioners have been involved from 23 weeks onwards. Is this something that can be brought to the attention of the Chief Health Officer when he makes the decision as to what directions to make?

Hon SUE ELLERY: I missed the very last bit, because I was talking. The honourable member is correct that proposed section 202MQ(e) goes to the Chief Health Officer's power to record, use or disclose information for the administration or enforcement of the act. He might decide that he wants to collect information along the lines that the member is suggesting, but the original question was: has he been asked to? No, he has not—but he could.

Hon NICK GOIRAN: The end part of my question that the minister did not hear is: will this point be drawn to his attention?

Hon SUE ELLERY: I am happy to, honourable member.

Hon NICK GOIRAN: From my perspective, I have come to the end of my questions about proposed section 202ME. As is now customary as we consider this bill, I flag that for the attention of other members before we move to other amendments and proposed section 202MF. Before we move off consideration of proposed section 202ME, "Performance of an abortion by medical practitioner at more than 23 weeks," can the minister indicate to the house why the policy decision has been made that two doctors be involved?

Hon SUE ELLERY: The change in the maternal risk of the procedure after 23 weeks makes the decision for doing an abortion later than 23 weeks more difficult and complex. A second opinion from another medical practitioner has been deemed clinically important at that later gestation. An independent second opinion adds another layer of review. It is important for the patient, the institution conducting the procedure and the staff performing the procedure.

Hon NICK GOIRAN: The maternal risk is greater at 23 weeks.

Hon Sue Ellery: More.

Hon NICK GOIRAN: More than 23 weeks. Is that from 23 weeks or more than 23 weeks? For example, from 27 weeks? Is there some clinical information around that?

Hon SUE ELLERY: It is not a hard and fast 23 weeks. Remember, we had a conversation before about 22, 23 weeks. It depends on the person. I would not say it is a hard cut-off, but the clinical advice is that there are differences to maternal risk involved in the procedures used by practitioners below 23 weeks versus 23 weeks and above. The cut-off is not absolute or hard and fast. It is a complex environment, and many factors regarding the individual woman's health need to be considered. The advice is based on discussions with senior doctors in the field. I guess the answer is that the procedure becomes more complex due in part to the size of the fetus. The procedure used differs when above 23 weeks. Bearing in mind it has been set at 23 weeks, it will depend on the circumstances of the individual woman, as they will present differently, but essentially that is the reason.

Hon NICK GOIRAN: This might be a convenient time to deal with the scenario post–23 weeks, when the performance of an abortion results in the live birth of a child. On 15 August this year, during consideration in detail in the other place, the Minister for Health said about late-term abortions —

> There is always a paediatrician there to assess the baby once it is born.

Is that correct?

Hon SUE ELLERY: Yes, at King Edward Memorial Hospital for Women, that is the practice.

Hon NICK GOIRAN: Moving forward, will all post–23 weeks abortions—that is to say, late-term abortions—be taking place at King Edward Memorial Hospital?

Hon SUE ELLERY: In the immediate term, those procedures will be able to be carried out only at King Edward, because that is the medical facility that has all the required facilities and staff. It might be the case the new women's and babies' hospital, when that is built, will take over the function of King Eddy's. In order for any other health service provider to provide post–23 weeks abortions, it would need to have all of the things that are in place at King Edward. Right now, in Western Australia, the only place that does it is King Edward. There is no plan to expand them. It is driven by the level of clinical expertise available. That is available only at King Edward right now.

Hon NICK GOIRAN: What about the Broome hospital?

Hon SUE ELLERY: Can I just correct that. Broome Health Campus is accredited. I am advised that it does it only occasionally.

Hon NICK GOIRAN: On these occasional times when Broome hospital undertakes late-term abortions, is a paediatrician always there to assess the baby once it is born?

Hon SUE ELLERY: I am not able to give a precise answer. The hospital may not have a paediatrician available. I am advised that the procedure occurs at Broome hospital quite infrequently, but I cannot tell the honourable member with precision that a paediatrician will always be present or has always been present at the Broome facility when these procedures have been carried out there.

Hon NICK GOIRAN: I do not understand that, because on 15 August 2023 according to—not uncorrected but corrected—*Hansard* the Minister for Health said to the member for Vasse —

> There is always a paediatrician there to assess the baby once it is born.

The Minister for Health has been very categorical about that, so it seems odd that the minister representing her says she cannot confirm that is the case. I hasten to add that I am not here to shoot the messenger, because the minister is taking the advice she has been given. One chamber of the Western Australian Parliament was told that this is always the case, and now this house of review has been told by the minister representing that she cannot necessarily confirm that is the case. One of those two things must be true and the other one must be inaccurate. I will not take this any further because there is no purpose in doing so, other than to say that I give great weight to what the minister representing has just told the house of review and I give little weight to what has been given to the other place. I am very disappointed that a chamber of the Western Australian Parliament that has 59 Western Australians elected to it to make laws has been told inaccurate information, and it is once again left to the house of review to correct it. I might say that information provided to Parliament in an accurate and a timely fashion is essential to our democracy. That was said by a member of Parliament in this place some years ago and it is a principle that I uphold.

I want to move on from that to the amendment that stands in my name on the supplementary notice paper. Before I do so, I resume my seat to allow other members to ask questions at this time.

Hon KATE DOUST: I want to do this before we move on to the next subject because I want to be clear in my own mind and shut off this part of the conversation. Twenty weeks' gestation has moved to 23 weeks, and we know from our earlier conversation that the vast bulk of abortions conducted in this state—I think 86 per cent of them—are conducted in the private sector up to 20 weeks; everything else after that is currently done at King Edward Memorial Hospital or Broome hospital. The goalposts have been shifted, so does that mean those private providers can provide an abortion up until 23 weeks, or between 20 and 23 weeks, or will those women still have to go to King Edward? That is just my first question.

Hon SUE ELLERY: It will depend on the procedure. If the procedure used between 20 and 23 weeks is required to be conducted at a tertiary hospital, there is only one tertiary hospital and that is King Eddy's. If it is not a procedure that requires that, it may be done at the other clinics available—private clinics or private hospitals.

Hon KATE DOUST: Yesterday we had a discussion about the qualifications of the practitioner who would perform the abortion at that later stage, if required. After listening to some of the discussion earlier, if things were to change and there is a different time frame, aside from not having the skill set or staffing numbers yet, are there currently any legislative barriers, or even in this new arrangement, that would prevent a private provider from upskilling, if they are able to find staff, to provide a different level of service, if you like, so the woman does not have to go to King Edward or Broome?

Hon Sue Ellery: Post 23 weeks?

Hon KATE DOUST: Leading up to 23 weeks.

Hon SUE ELLERY: No, there will be no legislative barrier. It will depend on staffing. The clinics will still have to complete all of the same accreditation and registration processes they do now. It will depend on whether they have the skills. It is basically the list that the Hon Kate Doust referred to: Have they got the skills? Have their staff been trained? Do they meet all the requirements for relevant accreditation? If they do, they will be able to provide that service.

Hon KATE DOUST: The minister pre-empted my next question. I assume the answer will be the same if they want to proceed to then conducting abortions beyond 23 weeks—that is, as long they have the staff and the skill sets required. Will there be no legislative preventer beyond 23 weeks?

Hon SUE ELLERY: It is very much more likely that after 23 weeks the procedure will continue to be done at a tertiary hospital because of the complexity of the care required. That is not absolute because it will depend on technical ability. A fetal medical specialist may be required. I know the honourable member is well aware of this: we are talking after 23 weeks and a very small number of people undertake the procedure then. They are very complex

circumstances and every single one is different. But the expectation is that it is highly likely that most procedures will require a level of skill only available at a tertiary hospital, so it is likely they will continue to be done at King Edward.

Hon KATE DOUST: I think this might be my last question on this part. Have there been any discussions between the Department of Health, the Chief Health Officer and any of the private providers about proposed changes to fill that gap, if you like, of that new zone between 20 and 23 weeks, and getting more involved in that space?

Hon SUE ELLERY: I am not aware of any discussions with the Chief Health Officer. Some of them were represented in the clinical round tables that I attended. They are well aware of the change. To date, they have not been able to perform post–20 weeks, so they have not needed to get that higher skill level. They might choose to get that higher skill level and they will have to meet all the requirements to do that and to attract staff with those specialist skills, if that is what they decide to do. I have no knowledge of whether that is what they intend to do.

Hon KATE DOUST: My question is not to the minister. I note that Hon Nick Goiran said that he had basically finished with this area of the bill, except for his amendment. I will remind the chair that I have other amendments on the paper after Hon Nick Goiran's. It is my intention to wait until he has completed his discussion around his amendment to then move back into this space.

The DEPUTY CHAIR: Noted.

Hon NICK GOIRAN: In a moment, I will move the amendment standing in my name at 19/8 on the supplementary notice paper. It is entitled "Performance of abortion for particular reason of diagnosed or suspected Down syndrome". Before I move it, I have a couple of questions for the minister. In the last calendar year, how many abortions were performed with the justification given being trisomy 21?

Hon SUE ELLERY: In 2022, 71 were performed, but the caveat is that other significant conditions may have been present. I cannot accurately say that the only reason they were performed was because of trisomy 21. I can say that it was present within those 71 cases, but there well may have been other significant conditions.

Hon NICK GOIRAN: I have heard that argument before. The reality is that anybody who has ever observed a form 1 knows full well that it is rarely the case that more than one condition is written on there. I accept that it is possible that in a small number of the 71 form 1 cases submitted in the last calendar year alone there may have been other conditions such as fetal abnormalities written alongside trisomy 21—otherwise known as Down Syndrome. However, I am not going to sit here and move my amendment in a moment and have any member tell me that the majority of form 1 cases list more than one fetal abnormality. That is simply not the practice or case.

I have investigated this situation for years. In fact, it is the case that I had the opportunity to conduct some research on this matter. At the time, I reviewed all post–20 weeks abortions up until 2013. If somebody is able to provide some comprehensive and cogent information to the house demonstrating that a majority of form 1s in 2022 listed more than just trisomy 21, I would be prepared to receive that in a redacted, de-identified form. There is an opportunity here for the Minister for Health. If the Minister for Health would like the Parliament of Western Australia and the house of review to be provided with accurate and timely information, now would be the time to provide it. There is absolutely no point in us having information about Down syndrome provided to the house after we consider this amendment.

I respectfully put to the minister and members that the information that has been provided to the Parliament in the answer to a question on notice on 14 March 2023 indicated exactly what the minister just said—that 71 abortions were performed with the justification given being trisomy 21. That deals with the last calendar year and I acknowledge that that deals with abortions that took place over a range of gestational ages. Is there any data available regarding just late-term abortions? I would like data that is not just in the last calendar year, because that would be looking at a very small cohort. I know that it is routinely the case that if the answer is less than five, the answer is not provided, unless it is zero. Is there any information available to try to widen the dataset regarding late-term abortions that have been performed in Western Australia with the justification being trisomy 21?

Hon SUE ELLERY: No, honourable member.

Hon NICK GOIRAN: In the answer to the same question on notice on 14 March 2023, I was told that between 22 October 2001 and 31 December 2022 that 51 abortions were performed at or later than 20 weeks' gestation with the justification given being trisomy 21. Is the minister able to confirm that that answer provided on 14 March 2023 is correct?

Hon SUE ELLERY: We do not have the parliamentary question in front of us, so we are just going to take a minute to make sure that we have the information in front of us.

Honourable member, there was no information available to me at the table when I said no; I asked the question and was told no. That is not correct, and the adviser has apologised for that. I have seen the answer to the question and I can confirm that, over that 20-odd year period, there were 51.

Hon NICK GOIRAN: I thank the minister for that. For the benefit of members, we know, in the lead-in to the amendment I would like to move, that it is the case that abortions are performed in Western Australia because of a diagnosis of Down syndrome. There is little doubt about that. Over the last calendar year there were 71 such abortions. Record keeping began on 22 October 2001—that is a strange date for members—but I believe, as best I can recall, that that is when the form 1 reporting process began, so we have data on late-term abortions from 22 October 2001 up to the end of the last calendar year. There have been 51 late-term abortions—that is, more than 20 weeks' gestation—performed, with the reason or justification given as trisomy 21. This practice occurs in Western Australia. I have taken some time to make this point because I know that in due course we will have a discussion on Hon Kate Doust's amendment regarding sex selection. I know people will have various views about that, but I have already heard in the lead-in to this debate the general view that this does not happen in Western Australia. We will get to that discussion, but in respect of this amendment I do not want a discussion about whether this happens in Western Australia; clearly, it does. There will be members in this place who, I presume, hold the view that it is okay for an abortion to happen, either in phase 1 or as a late-term abortion, if a diagnosis of Down syndrome has been provided to the family. I am not one of those members.

This is what is best known as "eugenics". This is deciding what type of people in the human race have conditions that are acceptable and unacceptable. I align myself with a principal petitioner; her name is Lisa. I tabled her petition last month. Lisa is a wonderful Western Australian. She is the mother of another wonderful Western Australian, Emily, and 3 023 Western Australians signed that petition, which I had the honour of tabling. The petition is currently before the committee chaired by Hon Peter Foster, the Standing Committee on Environment and Public Affairs. I acknowledge that that committee has not yet had a proper opportunity at this time to consider the petition but it has, as a courtesy to me, invited me to make a submission to the petition. I have done so, so I thank the committee for giving me that courtesy. I also note, having looked at the committee's parliamentary website, that it has made that submission public. I invite members who are concerned about discrimination against unborn children with Down syndrome to familiarise themselves with that submission, dated 8 September 2023. With those introductory remarks, I move —

Page 10, after line 12 — to insert —

202MEA. Performance of abortion for particular reason of diagnosed or suspected Down syndrome

(1) Subject to subsection (2), a medical practitioner or prescribing practitioner must not, and is not authorised to, perform, and a registered health practitioner or student in a relevant health profession must not, and is not authorised to assist in the performance of, an abortion on a person for the particular reason of the diagnosis in the unborn baby of, or suspicion that the unborn baby has, the genetic condition Down syndrome, also known as trisomy 21.

(2) In an emergency, a medical practitioner is authorised to perform an abortion, or assist in the performance of an abortion, on a person in the circumstances mentioned in subsection (1) if the medical practitioner considers it necessary to perform the abortion to save the person's life or save another unborn baby.

(3) This section applies despite any other provision of this Act.

Hon MATTHEW SWINBOURN: This is my first contribution to this debate. I have to respond to the use of the word "eugenics". It is highly offensive, honourable member—highly offensive. I think you know that, and I think you have used it deliberately. I typically do not impute to you those kind of motives, but in this particular instance, you have used the term carefully, because your words are always used very, very carefully.

I could not support your amendment. I will not support your amendment. But as the father of a child with a genetic condition—not Down syndrome, but Noonan syndrome, and also the father of two children who have familial paraganglioma syndrome, both of which are genetic conditions; this amendment does not deal with those conditions—my wife and I had to make decisions during the course of one of her pregnancies. We had to make a decision whether or not to continue with the pregnancy because of the very real prospect that if our last son, Darcy, had Noonan syndrome, he could have been so severely disabled that he could not have survived his own birth.

We were not making a "eugenic" choice, such as you have referred to. I cannot believe this word has been included in this debate, at this time—you may have used it previously, but it is the first time I have heard it—to suggest that anyone who does not support your amendment is supporting eugenics. That casts a slur across so many parents who have had to be in the situation of making a decision about whether to continue with a pregnancy.

I know and have met Down syndrome people. They are beautiful, wonderful people. But, like all syndromes, the degree of disability in that syndrome varies from mild to severe. It is the same with Noonan syndrome, a condition that my wife suffers. It can be a very mild syndrome; it might involve nice blue eyes and thick brown hair, but it

can also result in a deformed heart that cannot sustain life. When I was sitting with my wife at 19 weeks doing a scan to determine whether the heart of my unborn son Darcy was formed sufficiently enough for us to be confident to continue with the pregnancy, I was not thinking about eugenics. I was thinking about the suffering that he might have to go through had he been born with that debilitating condition. That was all we had at that time to consider that. I have not contributed to this debate because I think this is a women's health issue and I am happy to stand back and allow women and the women of this house to speak, and to speak on my behalf on this issue. However, on the issue of eugenics, please do not put me into the category of Nazi Germany and those other people because that is not where I was and it is never where I was, and because I do not support your amendment and I have a different view from you does not mean that I support removing from our society people with disabilities. That is completely contrary to where I stand on any of these issues. Please, member, maintain your position on this bill, which you are entitled to maintain, but please do not bring in words like that. As I have said, I accused the member of doing it deliberately, and I think he did, but I ask him to reconsider that when he is suggesting that those of us in this place who do not support his view might be engaging in eugenics, because that is not what it is about. It is not a state-sponsored attempt to remove certain people from our society.

Hon SUE ELLERY: Members, I think it is important that I take the temperature down just a little because I share Hon Matthew Swinbourn's concerns about the use of the word eugenics. A quick google tells us that it is —

> … a set of beliefs and practices that aim to improve the genetic quality of a human population … Historically, eugenicists have attempted to alter human gene pools by excluding people and groups judged to be inferior or promoting those judged to be superior.

What we are debating here is: when a woman at 23 weeks needs an abortion, what is the regulatory framework within which that should occur? We are not debating a policy about improving, or otherwise, the genetic pool. We are not debating that. I understand the strength of feeling of Hon Nick Goiran—I really do—and he has been steadfast in his beliefs and steadfast in his pursuit of public policy that supports his beliefs, and I respect him for that. So far in the debate we have conducted ourselves relatively calmly, I think, even though we have been talking about some really hard things. Abortion post–23 weeks is really hard. I ask everyone to just take it down and not use terms that are about something that we are actually not debating. What we are debating here is what is the regulatory framework for women who find themselves in a position when they need a termination post–23 weeks.

Having said that, the government does not support the amendment. Ultimately, the abortion is a decision for the woman in consultation with her treating practitioners and her partner or family. It is important to note that we do not preclude abortions for the reason of trisomy 21 now, so if we were to agree to this amendment, we would be putting in place a new barrier. Difficult decisions have been made by women in Western Australia around this issue and they will continue to be made, whether we change this clause or not. Do not kid yourself—they will continue to be made. All that will happen is that those women who can afford to will travel interstate and those women who cannot afford to will have to manage the best way they can, unsatisfactory as it may be for them and their health and for their family. Where there is a suspected or diagnosed fetal or maternal condition, the practitioner would inform the patient of all the possible outcomes and any proposed treatment. As I said, there is no limitation now, noting that the condition is commonly detected early in pregnancy. I have checked whether any Australian jurisdiction has got an exemption around trisomy 21 and I am advised no, that is not the case. If we were to put this in place, we would be the first jurisdiction in Australia to do it. As I said, the result would be that if a woman could afford a plane ticket, she would go and get it done somewhere else. I appreciate the member's longstanding commitment to pursuing public policy in this issue and I respect his diligence and his commitment to his principles, but we cannot support this amendment.

Hon NICK GOIRAN: I thank the Leader of the House for putting the government's position. I thank also Hon Matthew Swinbourn for his first contribution in this debate. I will address briefly both points. First, I concur with what the Leader of the House said that no other Australian jurisdiction has a Down syndrome prohibition with respect to abortion. I agree with her on that point. I do not say that that is then a reason for Western Australia not to do it, and I know the Leader of the House is not imparting that upon me. I think this would be an opportunity for us to make a very powerful statement as Western Australians on what our view is when it comes to the diagnosis of Down syndrome. It follows from that that the other remark of the Leader of the House, that this is not a provision that currently exists in the law in Western Australia, is also true, and that is evidently the case because of the data we confirmed earlier that there have been 71 of these cases in Western Australia in the past calendar year and 51 late-term abortions since data has been collected in 2001. I concede those two factual points made by the Leader of the House. I respond to say simply that that does not in itself mean that we should not be doing anything. This would be a reform, in my view, so I seek the support of members in that respect.

With regard to my learned friend Hon Matt Swinbourn, I want to take a moment to acknowledge his contribution and the passion that I know is genuinely held by him, a member of Parliament for whom I have the highest regard. He is a person who also chooses his words carefully. He is a most diligent member of Parliament, a very committed

father and a person whom I consider an honour to serve with in the Western Australian Parliament. He said that I chose to use that word deliberately, and he is right; I have today. I know that we will not agree about this matter and I am okay with that. I acknowledge that the honourable member may not be okay with that. Unfortunately, this may be one of those occasions when we will have to have a different view on a matter. However, what I do not want to happen here is a situation where there is an imputation understood from me in any way with regard to a decision he and his family have made. I hold him and his family in the highest regard as Western Australians and I wish them my very best. However, I continue to hold my view about Down syndrome. I want to make it clear that I am not talking about any other condition.

I accept we could have a debate about other conditions, but at the moment I am only talking about Down syndrome. The reason I am talking about it is because 3 023 Western Australians have signed a petition, and because Lisa—who is the mother of Emily—feels more strongly about this than I do. I acknowledge what the honourable member has said. It has become customary during the course of this debate for there to be a suggestion that you are only able to have a voice on this matter if you are of the female gender. That is obviously and self-evidently not a view that I hold. For those who consider that to be a prerequisite, I emphasise that Lisa, a female Western Australian, a great female mother, was the principal petitioner. She does not have a seat in this Parliament, but she does have 35 Western Australian members whom she can call upon. She called upon me to be her representative and to be her voice at this time. Her daughter, Emily, has been diagnosed with Down syndrome.

I acknowledge that there may be other members who wish to contribute to the consideration of this amendment. I will close with a quote from the submission I made to the Standing Committee on Environment and Public Affairs in respect to the petition *Discrimination against unborn children with Down syndrome*, in which I say —

> Every individual, regardless of their abilities or disabilities, possesses inherent human rights. A Down syndrome diagnosis is not necessarily a 'severe medical condition' that 'justifies the procedure'.
>
> Discriminatory practices, such as aborting pregnancies due to a Down syndrome diagnosis, send a harmful message that some lives are less valuable than others. Upholding human rights and ensuring equal treatment for all is the task of government, and extends to those with disabilities, fostering a society that respects the intrinsic worth of every person.
>
> During the third reading speech of the Acts Amendment (Abortion) Bill 1998, on Thursday 7 May 1998, Mr John Kobelke MLA said:
>
> > This Bill will not directly destroy our society, but it is both a signal of the direction in which we are going and a mechanism to speed up the process of creating disregard for the value of human life, starting with the life of the unborn child, and from there growing to a total disrespect for the value of all human life.
> >
> > I imagine that members would, through Robert Bolt's play A Man for all Seasons, and perhaps their knowledge of history, have heard of Sir Thomas More, who was the Chancellor of England, which is perhaps equivalent to today's Prime Minister. Sir Thomas More stated in that famous and very meaningful play that "when statesman forsake their own private conscience for the sake of public duties, they lead their country by a short route to chaos."

Later in the submission I referred to the second article in the *Convention on the rights of the child*, to which Australia is a signatory. It states —

> 1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

The second part of that article in the *Convention on the rights of the child*, reads as follows —

> 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

I go on to say in the submission —

> Australia has agreed to be bound by the Convention on the Rights of the Child, and it is essential that Western Australia move beyond discriminatory practices that target individuals with Down syndrome.

Hon Dr BRIAN WALKER: I will add a few words here to hopefully complete this part of the debate. It is customary when I have a patient in front of me, that we are discussing the potential for findings. It is their nuchal translucency scan, which would give a clue as to the presence of Down syndrome. You can, as a parent, choose not to undertake

that scan, because you then say, "If I did find something I would not be prepared to abort my child." I think this is an example of freedom we allow to people to make a choice—the rights of the parents to make a choice. Once that scan has been done, and if there was to be a declaration that this child is suffering from Down syndrome, and further tests would prove that, then the question can still be asked, "Well, having thought about that, we will let this pregnancy continue", or not. Once again, this represents the freedom or the right to decide our own future. There is a balance here, of course. On the one hand, there are firmly held beliefs that a child, no matter how serious the dangers that they are facing, how serious the debilities they face or how difficult their life may be in the future, every life is sacred. I think back to that famous Monty Python film where every sperm is sacred. We can take this way too far.

I uphold the principle of the right to choose, because it is not easy to be the parent of a child severely damaged with Down syndrome. The children I deal with who have Down syndrome are delightful. You can generally recognise them by their beautiful, beatific smiles. We can impute to them a certain equality of life. Remarkable things have happened, that is true; however, there have been disasters as well. No parent should be forced into a situation in which they may be exposed to extremely difficult circumstances because of someone else's deeply held beliefs. There is no imputation of anything wrong about this, honourable colleague. I fully support the member's right to his belief, but I think it is a problem to impose that on other people. We are debating the rights of parents to make decisions about their future and the future of their children, so I will not support the amendment.

I would like to stand in defence of my colleagues, because the words Hon Nick Goiran chose—as well-meaning as he thinks they are and as deeply held as his beliefs may be—suggest that all doctors are supporters of eugenics, unless they specifically refuse to take part in abortion. That is a terrible slur against every one of my colleagues in my profession, and I reject it wholeheartedly.

Hon KATE DOUST: I support this amendment and I thank the member for moving it. I have always had a concern about how this situation is managed, when a family has been advised that their baby potentially has Down syndrome. Part of my concern is that we will see a dramatic shift with the changes in this bill about mandatory counselling, which goes out the door. Part of my concern is about when this situation arises, when a woman has had the appropriate screening in the first trimester, and gets this particular result, how will it be managed? I looked to information provided by Down Syndrome Australia in its submission to the *Disability royal commission health issues paper* from March 2020 in which it talked about how—I am going to take this as a direct quote from this paper. It says —

> The majority of pregnant women in Australia undertake the combined first-trimester screening which includes screening for chromosomal conditions such as Down Syndrome. A smaller number opt to undertake the Non-Invasive Prenatal Screening (NIPS) which is available at 10 weeks of pregnancy.

I will talk about that when we get to another amendment about sex selection as well. It goes on to say —

> The Department of Health provides guidelines which indicate that doctors should support women to make 'informed decisions'.
>
> There is considerable evidence, despite appropriate guidelines, that appropriate information about screening is often not provided to women and acceptance of screening is frequently presumed.

It goes on to say —

> Once a result is provided, if an unexpected result is received, families are often pressured to make a decision to terminate even when this goes against their personal beliefs.

This is information from Down Syndrome Australia. It continues —

> Data from Western Australia suggests that in Australia, most women for whom a confirmed prenatal diagnosis of fetal Down syndrome is made, choose to terminate the pregnancy (93%). There is significant concern that these termination rates are impacted by the lack of balanced information provided to families during prenatal screening. The lack of support from some medical professionals about continuing a pregnancy after a prenatal diagnosis also may influence parents' decisions.

Further in the submission, Down Syndrome Australia, in 2021, conducted a national survey to explore expectant parents' experiences of prenatal screening. The survey was called, "We have a lot to learn". It surveyed 320 parents who had a child under the age of 10 years with Down syndrome. The responses from that survey revealed that prospective parents are commonly given misinformation about life with Down syndrome and that nearly half felt pressure from healthcare providers to terminate their pregnancy. Families describe significant gaps in the information and support provided during pregnancy. I want to read in a list of statistics from that survey: 49 per cent of families felt pressure from their healthcare provider to terminate their pregnancy; 42 per cent of families said they received negative information about Down syndrome; 42 per cent of families were told information about Down syndrome by health professionals that they now know to be untrue; 45 per cent of families felt that they did not receive appropriate support during pregnancy; 47 per cent of families felt they did not get the information they needed to

understand Down syndrome during their pregnancy; 69 per cent of families felt that the information provided did not give them an understanding of the lived experience of people with Down syndrome and their families. It goes on to say that prospective parents make decisions about their pregnancies within a social context that displays bias and stigma against people with disability.

I take on board the comments made by Hon Dr Brian Walker about his colleagues. I do not think the intention is to assume that but I thought they were very interesting stats. Sometimes when people have this discussion, they will have certain biases. Sometimes they are inherent biases about a particular issue. It may be with the best of intentions that a bias may drive a conversation on a particular pathway whereby someone thinks it might be in the best interests of those individuals for the future. However, based on information from the survey by Down Syndrome Australia, that has not been the lived experience of those individuals coming out of that situation.

I think the amendment has been moved as a protective mechanism to ensure that when a diagnosis is made, it cannot be used as the sole reason for terminating a pregnancy. The Down Syndrome Australia submission further talks about how there were concerns from some families about seeking terminations without appropriate follow-up tests after a positive result. I do not know, aside from the test in the first 10 weeks, what other tests are available to people that perhaps provide a clearer outcome. Are they advised whether follow-up tests can be made available? The final part of the submission reads —

> The misinformation, coercion and lack of support provided to parents undergoing prenatal screening constitutes a form of neglect and abuse within the health care system. These experiences have significant impacts on both the decisions made by families, but also have long-term consequences for the wellbeing of family members. Many parents of children with Down syndrome remark that the way the diagnosis is presented can be traumatic.

These are not my words. They are the words of the people who have day-to-day and ongoing engagement with families and children who have Down syndrome. I thought it was a fairly powerful set of comments. I think the amendment is there as a protective measure. It may be that it gives food for thought about how this set of issues is managed in relaying information and having consultation. As I said, once mandatory counselling is gone, I have concerns about how a discussion would occur and how information is conveyed. How do people in this situation make a fully informed decision when they are already feeling, under the current arrangements, that they are not getting that information? They feel they are being guided down a certain pathway that they are not entirely comfortable with. I am going to take my decision partly on the information provided from Down Syndrome Australia. I support the amendment moved by Hon Nick Goiran.

Hon NICK GOIRAN: In my haste to respond earlier, one thing I omitted doing on behalf of the principal petitioner, Lisa, at the time of moving this amendment, was to read in the petition that was tabled on her behalf on 8 August this year. I will conclude on this point. It reads —

> To the President and Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled. We the undersigned…
>
> 1. Are distressed to learn that last year alone there were 8,551 abortions in our State, including 76 at a late-stage of pregnancy and 71 "justified" because the unborn child was suspected of having Down syndrome; 2. Note the Premier's statement on the first day of Parliament this year that his Government intends to "modernise our abortion laws to make safety, privacy and dignity an absolute right"; 3. Call on the State Government to affirm that Western Australia is a State that has compassion for both pregnant mothers and unborn children irrespective of the circumstances of the pregnancy; 4. Appeal to the State Government to ensure that any purported modernisation of our State's law include the ending of the disability discrimination that has seen so many lives taken of those with Down syndrome; and 5. Request that the Legislative Council ensure any amendment legislation enshrines the safety, privacy and dignity of unborn children suspected of having Down syndrome and other conditions compatible with life.
>
> And your petitioners as in duty bound, will ever pray.

Division

Amendment put and a division taken, the Chair of Committees casting his vote with the noes, with the following result —

Ayes (3)

Hon Ben Dawkins	Hon Kate Doust	Hon Nick Goiran *(Teller)*

Noes (25)

Hon Martin Aldridge	Hon Lorna Harper	Hon Stephen Pratt	Hon Dr Brian Walker
Hon Klara Andric	Hon Jackie Jarvis	Hon Martin Pritchard	Hon Darren West
Hon Dan Caddy	Hon Ayor Makur Chuot	Hon Samantha Rowe	Hon Pierre Yang
Hon Sandra Carr	Hon Kyle McGinn	Hon Rosie Sahanna	Hon Peter Foster *(Teller)*
Hon Stephen Dawson	Hon Sophia Moermond	Hon Matthew Swinbourn	
Hon Colin de Grussa	Hon Shelley Payne	Hon Dr Sally Talbot	
Hon Sue Ellery	Hon Dr Brad Pettitt	Hon Wilson Tucker	

Amendment thus negatived.

Hon KATE DOUST: I think we have reached the point at which I will move the next amendment standing in my name. I move —

Page 10, after line 12 — To insert —

202MEB. Medical practitioners and prescribing practitioners not to perform abortion for sex selection

(1) Subject to subsection (2), a medical practitioner or prescribing practitioner must not, under section 202MC, 202MD(2) or 202ME(1), perform an abortion on a person for the purposes of sex selection.

(2) Subsection (1) does not apply if the medical practitioner or prescribing practitioner (as the case requires) is satisfied that there is a substantial risk that the person born after the pregnancy (but for the performance of the abortion) would suffer a sex-linked medical condition that would result in serious disability to that person.

We sort of started the discussion of this issue yesterday. It has come up at different points during the debate over the last few days.

Although we acknowledge that there is an overall ban on sex selection being used in abortion, the boundaries are changing. We have already identified that significant pieces of work have been done globally to acknowledge that abortion has been used for gender selection with a male bias. We now see a worldwide trend in which it is stated that something like 117 million women are missing because of gender-selection abortion. Although there are no formal records here in Western Australia, we note, from the reference I made to the *Framework for termination of pregnancy in New South Wales* policy directive, that a number of doctors had had the question put to them about having a gender-selection abortion, and those guidelines provided advice and support to doctors.

I might stop for a second so that people can find their seats.

The CHAIR: They will have to find another way to find their seats.

Hon KATE DOUST: They might have to find another way around me.

I recall that we had this conversation earlier. I cannot remember whether I asked the minister a question about whether there were any records about it, but I think the answer was no. We then had the very interesting contribution from Hon Dr Brian Walker, who stated, from his own experience, that he had been asked for that type of abortion. It would be interesting to hear anecdotally from other doctors. From memory, I think I asked the minister the question about whether, as part of this whole process, doctors had been asked whether this question had been put to them. I might get the minister to remind me what the answer was.

This amendment is about reinforcing the fact that, even with the legislation changes, this is not an acceptable practice. I do not think anyone here thinks that gender selection by abortion is an acceptable practice just for the sake of a male or female—predominantly male—gender preference, or even for family balance purposes, for which I understand gender selection is sometimes used. I appreciate that in some circumstances people would seek a gender-based abortion if a genetic disease might be passed on via a particular gender, and that is why it is referenced in the second part of this amendment. The capacity for that to occur is still there.

I think we should be doing whatever we can to educate people that it is not an acceptable practice and to reinforce the law for medical practitioners who might be tempted. Not all medical practitioners are necessarily as solid in their convictions on this, and they might be tempted to provide that assistance. I imagine that in some sectors of our community and in some cases, significant pressure would be put on a woman to have a gender-selected abortion. It might be for a cultural or family balance issue. This amendment will not take away from the legislation before us. It will reinforce the fact that this should not happen in a general sense. It should happen only in the very specific margins, when there is potential for an inherited genetic disease, and it would then be up to the individual to decide whether to make that choice in those circumstances. I do not believe that we should enable—in any way, shape or form, for cultural or family balance reasons—a gender-selection abortion.

The three sections of the bill have been selected because they deal with the proposed period before 23 weeks, during which a woman can effectively seek an abortion without reason. We know that people can find out the gender of their child at a relatively early stage. I read somewhere that with advances in technology and blood tests, that information can be obtained even in the first trimester. Traditionally, people would find out the gender at about 16 weeks. I never had that opportunity during my first two pregnancies. My husband believed that we should have a surprise; I am not a great believer in surprises. When I had my third child, it was not until he was a week overdue and medical staff put images up on two ultrasound screens and said, "Do you want to know what you are having?" I said, "No", but they said, "Too late! There it is!" That was 25 or 26 years ago. Technology has changed, and testing mechanisms have changed. If people choose to know, they have ways of doing it so much earlier than the ways available to many of us in this chamber when we had children. It is entirely possible to think about having a gender-selection abortion at that early stage. Because of the stage of the pregnancy, if someone has that information, it may very well be a—I want to use the words "simpler process", but that is not really the way I want to describe it. If it were at an earlier stage, I think it would be an easier process to manage, because if the woman did not have to give that reason, she would not have to articulate why she wanted to have it, even if she was under pressure to have it for those reasons.

Obviously, proposed section 202ME(1) relates to post–23 weeks abortions, and they may very well fall into the category in which the potential for an inherited genetic disease based on gender has been identified. However, it should not be able to be used based on a preference or for family purposes even at that point. That is my view. I hope others might pick up on that. I see this as being a very clear way of sending out the message that a gender-based abortion for a family preference or for family balance is not acceptable in our country. It should not be a practice that we support in any way, shape or form. This would still give people the option of having an abortion, if they so choose, in circumstances in which the potential for an inherited genetic disease based on gender has been detected. I hope that members will give this due consideration and support the amendment.

Hon Dr BRIAN WALKER: Hon Kate Doust may well be surprised, but I am going to support this amendment, and there are a couple of reasons for that. The first is that abortion is not undertaken lightly; it should be undertaken for serious reasons—physical or mental reasons or the health of the mother or, indeed, the unborn child. Choosing not to have a child simply because it is the wrong sex is not a valid reason for interrupting a pregnancy. The mother might say, "I can't have a child at all. This will ruin my life. I can't manage this." There could be many psychosocial issues going on. Absolutely that would be a valid reason for considering an abortion in the first trimester. Indeed, if they had been delayed—they had been raped or were just unaware of the pregnancy—that would also be a valid reason. If it is going to be utterly impossible for the mother to carry on with her life, she should not be denied an abortion.

However, if a woman said, "Yes, I'm pregnant. I want to wait to see what sex it is and then I'll make a decision", we would have a very different conversation. In my education, I was taught that that is not valid. It never came across that a woman would say, "I want to choose the sex of my baby"—in India, perhaps. There is consideration here. If we allowed a woman to say, "I'm carrying a female child; I want it aborted", we would also be saying that we fundamentally disrespect the female gender as being second rate or second class. What does that say about the views of an adult towards women in general? Do we in our society tolerate the kind of thinking by someone who judges a woman walking down the street by saying, "You're a female. I don't respect you because you're not a male"? I sincerely hope not. In fact, it is part of the questions we ask those who seek to become citizens of our great nation. These are the social standards that we expect: "You are not going to come from another country and then demand that women become subservient slaves in your household, like you did in your previous home, wherever that may be. If that is your firmly held belief, you don't fit the criteria for being granted citizenship in our nation." I suspect that those people would determine that women are to be disrespected and would want to be rid of a female unborn child, so I would be saying, "Get out of Australia. The whole morality that you are showing here is not one that I feel is compatible with our social norms in Australia."

This is a serious question. It is not just about ending an unborn child's life. It is about a perception that could go right through society and cause huge damage to women who could then be abused at home or suffer the deprivations of being bullied in the workplace or at home. That kind of mentality allows people to perpetuate a society in which a female child is something to be despised and the woman is something to be done away with: "We want males in our family to carry on the family name and to work in the fields. Let's marry this child off as soon as possible to any old man who will have her and get her out of our home. We'll take the dowry." That attitude is fundamentally un-Australian. If we are not prepared to have that social norm in our society, we should be prepared to put on our statute book that terminating a child based on sex selection is inappropriate and should be forbidden.

I support this amendment as it is intended. All life is to be respected, whether male or female—the parent's life and the child's life. We should not say that any one particular gender is better than the other. With those few words, I will be supporting the amendment.

Hon MARTIN PRITCHARD: I struggled a lot with the last amendment, but I am not struggling so much with this amendment. I have not decided whether I will vote in favour of it; I am leaving it very much to the last moment. A couple of things are affecting my decision. One is that I accept that it is not part of common practice in Australia, so one part of me thinks that if it were to become more common, I would rely on a future Parliament to amend the legislation to prohibit it. I am not overly sure that it is needed, but I think that most people would not think that the concept of a mother choosing whether to have a male or a female child should be part of the consideration.

I do not know why, but I imagine that it would be more stark if it related only to late-term abortions. In the early stages of a pregnancy, there are many considerations. Even if the mother knew the sex of the child, she would probably have a medical abortion and the doctor probably would not know the reason for it. It would be more offensive to me if it related to late-term abortions.

As I said, I am not sure whether I will support the amendment, and I would like to hear more members comment on it to help me make up my mind. I certainly do not have a particular concern with the concept behind it.

Hon SOPHIA MOERMOND: I am in favour of this amendment. The reason for that is that I have chosen to always speak up for the human rights of women and girls. Female fetuses are at most risk of femicide with sex-selective abortion. That is very obvious in countries like China and India. I think in India, 40 million girls are missing because of sex-selective abortions. I think that is very unfair and it is clearly discriminatory.

Hon SUE ELLERY: I indicate that the government will not support the amendment. I understand the argument about why we do not think sex selection is a valid reason for abortion. I agree with that entirely. But we are being asked to put a measure into the regulatory framework that I do not think we will be able to enforce. Blood tests to determine gender can be done at 10 weeks' gestation. In an earlier contribution I think Hon Dr Brian Walker said he had been asked by a patient about an abortion related to sex selection. Previously, Hon Kate Doust asked me whether, in the process of drafting this bill, clinicians had been asked whether they had concerns. I told her, yes, they were asked, and the response was no, they were not concerned that this was an issue. Irrespective of the contribution by Hon Dr Brian Walker, it is unlikely a person will say they want an abortion related to the gender of the child. What are we then doing to the clinician? We are asking them to get inside the head of the patient and determine for themselves whether that is the reason they are seeking a termination. Bear in mind what I just said: blood tests can now be done at 10 weeks that help establish the gender of the baby. We do not think this is a practical amendment.

Hon Kate Doust also made the point, if I heard her correctly, that we should not enable sex-selection abortions. I completely agree, but there is nothing in the bill before us that enables that. A statutory prohibition would result in practitioners having to determine whether every abortion requested after nine weeks was potentially suspect of falling foul of the provision we are being asked to put into the bill. At best, we think it could lead to delays in delivering care and, at worst, perhaps no procedure at all. It is for those reasons we do not support the amendment, and not because abortions should be performed for the reason of sex selection. We do not think this provision will practically be able to be enforced. We do not think it will be able to be determined. Clinicians would have to put themselves in the mind of the patient because it is highly unlikely that a patient will say up-front that that is the reason they want the abortion.

Some work was done on this in New South Wales in a review done between 1 October 2019 and 30 September 2020. It found that the percentage of people stating gender selection as a reason for seeking an abortion was negligible, at 0.02 per cent. I do not take issue with the point members have made that in some cultures there is a view still that male babies are preferred over girl babies. That may be the case, but in Western Australia when we asked clinicians, they said it was not an issue that had been raised with them. When New South Wales asked the question, clinicians said that proportion was negligible, at 0.02 per cent.

For those reasons we do not support the amendment. We do not think it will add anything that will prevent the issue that people appear to be concerned about. That is because we have no way of enabling practitioners to get inside the head of someone who says they want an abortion for another reason when they think they want it for the purpose of sex selection. How can practitioners satisfy themselves when there may be a completely legitimate range of other reasons a patient gives for wanting the abortion? I am not sure that this amendment is a practical solution. I understand the thinking behind wanting to make sure we do not create the situation described, but we are not in a position to support the amendment.

Hon WILSON TUCKER: For the record, I support the amendment. I take the minister's point that clinicians have been surveyed, and she has indicated that abortions for the purpose of sex selection are not an issue in WA today. Just because this is not seen as an issue or the practice does not occur in WA today does not mean that it could not be in the future. The minister mentioned a New South Wales survey. She is right that there was a data anomaly and only a very small percentage of abortions were listed as being performed for the reason of gender selection. Looking at data, another survey was issued to clinicians, and I believe 18 per cent of surveyed clinicians indicated

that they had been approached to perform an abortion on the basis of gender selection. That probably speaks to a very limited pool of clinicians and a very large number of abortions performed. Be that as it may, it was still a very small subset of people trying to have an abortion performed in New South Wales on the basis of gender selection.

There is another report focusing on Victoria. I will read from the report. One researcher is quoted as saying —

> "I think it's important to monitor this issue because our data indicates sex-selective practices are continuing in some migrant communities in Victoria, irrespective of legislation."

We know Victoria has ruled out this practice. South Australia has ruled it out. I believe the amendment we are dealing with today is copied and pasted from the South Australian legislation. The New South Wales Parliament has condemned the practice. Also, gender selection through IVF is illegal in Australia. That issue has largely been put to bed. The jury is out, and the evidence is not there to suggest—as the minister pointed out—that this is a widespread problem happening in Australia today. Latrobe University put out a report indicating that the practice occurs in some nations around the world and continues in first-generation migrant groups that have moved to Australia, but researchers did not yet see it occurring systemically in Australia. But just because it is not happening today does not mean it will not happen in the future. As I mentioned in my second reading contribution, the lens I take on this bill is a data-driven, evidence-based approach. I take the view that if this is not being measured, we do not understand the issue and cannot inform a policy in the future.

I support the amendment. I have drafted another amendment that is really a softer approach to the one on the supplementary notice paper at the moment. It will not ban the practice of gender selection through abortion but will measure abortions being sought on that basis. We will deal with that debate when we get to, I think, page 21 or so of the bill. I take the minister's point that it is probably quite hard to glean the real reasons that people approach a clinician for an abortion. We could probably not get an accurate testimony in the majority of cases. However, I think the amendment will codify that this is a practice that we do not accept as a society. It has been ruled out as part of IVF. We are debating whether to rule it out as part of this bill. I think it makes sense to include it as part of this bill and, therefore, I support this amendment.

Hon MARTIN ALDRIDGE: I will support the amendment moved by Hon Kate Doust as well. I have not heard any dissent in the course of this debate that abortion for the purposes of gender selection should not occur. I think that matter is not controversial and we are all in agreement of the point. Particularly having had regard to the response by the minister at the table, it is important to reflect on the fact that for the first time since 1998, we are significantly modernising and expanding the abortion laws in Western Australia. I have supported the provisions up to this point. We will probably do this again in another 20 or so years.

I listened to the response from the government about the practicalities of this amendment and I accept those. However, if that is the standard or reason for legislating or not legislating a provision, we could probably fit our sitting calendar into about five weeks or so. There are many laws, bills and clauses. If the test is whether they are practical or enforceable, we could probably erase half the statute book. Perhaps we should write to the Attorney General to review the statute book in terms of practicality and enforceability.

The reason I support the amendment before us is that it is will not restrict access, apart from access for gender-selection purposes, which I think we all agree should be restricted. It is not the case that this example is hypothetical and we are clutching at straws, because Hon Dr Brian Walker just yesterday said that he has experienced this very thing.

The other thing that I want to draw to the attention of members is later on in this clause, proposed section 202MP, "Chief Health Officer may direct certain persons to give information about abortion". The minister may have heard Hon Nick Goiran pursue this issue at length yesterday, or at least earlier this week, regarding what the three-yearly report will look like once the bill passes. A whole bunch of information will no longer be collected about abortion in Western Australia. One of those pieces of information is the particular race or nationality of a person on whom an abortion is being performed. I listened to what Hon Dr Brian Walker said yesterday and I have listened to other members who have contributed to this clause. There are countries and cultures that pursue abortions for gender selection. Again, I do not think that is a matter of controversy. However, this bill will restrict the Chief Health Officer from collecting information about race and nationality. This information-gathering provision was about looking at health trends and service delivery. If we find ourselves in a situation in which we need to respond to something that is happening, we are not going to know—particularly if it is culturally driven.

I think we have to give regard to the practical challenges presented by the minister. The fact is, if this amendment becomes law, someone may be unaware of the provision. They may go to their doctor and say "I would like an abortion for this purpose" and the doctor would respond with "You cannot have that; it is against the law of Western Australia". The person may then go down the street to see the next doctor and will not tell them as much as they did the first time. There will always be ways around laws. However, I think there is nothing wrong with affirming as a Parliament that abortion for gender-selection purposes is not acceptable and is therefore not lawful.

Hon NICK GOIRAN: I rise to support the amendment. In providing an explanation, I want to deal with the four points that were made by the minister on behalf of the government as to why the government is not supporting the amendment. I agree with one of the four things that were said, that is the first—that the mother is unlikely to ask. I think that members would agree that what the Leader of the House said is true; it is unlikely that a Western Australian mother who is pregnant with an unborn child would go to a Western Australian practitioner and ask that an abortion be performed for the purposes of sex selection. The key word here is "unlikely", and I agree. I concede the point made by the minister. It is the only one of the four points made by the minister that I agree with. However, the fact that it is unlikely to happen is not a reason to not support the amendment. It is not impossible for it to happen or not even necessarily the case that it could never happen. The point is that it may happen. Hon Martin Aldridge referenced moments ago that we have effectively had the testimony delivered to this house earlier by Hon Dr Brian Walker that, in his experience, sex-selection has been requested. This is not a controversial point, because we know this to be the case in other jurisdictions in Australia. I encourage members to familiarise themselves with the complaint made against the doctor who found themselves before the Australian Health Practitioner Regulation Agency. Obviously, no such complaint was made against Hon Dr Brian Walker in that instance, and rightly so—nor should a complaint be sustained against a practitioner for refusing to agree to such a request. We cannot pretend that we do not know that these requests are being made, even in our own state. We know that they are being made.

I accept that there is nothing before the house that says that the practice has been facilitated. This really goes to the point made by Hon Martin Pritchard, which, according to my notes, was that he was not sure whether this was needed. The honourable member has been here for a long time, as I have. I have lost count of the number of times that we have heard from governments of both persuasions about the need to futureproof bills. I have lost count of how many times, when scrutinising bills, that I have asked whether a provision was necessary. The defence that was put by governments, whether Liberal or Labor, has been "Well, honourable members, we would like to include this to futureproof the bill." At the moment, I can think of no better example than this: if the practice of sex-selection on abortions is not happening in Western Australia, for goodness sake, let us futureproof the bill now and make sure that it does not happen.

The Leader of the House also said that the government does not think we can enforce the provisions. Once again, I have lost count of how many times I have raised this point before and been told that it is important to send a message. That was the phrase put to me on multiple occasions. There have been substantial laws passed, apparently to target bikies in Western Australia, including by the current government. Even though some of those laws are plainly unenforceable to anyone familiar with the operations of outlaw motorcycle gangs and the like, the government has repeatedly made the point that it is important to send a message. Indeed, one of the purposes of the statute book is to send a message to Western Australians about the law that we agree upon and the parameters and boundaries within which we are going to operate. If it is the case that there is overwhelming consensus in the chamber—I am yet to hear anyone dissent—that abortions ought not take place in Western Australia for sex selection, why would we not enshrine that consensus in the statute book to send a message?

With regard to the minister's further point that the government does not think it can enforce this amendment, we do not want to enforce it. We do not want it to happen, and that is why we want to send the message in the first place. The government can assist in helping this happen by, as Hon Martin Aldridge has suggested, collecting data in respect of this point. If we ask a medical practitioner to sign a form 1 and sign off on whether this has occurred for sex selection purposes, we can be sure that that will assist in enforcing the message that is being sent.

The minister also indicated that there is nothing in the legislation at the moment that would enable sex selection under this bill. I suggest that that is actually an incorrect statement. The entire phase 1 abortion regime that will be passed by this legislation will enable sex selection because no reason will need to be provided. The entire phase 1 abortion system will enable a person to go to a practitioner prior to 23 weeks and request an abortion without giving a reason. To suggest that this regime will not enable sex selection under the legislation is categorically incorrect. It will absolutely enable this to happen, and that is why Hon Kate Doust has moved this amendment—to make sure that it is abundantly clear that, even though people do not need to give reason prior to 23 weeks, the medical practitioner should not allow it to occur for the purposes of sex selection.

The honourable minister suggested that we are asking the medical practitioner to enter into the mind of the person. There are no words in the amendment that can be read to give effect to that; nothing whatsoever. The point here is that if the medical practitioner becomes aware because, as was outlined by Hon Dr Brian Walker, somebody has come to them and articulated in words that they would like to have an abortion because they understand that they will be having a girl, or words to that effect, the practitioner will be aware and will not be able to proceed. They will not be able to proceed because the Legislative Council, the house of review, will have enshrined the message that I believe every member of this chamber says they agree with: that this should not be a practice that occurs.

The final point I will make in support of the amendment moved by Hon Kate Doust is that it will provide—to use the words used by the government during the course of this debate—clarity, certainty and safety. It is ultimately unobjectionable, but I cannot believe that we are defining the term "person". I do not believe there is anyone here who does not understand what a person is, and I do not believe there is anyone in Western Australia who does not understand what a person is, the government has said that it would like us to define the term "person" in this bill for clarity, certainty and safety. I took some time when we were debating that provision to make that point and to get on the record, through the Leader of the House, why the term "person" was being inserted, because it seemed to me to be utterly unnecessary. I could not even necessarily make a case that it would be needed for futureproofing. I do not believe that, in the future, anyone is going to be confused about what a person is. Nevertheless, the government has said that it would like that for clarity, certainty and safety, and for the exact same reasons I encourage members to support this amendment.

Hon MARTIN ALDRIDGE: I have a question about the amendment. If the amendment is not supported, will it be lawful to have an abortion in Western Australia for the purposes of gender selection?

Hon SUE ELLERY: No, it would not be unlawful. There is no legal framework. The only law that exists in respect of that—I think Hon Kate Doust referred to it—is the IVF arrangements. I think that was —

Hon Martin Aldridge interjected.

Hon SUE ELLERY: Somebody did. Anyway, no, there is no law that goes to this issue.

Hon MARTIN ALDRIDGE: I am a little confused by the answer. There is no law that addresses that specific question?

Hon Sue Ellery: That goes to the issue.

Hon MARTIN ALDRIDGE: So is the answer to my question, yes, it would be lawful for an abortion to be performed for the purposes of sex selection?

Hon SUE ELLERY: I do not know whether we can use the word "lawful" if no law exists. I could accurately say to the member that it would not be unlawful because there is no law. To be lawful, there must be a law. There is no law.

Hon KATE DOUST: If it is the case that we currently do not have anything in place to protect female babies from being aborted simply because they are female babies, then, surely, if we all think the idea of abortion being a tool for gender selection in certain circumstances for a particular gender preference or family balance is abhorrent, it is all the more reason to put something in place to ensure that gender selection via abortion does not occur in Western Australia.

Hon SUE ELLERY: I guess the tricky bit of what Hon Kate Doust just said is the last bit—to ensure it does not happen. That is the point I was trying to make earlier, because it is highly unlikely that a woman is going to present and say, "Here's the reason why I want to termination of this pregnancy—because I don't want sex A or sex B." For the amendment proposed by the member to have effect, there would have to be some way for the practitioner to be able to establish whether or not that was the case. The government has no in-principle disagreement about the fact that we do not want that to happen. When the clinicians in this state were asked whether they had concerns about this being an issue, they said no. When New South Wales explored this issue it emerged that 0.02 per cent of abortions were because of gender selection. Despite all this, we would have no way of giving effect to the amendment the member is seeking to insert. That is why we are saying we will not support the amendment. It cannot be enforced and it would require the practitioner to get inside the head of the woman presenting and satisfy themselves that, somehow, when the woman says, "No, that is not the reason", it is in fact the case. That is not enforceable.

Hon MARTIN ALDRIDGE: I am not a lawyer but I am not sure about the difference between something being lawful and unlawful. We have established that it would not be unlawful, so perhaps the language I will use is that it will be permissible. It will be permissible under Western Australian law for a medical practitioner to perform an abortion for the purposes of sex selection. We know that it will not be unlawful; it will be permissible. Under proposed section 202ME, "Performance of abortion by medical practitioner at more than 23 weeks", proposed subsection (2) states that in considering whether performing an abortion on a person is appropriate in all the circumstances, a medical practitioner must have regard to the provisions in paragraphs (a), (b) and (c). Could a medical practitioner satisfy himself or herself that sex selection could meet one of those three limbs?

Hon SUE ELLERY: No, honourable member.

Division

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

Ayes (12)

Hon Martin Aldridge	Hon Colin de Grussa	Hon Sophia Moermond	Hon Wilson Tucker
Hon Peter Collier	Hon Nick Goiran	Hon Martin Pritchard	Hon Dr Brian Walker
Hon Ben Dawkins	Hon Steve Martin	Hon Tjorn Sibma	Hon Kate Doust *(Teller)*

Noes (19)

Hon Klara Andric	Hon Lorna Harper	Hon Dr Brad Pettitt	Hon Dr Sally Talbot
Hon Dan Caddy	Hon Jackie Jarvis	Hon Stephen Pratt	Hon Darren West
Hon Sandra Carr	Hon Ayor Makur Chuot	Hon Samantha Rowe	Hon Pierre Yang
Hon Stephen Dawson	Hon Kyle McGinn	Hon Rosie Sahanna	Hon Peter Foster *(Teller)*
Hon Sue Ellery	Hon Shelley Payne	Hon Matthew Swinbourn	

Amendment thus negatived.

Hon KATE DOUST: I move —

Page 10, after line 12 — To insert —

202MEC. Obligations of medical practitioners and prescribing practitioners to provide information about counselling

(1) Before a medical practitioner or prescribing practitioner, under section 202MC, 202MD(2) or 202ME(1), performs an abortion on a person, the practitioner must provide all necessary information to the person about access to counselling, including publicly-funded counselling.

(2) A medical practitioner or prescribing practitioner may, in an emergency, perform an abortion on a person without complying with subsection (1).

Members will note from the second reading speech that one of the key changes in this bill relates to the removal of mandatory counselling. Before I go into more detail I will ask the minister a couple of questions because I want to get it clear in my head, and perhaps in the minds of others in this room. I would like the minister to provide us with some detail about the nature of what is offered currently for counselling to a woman who presents herself to a medical practitioner seeking an abortion.

Hon SUE ELLERY: I will describe it this way—this is my description—I am informed that it operates in two tiers. In the first instance, it is the general practitioner to whom the woman presents who will provide immediate counselling directly with her to understand her decision-making and her understanding of all the issues. If in the course of that either the woman requests or the clinician determines that she needs access to further counselling, the following services have been engaged by the Department of Health to provide free counselling information and support—Sexual Health Quarters in Perth, Desert Blue Connect in Geraldton, the Goldfields Women's Health Care Centre and the South West Women's Health and Information Centre. Depending on the GP's assessment or the woman's requests or what she is looking for, a number of websites may assist—namely, Pregnancy, Birth and Baby at Healthdirect and the Royal Women's Hospital.

Support is also available for family and support persons by the counselling services that I have already mentioned. Through the Women and Newborn Health Service, there is public funding for six unplanned pregnancy counselling programs, offering counselling during which women are advised of all the different options relating to an unplanned pregnancy. The two peak membership organisations for counselling in Australia, the Psychotherapy and Counselling Federation of Australia and the Australian Counselling Association, were established to provide industry-based standards and self-regulated counsellors. Both have codes of ethics, the principles of which respect the patient's rights to determination.

Hon KATE DOUST: When somebody is going to see the doctor, is that termed provision of information or counselling? I see those things as being quite different.

Hon Sue Ellery: Counselling.

Hon KATE DOUST: Counselling. Is that talking about whether or not they want to have the process? The second reading speech refers to how currently people receive counselling to enable informed consent. We have had discussions about informed consent in a modern or current context. Once this mandated counselling at that first point of contact is removed, what will happen in reality? Will there be any change in the engagement or the provision of information in that first instance?

Hon SUE ELLERY: Under the existing regulatory regime, the counselling in a practical sense occurs when the woman presents at the GP. It must include the GP counselling about the medical risk of termination of pregnancy and

of carrying the pregnancy to term. In the course of the consultation, an overwhelming majority of women said that they do not want that degree of counselling. In a practical sense, what has been explained to me is there are some women who come in knowing they are pregnant and knowing they want a termination. They do not want to have a conversation around, "Do you understand the risks of carrying or the risks of termination?" They do not want to have that conversation. They know what they want to achieve. However, the regulatory framework says they must be provided that. There may not be a huge difference in what actually happens, but the requirement for the clinician to say the words that are in the legislation is removed. There will still be women who come in and say, "I'm pregnant and this is what I want." There will be others who come in and say, "I think I'm pregnant and I want to talk about the options." The difference between the current regime and what is proposed is around the patient's needs. It is not us assuming what the patient needs and having a legal requirement to give the patient certain information. It is about: "What is it that you want from me and how can I help you make the decisions you need to make?"

Hon KATE DOUST: The second reading speech refers to the current situation not reflecting contemporary practice. I am assuming "contemporary practice" refers to what happens elsewhere.

Hon Sue Ellery: No, it is here as well.

Hon KATE DOUST: My question then is: what happens in other states in regard to the manner of information provided?

Hon SUE ELLERY: I do not have a table with the differences set out. The advice available to me is that counselling is optional in Victoria, Queensland, Northern Territory, Australian Capital Territory and Tasmania. In New South Wales, medical practitioners assess whether it is necessary to discuss counselling. In South Australia, they provide all necessary information about how to access counselling, including publicly funded counselling.

Hon KATE DOUST: Based on those examples provided, once mandated counselling is removed in Western Australia, where would we fit in with some of those other examples? Would whether they offer the information be deemed to be optional or would it depend on the individual doctor? I will talk about South Australia when we deal with the amendment.

Hon SUE ELLERY: I am conscious of the time, so I might give a quick answer now, honourable member. The difference between what existed before and what exists in other jurisdictions and what is proposed in Western Australia is patient-centred care. It is driven by what it is that the patient says they want. If the patient says they want information about all of their options—namely, what option A might mean and what option B might mean—the GP will provide that information either then and there in the consultation or will have access to information about the services available. It might be outlining what is available online, if that is easier for the person, on how to access telehealth services or whatever it is that the patient wants. The patient is at the centre. If the patient seeks information about counselling services, the patient will be provided with that.

Hon KATE DOUST: I know we are going to be doing something else in a minute and a bit, so I will just flag that the second reading speech also refers to clinical guidelines to provide clarity on appropriate pathways for counselling. I am assuming those clinical guidelines will be constructed or developed during the next six-month phase that the Leader of the House has referred to.

Hon Sue Ellery: Yes.

Hon KATE DOUST: Will those clinical guidelines be available only to the practitioner or will they be publicly available, as they have been in New South Wales and I think Queensland? We have already referenced some of them during debate.

Committee interrupted, pursuant to standing orders.

[Continued on page 4632.]